

## MAIN CHANGES OF THESE AMENDMENTS

1. Minor reorganization and clarification of requirements and procedures
2. Board of Adjustment is now 5 members with 2 alternates (still served by the 7 Planning Board members)
3. Stricter stormwater management requirements
  - 500sf impervious threshold for management plans
  - All plans must be professionally designed and certified once installed
4. 15' side setback for all oceanfront homes regardless of plat date
5. Prohibits parking decks/garages
6. Remove redundant or conflicting provisions in Chapter 6 Building Regulations

## FUTURE AMENDMENT PROPOSALS WILL INCLUDE

- Further standardize and clarify review procedures
- Add graphics to display dimensional standards
- Further reorganization, clarification, and addition to use-specific, district-specific, and permit-specific standards
- Update definitions based on state statutes and building code (e.g. manufactured home vs mobile home)
- Update signage provisions to better comply with federal regulations and best management practices
- Landscaping requirements for residential projects
- Oceanfront structure massing limitations/guidance

## FUTURE AMENDMENT PROPOSALS MAY INCLUDE

- Move codified ordinance from appendix to Code of Ordinance
- Modernization of Chapter 9 Nuisances to meet statutory requirements and best management practices
- Add business registration requirement in Chapter 9 Business Regulations or UDO
- Standards for shoreline stabilization and marine construction projects (mainly maintenance requirements)
- Increase types of landscaping requirements for mixed-use and commercial projects
- Increase off-street parking requirements for residential uses (currently only 2 per dwelling)
- Require under-construction elevation certificate (in addition to pre-construction and final)



Nice Matters!

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## Summary of Staff's Proposed Amendments November 29, 2022

### APPENDIX A – UNIFIED DEVELOPMENT ORDINANCE (UDO)

#### Throughout entire ordinance

- Corrected numbering/lettering due to changed sections
- Fixed minor spelling/typing errors
- Corrected section references
- Removed gender (his/her) and replaced with neutral pronoun

#### Chapter One General Provisions

- NO PROPOSED CHANGES

#### Chapter Two Administration

- Table 2.1 Summary Procedures Table
  - Added Pre-Application Consultation and removed “consult”
  - Added Pre-Application Consultation requirement to more review types to ensure that staff-applicant conversations are occurring prior to application submission (also identified within review procedures sections)
  - Updated Hearing to reflect either Evidentiary or Legislative type
  - Removed Appeals from the table and identified in new Note 1 that all appeals of Town development ordinances are heard by BOA and appeals of BOA decisions go to Superior Court.
  - Re-arranged procedures to match organizational structure
  - Corrected section references
- Section 2.2 Decision-Making and Administrative Bodies: Integrated “conflict of interest” requirements into section wording for decision-making bodies, rather than as separate subsection
- Section 2.2.3 Board of Adjustment
  - Now served by five regular members and two alternates, to be conducted by the seven members of the Planning Board and alternating as regular/alternate members as designated by the Chairman. (This provides the required 4/5<sup>th</sup> vote for variances.)
  - This would require four members for a quorum, versus the previous six.
  - Relocated appeal & variance provisions to respective procedure review sections
  - Relocated the quasi-judicial procedure to its own subsection, rather than under BOA powers and duties
- Section 2.2.4 Staff: Added the Public Works Director under staff (see updates to Dunes & Vegetation Permit)
- Section 2.3 Common Review Procedures: Simplified and/or consolidated wording, identify specifics for review procedure steps, and update wording as needed.
- Section 2.4.3 Planned Unit Developments: Updated language for townhouses/duplexes
- Section 2.4.5 Subdivision of Land: removed requirement to identify proposed dedicated sites for places of worship (ROW, easements, and public use sites only)
- Section 2.4.11 Dunes and Vegetation Permit

- Relocated applicability section from Section 6.4 here
- Updated language in applicability section to include language from N-Focus' draft (previously reviewed and discussed with UDO Committee)
- Relocated exemptions section from Section 6.4 here
- Included an exemption for Public Works projects in rights-of-way and Town property/easement (for repaving or stormwater projects, for example)
- Consolidated repetitive permit application requirements
- Section 2.4.12 Appeals
  - Relocated appeals provisions here from Section 2.2.3
  - Removed sign permit, now covered by zoning permit procedure
- Section 2.4.13 Wireless Communication Permit
  - Removed unnecessary regarding public comment – public comment periods are allowed at public meetings independent of this provision
  - Relocated application requirements here from appendix
  - Removed compulsory permit issuance
- Section 2.4.15 Zoning Permit: Expanded procedure to include applicability, procedure, and expiration sections
- Section 2.4.16 Building Permit: Updated to reflect current permitting through Carteret County
- Section 2.4.17 Variances: Updated language to match General Statutes requirements for variances

### Chapter Three Zoning Districts

- NO PROPOSED CHANGES

### Chapter Four Use Regulations

- Table 4.1.2 Permitted and Special Uses
  - Consolidated multifamily dwellings
  - Clarified that dwellings/condominiums in the Business zoning district are with regard to mixed-use developments (otherwise, dwellings aren't permitted in that district)
  - Combined motels and motor courts with hotels and inns, same use profile
  - Removed repetitive "Retail sales, indoor, not listed separately" in favor of "General retail sales not otherwise listed" with same use profile
  - Removed "or garages" from parking lots in order to prohibit parking garages/decks in accordance with UDO Committee direction

### Chapter Five Density, Intensity, and Dimensional Standards

- Table 5.1 Dimensional Standards
  - Removed overlay districts from dimensional table – overlay districts have the same dimensional standards as base district, with additional dimensional standards for those districts already provided as additional requirements in Notes section of table
  - Reformatted table to mirror review procedure table structure
  - Identified the "Business/Government and Camp" districts as Commercial
  - Added multifamily residential lot area requirements to MH district
  - Created a new requirement for all oceanfront lots to have a 15' setback (regardless of lot plat date)

- Removed minimum dwelling unit size from the table (size limitation already removed)
- Mobile home requirements removed (manufactured homes meeting current requirements wouldn't be smaller than these dimensions anyway)
- Relocated the minimum camping space size to Notes section.
- Relocated the 3ft setback encroachment provision from Section 10.2 Definitions here.

#### Chapter Six Development Standards

- Section 6.3 Stormwater Management
  - Consolidated introductory subsection to state the purpose, authority, and objectives of the section more succinctly
  - Removed redundant or vague statements and clarified requirements
  - Lowered the permitting exemption from 1000 impervious sf to 500sf
  - Added that all stormwater management plans must be professionally designed (small, as well as large)
  - Added requirement that the installation of stormwater plans must be inspected and approved by a design professional and provide a certification at the completion of the project.

#### Chapter Seven Subdivision Standards

- NO PROPOSED CHANGES

#### Chapter Eight Nonconformities

- NO PROPOSED CHANGES

#### Chapter Nine Enforcement

- Section 9.1 Violations – additional language imported from Chapter 6

#### Chapter Ten Definitions and Rules of Interpretation

- Removal of standards from definitions to incorporate into relevant ordinance sections
- Added definition for “oceanfront”

### **CODE OF ORDINANCES CHAPTER 6 BUILDING REGULATIONS**

- Removed sections that are conflicting or redundant with UDO provisions

## STATEMENT OF CONSISTENCY

### Statement of Consistency in accordance with G.S. 160D-604(d) for text amendments to Chapter 6 Building Regulations and Chapter 18 Unified Development Ordinance of the Town of Emerald Isle

**WHEREAS**, in 2021 the Town of Emerald Isle began the process to comprehensively update development regulations; and

**WHEREAS**, throughout 2021 and 2022 staff, elected officials, appointed officials, and an outside consulting firm met in monthly UDO Steering Committee meetings to discuss a suite of procedural and policy updates; and

**WHEREAS**, the Town decided to utilize staff-drafted text amendments to achieve the goals of the Town; and

**WHEREAS**, staff generated comprehensive updates to Chapter 18 Unified Development Ordinances and Chapter 6 Building Regulations; and

**WHEREAS**, the Planning Board met on November 28, 2022 to discuss the appropriateness of amending the ordinance at issue and made the following findings and conclusions:

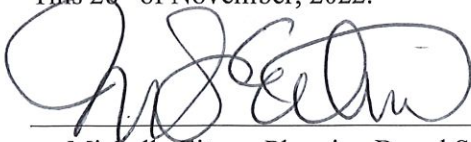
- a) The amendments provide greater clarity to procedures and requirements for development review and approval.
- b) A Board of Adjustment with 5 regular members and 2 alternate members is well served by the 7 regular members of the Planning Board, but complies with statutory requirements for a 4/5ths vote to approve variances.
- c) Stricter stormwater management requirements will reduce the rate at which stormwater flooding is increasing in Town and better reduce impacts to adjacent properties.
- d) Requiring all oceanfront projects to have a 15' side setback ensures that separation between structures provides access to the south side of structures, as accessing the structures via the dunes is not an acceptable option should repairs or replacement be required.
- e) Parking decks or garages are not reasonable additions to the built landscape in Emerald Isle, as traffic is already a concern and additional vehicles would further inundate roads.
- f) These comprehensive code updates succinctly provide a suite of amendments that have been discussed at length.

These amendments are attached and incorporated by reference (blue underline text is added, red strikethrough text is deleted, and green underline text has been relocated).

*with added definition for "oceanfront"*

On the basis of foregoing findings, conclusions, and reasoning the Town of Emerald Isle Planning Board does hereby recommend these ordinance amendments as proper, consistent with the most recently adopted CAMA Land Use Plan, and with the other plans of the Town; that the Ordinance is reasonable in scope and approach pursuant to such plans; and the ordinance is in the public interest.

This 28<sup>th</sup> of November, 2022.



Michelle Eitner, Planning Board Secretary



Kenneth Sullivan, Planning Board Chair

## Chapter 1: GENERAL PROVISIONS

### 1.1 OFFICIAL TITLE

This Ordinance shall be officially known as the "Unified Development Ordinance of the Town of Emerald Isle, North Carolina" and may be referred to as the "Unified Development Ordinance", or "Development Ordinance" or "the UDO" or "this Ordinance".

### 1.2 EFFECTIVE DATE

This Ordinance shall become effective on (insert effective date).

### 1.3 AUTHORITY

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Articles 7, 9, and 11 of Chapter 160D (Effective January 1, 2021) of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Board of Commissioners of the Town of Emerald Isle, North Carolina, does ordain as follows:

(Ord. of 6-9-20(2) , § 1)

#### 1.3.1 General Authority

This Ordinance consolidates the Town's zoning, subdivision and other land development regulatory authority as authorized by the North Carolina General Statutes and is adopted pursuant to:

- (1) The authority granted to the Town by the General Assembly of the State of North Carolina;
- (2) The Town Charter;
- (3) The North Carolina General Statutes (G.S.) ch. 160A, art. 8; ch. 160A, art. 19, pts. 1, 3, 5, and 8; ch. 160A, pt. 175, ch. 160A, pt. 361; ch. 160A, pt. 385.1; ch. 143, art. 21, pt. 6; and ch. 14-4; Chapter 160D and relevant Articles;
- (4) All other relevant laws of the State of North Carolina; and
- (5) Any special legislation enacted for the Town.

(Ord. of 3-9-21(1) , § 1)

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### 1.3.2 References to North Carolina General Statutes

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

### 1.4 GENERAL PURPOSE AND INTENT

The purpose of this Unified Development Ordinance is to protect the public health, safety, and general welfare of the citizens and land owners of the Town, and to implement the policies and objectives of the Emerald Isle Land Use Plan. The intent of this Unified Development Ordinance is to:

- (1) Foster convenient compatible, and efficient relationships among land uses;
- (2) Lessen congestion in the streets;
- (3) Ensure the provision of adequate open space between uses for light, air and fire safety;
- (4) Prevent the overcrowding of land and avoid undue concentrations of population;
- (5) Preserve the character and quality of residential neighborhoods while providing increased housing choices;
- (6) Facilitate the adequate provision of transportation, utilities, parks, recreation and other public uses;
- (7) Maintain and protect high quality aesthetic standards for development;
- (8) Conserve the value of buildings and land;
- (9) Conserve the natural resources and environmental quality of the Town and its environs; and,
- (10) Protect development and residents from flooding and other natural hazards.

### 1.5 APPLICABILITY AND JURISDICTION

#### 1.5.1 General Applicability

The provisions of this Ordinance shall apply to the development of all land within the corporate limits unless it is expressly exempted by a specific section or subsection of this Ordinance. [Notwithstanding the foregoing, in the event there is a conflict between the provisions of this Ordinance and the requirements of the North Carolina General Statutes, including but not limited to the requirements of Chapter 160D of the North Carolina General Statutes, the conflicting provisions of this Ordinance shall be superseded and supplanted by the requirements of the North Carolina General Statute\(s\).](#)

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## 1.5.2 Application to Governmental Units

Except as expressly stated in specific sections of this Ordinance, the provisions of this Ordinance shall apply to:

- (1) Development of land owned or held in tenancy by the Town or its agencies or departments;
- (2) Development by public colleges or universities;
- (3) State and county buildings in accordance with the standards in G.S. 160D-913;
- (4) To the full extent permitted by law, development of land owned or held in tenancy by the government of the United States, its agencies, departments or corporate services.

(Ord. of 3-9-21(1) , § 1)

## 1.5.3 No Development Until Compliance with this Ordinance

No structure or land shall be used and no part of a structure shall be located, erected, moved, reconstructed, extended, converted, demolished or structurally altered, without full compliance with the provisions of this Ordinance and all other applicable Town, state, and federal regulations.

## 1.5.4 Agricultural Uses—Bona Fide Farming Exempt From Zoning

- (a) Zoning regulations may not affect property used for bona fide farm purposes; provided, however, that this section does not limit zoning regulation with respect to the use of farm property for nonfarm purposes. Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1. Activities incident to the farm include existing or new residences constructed to the applicable residential building code situated on the farm occupied by the owner, lessee, or operator of the farm and other buildings or structures sheltering or supporting the farm use and operation. For purposes of this section, "when performed on the farm" in G.S. 106-581.1(6) shall include the farm within the jurisdiction of the town and any other farm owned or leased to or from others by the bona fide farm operator, no matter where located. For purposes of this section, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:
  - (1) A farm sales tax exemption certificate issued by the Department of Revenue.
  - (2) A copy of the property tax listing showing that the property is eligible for participation in the present-use value program pursuant to G.S. 105-277.3.

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- (3) A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
  - (4) A forest management plan. A building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that (i) is owned by a person who holds a qualifying farm sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a) or (ii) is enrolled in the present-use value program pursuant to G.S. 105-277.3. Failure to maintain the requirements of this subsection for a period of three years after the date the building or structure was originally classified as a bona fide farm purpose pursuant to this subsection shall subject the building or structure to applicable zoning and development regulation ordinances adopted by a town pursuant to subsection (a) of this section in effect on the date the property no longer meets the requirements of this subsection. For purposes of this section, "agritourism" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.
- (b) County Zoning of Residential Uses on Large Lots in Agricultural Districts. - A county zoning regulation shall not prohibit single-family detached residential uses constructed in accordance with the North Carolina State Building Code on lots greater than ten (10) acres in size and in zoning districts where more than fifty percent (50%) of the land is in use for agricultural or silvicultural purposes, except that this restriction shall not apply to commercial or industrial districts where a broad variety of commercial or industrial uses are permissible. A zoning regulation shall not require that a lot greater than ten (10) acres in size have frontage on a public road or town-approved private road or be served by public water or sewer lines in order to be developed for single-family residential purposes. (G.S. 160D-903)

(Ord. of 3-9-21(1) , § 1)

### **1.5.5 Development Approvals**

- (1) All development approvals must be provided in writing; in either print or electronic form. If the electronic form is used, then it must be protected from further editing. (G.S. 160D-403(a))
- (2) All development approvals run with the land. (G.S. 160D-104)
- (3) For revocation of a development project, the same process that was used for approval must be followed. (G.S. 160D-403(f))

(Ord. of 3-9-21(1) , § 1)

## **1.6 CONFORMANCE WITH ADOPTED PLANS**

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### **1.6.1 CAMA Land Use Plan**

- (1) The Emerald Isle CAMA Land Use Plan, as amended from time to time, shall serve as the basic policy guide for the administration of this Ordinance in the Town, and any other geographic areas specifically addressed by the CAMA Land Use Plan. All references to the CAMA Land Use Plan shall include any amendments to the plan after the effective date of this Ordinance.
- (2) All development and redevelopment within the Town shall comply with the applicable provisions of the adopted CAMA Land Use Plan. Amendments to the text of this Ordinance and/or rezoning of land may be required in order to ensure compliance with this section 1.6.1.

### **1.6.2 Other Plans**

In addition to the Land Use Plan, all development applications should be in conformance with any applicable plans adopted by the Board of Commissioners.

## **1.7 RELATIONSHIP WITH OTHER LAWS, COVENANTS, OR DEED RESTRICTIONS**

### **1.7.1 Conflicts with Other Town Codes or Laws**

If the provisions of this Ordinance are inconsistent with one another, or if the provisions of this Ordinance conflict with provisions found in other adopted codes or ordinances of the Town, the more restrictive provision shall govern unless the terms of the provisions specify otherwise.

### **1.7.2 Conflicts with Private Agreements**

If the provisions of this Ordinance conflict with the provisions of private easements, covenants, or restrictions, the stricter of the requirements shall apply. The Town shall not be responsible for monitoring or enforcing private covenants and restrictions, although the Town may inquire as to whether land is subject to covenants and restrictions during the review of development applications.

### **1.7.3 Conflicts with State or Federal Law**

If the provisions of this Ordinance are inconsistent with the law or regulations of the state or federal government, the more restrictive provision shall control, to the extent permitted by law.

### **1.7.4 Existing Agreements or Vested Rights**

Nothing in this Ordinance is intended to repeal, supersede, annul, impair, or interfere with any existing private agreements or vested rights previously adopted or issued pursuant to all applicable laws.

## **1.8 OFFICIAL ZONING DISTRICT MAP**

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### **1.8.1 Generally**

The Official Zoning District Map designates the location and boundaries of the various base zoning districts, overlay zoning districts, and municipal corporate boundaries. The Official Zoning District Map shall be kept on file in the office of the Planning Director and is available for public inspection during normal business hours. The original official version of the map shall be certified by the Town Clerk, and shall bear the seal of the Town. It may be kept in either hardcopy or digital form. It shall be the final authority as to the status of the current zoning district classification of land in the Town, and shall only be amended in accordance with this Ordinance.

### **1.8.2 Incorporated by Reference**

The Official Map of Zoning Districts, all the notations on that map, and any related maps are hereby incorporated by reference and made part of this Ordinance. All previous maps shall be kept in either hardcopy or digital form.

(Ord. of 3-9-21(1) , § 1)

### **1.8.3 Interpretation of Official Map Boundaries**

The Board of Adjustment shall be responsible for interpretations of the Official Zoning District Map pursuant to section 2.2.3(4)(B).

### **1.8.4 Changes to Official Zoning District Map**

Changes made in zoning district boundaries or other matters portrayed on the Official Zoning District Map shall be made in accordance with section 2.4.1, Text and Map Amendments. Changes shall be entered on the Official Zoning District Map by the Planning Director promptly after the amendment has been approved by the Board of Commissioners.

- (a) If a zoning map amendment is approved that is not consistent with the map; then the future land use map is deemed amended when an inconsistent zoning is approved. (160D-605(a))
- (b) For a future land use map that is deemed amended, if it is a CAMA plan, then such amendment is not effective until it goes through the CAMA plan amendment process. (160D-605(a))
- (c) The Planning Board must adopt a statement of reasonableness for zoning map amendments; for such statements may consider factors noted in the statutes. The Planning Board may adopt a statement of reasonableness for zoning text amendments. (160D-605(a)).

(Ord. of 3-9-21(1) , § 1)

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## **1.8.5 Transition to New Zoning Districts**

Upon the effective date of this Ordinance, land that is zoned with a zoning district classification from the previous Code of Ordinances shall be re-classified or translated to one of the zoning district classifications in this Ordinance as set forth in Chapter 3: Zoning Districts.

## **1.9 VESTED RIGHTS**

### **1.9.1 Statutory Vesting**

Pursuant to G.S. 160D-102, 160D-100(d) and notwithstanding any other provision of this Ordinance, a landowner may apply for a site specific development plan approval that shall entitle said landowner to develop land in accordance with the site specific development plan. The procedure for establishing a vested right is set forth in section 2.4.14, Statutory Vested Rights.

(Ord. of 3-9-21(1) , § 1)

### **1.9.2 Common Law Vesting**

A common law vested right applies to a development that is under construction prior to a zoning change in which the change may adversely effect the development of the project. A common law vested right is established only when each of the four (4) tests is met:

- (1) The owner has made substantial expenditures towards the project; and
- (2) The expenditures were made in good faith; and
- (3) The expenditures were made in reliance on valid governmental approval; and
- (4) The owner would be harmed without the vested right.

When a phased development is involved, the common law vesting only applies to that phase of the project in which development has started at the time of the ordinance change, unless the expenditures cannot be allocated by phases. The remaining phases not under construction will need to apply for statutory vesting in order to obtain a vested right.

### **1.9.3 Permit Choice**

If an application made in accordance with local regulation is submitted for a development approval required pursuant to this Chapter and a development regulation changes between the time the application was submitted and a decision is made, the applicant may choose which version of the development regulation will apply to the application. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit. This section applies to all development

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approvals issued by the State and by local governments. The duration of vested rights created by development approvals is as set forth in Section 1.9.3. (160D-108(b))

(Ord. of 3-9-21(1), § 1)

## **1.10 SEVERABILITY**

If any section, subsection, sentence, boundary, clause, or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Commissioners hereby declares that it would have passed this Ordinance and any section, subsection, sentence, boundary, clause, and phrase of this Ordinance, even though any one or more sections, subsections, sentences, boundaries, clauses, or phrases might in the future be declared invalid.

## **1.11 ADOPTION AND CODIFICATION**

The current Chapters 13, 16, 18, 19 and 20 in their entirety, as well as applicable sections of Chapter 17, of the Town Code are hereby repealed and replaced in their entirety with this Unified Development Ordinance (UDO). Upon adoption, this UDO will be codified as Chapter 13 of the Town Code.

Editor's note(s)—At the direction of the town, the Unified Development Code has been codified as Appendix A.

## Chapter 2: ADMINISTRATION

### 2.1 SUMMARY PROCEDURES TABLE

The various types of approvals required for the administration of this Ordinance, the review and decision-making bodies responsible for each type of approval, the appeals bodies assigned to hear various types of appeals, requirements for public hearings, and public notice required for various types of approvals are summarized in Table 2.1 and explained in more detail in the remaining sections of this Chapter 2. In the event of any inconsistency between Table 2.1 and other provisions of this Chapter 2, the other provisions shall govern.

**TABLE 2.1: SUMMARY PROCEDURES TABLE**

PC = PRE-APPLICATION CONSULTATION; R = REVIEW BODY; D = DECISION-MAKING BODY; A = APPEALS BODY; /H = PUBLIC HEARING REQUIRED; EH = EVIDENTIARY HEARING; LH = LEGISLATIVE HEARING

N = NEWSPAPER NOTICE-SEC. 2.3.45(2); M = MAILED NOTICE- SEC. 2.3.95(3); P = POSTED NOTICE -SEC. 2.3.95(4)

APPLICATION TYPE		REVIEW AND DECISION-MAKING AND APPEAL BODIES				PUBLIC NOTICE REQUIRED
		STAFF	PLANNING BOARD	BOARD OF ADJUSTMENT	BOARD OF COMMISSIONERS	
Zoning Text Amendment (Section 2.4.1)		R	R		LH, D/H	N
Official Zoning District Map Amendment (Section 2.4.1)		R	R		LH, D/H	N, M, P
Conditional Rezoning (Section 2.4.2)		PC, R	R		LH, D/H	N, M, P
Planned Unit Developments (Section 2.4.3)		PC, R	R		LH, D/H	N, M, P
Special Use Permit (Section 2.4.4)		consult PC, R			EH, D/H	N, M, PM, P
Subdivision of Land (Section 2.4.5)	Sketch Plan	consult PC, R	R			
	Preliminary Plat and Final Plat	PC, R	R		D	N
	Final Plat					N
Special Plat Approval (Section 2.4.6)	Preliminary Plat and Final Plat	R	R		D	
	Final Plat					
Mobile Home Park or Recreational Vehicle Park Permit (Section 2.4.7)		PC, R	R		D	
Commercial Plan Review (section 2.4.8)	Over 1000 sq. ft.	PC, R	R		D	
	Under 1000 sq. ft.	D		A		
Floodplain Development Permit (Section 2.4.9)		D				
Stormwater Plan and Permit (Section 2.4.10)		D, RD	R	A	D	
<del>Variance (Section 2.4.17)</del>		R		D/H		N, M, P
Dunes and Vegetation Permit (Section 2.4.11)		D				
Appeal (Section 2.4.12)		R		EH, D		N

<b>Floodplain Development Permit (Section 2.4.9)</b> <b>Dunes and Vegetation Permit (Section 2.4.11)</b> <b>Sign Permit (Section 2.4.12)</b>	D		A		
<b>Wireless Telecommunications Permit (Section 2.4.13)</b>	D	R	A	D	N,M,P
<b>Statutory Vested Rights (Section 2.4.14)</b>	Same as for Underlying Application				
<b>Zoning Permit (Section 2.4.15)</b>	D		A		
<b>Building Permit (Section 2.4.16)</b>	D		A		
<b>Variance (Section 2.4.17)</b>	R		EH, D		N, M, P
<u>Note 1: All appeals of decisions or interpretations by a Town official made pursuant to this Ordinance or any other ordinance that regulates land use or development authorized by general statute are heard by the Board of Adjustment. Appeals of decisions by the BOA shall be subject to Superior Court of Carteret County review by proceedings in the nature of certiorari.</u>					

## 2.2 DECISION-MAKING AND ADMINISTRATIVE BODIES

### 2.2.1 Board of Commissioners

In order to exercise the authority granted the Board of Commissioners by state law, the Board of Commissioners shall have the following powers and duties:

(1) **Powers and Duties**

To initiate, review, and decide applications for the following:

- (A) Amendments to the text of this Development Ordinance;
- (B) Amendments to the Official Zoning District Map;
- (C) Planned Development Master Plans;
- (D) Special Use Permits; and
- (E) Vested Rights Determinations
- (F) Subdivisions;
- (G) Special Plat Approvals;
- (H) Mobile Home Park or Recreational Vehicle Park Permit;
- (I) Commercial Architectural Review; and
- (J) Commercial Plan Review (over one thousand (1,000) sq. ft).

(2) **Schedule of Fees**

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To approve by resolution a schedule of fees governing applications for permits and other permit approvals reviewed under this Ordinance.

(3) **Other Actions**

To take any other action not delegated to the Planning Board, Board of Adjustment, the Planning Director, or other decision-making body as the Board of Commissioners may deem desirable and necessary to implement the provisions of this Ordinance.

(4) **Conflict of Interest**

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

A member of the board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. [For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationship.](#)

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

~~(A) For purposes of this Chapter, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationship.~~

(Ord. of 3-9-21(1) , § 2)

## 2.2.2 Planning Board

(1) **Creation**

A Planning Board for the Town is hereby created under the authority of the North Carolina General Statutes.

(2) **Membership**

**(A)** The Town Planning Board (referred to as the "Planning Board") shall consist of seven (7) permanent residents of the Town. The initial members of the Planning Board shall serve staggered terms. Appointments at the expiration of the terms of office for the initial

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members shall be for a term of two (2) years each. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term.

**(B)** Appointments to the Planning Board shall be made by the Board of Commissioners. A member of the Planning Board may be removed by a majority vote of the Board of Commissioners, upon a finding by a majority of the Board of Commissioners that:

**(i)** The appointed member has missed three (3) consecutive meetings (special or regular or a combination of both) without the member being excused for ~~his~~ their absence by a majority vote of the Planning Board. Absences due to sickness, death, or other emergencies of like nature shall be regarded as approved absences, and the Planning Board shall vote on other excuses and justifications of the member for ~~his~~ their absence; or

**(ii)** Prolonged illness or absence, whether excused or not; or

**(iii)** The appointed member has voted on an issue that represents a conflict of interest for the Planning Board member so voting; or

**(iv)** The Board of Commissioners determines that removal is in the best interest of the Town.

**(3) Organization; Rules; Meetings; Records**

**(A)** The Planning Board shall meet and elect a chairman, vice-chairman, and such other officers as they may determine necessary to fill. The term of the chairman and other officers shall be one (1) year, with eligibility for reelection. It shall adopt rules for the transaction of business and shall keep a record of its members' attendance and all resolutions, discussions, findings, and recommendations, which records shall be a public record. Robert's Rules of Order shall be followed and adhered to by the Planning Board in the conduct of its business. Four (4) Planning Board members present shall constitute a quorum.

**(B)** The Planning Board shall hold a minimum of one (1) regular meeting monthly which shall be on a designated day of each month. Other regular and special meetings of the Planning Board shall be held at the call of the chairman or upon the written request of any two (2) members of the board. The regular meeting of the Planning Board may be cancelled upon concurrence of the Chairman and the Planning Director if doing so is in the best interest of the Board.

**(4) Powers and Duties**

The powers and duties of the Planning Board are as follows:

**(A)** Make studies of the area within its jurisdiction and surrounding areas;

**(B)** Determine objectives to be sought in the development of the study area;

**(C)** Prepare and recommend to the Board of Commissioners a Land Use Plan for achieving these objectives;

**(D)** Develop and recommend policies, ordinances, and administrative procedures; and other planning-related duties.

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- (E) Advise the Board of Commissioners concerning the use and amendment of means for carrying out the comprehensive plan;
  - (F) Review and advise the Board of Commissioners on all proposed plats of land subdivision;
  - (G) Review and advise the Board of Commissioners on all requests of rezoning of property;
  - (H) Report monthly to the Board of Commissioners; and
  - (I) Perform any other related duties that the Board of Commissioners may direct.
  - (J) The Planning Board shall review and comment on any zoning amendments. (160D-604(c))
  - (K) The Planning Board shall consider any adopted plans when making a comment on plan consistency. When adopting an amendment to the zoning ordinance, the Planning Board must adopt a brief statement describing whether the action is consistent or inconsistent with approved plans. (160D-604(c) & (e) and 160D-605(a))

(5) **Conflict of Interest**

A Planning Board member shall abstain from voting on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A board member shall not vote on any zoning, amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationship.

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

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

~~(A) For purposes of this Chapter, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationship.~~

(6) **Compensation**

All members of the Planning Board may be compensated from time to time as deemed appropriate by the Board of Commissioners.

(Ord. of 3-9-21(1), § 2)

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## 2.2.3 Board of Adjustment

### (1) Designation of Planning Board as the Board of Adjustment

The Planning Board is hereby authorized to perform all of the duties of a Board of Adjustment as provided under the authority of the North Carolina General Statutes. [The seven members of the Planning Board shall exchange serving as the five regular members and two alternate members of the Board of Adjustment, as designated by the Planning Board Chairman.](#)

### (2) Organization; Rules; Meetings; Records

All meetings of the Planning Board acting as the Board of Adjustment shall be held at a regular place and shall be open to the public. The Board shall adopt rules governing its organization and for all proceedings before it. Final disposition of appeals shall be by recorded resolution indicating the reasons of the Board thereafter, all of which shall be a public record. No final action shall be taken on any matter unless a quorum is present. A quorum for the Planning Board acting as the Board of Adjustment shall consist of ~~six (6)~~ [five \(5\) regular](#) members.

Appeals from the enforcement and interpretation of this chapter and requests for variances [or interpretations](#) shall be filed with the Planning Director ~~specifying the grounds for the appeal.~~ The Planning Director shall transmit to the Planning Board (acting as the Board of Adjustment) all applications and records pertaining to such appeals ~~, or variances,~~ [or interpretations](#). The Planning Board (acting as the Board of Adjustment) shall fix a reasonable time for the [evidentiary](#) hearing ~~of the appeal~~, and shall give the public notice thereof, ~~published in a newspaper of general circulation in the town at least once each week for two (2) successive weeks prior to the hearing. An appeal stays all proceedings in furtherance of the action appealed from, unless the Planning Director certifies to the Planning Board (acting as the Board of Adjustment) that by reason of facts stated in the record a stay would, in his opinion, cause imminent peril to life and property, in which case proceedings shall not be stayed otherwise than by an order from the Superior Court of Carteret County.~~

### (3) Powers and Duties

The Planning Board, acting as the Board of Adjustment, shall have the following powers and duties:

#### (A) Appeal of Administrative Decisions and Interpretations

To hear and decide appeals where it is alleged that there is an error in (1) an order, requirement, decision, or determination pursuant to this Unified Development Ordinance, made by the Planning Director, or (2) an interpretation of this Unified Development Ordinance, made by the Planning Director. A simple majority vote of the members of the Board present for the hearing of a particular case shall be necessary to reverse any order, requirement, decision, or determination of the Planning Director, or to decide in favor of the applicant any matter that it is required to pass under the Unified Development Ordinance.

~~**Quasi-judicial decision.**—A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions~~

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~~involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board. (160D-102(28))~~

~~**Quasi-judicial procedure.**~~

- ~~(a) Process Required. Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.~~
- ~~(b) Notice of Hearing. Notice of evidentiary hearings conducted pursuant to this Chapter 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; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the local government 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. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.~~
- ~~(c) Administrative Materials. The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.~~
- ~~(d) Presentation of Evidence. The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the~~

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~~board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.~~

- ~~(e) Appearance of Official New Issues. — The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.~~
- ~~(f) Oaths. — The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.~~
- ~~(g) Subpoenas. — The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.~~
- ~~(h) Appeals in Nature of Certiorari. — When hearing an appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).~~
- ~~(i) Voting. — The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.~~
- ~~(j) Decisions. — The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have~~

~~all the powers of the official who made the decision. 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, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first class mail to the applicant, landowner, and 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 to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.~~

~~(k) Judicial Review. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). (160D-406) Appeals of the decisions of the Planning Board, acting as the Board of Adjustment, shall be to the Carteret County Superior Court, pursuant to G.S. Ch. 7A.~~

## **(B) Interpretation of Zoning Map**

To interpret the location of lines on the Official Zoning District Map where they appear to be unclear. Interpretations shall comply with the following criteria:

(i) Boundaries delineated by the centerline of streets, highways, or alleys shall follow such centerlines.

(ii) Boundaries delineated by lot lines shall follow such lot lines.

(iii) Boundaries shown parallel to or as extensions of features indicated in this subsection shall be interpreted as such. Distances not specifically indicated on the Official Zoning District Map shall be determined by the scale of the map.

(iv) Where the actual location of existing physical or natural features vary from those shown on the Official Zoning District Map, or in other circumstances not covered by this subsection, the Planning Director shall have the authority to interpret the district boundaries.

## **(C) Variances**

To grant variances from the terms of this Ordinance pursuant to section 2.4.17, Variances. ~~The concurring vote of four fifths (4/5) of the members of the Board present for the hearing of a particular case shall be necessary to affect any variance in the Unified Development Ordinance.~~

## **(D) Appeals**

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~~Appeals of the decisions of the Planning Board, acting as the Board of Adjustment, shall be to the Carteret County Superior Court, pursuant to G.S. Ch. 7A.~~

**~~(E) Appeals of Administrative Decisions~~**

- ~~(a) Appeals. Except as provided in subsection (c) of this section, appeals of decisions made by the staff under this Chapter shall be made to the board of adjustment unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter. If this function of the board of adjustment is assigned to any other board pursuant to G.S. 160D-302(b), that board shall comply with all of the procedures and processes applicable to a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a stormwater control regulation, or a provision of the housing code shall not be made to the board of adjustment unless required by a local government ordinance or code provision.~~
- ~~(b) Standing. Any person who has standing under G.S. 160D-1402(c) or the local government may appeal an administrative decision to the board. An appeal is taken by filing a notice of appeal with the local government clerk or such other local government official as designated by ordinance. The notice of appeal shall state the grounds for the appeal.~~
- ~~(c) Judicial Challenge. A person with standing may bring a separate and original civil action to challenge the constitutionality of an ordinance or development regulation, or whether the ordinance or development regulation is ultra vires, preempted, or otherwise in excess of statutory authority, without filing an appeal under subsection (a) of this section.~~
- ~~(d) Time to Appeal. The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.~~
- ~~(e) Record of Decision. The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.~~
- ~~(f) Stays. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings shall not be stayed except by a restraining order,~~

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~~which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation shall not stay the further review of an application for development approvals to use such property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.~~

~~(g) Alternative Dispute Resolution. — The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The development regulation may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution. (160D 405)~~

~~(h) Appearance of Official New Issues. — The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. (160D 406(e))~~

#### (4) Quasi-Judicial Procedure

##### Quasi-judicial procedure.

##### (A) Process Required

(a) Process Required. — Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.

##### (B) Notice of Hearing. -

Notice of evidentiary hearings conducted pursuant to this Chapter 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; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the local government 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. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the

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hearing shall be continued until the next regular board meeting without further advertisement.

**(C) Administrative Materials.-**

The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

**(D) Presentation of Evidence. -**

The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

**(E) Appearance of Official New Issues. -**

The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

**(F) Oaths. -**

The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

**(G) Subpoenas. -**

The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local

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government, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

**(H) Appeals in Nature of Certiorari. -**

When hearing an appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).

**(I) (i) Voting. -**

The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

**(J) Decisions. -**

The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. 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, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and 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 to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

**(K) Judicial Review. -**

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Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). (160D-406)

(Ord. of 6-13-17(1) , § 1; Ord. of 3-9-21(1) , § 2)

## 2.2.4 Staff

Certified staff members are hereby authorized, empowered, and directed to enforce all the provisions of this chapter and the regulatory codes adopted in this Ordinance.

(1) **Planning Director**

The Planning Director is generally responsible for administration of this Unified Development Ordinance, and serves as the zoning administrator for the Town, except in cases where specific authority for the implementation of this Ordinance has been specifically delegated to another Town official or body. The Planning Director shall serve as secretary to the Planning Board, both for Planning Board and Board of Adjustment deliberations.

(2) **Code Enforcement Officer**

The code enforcement officer is sometimes referred to as the "building official" or the "building inspector", and is generally responsible for administration and enforcement of the building code and for any portions of this Unified Development Ordinance that have been specifically delegated to him or her.

(3) **Dunes and Vegetation Protection Inspector**

A representative from the planning and inspections department (the "dunes and vegetation protection inspector") is hereby appointed to administer and implement the provisions of this Ordinance related to section 6.4, Dunes and Vegetation Protection.

(4) **Stormwater Administrator**

**(A) Designation of Stormwater Administrator**

A Stormwater Administrator shall be designated by the Town Manager to administer and enforce the provisions of this Ordinance related to section 6.4, Stormwater Management. In addition to the powers and duties conferred by other provisions of this development ordinance and other laws, the Stormwater Administrator shall have the following powers and duties under this Ordinance.

**(B) Duties and Responsibilities**

- (i) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this Ordinance.
- (ii) To make determinations and render interpretations of stormwater management regulations of this development ordinance.

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- (iii) To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the board of Commissioners on applications for development or redevelopment approvals.
  - (iv) To enforce the provisions of the stormwater management regulations of this Ordinance in accordance with its enforcement provisions.
  - (v) To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of the stormwater management regulations of this development ordinance.
  - (vi) To provide expertise and technical assistance to the Board of Commissioners upon request.
  - (vii) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
  - (viii) To take any other action necessary to administer the stormwater management provisions of this development ordinance.

(5) **Floodplain Administrator**

**(A) Designation of Floodplain Administrator**

The Town Planner/Planning Director hereinafter referred to as the "floodplain administrator" or their designee is hereby appointed to administer and implement the provisions of this Ordinance related to floodplains. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement the provisions of this Ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this Ordinance.

**(B) Duties and Responsibilities**

Duties of the floodplain administrator shall include, but not be limited to:

- (i) Review all floodplain development applications and issue permits for all proposed development with in flood prone areas to assure that the requirements of the flood damage prevention regulations have been satisfied.
- (ii) Advise permittee that additional federal or state permits (i.e., wetlands, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.) may be required, and if specific federal or State permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit.
- (iii) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (iv) Assure that maintenance is provided within the altered or relocated portion of any watercourse so that the flood-carrying capacity is not diminished.

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- (v)** Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of sections 6.2.4(2) and 6.2.4(5) are met.
  - (vi)** Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with section 2.4.9(3).
  - (vii)** Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with section 2.4.9(3).
  - (viii)** Obtain actual elevation (in relation to mean sea level) of all public utilities, in accordance with section 2.4.9(3).
  - (ix)** When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with sections 2.4.9(3) and 6.2.4(2)(B).
  - (x)** Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation.
  - (xi)** When base flood elevation (BFE) data has not been provided in accordance with section 6.2.3(2), obtain, review, and reasonably utilize any base flood elevation (BFE) data, along with floodway data and/or non-encroachment area data available from a federal, state, or other source.
  - (xii)** When the exact location of boundaries of the special flood hazard areas conflict with the current, natural topography information at the site, the property owner may apply and be approved for a letter of map amendment (LOMA) by FEMA. A copy of the letter of map amendment issued from FEMA will be maintained by the floodplain administrator in the floodplain development permit file.
  - (xiii)** Permanently maintain all records that pertain to the administration of flood-related regulations and make these records available for public inspection. This includes maintaining records of all appeal actions and reporting of any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
  - (xiv)** Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of this Ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

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- (xv) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of the flood damage prevention regulations in this Ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (xvi) Revocation of floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.
- (xvii) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of ~~his or her~~their inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (xviii) Follow through with corrective procedures described in sections 9.3.3 and 9.5.1.
- (xix) Review, provide input, and make recommendations for variance requests.
- (xx) Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of Section 6.2.3 of this Ordinance, including the revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (xxi) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

#### (6) Public Works Director

The Public Works Director is generally responsible for trees, shrubbery, and signage on Town property including public street right-of-way.

#### (G7) Conflict of Interest

No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be

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assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

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

(Ord. of 6-13-17(1) , § 2; Ord. of 6-9-20(3) , § 1; Ord. of 3-9-21(1) , § 2)

## 2.3 COMMON REVIEW PROCEDURES

### 2.3.1 General

This section describes standard procedural steps and rules generally applicable to development applications reviewed under this Ordinance, unless otherwise specified in Section 2.4. ~~The Town may from time to time establish regulations or guidelines related to the following topics, and such regulations or guidelines shall govern all applications under this Unified Development Ordinance after their adoption:~~

- ~~(1) Authority to File Applications;~~
- ~~(2) Application Contents;~~
- ~~(3) Application Review Procedures and Schedules;~~
- ~~(4) Application and Review Fees;~~
- ~~(5) Pre-Application Conference Requirements; and~~
- ~~(6) Determinations of Application Completeness.~~

### 2.3.2 Pre-Application Consultation

A pre-application consultation may be held between the applicant and Planning Director to discuss submittal requirements, procedures, and standards applicable to a development application, as well as the scope, features, and impacts of the proposed development. A pre-application consultation is required prior to submission of application of procedures identified in Section 2.1. Discussion at a pre-application consultation is not binding to the Town and does not constitute submittal or formal review of an application.

### 2.3.2-3 ~~Incomplete~~ Application Submissions

Applications may be made by the landowner, a person with a property interest in the property or a contract to purchase the property, or an authorized agent of the landowner. The Planning Director may refuse to process any application ~~that the Planning Director determines~~determined to be

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incomplete unless and until the applicant has submitted any missing information or materials. If the Planning Director determines that an application is incomplete, ~~they~~ ~~he or she~~ shall notify the applicant of the specific missing information or materials. Whenever two (2) or more forms of review and approval are required under this Development Ordinance, the applications for those permits or approvals may, at the option of the Planning Director, be processed simultaneously, so long as all applicable federal, state and local requirements are satisfied.

### ~~2.3.3 Public Hearing(s)~~

~~A public hearing shall be required in those cases shown in Table 2.1, and shall be scheduled so that required public notifications subject to section 2.3.4 can be completed.~~

### 2.3.4 Review

Once a complete application is submitted, it shall be distributed by the Planning Director to appropriate staff and review agencies/boards for review and recommendation. Staff review will include a written report with recommendations as appropriate. Board review will include a recommendation made by simple majority vote.

### ~~2.3.4~~5 Public Notification

#### (1) **Content**

All notice required under this Ordinance shall comply with North Carolina General Statutes. In addition, all notices shall, unless otherwise specified in this Ordinance:

- (A) Identify the date, time, and place of the public hearing;
- (B) Describe the land involved by street address or by legal description and nearest cross street (if applicable);
- (C) Describe the nature, scope, and purpose of the proposed action;
- (D) Indicate that interested parties may appear at the hearing and speak on the matter; and
- (E) Indicate where additional information on the matter may be obtained.

#### (2) **Newspaper Notice**

When the provisions of this Ordinance or the provisions of North Carolina General Statutes require that notice of a ~~development application~~ public hearing be published in a newspaper, the Planning Director shall publish the notice in a newspaper of general circulation once a week for two (2) successive calendar weeks. The notice shall be published at least ten (10) days and not more than twenty-five (25) days before the first public hearing date. In computing such period, the day of publication shall not be counted, but the day of the hearing shall be counted.

#### (3) **Mailed Notice**

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- (A)**When the provisions of this Ordinance require that mailed notice be provided, the Planning Director shall prepare a notice of the public hearing and deliver the notice via first class mail to the following persons:
- (i)**The applicant; and
  - (ii)**Listed owners of adjacent lands, as their names and addresses are shown and identified on the county tax maps and tax records. Notices shall also be sent to those properties separated from the subject property by street, railroad, or other transportation corridor. (160D-602)
  - (iii)**Notice to Military Bases. - If the adoption or modification would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing. If the commander of the military base provides comments or analysis regarding the compatibility of the proposed development regulation or amendment with military operations at the base, the governing board of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance. (c) A development regulation adopted pursuant to this Chapter shall be adopted by ordinance. (160D-601)
- (B)**Mailed notice shall be postmarked not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the hearing.
- (C)**At each public hearing involving a zoning classification action for a parcel of land, the Planning Director or ~~his~~their designee shall certify, in writing, the mailing of the notice of public hearing to the owner of the parcel of land involved and as to each owner of abutting parcels in accordance with this section.
- (D)**Mailed notice shall not be required when an application to amend the Official Zoning District Map includes more than fifty (50) lots or tracts, owned by at least fifty (50) different land owners provided the Town publishes a map (occupying at least one-half (½) of a newspaper page) showing the boundaries of the affected area in a newspaper of general circulation once a week for two (2) successive calendar weeks. Affected land owners whose addresses in the tax records reflect a mailing address outside the Town's jurisdiction or the newspaper circulation area shall be notified via first class mail pursuant to subsections (A) and (B) above.

**(4) Posted Notice**

- (A)**When the provisions of this UDO require that notice be posted, the Planning Director shall post the notice on the subject property at least seven (7) days prior to the first public hearing. Posted notice shall be located adjacent to each public street right-of-way bordering the subject property. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. Posted notice shall remain in place until after the Board of Commissioners has rendered its final decision on the application.

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**(B)**If no part of the subject property is visible from the public right-of-way, the notice shall be posted along the nearest street in the public right-of-way in such a manner as to ensure consistency with the intent of this subsection.

**(C)**In addition to posted notice on the subject property, notice of the first public hearing shall also be posted in a conspicuous location within Town Hall ten (10) days before the hearing.

**(5) Summary Table**

Applications that require newspaper, mailed, and posted notice are summarized in Table 2.1.

**(6) Constructive Notice**

**(A)**Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in notice may include but are not limited to errors in a legal description or and typographical or grammatical errors that do not impede communication of the notice to affected parties.

**(B)**Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a public hearing and the location of the subject property shall be strictly construed.

**(C)**If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall direct the Planning Director to make a formal finding as to whether there was substantial compliance with the notice requirements of this Ordinance, and such finding shall be made available to the decision-making body prior to final action on the request.

**(7) Determination and Notice of Determinations**

A development regulation enacted under the authority of this Chapter may designate the staff member or members charged with making determinations under the development regulation.

The officer making the determination shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the determination from the date a sign providing notice that a determination has been made is prominently posted on the property that is the subject of the determination, provided the sign remains on the property for at least ten (10) days. The sign shall contain the words "Zoning Decision" or "Subdivision Decision" or similar language for other determinations in letters at least six (6) inches high and shall identify the means to contact a local government staff member for information about the determination. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner, applicant, or person who sought the determination. Verification of the posting shall be provided to the staff member responsible for the determination. Absent an ordinance provision to the contrary, posting of signs shall not be required. (160D-403(b))

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(Ord. of 3-9-21(1) , § 2)

### **2.3.36 Public Hearing(s)**

A public hearing shall be required in those cases shown in Table 2.1, and shall be scheduled so that required public notifications subject to sSection 2.3.45 can be completed.

### **2.3.5-7 Conditions of Approval**

#### **(1) General**

When a review body or the Planning Director may approve development application with conditions, such body or the Planning Director may impose restrictions and conditions on the approval. The conditions may be crafted to (a) ensure compliance with the general goals and policies of this Development Ordinance or with particular standards of this Development Ordinance, (b) prevent or minimize adverse effects from the proposed development on surrounding lands, (c) protect the health, safety and welfare of workers and residents of the community, and/or (d) protect the value, use and enjoyment of property in the general neighborhood.

#### **(2) Limitations**

The restrictions and conditions imposed must be related in both type and amount to the impact that the proposed development would have on the public and surrounding development. All conditions imposed shall be expressly set forth in the permit approval.

### **~~2.3.6 Simultaneous Processing of Applications~~**

~~Whenever two (2) or more forms of review and approval are required under this Development Ordinance, the applications for those permits or approvals may, at the option of the Planning Director, be processed simultaneously, so long as all applicable state and local requirements are satisfied.~~

### **~~2.3.7-8 Lapse of Approval~~Expiration**

~~Lapse of approval ("expiration")~~Expiration shall occur as provided by this Ordinance for the various types of development applications. If no provision for ~~lapse-expiration~~ is given by this Development Ordinance for a particular type of development permit or approval, and if no ~~lapse-expiration~~ period is imposed as part of an approval by the decision-making body, ~~lapse-expiration~~ shall occur if development is not commenced or a subsequent permit is not obtained within one (1) year.

## **2.4 SPECIFIC DEVELOPMENT APPROVALS**

The provisions of this section 2.4 supplement the Common Review Procedures of section 2.3. These provisions do not replace the Common Review Procedures, but in case of any direct conflict between the requirements of this section 2.4 and a requirement of section 2.3, the provisions of section 2.4 shall govern.

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## 2.4.1 Text and Map Amendments

Unless superseded by inconsistent provisions of subsections 2.4.2 or 2.4.3 below, the following terms and provisions shall apply.

(1) **Procedure**

A petition for a zoning amendment may be initiated by the Board of Commissioners, Town Staff, the Planning Board, or the owner or holder of any interest in the real property that is the subject of the rezoning petition within the zoning jurisdiction of the Town. Third party rezoning applications are prohibited unless such procedures are initiated by the Town. Once a petition for a zoning amendment has been initiated, the Board of Commissioners may amend, supplement, change, modify, or repeal the zoning regulations established in this Development Ordinance after public notice and hearing, and upon a recommendation by the Planning Board. No regulation or map shall be amended, supplemented, changed, modified, or repealed until after a public hearing has been held on the proposed change, at which parties in interest and citizens shall have an opportunity to be heard. The adoption of a legislative decision for a development regulation shall be by a simple majority of the Town Board. (160D-705(a))

(2) **Zoning District Intensity**

No application for any change in the zone of property for the same property or any part thereof shall be filed until the expiration of one (1) year from the date of final action by the Board of Commissioners on any rezoning request of that property, unless it shall be for a less intensive zoning district than originally requested within the one-year time frame.

(3) **Amendment Public Hearing**

Upon receipt of a recommendation of the Planning Board to amend the zoning district classification for any property, the Town Clerk shall publish notice of a public hearing to be held at the next regular meeting of the Board of Commissioners following the standard advertising schedule, as prescribed by state law. In addition to the published notice, text and map amendments shall comply with the requirements for mailed and posted notices following the procedure and requirements set forth in Section 2.3.4-5 of this Development Ordinance.

(4) **Mailed Notice**

(A) When the provisions of this Ordinance require that mailed notice be provided, the Planning Director shall prepare a notice of the public hearing and deliver the notice via first class mail to the following persons:

(i) The applicant; and

(ii) Listed owners of adjacent lands, as their names and addresses are shown and identified on the county tax maps and tax records.

(B) Mailed notice shall be postmarked not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the hearing.

(C) At each public hearing involving a zoning classification action for a parcel of land, the Planning Director or ~~his~~ their designee shall certify, in writing, the mailing of the notice of

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public hearing to the owner of the parcel of land involved and as to each owner of abutting parcels in accordance with this section.

**(D)**Mailed notice shall not be required when an application to amend the Official Zoning District Map includes more than fifty (50) lots or tracts, owned by at least fifty (50) different land owners provided the Town publishes a map (occupying at least one-half (½) of a newspaper page) showing the boundaries of the affected area in a newspaper of general circulation once a week for two (2) successive calendar weeks. Affected land owners whose addresses in the tax records reflect a mailing address outside the Town's jurisdiction or the newspaper circulation area shall be notified via first class mail pursuant to subsections (A) and (B) above.

**(5) Posted Notice**

**(A)**When the provisions of this UDO require that notice be posted, the Planning Director shall post the notice on the subject property at least seven (7) days prior to the first public hearing. Posted notice shall be located adjacent to each public street right-of-way bordering the subject property. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. Posted notice shall remain in place until after the Board of Commissioners has rendered its final decision on the application.

**(B)**If no part of the subject property is visible from the public right-of-way, the notice shall be posted along the nearest street in the public right-of-way in such a manner as to ensure consistency with the intent of this subsection.

**(C)**In addition to posted notice on the subject property, notice of the first public hearing shall also be posted in a conspicuous location within Town Hall 10 days before the hearing.

(Ord. of 3-9-21(1) , § 2)

## 2.4.2 Conditional Rezoning for Overlay Districts

**(1) Petition**

Specific property may be rezoned to the Village-East Conditional Zoning Overlay District, the Village-West Conditional Zoning Overlay District, and the Marina Village Conditional Zoning Overlay District only in response to and consistent with a petition submitted by the owners of all of the property to be included in the district. The petition shall be on forms provided by the Town. [A pre-application consultation must be held prior to application submission.](#)

**(2) Procedure**

Conditional zoning district decisions pertaining to the Village-East, Village-West or Marina Village are a legislative process subject to judicial review using the same procedures and standard of review as apply to general use district zoning decisions. Conditional zoning district decisions shall be made in consideration of identified relevant adopted land use plans for the area, including but not limited to, comprehensive plans, strategic plans, district plans, area plans, and other land-use policy documents.

**(A)Plans and Other Information to Accompany Petition**

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Specific property may be rezoned to the Village-East Conditional Zoning Overlay District, the Village-West Conditional Zoning Overlay District or the Marina Village Conditional Zoning Overlay District only in response to and consistent with a petition submitted by the owners of all of the property to be included in the district. A petition for conditional zoning must include a site plan, drawn to scale, and supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property. The site plan and any supporting text shall constitute part of the petition for all purposes under the UDO. The Planning Director has the authority to waive any application requirement where the type of use or scale of proposal makes providing that information unnecessary or impractical. Unless waived by the Planning Director, each site plan must provide the following information, if applicable.

- (i) The name of the proposed development, the names and addresses of the owners and the designer of the development and ~~his~~ their qualifications.
- (ii) Date, approximate north arrow and scale.
- (iii) The boundary line of the tract to be developed drawn accurately to scale and with accurate linear and angular dimensions.
- (iv) The location of primary dunes as established by CAMA, including all required CAMA setbacks and limits of Areas of Environmental Concern (AEC), if applicable.
- (v) The location of existing and platted property lines, streets and public utility easements. The names of adjoining subdivisions or the names of record owners of adjoining parcels of unsubdivided land.
- (vi) The names, proposed locations, and approximate dimensions of all proposed improvements, both public and private. All lots created shall have adequate access to a dedicated public street. The public streets to each of these lots shall conform to the design standards for town streets specified in Chapter 6 of this Unified Development Ordinance unless modified as a condition of the overlay district. In no case shall a public street be allowed to have a right-of-way width of less than forty (40) feet.
- (vii) Proposed changes. In all cases, shall be shown in a manner that will distinguish them clearly from the existing characteristics of the land.
- (viii) The site plan shall include all applicable utilities including street lighting. All utilities shall be underground.
- (ix) The site plan shall provide for a minimum of a four-foot wide sidewalk along both sides of all streets. These standards may be modified as a condition of the overlay district if based on an acceptable pedestrian plan.
- (x) Areas in which structures will be located.
- (xi) The proposed uses of structures.
- (xii) The proposed intensity of use (height, floor area, number of dwelling units)
- (xiii) The existing and proposed points of access to existing public streets.

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(xiv) Proposed phasing, if any.

(xv) The location and nature of proposed wastewater treatment facilities intended to serve the proposed development.

(xvi) Generalized traffic, parking, and circulation plans. Plans for streets should, to the best extent possible, insure connectivity within the proposed development and with adjacent developments and existing streets.

(xvii) Areas proposed for landscaping.

(xviii) Proposed location of any public areas including, but not limited to, parking, beach access, sound access, boat ramps, recreational uses and other similar public access and recreational amenities.

### **(B) Conditions to Approval of Petition**

In approving a petition for the reclassification of property to the Village-East Conditional Zoning Overlay District, the Village-West Conditional Zoning Overlay or the Marina Village Conditional Zoning Overlay District, the Planning Board may recommend, and the Board of Commissioners require, that reasonable and appropriate conditions be attached to approval of the petition. Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, stormwater drainage, the provision of open space including beach access, sound access, boat ramps, fishing piers, recreational uses and similar public uses, and other matters that the Board of Commissioners may find appropriate or the petitioner may propose. Such conditions to approval of the petition or application for approval of the project as Village-East Conditional Zoning Overlay, Village-West Conditional Zoning Overlay or Marina Village Conditional Zoning Overlay or the varying of any conditions, setting aside or dedication of streets, beach access sites, sound access, boat ramps, open spaces, piers, water related or recreational facilities or sites, utility easements and the like to either the Town, county, or state or public as deemed appropriate by the Town as a prerequisite to approval. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Board of Commissioners.

### **(C) Effect of Approval**

(i) If a petition for the Village-East Conditional Zoning Overlay District, the Village-West Conditional Zoning Overlay District or the Marina Village Conditional Zoning Overlay District is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Official Zoning District Map.

(ii) If a petition is approved, the ordinance, site plan and any additional approved rules, regulations and conditions will be recorded in the Carteret County Registry and shall

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be binding on the applicant and all future owners of the real property described in and covered by the approval shall be obligated to carry out and comply with the plan as approved. The plan as approved shall be binding on the applicant and all future owners, and the uses, dimensions and development and zoning requirements for each and every parcel within the real property as approved in the petition may not be changed or altered by any future owners except upon return to and amendments of the petition and approval by the Town if the Town deems such amendments or modifications appropriate.

(iii) If a petition is approved, the petitioner shall comply with all requirements established in this Ordinance for obtaining a building permit and certificate of occupancy. Only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. A change of location or use of the structures may be authorized pursuant to subsection (D) below.

**(D) Alterations to Approval**

(i) Except as provided in subsection (ii) below, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the Official Zoning District Map and shall be processed in accordance with the procedures in this Ordinance.

(ii) The Planning Director shall have the delegated authority to approve an administrative amendment change to an approved site plan. The standard for approving or denying such a requested change shall be that the change does not significantly alter the site plan or its conditions and that the change does not have a significant impact upon abutting properties. An administrative amendment shall not be subject to a protest petition. Any decision must be in writing stating the grounds for approval or denial.

(iii) The Planning Director shall always have the discretion to decline to exercise the delegated authority either because he/she is uncertain about approval of the change pursuant to the standard or because a rezoning petition for a public hearing and Board of Commissioners' consideration is deemed appropriate under the circumstances.

(iv) Any request for an administrative amendment shall be pursuant to a written letter, signed by the property owner, to the Planning Director, detailing the requested change. Upon request, the applicant must provide any additional information that is requested.

**(3) Preliminary and Final Subdivision Plats**

After approval of the Conditional Zoning Overlay District in accordance with this section 2.4.2, the petitioner may proceed with the development of preliminary and final subdivision plats pursuant to section 2.4.5. The standards set forth in this Ordinance, and all other applicable requirements of the Town Code, shall apply unless modified as a condition of approval of the overly district. The preparation and approval of a sketch plan shall not be required for projects approved pursuant to this section 2.4.2.

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## 2.4.3 Planned Unit Developments

### (1) General Description and Purpose

Planned unit developments are planned residential developments in which the principal use of land within a development is for both ~~attached and~~ detached single-family dwellings and/or [duplexes](#), condominiums, townhouses and other multifamily dwellings. A planned unit development is an alternative procedure for development that may be utilized by owners and developers with regard to the development of any parcel of land in those districts where planned unit developments are permitted or special uses. The purposes of a planned unit development are as follows:

- (A) To provide for the preservation of large areas of open space for recreation and preservation of natural amenities;
- (B) To provide flexibility in design to take the greatest advantage of natural land, water, trees, and environmental and historical features;
- (C) To provide for the creation of compatible neighborhood arrangements that give the home buyer greater choice in selecting ~~his~~ [their](#) living environment;
- (D) To provide sufficient freedom for the developer to submit plans that embody a creative approach to the use of lands and related physical development, as well as utilizing innovative techniques to enhance the visual character of the development;
- (E) To provide for the efficient use of land that may result in smaller street and utility networks, better maintenance and upkeep of sewage disposal systems, and reduced development and maintenance costs;
- (F) To establish criteria for the inclusion of compatible or associated uses to complement the residential area within the planned unit development;
- (G) To simplify the procedures for obtaining approval of proposed development through expeditious review of proposed land use, site layout, public needs, and health and safety factors;
- (H) To minimize expenditures of public funds for services and maintenance of streets, roads, central sewage systems, and similar utilities, and to promote the efficient investment of community resources.

### (2) Location

Planned developments may be established in those zoning districts in which a planned unit development is shown as a permitted use in Table 4.1. Single-family dwellings, townhouses, condominiums, multifamily dwellings or combinations thereof may be located within a planned unit development. Provided, that nothing in this Ordinance shall permit within the R2 Zoning District any uses other than residential single-family detached and two-family dwellings.

### (3) Preliminary and Final Review Procedures and Approvals

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The procedure for both preliminary and final approval by the Planning Board and the Board of Commissioners as described in sections 2.4.5(2), 2.4.5(3), 4.2.1, shall also be applicable to planned unit developments. [A pre-application consultation must be held prior to application submission.](#) The preliminary and final plats and documents shall meet the requirements of this Ordinance as applicable and, in addition thereto, the following additional information and documents shall be submitted to the Planning Board and Board of Commissioners simultaneously with the final plat:

- (A) Documents creating the homeowners' association. The documents creating the homeowners' association shall provide for control by the property owners other than developer at such time as over fifty (50) percent of the dwelling units within the project have been sold.
- (B) A proposed annual budget for the association that includes the proposed monthly expenditures and income.
- (C) A proposed ten-year income and expense budget reflecting the establishment of a sinking fund for capital replacement.
- (D) A copy of the proposed declaration of unit ownership and the proposed bylaws meeting the requirements of G.S. ch. 47A, in the event condominiums are involved in the planned unit development.
- (E) If the proposed planned unit development is to consist of townhouses, rowhouses, or other attached single-family dwellings other than condominiums, a copy of the proposed restrictions, covenants and easements shall be provided. The proposed annual budget for the homeowners' association shall also be included.

## 2.4.4 Special Use Permits

### (1) Application Requirements

[A pre-application consultation must be held prior to application submission.](#) The application for a special use permit shall contain the following information and be accompanied by the following documents:

- (A) Name and address of applicant;
- (B) Address of property;
- (C) Name and address of owner, developer and all proposed tenants of the property which is the subject of the special use permit application;
- (D) Legal description of the property which may include a copy of the deed or other document vesting ownership of the property in the present owner;
- (E) A detailed statement of all proposed use of the property;
- (F) A site plan showing all buildings, outdoor facilities, parking lots, proposed lighting, and utilities.
- (G) Names and addresses of all abutting or adjoining property owners.

### (2) Procedure and Criteria for Approval

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Permission may be granted for the establishment of uses listed as special uses if the Board of Commissioners finds from the evidence, maps and documents filed or produced after a study of the complete records and following a public hearing regarding the application for a special use permit:

- (A) That the proposed use will not materially endanger the public health or safety if located where proposed and if developed according to the plan as submitted and approved.
- (B) That the use meets all conditions and specifications required by this Ordinance and other applicable Town, county, state and federal laws and regulations.
- (C) That the proposed use will not substantially injure the value of abutting or adjoining property, or that the use is a public necessity.
- (D) That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the land use plan as updated and amended for the Town.

(3) **Restrictions and Conditions for Special Uses**

- (A) The Board of Commissioners may impose or require such additional restrictions and standards on the proposed special use pursuant to section 2.3.75, Conditions of Approval.
- (B) The Board must not impose conditions on Special Use Permits that the Town does not otherwise have statutory authority to impose. (S.L. 2019-111 Pt. 1)
- (C) The Board must obtain the applicant's/landowner's written consent to conditions related to a Special Use permit to ensure enforceability, (S.L. 2019-111 Pt. 1)
- (D) There is a thirty-day period to file an appeal of any administrative determination under a development regulation. If the notice is sent by mail, it is presumed to have been received on the third business day after it is sent. (160D-405(c))

(4) **Written Conditions and Signatures**

All special use permits, if granted by the Board of Commissioners, must be reduced to writing and state any and all conditions regarding the special use permit. All special use permits issued by the Board of Commissioners must be signed by the applicant, tenant, developer, and/or owners, and shall be binding on those executing the special use permit and their successors and assigns during the period of time that the special use permit is in effect.

(5) **Term**

All special use permits shall be issued for a period to be established by the Board of Commissioners. The Board of Commissioners is authorized to issue special use permits appurtenant to the special use so approved for the property. Provided, however, that any such special use permit shall become invalid upon the cessation of the special use for twelve (12) months.

(6) **Board of Commissioners Review**

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The Board of Commissioners may require that the applicant submit such other information, data and documents as the Board deems necessary in order to consider the applicant's request for a special use permit.

(7) **Public Hearing**

The Board of Commissioners shall hold a public hearing regarding the application for a special use permit. The notices for the hearing shall be provided pursuant to section 2.3.4(2)-5.

(8) **Decision**

If the Board of Commissioners finds that the application for a special use permit meets the requirements of this Ordinance, in addition to the additional requirements imposed by the Board of Commissioners in order to protect the health, safety and welfare of the community and the neighborhood where the special use is proposed, then the Board of Commissioners may, but is not required to, issue a special use permit.

(9) **Revocation**

The Board of Commissioners may revoke any special use permit following notification to the special permit use holder that one (1) or more of the conditions of the special use permit are believed to have been violated and following a hearing in which the Board of Commissioners finds that one (1) or more of the conditions have been violated and that the special use permit should be revoked.

(Ord. of 3-9-21(1) , § 2)

## 2.4.5 Subdivision of Land

Subdivisions shall be subject to the following procedures and requirements in addition to any other applicable terms and conditions set forth in this Ordinance. Both preliminary and final plats and other documents required by this Ordinance shall be submitted for approval to the Planning Board and the Board of Commissioners.

(1) **Sketch Design Plan**

Prior to the filing of an application for approval of the preliminary plat, the subdivider shall submit to the Planning Board a sketch design plan and a vicinity sketch showing the relationship of the proposed subdivision to surrounding properties and areas of environmental concern. The Planning Board shall review the sketch design plan for compliance with the requirements of this Ordinance and inform the subdivider about the regulations that govern the proposed development and the procedure the subdivider is to follow in preparing and submitting the preliminary and final plats. The subdivider is to informally explain to the Planning Board the plans for developing the proposed subdivision, including the kind and extent of proposed improvements. The Planning Board is to discuss with the subdivider any suggested changes deemed advisable. Discussion of a sketch design plan with or without modifications shall not constitute or imply approval of any preliminary or final subdivision plat based on the sketch design plan.

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Applicants shall submit twelve (12) copies of all required application materials. The sketch design plan and site planning sketches shall be drawn at an approximate scale of one (1) inch to one hundred (100) feet (1" = 100') and include:

- (i) The name and address of the owner and the subdivider.
- (ii) Existing conditions of the site including streets, roads, rights-of-way, easements, watercourses, wetlands, and structures.
- (iii) Approximate location of lot lines, approximate number of lots, and total tract acreage.
- (iv) Proposed rights-of-way, easements, and any sites to be dedicated for ~~places of worship or~~ public use.

(2) **Preliminary Plat**

**(A) Application Requirements**

A preliminary plat shall be drawn at a scale sufficient to show the level of detail required for review ~~of not less than one hundred (100) feet to the inch~~ and show the following:

**(i) Name**

The subdivision name, the names and addresses of the owners and the designer of the subdivision and ~~his~~ their qualifications.

**(ii) Date, Etc.**

Date, approximate north arrow and scale.

**(iii) Boundaries**

The boundary line of the tract to be subdivided drawn accurately to scale and with accurate linear and angular dimensions.

**(iv) Location Map**

A map with a scale of not less than one (1) inch equals one thousand (1,000) feet showing the location of the subdivision.

**(v) Contours, Contour Interval, and Finished Grades**

Contours with a vertical interval of two (2) feet referenced to sea level datum perimeter and in the interior shown in a manner that clearly distinguishes proposed elevations from existing elevations.

**(vi) Primary Dunes**

The location of the primary dunes as established by the NC Division of Coastal Management (CAMA) or CAMA Local Permit Officer (LPO).

**(vii) Existing Property Lines, Etc.**

The location of existing and platted property lines, streets, buildings, watercourses, railroads, bridges, water mains, sewers, culverts, drainpipes, and public utility easements, both on the land to be subdivided and on the land immediately adjoining and any other pertinent characteristics of the land. The names of adjoining

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subdivisions or the names of record owners of adjoining parcels of unsubdivided land.

**(viii) Proposed Improvements**

The names, proposed locations, and approximate dimensions of all proposed improvements. All subdivision plats which will create lots not directly abutting a dedicated and accepted public street shall include proposed improvements for roadway access, either public or private, to each of these lots and such roadways shall conform to the design standards for town streets specified in Chapter 6, section 6.1.5 of this Unified Development Ordinance.

**(ix) Proposed Changes**

In all cases, shall be shown in a manner that will distinguish them clearly from the existing characteristics of the land.

**(x) Drainage**

The preliminary plat shall also indicate and show surface water drainage plans and methods. The preliminary plat shall include a drawing showing storm water drainage supported by design computations. The design shall conform to the standards set forth in Chapter 6, section 6.3 of the UDO.

**(xi) Utilities**

The preliminary plat shall include all applicable utilities including street lighting. All utilities shall be underground. Utility distribution boxes; such as, water meter boxes and transformers, shall be located where side yard property lines intersect with street right-of-way lines (front yard property lines) and placed at the property corners in a manner that incompatible types of utility services will not conflict with each other. (i.e., electric services combined at a common corner of two (2) adjacent lots and water services combined at another common corner in order to serve two (2) lots from each location when possible.)

**(xii) Environmental Concern Standards**

In order to be in compliance with area of environmental concern standards, the preliminary plat shall contain a statement that the subdivision is located either within or without a North Carolina Coastal Area Management Act Area of Environmental Concern and shall show all required AEC data.

**(xiii) Profiles**

Profiles of all streets showing natural and finished grades drawn to scale of not less than one (1) inch equals forty (40) feet horizontal and one (1) inch equals four (4) feet vertical.

**(xiv) Health Department Approval**

Where public water and/or public sewage is not available for extension to each lot in the subdivision, a written report from the county health department shall be submitted as to the adequacy of the land area, and the suitability as to the soil and topography

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of the proposed subdivision to accommodate the proposed methods of water supply and sewage disposal.

**(xv) Required Data**

The preliminary plat shall be accompanied by a copy of all applications required by agencies other than the town. Applications must contain all pertinent data required to process applications.

**(xvi) Street Access to Subdivided Lots**

Except as otherwise provided by this chapter, every subdivision of property within the jurisdiction of the town shall include access to each and every lot of the subdivision by way of dedicated and accepted public streets or by establishment of private street systems which are platted and approved pursuant to the requirements of this chapter. All public or private streets shall meet the design standards for town streets specified in Chapter 6, section 6.1.5 of this Development Ordinance and/or any amendments thereof.

**(xvii) Other Information**

Other information as deemed necessary.

**(B) Approval Procedure**

The submission of a preliminary plat shall be accompanied by a letter of transmittal describing the proposed subdivision and a statement that the plat is in compliance with this Ordinance. The Planning Board shall review the preliminary plat and shall approve the preliminary plat if it finds that the subdivision meets or exceeds the standards of this Development Ordinance.

**(C) Tentative Approval**

Approval of a preliminary plat shall constitute tentative approval of a final subdivision plat. Such approval shall be valid for a period of one (1) year, with the exception of preliminary plats for subdivisions located within the NC Coastal Area Management Act Area of Environmental Concern (AEC), for which such approval shall be valid for a period of two (2) years.

**(D) Approval and Conditional Approval**

(i) When a preliminary plat is approved, approval shall be so indicated on the preliminary plat by the Planning Director and forwarded to the Board of Commissioners for review and approval.

(ii) When a preliminary plat is granted only a conditional approval, the reasons for conditional approval and the conditions to be met must be stated in writing. In lieu of granting conditional approval of the preliminary plat, the Planning Board may require the subdivider to resubmit the preliminary plat in a revised format that incorporates recommended changes.

(iii) When a preliminary plat is disapproved by the Planning Board, reasons for such action shall be stated in writing. One (1) copy of the plat with the reasons for disapproval

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shall be provided to the subdivider and one such copy shall be retained by the Planning Director. The subdivider may make the recommended changes and submit a revised plat to the Planning Board for approval.

(iv) If only conditional approval of a preliminary plat has been granted by the Planning Board, the preliminary plat, along with the conditions of approval shall be submitted to the Board of Commissioners for consideration.

(v) If the Board of Commissioners approves the preliminary plat, one (1) copy approved by the Board of Commissioners shall be sent to the subdivide and one (1) to the Planning Director. If the preliminary plat is granted conditional approval, the conditions for approval by the Board must be noted and these conditions must be found by the Planning Director to be satisfied prior to the plat being deemed acceptable. If the preliminary plat is not acceptable to the Board of Commissioners, the plat, along with the reasons for non-approval, shall be returned to the Planning Board for further consideration and appropriate action.

**(3) Final Plat**

**(A) Application Requirements**

The final plat shall be a reproducible map on linen, film, or other permanent material and shall have an outside marginal size of twenty-four (24) inches by thirty-six (36) inches including one and one-half (1½) inches for binding on the left margin and one-half-inch border on each of the other sides. Where the size of land areas is of a suitable scale, to assure legibility requirements maps may be placed on two (2) or more sheets with appropriate match lines. It shall be drawn to the same scale as the preliminary plat, and shall contain the following:

**(i) Boundary, Etc.**

The exact boundary of the tract of land being subdivided, showing clearly the disposition of all portions of the tract into designated tracts, lots, streets, alleys, parks, open spaces, easements, or other classifications, the exact location and width of all existing or recorded streets intersecting the boundary of the tract being subdivided, and the names of adjoining subdivisions or the name of record owners or adjoining parcels of unsubdivided land, including the boundaries of all special flood hazard areas. All existing characteristics of the land shall be clearly defined from those characteristics that are proposed.

**(ii) Streets, Etc.**

The lines and names of all streets, alleys, boundary lines, lot lines, building lines, easements, areas devoted to public use, and lot and block numbers.

**(iii) Title**

A note shall appear on the final plat stating the deed reference under which title to the property being subdivided is held.

**(iv) Lines**

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Sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement, boundary line, and building line whether straight or curved. This shall include tangent distance, the central angle, the radius, arcs, and chords of all curves. All linear dimensions shall be given in feet and hundredths thereof, and angular dimensions shall be of comparable accuracy within the limits of good surveying practice.

**(v)Monuments and Control Corners**

The accurate location, material, and size of all monuments and the designation of specific control corners in conformance with the letter and intent of G.S. 39-32.1, 39-32.2, 39-32.3, 39-32.4, shall be known.

**(vi)Name of Surveyor, Etc.**

The title, including the name of the subdivision, the town, the name of the registered engineer or registered surveyor under whose supervision the plat was prepared, the date of the plat, and a north arrow. Indication shall be made as to whether the north index is true, magnetic, or grid.

**(vii)Certificate of Ownership and Dedication of Streets and Right-of-Way**

For any plat submitted which incorporates public roadways, streets, easements, and other rights-of-way, a certificate of ownership and dedication shall be shown properly completed and signed by the owners and all other interested parties, similar in wording to the following:

"The undersigned hereby acknowledge(s) this plat and allotment to be (his, her, their) free act and deed, and hereby dedicate(s) to public use as streets, playgrounds, parks, open spaces, and easements forever all areas so shown or indicated on said plat.

Signed \_\_\_\_\_."

**(viii)Owners' Association Documents for Maintenance of Private Improvements**

For any plat submitted incorporating private roadways, streets, easements, and other rights-of-way, the following documents shall be submitted simultaneously with the final plat in order to provide for ongoing maintenance of private improvements that will not be dedicated to the town:

**(a)**Documents creating the owners' association. The documents creating the association shall provide for control by the property owners other than the developer at such time as over fifty (50) percent of the lots within the subdivision have been sold.

**(b)**Proposed annual budget for the owners' association which includes the proposed monthly expenditures and income.

**(c)**A proposed ten-year income and expense budget reflecting the establishment of a sinking fund for capital replacement.

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(d) A copy of the proposed bylaws of the association, and, when applicable, a declaration of unit ownership meeting the requirements of G.S. ch. 47A or 47C.

(e) If the project is to consist of single-family dwellings, townhouses or structures other than condominiums, a copy of the proposed restrictions, covenants and assessments shall also be provided.

**(ix) Form for Endorsement**

A form for the endorsement of the town Board of Commissioners shall be similar to the following:

Approved by the Board of Commissioners of the Town of Emerald Isle, North Carolina, effective on the \_\_\_ day of \_\_\_\_\_, 20\_\_.

Signed \_\_\_\_\_

Mayor

Town of Emerald Isle

**(x) Certification**

The plat shall show proper certificates of the engineer or surveyor, notary public and the probate clerk as required by state law.

**(xi) AEC Standards**

The AEC certification shall be similar to the following:

"This subdivision conforms to the standards of the North Carolina Coastal Area Management Act of 1974 and is not located within an Area of Environmental Concern.

\_\_\_\_\_  
Local Permit Officer"

"This subdivision conforms to the standards of the North Carolina Coastal Area Management Act of 1974, and portions of the subdivision located within an Area of Environmental Concern is duly noted.

\_\_\_\_\_  
Local Permit Officer"

**(B) Preparation of Final Plat**

Upon approval of the preliminary plat by the Board of Commissioners, the subdivider may proceed with the preparation of the final plat, and the construction of required improvements in accordance with the approved preliminary plat and the requirements of this Ordinance. Prior to approval of the final plat, the subdivider must complete the construction of all required improvements, or substantially complete all required improvements and guarantee completion by posting a letter-of-credit or cashiers check in accordance with subsection (H) below.

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### **(C) Planning Board Review**

The Planning Board shall review the final plat to insure that the subdivision meets or exceeds the standards of this Ordinance. Upon determination that these standards have been achieved, the Planning Board shall recommend to the Board of Commissioners that the final subdivision plat be approved.

### **(D) Submitting Final Plat**

After the preliminary plat has been approved, the final subdivision plat shall be prepared and submitted for final approval within one (1) year after approval of the preliminary plat, with the exception of preliminary plats for subdivisions located within the NC Coastal Area Management Act Area of Environmental Concern (AEC), for which such approval shall be valid for a period of two (2) years. Such owner or subdivider shall submit an original linen, film, or other permanent material tracing, one (1) print on cloth, one (1) sepia, and two (2) blueprint copies of the final plat, properly signed and executed as required for recording in the office of the Register of Deeds of the county along with the necessary probate and recording fees to the Planning Director. Upon approval by the Board of Commissioners, the Planning Director, or designee, shall forward the final plat to the Register of Deeds for recording.

### **(E) Conformity with Preliminary Plat**

The final plat shall conform with the preliminary plat as approved, and, if desired by the owner or subdivider, it may constitute only that portion of the approved preliminary plat that he proposes to record and develop at the time provided; however that:

- (i) The Planning Board shall find that the subdivision is reasonably located with respect to existing roads and utility lines; and
- (ii) Such portion shall conform to all requirements of this Ordinance.

### **(F) State Board Compliance**

The final plat shall conform in all ways to the state statute (G.S. 47-30) as amended and to the state board of registration for professional engineers and land surveyors "Manual of Practice for Land Surveying."

### **(G) AEC Standards**

Area of environmental concern standards certification shall be provided on the final plat by the local permit officer that the subdivision is either within or without a North Carolina Coastal Management Act of 1974 Area of Environmental Concern.

### **(H) Security for Uncompleted Improvements**

If the required improvements and utilities are substantially complete, with only punch list items remaining, the owner or subdivider shall have the right to provide a surety bond, letter-of-credit or other form of guarantee in an amount equal to one hundred twenty-five (125) percent of the estimated cost of the remaining improvements. The surety bond, letter-of-credit or other form of guarantee shall guarantee the construction of required improvements and utilities and shall satisfy the requirements of this section to secure final

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plat approval. The expiration date on the surety bond, letter-of-credit or other form of guarantee shall be one year unless the developer determines a longer duration. A developer that extends good-faith progress in the completion of the required improvements whose surety bond, letter of credit or other guarantee is about to expire prior to completion of improvements shall provide a new performance guarantee for an additional period for one hundred twenty-five (125) per cent of the total cost of uncompleted improvements. The performance guarantee shall be released in a timely manner upon acknowledgement that the improvements being required are satisfactorily complete. The performance guarantee shall only be used for the completion of required improvements, not for repairs or maintenance after completion. The developer has the option to provide one performance guarantee rather than multiple bonds.

**(I)Areas for Use**

All property shown on the plat as dedicated for public use shall be deemed to be dedicated for any other public use authorized by the Town Charter or any general, local, or special law pertaining to the Town, when such other use is approved by the Board of Commissioners as in the public interest.

**(J)Recordation of Plat**

No plat shall be recorded until the final subdivision plat is approved in accordance with this Ordinance.

(Ord. of 3-9-21(1) , § 2)

## 2.4.6 Special Plat Approval

The following types of development shall be subject to special plat approval by the Board of Commissioners, regardless of whether they involve a formal subdivision of land. [A pre-application consultation must be held prior to application submission.](#)

**(1) Group Housing and Other Special Developments**

**(A)Generally**

This section 2.4.6 shall apply to group housing and special developments shall include apartments, condominiums, townhouses, and planned unit developments.

**(B)Application Requirements**

The application for preliminary approval and the preliminary plat as shall contain the following information on one (1) or more sheets, and shall comply with the following requirements:

**(i)General information:**

- (a)**Name of development;
- (b)**Name of owner and developer;
- (c)**Name of land planner, architect, engineer or surveyor;

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- (d)**Scale of map which shall be fifty (50) feet to an inch;
  - (e)**Date of preliminary plan.
  - (ii)**A vicinity map showing all roads in the general area of the proposed group housing development, and also showing the relationship of the group housing project site to major roads in the area.
  - (iii)**The dimensions and bearings of all exterior property lines shall be shown on the preliminary plat.
  - (iv)**Land contours with vertical intervals of not more than two (2) feet shall be provided for all projects and shall be shown either on the preliminary plat or on a topographic survey which accompanies the preliminary plat. In the event a topographic survey is submitted with the preliminary plat, it shall be drawn to the same scale as the preliminary plat and shall show land contours with vertical intervals of not more than two (2) feet. Final grades around the perimeter and at significant locations inside the lot(s) shall be shown on the drawings.
  - (v)**The preliminary plat shall show all roads within the group housing project area to include access roads and adjacent roads to the project area.
  - (vi)**The preliminary plat shall include a drawing showing storm water drainage supported by design computations. The design shall conform to the standards set forth in Chapter 6 of this Unified Development Ordinance for Stormwater Management.
  - (vii)**The preliminary plat shall show and specifically locate all structures and buildings within the project site to include both present and proposed structures and buildings. The dimensions of the buildings and structures shall be shown in detail.
    - (viii)**All recreational and open spaces both existing and proposed shall be indicated in detail, and all structures, uses and buildings both existing and proposed within the recreation and open spaces shall be indicated in detail.
  - (ix)**The preliminary plat shall be accompanied by detailed plans of the developer concerning the method of surfacing roads and parking areas.
  - (x)**The preliminary plat shall indicate in detail the location and intensity of area lights in the general plan of the electrical system for the proposed area.
  - (xi)**The preliminary plat shall indicate the source of water and the distribution system for the source of water. In the event the water system requires approval by state and/or federal agencies, then plans and specifications approved by the state and federal agencies having jurisdiction over the system must be approved. If the water distribution system requires approval from the county health department, then the approval of the county health department must accompany the preliminary plats.
  - (xii)**Sanitary sewage system. If a sewage collection disposal system is used, plans and specifications approved by state and/or federal agencies must be submitted. If the public sewage system is not required and such system comes under the jurisdiction

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of the county health department, then their approval must accompany the preliminary plats.

**(xiii)**The preliminary plats shall indicate bodies of water, marshes, wooded areas, rivers, creeks, and other natural conditions which may affect development within the project site.

**(xiv)**The preliminary plat shall indicate all adjoining property owners.

**(xv)**The north arrow and graphic scale shall be shown.

**(xvi)**The preliminary plat shall indicate in detail the site data as follows:

**(a)**Total acreage in the project, and natural area and method of calculation;

**(b)**Type of group housing project units to be approved;

**(c)**Number of one-bedroom, two-bedroom, three-bedroom and four-bedroom group housing project units;

**(d)**Maximum project area covered by all structures and improvements;

**(e)**Minimum front, rear and side yards for each unit within the group housing project;

**(f)**Minimum distance between principal buildings;

**(g)**Height of each building;

**(h)**Parking area and parking spaces for the project;

**(i)**If the group housing project proposes townhouses, row houses or other attached single-family dwellings, other than condominiums, the size of each lot shall be indicated. The minimum lot width and side, rear, and front yards of each unit shall be indicated in detail;

**(xvii)**The preliminary plat shall also indicate the height above sea level for the project site, and shall indicate whether or not any of the project area is within the area of environmental concern as defined under the Coastal Area Management Act.

**(xviii)**All utilities, including street construction, shall conform to the construction standards of the town. The width and rights-of-way of streets shall meet the minimum standards for streets within the town as contained in Chapter 6 of this Unified Development Ordinance. The dedication of streets to the public use shall not be required, but the streets shall be designed and constructed meeting the minimum standards of the town in the event of future dedication of such streets to the town or the state department of transportation.

**(xix)**The declaration of unit ownership, bylaws, restrictions or covenants shall contain information as to whom shall be responsible for payment of premiums for liability insurance, local taxes, maintenance of recreational facilities, parking lots, streets and drives, and other common areas, assessments, maintenance and repair expenses, and similar costs.

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(xx) All natural areas, as defined in Chapter 10 of the UDO, shall be clearly delineated with dimensions shown, in order to verify the calculations of the reserved areas. All requirements of the "Dunes and Vegetation Protection Ordinance" are applicable.

**(C) Procedure for Approval**

Both preliminary and final plats and other documents required by this Ordinance shall be submitted for approval to the Planning Board and the Board of Commissioners in the same manner as preliminary and final subdivision plats. The application for preliminary and final approval of the group development shall contain the information and documents as required in section 2.4.3, in addition to the information required on preliminary and final subdivision plats, except as varied in this section. The same procedure for preliminary and final approval of subdivision plats as set forth in sections 2.4.5(2), 2.4.5(3) and applicable provisions of this Unified Development Ordinance shall be applicable to preliminary and final approval of group housing plats, except as varied herein. Once final approval has been given by the Board of Commissioners, all final plats shall be recorded in the office of the Carteret County Register of Deeds.

**(2) Commercial and Business Condominiums**

Condominiums and townhouses designed, developed and constructed primarily for business and/or commercial use shall be subject to the procedure for preliminary and final approval by the Planning Board and the Board of Commissioners as detailed in section 4.2.1 in addition to any other terms and conditions set forth in this Ordinance.

The preliminary application and preliminary plats shall meet the requirements of for Group Housing and Other Special Developments above, as applicable, and in addition thereto the following additional information and documents shall be submitted to the Planning Board and Board of Commissioners prior to final approval for approval by the Planning Board and Board of Commissioners, and such information and documents shall be submitted simultaneously with the final plats:

- (i) Documents creating the condominium owners' association. The documents creating the association shall provide for control by the property owners other than the developer at such time as over fifty (50) percent of the condominium units within the project have been sold.
- (ii) Proposed annual budget for the association including monthly assessments. The proposed monthly assessments shall be in such amounts as to ensure success of the association.
- (iii) A proposed ten-year income and expense budget reflecting the establishment of a sinking fund for capital replacement.
- (iv) A copy of the proposed declaration of unit ownership and proposed bylaws meeting the requirements of G.S. ch. 47A.
- (v) If the project is to consist of townhouses or other structures other than condominiums, a copy of the proposed restrictions, covenants and assessments shall also be provided.
- (vi) Once final approval has been given by the Board of Commissioners, all final plats shall be recorded in the office of the county Register of Deeds.

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## 2.4.7 Mobile Home Park or Recreational Vehicle Park Permit

### (1) Application

[A pre-application consultation must be held prior to application submission.](#) The application for a mobile home park permit or a recreational vehicle park permit shall be filed with the Planning Director before the appropriate deadline established prior to the regular meeting of the Planning Board. The application will be reviewed by the Planning Director for completeness prior to submittal to the Planning Board. After receipt of a favorable recommendation by the Planning Board, the Board of Commissioners will review application for final approval. Park plans that have been approved under previous ordinances are exempt from this requirement.

### (2) Mobile Home Park Permit or Recreational Vehicle Park Permit

#### (A) Permit Application

All applications for a mobile home park construction permit or recreational vehicle park will be accompanied by twelve (12) prints of the preliminary plan. Park plans that have been approved under previous ordinances are exempt from this requirement.

#### (B) Contents of Preliminary Plan

The preliminary plan shall be drawn at a scale of not more than two hundred (200) feet to the inch and shall show the following on one (1) or more sheets:

- (i) Name of park.
- (ii) Name of developer.
- (iii) Scale.
- (iv) Date.
- (v) Vicinity map showing all roads in the vicinity and the relationship of the site to major roads.
- (vi) Dimensions and bearings of exterior property lines.
- (vii) Land contours with vertical intervals of not more than two (2) feet shall be provided for all mobile home parks that have sufficient land area for twenty-five (25) spaces or more.
- (viii) Roads in vicinity to include access roads and adjacent roads.
- (ix) Mobile home spaces well defined.
- (x) Surface water drainage plans.
- (xi) All structures in the park site both present and proposed.
- (xii) Recreation areas and open spaces.
- (xiii) Method of surfacing roads within the park.

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(xiv) Location and intensity of area lights and typical connections to mobile homes, or a statement from the power company servicing the area where the park is to be located indicating that it will be responsible for design and installation of the electric system.

(xv) Source of water and water distribution system. If water source is a well, the applicant must provide proper county and state permits indicating approval for the use of well water to serve the proposed development.

(xvi) Sanitary sewage. If a public sewage collection and disposal system is used, plans and specifications approved by the state department of water and air resources must be submitted. If system is not connected to sewage collection, show location and size of septic tanks, mobile homes connected to each septic tank, layout of drain fields, date and result of percolation tests.

(xvii) Adequate facilities for fire protection.

(xviii) Landscaping plans. The preliminary plan shall indicate appropriate landscaping at the entrance, on the boundaries, and around utility buildings, utility systems, and other structures as considered necessary by the reviewing boards.

(xix) Fee. The preliminary plan as filed with the town for approval shall be accompanied by a fee in such amount as may be established, from time to time, by the Board of Commissioners by resolution.

**(3) Approval Process for Alteration of Existing Mobile Home Park or Recreational Vehicle Park**

With regard to any application to alter an existing mobile park whereby the mobile home park owner proposes to recombine or alter not more than three (3) existing mobile home lots or spaces, the Planning Director shall have authority to make a determination as to whether or not the alterations meet the requirements of this section, as amended, for the zoning district in which the mobile home spaces or lots are located, and the Planning Director shall have the authority to either grant or deny approvals for the alterations. For all alterations involving more than three (3) existing spaces or lots within existing mobile home parks, the review process provided for below shall apply.

**(A) Review of Preliminary Plan**

After preliminary plans for a mobile home park or recreational vehicle park have been properly submitted to the Planning Director, the following agencies shall be responsible for reviewing the proposed plans:

**(i) Planning Board**

The Planning Board shall secure the plans for the mobile home park or recreational vehicle park and shall be responsible for the review of the following to determine if the proposed design is in accordance with the specifications of this Ordinance regarding:

- (a) Title information;
- (b) Vicinity map;
- (c) Dimensions and bearing of exterior property lines;
- (d) Roads in the vicinity;
- (e) Method of surfacing road within the park;

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- (f) Location of park;
  - (g) Street and lot design;
  - (h) Adequate lot size; and
  - (i) Adequate screening, the natural terrain within ten (10) feet of adjacent property lines may not be disturbed.

**(ii) County Health Department**

The county health department or appropriate regulatory and licensing agency shall review plans for the mobile home park or recreational vehicle park to determine if they are in accordance with the minimum health standards and regulations regarding:

- (a) Source of water and water distribution system;
- (b) Sanitary sewage system;
- (c) Surface water drainage; and
- (d) Adequate lot size.

**(iii) Code Enforcement Officer**

The code enforcement officer shall review the plans for the mobile home park or recreational vehicle park that include buildings to be constructed within the proposed park. In addition, the code enforcement officer shall review plans for the mobile home park or recreational vehicle park, to determine if the proposed electrical system is in accordance with electrical codes adopted by the state.

**(iv) Board of Commissioners**

This agency shall review preliminary plans for final approval.

**(B) Deficiencies Found During Review**

Should any agency find deficiencies in the review of the plans of a mobile home park or recreational vehicle park, that agency shall notify the developer of the park to correct such deficiencies. Each agency must notify the developer and shall also notify the Planning Board, in writing, through the building official, after approval of the plans for a proposed park. The Planning Board shall notify the developer of its decision to recommend approval or disapproval of the preliminary plan to the Board of Commissioners.

**(C) Issuance of Construction Permit and Zoning Permit**

**(i) Construction Permit**

After approval of the preliminary plans for a mobile home park or recreational vehicle park by the Planning Board and the Board of Commissioners concerned, the Planning Director is authorized to issue a construction permit. The intent of this permit is to enable the execution of the plan in the field and shall not be construed to entitle the recipient to offer space for rent or lease or to operate a park. All field work shall be in accordance with the approved plans. It shall be the responsibility of the

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developer to inform the various county inspection officials as to the progress of field work so that timely inspections may be made.

**(ii) Zoning Permit**

The Planning Director is authorized to issue a Zoning Permit after the installation of the number of spaces the developer wished to initially install. In no case shall the Zoning Permit be issued for less than the minimum spaces required by this Ordinance. The Zoning Permit will be issued only after the Planning Director is satisfied that all work has been executed as outlined in this Ordinance. Should additional spaces be added to a park that has preliminary plans approved, a Zoning Permit for the additional spaces will be necessary before such spaces are offered for rent or lease. In the case of a mobile home park each final permit for additional spaces to be added to an existing park that has preliminary approval shall be for a minimum of five (5) spaces.

**(iii) Authorization to Operate**

Upon receipt of the Zoning Permit, the permittee is duly authorized to operate and maintain ~~his~~ [their](#) park in any way that is not contrary to the provisions of the permit and this Ordinance. However, should the Planning Director find at any time subsequent to the issuance of the permit that the park is operating in violation of the terms of this Ordinance, or of special conditions set forth in the permit, he shall revoke the Zoning Permit and further operation of the park without a Zoning Permit shall be cause for legal action.

## **2.4.8 Commercial Plan Review**

**(1) Review of Plans Required**

In order to promote the appearance of the Town as a family beach and to protect the value of adjoining properties as well as the aesthetic qualities of the Town, each applicant for the approval of a commercial use structure, or an addition to a commercial structure, shall as a condition for issuance of a building permit apply for approval of both a site plan and architectural plans of the proposed commercial structure. The architectural plans shall include front, rear, and side elevations, exterior building colors, lighting fixtures and any proposed exterior decorative construction and/or roof line. Except as noted in subsections (2) and (4) below, approval of the site plan and architectural plans shall require review by both the Planning Board and the Board of Commissioners, and such approval shall be a condition for issuance of the building permit for the commercial structure. [A pre-application consultation must be held prior to application submission.](#)

**(2) Application Requirements**

As a condition for approval of all site and architectural plans for motels, hotels, and other commercial use structures and additions, modifications or changes to them:

**(A)** The number, type, candlepower, location, purpose and characteristics of all exterior lighting shall be shown on the plans;

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(B) All architect's plans shall indicate the colors or tones to be used on the exterior of the commercial structure; and

(C) All architects plans for motel, hotels, shopping centers, retail stores and other commercial use structures and additions, modifications or changes thereto, shall indicate the construction of the exterior wall facings.

(3) **Planning Director Site Plan Review**

Site plans for additions to existing structures, not exceeding one thousand (1,000) square feet can be reviewed and approved by the Planning Director to ensure compliance with this Ordinance and applicable building regulations. The Planning Director has the authority to recommend that the site plans, not exceeding one thousand (1,000) square feet be reviewed by the Planning Board and Board of Commissioners if he or she feels such review is necessary. Not more than two (2) additions of five hundred (500) square feet or less, each, will be added to the original site plan. Subsequent request of more than one hundred (100) square feet will require review by the Planning Board and Board of Commissioners. Additions constructed prior to January 14, 1997 (the date on which this provision was originally adopted) shall not be exempt from when a subsequent request is sought.

(4) **Exemption for Architectural Plan Review**

The requirement for approval of architectural plans in accordance with this section 2.4.8 shall not be applicable to any existing commercial buildings and/or new commercial structures for which building permits have been issued prior to the effective date of this section. However, any repairs, modifications, alterations, reconstruction and/or additions to existing commercial structures that exceed fifteen (15) percent of the fair market value of the existing commercial structure shall be required to conform obtain review and approval of architectural and site plans pursuant to this section 2.4.8. Notwithstanding the previous sentence, the requirements set forth in subsection 6.1.3(2), Permitted Exterior Colors, shall be applicable to all commercial structures, regardless of when a building permit was issued, and shall include the painting or repainting of any commercial structure. Exterior commercial colors must be approved by the Town prior to the painting or repainting of any commercial structure.

(5) **Criteria for Approval**

Both the site and architectural plans must meet all requirements of this Ordinance, including without limitation the requirements of section 6.1.3 and all other applicable Town ordinances and regulations.

## 2.4.9 Floodplain Development Permit

No development shall occur in flood hazard areas, as defined in section 6.2, Flood Damage Prevention, unless the Floodplain administrator shall first issue a floodplain development permit pursuant to the following requirements and criteria, unless a variance has been approved pursuant to section 2.4.17, Variances:

(1) **Plans and Application Requirements**

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Application for a floodplain development permit shall be made to the floodplain administrator on forms furnished by him or her prior to any development activities proposed to be located within flood prone areas. The following items/information shall be presented to the floodplain administrator to apply for a floodplain development permit.

**(i)Plot Plan**

A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development.

- (a)The nature, location, dimensions, and elevations of the area of development disturbance; existing and proposed structures, the location of utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
- (b)The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in 6.2.3(2) of the UDO or a statement that the entire lot is within the special flood hazard area;
- (c)Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in section 6.2.3(2) of the UDO;
- (d)The boundary of the floodway(s) or non-encroachment area(s) as determined in section 6.2.3(2) of the UDO;
- (e)The base flood elevation (BFE) where provided as set forth in section 6.2.3(2); subsections 2.2.4(3)(B)(xi) and (xii); sections 6.2.4(3) and (4); and subsection 6.2.4(2)(E) of the UDO;
- (f)The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
- (g)The boundary and designation date of the Coastal Barrier Resource System (CBRS) area of Otherwise Protected Areas (OPA), if applicable.
- (h)Preparation of the plot plan by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.

**(ii)Development Plan**

Proposed elevation, and method thereof, of all development within a special flood hazard area including but not limited to:

- (a)Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;
- (b)Elevation in relation to NAVD 1988 to which any non-residential structure will be flood-proofed;
- (c)Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed;

**(iii)Floodproofing Plan**

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If floodproofing, a floodproofing certificate (FEMA Form 086-0-34) and back-up plans from a registered professional engineer or architect certifying that the non-residential floodproofed development will meet the flood-proofing criteria in subsections 6.2.4(2)(B) and 6.2.4(3)(B) of the UDO.

**(iv) Foundation Plan**

A foundation plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this article are met. These details include but are not limited to:

- (a)** Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers);
- (b)** Should solid foundation perimeter walls be used in floodplains other than coastal high hazard areas, details of sufficient openings to facilitate the unimpeded movements of floodwaters in accordance with Division 5, subsection 6.2.4(2)(D) of the UDO;
- (c)** In coastal high hazard areas, the following must also be submitted prior to floodplain development permit issuance. Specific requirements are detailed in section 6.3.4(5) and subsection 6.2.4(2)(D)(iii) of the UDO.
  - (i)** V-zone certification form with accompanying plans and specifications verifying the engineered structure and breakaway wall designs as set forth in subsection 6.2.4(2)(D)(iii) of the UDO;
  - (ii)** Plans for lattice work or decorative screening, if applicable. Plans for any structures that will have lattice work or decorative screening must be submitted to the floodplain administrator for approval prior to floodplain development permit issuance;
  - (iii)** Plans for non-structural fill, if applicable. Plans for placement of any non-structural fill must be submitted to the floodplain administrator for approval prior to floodplain development permit issuance. Requirements are detailed in section 6.2.4(5)(H) of the UDO.

**(v) Usage Details**

Usage details of any enclosed space below the regulatory flood protection elevation.

**(vi) Utility Protection**

Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

**(vii) Other Relevant Permits**

Copy of all other local, state and federal permits required prior to floodplain development permit issuance (i.e. wetlands, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.)

**(viii) Recreation Vehicle Requirements**

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If floodplain development permit is issued for placement of recreational vehicles and/or temporary structures, documentation to ensure sections 6.2.4(2)(F) and (G) of the UDO are met.

(ix) **Engineering Report for Watercourse Alteration**

If a watercourse is proposed to be altered and/or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) **Floodplain Development Permit Data Requirements**

The following information shall be provided at a minimum on the floodplain development permit to ensure compliance with this Code.

(A) A complete description of the development to be permitted under the floodplain development permit issuance (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation, or drilling operations, or storage of equipment or materials, etc.).

(B) The special flood hazard area determination for the proposed development per available data specified in section 6.2.3(2).

(C) The regulatory flood protection elevation required for the reference level and all attendant utilities.

(D) The regulatory flood protection elevation required for the protection of all public utilities.

(E) All certification submittal requirements with timelines.

(F) Provide a minimum of:

(i) Two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding.

(ii) The bottom of all openings shall be no higher than one (1) foot above grade.

(iii) If a design does not meet these minimum criteria it must either be certified by a professional engineer or architect.

(G) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(3) **Certification Requirements**

(A) **Elevation Certificates**

(i) An Elevation Certificate (FEMA Form 086-0-33) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. The Floodplain Administrator shall review the certificate data submitted.

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Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

- (ii) A final Finished Construction Elevation Certificate (FEMA Form 086-0-33) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. The Finished Construction Elevation Certificate certifier shall provide at least two (2) photographs showing the front and rear of the building taken within ninety (90) days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least two (2) additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" x 3". Digital photographs are acceptable.

## **(B) Floodproofing**

- (i) If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (ii) A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in

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relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.

**(C)V-Zone/Breakaway Wall**

A V-Zone Certification with accompanying design plans and specifications is required prior to issuance of a Floodplain Development permit within coastal high hazard areas. It shall be the duty of the permit applicant to submit to the Floodplain Administrator said certification to ensure the design standards of this Ordinance are met. A registered professional engineer or architect shall develop or review the structural design, plans, and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Ordinance. This certification is not a substitute for an Elevation Certificate. In addition, prior to the Certificate of Compliance/Occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE Zone construction.

**(D)Manufactured Homes**

If a manufactured home is placed within an A, AE, AH, AO, A99 zone and the elevation of the chassis is above thirty-six (36) inches in height, an engineered foundation certification is required in section 6.2.4(2)(C).

**(E)Altered Watercourses**

If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

**(F)Certification Exemptions**

The following structures, if located within AE1 through AE12 zones, are exempt from the elevation/floodproofing certification requirements specified in sections 2.4.9(1) and (2) above:

- (i)Recreational vehicles meeting requirements of section 6.2.4(2)(F)(i).
- (ii)Temporary structures meeting requirements of section 6.2.4(2)(G); and
- (iii)Accessory Structures less than one hundred fifty (150) square feet or less or five thousand dollars (\$5,000.00) or less meeting requirements of section 6.2.4(2)(H).

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#### **(4) Determination for Existing Buildings and Structures**

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (i) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (ii) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (iii) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (iv) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this Ordinance is required.

( Ord. of 6-9-20(3) § 1)

#### **2.4.10 Stormwater Management Plan and Permit**

##### **(1) Plan Required**

Any person planning a development, as defined by this development ordinance, unless exempted, shall submit a stormwater management plan to the Stormwater Administrator.

##### **(2) Permit and Fee**

A permit fee will be collected at the time the stormwater management plan is submitted and will reflect the cost of administration and management of the permitting process. The Stormwater Administrator shall recommend a fee schedule based upon the relative complexity of the project. The fee schedule will be established, by the Board of Commissioners by resolution. The fee schedule is not printed therein but is on file in the Town Clerk's Office.

##### **(3) Plan Approval**

The stormwater management plan shall not be approved unless it clearly demonstrates that the proposed development will meet the performance standards and the design standards in section 6.3, except where a variance has been granted pursuant to section 2.4.17.

Within thirty (30) days after submission of the completed stormwater management plan, the Stormwater Administrator shall approve, with or without specified conditions or modifications, or reject the plan and shall notify the applicant accordingly. If the Town has not rendered a decision

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within thirty (30) days after plan submission, it shall inform the applicant of the status of the review process and the anticipated completion date. If the plan is rejected or modified, the Stormwater Administrator shall state its reason. While it is not customary for the town or its designated agents to actually design an acceptable project for the applicant; it will do all it can to work with the applicant to achieve an acceptable project plan in harmony with the stormwater management provisions of this Ordinance. Projects requiring formal Planning Board and Board of Commissioner review shall not be subject to the 30-day requirement. Approval of stormwater management plans for these projects shall be determined in conjunction with the Planning Board's and Board of Commissioner's formal review process.

**(4) Expiration**

Should the development not be completed within three (3) years, the stormwater management plan will no longer be considered approved. The applicant must resubmit a stormwater management plan for approval by the Stormwater Administrator before construction may begin. The applicant may request, and the Stormwater Administrator may grant, a single one-year extension to the approved plan provided the initial three-year approval period has not lapsed.

**(5) Inspections**

No stormwater management plan may be approved without adequate provision for inspection of the property before development activity commences. The applicant shall arrange with the town's building inspector or ~~his~~ their designated agent for scheduling the following inspections:

**(A) Initial Inspection**

Prior to approval of the stormwater management plan;

**(B) Bury Inspection**

Prior to the burial of any underground drainage structure;

**(C) Erosion Control Inspection**

As necessary to ensure effective control of erosion and sedimentation;

**(D) Finish Inspection**

When all work including installation of all drainage facilities has been completed;

**(E) As Built Drawings**

For projects disturbing ten thousand (10,000) square feet or more of land and all multi-family residential, commercial and industrial projects, as-built drawings of the stormwater treatment system shall be provided to the Town.

The town building inspector or ~~his~~ their designated agent shall inspect the work and shall either approve it or notify the applicant in writing in what respects there has been a failure to comply with the requirements of the approved stormwater management plan. Any portion of the work which does not comply shall be promptly corrected by the applicant or the applicant will be subject to the penalty provisions of section 6.3.

**(6) Appeals**

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Any person aggrieved by the action of any official charged with ~~en~~-enforcement of the stormwater regulations of this development ordinance, as a result of the disapproval of a properly filed application for a permit, issuance of a written notice of violation, or an alleged failure to properly enforce this Ordinance in regard to a specific application shall have the right to appeal the action to the town Board of Adjustment. The appeal must be filed in writing within twenty (20) days of the mailing date of the official transmittal of the final decision or determination to the applicant, and it must state clearly the grounds on which the appeal is based, and shall be processed in the manner prescribed ~~for~~for hearing administrative appeals under local and state statutes. Appeals relating to erosion and sedimentation control, stormwater control, or building-code and housing-code violations are not made to the board of adjustment.

(Ord. of 3-9-21(1) , § 2)

## 2.4.11 Dunes and Vegetation Permit

No development regulated by the dune and vegetation protection standards in section 6.4 shall occur, unless the dunes and vegetation protection inspector shall first issue a dunes and vegetation permit pursuant to the following requirements and criteria, unless a variance has been approved pursuant to section 2.4.17 variances.

### (1) Applicability

Trees and vegetation shall not be removed, destroyed, and/or altered, nor land disturbed without obtaining a Dunes and Vegetation (DV) permit in accordance with Section 6.4 of this Ordinance. The provisions of this article shall apply to the following:

(A) All new residential and non-residential development(s), including both existing lots of record and proposed new lots within the Town. The provisions also apply to all previously developed lots of record within the Town, except for those projects listed under Section 2.4.11 Exemptions below.

(B) Changes in use, expansions, and new buildings for already existing residential, non-residential, or mixed-use developments as per the following:

(i) Changes in use to a higher intensity, such as a change from residential to commercial. The requirements shall be applicable to the entire lot;

(ii) All non-residential expansions of buildings, except the first one hundred (100) square feet of gross leasable area. The requirements of this article shall be applicable only to the expansion area;

(iii) Expansions exceeding 50 percent of the pre-expansion floor area must bring the entire site into compliance, superseding 2.4.11(B)(ii)

(iv) Renovations with a total cost exceeding 50 percent of the appraised value of the building as established by the Carteret County Tax Office.

### (2) Exemptions

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Exemptions described below are limited to the activity described and shall not be construed to allow the destruction of any frontal or interior dune, and/or allow alteration of the natural topography without first obtaining a *Dunes and Vegetation* (DV) Permit as prescribed in this Ordinance. Any such actions creating and/or causing such destruction and/or alteration shall constitute a violation of this Ordinance.

Provided the activity is conducted in accordance with the aforementioned requirements the provisions of this Article shall not apply to the locations listed below:

(A) Removal of sand, seashells, or similar small materials in such amounts as may be carried easily upon the person;

(B) The normal maintenance of existing non-native landscape plantings upon any lot or parcel including, but not limited to, lawn maintenance; the relocation, removal, and/or replacement of non-native shrubs; and the cutting and/or removal of non-native nuisance vegetation;

(C) The removal of trees with a caliper less than three (3) inches at a height of thirty-six (36) inches;

(D) The cutting of brush or vegetation with a caliper less than three (3) inches at a height of thirty-six (36) inches above adjacent grade by a registered land surveyor or engineer for the purpose of completing survey work on a parcel of property;

(E) The cutting of brush, vegetation and/or trees with a caliper of less than three (3) inches at a height of thirty-six (36) inches above adjacent grade to allow for the evaluation of a parcel for on-site septic wastewater system purposes;

(F) The clearing of no more than five hundred (500) square feet of property to allow for the incidental use of an undeveloped property by the owner within any consecutive three-year time period.

(G) The cutting of brush or vegetation and/or land disturbance by the Public Works Director or their designee within the right-of-way, on Town property or easement, as result of a Town public works project.

### **(43) Application Requirements**

The following information is required in order to issue a permit:

#### **~~(A)~~ New Development and Redevelopment**

##### **~~(i)~~ A) Site Plan**

A site plan indicating the existing and proposed location of the principal and accessory structures on the lot and associated parking areas, septic system, driveways, storm water system, and any and all other structures or impervious surfaces that are intended for location on the property;

##### **~~(ii)~~ B) Topography**

The site plan shall be transposed on a topographic map of the property;

##### **~~(iii)~~ C) Natural Area Reserve**

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The site plan shall indicate the proposed area to be reserved as natural area on the property;

**(ivD) Fill Areas**

The site plan shall indicate the proposed use of fill on the property;

**(vE) Compliance with Design Standards**

The site plan shall demonstrate compliance with the design standards contained within this [Ordinance](#) article;

**(viF) Flag Natural Areas**

The applicant shall be required to physically flag the required natural areas on the property.

**~~(B) Disturbance of Previously Developed Lots Where Additional Development is Planned~~**

**~~(i) Site Plan~~**

~~A site plan indicating the location of existing principal and accessory structures on the lot and associated parking areas, septic system, driveways, storm water system, and any and all new structures or impervious surfaces that are intended for location on the property;~~

**~~(ii) Topography~~**

~~The site plan shall be transposed on a topographic map of the property;~~

**~~(iii) Natural Area Reserve~~**

~~The site plan shall indicate the proposed area reserved as natural area on the property;~~

**~~(iv) Fill Areas~~**

~~The site plan shall indicate the proposed use of fill on the property;~~

**~~(v) Compliance with Design Standards~~**

~~The site plan shall demonstrate compliance with the design standards contained within this article;~~

**~~(vi) Flag Natural Areas~~**

~~The applicant shall be required to physically flag the required natural areas on the property.~~

**(24) Review and On-site Visit**

All submitted permit application materials will be reviewed and an on-site visit shall be conducted to determine compliance with the requirements of section 6.4. Approval will be authorized if it is in compliance with all relevant design standards outlined within section 6.4.

**(35) Permitted Activities and Inspection**

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The permit shall indicate the activities and the locations that are permitted. The planning and inspections department shall conduct the necessary inspections to ensure that the permitted activities are conducted in accordance with the approved dunes and vegetation permit.

**(46) Permit Duration**

All dunes and vegetation permits shall be valid for a period of eighteen (18) months, with work commencing on a parcel of property within six (6) months from the date the permit was issued. Failure to commence work within the allotted time period shall void the existing permit and require applicant to secure another permit.

(Ord. of 3-9-21(1) , § 2)

## 2.4.12 Sign Permit Appeals

**(1) Procedure (a) Appeals. -**

Except as provided in subsection (c) of this section, appeals of decisions made by the staff under this Chapter shall be made to the board of adjustment unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter. If this function of the board of adjustment is assigned to any other board pursuant to G.S. 160D-302(b), that board shall comply with all of the procedures and processes applicable to a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a stormwater control regulation, or a provision of the housing code shall not be made to the board of adjustment unless required by a local government ordinance or code provision.

**(b2) Standing. -**

Any person who has standing under G.S. 160D-1402(c) or the local government may appeal an administrative decision to the board. An appeal is taken by filing a notice of appeal with the local government clerk or such other local government official as designated by ordinance. The notice of appeal shall state the grounds for the appeal.

**(e3) Judicial Challenge. -**

A person with standing may bring a separate and original civil action to challenge the constitutionality of an ordinance or development regulation, or whether the ordinance or development regulation is ultra vires, preempted, or otherwise in excess of statutory authority, without filing an appeal under subsection (a) of this section.

**(d4) Time to Appeal. -**

The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

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**(e5) Record of Decision.-**

The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

**(f6) Stays.-**

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation shall not stay the further review of an application for development approvals to use such property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

**(7g) Alternative Dispute Resolution.-**

The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The development regulation may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution. (160D-405)

**(h8) Appearance of Official New Issues. -**

The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. (160D-406(e))

~~The Planning Director may approve an application for a sign permit if it complies with all applicable provisions of this Ordinance.~~

## **2.4.13 Wireless Communication Permit**

### **(1) Procedure**

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All applications will first be checked for compliance by the Planning Director or ~~his~~ [their](#) designee. If the Planning Director is unable to approve the application, then the application will be reviewed by the Planning Board at its next regular meeting. Discussion and recommendation for approval or denial will then be made to the Board of Commissioners. At their next regular meeting, the Board of Commissioners will review all findings and, following their discussion, decide upon approval or denial of the application. The application will be treated as either a permitted or special use, dependent upon the type of structure, and the time frame will approximate that of any other permitted use or special use within the Town. ~~Public comment for any permitted use or special use is always allowed at public meetings.~~ In determining whether a Wireless Telecommunications Support Structure (WTSS) application should be approved or denied, the Planning Director and the Board of Commissioners shall take into account the structure's harmony with the surrounding area, its compatibility with adjacent properties, and the availability, or lack thereof of more suitable sites. The aesthetic effects of the WTSS, as well as any mitigating factors concerning aesthetics, may be used to evaluate the application. In reaching a decision, the Board of Commissioners may request modification of the height, design, screening, placement, or other characteristics of the WTSS to produce a more harmonious situation.

## (2) Application Requirements

### (A) Checklist of Requirements for New Wireless Telecommunication Support Structures (WTSS)

- Application fee.
- Complete application for WTSS.
- Copy of FCC license.
- Copy of all applications filed with federal and state agencies.
- FAA letter ascertaining "No Hazard" to air navigation.
- Statement of financial responsibility or surety bond.
- Engineer's letter describing lack of technically feasible co-location opportunities within a 3,000-foot radius of the proposed site location.
- Owner(s) letter describing inability to negotiate in good faith co-location on all possible site which are technically feasible.
- Owner(s) letter describing and the availability and opportunity for co-location-sites on the proposed structure.
- Engineer's site plan for the proposed WTSS depicting the location parcel, its size, zoning, adjacent zoning, and fall radius.
- FAA or other federal agency letter describing minimal lighting and color requirements for the proposed WTSS.
- Engineer's letter denoting structural integrity of the proposed WTSS and all potential tenants, and certification of its integrity in a 50-year storm.

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- Engineer's letter attesting to the fact that exposures to the public of any radiofrequency levels will at or below the lesser of the FCC and ANSI standards.
  - Letter from insurer that the owner(s) will have a minimum one million dollar (\$1,000,000.00) general liability policy, and that the insurer will notify the town thirty (30) days prior to cancellation of this insurance.
  - Engineer's scaled site plan including elevations, visual analysis, rendering, or photo simulation of the proposed WTSS from varying distances as viewed by the public.
  - Engineer's site plan including elevations, and showing total heights of the proposed WTA and its support structure, and the WTA proposed color(s) and illumination scheme.

(B) Checklist of Requirements for New Wireless Telecommunication Antenna (WTA)

- Application fee.
- Complete application for WTA.
- Copy of FCC license.
- Copy of all applications filed with federal and state agencies.
- FAA letter ascertaining "No Hazard" to air navigation.
- FAA or other federal agency letter describing minimal lighting and color requirements for the proposed WTA.
- Engineer's letter denoting structural integrity of the proposed WTA and all potential tenants, and certification of its integrity in a 50-year storm.
- Engineer's letter attesting to the fact that exposures to the public of any radiofrequency levels will at or below the lesser of the FCC and ANSI standards.
- A copy of the lease agreement between the owner(s) of the WTA and the owner(s) of the structure on placement is proposed.
- Engineer's depiction of the minimal size and other requirement for equipment housing structures.
- Engineer's site plan including elevations, and showing total heights of the proposed WTA and its support structure, and the WTA proposed color(s) and illumination scheme.

(C) Checklist of Requirements for Renewal of Wireless Telecommunications Antennae and Wireless Telecommunication Support Structures

- Renewal application fee.
- Complete renewal application form.
- Letter of continued insurance coverage for minimal general liability.
- Letter from the inspections department that the WTSS or WTA has remained in compliance with Town Code since the later of the last renewal or the certificate of occupancy.

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• Engineer's letter stating that the WTSS or WTA had remained in compliance with all federal, state, and Town Code requirements for structural integrity, and for radiofrequency exposure requirements.

• Letter from the owner(s) that the WTSS or WTA has remained in compliance with all FCC, FAA, and NEPA requirements since the later of either the last renewal or the certificate of occupancy. Letter from the owner(s) that they intend to maintain full financial responsibility for the WTSS or WTA for the entire renewal period.

**(23) Notice of Approval or Disapproval**

Notice of approval or disapproval will be provided in writing by the Board of Commissioners following their decision. All discussion and review notes from both the Planning Board and Board of Commissioners shall be maintained in writing as part of the public record, and shall be available for review by all interested parties.

**(34) Building Permits and Certificates of Occupancy**

Following approval by the Board of Commissioners, ~~the inspections department shall issue a~~ building permit may be obtained. Construction of the Wireless Telecommunications Antennae (WTA) or WTSS shall commence within one (1) year from the date of issue of the building permit. If construction has not commenced within one (1) year, the building permit shall be considered null and void. An application for a one-time extension of six (6) months may be made by petition to the Board of Adjustment. If the construction has not commenced by the end of this extension period, then the permit shall be considered null and void. The inspections department shall issue a certificate of occupancy following satisfactory completion of the structure according to design and stated intent. Any unapproved changes to the structure shall prohibit issue of a certificate of occupancy, and shall require a new application and fees to reinstate the tiered review process.

**(45) Town Code**

Nothing in this section 2.4.13 shall have the effect of releasing in whole, or in any part, any applicant's or their facilities' obligations to comply with Town Code.

## **2.4.14 Statutory Vested Rights**

**(1) Purpose**

The purpose of this section 2.4.14 is to implement the provisions of G.S. 160D-102, 160D-100(d) pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan.

**(2) Establishment of a Zoning Vested Right**

**(A) Approval by Applicable Authority**

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A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the Board of Commissioners, Board of Adjustment, or Planning Board, as applicable, of a site specific development plan, following notice and public hearing.

**(B)Terms and Conditions**

The approving authority may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare.

**(C)Condition of Variance**

Notwithstanding subsections (A) and (B), approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.

**(D)Effective Date**

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

**(E)Overlay Zoning**

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 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 Ordinance.

**(F)Applicable to Property**

A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

**(3) Approval Procedures and Approval Authority**

**(A)Approval by Applicable Authority**

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 of the specific type of zoning or land use permit or approval for which application is made.

**(B)Delegated Authority**

Notwithstanding the provisions of subsection (A), if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to the board, committee or administrative official other than the Board of Commissioners, Board of

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Adjustment or Planning Board, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the Board of Commissioners, Board of Adjustment or the Planning Board following notice and a public hearing as provided in G.S. 160D-601.

**(C)Time of Application**

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

**(D)Necessary Notation**

Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under G.S. 160D-102, 160D-100(d). Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

**(E)Subsequent Review**

Following approval or conditional approval of a site specific development plan, nothing in this section 2.4.14 shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.

**(F)Revocation**

Nothing in this section 2.4.14 shall prohibit the revocation of the original approval or other remedies for failure to comply with the applicable terms and conditions of the approval or this Unified Development Ordinance.

**(4) Duration**

**(A)Two-Year Period**

A zoning right that has been vested as provided in this section 2.4.14 shall remain vested for a period of two (2) years unless specifically and unambiguously provided otherwise pursuant to subsection (B). This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.

**(B)Authority to Extend Duration**

Notwithstanding the provisions of subsection (A), 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 of the site specific development plan is approved.

**(C)Expiration**

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Upon issuance of a building permit, the expiration provisions of G.S. 160D-403(c), 160D-1108 and the revocation provisions of G.S. 160D-403(f), 160D-1113 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.

(5) **Termination**

A zoning right has been vested as provided in this section 2.4.14 shall terminate:

- (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 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 the legal rate until paid. Compensation shall not include any diminution in the value of the property that is caused by such action;
- (E) Upon findings by the Board of Commissioners, by ordinance after notice and hearing, that the landowner or ~~his~~ [their](#) representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the approval authority of the site specific development plan; or
- (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 hearing.

(Ord. of 3-9-21(1) , § 2)

## 2.4.15 Zoning Permit

~~It shall be unlawful to use or permit the use of any building or premises or part of a building or premises until a zoning permit has been issued by the Town; provided, however, no zoning permit shall be required for the continuance of a use in effect at the time of adoption of this Ordinance.~~

### (1) Applicability

It shall be unlawful to use or permit the use of any building or premises or part of a building or premises until a zoning permit has been issued by the Town; provided, however, no zoning

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permit shall be required for the continuance of a use in effect at the time of adoption of this Ordinance. Approval of a zoning permit is required for:

(A) Construction of a new principal structure on an individual lot

(B) Additions, enlargements, or expansions of a building footprint or heated square footage

(C) Construction/installation of accessory structures and uses, including but not limited to swimming pools, sheds, and decks/porches

(D) Construction, replacement, relocation, or alteration of signage in accordance with Section 6.6.

(E) A zoning permit is not required for establishment or replacement of an individual minor residential component such as a fence, mechanical unit, generator, above-ground gas tank, rain barrel, decorative garden trellis/arbor, or similar element, however they still must meet applicable requirements.

(2) Procedure

Applications and applicable documentation must be submitted to the Planning Director or other designated staff member. Upon receipt of complete application package, staff shall review and decide the application as it complies with the following:

(A) All standards or conditions of any prior applicable permits and developments approvals; and

(B) All applicable requirements of this Ordinance, the Town Code of Ordinances, and any applicable State or federal requirements.

(3) Expiration

A zoning permit shall expire if the development it authorizes is not commenced within one (1) year of permit issuance.

## 2.4.16 Building Permit

Before the erection, construction or alteration of any building or structure, or part of the same, ~~there shall be submitted to the building inspector by the owner or authorized agent, an application for a building permit on appropriate blanks to be furnished by the town. the applicant, owner, or other authorized agent shall obtain a building permit from the Carteret County Planning & Inspections Department in accordance with their procedures and requirements, as applicable. Each application for a building permit shall be accompanied by a plat, showing accurate dimensions of the lot to be built upon, accurate dimensions of the building to be erected and its location on the lot. If it shall appear to the building inspector that the provisions of this chapter and all requirements of fees have been paid, if any, he will then issue the building permit. Plats and plans submitted to the building inspector shall be kept in the files in the town for future reference. Pursuant to G.S. 160D-1111, a building permit expires six months after issuance unless work under the permit has commenced. Building permits also expire if work is discontinued for a period of twelve (12) months after work has commenced. (160D-1111)~~

(Ord. of 3-9-21(1), § 2)

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## 2.4.17 Variances

### (1) General

The Board of Adjustment may authorize in specific cases such variances from the terms of this Ordinance that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of this Ordinance would result in unnecessary physical hardship.

### (2) Procedure

In order to initiate a variance request, the applicant shall file an application with the Board ~~or of~~ Adjustment on forms approved by the Town, and with supporting information required by the Town. The Board of Adjustment shall review the application and shall approve or deny the variance, pursuant to the criteria established for different forms of variance in subsections (3), (4), (5), ~~and or~~ (6) below. The Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance.

### (3) Criteria for General Variance Approval

~~The concurring vote of four-fifths (4/5) of the members of the Board present for the hearing of a particular case shall be necessary to affect any variance in the Unified Development Ordinance.~~ A variance from any of the terms of this Ordinance not governed by subsections (4) or (5) below shall be granted by a concurring vote of four-fifths (4/5) of the present members of the Board of Adjustment ~~only if it shall make the following findings~~ upon a showing of all of the following:

- (A) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. ~~That special conditions and circumstances exist that are peculiar to the land, structure, or building involved and that are not applicable to other lands, structures, or buildings in the same district; and~~
- (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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability. ~~That literal interpretation of the provisions would deprive the applicant of rights commonly enjoyed by other properties in the same district under terms of this Ordinance; and~~
- (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 is not a self-created hardship. ~~That the special conditions and circumstances do not result from the actions of the applicant; and~~
- (D) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved. ~~That the hardship is of a physical nature and not economic; and~~

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~~(E) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other land, structures, or buildings in the same district.~~

**(4) Criteria for Floodplain Variance Approval**

**(A) Application Requirements**

Applications for floodplain variances shall include a written report addressing each of the above factors:

- (i) The danger that materials may be swept onto other lands to the injury of others;
- (ii) The danger to life and property due to flooding or erosion damage;
- (iii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (iv) The importance of the services provided by the proposed facility to the community;
- (v) The necessity to the facility of a waterfront location, where applicable;
- (vi) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (vii) The compatibility of the proposed use with existing and anticipated development;
- (viii) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (ix) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (x) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
- (xi) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas.

**(B)** In passing upon floodplain variances, the Board of Adjustment shall consider all technical evaluations, all required application materials and reports, all standards specified in other sections of this Ordinance, and all other relevant factors.

**(C)** A variance from any of the terms of this Ordinance related to floodplain protection shall be granted by the Board of Adjustment only if it shall make the following findings:

- (i) The applicant has shown good and sufficient cause; and
- (ii) Failure to grant the variance would result in exceptional hardship; and
- (iii) The granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (iv) No increase in flood levels during the base flood discharge will result within any designated floodway or non-encroachment area as a result of the variance.
- (v) The variance will not result in any structure being in violation of other federal, state, or local laws or regulations.
- (vi) The variance is the minimum necessary, considering the flood hazard, to afford relief.
- (vii) If the proposed variance is for the repair or rehabilitation of a historic structure, the Variances the proposed repair or rehabilitation will not preclude the structure's

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continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(D) The Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Ordinance and to protect the public health, safety, and welfare.

(E) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.

(5) **Criteria for Stormwater Management Variances**

The Board of Adjustment may grant a written variance from any requirement of section 6.3 or related stormwater management requirements if it makes a written finding that the following criteria have been met:

(A) That the criteria of subsection (3) above have been met;

(B) The variance will not significantly increase or decrease the rate or volume of surface water runoff;

(C) The variance will not have a significant adverse impact on an interdunal trough, basins, wetland, watercourse or water body;

(D) The variance will not significantly contribute to the degradation of water quality; and

(E) The variance will not otherwise significantly impair attainment of the objectives of section 6.3 and related stormwater management regulations.

(6) **Variance Conditions**

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this the provisions of section 6.3 and related stormwater regulations.

( Ord. of 6-9-20(3) , § 1)

## Chapter 3: ZONING DISTRICTS

### 3.1 GENERAL PROVISIONS

#### 3.1.1 Base and Overlay Districts Established

The following base and overlay zoning districts are hereby established:

**TABLE 3.1.1: ZONING DISTRICTS ESTABLISHED**

ABBREVIATION	DISTRICT NAME
<b>BASE DISTRICTS</b>	
RESIDENTIAL DISTRICTS	
R2	Residential
RMF	Residential Multi Family
MH	Mobile Home
<b>BUSINESS/GOVERNMENT/CAMP DISTRICTS</b>	
B	Business
C	Camp
G	Government
<b>MIXED-USE DISTRICTS</b>	
VE	Village-East
VW	Village-West
MV	Marina Village
<b>OVERLAY DISTRICTS</b>	
Bogue Field AICUZ	Bogue Field Air Installation Compatible Use Zone Overlay
VE-C	Village-East Conditional Overlay
VW-C	Village-West Conditional Overlay
MV - C	Marina Village Conditional Overlay
EEO	Eastern End Oceanfront Overlay

(Ord. of 8-10-10(2), §§ 1, 2)

#### 3.1.2 Relationship of Base and Overlay Zoning Districts

Lands within the Town shall be classified into one (1) of the base zoning districts established in section 3.1.1, Base and Overlay Zoning Districts Established, and may also be classified into also one (1) or more of the overlay districts set forth in section 3.1.1. Where land is classified into an overlay district as well as a base zoning district, the standards governing development in the overlay district shall apply in addition to the standards governing development in the underlying base zoning district.

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In the event of an express conflict between the standards governing a base zoning district and those governing an overlay district, the standards governing the overlay district shall control.

### **3.1.3 Compliance with Ordinance Standards**

No land within the City shall be developed except in accordance with the zoning district regulations of this Ordinance as applicable to the base zoning district and the overlay zoning districts (if any) in which the property is located.

## **3.2 PURPOSE AND INTENT**

### **3.2.1 Base Districts**

(1) **Residential (R2)**

Residential district allowing a single-family dwelling or a two-family dwelling on a lot.

(2) **Residential Multi-Family (RMF)**

Residential district allowing a single-family dwelling, a two-family dwelling, or a multifamily dwelling on a lot.

(3) **Mobile Home (MH)**

Mobile home district allowing mobile homes on lots located outside of mobile home parks.

(4) **Business (B)**

Business district allowing a general and wide variety of retail and professional uses. The district will also allow residential use that is supplemental to business uses, but is not intended solely for residential housing. Only business use is allowed on the ground level of a structure, while upper levels are allowed to have residential and/or business uses.

(5) **Camp (C)**

Recreational district allowing travel trailers, campers and tents.

(6) **Government (G)**

A district allowing a variety of governmental and public uses.

(7) **Village-East (VE)**

A mixed use district consisting of residential, commercial, recreational, Institutional, and office land uses that may only be applied to the area designated as "Village-East" as identified in the Town's CAMA Land Use Plan.

(8) **Village-West (VW)**

A mixed use district consisting of residential, commercial, recreational, Institutional, and office land uses that may only be applied to the area designated as "Village-West" as identified in the Town's CAMA Land Use Plan.

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(9) **Marina Village (MV)**

A mixed use district consisting of residential, commercial, recreational, Institutional, and office land uses that may only be applied to the area designated as "Marina Village" as identified in the Town's CAMA Land Use Plan.

(Ord. of 11-14-17(1) , § 1)

### 3.2.2 Overlay Districts

(1) **Bogue Field AICUZ Overlay District**

The purpose of the Bogue Field Air Installation compatible use zone (AICUZ) overlay district is to identify properties located within the accident potential zones and/or noise exposure levels for MCAS Auxiliary Landing Field Bogue as identified in the AICUZ Requirements Update Marine Corps Air Station Cherry Point, NC, dated December 18, 2001. The overlay district shall apply to any property located within this area as shown on the Official Zoning District Map. The following are supplemental requirements in addition to the requirements of the underlying zoning district:

(A) **Disclosure for All Property Transfers and Leases for Greater than Ninety (90) Days**

Property owners located within the Bogue Field AICUZ overlay district are urged to disclose this fact prior to the transfer of the property or the execution of a lease for greater than ninety (90) days. The Town will make available for voluntary use a disclosure form that may be used for transfers or leases greater than ninety (90) days. Property owners may but are not required to use the disclosure form.

(B) **Subdivision Plats**

All subdivision plats approved after October 12, 2004 (the effective date of this section 3.2.1(9)(1)) for lots located within the Bogue Field AICUZ overlay district shall have designated on them those properties that are located within an APZ or noise contour.

(C) **Condominiums, Townhouses, and Group Housing Projects**

All similar developments approved after October 12, 2004 within the Bogue Field AICUZ overlay district shall indicate in the declaration of unit ownership, bylaws, restrictions or covenants that the property is located within an accident potential zone and/or noise contour of the Bogue Field AICUZ.

(D) **Building Permits**

No building permit shall be issued after the effective date of this section until the owner/applicant for any development within the Bogue Field AICUZ overlay district has signed the required disclosure form.

(2) **Village-East Conditional Zoning Overlay District (VE-C)**

An overlay district that may overlay only those properties in the Village- East Zoning District.

(A) The purpose of the Village-East Conditional Zoning Overlay District is to provide, to the best extent possible, for the opportunity for the creation of public amenities for parking,

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access and recreational purposes. Another purpose of the Village-East Conditional Zoning Overlay District is to provide for an overlay conditional zoning district in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property. This conditional zoning overlay district is available only for property within the Village-East Zoning District.

- (B) A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project in conjunction with the opportunity for the creation of public amenities for parking, access and recreational purposes. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted CAMA Land Use Plan, and adopted district and area plans. The review process established for the VE-C district provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions, which ensure compatibility of the use with the use and enjoyment of neighboring properties. The conditional zoning overlay district also establishes project specific development standards to be applied in the overlay district.

(3) **Village-West Conditional Zoning Overlay District (VW-C)**

An overlay district that may overlay only those properties in the Village-West Zoning District.

- (A) The purpose of the Village-West Conditional Zoning Overlay District is to provide, to the best extent possible, for the opportunity for the creation of public amenities for parking, access and recreational purposes. Another purpose of the Village-West Conditional Zoning Overlay District is to provide for an overlay conditional zoning district in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property. This conditional zoning overlay district is available only for property within the Village-West Zoning District.
- (B) A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project in conjunction with the opportunity for the creation of public amenities for parking, access and recreational purposes. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted CAMA Land Use Plan, and adopted district and area plans. The review process established for the VW-C district provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions,

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which ensure compatibility of the use with the use and enjoyment of neighboring properties. The conditional zoning overlay district also establishes project specific development standards to be applied in the overlay district.

**(4) Marina Village Conditional Zoning Overlay District (MV-C)**

An overlay district that may overlay only those properties in the Marina Village Zoning District.

- (A) The purpose of the Marina Village Conditional Zoning Overlay District is to provide, to the best extent possible, for the opportunity for the creation of public amenities for parking, access and recreational purposes. Another purpose of the Marina Village Conditional Zoning Overlay District is to provide for an overlay conditional zoning district in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property. This conditional zoning overlay district is available only for property within the Marina Village Zoning District.
- (B) A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project in conjunction with the opportunity for the creation of public amenities for parking, access and recreational purposes. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted CAMA Land Use Plan, and adopted district and area plans. The review process established for the MV-C district provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions, which ensure compatibility of the use with the use and enjoyment of neighboring properties. The conditional zoning overlay district also establishes project specific development standards to be applied in the overlay district.

**(5) Eastern End Oceanfront Overlay District (EEO)**

An overlay district that encompasses all of the oceanfront parcels located between 1st Street and Diann Drive.

- (A) The purpose of the Eastern End Oceanfront Overlay District is to provide, to the best extent possible, for the opportunity for development and redevelopment of properties that are consistent with the older established dwellings in the area. The Eastern End Oceanfront Overlay District only applies to oceanfront parcels between 1st Street and Diann Drive that are subject to the Static Vegetation Line and eligible for the Static Line Exception.
- (B) The permitted and special uses and all density, intensity, and dimensional standards within this overlay district are the same as the underlying zoning district, with the exception of a reduced front setback of 20 feet for structures within this overlay district.

**(6) Reed Drive Overlay District (RDO)**

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An overlay district that encompasses all of the parcels located between 8714 Reed Drive (PIN 538307771512000) and 8502 Reed Drive (PIN 538308987255000).

- (A) The purpose of the Reed Drive Overlay District is to provide, to the best extent possible, for the opportunity for reduced rear yard setbacks in this area that is impacted by the presence of a 200 foot wide right-of-way for NC 58.
- (B) The permitted and special uses within this overlay district are the same as those permitted in the underlying zoning district, except that the setback from the NC 58 property line may be 15 feet instead of the underlying district's 30 feet setback.

(Ord. of 8-10-10(2), §§ 1, 3; Ord. of 9-9-14(1) , § 1; Ord. of 9-9-14(2) , § 1)

## Chapter 4: USE REGULATIONS

### 4.1 USE TABLE

#### 4.1.1 Definition of Permitted Uses and Special Uses

(1) **Permitted Use**

A use permitted in one (1) or more zoning districts as a matter of right provided and the land and structures and the use itself otherwise meet the remaining requirements of this Ordinance. Uses permitted in the various districts are indicated by a "P" mark in the appropriate column(s) of Table 4.1. Permitted uses are required to comply with all applicable requirements of section 4.2, Use-Specific Standards, and all other applicable standards of this Ordinance.

(2) **Special Use**

A use within one (1) or more zoning districts that is not a use by right, but that is required to meet the terms, conditions, and requirements for special uses and for which a special use permit is required to have been issued by the Board of Commissioners. Special uses that may be allowed in the various districts are indicated by an "S" mark in the appropriate column(s) of Table 4.1. Permitted uses are required to comply with all applicable requirements of section 4.2, Use-Specific Standards, and Chapter 5, Density, Intensity, and Dimensional Standards, unless any such requirement is modified or waived by the Board of Commissioners in the special use permit, as well as with all other applicable standards of this Ordinance.

(3) **Prohibited Use**

Any use that is not indicated by a "P" or an "S" for a specific zoning district in Table 4.1 is a prohibited use in that district, and is indicated by an empty cell in the table.

(4) **Overlay Districts**

Permitted and Special Uses in each overlay zoning district are the same as those available in that portion of the base district(s) in which the overlay applies, unless the terms of the overlay zoning district specifically prohibit the use. In addition, because of site-specific conditions or other factors, the terms and provisions of overlay districts may restrict or prohibit the availability or practicability of a use listed as a permitted or special use on or more base districts in Table 4.1. Applicants are urged to review all applicable overlay district provisions in conjunction with the provisions of this Chapter.

(5) **Accessory Uses**

Accessory Uses are defined in Chapter 10. Such uses may only exist so long as the principal use of the property is in existence and not in violation of this Ordinance. Accessory uses may not be established before a principal use is in operation, and may not continue after the principal use has ceased operation.

## 4.1.2 Table of Permitted and Special Uses

Permitted and special uses for each of the zoning districts, and cross-references to use-specific standards applicable to some uses, are shown in Table 4.1.

**TABLE 4.1.2: PERMITTED AND SPECIAL USES**

PERMITTED USES (P) AND SPECIAL USES (S) WITHIN ZONING DISTRICTS

Zoning District →	R 2	R M F	M H	G	B	C	V E	V W	M V	Use- Specific Standards
↓ Use Type										
<b>Residential and Related Uses</b>										
Dwelling, single-family	P	P	P				P	P	P	
Dwelling, single-family to be used exclusively for managers quarters						P	P	P	P	
Dwelling, two-family	P	P	P				P	P	P	
Dwelling, multifamily ( <a href="#">townhouses and/or condominiums</a> )		P					P	P	P	
<del>Dwellings, townhouses, and condominiums</del>		<del>P</del>					<del>P</del>	<del>P</del>	<del>P</del>	
Dwellings and condominiums <a href="#">in mixed-use structures</a>					P					
Group housing projects		P					P	P	P	4.2.1
Hotels, <a href="#">motels</a> , <a href="#">motor courts</a> , and inns					P		S	P		4.2.7
Mobile homes, on individual lots, <del>or in subdivisions</del>			P							4.2.6
Mobile home parks			S				S		S	4.2.2
Mobile home, to be used exclusively for manager quarters						P	S			
<del>Motels and motor courts</del>					<del>P</del>		<del>S</del>	<del>P</del>		<del>4.2.7</del>
Planned unit developments	P	P	P				P		P	
<b>Public and Institutional Uses</b>										
Assembly halls, coliseums, gymnasiums and similar structures				P	P		P	P		
Bus passenger stations					P					
Churches	P	P	P		P	P	P	P		
Convalescent and nursing homes					P					
Country clubs, golf clubs; exclusive use of the property owners of the platted subdivision and their invited guests	P	P	P		P	P				
Government uses, not listed separately	P	P	P	P	P	P	P	P	P	
Grounds and facilities for open air games and sports, community sports, community centers, and other similar properties, nonprofit	P	P	P	P	P	P	P	P		
Health clinic and Hospital				P	P		P	P		
Libraries, museums and art galleries				P	P		P	P		
Offices of licensed health care professionals					P		P	P		
Parks, public, nonprofit, and private	P	P	P	P	P	P	P	P	P	
Police and fire stations	P	P	P	P	P	P	P	P	P	
Post office				P	P		P	P		

Zoning District →	R	R	M	G	B	C	V	V	M	Use-Specific Standards
↓ Use Type	2	M	H				E	W	V	
Public utility distribution lines, transformer stations, transmission lines and towers, and telephone exchanges, but not service or storage yards	P	P	P	P	P	P	P	P	P	4.2.4
Public utility storage yards				P	P					4.2.4
Theaters				P	P		P	P		
Wastewater treatment facilities and package plants when approved as part of a petition for the Village-East Conditional Zoning Overlay District, Village-West Conditional Zoning Overlay District or the Marina Village Conditional Zoning Overlay District	P	P	P	P	P	P	P	P	P	
Yacht basins, dock slips or ramps for boats	P	P	P	P	P	P			P	
<b>Retail and Office Uses</b>										
Agencies and offices rendering specialized services in the professions, finance, real estate and brokerage					P		P	P		
Alcohol beverage commission stores and sales operated by governmental units and packaged retail sales					P		P	P		
Amusement enterprises, indoor, similar to billiards, pool, bowling, shooting gallery, roller rink, dance hall, not including electronic gaming operation as defined in chapter 10					P		P	P		
Antiques, art supply, and gift retail sales					P		P	P		
Athletic clubs and facilities	S	S	S	P	P	P	P	P		
Banks, finance and loan					P		P	P		
Bars and lounges, indoor					P		P	P	P	
Bars and lounges, partially or totally outdoor					S		S	S	S	
Bicycle sales and repair					P	P	P		P	
Book and stationery stores					P		P	P		
Campers					S	P	S	S	S	
Campgrounds and travel trailer parks					S	P	S	P	S	
Clothing sales					P		P	P	P	
Convenience store					P	P	P	P	P	
Electronic gaming operation					P					4.2.8
Feed, seed and fertilizer retail sales					P		P	P		
Food or grocery stores					P	P	P	P	P	
Furniture, retail sales					P		P	P		
General retail sales not otherwise listed					P		P	P		
Golf cart sales and rentals					P		P	P	P	
Incidental outdoor entertainment				P	P	P	P	P		
Mixed use and commercial structures with high slope roof and 50 foot mean roof height				S	S		S	S	S	4.2.11
Mixed use structures					P		P	P	P	
Mobile home sales					P					

Zoning District →	R	R	M	G	B	C	V	V	M	Use-Specific Standards
↓ Use Type	2	M	H				E	W	V	
	F									
Musical, dance, dramatic and other artistic programs or events, indoor only				P	P	P	P	P		
Musical, dance, dramatic, and other artistic programs or events, outdoor				P	S	S	S	S		4.2.3
Offices - general					P		P	P		
Outdoor activities and amusements - commercial					P			P		
Pet shops, bird stores, taxidermists					P		P	P		
Racquetball or tennis clubs and facilities	S	S	S	P	P	P	P	P		
Radio, television retail sales and service					P		P	P		
Restaurants					P	P	P	P	P	
<del>Retail sales, indoor, not listed separately</del>					<del>P</del>		<del>P</del>	<del>P</del>		
Seafood market - retail					P		P	P	P	
Stone and granite sales					S			S		
<b>Personal and Commercial Services</b>										
Automobile repair garages					P		P			
Automobile service stations					P					
Barber, beauty and other similar personal services					P	P	P	P	P	
Carwash					P			P		
Contractor or plumber shop and/or outdoor storage					P					
Day care center				P	P		P	P		
Dog grooming operations					S		P	P		
Dry cleaning					P		P	P		
Dry cleaning drop-off/pick-up site					P		P	P		
Fishing piers, commercial and public				P	P	P	P	P	P	
Laundries and laundrette service					P		P	P		
Lock and gunsmiths					P					
Marina and other watercraft-related facilities									P	
Parking lots <del>or garages</del> , commercial or public				P	P		P	P	P	
Photographic studios and camera supply					P		P	P		
Printing, publishing and reproduction establishments				P	P					
Recreational vehicle park					S	P	S	P	S	4.2.2
Taxicab, transportation for hire stations					P					
Veterinarians—no outside kennel, no boarding					P		P	P		
Watercraft related facilities					P				P	
Wireless telecommunication towers				S	S					4.2.5
<b>Wholesale, Warehouse, and Industrial Uses</b>										
Bakery shops operating both wholesale and retail businesses					P		P	P		
Florist, greenhouses, facilities and warehousing for retail trade					P		P	P		
Ice manufacture, storage and sales					P		P	P		
Storage facilities for rent					P		P	P		
<b>Accessory and Other Uses</b>										

Zoning District →	R 2	R M F	M H	G	B	C	V E	V W	M V	Use- Specific Standards
↓ Use Type										
Accessory buildings	P	P	P	P	P	P	P	P	P	
Accessory uses and structures incidental to any permitted use such as servants quarters, garages, greenhouses, swimming pools, workshops, temporary RVs and travel trailers	P	P	P	P	P	P	P	P	P	4.2.14
Accessory uses and structures—Solar panels	P	P	P	P	P	P	P	P	P	4.2.9
Accessory uses and structures—Wind energy systems	P	P	P				P	P	P	4.2.10
Automobile parking operated in conjunction with permitted uses	P	P	P	P	P	P	P	P	P	
Bed and breakfast lodging	P						P	P	P	
Electronic gaming operation					P					4.2.8
Incidental home occupations	P	P	P				P	P	P	
Nonconforming uses and buildings	P	P	P	P	P	P	P	P	P	

(Ord. of 1-12-10(2), § 1; Ord. of 6-12-12(1), § 1 ; Ord. of 6-12-12(2), § 2 ; Ord. of 7-10-12(1), § 1 ; Ord. of 7-10-12(2), § 1 ; Ord. of 2-12-13, § 1 ; Ord. of 3-12-13, § 1 ; Ord. of 7-8-14 , § 1; Ord. of 12-8-15(1) , § 1; Ord. of 12-8-15(2) , § 1; Ord. of 4-12-16(1) , § 1; Ord. of 6-14-16(1) , § 1; Ord. of 11-14-17(2) , § 1; Ord. of 10-9-18(2) , § 1)

## 4.2 USE SPECIFIC STANDARDS

The numbered paragraphs in this section 4.2 contain use-specific standards for certain designated permitted and special uses listed in Table 4.1. Each subsection relates to a notation in the right hand column of Table 4.1, and applies to the use(s) on the same line as the notation. Each subsection contains application requirements, conditions, procedures and/or requirements for the permitted or special use to which this subsection applies to that are in addition to other requirements and conditions contained in this Ordinance, and apply regardless of whether the use is a Permitted or a Special Use.

### 4.2.1 Group Housing Projects

In addition to complying with all other applicable provisions of this Ordinance, all group housing projects shall be developed according to the following specifications and standards and those requirements contained in section 2.4.6, Special Plat Approvals, as applicable.

- (1) All group development projects of more than three (3) units shall be designed by a professional engineer or architect.
- (2) The minimum lot width that may be subdivided for each individual townhouse shall be sixteen (16) feet, provided that in no case shall the width increase the maximum density allowed in this Unified Development Ordinance.
- (3) Each townhouse shall front on a public street or commonly owned street or area.
- (4) The minimum width for each townhouse or condominium unit shall be sixteen (16) feet.

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- (5) The maximum length of group development buildings shall be two hundred fifty-six (256) feet.
  - (6) Each building on the periphery of a group housing development shall comply with the minimum yard requirements of the zoning district in which the project is located. A screen of dense plant material that will grow at least three (3) feet in width by six (6) feet in height within three (3) years shall be required and constructed in a manner that will be compatible with the design of the project. The screen shall be provided along the perimeter of the project.
  - (7) For all projects containing more than eight (8) units, all parking lots, drives, streets and roads within the group housing development shall be paved and constructed in accordance with the construction standards for paved subdivision public streets within the Town.
  - (8) Any lighting provided within the group housing project shall be so located or shielded so that no offensive glare will be visible from an adjoining street or property.
  - (9) Group housing projects containing more than fifty (50) units and utilizing a single access shall have a minimum street or drive width of twenty-eight (28) feet.
  - (10) All group housing developments containing more than one hundred (100) units may be required to have a minimum of two (2) accesses, each having a minimum width of twenty (20) feet if deemed necessary by the Board of Commissioners due to access, traffic, fire, or safety considerations or similar factors.
  - (11) Parking shall be prohibited within the access streets or roads.
  - (12) Each space shall contain a minimum of two hundred (200) square feet and be permanently marked by painting or other designation on a paved parking lot. All spaces shall be shown on the site plan. Enclosed garages and carports within the group housing development shall be counted as a part of the parking requirements. If developed in phases, each phase shall contain the required number of parking spaces, and shall be shown on final plats.
  - (13) Recreational areas shall be provided for all group housing projects containing more than eight (8) dwelling units. A minimum recreation area of two thousand (2,000) square feet, having a minimum width of twenty-four (24) feet shall be provided for the first nine (9) to twenty-five (25) dwelling units within the project. For each dwelling unit over twenty-five (25) units in number, an additional sixty (60) feet per dwelling unit shall be provided.
  - (14) Swimming pools and their accessory areas shall not be counted as a part of the recreational area requirement. No part of the required recreation area shall be used for any other purpose.
  - (15) Swimming pools, if provided, shall conform to the building setback lines. All swimming pools shall be reasonably accessible to emergency equipment and vehicles. Any lighting in the pool area shall be shielded in such a manner that no offensive glare will be visible from an adjoining street or property.
  - (16) Signs identifying the group housing development or located within the group housing development shall be constructed and installed in a manner compatible with the design of the project. Any lighting used in conjunction with signs shall be shielded in such a manner that no offensive glare will be visible from the adjoining street or property.

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- (17) Adequate space shall be provided within the project area for the collection of garbage and other refuse, and all dumpsters and equipment used for garbage collection shall be screened from public view.
  - (18) Each building within a group housing development shall be located within two hundred forty (240) feet of a fire hydrant. All hydrants shall be located adjacent to a paved street, road or parking lot suitable for the transportation of firefighting vehicles and equipment. A suitable and readily accessible drive or passage shall be provided so that firefighting vehicles will have the capability of getting within fifty (50) feet of all dwelling units within the group housing development.
  - (19) If buildings within the group housing development have standpipes or sprinkler systems, one (1) fire hydrant shall be located within seventy-five (75) feet of each standpipe or sprinkler system.
  - (20) All hydrants shall be connected to a six-inch, or larger, water main. Easements shall be provided from the hydrant to the street connection along the water main so that the line and hydrant can be maintained by a public agency. A loop system may be required.
  - (21) In the event a dead-end street, road, drive or parking lot exceeds two hundred (200) feet in length, a paved turnaround for firefighting equipment and vehicles, emergency vehicles, and service vehicles shall be provided having a minimum interior turning radius of twenty-eight (28) feet. This provision may be omitted where such a turnaround is determined by the Board of Commissioners to be neither desirable nor necessary.
  - (22) A screen of dense plant material that will grow to a width of at least three (3) feet and a height of at least six (6) feet within three (3) years from the date of planting shall be provided, or in lieu thereof, a screen fence six (6) feet in height constructed in a manner that is compatible with the design of the project shall be provided along the perimeter of each project.

#### **4.2.2 Mobile Home Parks and Recreational Vehicle Parks**

All special use applications and special use permits for mobile home parks within an MH zone shall be accompanied by a detailed site plan which shall show and locate all structures, buildings, spaces, sites, utilities and other particulars as required in the mobile home park and travel trailer park ordinance.

All special use applications and special use permits for mobile home parks within the MH, VE, VW, MV, VE-C, VW-C, or MV-C districts, and for recreational vehicle parks shall meet the requirements of this section 4.2.2. In addition, all special use applications and special use permits for mobile home parks shall meet the applicable section of this Development Ordinance. The provisions of this section and other related sections of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. These standards shall also apply to all mobile home and recreational vehicle parks existing on the effective date of this Ordinance.

- (1) **Reenactment of Existing Mobile Home Park and Travel/Recreational Vehicle Park Ordinances and Regulations**

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This section in part carries forward by reenactment some of the provisions of the mobile home park and recreation vehicle park ordinances, originally adopted on March 3, 1976, and it is not the intention to repeal but to reenact and continue in force such existing provisions so that all rights and liabilities that have occurred those ordinances as to existing parks and individual lots are preserved and may be enforced. This section shall be applicable to all mobile home and recreation vehicle parks, lots, and uses arising, proposed or created on and after the date of enactment of the ordinance from that this section 4.2.3 derives, and all prior regulations in conflict herewith are superseded.

(2) **Mobile Home Park Permit or Recreational Vehicle Park Permit Required**

No person shall construct a mobile home park or a recreational vehicle park, or make any addition to a mobile home park or recreational vehicle park that either alters the number of sites for mobile homes or recreational vehicles within the park or affects the facilities required in such park until he first secures a mobile home park permit or recreational vehicle permit, as applicable, pursuant to section 2.4.7, Mobile Home Park or Recreational Vehicle Park Permit. The construction, or addition, shall be in accordance with plans and specifications submitted with the application, as such plans and specifications may be modified by the Board of Commissioners at the time of approval or conditional approval.

(3) **Mobile Home Park Site Development and Management**

(A) **Minimum Size**

Every mobile home park shall contain at least ten (10) acres, unless adjacent to and contiguous with an existing park.

(B) **Compliance with Dimensional Requirements**

The dimensions of each mobile home space shall be in accordance with the dimensional requirements of Chapter 5, Density, Intensity, and Dimensional Standards.

(C) **Parking Space**

Parking space sufficient to accommodate at least two (2) automobiles shall be located in each mobile home space.

(D) **Grading**

The mobile home park shall be graded so as to prevent any water from ponding or accumulating on the premises. All ditch banks shall be sloped and seeded.

(E) **Width and Setbacks**

Each mobile home space shall be at least seventy-five (75) feet wide and clearly defined. The front setback shall be a minimum of thirty (30) feet, and the side and rear setback shall be a minimum of ten (10) feet. No mobile home shall be located closer than ten (10) feet to any building within the park.

(F) **Interior Drives**

All mobile home spaces shall abut upon an interior drive of not less than thirty (30) feet of right-of-way, which shall have unobstructed access to a public street or highway. It is the

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intent of this section that mobile home spaces shall not have access to public streets or highways except through the interior drive. All interior drives shall have a paved width of not less than twenty (20) feet. All interior drives shall be constructed in accordance with applicable Town street specifications and shall be maintained by the park owner.

(G) **Culs-de-sac**

Culs-de-sac shall not exceed six hundred (600) feet in length, measured from the entrance to the center of the turnaround. Any interior street designed to be permanently closed shall have a turnaround at the closed end with a minimum right-of-way diameter of one hundred (100) feet. The entire right-of-way of such turnaround shall be graded and usable for the turning around of motor vehicles.

(H) **Intersections**

Streets shall intersect as nearly as possible, at right angles and no street shall intersect at less than seventy-five (75) degrees. Where a street intersects a highway, the design standards of the state highway commission shall apply. Street jogs of less than one hundred twenty-five (125) feet shall not be allowed.

(I) **Access**

The Town may require that each developer of a mobile home park set aside for the use and benefit of the public one (1) or more accesses for use by the public from a street right-of-way for ingress, egress, and regress to the Atlantic Ocean and Bogue Sound. Ordinarily, the public accesses shall have a minimum width of ten (10) feet and shall be provided at the east and west boundaries and center of each of the Town's fifty-four (54) blocks. A minimum of one (1) access shall be required for each three hundred fifty (350) feet of frontage on each street and both the Atlantic Ocean and Bogue Sound, and the access shall run in a north and south direction so as to afford access by the public from a street to both the Atlantic Ocean and Bogue Sound. Provided, there shall be a minimum of one (1) access for every mobile home park having a minimum frontage of one hundred fifty (150) feet on each street and both the Atlantic Ocean and Bogue Sound. Following consideration by the Planning Board, the Board of Commissioners is authorized to vary, eliminate or modify the location, design or width of the access, where conditions, good land use planning, topography or project design, in the opinion of the Board of Commissioners, would justify the variance or other modification.

(J) **Refuse Collection Facilities**

The park owner is responsible for refuse collection facilities. All refuse shall be connected at least twice weekly or more if the need is indicated. Two (2) Town-approved garbage cans with tight-fitting covers and a capacity of at least thirty (30) gallons shall be provided for each mobile home space. The garbage cans shall be located no further than one hundred (100) feet from any mobile home space. Racks or concrete platforms shall be provided on that to store containers for refuse. Such container racks or platforms shall be so designed to prevent tipping and to minimize spillage.

(K) **Accessory Structures**

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Within a mobile home park, one (1) mobile home may be used as an administrative office. Other administrative and service buildings housing sanitation and laundry facilities or any other such facilities shall comply with all applicable ordinances, codes and statutes regarding buildings, electrical installations, plumbing and sanitation systems.

**(L) Maintenance of Accessory Structures**

All service buildings, commercial structures, and the grounds of the park shall be maintained in a clean condition and kept free from any condition that will menace the health of any occupant or the public, or constitute a nuisance.

**(M) Management**

In each mobile home park, the permittee or duly authorized attendant or caretaker shall be responsible at all times to keep the mobile home park, its facilities, and equipment in a clean, orderly, safe and sanitary condition.

**(N) Registration**

It shall be the duty of the operator of the mobile home park to keep an accurate register containing a record of all occupants of the park. The operator shall keep the register available at all times for inspection by law enforcement officials, public health officials, tax officials, and other officials whose duties necessitate acquisition of the information contained in the register. The register shall contain the following information:

**(i)**Name and address of the occupants of each space;

**(ii)**Date entering and leaving the park;

**(iii)**The serial number of each mobile home with state of issuance, make and type of equipment, and date of manufacturing.

**(4) Recreational Vehicle Park Site Development and Management**

**(A) Minimum Size**

Every recreational vehicle park shall contain a minimum of ten (10) acres. Provided, the Town may approve an addition to an existing park containing a minimum of two (2) acres if the addition is contiguous to the existing park.

**(B) Compliance with Dimensional Requirements**

Every space shall consist of a minimum of one thousand (1,000) square feet with a 25-foot frontage. Each space shall be designated on the ground by permanent markers or monuments.

**(C) Recreational Vehicle Parking Space**

Parking spaces sufficient to accommodate at least one (1) motor and recreation vehicle shall be constructed within each space. Not more than one (1) recreation vehicle may be parked on any space.

**(D) Setbacks**

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All spaces developed adjacent to a public street shall be set back a minimum of thirty (30) feet from the street right-of-way.

(E) **Elevation; Grading**

All spaces shall be located on sites with elevations that are not susceptible to flooding. The spaces shall be graded to prevent any water from ponding or accumulating within the park. Each space shall be properly graded to obtain a reasonably flat site and to provide adequate drainage away from the space.

(F) **Interior Roads**

The park shall have all-weather roads that directly abut each space. All road rights-of-way shall have a minimum width of twenty (20) feet. In areas of heavy vehicle use wider rights-of-way shall be required.

(G) **Drainage**

The park shall be developed with proper drainage ditches. All banks shall be sloped and seeded.

(H) **Culs-de-sac**

Culs-de-sac or dead-end roads shall not exceed six hundred (600) feet in length measured from the entrance to the center of the turnaround. Any road designed to be permanently closed shall have a turnaround that provides adequate access for emergency vehicles as approved by the Town's fire department.

(I) **Access**

No space shall have direct vehicular access to a public road. When the park has more than one (1) direct access to a public road they shall be less than three hundred (300) feet apart or closer than three hundred (300) feet to a public road intersection unless unusual site conditions demand otherwise.

(J) **Restroom Facilities**

Parks that only operate on an annual lease schedule with each unit connected to a waste water system shall not require a central structure that provides toilet and bath or shower facilities for both sexes. Provided, nothing herein shall change the requirement for those RV facilities with pools or other common amenities that require separate restroom facilities. All other parks allowing daily, weekly or monthly rentals shall have a central structure, or structures, that will provide separate toilet and bath or shower facilities for both sexes. This structure may also contain a retail sales counter and/or coin-operated machines for the park residents use only, provided there is no exterior advertising. Vending machines also may be permitted in a sheltered area.

(K) **Swimming Pools; Bathing Areas**

No swimming pool or bathing area shall be installed, altered, improved, or used without compliance with applicable regulations. No bathing area shall be used without the written permission of the county health department.

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(L) **Signage**

Not more than two (2) signs with a total area of not more than sixty-four (64) square feet for each sign may be permitted. Signs shall be located on park property, but no closer than ten (10) feet to any property line and road right-of-way. Only indirect nonflashing lighting may be used for illumination and the sign must be constructed in such a manner as to prevent a direct view of the light source from any public right-of-way.

(M) **Ingress; Egress, Regress to Water**

The Town may require that each developer of a recreation vehicle park set aside for the use and benefit of the public, one (1) or more accesses for use by the public from a street right-of-way for ingress, egress, and regress to the Atlantic Ocean and Bogue Sound. Ordinarily, the public accesses shall have a minimum width of ten (10) feet and shall be provided at the east and west boundaries and center for each of the Town's fifty-four (54) blocks. A minimum of one (1) access shall be required for each three hundred fifty (350) feet of frontage on each street and both the Atlantic Ocean and Bogue Sound, and the access shall run in a north and south direction so as to afford access by the public from a street to both the Atlantic Ocean and Bogue Sound. Provided, there shall be a minimum of one (1) access for every recreation vehicle park having a minimum frontage of one hundred fifty (150) feet on each street and both the Atlantic Ocean and Bogue Sound.

(N) **Sanitary Facilities**

All toilet, shower, lavatory, and laundry facilities shall be provided and maintained in a clean and sanitary condition and kept in good repair at all times. They shall be safely and adequately lighted. Facilities shall be easily accessible and conveniently located. All toilet, shower, lavatory and laundry room facilities shall be acceptable to the health department and shall be in conformity with all county codes. All buildings shall be constructed in accordance with the building codes of the county.

(O) **Water Supply**

A safe, adequate and conveniently located water supply must be provided for each park. No water supply shall be installed, altered, or used without the written permission of the county health department.

(P) **Sewage Disposal**

Sewage dumping stations shall be approved by the county health department. Each park shall provide at least one (1) sewage dumping station. If the RV park plans indicate sewer services are being provided to each site, the requirement for a sewage dumping station may be waived by the Board of Commissioners. No method of sewage disposal shall be installed, altered, or used without the written permission of the health department. All sewage wastes from each park, including wastes from toilets, showers, bathtubs, lavatories, wash basins, sinks, and water-using appliances not herein mentioned, shall be piped into the park's sewage disposal system or systems.

(Q) **Garbage and Refuse Disposal**

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The park owner is responsible for refuse collection. All refuse shall be collected at least twice weekly, more if the need is indicated. Storage, collection, and disposal of refuse shall be so managed as not to create health hazards, rodent harborage, insect-breeding areas, accidents, fire hazards, or air pollution. All refuse shall be stored in conveniently located leak-proof, rodent-proof containers with tight-fitting lids. One (1) such can with a capacity of at least thirty (30) gallons shall be provided for every space. Garbage cans shall be located no farther than one hundred (100) feet from any space. Racks or concrete platforms shall be provided on which to store containers for refuse. Such container racks or platforms shall be so designed as to prevent tipping and to minimize spillage.

**(R) Electrical Service**

Where electrical service is used, the installation and use of such facilities shall conform with all applicable codes. Such facilities shall be inspected by the Town electrical inspector.

**(S) Mobile Homes**

It shall be unlawful for a person to park or store a mobile home in a recreation vehicle park for longer than seven (7) days. However, one (1) mobile home may be allowed within a recreation vehicle park to be used as an office and/or residence of persons responsible for the operation and maintenance of the recreation vehicle park.

**(T) Registration**

It shall be the duty of the operator of the recreation vehicle park to keep an accurate register containing a record of all occupants of the park. The operator shall keep the register available at all times for inspection by law enforcement officials, public health officials, and other officials whose duties necessitate acquisition of the information contained in the register. The register shall contain the following information:

(i) Name and address of the occupants of each space;

(ii) Date entering and leaving the park;

(iii) The license number of each vehicle (car, truck, recreation vehicle, etc.) with state of issuance, make and type of equipment.

( Ord. of 2-12-13, § 2 ; Ord. of 5-14-13, § 1 ; Ord. of 9-10-19(1) , § 1)

### **4.2.3 Musical, Dance, or Events, Outdoor Dramatic, and Other Artistic Programs**

All applications and permits for special uses for outdoor dances, outdoor music, outdoor drama, and similar outdoor amusements must comply with the following additional requirements:

- (1) The application for a special use must be accompanied by a site plan showing the dimensions of the property, the location and size of any proposed stages, the location and dimensions of the dance area, proposed seating arrangements for customers and participants, and the location and dimensions of the parking areas. Additionally, the site plans must indicate accesses to streets.

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- (2) If night activities are proposed, a lighting plan must accompany the application for a special use permit describing the exterior lighting plan, location of all exterior lights, wattage, direction of illumination, and methods of shielding the lighting from adjacent areas.
  - (3) The application for a special use permit must also include information concerning the type and manner of amplification of music and sound, type of activities to take place on the site and the audible range of the music and the sound from their amplification.
  - (4) The application for a special use permit shall contain the following information:
    - (A) The maximum capacity of the facility.
    - (B) The frequency and hours of operation for the events and facilities proposed.
    - (C) All law enforcement and public services which may be required or necessary for the events and facilities.
  - (5) If night activities are proposed, all lighting must be shielded from adjacent areas.
  - (6) The applicant shall indicate and provide off-street parking of not less than one (1) space for each three (3) customers or participants. Provided, the Board of Commissioners may reduce the parking requirements or allow parking off the premises on land in close proximity to the proposed use if the land is under the control of the applicant.
  - (7) The special use permit will be for such length of time as set forth in the permit issued by the Board of Commissioners, but shall be for a period not exceeding twelve (12) months. Provided, the special use permit may be renewed for one (1) or more successive periods not exceeding twelve (12) months each by the Board of Commissioners following recommendation by the Planning Board.

#### **4.2.4 Public Utility Sites**

Every public utility site, including, but not limited to, transformer stations, transmission lines, towers, telephone exchanges, and service or storage yards, shall be required to have a suitable buffer area around the perimeter of the site so as to screen the site from view from adjoining properties and adjacent streets, roads and easements. A site plan for each utility site shall be approved by Board of Commissioners before issuance of a building permit for the same and before any improvements to the site have taken place. The Board of Commissioners shall require either a six-foot-high opaque fence, continuous dense plant material designed to grow at least three (3) feet thick by six (6) feet wide within a three-year period, or such other suitable buffer materials as may be approved by the Board.

#### **4.2.5 Wireless Communication Towers**

##### **(1) General**

##### **(A) Intent**

In compliance with the Federal Communications Act of 1996 and all other relevant state and federal law, rules and regulations, it is the intent of the Town to allow telecommunication providers the opportunity to locate wireless telecommunications

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antenna and related facilities within its jurisdiction in order to provide an adequate level of service to its customers while protecting the health, safety, and welfare of its citizens, and the aesthetics of the community.

**(B) Applicant's Responsibilities**

It shall be the responsibility of all applicants and operators of the telecommunications equipment described herein to make all possible efforts to maintain consistency with the characteristics of this family beach community with its long and narrow island, its low building and vegetation profile, and the community whose primary income is based upon the attraction of tourists by the Town's qualities and characteristics as a family beach.

**(C) Conformance**

No WTA or WTSS shall be constructed or modified from and after November 14, 2000 except in conformance to the provisions stated in this section 4.2.23.

**(D) Enforcement**

This section 4.2.23 may be enforced by any and every remedy provided by the North Carolina General Statutes as specified in Chapter 9, Violation.

**(2) General Requirements**

**(A) Certification of Need**

Any applicant(s) requesting a new WTA or WTSS or any modification to an existing WTA or WTSS shall be required to provide substantial evidence of need for such structures both in terms of coverage and capacity.

**(B) Co-location**

WTA placement on an existing structure (either AASS or WTSS) is required unless the applicant(s) can clearly demonstrate with substantial, clear and convincing evidence that all co-location opportunities have been exhausted. The Town will attempt to maintain by its own efforts or through its agents an up-to-date inventory of buildings and structures suitable for WTA installations. Maps are available showing these locations, as well as relative flood zones and flight approach vectors to neighboring airfields.

**(C) New Construction Provision for Co-location**

All new WTSS shall be constructed to permit a minimum of two (2) new WTA. The owner(s) of the new WTSS shall submit a notarized letter to the Town declaring that these additional sites shall be available to new tenants and shall be negotiated in good faith at reasonable terms to other providers, and that if good faith negotiations fail, both parties may be subject to commercial arbitration. They shall further state that as a condition of sale or transfer of the proposed structure to any new owner(s), operator(s), or agent(s) that a statement of intent to provide for shared use of tower shall be required of any new owner(s), operator(s), or agent(s) and shall be delivered to the Town prior to closing.

**(D) Federal Certification**

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Any new WTA or WTSS, or any modification to an existing structure that would effect an increase in height shall require certification in writing by the Federal Aviation Administration that such addition or modification constitutes "No Hazard" to air navigation both by its physical structure and by its potential for radiofrequency interference with aviation communication signals. The proposed structure shall also satisfy all TOWAIR requirements. If operator(s) of the proposed structure can reasonably show that the Federal Aviation Administration cannot produce such certification, then certification of "No Hazard" to air navigation from a certified private agency shall suffice.

(E) **Certification of Compliance with FCC's Implementation of National Environmental Policy Act of 1969 (NEPA)**

The applicant(s) for any new WTA or WTSS or modification to any existing WTA or WTSS are required to file with the FCC if the structure location is within any definition provided in section 1.1307 of the NEPA. If the structure is located in any area defined by this Act, full compliance with the Act's requirements for environmental assessments (EA) shall be required.

(F) **Radiofrequency**

Radiofrequency exposure levels shall not exceed the lesser of FCC and ANSI exposure standards at any potential point of exposure to the general public. The owner(s) and operator(s) of all WTA shall make all reasonable attempts by design, fencing, signage, and the like to limit the public's exposure. An engineer prepared and sealed document attesting to the fact that the calculated and proposed radiofrequency levels shall remain at the lesser of the FCC and ANSI standards is required. This letter shall be required following completion of the structure's construction, and before a certificate of occupancy is issued.

(G) **Structural Integrity**

An engineer's prepared and sealed complete site plan document that denotes compliance with all technical specifications provided in federal, state, and Town Code, and a certification that the proposed structure and all proposed and potential occupant structures are stable and capable of withstanding a 50-year hurricane is required.

(H) **Insurance Requirements**

A minimum of one million dollars (\$1,000,000.00) general liability insurance with a letter from the insurer attesting to this fact shall be required prior to receipt of a certificate of occupancy. This same letter shall acknowledge that the insurer shall notify the Town thirty (30) days prior to cancellation of this insurance.

(3) **New Construction or Modification of Wireless Telecommunication Support Structures (WTSS)**

(A) **Statement of Financial Responsibility**

The owner(s), and their representative(s) shall be required to provide proof of financial responsibility for all wireless telecommunication structures constructed or maintained within the Town. This statement shall be completed upon initial application, and renewed each year. If full financial responsibility cannot clearly be demonstrated to the full

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satisfaction of the Town, a surety bond for one hundred ten (110) percent of the total cost of all structure(s) removal and associated cleanup may be required by the Town. The owner(s) and their representative(s) shall be fully responsible for all maintenance, and continued assurance that the structure(s) continually remain in compliance with Town Code.

**(B) Special Use Permit Required**

Construction of any new, or modification of any existing WTSS shall require a special use permit. Exemptions to this requirement shall include, but shall not be limited to, co-location of new WTA on an existing WTSS, reductions in height or size of a WTSS, or any issues of routine maintenance to either the WTA or WTSS.

**(C) Demonstration of Need**

Applicants shall provide substantial evidence as to the current need for the proposed WTSS both in terms of coverage area and capacity, and must demonstrate why all currently available WTSS and AASS co-location opportunities can not provide adequate coverage and capacity.

**(D) Demonstration of Lack of Suitable Co-location Opportunities**

New WTSS shall be permitted only after clear demonstration that all potential opportunities for co-location have been exhausted, and that no suitable existing support structures exist within the coverage area that may be used, including all WTSS and AASS. The applicant(s) shall identify and assess all potential opportunities for co-location within a 5,000-foot radius around the proposed point of construction for the new WTSS. An engineer's prepared and sealed letter shall be required, attesting to the fact that it is technically impossible to co-locate on any existing WTSS and all other AASS within the search area, with a map showing all potential sites, and stating why each is technically unfeasible. A notarized letter from the applicant(s) shall be required listing all technically feasible sites, noting for each site that the applicant(s) attempted, in good faith, to negotiate terms of co-location with the owner(s) of the potential site, and negotiation has failed.

**(E) Requirement of Notification**

Applicants shall be required to notify, by certified mail with return receipt requested, all property owners within five hundred (500) feet and all adjacent property owners of their application for construction of a new, or modification of an existing WTSS. Exceptions to this requirement shall include, but shall not be limited to, co-location of new WTA on an existing WTSS, reductions in height or size of the WTSS, or any issues of routine maintenance to either the WTA or WTSS.

**(F) Minimum Lot Area**

Parcels used for placement of new or modified WTSS shall be the greater of a minimum of ten thousand (10,000) square feet, or shall be capable of meeting the minimum lot size necessary to accommodate the minimum setback requirements defined below.

**(G) Minimum Setback Requirements**

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When the proposed structure is located adjacent to any church, school, public facility, or residential zone, the center of the support structure shall be located a distance from the nearest property line a minimum of one and one-quarter (1.25) times the greatest height of the structure including any WTA or devices that would add to the total height of the structure. The engineer's site plan for the tower shall indicate that the fall radius for the tower lies within the tower site, and that the fall radius zone does not include any of the aforementioned structures or zones. Otherwise, the center of structure shall be located as close as possible to then the geometric center of the property, with minimum setbacks from all sides of fifty (50) feet.

**(H) Support Structure Type**

Only camouflaged or "stealth" WTSS or monopole support structures shall be used. Structures involving the use of guy wires for either internal or external bracing and support, or lattice type structures, or any other type of support structure shall be prohibited.

**(I) Permitted Height**

The WTSS may not exceed the minimum height necessary to accomplish the technical objectives of the primary WTA and the required number of additional WTAs, and shall be the lesser of the demonstrated minimum required for the technology employed plus the minimum required for all proposed additional occupants. No WTSS shall be constructed that has any component of its structure more than seventy-five (75) feet above the average adjacent tree or building lines. No combination of WTA and WTSS may exceed one hundred (100) feet. An engineer's sealed letter describing the proposed WTSSs adherence to this provision shall be required.

**(J) Illumination**

No WTSS or WTA shall be illuminated unless specifically directed by the Federal Aviation Administration or other federal agency. If required, lighting must be to the minimum specified by a federal agency. Strobe lights shall be prohibited unless specifically required. When strobe lights are required by the specifying agency, they shall be dual strobes, with white strobes for daytime use, and red strobes for nighttime use. All lighting shall be directed toward the structure, and upward and outward from any public areas. A copy of the Federal Aviation Administration lighting requirements letter shall be submitted with the application.

**(K) Color**

Unless otherwise specified by a federal agency, all WTSS shall be painted a flat gray color.

**(L) Limited to Applicant**

Every special use permit for freestanding WTSS shall be limited to the applicant(s). Any assignment or transfer of the special use permit or any of the rights under the permit may be made only upon the approval of the Town.

**(M) Complete Application**

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The requirements for a complete application for a WTSS are provided in Appendix I.

(4) **Co-Location on Existing Structures**

(A) **Permitted Use**

Co-location of WTA on an existing WTSS or AASS shall be a permitted use.

(B) **Zoning**

Co-located WTA shall be allowed as a permitted use only in the Business (B) Zoning District and within the right-of-way for Highway 58 as defined by the State of North Carolina, and on water towers.

(C) **Height Limitations**

WTA located on an existing WTSS or AASS shall not exceed the lesser of fifteen (15) feet or ten (10) percent of the existing support structure height as measured from the structure's apex to the average ground level immediately adjacent to the structure.

(D) **Color**

The color of all WTAs shall match the color of the supporting WTSS or AASS.

(E) **Illumination**

Illumination requirements for new WTA co-located on existing structures shall be subject to the same requirements for freestanding WTSS.

(F) **Lease Agreement**

A copy of the lease agreement between the owner(s) of the WTA and the owner(s) of the support structure shall be submitted with the application. The financial terms of the agreement need not be disclosed.

(G) **Complete Application**

The requirements for a complete application for a WTA are provided in Appendix II.

(5) **Equipment Housing Structures**

(A) **Visibility**

The base of the support structure to a minimum height of six (6) feet shall not be visible from any public right-of-way or area of public congregation, and must be hidden from view either by natural vegetation or by vegetative screening. All equipment necessary for the functional operation of the technology employed shall be located in either a lawfully pre-existing structure, or in an equipment housing structure. The colors and external characteristics of the equipment housing structures shall be harmonious with, and blend with, the natural features, buildings, and structures surrounding it.

(B) **Access Drives**

Roads and drives used to gain access from public right-of-way to the equipment housing structures shall be designed to minimize, as much as possible, viewing of the equipment housing structures by the public.

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(C) **Size**

Equipment housing structures shall be the minimum size necessary to accommodate the closed storage of all ground-based equipment, and necessary materials for the primary occupant's technical needs, and for the technical needs of all potential tenants. Depiction of the minimum size necessary to accomplish these technical objectives shall be included in the engineer's site plan details.

(D) **Fencing and Screening**

The accessory building and its fencing shall be fully surrounded (excepting a single point of access) by a planted vegetative screening, as described below, or by a minimum of fifteen (15) feet existing natural vegetation. Whether natural or planted, the vegetative buffer shall have the effect of fully obscuring the structure and its fencing from public view. All planted buffers shall be at least five (5) feet tall at planting, and shall be designed to reach at least eight (8) feet within two (2) years, and shall be an evergreen, salt-resistant planting material. Continued maintenance and replacement of the vegetative buffer, as needed, shall be required for the permitted life of the structure. A security fence shall be installed along the full perimeter of the support structure and shall be no less than five (5) feet and no more than eight (8) feet high. The fencing shall incorporate designs for structure security and for making all possible efforts to minimize public exposure to radiofrequency radiation. Any and all accessories and all materials relating to the use of the WTA or WTSS shall be installed within the building, unless technically impractical. All road or drive, gate, fence, and vegetative screening details shall be noted within the engineer's site plan.

(E) **Signage**

No advertising signs are permitted on the support structure, the fence, building, or at any location on the site, with the exception of one (1) sign that is attached to the gate, and one (1) sign that is attached to the gate-face of the building for the purposes of safety and information. These two (2) signs shall clearly identify the dangers, and shall provide the names of emergency contact persons and their phone numbers. Any signs shall comply with Town Code.

(F) **Two-way and Microwave Antennae**

Two-way and microwave antennae shall be located within accessory buildings whenever technically feasible.

(G) **Outdoor Storage Prohibited**

Storage of any equipment or materials on the accessory building site or support structure site is prohibited.

(H) **Noise Producing Equipment**

Noise producing equipment shall be sited and/or insulated to minimize to the maximum practicable extent any increase in noise above ambient levels as measured at the property line.

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(I) **Electrical Connections and Land Lines**

Electrical connections and land phone lines to and from the accessory building shall be installed underground.

(6) **Applicant's Remedy**

Minor variances from the stated design and purpose of all structures may be addressed to the Board of Adjustment.

(7) **Informal Dispute Resolution Process**

All parties shall attempt to adhere to the agreement adopting an informal dispute resolution process as described in the 1998 meeting between the LSGAC, the CTIA, the PCIA, and the AMTA. This process is designed to arrive at a mutual agreement while avoiding lengthy and costly court proceedings. All parties retain their full legal rights should this remediation process fail.

(8) **Appeal for Remediation**

Upon disapproval, or dissatisfaction with the conditions of approval by the Board of Commissioners, the applicant(s) shall have a 30-day period in which to request an appeal for remediation. The appeal for remediation shall involve the applicant(s), selected members of the Planning Board, and the Board of Commissioners, and shall be moderated by a third-party arbitration team. At the end of the process, the arbitration team will make a recommendation of its findings to all parties, and will provide a written record of the proceedings.

(9) **Annual Renewal**

(A) **Annual Renewal Required**

All WTA and WTSS shall be reviewed by the Town on an annual basis. An application for annual renewal must be submitted to the Town no later than ninety (90) days prior to the date of last renewal or the date of the original certificate of occupancy. Structures will be re-permitted for the next three hundred sixty-five (365) days following review by the inspections office, the Planning Board, and the Board of Commissioners.

(B) **Application for Renewal**

The complete list of requirements for annual renewal for a WTSS and a WTA is listed in Appendix III.

(C) **Abandonment**

Any WTA or WTSS that is not operated for a continuous period of one hundred eighty (180) consecutive days, or that is not maintained according to Town Code for one hundred eighty (180) cumulative during the calendar year, or any structure for whom the owner(s) or representative(s) fail to make annual renewal shall be considered abandoned. Removal of the abandoned structure to the satisfaction of the inspections department shall be required within ninety (90) days. The owner(s) shall be responsible for all costs of removal. Petition for a one-time extension of ninety (90) days may be made to the Board of Adjustment.

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#### **4.2.6 Mobile Homes**

In no case shall there be more than one (1) mobile home be allowed per lot. In the event a mobile home is replaced or installed on a lot after the effective date of this Ordinance, the mobile home shall qualify and meet the Zone 3 home requirements defined by the US Department of Housing and Urban Development (HUD) in order to qualify for a building and transportation permit.

(Ord. of 10-12-10(2), § 1)

#### **4.2.7 Motel, Hotels, Inns and Condotels**

- (1) For each motel or hotel, every bedroom constitutes an individual unit. Provided that, irrespective of the number of square feet per unit, no more than thirty-two (32) units per acre shall be permitted. In addition, a minimum of seventy-five (75) percent of the total number of allowable units shall be designated and constructed as one-bedroom "rooming unit or lodging." This seventy-five (75) percent limitation shall apply to any existing morel/hotel being converted to a condominium hotel or condotel.

#### **4.2.8 Electronic Gaming Operation**

In addition to complying with all other applicable provisions of this Ordinance, all electronic gaming operations shall only be allowed according to the following specifications and standards:

- (1) An electronic gaming operation shall not be permitted if located within one thousand two hundred fifty (1,250) feet of any parcel used or occupied by a church, public park, playground or movie theater.
- (2) An electronic gaming operation as a standalone permitted use or as an accessory use shall be limited to no more than four (4) computers/gaming terminals/machines.
- (3) The parking requirement for an electronic gaming operation shall be one (1) space per computer/gaming terminal/machine and one (1) space per employee.
- (4) No alcoholic beverages shall be sold, served or consumed on the premises of an electronic gaming operation unless the owner/operator has secured appropriate State alcoholic beverage permits.

( Ord. of 7-10-12(1), § 2 )

#### **4.2.9 Solar Panels**

In addition to complying with all other applicable provisions of this Ordinance, solar panels shall only be allowed according to the following specifications and standards:

- (1) Solar panels may only be installed and erected after the issuance of the proper permits from the Planning and Inspections Office.

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- (2) Solar panels may only be attached to the roofs of structures, with the exception of freestanding solar panels permitted in residential zoning districts. If the placement of the panels will exceed the loading requirements of the roof structure; the structure and attachment must be certified by a professional licensed engineer in the State of North Carolina.
  - (3) Freestanding solar panels are permitted in residential zoning districts only, and may only be placed on a structure that meets all applicable provisions of the NC Building Code. If the placement of the panels will exceed the loading requirements of the structure; the structure and attachment must be certified by a professional licensed engineer in the State of North Carolina.
  - (4) Freestanding solar panels and structures must meet all applicable building setbacks.
  - (5) Freestanding solar panels and structures may not exceed a height of fifteen (15) feet as measured from nearest adjacent grade.

( Ord. of 6-12-12(1), § 2 ; Ord. of 7-10-12(2), § 2 )

#### **4.2.10 Wind Energy Systems**

In addition to complying with all other applicable provisions of this Ordinance, all wind energy systems shall only be allowed according to the following specifications and standards:

- (1) Wind energy systems may only be attached to the roofs of residential structures.
- (2) No wind energy system shall be installed on any vacant lot.
- (3) Each wind energy system shall maintain a non-reflective finish neutral in color to reduce reflection and glare and to otherwise reduce visual obtrusiveness.
- (4) Signs, advertisements, flags, streamers and other decorative items shall be prohibited from a wind energy system. No lighting on the wind energy system shall be permitted.
- (5) No communications antenna or arrangement of wires shall be installed or connected to the wind energy system.
- (6) The height of the wind energy system shall extend no greater than six (6) feet above its highest point of attachment on the roof structure. In no case may the top of the wind energy system extend above the peak of the roof structure on which it is attached.
- (7) The aggregate noise or audible sound resulting from a wind energy system shall not exceed five (5) decibels (dBA) above the existing average noise level of the surrounding area measured at the property lines and shall be restricted to a maximum of forty-five (45) decibels (dBA) measured at the property lines that contain the wind energy system.
- (8) A North Carolina licensed professional engineer shall sign and seal all structural plans for wind energy systems including its attachment to the structure. The installation and design of all wind energy systems shall comply with applicable industry standards, and all electrical and mechanical components shall conform to relevant local, state and national codes. No wind energy system may be installed until all applicable permits have been issued by the Planning and Inspections Office.
- (9) No more than one (1) wind energy system may be installed on each residential structure.

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( Ord. of 6-12-12(2), § 3 )

#### **4.2.11 Mixed Use and Commercial Structures with a 50 foot Mean Roof Height**

All applications and permits for special uses for fifty (50) foot mixed use and commercial structures shall meet all applicable requirements of this Unified Development Ordinance, and shall be considered in the context of any of the following or similar considerations that create a need for additional building height:

1. The use of parking under the structure if site specific conditions are such that under the structure parking is necessary in order to meet the minimum parking standards for the proposed use(s) of the building.
2. Topography of the site where the proposed building will be located.
3. Preservation of natural or vegetated area in order to meet the requirements set forth in the applicable zoning district.
4. Reduction of impervious coverage and improved stormwater control provisions as dictated by site specific conditions.
5. The provision of public or private amenities associated with hotels, motels, or similar transient lodging facilities.

( Ord. of 7-8-14 , § 2 )

#### **4.2.12 Golf Cart Sales and Rentals**

In addition to complying with all other applicable provisions of this Ordinance, all businesses that offer golf carts for sale and/or rent shall only be permitted according to the following specifications and standards:

1. Outdoor display of golf carts shall be limited to five (5) at any one time.
2. Shall have a physical place of business (brick and mortar type) in Town.
3. Loading and unloading of golf carts shall not impede the movement of vehicular traffic and pedestrian activity.
4. Rules for operating a golf cart on a public street, road, or highway within the Town shall be posted on every golf cart registered with the Town and a copy provided to each person operating a golf cart.

(Ord. of 4-12-16(1) , § 1)

#### **4.2.13 Incidental Outdoor Entertainment**

An application for a zoning permit for incidental outdoor entertainment shall comply with the following additional requirements:

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(Supp. No. 49)

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- (1) The application must be accompanied by a site layout showing the maximum occupancy of the facility, the dimensions of the property, the location of the entertainment area and how the area is proposed to be partitioned, the location and size of any stage, the location and dimensions of the dance area, proposed seating arrangements for customers and participants, and the means of ingress and egress to the outdoor entertainment area.
  - (2) If night activities are proposed, a lighting plan must be submitted showing the location of exterior lights, wattage, direction of illumination, and methods of shielding lighting from adjacent areas.
  - (3) Information concerning the type and manner of amplification of music and sound, and the audible range of the music and the sound shall be included. Methods to minimize the migration of music and sound to nearby properties shall be identified.
  - (4) The entertainment shall be provided for those patrons of the business conducting said activity.
  - (5) The frequency and hours of incidental outdoor entertainment shall comply with the Town's noise ordinance requirements.

(Ord. of 6-14-16(1) , § 1)

#### **4.2.14 Temporary RVs and Travel Trailers**

The Town Manager is authorized, in response to a natural disaster, to allow the temporary use of recreational vehicles (RVs) and/or travel trailers in all zoning districts in Emerald Isle. This temporary use shall be allowed for a period of ninety (90) days for each individual property owner. If circumstances arise that warrant additional time, the Town Manager is authorized to extend the time for a period not to exceed thirty (30) days. All RVs and/or travel trailers must be properly connected to a wastewater system or have a means to properly remove all wastewater and have a permanent power source. A permit shall be required for this activity.

(Ord. of 10-9-18(2) , § 2)

## Chapter 5: DENSITY, INTENSITY, AND DIMENSIONAL STANDARDS

### 5.1 DENSITY-INTENSITY-DIMENSIONAL TABLE

Regulations related to permitted density and intensity of development, lot size and dimensions, and other regulations related to the permitted dimensions of development and land parcels are contained in Table 5.1. All development within the Town shall comply with all of the requirements in Table 5.1 and in section 5.2, Additional Dimensional Standards. Within the zoning district designated as "Village-East" and the "Village-East Conditional Zoning Overlay"; Village-West" and the "Village-West Conditional Zoning Overlay"; and within "Marina Village" and "Marina Village Conditional Zoning Overlay", as shown on the Official Zoning District Map, the requirements in Table 5.1 and section 5.2 shall apply unless those requirements have been modified by a condition of approval of the Village-East Conditional Zoning Overlay District, Village-West Conditional Zoning Overlay District, or Marina Village Conditional Zoning Overlay, in which case the latter shall supersede any inconsistent provisions in Table 5.1 and section 5.2.

**TABLE 5.1: TABLE OF DIMENSIONAL STANDARDS**

Old Lot = Lot recorded on or before June 11, 1977

New Lot = Lot recorded after June 11, 1977

CAMA = Coastal Area Management Act of 1974, as amended

Use Type Dimensional Standard		Zoning Districts						Additional Requirements	
		Residential			Business/Government and Camp Commercial				Mixed Use
		R2	RMF	MH	G	B	C		VE, VW and MV
Minimum lot area (square feet)	Single-family—Old lot	7,000		6,000				6,250	
	Single-family—New lot	12,500	12,500	12,500					
Minimum lot area for multifamily residential use (square feet)	First 2 units or duplex—Old lot	11,250	11,250	<u>11,250</u>					
	First 2 units or duplex—New lot	15,000	15,000	<u>15,000</u>				2,550	
	—Each additional unit—Old lot	5,385	5,385	<u>5,385</u>					
	—Each additional unit—New lot	4,760	4,760	<u>4,760</u>					
Minimum lot area for a hotel/motel						1 acre		1 acre	(Note 10)

Use Type	Dimensional Standard	Zoning Districts						Additional Requirements	
		Residential			Business/Government and Camp Commercial				Mixed Use
		R2	RMF	MH	G	B	C		VE, VW and MV
	Minimum area per camping space (square feet)						1,000		(Note 1)
	Minimum lot width at front building line (feet)	75'	75'	75 ft. (60 ft. for lots recorded prior to 12/11/84)				60 ft. for single family detached  24 ft. for single family attached  60 ft. for mixed use	
Minimum lot depth (feet)	—Ocean front lot	200'	200'						
	—Mobile home lot			100'					
Minimum front building setback (feet)	—Front street ROW	30'	30'	30'	30' (Note 4)	10' (Note 4)	30'	10' (Note 11)	(Note 11) (Note 12)
	Side street ROW	20'	20'	20'	30' (Note 4)	10' (Note 4)	30'	10' (Note 4)	(Note 4)
	—Through/ double frontage lots (each frontage)	30'	30'	30'	40' (Note 4)	10' (Note 4)	30'	10'	(Note 12) (Note 14)
Minimum side yard setback (ft)	Old lot	10'	10'	10'	0 (Note 5)	0 (Note 5)			
	New lot	15'	15'	10'					
	Ocean front lot, regardless of date lot recorded	15'	15'	15'					
	Minimum rear yard setback (feet)	15'	15'	10'	0 (Note 5)	0 (Note 5)	15'	10'	Per CAMA

Use Type <u>Dimensional Standard</u>		Zoning Districts							Additional Requirements
		Residential			Business/Government and Camp Commercial			Mixed Use	
		R2	RMF	MH	G	B	C	VE, VW and MV	
<u>Maximum building height (feet)</u>	Flat/low slope roofs (<4:12)	35'	35'	35'	40' (Note 8)	40'	40'	40' (Note 8) (Note 9)	(Note 6)
	High slope roofs (>4:12)	40'	40'	40'	40' (Note 13)	40' (Note 13)	40'	40' (Note 13)	<a href="#">(Note 7)</a> <a href="#">(Note 8)</a> <a href="#">(Note 9)</a> <a href="#">(Note 13)</a> <del>(Note 7)</del>
	All roofs				40'	40' (Note 8) (Note 9)	40'	40 ft. for residential, mixed use commercial and non-residential structure (Note 8) (Note 9)	<a href="#">(Note 8)</a> <a href="#">(Note 9)</a> <a href="#">(Note 13)</a>
Maximum allowable density (dwelling units per acre)			8					(Note 2) (Note 3)	(Note 2) (Note 3)
Maximum structure height for antenna, communication towers, water tanks and similar utility equipment (feet)		100'	100'	100'	100'	100'	100'	100'	
Minimum distance between multifamily residential buildings (feet)			30'						For each story over two an additional 10 ft is required
<u>Minimum natural/vegetated area (% of site)</u>	–Natural area	35%	35%	35%	15%				
	–Vegetated area					15%		15%	
<del>Minimum dwelling unit size (heated square feet)</del>									

Use Type Dimensional Standard		Zoning Districts						Additional Requirements	
		Residential			Business/Government and Camp Commercial				Mixed Use
		R2	RMF	MH	G	B	C		VE, VW and MV
	—Single family dwellings								
	—Duplex dwellings								
	Mobile-home requirements								
	—Minimum size (square feet)			560					
	—Minimum width (feet)			12'					

**Notes:**

1. In the Camp district, the minimum parcel size per park shall be ten (10) acres. The Board of Commissioners may allow an addition to an existing park containing not less than two (2) acres if the proposed addition is contiguous to an existing park. [The minimum area per camping space is 1,000 square feet.](#)
2. There shall be no residential density requirement in VE, VE-C, VW and VW-C districts provided all applicable regulations in Chapters 2, 3, 4, 5, 6, and 7 of the Unified Development Ordinance are met. The Town will require a minimum of one (1) ten (10) foot wide public access easement, new or existing, for each five hundred fifty feet (550) feet of frontage on both the Atlantic Ocean and Bogue Sound, and the access shall run in a north and south direction to afford access to the ocean or sound by the public from a street.
3. There shall be no residential density requirement in the MV and MV-C districts provided all applicable regulations in Chapters 2, 3, 4, 5, 6, and 7 of the Unified Development Ordinance are met. The Town will require a minimum of one (1) ten (10) foot wide public access easement, new or existing, for each five hundred fifty feet (550) feet of frontage on both the Atlantic Ocean and Bogue Sound, and the access shall run in a north and south direction to afford access to the ocean or sound by the public from a street.
4. In the C, MV and MV-C zoning districts, every building or property in these districts that has NC 58 (Emerald Drive) as an adjoining street shall also be set back an additional ten (10) feet from NC 58 (Emerald Drive) for each additional story over two (2) stories. In the B, G, VE, VW, VE-C and VW-C zoning districts, every building or property in these districts that has NC 58 (Emerald Drive) as an adjoining street shall have a five (5) feet set back if parking is located on the side or rear of the building and has a primary building entrance located along NC 58 (Emerald Drive). Carteret Craven Electric Membership Cooperative (CCEMC) and Bogue Banks Water Corporation (BBWC) may require additional setbacks.
5. In the Business and Government zoning districts, when a side or rear lot line abuts a residentially zoned lot, there shall be a minimum yard of fifteen (15) feet for the first and second story of a commercial building and twenty (20) feet for all additional stories.
6. The height of a flat roof is to be measured from the grade plane to the mean roof height. The height of a building with a low slope roof in the R2, RMF, MH and Eastern End Oceanfront Overlay Zoning Districts is to be measured from the grade plane to the mean roof height. Buildings with flat roofs and buildings with low slope roofs in the R2, RMF, MH and Eastern End Oceanfront Overlay Zoning Districts may have a roof parapet not

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exceeding 3 feet in height. Buildings with flat roofs and buildings with low slope roofs in the B, C, G, VE, VW and MV Zoning Districts may have a roof parapet not exceeding 5 feet in height exclusive of elevator shafts, air conditioning and other necessary mechanical equipment, none of which shall exceed 10 additional feet in height, for a total of fifteen (15) feet. The additional 15 feet cannot be used for habitation.

7. Height shall be measured from the grade plane to the mean roof height. One- and two-family dwellings are limited to three (3) stories plus an attic story. The attic story is defined as per the NC Building Code, as amended.
8. Commercial buildings or mixed use structures with a roof pitch of 3/12 or less shall have a maximum wall height of 40 feet measured from the lowest finish grade level immediately adjacent to the building or pilings to the exterior wall load-bearing top plate, with a maximum of 5 foot roof top parapet exclusive of elevator shafts, air conditioning and other necessary mechanical equipment, none of which shall exceed 10 additional feet in height, for a total of fifteen (15) feet. The additional 15 feet cannot be used for habitation. Commercial buildings and mixed use structures with larger roof pitch shall have a maximum mean height of 40 feet and the mean roof height is determined from the lowest finish grade level immediately adjacent to the building foundation or pilings, to the mean roof height of the highest roof ridge.
9. Maximum mean roof height is forty (40) feet for residential mixed use, commercial and non-residential structures. The mean roof height for residential, commercial and mixed use structures in the VE, VW, MV, VE-C, VW-C, and MV-C may not be increased by a condition of approval of a Conditional Zoning Overlay District. The roof pitch for dry stack boat storage structures in the MV and MV-C districts may be as low as five-tenths (.5) units vertical in twelve (12) units horizontal (.5:12), or greater. The roof height for dry stack boat storage structures with a roof pitch of .5:12 will be measured to eave height as if the structure were a low-slope roof building and the maximum allowable building height shall be fifty (50) feet. The facade and roof design for any dry stack structure shall also be required to meet the design criteria set forth in section 6.1.3 of the UDO.
10. For each motel/hotel, every bedroom constitutes an individual unit. Provided that, irrespective of the number of square feet per unit, no more than thirty-two (32) units per acre shall be permitted. In addition, a minimum of seventy-five (75) percent of the total number of allowable units shall be designated and constructed as one-bedroom "rooming units or lodging." This seventy-five (75) percent limitation shall apply to any existing motel/hotel being converted to a condominium hotel or condotel.
11. Buildings may be set back further than the minimum setback requirement; however, in no case shall the deviation in the setback from an adjacent structure, or from the minimum setback requirement, exceed five (5) feet.
12. All properties in the Eastern End Oceanfront Overlay District have a front yard setback of twenty (20) feet. All other setbacks and dimensional requirements are as per the underlying R2 Zoning District.
13. The mean roof height for commercial and mixed use structures in the B, G, VE, VW, MV, VE-C, VW-C and MV-C Zoning Districts may be increased to a height of fifty (50) feet after the issuance of a special use permit from the Board of Commissioners and pursuant to the requirements set forth in Table 4.1.2 and section 4.2.11 of this [chapter Ordinance](#). All roofs must be high slope roofs with a pitch of four (4) units vertical in twelve (12) units horizontal (4:12) or greater and the mean roof height is determined from the lowest finished grade immediately adjacent to the building foundation or pilings, to the mean roof height of the highest roof ridge.
14. All properties in the Reed Drive Overlay District have a 30 feet setback from the Reed Drive property line, however, the setback the NC 58 property line may be 15 feet. All other setbacks and dimensional requirements are as per the underlying zoning district.

[15. The outermost three \(3\) feet of any uncovered porches, steps, eaves/overhangs, gutters, elevator shafts, residential utility structures \(mechanical units, electrical generators, above-ground gas tanks, etc.\) and similar fixtures not containing enclosed livable space may extend past the building setback line. All structures other than ground-level driveways and walkways shall be required to be set back so as to meet the required front, side, and rear setback requirements with regard to the property lines.](#)

(Ord. of 11-10-09(1), § 1; Ord. of 4-13-10(2), § 1; Ord. of 8-10-10(2), § 4; Ord. of 7-8-14, § 3; Ord. of 9-9-14(2), § 2; Ord. No. 5-12-15(1), § 1; Ord. of 11-8-16(1), §§ 1, 2; Ord. of 5-9-17(1), § 1; Ord. of 12-12-17(1), § 1; Ord. of 12-12-17(2), § 1; Ord. of 3-10-20(1), § 1)

## 5.2 ADDITIONAL DIMENSIONAL STANDARDS

### 5.2.1 Accessory Building/Swimming Pool Location

#### (1) In all Zoning Districts

- (A) No accessory building shall be erected in any setback or required yards.

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In-ground swimming pools must be setback five (5) feet from the side yard and five (5) feet from the rear yard and comply with the setback required for all zoning districts for the front yard. No masonry swimming pool shall be placed or constructed within the Coastal Area Management Act Ocean Erodible Setback area. Pools consisting of fiberglass construction shall be exempt from this prohibition.

( Ord. of 7-9-19(1) , § 1)

## **5.2.2 Motels and Hotels**

### **(1) In the B and VW Districts**

Minimum lot area for motel/hotel use shall be one (1) acre. For each motel/hotel, each bedroom constitutes an individual unit. Provided that, irrespective of the number of square feet per unit, no more than thirty-two (32) units per acre shall be permitted. In addition, a minimum of seventy-five (75) percent of the total number of allowable units shall be designated and constructed as one-bedroom "rooming units or lodging". This seventy-five (75) percent limitation shall apply to any existing motel/hotel being converted to a condominium hotel or condotel.

Condominium hotels or condotels shall also be required to submit legal and other condominium documents which address the following: 1) allows the Town to inspect the business records associated with the operation of the condotel as a transient hotel, 2) requires the owners' association to bear the Town's expenses associated with legal action to enforce the zoning ordinance, 3) states that the units are not to be used as permanent or secondary residences, and 4) requires participation in the rental management program established for the hotel. Provided, nothing therein shall require in any manner the pooling or sharing or rents.

## Chapter 6: DEVELOPMENT STANDARDS

### 6.1 DESIGN STANDARDS

#### 6.1.1 Subdivisions of Land

All proposed subdivisions shall be in conformity with a plan for the most advantageous development of the entire neighboring area and shall bear a sensible relationship to the existing or amended plans of the Town.

(1) **Use of Public and Private Streets**

The use of private streets is specifically authorized in residential subdivisions, group housing developments and other special developments, and planned unit developments that are authorized in accordance with this Ordinance. All other subdivisions authorized in accordance with this Ordinance shall utilize public streets for access to subdivided lots.

(2) **Relations of Proposed Streets to Adjoining Street Systems**

The proposed street system shall extend existing and projected streets at not less than the required minimum width. Where in the opinion of the Planning Board or Board of Commissioners it is desirable to provide for street access to adjoining property, proposed streets shall be extended by dedication to the boundary of such property. The Planning Board or Board of Commissioners may require that a subdivision locate proposed streets, public or private, to intersect with other streets or roadways in a place and manner that will minimize traffic congestion and risk to the public safety. The Board of Commissioners may limit the number of and control the traffic from all outlets of subdivisions onto other streets for the purpose of protecting the public safety while providing for reasonably convenient subdivision access to the street system.

(3) **Street Names**

Proposed streets that are obviously in alignment with others already existing shall bear the names of existing streets. In no case shall the name of proposed streets duplicate or be phonetically similar to existing street names, irrespective of the addition of a prefix, suffix, or word such as Street, Avenue, Boulevard, Drive, Place, or Court. In no case shall the total number of letters, including the spaces, exceed fifteen (15).

(4) **Street Construction**

All dedicated public streets and approved private streets shall be constructed to the specifications of the Town as specified in Chapter 6, section 6.1.5 of this Development Ordinance.

(5) **Intersections**

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Street intersections shall be as nearly at right angles as possible, and no intersection shall be at an angle less than seventy-five (75) degrees. No more than two (2) streets shall intersect at any one (1) point.

(6) **Drainage**

All watercourses not located within a street right-of-way shall have an adequate easement to allow for maintenance.

(A) An easement over a drainage pipe shall be a minimum width of fifteen (15) feet.

(B) An easement for an open ditch shall be a minimum width of twenty (20) feet, plus the width of the ditch.

(7) **Fire Hydrants**

Fire hydrants shall be within five hundred (500) feet of each proposed lot as measured along a paved street. All hydrants shall be three-outlet-base-valve type located on a six-inch or larger water main. The fire hydrant plan shall be reviewed by the fire chief.

(8) **Access**

Within all proposed subdivisions, group housing and special developments, and all other developments subject to the terms of special plat approvals, a minimum public access width of ten (10) feet shall be provided from each street right-of-way to the high-water mark of both the Atlantic Ocean and Bogue Sound at both the east and west boundaries and center in each of the Town's fifty-four (54) blocks starting at the western limits of the Indian Beach and proceeding in a westerly direction to Bogue Inlet. Provided, the Board of Commissioners may eliminate, vary or change the location or width of any of the public accesses within a block following consideration by the Planning Board based upon topography, good land use planning, or similar consideration.

(9) **Minimum Lot Width**

All lots within the proposed subdivision shall meet the required minimum lot width at the front building line. Additionally, every portion of a sawtooth or finger lot shall have a minimum width of at least thirty (30) feet. No portion of any subdivision lot shall have a minimum width of less than thirty (30) feet.

(10) **Installation of Improvements**

No local improvements or utilities, including water, sewer, storm drains, paving, curb and gutter, shall be constructed until the preliminary plat and completed detailed plans for such improvements have been examined, analyzed, and approved by the Board of Commissioners. Detailed plans of proposed improvements shall be submitted with the preliminary plat and shall include plan views, profiles, typical sections, cross sections, standard specifications, and construction details. Design of streets and utilities shall be combined into one (1) plan set when possible.

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## 6.1.2 Business and Mixed Use Districts

### (1) **Buffers**

A buffer shall be required if commercial, mixed use, or government development abuts a residential or multi-family residential lot. The buffer shall consist of one (1) of the following: (1) a vegetative opaque screen eight (8) feet in height, or (2) an opaque fence six (6) feet in height with a vegetative opaque screen eight (8) feet in height. The buffer must be located along the perimeter of the project where it abuts the residential or multi-family residential lot, and the methods and materials of construction must be approved as part of the commercial development review process. The buffer must be maintained as constructed and replaced or repaired if destroyed or damaged by any means.

### (2) **Paved Roads**

For all projects containing more than two (2) units, all parking lots, drives, streets and roads within the project shall be paved and constructed in accordance with the construction standards for paved subdivision streets within the Town.

### (3) **Lighting**

Any lighting provided within the project shall be so located or shielded so that no offensive glare will be visible from an adjoining street or property.

### (4) **Swimming Pools**

Swimming pools shall conform to the building setback lines. All swimming pools shall be reasonably accessible to emergency equipment and vehicles. Any lighting in the pool area shall be shielded in such a manner that no offensive glare will be visible from an adjoining street or property.

### (5) **Garbage Areas**

Adequate space shall be provided within the project area for the collection of garbage and other refuse, and all dumpsters and equipment used for garbage collection shall be screened from public view, in accordance with Chapter 15, Section 15-3 of the Town Code.

### (6) **Provision for Fire**

Each building within a project shall be located within two hundred forty (240) feet of a fire hydrant. All hydrants shall be located adjacent to a paved street, road or parking lot suitable for the transportation of firefighting vehicles and equipment.

(Ord. of 12-12-17(3) , § 1)

## 6.1.3 Commercial Structures

### (1) **Direct exterior lighting is prohibited.**

Strip lighting, including neon, LED, or fluorescent lighting, is prohibited on either the exterior or interior of any commercial building or commercial property, unless:

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- a) It is an informational sign (such as "OPEN") that does not exceed two (2) square feet; or
  - b) The interior strip lighting is located no closer than ten (10) feet to any exterior window or door containing glass so that the strip lighting may not be directly seen or viewed from the exterior of the property.

In addition, strip lighting, including neon, LED, or fluorescent lighting, is prohibited as a part of decorative displays, non-signage, or other building features.

The Board of Commissioners is authorized to vary the terms of this subsection (1) or allow lighting otherwise in violation if it finds that the proposed lighting is aesthetically consistent architecturally or for the commercial structure, or is necessary, or desirable for public health or safety reasons.

**(2) Permitted Exterior Colors**

The proposed exterior structure colors for facades and walls shall be of low reflectance, subtle, neutral, or earth tone colors. Building trim and accent areas may feature brighter colors as approved by the Planning Director. Colors for new construction will be approved by the Board of Commissioners as part of the commercial review process. For existing buildings, exterior commercial colors must be approved by the Town prior to the painting or repainting of any commercial structure. The colors to be used for the repainting of existing structures may be approved by the Planning Director based on the criteria and intent stated in this section 6.1.3. The Planning Director may request review of the colors by the Planning Board and approval by the Board of Commissioners if doing so is in the interest of maintaining a family beach image.

- (a) A request can be made for an exterior color that is not of low reflectance, subtle, neutral or earth tone. A request should meet one of the following two criteria: the business in that structure is a national chain or franchise that requires a certain color, or the name, product or service of the business denotes something other than low reflectance, subtle, neutral or earth tone color. Applicant shall have the burden of proving to the reasonable satisfaction of the Town that the exterior color falls under or meets one of the two criteria, and that granting approval is necessary or furthers a legitimate business interest of the applicant. A request for a color other than a one of low reflectance, subtle, neutral or earth tone, without meeting one of the two criteria shall result in denial.
- (b) The applicant may be requested to create a panel of desired color or colors for the Planning Director, Planning Board, and Board of Commissioners to better visualize the ordinance compatibility.

**(3) Decorative Construction Prohibited**

The construction, installation, painting, and finishing of the exterior walls, roof lines, awnings and similar architectural features of a commercial building that contain painted or raised designs such as waves, sea creatures, animals, murals, lettering or images other than the business or logo of the commercial establishments in the structure are prohibited.

**(4) Outside Wall Facings**

**(A)** The total area of glass, windows, and any similar transparent or translucent devices for any side of a commercial structure shall not exceed thirty-five (35) percent of the surface area

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for that side of the building, and must be positioned uniformly along the face of the structure except that this percentage may be increased by the local fire marshal to bring the structure into conformity with state fire code.

**(B)** Each exterior wall of a building that is viewable from any street, road, or the water, including Bogue Sound, its tributaries, the Atlantic Ocean, and the beach strand shall incorporate architectural design features to create a visual break at least every twenty (20) feet along the exterior wall in order to avoid a box-like appearance. A building offset, projecting porch, gable, or other similar structure may be utilized to meet this requirement. This requirement may also be met by the use of the following: variation in rooflines, balconies, building fenestrations, building recesses, variation of building materials and colors and other ornamental building features. All plans for exterior walls will be approved by the Board of Commissioners as part of the commercial review process.

**(C)** The placement of towers, spires, and other structurally non-functional additions to any commercial structure must be placed so that no portion extends above any existing or proposed roof line, except that a structure which is intended as a building offset, which is proportional to such structure, may extend no more than four (4) feet above the existing or proposed structure.

**(5) Dry Stack Boat Storage Roofs**

**(A)** Roofs for dry stack boat storage facilities with a roof pitch of less than four (4) units vertical in twelve (12) units horizontal (4:12) shall incorporate architectural features and building finishes along all sides of the structure in order to make the roof line appear less like a flat roofed structure. This requirement may be met by the use of mansard-style roofs, decorative peaks and gables, a variation in roof lines and pitches, and other similar roof and building fenestrations. All plans for roofs with a pitch of less than 4:12 will be approved by the Board of Commissioners as part of the commercial review process.

(Ord. of 5-12-09, § 1; Ord. of 11-10-09(1), § 1; Ord. of 11-10-09(2), § 1; Ord. of 5-12-15(2), § 1 ; Ord. of 10-13-15(1) )

## **6.1.4 Planned Unit Developments**

**(1) Design and Construction Requirements**

The design, construction and development of planned developments shall comply with the design and construction requirements of section 4.2.1, and other applicable ordinances of the Town, except as may be modified in this section 6.1.4.

**(2) Minimum Area**

Subject to the provisions in this Ordinance, all planned unit developments shall contain a minimum of five (5) contiguous acres. Any addition must be at least two (2) acres, contiguous and adjacent to the existing planned unit development, and subject to design standards.

**(3) Project Density**

The overall density of each planned development shall be in conformance to the requirements of this Unified Development Ordinance that would limit the number of residential dwellings to no

more than eight (8) units per acre regardless of the minimum lot area required per dwelling or unit herein. Specific density requirements for single-family and multifamily dwellings are as follows:

**(A)** Single-family dwellings such as cluster homes, patio homes, etc.—Minimum lot area of six thousand two hundred fifty (6,250) square feet for each lot.

**(B)** Multifamily dwellings—The minimum lot area for the first two (2) units or the first two-family dwelling shall be fifteen thousand (15,000) square feet. Each additional unit above two (2) shall require a minimum lot area of four thousand seven hundred sixty (4,760) square feet per unit.

**(4) Open Space**

**(A)** Each planned development shall contain open space in the following percentages of the overall area of the planned residential development that shall be computed based upon the number of dwellings per gross acre of planned development shown in Table 2.4.3.

**TABLE 6.1.4: REQUIRED OPEN SPACE IN PLANNED UNIT DEVELOPMENTS**

NUMBER OF DWELLING UNITS PER GROSS ACRE	MINIMUM PERCENTAGE OF OPEN SPACE
3 units or less	10
4 to 6 units	20
7 to 8 units	30

**(B)** Open space is defined as that land designated on the plat as being for the use, benefit and enjoyment of the residents of the planned unit development. The open space shall be set aside for the use, benefit and enjoyment of all residents of the planned unit development, and shall either be dedicated to the private use of residents of the planned unit development or conveyed to the owner's association or similar resident's association for ownership, use and management. Land that is restricted in any way so as to be for the use, benefit or enjoyment of a select group within the planned unit development shall not qualify as open space.

**(C)** To qualify as open space, land shall have a minimum width of twenty-four (24) feet excluding street rights-of-way, drives, parking areas or structures other than recreational structures. Street rights-of-way, drives, parking areas, and central water and sewer systems may qualify as open space and be counted towards the percentage of open space required for each development. Provided, that street rights-of-way, drives, parking areas, and water and central sewage systems shall not comprise more than thirty-three and one-third (33 $\frac{1}{3}$ ) percent of the required open spaces for each development unless the percentage is varied or waived by the Board of Commissioners upon recommendation by the Planning Board.

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(5) **Required Natural Area**

Nothing in this section 6.1.3 shall change, modify or repeal the requirements of sections 2.4.11 or 6.4 related to Dunes and Vegetation Protection with regard to the percentage of each tract or lot that must be retained in its natural state.

(6) **Dimension Requirements**

(A) Each detached single-family structure shall contain a minimum of seven hundred fifty (750) square feet of heated living space.

(B) The minimum lot width for detached single-family dwellings at setback shall be sixty (60) feet.

(C) A 15-foot setback shall be required along all peripheral boundaries of a planned residential development. A building, whether it is a principal or accessory building, shall not encroach upon this required setback distance.

(D) Side or rear setbacks for single-family detached dwellings. A zero side or rear yard setback, where the side or rear building line is on the side or rear lot line, may be permitted on one (1) side or rear of each lot subject to the following provisions:

(i) Any wall constructed on the side or rear lot lines shall be a solid, windowless, doorless wall if the wall is located less than three (3) feet from any side or rear lot line with a zero (0) side or rear yard setback.

(ii) The minimum building separation for the side or rear yard opposite the zero rear lot line shall be either a minimum building separation of fifteen (15) feet from the side of the adjacent dwelling if then constructed, or a minimum 15-foot building setback line from the adjoining side or rear lot line, whichever is greater. This 15-foot area shall be subject to all the requirements and conditions of the Unified Development Ordinance normally applied to side or rear yards for buildings within the zoning district in which the property is located.

(iii) A five-foot maintenance easement with a maximum eave encroachment easement of two (2) feet within the maintenance easement shall be established in the deed restrictions and covenants of the adjoining lot and shall assure ready access to the lot line wall at reasonable periods of the day for normal maintenance.

(iv) Preliminary and final site development plans shall indicate the proposed location and configuration of dwellings, driveways and parking arrangements for each lot. In addition, a draft of proposed encroachment and maintenance easement shall be submitted for review and approval.

(v) All remaining yards shall have a minimum 15-foot building setback.

(7) **Water Supply and Sewage Service**

Central water supply and central sewer service connection shall be required for all units, and the same shall be approved, constructed, completed and maintained in accordance with the requirements of the county health department and the state. The use of individual septic systems may be allowed under this section provided the lot served is a minimum of twelve

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thousand five hundred (12,500) square feet and the county health department has issued the appropriate permits for each lot to be served by an individual septic system.

**(8) Primary Vehicular Access**

Primary vehicular access to the planned residential development shall be from a public street.

**(9) Building Height**

Maximum height of all buildings shall not exceed the limitations for the district in which the planned residential development is located.

(Ord. of 6-8-10(2), §§ 1, 2; Ord. of 11-9-10, § 1)

## **6.1.5 Streets**

**(1) General Standards**

All streets within the Town shall be dedicated to public use unless otherwise allowed by applicable provisions of this Unified Development Ordinance. The use of private streets is specifically authorized only in residential subdivisions, group housing developments, other special developments and planned unit developments that are authorized in accordance with this development ordinance. The procedures for dedication are specified in the applicable sections of this development ordinance pertaining to the subdivision of land. All public streets shall be warranted by the developer/owner for a period of one (1) year from the date of acceptance by the Board of Commissioners.

**(2) Erosion and Sedimentation**

All streets shall have an acceptable permanent vegetation cover and erosion control measures to prevent erosion of the street right-of-way or private properties.

**(3) Storm Drainage**

All streets shall be inspected for proper drainage to the installation of the base course and final grading by the Director of Public Works or ~~his~~ [their](#) designee. The specific design standards for stormwater control within this development ordinance shall apply to all streets within the town.

**(4) Public Street Design Standards**

Minimum public street design standards are as follows:

**(A)**Right-of-way width—Fifty-five (55) feet.

**(B)**Pavement width—Twenty (20) feet for streets utilizing ditches; a total of twenty-seven (27) feet of pavement (asphalt and concrete sections) from the back of the curb to the opposite back of the curb for streets utilizing curb and gutter (valley curbs required).

**(C)**Base width—Twenty-six (26) feet for streets utilizing ditches and/or curb and gutter

**(D)**Shoulder width—Six (6) feet each side for streets utilizing ditches.

**(E)**Ditch width, V-type—3:1 side slopes, for streets utilizing ditches.

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- (F) Fill slope—3:1 side slopes minimum.
  - (G) Curb and gutter—Two (2) feet valley gutter as specified by the N.C. Department of Transportation.
  - (H) Intersection/turning radius—Thirty (30) feet.
  - (I) Cul-de-sac right-of-way—Fifty-five (55) feet radius.
  - (J) Cul-de-sac pavement width—Thirty-five (35) feet radius, for streets utilizing ditches and/or curb and gutter.
  - (K) Side ditches—Minimum depth shall be two (2) feet below center line grade.
  - (L) Minimum base course—Minimum base course shall be six (6) inches aggregate stone base course as required by the NCDOT compaction standards with regard to the type of road being constructed.
  - (M) Materials—All materials used in street construction within the town shall conform to the material standards of NCDOT.

(5) **Private Street Design Standards**

Minimum private street design standards are as follows:

- (A) Right-of-way width—Forty (40) feet, plus a five-foot utility easement on each side of the street.
- (B) Pavement width—Twenty (20) feet for streets utilizing ditches; a total of twenty-seven (27) feet of pavement (asphalt and concrete sections) from the back of the curb to the opposite back of the curb for streets utilizing curb and gutter (valley curbs required).
- (C) Base width—Twenty-three (23) feet for streets utilizing ditches and/or curb and gutter
- (D) Shoulder width—Three (3) feet each side for streets utilizing ditches.
- (E) Ditch width, V-type—3:1 side slopes, for streets utilizing ditches.
- (F) Fill slope—3:1 side slopes minimum.
- (G) Curb and gutter—Two (2) feet valley gutter as specified by the N.C. Department of Transportation.
- (H) Intersection/turning radius—Thirty (30) feet.
- (I) Cul-de-sac right-of-way—Forty (40) feet radius.
- (J) Cul-de-sac pavement width—Thirty-five (35) feet radius, for streets utilizing ditches and/or curb and gutter.
- (K) Side ditches—Minimum depth shall be two (2) feet below center line grade.
- (L) Minimum base course—Minimum base course shall be six (6) inches aggregate stone base course as required by the NCDOT compaction standards with regard to the type of road being constructed.

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**(M)Materials**—All materials used in street construction within the town shall conform to the material standards of NCDOT.

**(6) Utility Cuts**

All cuts of existing streets for utility service shall be backfilled in six (6) inches compacted layers. The base course of six (6) inches compacted stone shall be reinstalled and one and one-half (1½) inches of pavement shall be provided. Such utility cuts shall be warranted against failure for a period of one (1) year.

**(7) Other Street Design Standards**

Transverse slopes in pavement and shoulders, sight distance, grade, horizontal and vertical curves and superelevation shall be in accordance with the minimum construction standards as established by the North Carolina Department of Transportation.

### **6.1.6 Sidewalks and Driveways**

**(1) Sidewalk Standard**

No sidewalk shall be constructed without a written permit from the Town.

**(A)**All connections from the sidewalk to a business front shall be no less than four (4) feet in width and no greater than eight (8) feet in width.

**(2) Driveway Standard**

All persons engaging in driveway construction, reconstruction, repair, and alteration must secure a permit and must meet the following specifications:

**(A)**The plans for the proposed operation must be approved by the building official.

**(B)**The work shall be done according to the standard specifications of the Town. All driveways shall be constructed to prevent stormwater from running off from the driveway to the pavement of the existing public or private street. All driveways shall have a minimum width of ten (10) feet at the intersection with the public or private street.

**(C)**The operation will not reasonably interfere with vehicular and pedestrian traffic, the demand and necessity for parking spaces, and the means of egress to and from the property affected and adjacent properties, and

**(D)**The health, welfare, and safety of the public will not be unreasonably impaired.

**(3) In the R2, RMF, and MH District**

In addition to the standards in subsections (1) and (2) above, single-family, duplex and mobile home structures in the R2, RMF and MH districts shall:

**(A)**Be limited to two (2) driveways on the Town or private right-of-way,

**(B)**Not exceed a width of sixteen (16) feet each excluding the flares and, if used as part of the parking area, shall be of sufficient length to park two (2) cars off the street right-of-way,

**(C)**Not exceed a width of three (3) feet for each flare,

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- (D) Not exceed a length of six (6) feet for each flare,
  - (E) Flare points shall connect using an inward curved shape,
  - (F) Not exceed a width of twenty-two (22) total feet including flares.

All driveways or any other parking areas in a Town or private right-of-way that are constructed or repaired, and not in compliance with the above standards after the date of adoption of this Ordinance shall be subject to appropriate enforcement action.

(Ord. of 11-14-17(3) , § 1; Ord. of 3-13-18(1) , § 1)

### **6.1.7 In the VE, VW, MV, VE-C, VW-C and MV-C Districts**

- (1) Lots are encouraged to have vehicle access from the rear of the lot, rather than from the front of the lot.
- (2) The required vegetated area shown in Table 5.1 may be utilized to support on-site septic disposal systems. Site specific landscaping plans are required that include the location of any existing natural areas, proposed plans for the preservation of natural areas and the proposed location and extent of all new vegetated and landscaped areas.
- (3) For all projects containing more than two (2) dwelling (2) units, all parking lots, drives, streets and roads within the project shall be paved and constructed in accordance with the construction standards for paved public subdivision streets within the Town unless specifically otherwise authorized by a condition of approval of a Conditional Zoning Overlay District.
- (4) Any lighting provided within the project shall be so located or shielded so that no offensive glare will be visible from an adjoining street or property.
- (5) Adequate space shall be provided within the project area for the collection of garbage and other refuse, and all dumpsters and equipment used for garbage collection shall be screened from public view, in accordance with Chapter 15, section 15-3 of the Town Code.
- (6) Each building within a project shall be located within two hundred forty (240) feet of a fire hydrant. All hydrants shall be located adjacent to a paved street, road or parking lot suitable for the transportation of firefighting vehicles and equipment. A suitable and readily accessible drive or passage shall be provided so that firefighting vehicles will have the capability of getting adequate access to all structures within the district.
- (7) Public streets, constructed in accordance with Chapter 6, Design Standards of this Unified Development Ordinance, are required for all proposed developments in order to promote and preserve public access.

## **6.2 FLOOD DAMAGE PREVENTION**

### **6.2.1 Findings, Purpose, and Objectives**

- (1) **Findings of Fact**

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The flood prone areas within the jurisdiction of the Town are subject to periodic inundation that results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas by uses vulnerable to floods or hazardous to other lands that are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

**(2) Statement of Purpose**

It is the purpose of this section 6.2 to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (A)** Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards, or that result in damaging increases in erosion, flood heights or velocities;
- (B)** Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (C)** Control the alteration of natural floodplains, stream channels, and natural protective barriers that are involved in the accommodation of flood waters;
- (D)** Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (E)** Prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters or that may increase flood hazards to other lands.

**(3) Objectives**

The objectives of this section 6.2 are:

- (A)** To protect human life and health;
- (B)** To minimize expenditure of public money for costly flood control projects;
- (C)** To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D)** To minimize prolonged business losses and interruptions;
- (E)** To minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (F)** To minimize damage to private and public property due to flooding;
- (G)** To make flood insurance available to the community through the National Flood Insurance Program;
- (H)** To maintain the natural and beneficial functions of floodplains;

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(I) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and

(J) To ensure that potential homebuyers are notified that property is in a special flood hazard area.

( Ord. of 6-9-20(4) , § 1)

## 6.2.2 Applicability and Legal Status

### (1) Lands to Which This Article Applies

These regulations shall apply to all special flood hazard areas within the jurisdiction of the Town.

### (2) Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Ordinance

This section 6.2 and related sections of this Unified Development Ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted July 1, 1977, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued under the earlier regulations are reserved and may be enforced. The enactment of this section 6.2 and related sections in Chapters 2 and 9 shall not affect any action, suit or proceeding instituted or pending.

### (3) Effect Upon Outstanding Building Permits

Nothing in this section 6.2 or related sections of this Unified Development Ordinance shall require any change in the plans, construction, size or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or ~~his~~ [their](#) authorized agents before the effective date of this Ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to passage of this Ordinance or any revision to this Ordinance, construction or use shall be in conformity with the provisions of this Ordinance.

### (4) Severability

If any section, clause, sentence, or phrase of these regulations is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of these regulations.

### (5) Effective Date

These regulations shall become effective upon adoption.

( Ord. of 6-9-20(4) , § 1)

## 6.2.3 General Provisions

### (1) Compliance

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No structure or land shall be located, extended, converted, altered, or developed in any way without full compliance with the terms of this section 6.2 and other applicable regulations.

**(2) Basis for Establishing the Special Flood Hazard Areas**

The special flood hazard areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated June 19, 2020, for Carteret County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of these regulations and all revisions thereto after January 1, 2021. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdiction authority of the Town of Emerald Isle are also adopted by reference and declared a part of these regulations. Subsequent Letter of Map Revisions (LOMRs) and /or Physical Map Revisions (PMRs) shall be adopted within three (3) months.

**(3) Floodplain Development Permit Required**

A floodplain development permit shall be required in conformance with the provisions of section 2.4.9., Floodplain Development Permit, prior to the commencement of any development activities within special flood hazard areas as determined in section 6.2.3(2).

**(4) Variance Procedure**

The Board of Adjustment may grant a variance from the provisions of this section 6.2 pursuant to the provisions of section 2.4.17, Variances.

**(5) Abrogation and Greater Restrictions**

This section 6.2 is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**(6) Interpretation**

In the interpretation and application of this section 6.2, all provisions shall be considered as minimum requirements, shall be liberally construed in favor of the governing body; and shall be deemed neither to limit nor repeal any other powers granted under state statutes.

**(7) Warning and Disclaimer of Liability**

The degree of flood protection required by this section 6.2 is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Actual flood heights may be increased by manmade or natural causes. This section does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of the Town or by any officer or employee of the Town for any flood damages that result from reliance on this section or any administrative decision lawfully made under this section.

( Ord. of 6-9-20(4) , § 1)

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## 6.2.4 Provisions for Flood Hazard Prevention

### (1) General Standards

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

- (A) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure.
- (B) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements.
- (C) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (D) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, water heaters, and electric outlets/switches.
  - (i) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
  - (ii) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.
- (E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- (G) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (H) Nothing in this Ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this Ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this Ordinance. Any alteration, repair, reconstruction, or improvements to a structure that is in compliance with

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the provisions of this section 6.2, shall meet the requirements of "new construction" in Chapter 10.

- (I) Non-conforming structures or other development may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this Section 6.2. Provided, however, nothing in this Section 6.2 shall prevent the repair, reconstruction, or replacement of a building or structure existing on July 1, 1977 and located totally or partially within the floodway, non-encroachment area, or stream setback, provided that the bulk of the building or structure below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of the flood damage prevention regulations.
- (J) New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in special flood hazard areas. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to subsection 2.4.9(3).
- (K) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (L) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (M) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (N) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (O) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (P) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.

(2) **Specific Standards**

In all special flood hazard areas where base flood elevation (BFE) data has been provided, as set forth in subsection 6.2.3(2) or subsections 2.2.4(5)(B)(xi) and 2.2.4(5)(B)(xii), the following provisions are required:

**(A) Residential Construction**

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New construction or substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Section 10.2 of this Ordinance.

**(B) Non-residential Construction**

New construction or substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Section 10.2 of this Ordinance. Structures located in Zones A, AE, AH, AO, A99h may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in subsection 2.4.9(3).

**(C) Manufactured Homes**

- (i) New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Section 10.2 of this Ordinance.
- (ii) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement in accordance with the State of North Carolina Regulations for Manufactured/Mobile Homes, 1995 Edition, and any revision thereto adopted by the Commissioner of Insurance pursuant to G.S. 143-143.15 or a certified engineered foundation. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
- (iii) All foundation enclosures or skirting shall be in accordance with subsection 6.2.4(2)(D).
- (iv) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the floodplain administrator and the local emergency management coordinator.

**(D) Elevated Buildings**

Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor or below the lowest horizontal structural member in VE zones:

- (i) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum

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necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

- (ii) Shall not be temperature-controlled or conditioned;
- (iii) Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
- (iv) Shall include, in Zones A, AE, AH, AO, A99 flood opening to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
  - (a) Provide a minimum of two (2) openings on different sides of each enclosed area subject to flooding;
  - (b) The total net area of all openings must be at least one (1) square inch for each square foot of each enclosed area subject to flooding;
  - (c) If a building has more than one (1) enclosed area, each area must have openings on exterior walls to allow floodwater to directly enter and exit;
  - (d) The bottom of all required openings shall be no higher than one (1) foot above the higher of the interior or exterior adjacent grade;
  - (e) Openings may be equipped with screens, louvers, or other opening coverings or devices provided they permit the automatic flow of floodwaters in both directions; and
  - (f) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires hydrostatic openings as outlined above to comply with this Section 6.2.
- (v) Shall, in Coastal High Hazard Areas (Zone VE) meet the requirements of Section 6.2.4(5) of this Ordinance.

**(E) Additions/Improvements**

- (i) Additions and/or improvements to pre-FIRM structures whereas the addition and/or improvements in combination with any interior modifications to the existing structure.
  - (a) Are not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
  - (b) Are a substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both

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the existing structure and the addition must comply with the standards for new construction.

(ii) Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.

(iii) Additions and/or improvements to post-FIRM structures whereas the addition and/or improvements in combination with any interior modifications to the existing structure.

(a) Are not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.

(b) Are a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(iv) Where a fire wall or independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

(v) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one-year minimum period, the cumulative cost of which equals or exceeds fifty (50) percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one-year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this Ordinance. Substantial damage also means flood-related damage sustained by a structure on two (2) separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five (25) percent of the market value of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

(a) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.

(b) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

#### **(F) Recreational Vehicles**

Recreational vehicles placed on sites within a special flood hazard area shall either:

(i) Be on site for fewer than one hundred eighty (180) consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if

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it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and has no permanently attached additions); or

(ii) Meet all the requirements for new construction, including anchoring and elevation requirements of sections 2.4.9, 6.2.4(1), and subsection (2)6.2.4(C).

### **(G) Temporary Structures**

Prior to the issuance of a floodplain development permit for a temporary structure, the following requirements must be met:

#### **(i) Removal Plan**

Applicants must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane or flash flood warning notification. The plan must include the following information:

- (a) A specified time period for which the temporary use will be permitted;
- (b) The name, address, and phone number of the individual responsible for the removal of the temporary structure;
- (c) The time frame prior to the event at which a structure will be removed (i.e. minimum of seventy-two (72) hours before landfall of a hurricane or immediately upon flood warning notification);
- (d) A copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and
- (e) Designation, accompanied by documentation, of a location outside the special flood hazard area to which the temporary structure will be moved.

#### **(ii) Submitted in Writing**

The above information shall be submitted in writing to the floodplain administrator for review and written approval.

### **(H) Accessory Structures**

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

- (i) Accessory structures shall not be used for human habitation (including work, sleeping, living, cooking or restroom areas);
- (ii) Accessory structures shall not be temperature-controlled;
- (iii) Accessory structures shall be designed to have low flood damage potential;
- (iv) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (v) Accessory structures shall be firmly anchored in accordance with subsection 6.2.4(1)(A);

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- (vi) Accessory structures, regardless of their size or cost, shall not be placed below elevated buildings in V and VE zones;
  - (vii) All service facilities such as electrical and heating equipment shall be installed in accordance with subsection 6.2.4(1)(D); and
  - (viii) Openings to relieve hydrostatic pressure during a flood shall be provided below regulatory flood protection elevation in conformance with subsection 6.2.4(2)(D)(i).
  - (ix) An accessory structure with a footprint less than one hundred fifty (150) square feet or that is a minimal investment of five thousand dollars (\$5,000.00) or less and satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with subsection 2.4.9(3).

## **(I) Tanks**

When gas and liquid storage tanks are to be placed within a special flood hazard area, the following criteria shall be met:

- (i) Underground tanks.** Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
- (ii) Above-ground tanks, elevated.** Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;
- (iii) Above-ground tanks, not elevated.** Above-ground tanks that do not meet the elevation requirements of Article 5, Section B (2) of this Ordinance shall not be permitted in V or VE Zones. Tanks may be permitted in other flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.
- (iv) Tank inlets and vents.** Tank inlets, fill openings, outlets and vents shall be:
  - (a)** At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
  - (b)** Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

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**(3) Subdivisions, Manufactured Home Parks and Major Developments**

All subdivision, manufactured home park and major development proposals located within special flood hazard areas shall:

- (A)** Be consistent with the need to minimize flood damage;
- (B)** Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage; and
- (C)** Have adequate drainage provided to reduce exposure to flood hazards;

**(4) Standards for Floodplains without Established Base Flood Elevations**

Within the special flood hazard areas established in section 6.2.3(2) where no base flood elevation (BFE) data has been provided, the following provisions shall apply:

**(A) Encroachments**

No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five (5) times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

**(B) Elevation and Floodproofing**

If subsection 6.2.4(3)(A) is satisfied and base flood elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this section 6.2 and shall be elevated or floodproofed in accordance with elevations established in accordance with subsections 2.2.4(5)(B)(xi) and 2.2.4(5)(B)(xii). All subdivision, manufactured home park and other development proposals shall provide BFE data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such base flood data shall be adopted by reference with Section 6.2.3(2) and utilized in implementing this Ordinance. When base flood elevation (BFE) data is not available from a federal, state, or other source, the reference level, including basement, shall be elevated at least two (2) feet above the highest adjacent grade.

**(5) Coastal High Hazard Areas (Zone VE)**

Coastal high hazard areas are special flood hazard areas established in section 6.2.3(2) and designated as Zones VE. These areas have special flood hazards associated with high velocity waters from surges and, therefore, in addition to meeting all provisions in this section 6.2, the following provisions shall apply to all new construction, substantial improvements and all other development:

**(A) Location**

All development shall:

- (i)** Be located landward of the reach of mean high tide;

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- (ii) Be located landward of the first line of stable natural vegetation; and
  - (iii) Comply with all applicable CAMA setback requirements.

**(B) Required Elevation**

All development shall be elevated so that the bottom of the lowest supporting horizontal member (excluding pilings or columns) is located no lower than the regulatory flood protection elevation. Floodproofing may not be utilized on any structures in coastal high hazard areas to satisfy the regulatory flood protection elevation requirements.

**(C) Open Construction/Breakaway Walls**

All development shall have the space below the bottom of the lowest horizontal structural member of the lowest floor either be free of obstruction or constructed with breakaway walls, open wood latticework or insect screening, provided they are not part of the structural support of the building, are for aesthetic purposes only and are designed so as to breakaway, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building. The following design specifications shall be met:

(i) Material shall consist of open wood or plastic lattice having at least forty (40) percent of its area open,

(ii) Insect screening, or

(iii) Breakaway wall shall meet the following design specifications:

(a) Breakaway walls shall have flood openings that allow for the automatic entry and exit of floodwaters to minimize damage caused by hydrostatic loads, per the North Carolina Residential Building Code;

(b) Design safe loading resistance shall be not less than ten (10) nor more than twenty (20) pounds per square foot; or

(c) Breakaway walls that exceed a design safe loading resistance of twenty (20) pounds per square foot (either by design or when so required by state or local codes) shall be certified by a registered professional engineer or architect that the breakaway wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code.

**(D) Anchoring**

All development shall be securely anchored on pilings or columns.

**(E) Anchoring of Pilings and Columns**

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All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. Water loading values shall be those associated with base flood. Wind values used shall be those required by the current edition of the North Carolina State Building Code.

**(F) Certification**

A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in section 2.4.9 and subsections 6.2.4(2)(D), 6.2.4(2)(F), and 6.2.4(2)(H).

**(G) Other Development**

(i) For concrete pads, including patios, decks, parking pads, walkways, driveways, pool decks, etc. the following is required:

- (a) Shall be structurally independent of the primary structural foundation system of the structure and shall not adversely affect structures through redirection of floodwaters or debris; and
- (b) Shall be constructed to breakaway cleanly during design flood conditions, shall be frangible, and shall not produce debris capable of causing damage to any structure. (The installation of concrete in small segments (approximately 4 feet × 4 feet) that will easily break up during the base flood event, or score concrete in 4 feet × 4 feet maximum segments is acceptable to meet this standard); and
- (c) Reinforcing, including welded wire fabric, shall not be used in order to minimize the potential for concreted pads being a source of debris; and
- (d) Pad thickness shall not exceed four (4) inches; or
- (e) Provide a Design Professional's certification stating the design and method of construction to be used meet the applicable criteria of this section.

(ii) For swimming pools and spas, the following is required:

- (a) Be designed to withstand all flood-related loads and load combinations.
- (b) Be elevated so that the lowest horizontal structural member is elevated above the RFPE; or
- (c) Be designed and constructed to break away during design flood conditions without producing debris capable of causing damage to any structure; or
- (d) Be sited to remain in the ground during design flood conditions without obstructing flow that results in damage to any structure.
- (e) Registered design professionals must certify to local officials that a pool or spa beneath or near a VE Zone building will not be subject to flotation or displacement that will damage building foundations or elevated portions of the building or any nearby buildings during a coastal flood.

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(f) Pool equipment shall be located above the RFPE whenever practicable. Pool equipment shall not be located beneath an elevated structure.

(iii) All elevators, vertical platform lifts, chair lifts, etc., the following is required:

(a) Elevator enclosures must be designed to resist hydrodynamic and hydrostatic forces as well as erosion, scour, and waves.

(b) Utility equipment in Coastal High Hazard Areas (VE Zones) must not be mounted on, pass through, or be located along breakaway walls.

(c) The cab, machine/equipment room, hydraulic pump, hydraulic reservoir, counter weight and roller guides, hoist cable, limit switches, electric hoist motor, electrical junction box, circuit panel, and electrical control panel are all required to be above RFPE. When this equipment cannot be located above the RFPE, it must be constructed using flood damage-resistant components.

(d) Elevator shafts/enclosures that extend below the RFPE shall be constructed of reinforced masonry block or reinforced concrete walls and located on the landward side of the building to provide increased protection from flood damage. Drainage must be provided for the elevator pit.

(e) Flood damage-resistant materials can also be used inside and outside the elevator cab to reduce flood damage. Use only stainless steel doors and door frames below the BFE. Grouting in of door frames and sills is recommended.

(f) If an elevator is designed to provide access to areas below the BFE, it shall be equipped with a float switch system that will activate during a flood and send the elevator cab to a floor above the RFPE.

#### **(H) No Fill for Structural Support**

Minor grading and the placement of minor quantities of nonstructural fill may be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways. The fill material must be similar and consistent with the natural soils in the area. The placement of site compatible, nonstructural fill under or around an elevated building is limited to two (2) feet. Fill greater than two (2) feet must include an analysis prepared by a qualified registered design professional demonstrating no harmful diversion of floodwaters or wave run-up and wave reflection that would increase damage to adjacent elevated buildings and structures. Nonstructural fill with finished slopes that are steeper than five (5) units horizontal to one (1) unit vertical shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave run-up and wave reflections that would increase damage to adjacent elevated buildings and structures. There shall be no fill used as structural support.

#### **(I) No Alternation of Sand Dunes**

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There shall be no alteration of sand dunes or mangrove stands that would increase potential flood damage.

**(J)No Manufactured Homes**

No manufactured homes shall be permitted except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards are in compliance with this section of the Ordinance.

**(K)Recreation Vehicles Allowed**

Recreational vehicles shall be permitted in coastal high hazard areas provided that they meet the recreational vehicle criteria of subsection 6.2.4(2)(F)(i) and the temporary structure provisions of subsection 6.2.4(2)(2)(G).

**(L)Decks and Patios**

(i)A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the Regulatory Flood Protection Elevation and any supporting members that extend below the Regulatory Flood Protection Elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck. The increased loads must be considered in the design of the primary structure and included in the V-Zone Certification required under the flood damage prevention regulations of this Ordinance.

(ii)A deck or patio that is located below the Regulatory Flood Protection Elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.

**(M)Development Activities other than Buildings and Structures**

Shall be permitted only if also authorized by the appropriate state or local authority, if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave run-up and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

(i)Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures.

(ii)Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters.

(ii)Docks, piers and similar structures.

**(N)Electrical Outlets and Switches**

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No more than four (4) electrical outlets and no more than four (4) electrical switches may be permitted below RFPE unless required by building code.

**(O)Registered Professional**

A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of current flood damage prevention regulations in this Ordinance and on the current version of the North Carolina V-Zone Certification or equivalent local version.

**(6) Standards For Coastal A Zones (Zone CAZ) LiMWA**

Structures in CAZs shall be designed and constructed to meet V Zone requirements, including requirements for breakaway walls. However, the NFIP regulations also require flood openings in walls surrounding enclosures below elevated buildings in CAZs (see Technical Bulletin 1, Openings in Foundation Walls and Walls of Enclosures). Breakaway walls used in CAZs must have flood openings that allow for the automatic entry and exit of floodwaters to minimize damage caused by hydrostatic loads. Openings also function during smaller storms or if anticipated wave loading does not occur with the base flood.

**(i)**All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in Coastal A Zones to satisfy the regulatory flood protection elevation requirements.

**(ii)**All new construction and substantial improvements shall have the space below the bottom of the lowest horizontal structural member of the lowest floor either be free of obstruction or constructed with breakaway walls, open wood latticework or insect screening, provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building. The following design specifications shall be met:

**(a)**Material shall consist of open wood or plastic lattice having at least forty (40) percent of its area open;

**(b)**Insect screening; or

**(c)**Breakaway walls shall meet the following design specifications:

**(1)**Breakaway walls shall have flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the design criteria in Section 6.2.4 (2)(D)(iv); and

**(2)**Design safe loading resistance shall be not less than ten (10) nor more than twenty (20) pounds per square foot; or

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(3) Breakaway walls that exceed a design safe loading resistance of twenty (20) pounds per square foot (either by design or when so required by state or local codes) shall be certified by a registered professional engineer or architect that the breakaway wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code.

- (d) Concrete pads, including patios, decks, parking pads, walkways, driveways, etc. must meet the provisions of Section 6.2.4 (2)(G);
- (e) All new construction and substantial improvements shall meet the provisions of Section 6.2.4 (5);
- (f) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of Section 2.4.9 and Section 6.2.4(5)(B)(C), on the current version of the North Carolina V-Zone Certification form or a locally developed V-Zone Certification form;
- (g) Recreational vehicles may be permitted in Coastal A Zones provided that they meet the Recreational Vehicle criteria of Section 6.2.4(5)(K);
- (h) Fill/grading must meet the provisions of Section 6.2.4(5)(H);
- (i) Decks and patios must meet the provisions of Section 6.2.4(5)(L);
- (j) In coastal high hazard areas, development activities other than buildings and structures must meet the provisions of Section 6.2.4(5)(M).

**(7) Standards for Areas of Shallow Flooding (Zone AO)**

Located within the Special Flood Hazard Areas established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Article 5, Sections A and B, all new construction and substantial improvements shall meet the following requirements:

- (i) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of two (2) feet above the highest adjacent grade; or at least of two (2) feet above the highest adjacent grade if no depth number is specified.
- (ii) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Article 5, Section I (1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting

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hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Section 2.4.9 and Section 6.2.4(2)(B).

(iii) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from [proposed structures].

( Ord. of 6-9-20(4) , § 1)

## 6.3 STORMWATER MANAGEMENT

### 6.3.1 ~~Findings, Goals, Objectives and Authority~~ General

#### ~~(1) Findings of Fact~~

~~The Board of Commissioners finds that development without control of drainage has a significant adverse impact upon the health, safety and welfare of the community. More specifically:~~

~~(A) Uncontrolled stormwater runoff can carry pollutants into receiving water bodies, degrade water quality and result in closures of shellfishing waters;~~

~~(B) Uncontrolled stormwater runoff can increase nutrients such as phosphorus and nitrogen, thereby accelerating eutrophication of receiving waters, adversely affecting flora and fauna;~~

~~(C) Improperly channeling water increases the velocity of runoff, thereby increasing erosion and sedimentation;~~

~~(D) Construction requiring the alteration of natural topography and removal of vegetation tends to cause a loss of natural recharge areas and increase erosion;~~

~~(E) Siltation of water bodies resulting from increased erosion decreases their capacity to hold and transport water, interferes with navigation, and harms flora and fauna;~~

~~(F) Impervious surfaces increase the volume and rate of stormwater runoff and allow less water to percolate into the soil, thereby decreasing groundwater recharge;~~

~~(G) Improperly managed stormwater runoff can increase the incidence of flooding and the level of floods that occur, endangering property and human life;~~

~~(H) Improperly managed stormwater runoff can interfere with the maintenance of optimum salinity in estuarine areas, thereby disrupting biological productivity;~~

~~(I) The economy of the Town, as well as the health and welfare of its citizens, is dependent upon the preservation of pristine beaches, clean navigable waterways, abundant fishing and shellfishing resources, and a healthy ecosystem that attracts visitors to the Town.~~

~~(J) Many future problems can be avoided or substantially mitigated if land is developed in accordance with sound stormwater runoff management practices.~~

#### ~~(2)~~ Goals Purpose and Authority ~~and Purposes~~

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The Town of Emerald Isle is authorized to adopt this Ordinance pursuant to North Carolina law, including but limited to Article 14, Section 5 of the Constitution of North Carolina; G.S. 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2006-246; G.S. 160A-174, 160A-185. The preservation of water quality and protection against flooding are central environmental goals of the Town. The Town of Emerald Isle is authorized to adopt this Ordinance pursuant to North Carolina law, including but limited to Article 14, Section 5 of the Constitution of North Carolina; G.S. 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2006-246; G.S. 160A-174, 160A-185.

In order to meet these important goals, the Town adopts this stormwater management ordinance for the following purposes:

- (A) To regulate new development, redevelopment, and other construction activities within the jurisdiction of the Town, consistent with federal, state and local requirements, and the Town's environmental goals.
- (B) To provide the structure within which the authority of the Town to administer and enforce stormwater quantity and quality regulations will be exercised.

**(32) Objectives**

In order to protect, maintain, and enhance both the immediate and the long-term health, safety and general welfare of the citizens of the Town, this section 6.3 has the following objectives:

- (A) Promote productive and enjoyable harmony between human activities and nature;
- (B) Protect, restore and maintain the chemical, physical and biological integrity of the waters of Bogue Sound, Archer's Creek and the Atlantic Ocean;
- (C) Prevent individuals and business organizations from causing harm to the community by activities that adversely affect water resources;
- (D) Encourage the construction of drainage systems that aesthetically and functionally approximate natural systems;
- (E) Encourage the protection of natural systems and the use of them in ways that do not impair their beneficial functioning;
- (F) Encourage the use of drainage systems that minimize the consumption of electrical energy or petroleum fuels to move water, remove pollutants, or maintain the systems;
- (G) Minimize the transport of pollutants to area surface waters;
- (H) Protect and maintain natural salinity levels in estuarine areas;
- (I) Minimize erosion and sedimentation;
- (J) Prevent damage to wetlands;
- (K) Prevent damage from flooding, while recognizing that natural fluctuations in water levels are beneficial;
- (L) Protect, restore, and maintain the habitat of fish and wildlife;

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(M) Ensure the attainment of these objectives by requiring the approval and implementation of stormwater management plans for all activities that may have a significant adverse impact upon community waters and nearby properties.

(N) Prevent or reverse ~~salt water~~saltwater intrusion.

~~(4) Authority~~

~~The Town of Emerald Isle is authorized to adopt this Ordinance pursuant to North Carolina law, including but limited to Article 14, Section 5 of the Constitution of North Carolina; G.S. 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2006-246; G.S. 160A-174, 160A-185.~~

~~(A) To regulate new development, redevelopment, and other construction activities within the jurisdiction of the Town, consistent with federal, state and local requirements, and the Town's environmental goals.~~

~~(B) To provide the structure within which the authority of the Town to administer and enforce stormwater quantity and quality regulations will be exercised.~~

### 6.3.2 Applicability, Permits, and Variances

(1) **Applicability**

All development and redevelopment, including, but not limited to, all single-family and duplex residential dwellings, constructed within the Town after the effective date of this section 6.3 must comply with the minimum stormwater control standards outlined in sections 6.3.2(2)(C) and 6.3.3.

(2) **Stormwater Management Plan Required**

(A) Unless exempted by subsection (B) below, all development and redevelopment, ~~including, but not limited to, single-family or duplex residential dwellings, constructed~~ within the Town after the effective date of this Ordinance must submit a storm water management plan to the Stormwater Administrator that complies with the minimum stormwater control standards outlined in this section 6.3 and related standards of this Unified Development Ordinance, and all other applicable regulations of the Town. The burden of proving compliance with the stormwater management standards and the cost associated with producing such proof shall be borne by the applicant. The stormwater management plan must be submitted and approved before:

(i) A preliminary plat is approved;

(ii) An existing drainage system is altered, rerouted, or deepened; or

(iii) A zoning and/or building permit is issued.

**(B) Exemptions**

The following development activities are exempt from the stormwater management plan requirement:

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~~(i) Additions or modifications to existing single family detached residential structures. The addition of new impervious surfaces of up to five hundred (500) square feet, if the development does not increase impervious surface by more than one thousand (1,000) square feet.~~

(ii) Any maintenance, alteration, use or improvement to an existing structure not changing or affecting quality, rate, volume or location of surface water discharge.

(iii) New subdivisions that involve only the preparation of plats that delineate lot boundary lines within the subdivision, and do not involve the construction of infrastructure to serve the subdivision.

### **(C) Stormwater Management Plan Standards**

Stormwater management plans, when required, shall comply with all applicable provisions of this Ordinance and all other applicable regulations of the Town. It is the responsibility of an applicant to provide sufficient information in the plan so that the Town or its agents may reasonably evaluate the environmental characteristics of the affected areas, the potential and predicted impacts of the proposed activity on area surface waters, and the effectiveness and acceptability of those measures proposed by the applicant for reducing adverse impacts. The applicant shall provide maps, charts, graphs, tables, photographs, narrative descriptions and explanations, as appropriate, to demonstrate compliance with the Town's stormwater management standards.

#### **(i) Small Residential Projects**

Proposed single family and duplex residential projects with less than ten thousand (10,000) square feet of disturbed area shall adhere to the stormwater management plan requirements outlined below:

##### **(a) Professionally Drafted Plans**

The stormwater management plan for required under this subsection 6.3.2(2)(C)(i) shall be designed and sealed by a registered design professional as described in section 6.3.2(2)(C)(v).

##### **(ab) Applicant Submittal Requirements**

It is the responsibility of an applicant to provide sufficient information in the plan so that the Town or its agents may reasonably evaluate the environmental characteristics of the affected areas, the potential and predicted impacts of the proposed activity on area surface waters, and the effectiveness and acceptability of those measures proposed by the applicant for reducing adverse impacts. The applicant shall provide maps, charts, graphs, tables, photographs, narrative descriptions and explanations, as appropriate, to demonstrate compliance with the town's stormwater management standards.

##### **(bc) Owner and Developer Information**

The applicant shall submit the name, address and telephone number of the owner and the developer.

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**(ed) Conditions**

The conditions of the site shall be described in general, including the following:

1. The direction of flow of stormwater runoff under existing conditions;
2. The location of areas on the site where stormwater collects or percolates into the ground; and
3. A survey of the site, including topography. The survey shall be prepared by a licensed surveyor ~~showing contours every two (2) feet. It must also show the cross-section, and location of drainage ditches within the area surveyed, and the location of wetlands, and ponds.~~
4. At the discretion of the town or its agent, the elevation of the seasonal high water table may be required.

**(ee) Proposed Alterations**

Proposed alterations of the site shall be described, including:

1. Change(s) in topography. The proposed final elevations shall be shown in a manner that can be distinguished from the existing elevations. If there are abrupt changes in elevations, these should be clearly identified in the plans. These should be plotted on a scale that is easy to read and in a form that conveys the nature of changes that are proposed.
2. The proposed area to be reserved as natural area on the property as required by the Dunes and Vegetation Protection provisions of this Unified Development Ordinance.
3. Identification and quantification of the area(s) that will be covered with impervious surface(s) and a description of the surfacing material(s).
4. The size and location of any buildings or other structures.

**(ef) Impacts on Existing Conditions**

Predicted impacts of the proposed development on existing conditions shall be described in general, including:

1. Impacts on wetlands, if any;
2. Impacts on vegetation.

**(gf) Stormwater Runoff Features**

All features intended to receive stormwater runoff from the proposed impervious surfaces on site shall be described and their location identified on the survey. The applicant is required to demonstrate that sufficient area is reserved to

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provide sixteen and sixty-seven hundredths (16.67) cubic feet of storage capacity for every one hundred (100) sq. ft. of impervious surface proposed.

**(g) Erosion and Sediment Control Measures**

A description of the measures that will be put in place for the control of erosion and sedimentation shall be provided.

**(h) Other Information**

The applicant shall provide other information which the town or its designated agent deems necessary for an evaluation of the development proposal for compliance with this chapter.

**(i) Inspection and Certification Required**

Installation of the professionally designed stormwater management plan shall be inspected and approved by a registered design professional as described in section 6.3.2(2)(C)(v). Certification of the plan must be provided to the Town before the Town will issue of Certificate of Occupancy, if applicable.

**(ii) Large Residential Projects**

A professionally designed stormwater management plan, designed and sealed by a registered design professional, and meeting all applicable requirements of this Unified Development Ordinance shall be required for all single-family and duplex residential projects which disturb ten thousand (10,000) square feet or more of land and for all multi-family residential, commercial and industrial projects.

**(a) Professionally Drafted Plans**

The stormwater management plan for required under this subsection 6.3.2(2)(C)(ii) shall be designed and sealed by a registered design professional as described in section 6.3.2(2)(C)(iv).

**(b) Applicant Submittal Requirements**

It is the responsibility of an applicant to include in the stormwater management plan sufficient information for the town or its agents to evaluate the environmental characteristics of the affected areas, the potential and predicted impacts of the proposed activity on area surface waters, and the effectiveness and acceptability of those measures proposed by the applicant for reducing adverse impacts. The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions and explanations and citations supporting references, as appropriate, to communicate the information required by this section and applicable sections of this Unified Development Ordinance.

**(c) Owner and Development Information**

The stormwater management plan shall contain the name, address and telephone number of the owner and the developer.

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#### **(d)Deed Restrictions and Covenants**

The approval of the stormwater management plan requires submission of enforceable restrictions on property usage that run with the land, including deed restrictions and protective covenants, for recordation, to ensure that future development and redevelopment maintains the site consistent with the approved project stormwater plans.

#### **(e)Site Conditions**

The existing environmental and hydrologic conditions of the site and of receiving waters and wetlands shall be described in detail, as follows:

1. The location(s) of runoff leaving the development site along with the direction of the runoff as it exits the site;
2. The location of areas on the site where stormwater collects or percolates into the ground shall be denoted;
3. A description of all watercourses, water bodies and wetlands on or adjacent to the site or into which stormwater flows shall be provided. Information regarding their water quality and the current water quality classification, if any, given them by the state Department of Environment and Natural Resources (DENR) shall be included;
4. The depth(s) to the seasonal high groundwater table shall be provided;
5. Location of floodplains shall be denoted on the survey plan of the site;
6. A survey of the site, including topography. The survey shall be prepared by a licensed surveyor showing contours every two (2) feet. It must also show the cross section, and location of drainage ditches within the area surveyed, and the location of wetlands, and ponds. Elevation of the seasonal high water level in the ponds and wetlands shall also be shown. The geographic coordinates of the proposed stormwater treatment system shall also be provided to include within the Town's GIS system; and
7. Soils, as delineated and described in the Soil Conservation Service Publications, Soil Survey of Carteret County, NC or Soil Survey of the NC Outer Banks. The town or its agent, at their sole discretion, may also require the developer to conduct an evaluation of the soil profile at the development site. If such an investigation is required, it shall be conducted by a registered soil scientist for the developer.

#### **(f)Proposed Alterations**

Proposed alterations of the site shall be described in detail, including:

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1. Changes in Topography. The proposed final elevations shall be shown in a manner that can be distinguished from the existing elevations. If there are abrupt changes in elevations, these should be clearly identified in the plans. These should be plotted on a scale that is easy to read and in a form that conveys the nature of changes that are proposed.
  2. Natural Area Reserve. The proposed area to be reserved as natural area on the property as required by the Dunes and Vegetation Protection provisions of this Unified Development Ordinance.
  3. Impervious Surfaces. Areas that will be covered with an impervious surface and a description of the surfacing material.
  4. Buildings. The size and location of any buildings or other structures.

**(g)Impacts on Existing Conditions**

Predicted impacts of the proposed development on existing conditions shall be described in detail, including:

1. Changes in the incidence and duration of flooding on the site and adjoining property;
2. Impacts on wetlands, if any;
3. Impacts on vegetation;
4. Certification by the owner/developer that all stormwater management construction and maintenance will be done according to plan; and
5. An as-built certification signature block to be executed after completion, to be signed by the owner and the qualified stormwater design professional.

**(h)Stormwater Runoff Features**

All components of the drainage system and any measures for the detention, retention, or infiltration of water or for the protection of water quality shall be described in detail, including:

1. Stormwater Quantity. The quantity of stormwater, based on a two-inch rainfall design, that will be collected on the site;
2. Detention and Retention Areas. Detention and retention areas, including plans for the discharge of contained waters;
3. Percolation Areas. Areas of the site to be used or reserved for percolation;
4. Erosion and Sediment Control Plan. A plan for the control of erosion and sedimentation which describes in detail the type and location of control measures.

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5. Other Information. Any other information which the developer or the town or its designated agents believes is reasonably necessary for an evaluation of the development proposal for compliance with this chapter.

### **(iii)New Subdivisions**

The stormwater management plan for new subdivisions, regardless of proposed land use, shall be designed and sealed by a registered design professional as described in section 6.3.2(2)(C)(iv) and shall include calculations of, and incorporate design features to control, the total volume of storm water runoff projected after full build-out of the subdivision.

#### **(a)Catchment Area**

The catchment area shall be the entire development and any adjoining areas that drain into the development site.

#### **(b)New Subdivision Stormwater Management Plan**

Stormwater management plans for new subdivisions shall adhere to the requirements outlined in section 6.3.2(2)(C)(ii)(a).

#### **(c)Individual Lot Stormwater Management Plans**

The development of a subdivision stormwater management plan in accordance with this subsection may relieve individual lot owners of the requirement to provide the required on-site infiltration required in section 6.3.3(2)(N). As individual lots within a subdivision are developed, a stormwater management plan shall be required for each lot, in accordance with section 6.3.2(2)(A) and (B). The stormwater management plan for individual lots may refer to the original subdivision stormwater management plan to meet the requirements of this chapter, however, the town or its agent may require additional on-site retention if runoff from the proposed development is not adequately controlled through the original subdivision stormwater management plan.

### **(iv)Checklist for Plans**

A check list will be made available by the office of the Stormwater Administrator to facilitate the stormwater management plan approval application. A professionally designed stormwater management plan, designed and sealed by a registered design professional, shall be required for all single-family and duplex residential projects which disturb ten thousand (10,000) square feet or more of land and for all multi-family residential, commercial and industrial projects.).

### **(v)Registered Design Professional**

Where stormwater management plans are required to be prepared by a registered design professional, the plan must be completed by a North Carolina registered professional with qualifications appropriate for the type of system required; these registered professionals are defined as: professional engineers; landscape architects,

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to the extent that G.S. ch. 89A, allow; and registered land surveyors, to the extent that the design represents incidental drainage within a subdivision, as provided in G.S. 89C-3(7).

(3) **Variance Procedure**

The Board of Adjustment may grant a variance from the provisions of this section 6.3 pursuant to the provisions of section 2.4.17, Variances.

### 6.3.3 Stormwater Management Standards

(1) **Performance Standards**

The proposed development, development activity, or redevelopment shall be planned, designed, constructed, and maintained to:

- (A) Ensure that, after development or redevelopment, runoff leaving the development or redevelopment site approximates the rate of flow and timing of runoff that would have occurred following the two-inch rainfall under existing conditions and to the extent practicable, the predevelopment conditions, unless runoff is discharged into an off-site drainage facility as provided in section 6.3.3(3);
- (B) Protect the quality of surface waters;
- (C) Ensure that erosion during and after development or redevelopment is minimized;
- (D) Protect the beneficial functioning of wetlands as areas for the natural storage of surface waters and the chemical reduction and assimilation of pollutants;
- (E) Prevent the potential for increased flooding and damage to structures already located in areas known to be subject to potential flooding;
- (F) Protect the natural fluctuating levels of salinity in estuarine areas;
- (G) Minimize injury to flora and fauna and adverse impacts to fish and wildlife habitat that can be directly attributed to transport of sediment or contaminants by stormwater runoff or to recurrent flooding of natural habitats; and
- (H) Otherwise further the objectives of this section 6.3 and related provisions in this Unified Development Ordinance.

(2) **Design Standards**

To ensure attainment of the objectives of this section 6.3 and related provisions in Chapters 2 and 9, and to ensure that performance standards will be met, the design, construction and maintenance of drainage systems shall be consistent with the following standards:

(A) **Prevent Channeling**

Channeling runoff directly into water bodies shall be strictly prohibited. Instead, runoff shall be routed through swales and other systems designed to increase time of concentration, decrease velocity, increase infiltration, allow suspended solids to settle, and remove pollutants.

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**(B) Minimize Land Disturbance**

The area of land disturbed by development shall be as small as practicable. Those areas that are not to be disturbed shall be protected by an adequate barrier from construction activity. Whenever possible, indigenous vegetation shall be retained and protected. Where this is not possible, suitable nature species shall be planted.

**(C) Erosion and Sediment Control Devices**

(i) No grading, cutting or filling shall be commenced until erosion and sedimentation control devices have been installed between the disturbed area and water bodies, watercourses and wetlands. Following initial soil disturbance or redistribution, permanent or temporary stabilization shall be completed on all perimeter dikes, swales, ditches, perimeter slopes, all slopes greater than three (3) horizontal to one (1) vertical (3:1), and embankments of ponds. Requirements for permanent stabilization shall not apply to those areas being used for material storage or for those areas where construction activities are currently being performed.

(ii) Clean sand shall be used for fill. The fines in the sand should be limited so that seepage and migration through it will facilitate normal drainage. The fill shall be placed so as not to cause water to be diverted to adjacent property, including streets and roadways. Pipe culverts shall be installed under driveways to allow passage of water if consistent with good design practices.

(iii) Incidental filling on previously developed residential lots may be allowed provided the incidental filling does not cause water to be diverted to adjacent property, including streets and roadways.

**(D) Re-vegetation of Cleared Land**

Land that has been cleared for development and upon which construction has not commenced shall be protected from erosion by appropriate techniques designed to re-vegetate the area within thirty (30) days (seeding, etc.).

**(E) Retain Sediment**

Sediment shall be retained on the site of the development.

**(F) Protection of Wetlands and Waterbodies**

Wetlands and other waterbodies shall not be used as sediment traps.

**(G) Maintenance of Erosion and Sedimentation Facilities**

Erosion and sedimentation facilities shall be maintained to insure that they continue to function properly.

**(H) Artificial Watercourse Design**

Artificial watercourses shall be designed, considering soil type, so that the velocity of flow is low enough to prevent, or minimize to the maximum extent practicable, erosion.

**(I) Vegetation Buffer Strips Design**

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Vegetated buffer strips shall be created or, where practicable, retained in their natural state along the banks of all watercourses, water bodies or wetlands. The width of the buffer shall be sufficient to prevent erosion, trap the sediment in overland runoff, provide access to the water body and allow for periodic flooding without damage to structures. For projects that disturb more than ten thousand (10,000) square feet of land, no impervious surface shall be constructed within thirty (30) feet of any perennial or intermittent surface waters, except for roads, paths, and water dependent structures. Redevelopment activities which have no net increase in impervious surface and which provides equal or greater stormwater controls than the previous development shall not be subject to the 30-foot setback limitation contained in this paragraph.

**(J) Intermittent and Ephemeral Watercourse Design**

Intermittent and ephemeral watercourses will be vegetated.

**(K) Usage of Detention Ponds**

Detention ponds may be used to detain increased and accelerated runoff caused by development or redevelopment if the runoff is discharged to a water body, watercourse or wetland. Water shall be released from detention ponds into water bodies, watercourses or wetlands at a rate and in a manner approximating the natural flow that would have occurred before development. The drawdown rate for these ponds shall also be designed so that the water quality volume is drained no faster than forty-eight (48) hours but no slower than one hundred twenty (120) hours.

**(L) Removal of Suspended Solids**

For projects that disturb more than ten thousand (10,000) square feet of land, all stormwater management systems shall be designed in accordance with the state standards meeting the eighty-five (85) percent total suspended solids removal rate.

**(M) Usage of Wetlands**

Although the use of wetlands for storing and purifying water is encouraged, care must be taken not to overload their capacity, thereby harming the wetlands and transitional vegetation. Wetlands should not be damaged by the construction of detention ponds.

**(N) Infiltration Method Design**

All development must provide appropriate infiltration to control runoff of rainfall from all impervious surfaces on site as specified in section 6.3.2. The design of the infiltration method must take into account the runoff from any pervious surface drainage that is directed to the infiltration site. Flow from gutters and downspouts shall be diverted to the infiltration site, as necessary.

**(O) Underground Storage of Runoff**

All underground storage of runoff shall be accomplished so that there is a minimum of two (2) feet vertical separation between the highest seasonal water table and the bottom of the feature(s) used for storage.

**(P) Treatment of Runoff from Parking Lots**

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Runoff from parking lots shall be treated to remove oil and sediment before it enters receiving waterbodies.

**(Q)Detention and Retention Area Design**

Detention and retention areas shall be designed so that shorelines are sinuous rather than straight and so that length of shoreline is maximized, thus offering more space for the growth of littoral vegetation.

**(R)Detention and Retention Area Slopes**

With the exception of bulkheaded ponds, the banks of detention and retention areas shall slope at a grade no steeper than 3 to 1 (horizontal run to vertical rise) into an area of water as a safeguard against drowning, personal injury or other accidents, to encourage the growth of vegetation and to allow the alternate flooding and exposure of areas along the shore as water levels periodically rise and fall.

**(S)Usage of Drainage Facilities**

The multiple use of drainage facilities and vegetated buffer zones as open space, recreation and conservation areas is encouraged.

**(T)Filling of Wetlands or Ponds**

Lot owners or contractors may not fill more than one thousand (1,000) sq. ft. of any part of a pond or wetland unless that pond or wetland is expanded or a new retention area is built as a replacement, provided the following conditions are met:

- The applicant receives approval from the appropriate Federal and/or State regulatory agencies,
- The applicant receives approval from the Town of Emerald Isle, and
- Any expansion or new retention area shall be constructed within the Town limits of Emerald Isle, and be capable of holding a volume of storm water at least equal to the one lost as a result of the fill.

If this should preclude any reasonable development of the lot, the applicant may apply to the Board of Adjustment for a variance.

**(U)Discharge of Stormwater**

New discharges to SA or SB waters and/or expansion of existing conveyance systems which discharge directly to SA or SB waters shall be prohibited.

For projects that disturb more than ten thousand (10,000) square feet of land, diffuse flow of stormwater at a nonerosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the one-year, 24-hour storm prior to reaching any potential off-site discharge shall no be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when making a qualitative determination of infiltration effectiveness.

**(V)AEC Development**

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Development within the area of environmental concern (AEC) adjacent to outstanding resource waters (ORW), as defined by the North Carolina Division of Coastal Management, shall not exceed thirty-six (36) percent impervious coverage and shall adhere to the storm water management standards of the North Carolina Division of Coastal Management, or any successor agency (which may limit coverage to twenty-five (25) percent). The standards of the North Carolina Division of Coastal Management shall take precedence over the standards included in this section 6.3, provided, however, that the developer shall also be required to adhere to the specific standards included in this section 6.3 that are not in conflict with the standards of the North Carolina Division of Coastal Management. Redevelopment activities which have no net increase in impervious surface and which provides equal or greater stormwater controls than the previous development shall not be subject to the impervious area limitations contained in this paragraph.

**(W) Prohibited Artificial Recharge**

Because this practice reduces stormwater runoff storage capacity, the artificial recharge of natural ponds and/or man-made detention and retention ponds with groundwater or other water supplies is prohibited. This provision shall not apply to groundwater recharge systems installed and in regular use prior to the effective date of this section 6.3. However, the Town strongly encourages compliance with this prohibition by existing users of groundwater recharge systems.

**(X) Best Stormwater Practices**

For projects that disturb more than ten thousand (10,000) square feet of land that are located within one-half-mile of and that drain in whole or part to class SA waters shall design and implement the best stormwater practices that ensure reduction of fecal coliform loading. The best practices are ones that result in the highest degree of fecal die-off and control sources of fecal coliform to the maximum extent practical while still meeting the other requirements of this development ordinance.

**(Y) Engineered Design Criteria**

For projects that disturb more than ten thousand (10,000) square feet of land, all stormwater management systems shall meet the General Engineering Design Guidelines set forth in 15A NCAC 02H.1008(c).

**(Z) Universal Stormwater Management Program**

15A NCAC 02H.1020 UNIVERSAL STORMWATER MANAGEMENT PROGRAM, including future amendments, provides the foundation for this Ordinance.

**(3) Off-site Drainage Facilities**

**(A) Conditions for Allowance of Off-site Drainage Facilities**

The Town may allow stormwater runoff that is associated with subdivisions that have an approved subdivision stormwater management plan in accordance with section 6.3.2(2)(C)(iii), or that is otherwise of unacceptable quality or that would be discharged in volumes or at rates in excess of those otherwise allowed by this section 6.3, to be

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discharged into drainage facilities off the site of development if each of the following conditions are met:

- (i) It is not practicable to completely manage runoff on the site in a manner that meets the performance standards and design standards of this section 6.3, or if the initial subdivision stormwater management plan was designed to accommodate the runoff from the site;
- (ii) The off-site drainage facilities and channels leading to them are designed, constructed and maintained in accordance with the requirements of this section 6.3;
- (iii) Adverse environmental impacts on the site of development will be minimized.

**(B) Requesting Use of Off-site Drainage Facilities**

A request to use off-site drainage facilities and all information related to the proposed off-site facilities should be made a part of the developer's stormwater management plan. Guidance documents to be used when designing or operating off-site drainage systems are listed in section 6.3.4.

**(C) Approval for Use of Off-site Drainage Facilities**

The use of off-site drainage facilities shall be permitted only if easements or deed restrictions to insure continued use of the drainage facility site(s) have been approved by the Town and recorded in the office of the Carteret County Register of Deeds. A copy of such recorded provisions shall be provided to the Town and shall be considered a condition of any approval granted under this section 6.3.

( Ord. of 5-13-14 , § 1; Ord. of 2-13-18(1) , § 1)

### **6.3.4 Manual of Stormwater Management Practices**

**(1) Adopted Manuals of Stormwater Management Practices**

The Town adopts by reference the following published manuals of stormwater management practices for the guidance of persons preparing stormwater management plans, and designing or operating drainage systems:

**(A)** NCDENR Stormwater Best Management Practices (July 2007, as amended) as published by the NC Department of Environment and Natural Resources, Division of Water Quality, Water Quality Section, 512 N. Salisbury Street, Raleigh, NC 27699.

**(2) Manuals May be Updated**

This manual may be updated periodically to reflect the most current and effective practices and shall be made available to the public at the Town hall during normal business hours.

**(3) Stormwater Administrator as Custodian of Practices**

The Stormwater Administrator will be the official custodian of these manuals and shall present subsequent revisions of it to the Board of Commissioners and Planning Board for review and approval before same shall be incorporated into the manuals.

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### 6.3.5 Maintenance

(1) **Dedication of Drainage Facilities**

Drainage facilities shall be dedicated to the Town where they are determined by the Board of Commissioners to be appropriately a part of the Town's maintained system.

(2) **Adequate Easements**

Any private drainage or stormwater management systems designed to serve projects which disturb more than ten thousand (10,000) square feet of land and all multi-family residential, commercial and industrial projects shall have adequate recorded easements to permit the Town to inspect and, if necessary, to take corrective action should the owner fail to properly maintain the system. A copy of such recorded provisions shall be provided to the Town and shall be considered a condition of any approval granted under this section 6.3. The Stormwater Administrator or a designated Stormwater Inspector shall inspect all properties and systems annually for any deficiencies. Drainage and stormwater treatment systems must be performing properly to remain in compliance with this Ordinance.

(3) **Operations and Maintenance Plan**

Any private drainage or stormwater management systems designed to serve projects which disturb more than ten thousand (10,000) square feet of land and all multi-family residential, commercial and industrial projects shall have an adequate Operations and Maintenance Plan (O&MP). A copy of the recorded O&MP shall be provided to the Town and shall be considered a condition of any approval granted under this chapter.

(4) **Property Owner Responsibilities**

The owner of the property on which work has been done for private storm water management facilities pursuant to this section 6.3 or related regulations in this Unified Development Ordinance or any other person or agent in control of such property, shall maintain in good condition and promptly repair and restore all grade surfaces, drains, structures, and other protective devices. This includes regular removal of dead trees, leaves, debris that accumulate in ponds. Such repairs or restoration and maintenance shall be in accordance with approved plans.

## 6.4 DUNES AND VEGETATION PROTECTION

### 6.4.1 Intent

This section 6.4 has been created to regulate development and redevelopment within the Town to ensure compatibility with the environmentally sensitive nature of the unique coastal landforms contained within the community. Development and redevelopment of property shall be regulated by the underlying zoning designation already in place as well as the regulations contained herein in order to achieve the following:

(1) **Natural Features and Attractiveness**

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Preserve the natural features and visual attractiveness of the area. Such features include ocean frontal dunes, naturally vegetated areas, interior dune topography, maritime forest areas, and estuarine buffer areas.

(2) **Soil Stabilization**

Preserve vegetation acting as soil stabilizers, and that provide wind or salt mist intrusion protection value, including the dune ridge plants and naturally vegetated forested areas, and that absorb storm water runoff and reduce flooding concerns.

(3) **Natural Topography**

Preserve to the greatest extent possible the existing and natural topography of the Town.

(4) **Rights of Property Owners**

Preserve the rights of property owners to develop their property while understanding the impact of development on the natural environment.

### **6.4.2 Applicability**

~~These regulations shall apply to all lots of record and proposed new lots within the Town, including but not limited to all previously developed lots of record within the Town. Unless exempted by section 6.4.3, a Dunes and Vegetation (DV) Permit shall be obtained pursuant to section 2.4.11 for all new development, redevelopment, or disturbance of previously developed lots within the Town. A Dunes and Vegetation Permit shall be obtained prior to any land disturbing activity and/or tree removal. All proposed new development and redevelopment applications, as well as all proposed disturbance of previously developed lots shall be reviewed by the Dunes and Vegetation Protection Inspector (DVPI). The issuance of a DV permit by the DVPI authorizing site disturbance on a parcel of land does not grant the property, its owner or their agent(s) the authority to begin any construction project. The property owner and/or their agent(s) are required to obtain all other applicable permits, including but not limited to a Zoning Permit and/or a Building Permit, prior to the commencement of any construction project not specifically exempted in section 6.4.3 of this Ordinance.~~

### **6.4.3 Exemptions**

~~The following activities are considered exempt from this section 6.4:~~

- ~~(1) Removal of sand, seashells, or similar small materials in such amounts as may be carried easily upon the person;~~
- ~~(2) The normal maintenance of existing non-native landscape plantings upon any lot or parcel including, but not limited to, lawn maintenance; the relocation, removal, and/or replacement of non-native shrubs; and the cutting and/or removal of non-native nuisance vegetation;~~
- ~~(3) The removal of trees with a caliper less than three (3) inches at a height of thirty-six (36) inches;~~
- ~~(4) The cutting of brush or vegetation with a caliper less than three (3) inches at a height of thirty-six (36) inches above adjacent grade by a registered land surveyor or engineer for the purpose of completing survey work on a parcel of property;~~

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- ~~(5) The cutting of brush, vegetation and/or trees with a caliper of less than three (3) inches at a height of thirty six (36) inches above adjacent grade to allow for the evaluation of a parcel for on-site septic wastewater system purposes;~~
  - ~~(6) The clearing of no more than five hundred (500) square feet of property to allow for the incidental use of an undeveloped property by the owner within any consecutive three-year time period.~~
  - ~~(7) The clearing of no more than five hundred (500) square feet of property to allow for the incidental use of an undeveloped property by the owner;~~

## 6.4.4-2 Design Standards

The following design standards shall be adhered to in order to protect the unique natural features and vegetation of the Town:

### (1) New Development and Redevelopment

#### (A) Site Selection

In designing the location of a proposed development on a parcel of property, the Town in coordination with the property owner will consider the most suitable building sites on a given parcel of land to be those areas that will require the minimum alterations of the natural vegetation and topography to accommodate the proposed development project.

#### (B) Least Disturbance

Where vegetation must be removed for the building site(s), the most suitable site(s) shall be those that disturb the minimum number of healthy trees.

#### (C) Residential Area Natural Area Designation

For residential properties, there shall be a minimum of thirty-five (35) percent of the total lot area designated as natural area established in the following manner:

- (i) The applicant must demonstrate for the DVPI where the mandatory thirty-five (35) percent natural area shall be designated on the property. This area, marked on the submitted site plan, shall be staked off on the property for verification by the DVPI before the commencement of construction. During construction this area shall be left in its natural state. Appropriate actions shall be taken by the applicant to protect this area from disturbance.
- (ii) Where practical, the Town encourages property owners/developers to maintain a natural area buffer ten (10) feet in width from the front and rear property lines, excluding the driveway cut allowing vehicular access to the lot, and a five-foot buffer from the side property lines. This area shall count towards the mandatory thirty-five (35) percent natural vegetative area. Pruning or removal of vegetation in this area shall be permitted in accordance with the regulations contained within this section 6.4. The applicant shall be required to demonstrate to the DVPI where the remaining percentage of natural area shall be designated on the property. If the fringe buffer area, as defined above, satisfies the thirty-five (35) percent requirement then the

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applicant is not responsible for preserving any additional natural vegetation on the property.

**(D) Commercial Area Natural Area Designation**

For commercial properties, the area left in a natural vegetative state shall be designated as follows:

(i) The percentages of site area shown in Table 5.1 shall be maintained.

(ii) In cases where a commercial property abuts Emerald Drive (Hwy 58) a minimum of five-foot buffer of green or natural area, consisting of grass, flowers and shrubs not exceeding three (3) feet height, shall either be left bordering the street or planted in order to provide the required buffer. Branches of trees retained or established in the five-foot buffer area may be trimmed or cut up to a maximum of ten (10) feet as authorized by the DVPI. Additionally, the DVPI may require that trees be retained or established every fifteen (15) feet in this area.

(iii) For all commercial property, natural area can be utilized to support on-site septic systems.

**(E) Topography**

The finished topography of any lot altered shall be aligned with and graded with existing neighboring elevation in such a manner as to minimize erosion. In any case where two (2) feet of fill are added to a lot, the lot owner shall be required to obtain an engineered storm water plan indicating that the use of fill shall in no way create a burden on adjacent property;

**(F) Stable Slopes**

Areas where land-disturbing activities have created slopes in excess of three (3) to one (1) shall require a retaining wall to stabilize the slope and preserve vegetation on, above, and below the slope;

**(G) Shared Driveways**

The use of shared driveways is encouraged. Driveways shall follow the natural contour lines of the land insofar as possible. Driveway construction and connection with local rights-of-way shall be in accordance with this Ordinance;

**(H) Interior Dunes**

Designs that minimize the degree of alteration to interior dunes to the maximum extent practical are encouraged.

**(2) Disturbance of Previously Developed Lots where Additional Development is Planned**

**(A) Site Selection**

In designing the location of additional development on a previously developed lot, the Town considers the most suitable building sites on a given parcel of land to be those areas that will require the minimum alterations of the existing natural vegetation and topography

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of the parcel to accommodate the additional development after considering the practical limitations created by the existing development.

**(B)Least Disturbance**

Where vegetation must be removed for the building site(s), the most suitable site(s) shall be those that disturb the minimum number of healthy trees after considering the practical limitations created by the existing development.

**(C)Percentage of Natural Area**

The minimum percentages of natural areas, as described within this Ordinance for properties within all zoning districts shall conform to the standards set for in this Unified Development Ordinance.

**(D)Topography**

The finished topography of any lot altered shall be aligned with and graded with existing neighboring elevation in such a manner as to minimize erosion. In any case where two (2) feet of fill are added to a previously developed lot, the lot owner shall be required to obtain an engineered storm water plan indicating that the use of fill shall in no way create a burden on adjacent property.

**(E)Stable Slopes**

Areas where land-disturbing activities have created slopes in excess of three (3) to one (1) shall require a retaining wall to stabilize the slope and preserve vegetation on, above, and below the slope.

**(F)Interior Dunes**

Designs that minimize the degree of alteration to interior dunes to the maximum extent practical are encouraged.

**6.4.5-3 Natural Area Restrictions**

(1) **Topography**

The topography of the designated natural area shall not be altered. No land disturbing activity is permitted in the designated natural area.

(2) **Natural Vegetation**

Vegetation shall not be removed, destroyed, altered and/or disturbed without obtaining a Dunes and Vegetation (DV) Permit per Section [2.4.11\(1\)](#) ~~6.4.2~~ of this Ordinance.

**6.4.6-4 Special Restrictions on Oceanfront and Estuary Lots**

(1) **Oceanfront Lots**

The removal of any and all vegetation within the ocean-erodible setback area, as defined by the North Carolina Division of Coastal Management, is hereby prohibited, except for the construction of walkways and other structures designed to provide ocean access.

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(2) **Estuary Lots**

The removal of any and all vegetation within the estuarine setback area shall be in accordance with the regulations of the North Carolina Division of Coastal Management.

(3) **Special Restrictions**

The special restrictions included in this section 6.4.46 supersede other restrictions contained in this section 6.4.

## **6.4.7-5 Variances**

The Board of Adjustment shall have the authority to vary the percentage of the lot or parcel that shall be left in its natural state where, owing to special conditions, a literal enforcement of the provisions of this section 6.4 will, in an individual case, result in practical difficulty or unnecessary hardship so that the spirit of this section 6.4 shall be observed, public safety and welfare secured, and substantial justice done. Variances shall be granted in accordance with the procedures and criteria outlined section 2.4.17, Variances.

## **6.5 PROTECTION OF FRONTAL DUNES**

### **6.5.1 Statement of Purpose**

It is the intent of the Town to establish regulations to preserve and protect the existing frontal dunes and to promote the growth and recovery of frontal dunes that are damaged during natural disasters. It is desirable to the Town to maintain a continuous frontal dune along the oceanfront of the Town, extending from Bogue Inlet to the Indian Beach Town line, in order to provide a natural structure to mitigate the damaging effects of ocean water storm surge, flooding, and wave action associated with ocean storms; to preserve wildlife habitat in the frontal dunes; and to preserve the aesthetics of the oceanfront area of Emerald Isle.

### **6.5.2 Permitted Activities**

(1) **Narrow Pathway for Access**

Oceanfront property owners may traverse the frontal dune in a narrow pathway only for purposes of accessing the beach strand. Such pathway shall not exceed six (6) feet in width. Oceanfront property owners are encouraged to construct a permanent walkway, ramp, and/or stairs to provide pedestrian access to the beach strand in order to better preserve the frontal dunes.

(2) **Constructed Walkway for Pedestrian Access**

Oceanfront property owners may construct a walkway, ramp, and/or stairs to provide pedestrian access to the beach strand. The walkway, ramp, and/or stairs must meet the following specifications:

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**(A)**The walkway, ramp, and/or stairs shall be constructed to meet standards established in the North Carolina State Building Code.

**(B)**The construction of the walkway, ramp, and/or stairs shall be in accordance with the North Carolina Division of Coastal Management's enforcement of the Coastal Area Management Act (CAMA) so that it shall be conclusively presumed to entail negligible alteration of the frontal dune. In no case shall the walkway, ramp, and/or stairs be permitted if it will, in the opinion of the CAMA officer, diminish the dune's capacity as a protective barrier against flooding and erosion.

**(3) Maintenance and Minor Repairs**

Oceanfront property owners or their agents may traverse on the specific portion of the frontal dune within the limits of their property to make minor dune repairs, plant vegetation, install sand fencing, and otherwise maintain the frontal dune.

**(4) Vegetation**

Oceanfront property owners are encouraged to plant compatible vegetation and install sand fence in a manner that will allow for the nesting of sea turtles on the portion of the frontal dune on their property.

**(5) Narrow Pathway at Public Access Points**

The general public may traverse the frontal dune in a narrow pathway established at public access points only for purposes of accessing the beach strand. The public shall not deviate from the established pathway onto adjacent frontal dunes intended to be protected by this section 6.5.

**(6) Official Regulatory and Research Activities**

Federal, state, and local officials engaged in official regulatory activities are authorized to traverse the frontal dunes. Persons engaged in official research and wildlife preservation groups are also authorized to traverse the frontal dunes in support of their research and preservation activities.

**(7) Storage of Small Boats**

Oceanfront property owners or their agents may traverse on the specific portion of the frontal dune within the limits of their property in order to store small sailboats (i.e., Hobie Cats, Sunfish, and other similar small sailboats) out of the ocean tidal zone. Such sailboats shall be stored in such a manner that does not compromise the integrity of the frontal dune. If, in the judgment of the Town the sailboat storage does compromise the integrity of the frontal dune, the owner shall be directed to remove the sailboat or be subject to a civil violation as outlined in Chapter 9.

### **6.5.3 Prohibited Activities**

It shall be unlawful for any person or vehicle to cross any portion of the frontal dune except for official Town business or for emergency access purposes unless such crossing is over a designated pathway, ramp, and/or stairs, or for any other activity permitted in this section 6.5. Examples of specifically prohibited activities include, but are not limited to playing on frontal dunes, climbing on frontal dunes, removing dune vegetation, allowing pets to traverse frontal dunes, and other activities

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that reduce the stability of the frontal dune and potentially decrease its storm protection value, wildlife habitat value, and aesthetic value.

## 6.6 SIGNS

### 6.6.1 Intent

It is the intent of these regulations to preserve the aesthetic qualities of the unique natural environment that distinguishes the Town. The preservation of such environment from excessive and obtrusive signs is a matter of critical importance to the residents and to the Town, due to its economic reliance on the tourism industry. These regulations are also intended to promote the business community by conveying information to the public using legible and effective signage through the control of their number, location, size, height, appearance, illumination, animation and method or type of construction. Furthermore, the Town seeks to promote the safety of persons and property by providing that signs do not create traffic hazards due to collapse, fire, collision, decay, abandonment or undue distraction of motorists.

### 6.6.2 Administration

(1) **Generally**

No sign of any type, or any part thereof, shall be erected, painted, posted, placed, replaced or hung in any zoning district except in compliance with this section 6.6.

(2) **Application**

Each application for a sign permit shall be made in writing upon forms furnished by the building inspector, and shall contain or have attached thereto the following information:

**(A)** A drawing approximately to scale showing the design of the sign, including dimensions, method of attachment, or support, source of illumination and showing the relationship to any building or structure to which it is, or is proposed to be, installed or affixed.

**(B)** A plot plan, approximately to scale, indicating the location of the sign relative to property lines, easements, streets, sidewalks, and other signs.

(3) **Review**

Sign plans shall be submitted to and approved by the building inspector prior to a permit being issued. A record of such application, plans, and the actions taken thereon shall be kept in the office of the building inspector.

(4) **Fees**

Before being granted a sign permit, each applicant shall pay to the town a fee for each sign permit. The Board of Commissioners shall set the fee. Prior to additional signs being permitted, for a single lot, all existing signs must be brought into compliance (grandfathering will not apply).

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(5) **Standards**

In addition to the detailed regulations set forth in other provisions of this section 6.6, all signs displayed within the jurisdiction of this section 6.6 (including those exempted from the permit process shall comply with the following standards):

**(A)Obstruction to Exits**

No sign shall be erected so as to obstruct any fire escape, required exit, window, or door opening intended as a means of egress.

**(B)Obstruction to Ventilation or Light**

No signs shall be erected that interfere with any opening required for ventilation and/or light to a structure.

**(C)Clearance from Electrical Power Lines, and Communications Lines**

Signs shall maintain all clearance from electrical conductors in accordance with the Town electrical code and shall not interfere with or impede any other utility equipment and/or lines.

**(D)Clearance from Surface and Underground Facilities**

Signs and their supporting structures shall maintain clearance and noninterference with all surface and underground facilities and conduits for water, sewage, gas, electricity, or communications equipment or lines. Furthermore, placement shall not interfere with natural or artificial drainage, or surface or underground water.

**(E)Drainage**

The roofs of canopies, awnings, or similar sign structures exceeding twenty-five (25) square feet shall be drained to prevent dripping or flowing onto public sidewalks or streets; and shall be connected to an approved disposal source by adequate conductors.

**(F)Obstruction to Corner Visibility**

No sign or sign structure shall impair the visibility of intersecting streets and drives. Specifically there shall be no obstruction to vision between a height of three (3) feet and ten (10) feet at the intersection of any connecting streets.

(6) **Exemptions**

The following types of signs are exempt from all regulations of this section 6.6 with the exception of those defined in section 6.6.2(4).

**(A)**Residential signs not exceeding four (4) square feet in area and bearing only property numbers, post box numbers, names of occupants on premises, or other identification of premises not having commercial connotations.

**(B)**Non-advertising flags, and single pennants with not less than eight-foot separation; and, insignia of any legal government displayed in a legal manner.

**(C)**Legal notices, identification, informational, or directional signs erected or required by governmental bodies or public utilities. Such signs may be placed in a street right-of-way;

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provided that the sign is placed in such a manner as to not obstruct driver vision of any vehicle entering a roadway from any street, alley, driveway, or parking lot.

- (D)** Integral decorative or architectural features of buildings, except letter trademarks, moving parts, or moving lights.
- (E)** Signs with a display surface not exceeding four (4) square feet directing and guiding traffic and parking on private property, but bearing no advertising matter.
- (F)** Real estate signs advertising the sale, rental, or lease of the premises on which the signs are located, provided such signs:
  - (i)** "FOR SALE" sign: May not exceed one (1) sign per lot, or two (2) signs if the property for sale is a duplex with each unit offered by separate real estate agencies.
  - (ii)** "FOR LEASE - ANNUAL" or "FOR RENT - ANNUAL" sign: May not exceed one (1) sign per lot, or two (2) signs if the property for lease or rent is a duplex with each unit offered by separate real estate agencies.
  - (iii)** "VACATION RENTAL" or "VACATION LEASE" sign: May not exceed one (1) sign per lot, or two (2) signs if the property for rent is a duplex. Such sign must be placed on the principal building it advertises.
  - (iv)** Are not located on the beach side of any oceanfront property.
  - (v)** Do not exceed four (4) square feet in area per display surface for property zoned residential or sixteen (16) square feet per display surface for property zoned nonresidential.
  - (vi)** The signs are removed within thirty (30) days after the sale or lease of the premises.
  - (vii)** Open house signs for the sale of real estate are permitted under the following restrictions and conditions:
    - (a)** Open houses may be conducted at any time; however, the use of off-premise directional signs shall be limited to one (1) open house per premise per week and no such signs are permitted unless the owner or real estate agent is present on site during the open house.
    - (b)** A maximum of four (4) signs may be erected, one (1) on the property at which the open house is being conducted and the remaining three (3) may be placed at appropriate intersections to provide direction to the premises on which the open house is being conducted.
    - (c)** Do not exceed four (4) square feet in area and must be of similar construction as a typical real estate sign. No banners are permitted
    - (d)** Signs may be installed no more than one (1) hour before the commencement of the open house and must be removed within one (1) hour following the end of the open house, with a maximum duration of six (6) hours.
    - (e)** No balloons, streamers, banners or other wind activated devices may be attached to the signs.

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- (f) Signs may not be located on the beach side of any oceanfront property.
- (viii) Auction signs for the sale of real estate and/or the contents of real property are permitted under the following restrictions and conditions:
- (a) A maximum of four (4) signs may be erected, one (1) on the property at which the auction is being conducted and the remaining three (3) may be placed at appropriate intersections to provide direction to the premises on which the auction is being conducted.
  - (b) Do not exceed four (4) square feet in area and must be of similar construction as a typical real estate sign. No banners are permitted.
  - (c) Signs located on the premises in which the auction will be conducted may be installed no more than one (1) week prior to the day of the auction. All directional signs for the auction may be installed no more than one (1) hour before the commencement of the auction. All signs must be removed within one (1) hour following the end of the auction.
  - (d) No balloons, streamers, banners or other wind activated devices may be attached to the signs.
  - (e) Signs may not be located on the beach side of any oceanfront property.
- (G) Construction site identification signs whose message is limited to identification of architects, engineers, contractors, and other individuals or firms involved with the construction, the name of the building, the intended purpose of the building, and the expected completion date. Such signs shall not exceed one (1) sign per provider and shall be:
- (i) Eight (8) square feet in area per display surface for single-family or duplex construction;
  - (ii) Thirty-two (32) square feet in area per display surface for multifamily or nonresidential construction,
  - (iii) In any case, not erected prior to issuance of a building permit, and are removed within ten (10) days of issuance of a certificate of occupancy.
- (H) Temporary political signs advertising candidates or issues subject to the following conditions:
1. Signs may be placed within the NC 58 right-of-way and within the right-of-way of all Town streets, but permission of the adjacent private property owner is required.
  2. Signs must be placed at least three (3) feet from the edge of the street pavement, and shall not be more than forty-two (42) inches higher than the asphalt roadway surface.
  3. Signs shall not be displayed earlier than thirty (30) days prior to the start of "one-stop" voting and shall be removed no more than ten (10) days after the election.
  4. Signs shall not obstruct a driver's sight distance at an intersection or create an unsafe condition for motorists, pedestrians, or bicyclists.
  5. Signs shall not be larger than six (6) square feet.
  6. Signs shall not obscure or replace other signs.

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7.No banners are permitted.

8.No campaign signs are permitted on or in front of Town-owned property, with the exception of Election Day and only in accordance with the guidelines established by the Town.

9.There is no limit on the number of campaign signs, provided that all other regulations are followed.

(I)Gasoline islands and pumps to display only company name and price of product being pumped.

(J)Temporary sign or banner as defined in Chapter 10.

(K)On-site temporary signs:

(i)One (1) menu-board/specials board (e.g. chalkboard) may be utilized per business site and shall be considered as a portion of the allowed temporary signs. These signs shall not exceed seven (7) square feet and must be affixed to the exterior wall of the business.

(ii)One (1) A-frame sign may be utilized per business site and shall be considered as a portion of the allowed temporary signs. These signs shall be brought in at the close of business daily, and when in use outside of the business they shall be placed not more than five (5) feet from the entrance and shall not exceed four (4) feet in height and thirty (30) inches in width.

(iii)Movie theaters are limited to fifteen (15) square feet per board for each screening room.

(L)Permanent subdivision signs, or other structures constructed so as not to interfere with the free flow of traffic, may be located within the Town right-of-way, as approved by the Board of Commissioners.

(Ord. of 7-14-09, § 1; Ord. of 1-14-14, § 1 )

### 6.6.3 Prohibited Signs

The following signs are prohibited in the Town:

- (1) Signs that imitate, or in any way approximate, official highway signs, or that are erected in a way that obscures a sign displayed by a public authority.
- (2) Signs that display flashing, blinking or intermittent lights, or lights of changing intensity. No moving signs or moving parts of signs will be allowed. No sign shall purposefully emit sound, odor, or vapor and every sign must incorporate the latest technology to eliminate the same.
- (3) Except where otherwise allowed by this subsection, all portable signs shall include signs on wheels, affixed to a trailer or vehicle, A-frames or any other devices designed to, or capable of being moved from one (1) location to another. Signs as herein described must be covered, otherwise obscured, or properly situated upon the sign owner's premises, including common areas, in such a way that it may not be seen from any street, road, or other public vehicular

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right-of-way. A portable sign, vehicle, or trailer may not be parked, placed or otherwise located at any other location within the Town's jurisdiction where it may be seen from any street, road, or other public vehicular right-of-way unless the sign is attached to a vehicle or trailer being actively used by its owner for non-advertising purposes that are specifically related to the owner's regular business activities and then only for such period of time as is reasonably necessary to perform such service. This section shall take effect upon adoption.

- (4) Commercial banners, balloons, advertising flags, streamers, spinners, placards, line pennants and other wind activated devices.
- (5) Displays of letters, logos, trademarks, emblems, pictures, etc., on such items as facsimiles of buckets, human or animal figures, tin cans, and other such objects.
- (6) Signs that are erected in a street right-of-way, or placed in a street right-of-way, or placed in such a manner as to obstruct driver vision of any vehicle entering a roadway from any street, alley, driveway, or parking lot.
- (7) Commercial identification or advertising signs on public utility poles, telephone poles, trees, parking meter poles, benches, and refuse containers, except the latter two (2) may display a logotype.
- (8) Street pavement of any kind, other than those placed by the Town or state.
- (9) Signs that contain obscene, suggestive, or offensive words, or words and pictures, which would be inconsistent with a family oriented beach community.
- (10) Any sign located in such a way as to intentionally deny an adjoining property owner visual access to an existing sign.
- (11) Signs that advertise an activity, business, product or service no longer produced or conducted on the premises upon which the sign is located. Where the owner or lessor of the premises is seeking a new tenant, such signs may remain in place for not more than ten (10) days after the business's permanent operations cease.
- (12) No floodlights or signs shall be erected or placed in such a manner as to cause glare that impairs driver vision on a roadway or causes a nuisance to adjacent property.
- (13) Holiday decorations/signs shall be removed within ten (10) days following the recognized holiday.
- (14) The subject matter of all advertising signs shall be limited to advertising businesses or services located in the Town.
- (15) Political signs on state or Town rights-of-way.
- (16) Billboards.

#### **6.6.4 Signs in General**

- (1) All freestanding signs must be at least ten (10) feet from any street and off the right-of-way of Highway 58 (Emerald Drive). The required distance shall be measured from the side of the street or right-of-way to the edge of the sign, whether overhanging or supported.

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- (2) Signs shall be placed on the premises of the business being advertised and the sign copy shall be used primarily to identify the on-premises business. Use of the sign copy for the general advertising of products, such as "Coke," "7-Up," etc., shall not be permitted in residential zones.
  - (3) The area of a sign shall be measured according to the following rules, as applicable:
    - (A) In the case of freestanding, and projecting signs, area consists of the entire surface area on which copy could be placed. The supporting structure or bracing of a sign shall not be counted as part of the sign area, unless such structure or bracing is made part of the sign's message. Where a sign has two (2) display faces back-to-back, the area of only one (1) face shall be considered as the sign area. When a sign has more than one (1) display face, all areas, which can be viewed simultaneously, shall be considered the sign area.
    - (B) In the case of a sign (other than freestanding and projecting), whose message is fabricated assembled/printed together with the background that borders or frames that message, the sign area shall be the total area of the entire background.
    - (C) In the case of a sign (other than a freestanding, projecting, or marquee), whose message is applied to a background that provides no border or frame, sign area shall be the area of the sign where words, letters, figures, emblems, or other elements of the sign message are or could be placed.
  - (4) Strip lighting, including neon, LED, or fluorescent lighting, is prohibited on either the exterior of interior of any commercial building or commercial property, unless:
    - a) It is an informational sign (such as "OPEN") that does not exceed two (2) square feet; or
    - b) The interior strip lighting is located no closer than ten (10) feet to any exterior window or door containing glass so that the strip lighting may not be directly seen or viewed from the exterior of the property.

In addition, strip lighting, including neon, LED, or fluorescent lighting, is prohibited as a part of decorative displays, non-signage, or other building features.

( Ord. of 5-12-15(2), § 1 )

### **6.6.5 Signs Permitted in the R2, RMF and MH Districts**

- (1) Development identification signs containing only the name of a subdivision, multifamily development, or planned development, provided such signs are indirectly illuminated and are limited to one (1) freestanding sign at each principal point of access to the development, sixty-four (64) square feet in area per display surface, and a maximum height of six (6) feet, or two (2) signs per point of access not to exceed thirty-two (32) square feet each and six (6) feet in height to a subdivision.
- (2) Home occupation signs identifying a home occupation, provided such signs are not illuminated and limited to one (1) sign per zoning lot and a maximum display area of four (4) square feet.
- (3) Churches and other places of worship are limited to one (1) freestanding sign, not to exceed fifty (50) square feet in area, and a maximum height of six (6) feet above the nearest street grade. All

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signs freestanding signs must be at least ten (10) feet from any street and off the right-of-way of Highway 58 (Emerald Drive).

( Ord. of 10-11-11, § 1 )

### **6.6.6 Signs in Commercial, Government and Mixed Use Districts**

- (1) One (1) permanent, freestanding advertising sign (on-premises) permitted per lot, provided no such sign shall exceed the height of:
    - (A) Fifteen (15) feet in B, C, G, VE, VW and MV zoning districts from the grade level of the nearest street.
  - (2) In each commercial and mixed use district the sign face for an advertising sign will be limited to:
    - (A) Fifty (50) square feet for one (1) business;
    - (B) Fifty (50) square feet total for any number of remaining businesses, on a gang sign.
  - (3) Business operations fronting on more than one (1) street shall be permitted one (1) freestanding advertising sign each frontage; provided, however, the combined area of all such signs shall not exceed one hundred (100) square feet.
  - (4) Business identification signs may be suspended from, or attached to a canopy, wall, or roof, provided that:
    - (A) The sum total of the signs does not exceed thirty-two (32) square feet and the bottom of each sign may not extend more than two (2) feet above the lowest point of roof soffit. Business operations that physically front on two (2) or more streets may have two (2) identification signs, but only one (1) per frontage; provided, however, the combined area of all such signs shall not exceed forty-eight (48) square feet and no individual sign may exceed thirty-two (32) square feet, or
    - (B) For business operations that have more than one-hundred-fifty (150) linear feet of frontage on a street, a larger business identification sign area may be utilized, subject to the following formula and conditions:
      - (i) The maximum business identification sign area, in square feet, shall be equal to the amount of linear feet of frontage on each street times one-half (0.5).
      - (ii) The bottom of each sign does not extend more than two (2) feet above the lowest point of the roof soffit.
      - (iii) Business operations that physically front on two (2) or more streets may have two (2) business identification signs, but only one (1) per frontage, calculated according to the formula in this subsection as applied to each frontage.
- Or
- (iv) For those business operations that have more than one hundred fifty (150) linear feet of frontage on a street, alternatively, the maximum business identification sign area

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allowed per each street frontage may be divided into two (2) signs so long as the total sign area for the two (2) signs does not exceed the permitted sign area per frontage.

- (5) Those businesses at Emerald Plantation Shopping Center, in which entry is more than thirty (30) feet from the entrance of the roofed canopy, are permitted to install signage on the interior rear portion of the roof structure.
- (6) Temporary "grand opening" and other such similar banners. Such devices may only be placed after the issuance of temporary zoning permit by the Planning Director. The temporary permit may have a maximum duration of twenty-one (21) days. Signs may be no larger than twenty-four (24) square feet and must be placed on the structure housing the business it is advertising in a manner so as to keep a neat and clean appearance.

( Ord. of 5-12-15(2), § 1 ; Ord. of 7-14-15(1) ; Ord. of 7-12-16(1) , § 2; Ord. of 10-11-16(1) , § 1; Ord. of 5-12-20(1) , § 1)

### **6.6.7 Maintenance; Inspections**

#### **(1) Unsafe Signs**

Should any sign become insecure or in danger of falling or otherwise unsafe in the opinion of the building official, the owner thereof, or the person or firm maintaining the same, shall, upon written notice from the building official, forthwith, in the case of immediate danger, and in any case, within ten (10) days, secure the same in a manner to be approved by the building official, in conformity with the provisions of these sign regulations or remove such sign. If such order is not complied with within ten (10) days, the building official shall remove such sign at the expense of the owner or lessee, thereof.

#### **(2) Maintenance**

All signs, together with all their supports, braces, guides, and anchors shall be kept in good repair.

### **6.6.8 Design Standards**

All signs shall be constructed and designed according to generally accepted engineering practices, to withstand wind pressures and load distribution, as specified in the NC State Building Code.

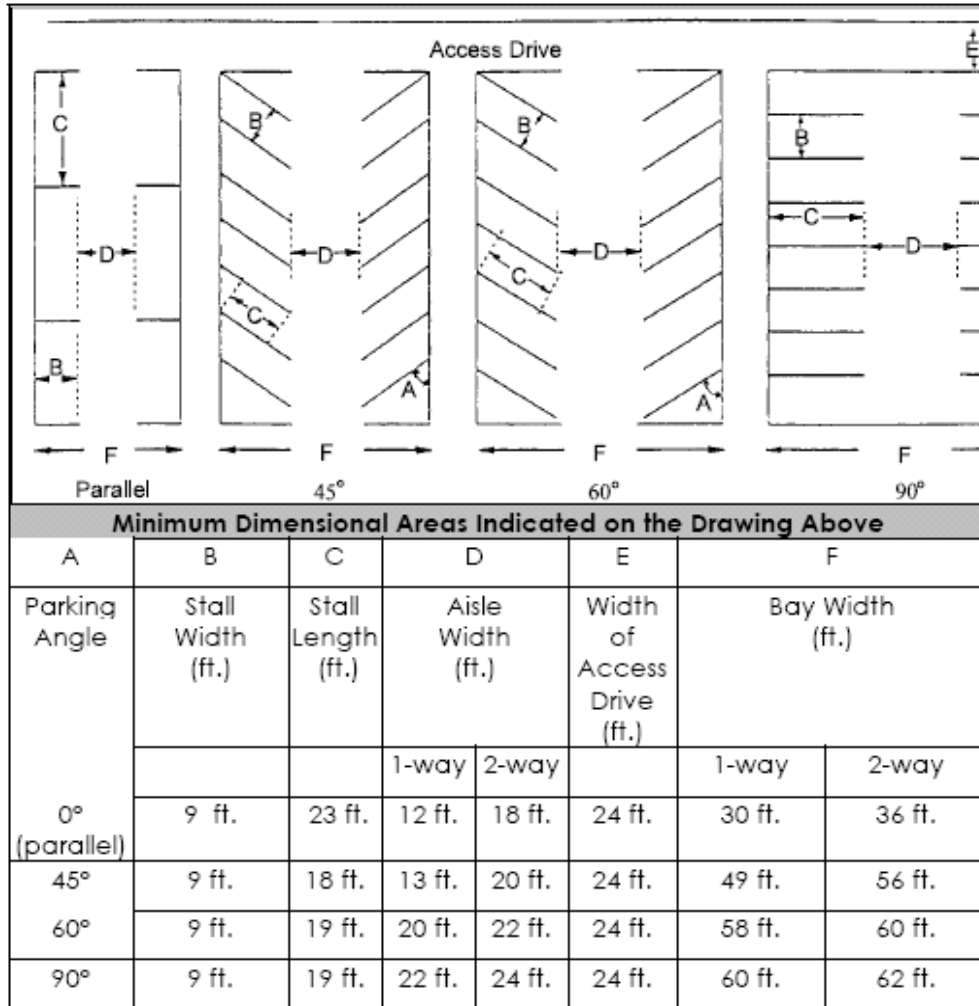
## **6.7 OFF-STREET PARKING AND LOADING REQUIREMENTS**

### **6.7.1 Detailed Specifications**

#### **(1) Generally**

All off-street parking spaces shall comply with the dimension shown in Table 6.7.1 below.

**Table 6.7.1: Minimum Parking Space Dimensions**



**(2) Submission of Plans**

Before the construction of any building in any of the various zones, in addition to the building plan to be submitted to the building official for approval, there shall also be submitted a detailed plan of the off-street parking arrangements to be utilized for such structure, including the number of spaces, size, and type of construction of the off-street parking area. Submission of a satisfactory parking plan shall be a condition precedent to the issuance of any building permit.

**(3) Remote Parking Space**

If the off-street parking space required by this section cannot be reasonably provided on the same lot on which the principal use is located, such space may be provided on any land within four hundred (400) feet of the main entrance to such principal use, upon review by the Planning Board and approval by the Board of Commissioners. In the Village East, Village West and Marina Village Zoning Districts, if the off street parking space required by this section cannot be reasonably provided on the same lot on which the principal use is located, such spaces may be provided by on-street parking spaces and/or facilities located within two hundred (200) feet of the principal use upon review of the Planning Board and approval by the Board of

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Commissioners, based upon a determination by the board of commissioners upon review of the application showing the location, design, cost, method of construction and payment, and other details, that such placement is in the public interest and/or will assist in economic development or provide access to nearby public facilities or attractions.

(4) **Width of Commercial Driveway**

The width of a commercial driveway shall be no less than twelve (12) feet.

(5) **Reserved**

(6) **Parking for Non-Residential Uses**

Parking areas required by commercial and institutional uses are permitted only in districts that allow commercial and institutional activities.

(7) **Materials for Commercial Parking Lots**

No commercial parking lot shall be made of materials other than asphalt, concrete, permeable construction blocks, or structural wood or a wood substitute.

The use of wood or a wood substitute shall be limited to the required standing space for vehicles and may not be used for travel lanes or accessways. Any person desiring to use structural wood or a wood substitute construction shall submit scale drawings and specifications designed and sealed by a North Carolina licensed engineer depicting the parking areas, materials to be used and construction design. Only pressure treated wood or a wood substitute may be used and the parking area shall be at-grade. The design load for the wood or wood substitute parking area shall be based on intended use and shall conform to the requirements of the North Carolina Building Code. All wood and wood substitute parking surfaces shall be kept free of debris and sand in order to insure that they continue to function effectively as a pervious surface.

No types of temporary materials, such as landing mats shall be used for the construction of commercial or residential parking facilities. Seasonal parking facilities (six months or less per year) and vehicular, marine, and trailer storage facilities shall be exempt from the above material requirements. A maintenance plan will be required as part of the site review process.

(8) **Off-street Parking for Special Uses**

Off-street parking for special uses shall meet the requirements of this section unless specific requirements for off-street parking for a designated special use is set forth in section 4.2, in which event the special use shall meet the off-street parking requirements in section 4.2 .

(9) **Access**

All required off-street parking facilities shall have adequate ingress and egress from the public right-of-way.

(10) **Handicap Parking Spaces**

The number, size, dimension and location for all required handicap parking spaces shall be determined by the applicable sections of the North Carolina Accessibility Code.

(Ord. of 1-13-09, § 1; Ord. of 3-13-18(1) , § 2; Ord. of 2-12-19(1) , § 1)

## 6.7.2 Measurement of Requirements

The required number of off-street parking spaces specified for each use shall be considered as the absolute minimum. Accessory buildings shall be included with principle buildings in measurement of gross floor area for determining parking requirements. Gross floor area shall be measured from the outside walls of all structures. Where computation of the required parking based upon gross floor area results in a fraction of a space being required, the next whole number shall be used. In addition, the developer shall evaluate ~~his~~ their own needs to determine if parking needs are greater than the required minimum specified by this Ordinance.

## 6.7.3 Specific Use Standards

Each development shall provide at least the minimum number of parking spaces shown in Table 6.7.3 below. Planned Unit Developments shall be required to provide the amount of off-street parking stated in the PUD approval.

**TABLE 6.7.3: REQUIRED PARKING SPACES**

Use	Number of Required Spaces
<b>RESIDENTIAL AND RELATED USES</b>	
<ul style="list-style-type: none"> <li>• Dwelling, single-family;</li> <li>• Dwelling, single-family, to be used exclusively as manager's quarters</li> <li>• Dwelling, two-family;</li> <li>• Dwelling, multifamily;</li> <li>• Dwellings, townhouses and condominiums;</li> <li>• Group housing projects</li> <li>• Mobile homes, on individual lots or in subdivisions;</li> <li>• Mobile home park</li> </ul>	2 space per individual living unit
<ul style="list-style-type: none"> <li>• Hotels and inns;</li> <li>• Motels and motor courts</li> </ul>	1 space for each rental room, plus 1 additional space for every 3 employees on largest shift
<b>PUBLIC AND INSTITUTIONAL</b>	
<ul style="list-style-type: none"> <li>• Assembly halls, coliseums, gymnasiums and similar structures</li> <li>• Churches</li> <li>• Funeral Homes</li> <li>• Theaters (Auditorium)</li> </ul>	1 space for each 4 seats in the assembly room, chapel, or main parlor
Bus passenger stations	5 spaces per each bus parking stall
Convalescent or nursing home (Nursing home)	1 space for each 3 beds
Country clubs, golf clubs; exclusive use of the property owners of the platted subdivision and their invited guests, nonprofit (Clubs and lodges)	1 space for every 4 seats
Government uses, not listed separately	1 space per employee, plus 5 spaces for customer service functions
Grounds and facilities for open air games and sports, community sports, community centers, and other similar properties, nonprofit	5 spaces, plus 1 space for each 500 sq. ft. principal use ground area.

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(Supp. No. 49)

Use	Number of Required Spaces
Health clinic (Clinic)	10 spaces minimum; or 5 spaces for each practitioner assigned, plus 1 parking space for each employee.
Hospital	1 space for each 4 patient beds, plus 1 space per each 2 employees
Libraries, museums, and art galleries	1 space for each 1,000 sq. ft. of gross floor area.
Offices, licensed health care professionals (Doctor/dentist office)	3 spaces for each doctor; plus 1 space per additional employee.
Police and fire stations	5 spaces plus 1 space per employee on largest shift
Post office	1 space for each 200 sq. ft. of gross floor space plus 1 space for each employee
Wastewater treatment facilities and package plants	1 space per employee
Yacht basins, nonprofit	1 and ½ spaces for each boat slip or rental unit plus 1 space for each employee on largest shift
<b>RETAIL AND OFFICE USES</b>	
• Agencies and offices rendering specialized services in the professions, finance, real estate and brokerage	1 space for each 300 sq. ft. of gross floor space For banks, add 1 space for each 2 employees
• Banks, finance and loan (General offices, real estate)	
• Bars and lounges, indoor	If no drive-in service: 1 space for each 4 customer seats plus one space for each 3 employees If drive-in service: 1 space for each 50 sq. ft. of gross floor area
• Bars and lounges, partly or totally outdoors	
• Restaurants (Restaurant, café, public eating spaces, lounges, bars), (Drive-in restaurant)	1 space for each 200 sq. ft. of principal use gross floor area, plus 1 space for each 3 employees
• Amusement enterprises, indoor, similar to billiards, pool, bowling, shooting gallery, roller rink, dance hall	
• Arcade and/or amusement machine facilities	
• Musical, dance, dramatic and other artistic programs or events, indoor only (Indoor entertainment facilities including dance halls, skating rinks, amusement arcades and similar facilities)	
• Athletic clubs and facilities	2 spaces per court, plus 1 space per 300 sq. ft. of exercise room gross floor area, plus 1 space per employee
• Racquetball or tennis clubs and facilities	
Furniture, retail sales	1 space for each 1,000 sq. ft. of gross floor area
Miniature Golf Courses	One parking space per hole, plus four spaces for each 18 holes and one for each two employees.
• Mobile home sales	5 spaces, plus 1 space for each 500 sq. ft. principal use ground area
• Musical, dance, dramatic, and other artistic programs or events, outdoor (Roadside stands, plant nurseries, outdoor concessions, sightseeing rides, automobile sales lots and similar activities involving outdoor display of merchandise or services) and (Outdoor activities or amusements, where operated as a commercial activity)	
• Campgrounds and travel trailer parks	1 space for each campsite or trailer/vehicle space
• Recreational vehicle park (Campgrounds and camp sites)	
• Alcohol beverage commission stores and sales operated by governmental units	1 space for each 300 sq. ft. of gross retail area, plus 1 space for each employee
• Alcohol beverage packaged retail sales	
• Antiques, art supply, and gift retail sales	

Use	Number of Required Spaces
• Book and stationery stores	
• Clothing sales	
• Convenience store	
• Feed, seed and fertilizer retail sales	
• Food stores; grocery	
• Pet shops, bird stores, taxidermists	
• Retail sales, indoor, not otherwise listed	
• Retail uses not otherwise listed	
<b>PERSONAL AND COMMERCIAL SERVICES</b>	
• Automobile repair garages	4 per 1,000 sq. ft. of gross floor area
• Automobile service stations	
Barber, beauty and other similar personal services	2 spaces for each chair, plus 1 space for each employee
Carwash	If full service: 1 space per 1,000 sq. ft. of gross floor area
Contractor or plumbing shop and/or outdoor storage	5 spaces, plus 1 space for each 500 sq. ft. principal use ground area.
Day care center (Day care)	5 spaces, plus 1 space for each employee
Dog grooming operations	2 spaces per 1,000 sq. ft. gross floor area
• Dry cleaning	2 spaces per 1,000 sq. ft. gross floor area
• Laundries and laundrette service	
• Lock and gunsmiths	
• Printing, publishing, and reproduction establishments	
Dry cleaning drop off/pick up site	1 space per employee
Fishing piers, commercial and public	One space for each 10 feet of length plus one space for each 200 sq. ft. of gross floor area. Restaurant, bars and lounges shall require additional parking spaces as per each use located on site.
Marina and other watercraft-related facilities (Marinas and boat rentals)	1 space for each 2 wet boat slips, 1 space for each 3 dry slips, 1 space for each employee, plus the required space for other uses on site.
Taxicab, transportation for hire stations	1 space per employee on largest shift
Veterinarians - no outside kennel, no boarding	4 spaces per 1,000 sq. ft. of gross floor area
<b>WHOLESALE, WAREHOUSE, AND INDUSTRIAL USES</b>	
Bakery shop and confectioneries operating both wholesale and retail businesses	1 space for each 300 sq. ft. of gross retail area, plus 1 space for each employee
Building supplies, wholesale and retail	5 spaces and plus 1 space for each 500 sq. ft. principal use ground area.
Florist, greenhouses, cultivations, facilities and warehousing for wholesale and retail trade	5 spaces and plus 1 space for each 500 sq. ft. principal use ground area.
• Storage facilities for rent (Wholesale and warehouses)	1 space per employee on largest shift, but not less than 5 spaces
Ice manufacture, storage and sales (Industrial uses)	2 spaces for each 3 employees on the largest shift, but not less than 5 spaces
<b>ACCESSORY USES</b>	
Bed and breakfast lodging	1 space for each owner's vehicle plus 1 space for each guest room plus 1 space for every 3 employees on the largest shift.
• Grills, when used as an accessory to fishing piers	1 space for each 6 customer seats plus 1 space per each 3 employees on largest shift.
• Restaurants when accessory to a motel, hotel, camping area or fishing pier	

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### 6.7.4 Off-street Loading

One (1) or more loading berths or other shall be provided for standing, loading and unloading operations either inside or outside a building and on the same or adjoining premises in accordance with the following table. A loading berth shall have minimum plan dimensions of twelve (12) feet by sixty (60) feet and a 14-foot overhead clearance. A loading space need not be necessarily a full berth but shall be sufficient to allow normal loading and unloading operations of a kind and magnitude appropriate to the property served thereby. The Planning Director shall determine the sufficiency of loading space but in no case shall the use of such space hinder the free movement of vehicles and pedestrians over a street, sidewalk, or alley.

**TABLE 6.7.4: REQUIRED OFF-STREET LOADING**

USE	SPACES REQUIRED
Retail uses with over 20,000 sq. ft. gross floor area	1 space per 20,000 sq. ft gross floor area
Restaurants with over 20,000 sq. ft. gross floor area	

## Chapter 7: SUBDIVISION STANDARDS

### 7.1 GENERAL

#### 7.1.1 Purpose

The procedures and standards for the development, subdivision, surveying, and platting of real estate, as prescribed in this Chapter 7, are hereby found by the Board of Commissioners to be necessary and appropriate in order:

- (1) To assure that land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health, or peril from fire, flood, erosion, or other menace.
- (2) To assure that proper provisions shall be made for drainage, water supply, sewerage, and other needed improvements, and that all proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties.
- (3) To provide for dedication of streets and rights-of-way or easements for vehicular, pedestrian and utility purposes, or to require properly constructed private streets, assuring that provisions are made for the distribution of population and traffic that shall avoid congestion and overcrowding and that shall create conditions essential to public health, safety, and welfare.
- (4) To provide for economical and sufficient streets composing a convenient system conforming to the Town's official street map, if such exists, and shall be of such width, grade, alignment, and location as to accommodate the prospective traffic, to facilitate fire protection, and to provide access of firefighting equipment to buildings, and to conform with existing or planned streets and with other public facilities.
- (5) To save unnecessary expenditure of public funds by studying space and recommending from time to time the purchase of such space for public lands and buildings and by initial proper construction of streets and utilities.
- (6) To provide proper land records for the convenience of the public and for better identification and permanent location of real estate boundaries.

#### 7.1.2 Applicability

(1) **Conformity with Regulations Required**

After the effective date of this Chapter 7, or the regulations from which they derive, no real property within the Town, shall be subdivided and any portion of the property offered for sale, sold, or transferred except in conformance with all applicable provisions of this Chapter 7. Compliance with this Chapter 7 includes but is not limited to compliance with all regulations in this Ordinance applicable in the district in which the land is located.

(2) **Suitability of Land**

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Land subject to flooding, poor drainage, erosion or that is for topographical or other reasons unsuitable for residential use as determined by the Planning Board or Board of Commissioners, shall not be platted for residential use nor for any other uses that will continue or increase the danger to health, safety or property unless the conditions can be corrected.

(3) **Building Permits**

Building permits shall not be issued for structures located in a subdivision unless the final plat is recorded in the office of the county Register of Deeds.

### 7.1.3 Exemptions

The following shall not be included within the definition of a subdivision nor be subject to the subdivision regulations; provided, however, that any document or plat to be recorded pursuant to such exclusions shall have the notation of "no approval required" and the signature of the Planning Director, before filing with the office of the register of deeds:

- (1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this Ordinance;
- (2) The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets; and
- (4) The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standard of this Ordinance.

## 7.2 STANDARDS

### 7.2.1 Relationship of Buildings to Lot

Every building erected after the effective date of the ordinance from which this section derives, shall be located on a lot of record. There shall be no more than one (1) principal residential building and its accessory buildings on one (1) lot except as specifically permitted in this Ordinance.

### 7.2.2 Street Access

No building shall be erected on a lot that does not abut a street except in the following circumstances:

(1) **Planned Unit Development**

The lot is part of a planned unit development or a condominium (residential or commercial), where an owners' association is responsible for maintaining a private access road and insuring adequate access for ingress, egress, and regress to and from the lot and a street.

(2) **Common Parking Area**

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The lot adjoins a common parking area connected to a street, the common parking area used in connection with other lots, commercial uses, or businesses, such common parking area already existing or approved by the Board of Commissioners.

### **7.2.3 Reduction of Lot Size Prohibited**

No lot shall be reduced so that yards, width or area below the minimum required under this Ordinance shall result.

### **7.2.4 Vacant Lot Below Minimum Size**

Vacant adjoining lots that are too small to meet the yard, width, and area requirement of the district in which they are located and are in single ownership shall be considered as a single lot or several lots subject to the requirements of this Ordinance.

## **7.3 EXPEDITED REVIEW**

This is a procedure for the recordation of a plat for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

- (1) The tract or parcel to be divided is not exempted under subdivision G.S. 160D-802(a)(2).
- (2) No part of the tract or parcel to be divided has been divided under this subsection in the ten (10) years prior to division.
- (3) The entire area of the tract or parcel to be divided is greater than five (5) acres.
- (4) After division, no more than three (3) lots result from the division.
- (5) After division, all resultant lots comply with all of the following:
  - a. All lot dimension size requirements of the applicable land-use regulations, if any.
  - b. The use of the lots is in conformity with the applicable zoning requirements, if any.
  - c. A permanent means of ingress and egress is recorded for each lot. (160D-802)

(Ord. of 3-9-21(1), § 3)

## Chapter 8: NONCONFORMITIES

### 8.1 NONCONFORMING USES

#### 8.1.1 Existing Nonconforming Uses

The lawful use of land and/or buildings existing at the time of adoption of the various regulations from which this Ordinance derives, although such use does not conform to the provisions of this Ordinance, shall not be affected by this Ordinance; provided, however, that no such nonconforming use shall be enlarged or increased, nor shall any nonconforming use be extended to occupy a greater area of land than that occupied by such use at the time of the passage of the various regulations from which this Ordinance derives. If such nonconforming use is discontinued for a continuous period of more than one hundred eighty (180) days, any future use of the land and/or building shall be in conformity with the provisions of this Ordinance.

#### 8.1.2 Changing Nonconforming Uses

A nonconforming use shall not be changed to any use other than either a permitted use or special use for the district in which the nonconforming use is located. Provided, before the nonconforming use can be changed to a special use, it must have met the conditions and requirements of the special use as contained in this Ordinance, and the nonconforming use must have been issued a special use permit by the Board of Commissioners.

#### 8.1.3 Restoring Nonconforming Uses

- (1) The lawful use of "land and/or buildings" existing at the time of adoption of this Development Ordinance, although such use does not conform to the provisions of this Development Ordinance, shall not be affected by this Development Ordinance; however, no such nonconforming use shall be enlarged or increased, nor shall any nonconforming use be extended to occupy a greater area of land than that occupied by such use at the time of the passage of this Development Ordinance.
- (2) A nonconforming use shall not be changed to any use other than either a permitted use or a special use for the zoning district in which the nonconforming use is located. Provided, before the nonconforming use can be changed to a special use, it must be granted a special use permit by the board of Commissioners.
- (3) In cases not covered by subsection (1) above, no provision in this Development Ordinance shall prevent the restoration of a nonconforming building destroyed to the extent of not more than fifty (50) percent of its physical structure by fire, explosion, other casualty or act of God, or the public enemy, if the restoration of such building is commenced within one hundred eighty (180) days of

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the date such damage and completed within the period of validity of the building permit issued therefore.

## **8.2 NONCONFORMING SIGNS**

### **8.2.1 Intent**

Signs in existence prior to the adoption of the regulations from which this Development Ordinance is derived and that do not conform to the provisions of this Development Ordinance are declared nonconforming signs. The policy of the Town is that the eventual elimination of nonconforming signs is just as important to the health, safety, welfare, and appearance of the Town as is the prohibition of new signs that would violate this Development Ordinance.

### **8.2.2 General Provisions**

Nonconforming signs may be continued, provided that they:

- (1) Were erected prior to adoption of the various sign regulations from which this Ordinance derives, and with which they are in violation.
- (2) Are not changed or replaced with another nonconforming sign, nor modified in any way except as noted in section 6.6.7.
- (3) Shall not be expanded or relocated.
- (4) Shall not be re-established after damage or destruction in excess of fifty (50) percent of the sign square footage at the time of the damage or destruction.
- (5) Shall not be modified in any way that increases their degree of nonconformity.
- (6) Shall be removed within ten (10) days of the close of the business that they advertise.

### **8.2.3 Special Provisions for Off-Premises Signs**

Off-premises signs are not permitted as per the Unified Development Ordinance. However, nonconforming sign locations with off-premises signs in place as of January 1, 2006 may be removed and replaced or improved, provided the following:

- (1) The number of off-premises signs at the location shall not increase.
- (2) Each nonconforming sign shall have a maximum size of fifty (50) square feet or the original square footage of the sign in place as of January 1, 2006. The more stringent of the two shall apply.
- (3) Each nonconforming sign shall not exceed fifteen (15) feet in height or the original height of the sign in place as of January 1, 2006. The more stringent of the two shall apply.
- (4) The number of sign facings for each nonconforming sign shall not increase.

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- (5) Each nonconforming sign shall remain or be replaced in the same location as it existed prior to its repair or reconstruction.

(Ord. of 7-12-16(1) , § 1)

### **8.3 NONCONFORMING LOTS**

A nonconforming vacant lot is a lot that does not conform to the dimensional requirements and district regulations for the district in which it is located, either at the effective date of any regulation from which this Ordinance derives or as a result of one (1) or more subsequent amendments to those regulations or this Ordinance. A nonconforming vacant lot may be used for one (1) single-family residence if permitted by the zoning district in which the lot is located provided the minimum front, side and rear yard setbacks can be met.

### **8.4 NONCONFORMING STRUCTURES**

Nonconforming structures may be improved or expanded, provided that any addition to, improvement to or expansion of the nonconforming building must comply with the minimum front, side and rear yard setbacks as well as other dimensional requirements for the district in which it is located, and the addition to, improvement or expansion may not increase the nonconformity of the structure. When a nonconforming structure is damaged by fire, flood, wind, act of God, or condemnation proceedings, the structure may only be repaired and restored to its original dimensions and conditions provided less than fifty (50) percent of the structural fair market value has been damaged.

## **Chapter 9: ENFORCEMENT**

### **9.1 VIOLATIONS**

Any of the following shall be a violation of this Unified Development Ordinance and shall be subject to the enforcement remedies and penalties provided by this Chapter 9 and North Carolina State Law.

#### **9.1.1 Development Without a Permit**

To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereto subject to the jurisdiction of this Ordinance without all the required permits, certificate, or other forms of authorization as set forth in this Development Ordinance.

#### **9.1.2 Development Inconsistent with a Permit**

To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereto inconsistent with any approved plan, permit, certificate, or other forms of authorization as set forth in this Ordinance.

#### **9.1.3 Violation of Conditions Imposed**

To violate by act or omission any term, variance, modification, condition, or qualification placed by the Board of Commissioners, the Planning Director, or the building official, in accordance with this Development Ordinance, upon any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereto.

#### **9.1.4 Use in Violation**

To use any building, structure, or land in violation or contravention of this Development Ordinance or any other regulation made under the authority of this Development Ordinance.

#### **9.1.5 Subdivide in Violation**

To subdivide land in violation or to transfer land, sell land by reference to, exhibition of, or any other use of a plat or map showing a subdivision of land before the plat or map has been properly approved under this Ordinance and recorded in the Office of the Carteret County Register of Deeds. The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring land does not exempt the transaction from violation of this Ordinance.

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### **9.1.6 Violation of Mobile Home Park/Recreational Vehicle Park Standards**

Violations of any provisions of this Development Ordinance regarding the creation, construction, operation, or maintenance of a mobile home park or recreational vehicle park (including violations of conditions and safeguards established in connection with grants of variances) shall constitute a misdemeanor. Any person who violates the mobile home park or recreational vehicle park regulations in this Development Ordinance or fails to comply with any of their requirements shall, upon conviction thereof, be punished in accordance with section 1-6 of the Town Code and section 9.4 of this Development Ordinance.

### **9.1.7 Violations of Sign Regulations**

Any person violating any of the sign regulations in section 6.6 shall be subject to enforcement, penalties, and remedies pursuant to sections 9.4 and 9.5.4 of this Development Ordinance.

### **9.1.8 Continued Violations**

To continue any of the above violations is a separate and distinctive offense.

### **9.1.9 Recurring Violations**

A violation that has been corrected but recurs within three hundred sixty-five (365) days is a continued violation subject to any one (1) or combination of the penalties for violation pursuant to sections 9.3, 9.4, or 9.5 or otherwise available at law.

### **9.1.10 Oversight of Violations**

No oversight or dereliction of duty on the part of any official shall be deemed to legalize the violation of any provision of this chapter or any provision of any regulatory code herein adopted.

## **9.2 RESPONSIBLE PERSONS**

The owner of each property located within the Town is responsible for ensuring that development, redevelopment, use of the land and improvements to land on that property occur and are maintained in compliance with this Ordinance. In addition, each tenant of property located within the Town is responsible for ensuring that the use of the land and improvements to land on that property occur and are maintained in compliance with this Ordinance.

## **9.3 ENFORCEMENT GENERALLY**

### **9.3.1 Complaints Regarding Violations**

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Any written complaint stating fully the cause and basis of the complaint shall be

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filed with the Planning Director, or designee, who shall properly record such complaint, investigate in a timely manner, and take appropriate action as provided by this Ordinance.

### **9.3.2 Enforcement Procedure Generally**

- (1) A Notice of Violation indicating the nature of the violation, the section of this Ordinance that has been violated, the order giving the necessary action needed to correct the violation, and the time frame for which the violation is to be corrected shall be sent to the person or property owner responsible for the violation. The notice of violation shall be sent via personal delivery, electronic delivery or first class mail. The notice of violation may be posted on the property. The person providing the notice of violation shall certify that the notice was provided and the certificate shall be deemed conclusive in the absence of fraud. The notice of violation shall be delivered to the permittee or landowner, if different the Planning Director may, but is not obligated to, issue an initial Notice of Violation allowing the person or property owner a period of time to correct the violation and providing that a final Notice of Violation will not be issued if the violation is corrected within that time. (160D-404)
- (2) The final Notice of Violation (and the initial Notice of Violation may be the final Notice of Violation) shall state what the course of action is intended if the violation is not corrected within the specified time frame as ordered. The Notice of Violation shall also advise the violator of their rights to appeal the Notice of Violation to the Board of Adjustment within thirty (30) days of the date the Notice of Violation was issued. A civil penalty can not be appealed.
- (3) If the owner, occupant, or person responsible for the violation fails to comply with the Notice of Violation from which no appeal has been taken, or from a final decision by the Board of Adjustment following an appeal, the owner, occupant, or person responsible for the violation shall be subject to any one (1) or combination of the remedies and penalties authorized in sections 9.4 and 9.5.
- (4) If inspecting for a violation, the property must be entered during reasonable hours and upon presenting credentials of identification. There must be consent of the property owner for an inspection or an administrative search warrant to inspect areas not open to the public.
- (5) A revocation of development approval must follow the same process as was used for the original approval. (160D-404)

(Ord. of 3-9-21(1) , § 4)

### **9.3.3 Enforcement of Flood Damage Prevention Regulations**

In the case of any violation or alleged violation of flood damage prevention regulations or floodplain regulations in this Ordinance, or any applicable law, the floodplain administrator shall notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property. If the owner fails within thirty (30) days from the date of notice to commence corrective action, and thereafter to proceed with due diligence to make all necessary corrections, and fails to appeal the matter to the Board of Adjustment, the Town may take

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necessary corrective action pursuant to section 9.5.1 and any other applicable provision of section 9.4 or 9.5 permitted by law.

### **9.3.4 Enforcement of Stormwater Management Regulations**

In the case of any violation or alleged violation of stormwater management regulations, the Town shall give the owner written notice of the nature of the existing defects. If the owner fails within thirty (30) days from the date of notice to commence corrective action, and thereafter to proceed with due diligence to make all necessary corrections, and fails to appeal the matter to the Board of Adjustment, the Town may take necessary corrective action pursuant to section 9.5.2, and any other applicable provision of section 9.4 or 9.5 permitted by law. If the Town takes necessary corrective action, the cost shall become a lien on the real property until paid, or if the property is under common ownership, such as an owners' association, the cost shall be assessed equitably among all property owners in the subdivision, multi-family residential development, and/or commercial structure.

### **9.3.5 Enforcement of Sign Regulations**

Any person violating provisions of section 6.6 shall be notified of the nature of the violation, via certified mail, posted to the mailing address of record at the Town's tax office, and shall be subject to those penalties and remedies described in section 9.5.4 and any other applicable provisions of section 9.4 or 9.5 permitted by law.

## **9.4 GENERAL REMEDIES AND PENALTIES**

Failure to comply with any provision of this Development Ordinance is declared unlawful. The remedies and enforcement powers in this section 9.4 may be used to administer and enforce this Ordinance, provided, that when the provisions of section 9.5 apply they shall supersede any inconsistent provisions in section 9.4.

### **9.4.1 Equitable Remedies Through the Courts**

The Town may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. It is not a defense to the Town's application for equitable relief that there are other remedies provided under general law or this Ordinance.

(1) **Injunction**

Enforcement of the provisions of this Ordinance may also be achieved by injunction. When a violation occurs, the Town may, either before or after the initiation of other authorized action, apply to the appropriate division of the court for a mandatory or prohibitory injunction commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.

(2) **Order of Abatement**

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In addition to an injunction, the Town may apply for and the court may enter into an Order of Abatement as part of the judgment in the case. An Order of Abatement may direct any of the following actions:

- (A) Buildings or other structures on the property be closed, demolished, or removed;
- (B) Fixtures, furniture or other moveable property be moved or removed entirely;
- (C) Improvements alterations, modifications or repairs be made; or
- (D) Any other action be taken that is necessary to bring the property into compliance with this Ordinance.

**(3) Execution of Court Decisions**

If the defendant fails or refuses to comply with an injunction or with an Order of Abatement within the time allowed by the court, the defendant may be cited for contempt. If so authorized to do so by the Court, the Town may execute the order of abatement and will have a lien on the property in the nature of a mechanic's and material man's lien for the cost of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and by posting a bond for compliance with the order. The bond must be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter was heard and shall be conditioned for the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

## **9.4.2 Equitable Remedies Through the Town**

The Town may enforce this Ordinance through the use of any of the equitable remedies in this section 9.4.2, provided, that if the provisions of section 9.5 apply they shall supersede any inconsistent provisions in this section 9.4.2.

**(1) Stop Work Order Issuance and Revocation of All Permits**

**(A) Notices of Violation.** - When staff determines work or activity has been undertaken in violation of a development regulation adopted pursuant to this Chapter or other local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405.

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**(B) Stop Work Orders.** - Whenever any work or activity subject to regulation pursuant to this Chapter or other applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the local government that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

**(C) Remedies.**

- (1)** Subject to the provisions of the development regulation, any development regulation adopted pursuant to authority conferred by this Chapter may be enforced by any remedy provided by G.S. 160A-175. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of this Chapter or of any development regulation or other regulation made under authority of this Chapter, the local government, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.
- (2)** When a development regulation adopted pursuant to authority conferred by this Chapter is to be applied or enforced in any area outside the planning and development regulation jurisdiction of a city, the city and the property owner shall certify that the application or enforcement of the city development regulation is not under coercion or otherwise based on representation by the city that the city's development G.S. 160D-404 approval would be withheld without the application or enforcement of the city development regulation outside the jurisdiction of the city. The certification may be evidenced by a signed statement of the parties on any development approval.
- (3)** In case any building, structure, site, area, or object designated as a historic landmark or located within a historic district designated pursuant to this Chapter is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed, or destroyed, except in compliance with the development regulation or other provisions of this Chapter, the local government, the historic preservation commission, or other party aggrieved by such action may

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institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling, or removal, to restrain, correct, or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area, or object. Such remedies shall be in addition to any others authorized by this Chapter for violation of an ordinance. (160D-405)

(Ord. of 3-9-21(1) , § 4)

### 9.4.3 Criminal Penalties

Pursuant to North Carolina General Statute 14-4, any person, firm, or corporation convicted of violating the provisions of this Ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined an amount not to exceed five hundred dollars (\$500.00). No fine shall exceed fifty dollars (\$50.00) unless the Ordinance expressly states that the fine is greater than fifty dollars (\$50.00).

### 9.4.4 Civil Penalties

In addition to the other remedies cited in this Ordinance for the enforcement of its provisions, and pursuant to North Carolina General Statute 160A-175, the regulations and standards in this Ordinance may be enforced through the issuance of civil penalties by the building official. Subsequent citations for the same violation may be issued by the Town if the offender does not pay the citation after it has been issued unless the offender has sought an appeal to the actions of the Building Inspector or through the Board of Adjustment. The penalties listed in Table 9.4 are hereby established. If the offender fails to pay the civil penalties within seven (7) days after having been cited, the Town may recover the penalties in a civil action in the nature of debt.

**TABLE 9.4: CIVIL PENALTIES**

Notice of Violation	Correct Violation Within 15 Days
First Citation	\$50.00
Second Citation for Same Offense	\$100.00
Third and Subsequent Citations for Same Offense	\$200.00

### 9.4.5 Cumulative Penalties

More than one (1) of the listed remedies and enforcement powers may be used in connection with a specific violation, and use of one (1) listed remedy or enforcement power shall not preclude the Town from concurrently or later using a different remedy or enforcement power.

## 9.5 SPECIAL REMEDIES, AND PENALTIES

### 9.5.1 Flood Damage Prevention Regulations

#### (1) Violations to be Corrected

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When the Floodplain Administrator finds violations of applicable state and local laws, it shall be ~~his or her~~ their duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notifications.

**(2) Actions in Event of Failure to Take Corrective Action**

If the owner of a building or property fails to take prompt corrective action in response to a notification from the floodplain administrator, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

- (A) That the building or property is in violation of the flood damage prevention regulations;
- (B) That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- (C) That following the hearing, the floodplain administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

**(3) Order to Take Corrective Action**

If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the flood damage prevention regulations, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) days. Where the floodplain administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

**(4) Appeal**

Any owner who has received an order to take corrective action may appeal the order to the Board of Adjustment by giving notice of appeal in writing to the floodplain administrator within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

**(5) Failure to Comply with Order**

If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

( Ord. of 6-9-20(5) , § 1)

## **9.5.2 Stormwater Management Regulations**

**(1) Public Health Nuisance**

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Any development activity that is commenced without prior approval of a stormwater management plan or is conducted contrary to an approved stormwater management plan as required by this Ordinance may be deemed a public health nuisance and may be restrained by injunction or otherwise abated in a manner provided by law. (G.S. 160A-175, 160A-193)

**(2) Civil Penalties**

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the stormwater management regulations is subject to a civil penalty. The civil penalty shall be not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00). Such person shall be guilty of a separate offense for each day during which the violation occurs or continues. If the violator does not pay a civil penalty assessed by the Town within thirty (30) days after it is due, the Town may institute a civil action to recover the amount of the penalty assessed in the superior court of Carteret County. An assessed penalty that is not contested is due when the violator is served with a notice of violation. An assessment that is contested is due at the conclusion of the administrative and/or judicial review of the assessment (NCGS 160A-175).

**(3) Abatement and Restoration of Land**

Any violator may be required to restore the land disturbed by the violator to its undisturbed condition. In such cases, the Town shall bring an action for mandatory and/or prohibitory injunction and order of abatement. Should the violator fail to restore the land in accordance with the court's order of abatement, the Town may execute the order of abatement and levy a lien upon the property restored (G.S. 160A-175).

**(4) Notice of Violation**

**(A) Stop Work Order**

When the Stormwater Administrator determines that development activity is not being carried out in accordance with the requirements of this Ordinance, the building official shall issue a stop work order and a written notice of violation to the owner of the property. The notice of violation shall contain:

- (i)** The name and address of the owner or developer;
- (ii)** The street address when available or a description of the building structure, or land upon which the violation is occurring;
- (iii)** A statement specifying the nature of the violation;
- (iv)** A description of the remedial actions necessary to bring the development activity into compliance with this Ordinance and a time schedule for completion of such remedial action;
- (v)** A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (vi)** A statement that the Town's determination of violation may be appealed to the Board of Adjustment by filing a written notice of appeal with the Town's building official within fifteen (15) days of service of notice of violation.

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**(B) Method of Serving Notice**

The notice of violation shall be served upon the person to whom it is directed in any of, or any combination of, the following methods:

**(i)** By personal service upon the violator;

**(ii)** By mailing a copy of the notice of violation by certified mail, postage prepaid, return receipt requested to such person at ~~his/her~~their last known address. Notice shall be deemed to be received if no return is received within ten (10) days of the date of such mailing;

**(iii)** By posting a notice in a visible location upon the property where a violation is or was occurring. Notice of the violation shall be deemed to be received by the violator immediately upon such posting.

**(C) Appeal**

A notice of violation issued pursuant to this section constitutes a determination from which an administrative appeal may be taken to the Board of Adjustment.

**(D) Right to Enforcement**

No action, inaction, or election of remedy shall be construed as a waiver of the Town's right to enforce any part of this Ordinance by any and all remedies provided herein.

### **9.5.3 Dunes and Vegetation Protection Regulations**

Construction or land disturbance without a required dunes and vegetation permit, or failure to comply with the requirements of an approved dunes and vegetation permit shall be considered a violation of this Ordinance and shall be subject to the immediate issuance of a stop work order by the Town and to the other procedures and remedies below as applicable.

**(1) Rebuilding of Damaged Dunes**

Any dune in the required natural area that is damaged during construction, or damage occurring as a result of such construction, or excavated in violation of this Ordinance shall be restored to its original state using similar materials and stabilizing vegetation. It shall be the responsibility of the property owner to guarantee the protection of all identified dune systems and not allow the natural topography of the lot altered beyond that which has been authorized in the permit. The rebuilding of a dune shall be the ultimate responsibility of the property owner. Any dune in the required natural area that has been damaged or excavated in violation of this Ordinance shall be restored within sixty (60) days of notice.

**(2) Replacement of Damaged Trees**

Any trees in the required natural area that have been killed, damaged, destroyed or removed in violation of this Ordinance shall be restored or replaced within sixty (60) days of notice. All replacement trees shall be at least ten (10) feet in height and have a caliper of not less than three (3) inches.

**(3) Conformance with Authorized Permit**

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Prior to the issuance of a certificate of occupancy for the development site, the site shall be inspected for the purpose of certifying compliance with the requirements of the authorized permit. Posting surety in lieu of actual compliance with an authorized permit may be permitted, providing that compliance with the authorized permit shall be obtained within sixty (60) days.

(4) **Daily Violation Charge**

Each day after the 60-day period that the violator fails to perform such restoration or replacement shall constitute a new and separate civil violation.

(5) **Individual Tree Violations**

For purposes of the dunes and vegetation regulations, the removal of each tree and the failure to replace each tree on a given parcel of land shall be viewed as individual violations of these regulations.

(6) **Civil Penalty for Violation**

Each violation of Section 9.5.3 of this Development Ordinance shall incur a civil penalty in the amount of one thousand dollars (\$1,000.00).

### 9.5.4 Violation of Sign Regulations

If, within ten (10) days of the date of the mailing of the notice described in section 9.3.5 the party fails to bring the sign into compliance with this Ordinance, fails to remove the sign or fails to provide to the Town any evidence of the party's good faith effort to do either, then the party shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of one hundred dollars (\$100.00) per day, per violation, retroactive to the date of mailing of the violation notice and any or all of the following:

(1) **Abatement**

In case any sign is erected, constructed, reconstructed, altered, repaired, converted or continued in violation of this Ordinance, the Town, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction or mandamus, or other appropriate action or proceeding to prevent or abate such violations.

(2) **Impoundment of Signs**

(A) The Town shall have the authority to remove and impound any sign, without further notice, where such sign is not in compliance with this Ordinance, and:

(i) After ten (10) days of the mailing of notification of a violation in accordance with section 9.3.5, the owner has failed to remove the sign or bring it into compliance with this Ordinance, or has failed to provide the Town with the evidence of a good faith effort to make such removal or compliance, or

(ii) The sign is placed within any street, state road or highway right-of-way or other right-of-way, or attached to trees, fence posts, telephone and/or utility poles, and other than natural features. (See section 6.6.2(6)(L) of this Development Ordinance.)

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- (B) The Town shall impound such signs for a period of then (10) days. The owner of a sign impounded may recover it upon payment of fifty dollars (\$50.00) for each sign, prior to the expiration of the ten-day impoundment period. In the event a sign is not claimed within ten (10) days of its impoundment, the Town shall have the authority to dispose of such sign.
  - (C) In the event a violating sign requires special resources for its removal and impoundment, the Town, or independent contractor secured by the Town, shall remove the sign and the resulting charges shall be assessed to the owner and/or lessee.

## **Chapter 10: DEFINITIONS AND RULES OF INTERPRETATION**

### **10.1 GENERAL RULES FOR INTERPRETATION**

#### **10.1.1 Meanings and Intent**

All provisions, terms, phrases, and expressions contained in this Development Ordinance shall be construed according to the stated purpose and intent of the Development Ordinance or its various sections.

#### **10.1.2 Headings, Illustrations, and Text**

Headings, illustrations in this Development Ordinance are intended to supplement and explain the meaning of the text, but shall not be used to expand, limit, or alter the meanings of the words in the text. In case of an inconsistency between a heading or illustration and the substantive text of any section, the text of the section shall govern.

#### **10.1.3 Lists and Examples**

Unless otherwise specifically indicated, lists of items or examples that use terms such as "for example," "including," and "such as," or similar language are intended to provide examples; not to be exhaustive lists of all possibilities.

#### **10.1.4 Computation of Time**

Periods of time defined by a number of days shall mean a number of consecutive calendar days, including all weekend days, holidays, and other non-business/working days; however, if the last day is a Saturday, Sunday, or legal holiday, that day shall be excluded.

#### **10.1.5 References to Other Regulations/Publications**

Where this Development Ordinance refers to other regulations or publications, the reference shall be to the most recent version of such regulation or publication, including any amendments that may have been made after the effective date of this Development Ordinance. If the regulation or publication referred to is no longer published or effective, the reference shall be deemed to be any successor or replacement regulation or publication, if there is one, as determined by the Planning Director.

#### **10.1.6 Delegation of Authority**

Whenever a provision appears requiring the head of a department or division, or another officer or employee of the Town to perform an act or duty, that provision shall be construed as authorizing the

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department/division head or officer to delegate the responsibility to subordinates, unless the terms of the provision specify otherwise.

### **10.1.7 Technical and Nontechnical Terms**

Words and phrases not otherwise defined in this Development Ordinance shall be construed according to the common and approved usage of the language, but technical words and phrases not otherwise defined in this Development Ordinance that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

### **10.1.8 Public Officials and Agencies**

All public officials, bodies, and agencies to which references are made are those of the Town of Emerald Isle, unless otherwise indicated.

### **10.1.9 Mandatory and Discretionary Terms**

The word "shall" is always mandatory, and the words "may" or "should" are always permissive.

### **10.1.10 Conjunctions**

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows. "And" indicates that all connected items, conditions, provisions, or events shall apply. "Or" indicates that one (1) or more of the connected items, conditions, provisions, or events shall apply.

### **10.1.11 Tenses, Plurals, and Gender**

Words used in one tense (past, present, or future) include all other tenses, unless the context clearly indicates the contrary. The singular shall include the plural, and the plural shall include the singular. The masculine shall include the feminine, and vice versa.

## **10.2 DEFINITIONS**

Unless specifically defined below, words or phrases used in this Development Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application.

### **ABANDONMENT**

A property, use, or structure that has been physically and objectively discontinued, ceased, relinquished, vacated, or not maintained for a consecutive period of one-hundred eighty (180) or more days and regardless of any condition or circumstance beyond the control of such parties that prevent a continuation of the use or occupancy of the structure or property.

### **ABUTTING**

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See Adjacent.

**ACCESSORY STRUCTURE**

A structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures.

**ACCESSORY USE**

A use customarily incidental and subordinate to the principal use of land or building, and located on the same lot with such principal use.

**ADDITION (TO AN EXISTING BUILDING)**

An extension or increase in the floor area or height of a building or structure.

**ADJACENT, ADJOINING LOT OR LAND**

A lot or parcel of land that shares all or part of a common lot line or boundary with another lot or parcel of land or that is directly across a public street or right-of-way.

**ADMINISTRATIVE DECISION**

Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Chapter or local government development regulations. These are sometimes referred to as ministerial decisions or administrative determinations.

**ADMINISTRATIVE HEARING**

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

**ADULT DAY CARE CENTER**

See "Day care center."

**ADVERSE IMPACT**

Any modification, alteration or effect on a feature or characteristic of community waters or wetlands, including their quality, quantity, hydrodynamics, surface area, species composition, living resources, aesthetics or usefulness for human or natural uses that is or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity, or stability or that unreasonably interferes with the enjoyment of life or property, including outdoor recreation.

**ADVERTISING SIGN (ON-PREMISES)**

Directs attention to a business, profession, commodity, service, or entertainment sold or offered upon the premises where such sign is located, or to which it is attached.

**ALTERNATIVE ANTENNA SUPPORT STRUCTURES (AASS)**

Structures that are functionally and legally capable of supporting wireless communication antennae, including, but not limited to buildings, water towers, and utility poles as an ancillary use of the primary structure.

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**ALLEY**

A public way that affords only secondary means of access to abutting property and not intended for general traffic circulation.

**ALTERATION**

Any change or expansion in the size, configuration, or location of a structure; or any change or expansion in the use of a structure or lot, from a previously approved or legally existing size, configuration, location, or use.

**ALTERATION OF A WATERCOURSE**

Means a dam, impoundment, channel relocation, change in channel alignment, channelization, change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of base flood.

**AMENDMENT**

Any change by the Board of Commissioners to the Unified Development Ordinance such as text amendments or changes to the Official Zoning District Maps.

**AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION (AMTA)**

A Washington, D.C. based industry trade group that serves to support its specialized mobile radio (SMR) operator members through lobbying and networking efforts.

**AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI)**

A private sector federation for voluntary standardization of measurements.

**ANTENNA**

Any apparatus or group of apparatus, designed for the transmitting and/or receiving of electromagnetic waves that includes, but is not limited to: telephonic, radio or television communications. Antennas include omni-directional (whip) antennas, sectorized (panel) antennas, microwave dish antennas, multi or single bay (FM & TV), yaggie, or parabolic (dish) antennas, but do not include satellite earth stations.

**ANTENNA, DISH**

A parabolic, spherical, or elliptical antenna intended to receive wireless communications.

**ANTENNA, FLUSH-MOUNTED**

An antenna that is attached flush to an antenna-supporting structure, without the use of sidearms or other extension devices.

**ANTENNA, PANEL**

A directional antenna designed to transmit and/or receive signals in a directional pattern that is less than three hundred sixty (360) degrees and is not flush-mounted or dish antenna.

**ANTENNA, SURFACE MOUNTED**

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An antenna that is attached flush to the surface or façade of a building or structure other than an antenna-supporting structure.

**ANTENNA, WHIP**

A cylindrical, omni directional antenna designed to transmit and/or receive signals in a 360-degree pattern.

**APARTMENT BUILDING**

A building containing three (3) or more residential dwelling units. Such units may be leased separately or developed as condominiums.

**APPEAL**

Means a request for a review of the Floodplain Administrator's interpretation of any provision of this Ordinance.

**APPROVAL AUTHORITY**

The Board of Commissioners, Board of Adjustment, Planning Board, Planning Director or official designated by this Development Ordinance or by the Town as being authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan.

**ARCHITECTURAL FEATURE**

A prominent or significant part or element of a building, structure, or site.

**ARCHITECTURAL STYLE**

The characteristic form and detail of buildings. Common styles include Colonial, Neo-Classical, Federal, American Victorian, and Arts & Crafts.

**AREA OF SHALLOW FLOODING**

Means a designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

**AREA OF SPECIAL FLOOD HAZARD**

See "Special Flood Hazard Area (SFHA)."

**ATTIC**

The unfinished space between the ceiling joists of the top story and the roof rafters.

**ATTIC STORY**

Any story situated wholly or partly in the roof, so designated, arranged, or built as to be used for storage or habitation. If an attic that is accessible by a fixed stairway has a seven-foot clear height for greater than fifty (50) percent of the width of the floor below, then the space shall be considered as a story when determining building height. For purposes of this Ordinance, an attic story is permitted only in one- and two-family dwellings.

**AWNING**

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A structure made of cloth, metal, or other material affixed to a building in such a manner that the structure may be raised or retracted from a building to a flat position against the building, but not a canopy.

**BANNER**

A sign intended to be hung either with or without a frame, possessing characters, letters, illustrations, or ornamentation's applied to plastic or fabric of any kind excluding flags and emblems of political, professional, religious, educational, or corporate organizations attached to the building.

**BASEMENT**

Any area of the building having its floor subgrade (below ground level) on all sides.

**BASE FLOOD**

The flood having a one (1) percent chance of being equaled or exceeded in any given year.

**BASE FLOOD ELEVATION (BFE)**

A determination as published in the Flood Insurance Study of the water surface elevations of the base flood.

**BED AND BREAKFAST**

A single-family dwelling that consists of a single dwelling unit together with the rental of one (1) or more dwelling rooms on a daily or weekly basis. The dwelling rooms shall not be equipped to allow the preparation of meals, although a single meal may be provided in a common area by the proprietor of the establishment. Bed and breakfast facilities shall be limited to a maximum of twenty (20) dwelling rooms for rent.

**BILLBOARD**

A sign that identifies, advertises, and/or directs the public to a business, merchandise, service, entertainment or product that is located at a place other than the property on which such sign is located (see also "Sign, Off-Premises").

**BLOCK**

A unit of land bounded by streets or by a combination of streets and public land, waterways, or any other barrier to the continuity of development.

**BONA FIDE FARM PURPOSES**

Agricultural activities as set forth in G.S. 160D-903.

**BREAKAWAY WALL**

A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

**BUFFER, VEGETATIVE**

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An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and that provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

## **BUILDING**

Any structure used or intended for supporting or sheltering any use or occupancy.

## **BUILDING, ACCESSORY**

See "Accessory structure."

## **BUILDING LINE**

Lines that are tangent to the exterior surface of buildings or structures, or the surfaces of cantilevered projections from the exterior surfaces, parallel to front, side, and rear lot lines, and referred to as front, side, and rear building lines, respectively.

## **BUILDING PERMIT**

A permit obtained from the Town for the construction, repair, alteration, or addition to structure, which sets the inspection schedule and construction techniques for a particular project and specified use in accordance with this Ordinance and adopted building ordinances and other prevailing standards for construction, and includes the Town's necessary zoning approval.

## **BUILDING SETBACK LINE, FRONT, SIDE OR REAR**

A line establishing the minimum allowable distance between the nearest portion of any exterior building wall or vertical projection thereof, and the right-of-way of the street or property line when measured perpendicularly thereto. ~~The outermost three (3) feet of any uncovered porches, steps, eaves, gutters, elevator shafts and similar fixtures not containing enclosed livable space may extend past the building setback line. All structures other than walkways shall be required to be set back so as to meet the required front, side, and rear setback requirements with regard to the property lines.~~

## **CALIPER**

The size of tree's trunk diameter as measured thirty-six (36) inches above the ground.

## **CAMA**

North Carolina's Coastal Area Management Act. This act, along with the Dredge and Fill Law and the federal Coastal Zone Management Act, is managed through North Carolina Department of Environment and Natural Resources' (NCDENR's) Division of Coastal Management (DCM).

## **CANOPY**

A structure constructed of rigid materials that is attached to a building that serves as an overhang intended to shield persons from the elements.

## **CARPORT**

Means a covered parking area opened on at least two (2) sides.

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**CAMOUFLAGED (TOWERS)**

A tower that is designed to blend into the surrounding environment, such as a tower designed to resemble a tree or, if erected on an existing structure, an integral part of the building.

**CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION (CTIA)**

A family of representative companies that support the cellular, PCS, and enhanced SMR carriers industry through lobbying, research and policy efforts.

**CERTIFICATE OF OCCUPANCY**

A document issued by the Town allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with this Ordinance and all other applicable regulations.

**CHEMICAL STORAGE FACILITY**

Means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

**CITATION**

A notice by a governmental authority indicating a violation or possible violation of this Ordinance or other applicable government regulations applicable to the property.

**CLEARING**

The removal of trees and brush from the land but shall not include the ordinary mowing of grass.

**COASTAL AREA MANAGEMENT ACT (CAMA)**

Means North Carolina's Coastal Area Management Act, this act, along with the Dredge and Fill law and the Federal Coastal Zone Management Act, is managed through North Carolina Department of Environmental Quality (NCDEGQ) Division of Coastal Management (DCM).

**COASTAL A ZONE (CAZ)**

Means an area with a special flood hazard area, landward of a V zone or landward of an open coast without mapped V zones. In a Coastal A Zone, the principal source of flooding must be astronomical tides, storm surges, seiches, or tsunamis not riverine flooding. During the base flood conditions, the potential for wave heights shall be greater than or equal to one and one-half (1.5) feet. Coastal A Zones are not normally designated on FIRMs. (See Limit of Moderate Wave Action (LiMWA))

**COASTAL BARRIER RESOURCES SYSTEM (CBRS)**

Consists of undeveloped portions of coastal and adjoining areas established by the Coastal Barrier Resources Act (CoBRA) of 1982, the Coastal Barrier Improvement Act (CBIA) of 1990, and subsequent revisions, and includes areas owned by Federal or State governments or private conservation organizations identified as Otherwise Protected Areas (OPA).

**COASTAL HIGH HAZARD AREA**

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A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM, or other adopted flood map as determined in section 6.2.3(2), as Zone VE 1 through VE 18.

**CO-LOCATION**

The siting of two (2) or more wireless telecommunication antennae on the same wireless telecommunication support structure.

**COMMERCIAL USE**

Any use permitted by this Ordinance in one (1) or more of the B, VE, VW, MV, VE-C, VW-C or MV-C zoning district, or as otherwise permitted by this Ordinance. Unless otherwise indicated, the meaning and use of the term "commercial" or "business" are similar and the terms are interchangeable.

**COMPREHENSIVE PLAN**

The comprehensive plan, land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, and any other plans regarding land use and development that have been officially adopted by the governing board.

**CONDITIONAL ZONING**

A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendments.

**CONDOMINIUM**

Ownership of single units in a multiunit structure with common areas and facilities in accordance with G.S. ch. 47A.

**CONDOMINIUM DEVELOPMENT**

A project consisting of three (3) or more condominium units in one (1) or more multiunit buildings designed, developed, and constructed for unit ownership in accordance with G.S. ch. 47A.

**CONDOMINIUM HOTEL OR CONDOTEL**

See definition of motel/hotel.

**CONGREGATE HOUSING**

Dependent or independent living facilities for the elderly; dormitories, orphanages, and similar uses, but not including group homes.

**CONTIGUOUS**

Abutting directly or immediately adjacent to a boundary or separated only by a street, railroad or public utility right-of-way.

**CONVENIENCE STORE**

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A use where certain retail goods and vehicular fuels are sold at the retail level. Such a use may permit car washes as an accessory use, but shall not allow the installation of such automotive items as lubricants, tires, batteries, or minor automobile repair and maintenance work.

### **CUL-DE-SAC**

A street designed with a closed end and does not intersect with another street that is terminated by a vehicular turnaround.

### **DAY CARE CENTER**

A place where daytime care, supervision, and protection is provided to three (3) or more children or adults who are not the legal wards or foster children of the attendant adult within an occupied residence. This use includes all of the following:

*Child day care center:* An individual, agency, or organization providing supervision or care on a regular basis for children who are not related by blood or marriage to, and who are not the legal wards or foster children of, the supervising adults; usually serving more than ten (10) children at a time; not an accessory to residential use.

*Adult day care center:* An individual, agency, or organization providing supervision or care on a regular basis; usually for more than six (6) adults in a place other than their usual place of abode; not an accessory to residential use.

*Day care home (accessory use):* Day care provided on a less than 24-hour basis for either children or adults, according to the following limiting definitions.

*Child Day Care Home (accessory use):* Supervision or care provided on a regular basis as an accessory use within a principal residential dwelling unit, by a resident of the dwelling, for five (5) to ten (10) children who are not related by blood or marriage to, and who are not the legal wards or foster children of, the supervising adult.

*Adult Day Care Home (accessory use):* Care provided on a regular basis as an accessory use within a principal residential dwelling unit, by a resident of the dwelling, for up to six (6) adults who do not reside in the dwelling.

### **DECISION-MAKING BOARD**

A governing board, planning board, board of adjustment, historic district board, or other board assigned to make quasi-judicial decisions'.

### **DEDICATION**

A fee simple transfer of land ownership to a homeowners association, governmental unit or agency, or non-profit land trust or conservancy for a specified purpose. Because a transfer of property rights is entailed, dedication must be made by written instrument, must be completed with an acceptance, and must be in a form acceptable for recording.

### **DESIGN FLOOD**

See "Regulatory Flood Protection Elevation."

### **DETENTION**

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Means the collection and storage of surface water for subsequent gradual discharge.

### **DETENTION POND**

Engineered facilities for storing or detaining rain water runoff from a site. Detention stores water on a site to allow time for pollutants precipitate out of the runoff. This cleans the water before it is allowed to flow to nearby surface waters. See "Watershed."

### **DETERMINATION**

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

### **DEVELOPER**

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

### **DEVELOPMENT**

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

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. The excavation, grading, filling, clearing, or alteration of land.
- c. The subdivision of land as defined in G.S. 160D-802.
- d. The initiation or substantial change in the use of land or the intensity of use of land. This definition does not alter the scope of regulatory authority granted by this Chapter.

### **DEVELOPMENT ACTIVITY**

Means any activity defined as development which will necessitate a Floodplain Development Permit. This includes buildings, structures and nonstructural items, including (but not limited to) fill, bulkheads, piers, pool, docks, landings, ramps, and erosion control/stabilization measures.

### **DEVELOPMENT APPROVAL**

An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this Chapter, including G.S. 160D-102 Page 2 plat approvals, permits issued, development agreements entered into, and building permits issued.

### **DEVELOPMENT REGULATION**

A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code

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enforcement, or any other regulation adopted pursuant to this Chapter, or a local act or charter that regulates land use or development.

**DIGITAL FLOOD INSURANCE RATE MAP (DFIRM)**

Means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

**DIRECT LIGHTING**

Lighting in which the greater part of the light goes directly from the source to the area lit.

**DISPOSAL**

The discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

**DISTRICT**

An area delineated on the Official Zoning District Map for which this Ordinance sets forth standards and guidelines for development.

**DISTURBED AREA**

The portion of the lot that is allocated for land disturbing activities and construction of structures and associated improvements.

**DISPOSAL**

Defined as in G.S. 130A-290(a)(6).

**DOUBLE FRONTAGE LOT OR THROUGH LOT**

A lot other than a corner lot with frontage on more than one (1) street. Through lots abutting two (2) streets are referred to as "double frontage lots."

**DRAINAGE FACILITY**

Any component of the drainage system.

**DRAINAGE SYSTEM**

The system through which water flows from the land. It includes all watercourses, water bodies and wetlands.

**DRIVEWAY**

A private roadway providing ingress and egress from a street or thoroughfare to a property and for the off-street travel. Parking areas are separate from driveways, though the two (2) may be combined.

**DUNE**

A naturally placed mound of earth or sand, vegetated or un-vegetated, that can be independent or part of an incorporated system. The word "dune" shall include:

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- (1) *Estuarine Frontal Dunes*: The first mounds of sand located landward of the estuarine waters of the Bogue Sound and having a minimum elevation equal to mean flood level plus six (6) feet;
  - (2) *Frontal Dunes*: The first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity, and configuration to offer protective value;
  - (3) *Interior Dunes*: All dunes located in the Town of Emerald Isle that are not considered frontal dunes;
  - (4) *Primary Dunes*: The first mounds of sand located landward of the ocean beaches having an elevation equal to mean flood level for the area plus six (6) feet. Primary dunes extend landward to the lowest elevation in the depression behind the same mound of sand.

#### **DUNES AND VEGETATION PROTECTION INSPECTOR (DVPI)**

A Town employee of the planning and inspections department appointed to interpret, administer, and enforce the Dunes and Vegetation regulations in section 6.4.

#### **DUPLEX**

See "Dwelling, Two-Family, or Duplex."

#### **DWELLING**

Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. The term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

#### **DWELLING, MULTIFAMILY**

A building or portion of a building used or designed as a residence for three (3) or more families living independently of each other and doing their own cooking in the building, including apartment houses.

#### **DWELLING, SINGLE-FAMILY**

A building used or designated as a residence for a single family.

#### **DWELLING, TWO-FAMILY, OR DUPLEX**

A building containing not more than two (2) structures physically connected on one (1) of the exterior walls by at least fifty (50) percent of the exterior area of the connecting wall, and used and designated as a residence for two (2) families living independently of each other and doing their own cooking in the building.

#### **DWELLING UNIT**

A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

#### **EASEMENT**

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A grant by the property owner to the public, a corporation, or persons of the right to use a specified portion of a tract or tracts of land for a specified purpose. All easements must be in a form suitable for recording, preferably as part of the plat.

## **EAVE**

The projecting lower edges of a roof overhanging the wall of a building.

## **ELECTRONIC GAMING OPERATION**

Any business enterprise, whether as a principal or an accessory use, where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, including but not limited to sweepstakes and video poker, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. Electronic gaming operations may include, but are not limited to, internet cafes, internet sweepstakes, electronic gaming machines/operations or cybercafés. This use does not include any lottery approved by the State of North Carolina or any nonprofit operation that is otherwise lawful under State law (for example, church or civic organization fundraisers). This definition applies to all such uses whether they are a stand alone operation or as an accessory use to any lawfully permitted use.

## **ELEVATED BUILDING**

A non-basement building that has its reference level raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

## **ENCROACHMENT**

The advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

## **ENFORCEMENT OFFICER**

The enforcement officer, as the term is used herein, shall be the building official for the Town, or ~~his~~ [their](#) designated representative.

## **ENVIRONMENTAL ASSESSMENT (EA)**

An assessment of a project's environmental impact as defined in the National Environmental Policy Act of 1969.

## **EROSION**

The wearing or washing away of soil by the action of wind or water.

## **EVERGREEN**

Shrubs and trees that retain their foliage throughout the year.

## **EVIDENTIARY HEARING**

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

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## **EXISTING BUILDING AND EXISTING STRUCTURE**

Means any building and/or structure for which the "start of construction" commenced before the community entered the NFIP, dated April 1, 1977.

## **EXISTING CONDITIONS**

The current conditions that exist at the site as a result of prior development of the site, including, but not limited to, any structures, impervious surfaces, drainage facilities, and other disturbances of the site. In cases in which no prior development of the site has occurred, the existing conditions are the predevelopment conditions, as defined in this Chapter 10.

## **EXISTING DEVELOPMENT**

Structures, buildings, site specific plan or other projects that are completely built or that at a minimum have established a vested right at the time of consideration.

## **EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION**

A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) the effective date of the floodplain management regulations adopted by the community dated April 1, 1977.

## **EXPANSION**

An increase in the size of an existing structure or use, including physical size of the property, building, parking, and other improvements or structures.

## **FACADE**

Front or principal face of a building, and any face of a building that faces any street.

## **FALL RADIUS**

A physical radius prescribed by the total effective height of any tower that includes an area that theoretically could be penetrated by the collapse of that tower.

## **FAMILY**

Means any number of individuals living together as a single housekeeping unit.

## **FCC**

The Federal Communications Commission.

## **FEDERAL AVIATION ADMINISTRATION**

The Federal Agency responsible for regulating aviation in the United States.

## **FEDERAL COMMUNICATIONS COMMISSION (FCC)**

The Federal Agency responsible for regulating telecommunications in the United States.

## **FEMA (FEDERAL EMERGENCY MANAGEMENT AUTHORITY)**

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The agency responsible for the promulgation and maintenance of official Flood Hazard Boundary Map and/or Flood Insurance Rate Maps.

**FENCE**

A structure used to delineate, enclose, screen, separate or define a boundary, particularly for privacy or to delineate the public or private realm of a property.

**FLOOD OR FLOODING**

A temporary rise in the level of any water body, watercourse or wetland that results in the inundation of areas not ordinarily covered by water, from (1) the overflow of inland or tidal waters; or (2) the unusual and rapid accumulation of runoff of surface waters from any source.

**FLOOD BOUNDARY AND FLOODWAY MAP (FBFM)**

An official map of a community, issued by the Federal Emergency Management Agency, on which the special flood hazard areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

**FLOOD HAZARD BOUNDARY MAP (FHBM)**

An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the special flood hazard areas have been defined as Zone A.

**FLOOD INSURANCE**

The insurance coverage provided under the National Flood Insurance Program.

**FLOOD INSURANCE RATE MAP (FIRM)**

An official map of a community, issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

**FLOOD INSURANCE STUDY (FIS)**

An examination, evaluation, and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood insurance risk zones, and other flood data in a community issued by FEMA. The flood insurance study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

**FLOOD PRONE AREA**

See "Floodplain."

**FLOOD RESISTANT MATERIAL**

Means any building product (material, component or system) capable of withstanding direct and prolonged contact (minimum seventy-two (72) hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbars are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that

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absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

### **FLOOD ZONE**

A geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area.

### **FLOODPLAIN OR FLOOD PRONE AREA**

Any land area susceptible to being inundated by water from any source.

### **FLOODPLAIN ADMINISTRATOR**

The individual appointed to administer and enforce the floodplain management regulations pursuant to section 2.2.4(5).

### **FLOODPLAIN DEVELOPMENT PERMIT**

Means any type of permit that is required in conformance with the provisions of this Ordinance, prior to the commencement of any development activity.

### **FLOODPLAIN MANAGEMENT**

The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

### **FLOODPLAIN REGULATIONS**

All provisions of this Ordinance, applicable building codes, health regulations, special purpose ordinances, and other applications of police power that control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

### **FLOODPROOFING**

Any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.

### **FLOODWAY**

The channel of a stream, river, or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than the allowable surcharge (currently two (2) feet).

### **FLOODWAY ENCROACHMENT ANALYSIS**

Means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

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## **FLOOR AREA**

The sum of the gross horizontal areas of each floor of the principal building' and any accessory buildings or structures, measured from the exterior walls or from the center line of party walls. The term does not include any area used exclusively for the surface parking of motor vehicles or for building or equipment access, such as stairs, elevator shafts, and maintenance crawl space.

## **FREEBOARD**

The additional amount of height added to the base flood elevation (BFE) to account for uncertainties in the determination of flood elevations. See "Regulatory flood protection elevation."

## **FRONTAGE**

The lot boundary that coincides with a public thoroughfare or space. The facade of a structure facing the street.

## **FRONTAL DUNES**

The dunes designated by the North Carolina Division of Coastal Management as the "frontal dunes"; otherwise, they are the first mounds of sand located landward of the waters of the Atlantic Ocean with sufficient vegetation, height, and configuration to offer protection from ocean storms.

## **FUNCTIONALLY DEPENDENT FACILITY**

Means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

## **GARAGE**

An attached or detached structure to a residential building generally designed for the parking of motor vehicles.

## **GAZEBO**

A free standing, roofed, open sided structure providing a shady resting place.

## **GOVERNING BOARD**

The Town Board of Emerald Isle. The term is interchangeable with the terms "board of aldermen" and "boards of commissioners" and shall mean any governing board without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.

## **GRADE**

The elevation of the land or land level at a specific point.

## **GRADE PLANE**

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A reference plane representing the average of the finished ground level adjoining the building at all exterior walls.

### **HAZARDOUS MATERIAL**

Any substance listed as such in: SARA section 302, Extremely Hazardous Substances, ERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

### **HAZARDOUS WASTE MANAGEMENT FACILITY**

A facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste as defined in G.S. ch. 130A, art. 9.

### **HEIGHT**

The vertical distance from the mean grade elevation taken at the fronting street side of a structure and measured as described in the notes to Table 5.1. Towers, spires, steeples, and enclosed roof top mechanical equipment are not counted in height measurements. Exceptions to this definition are listed within this Ordinance.

### **HIGH DEFINITION TELEVISION (HDTV)**

Digital television signals transmitted in the very high frequency band by national and local television stations.

### **HIGHEST ADJACENT GRADE**

The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

### **HISTORIC STRUCTURE**

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program"; or
- (d) Certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program."

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

### **HOLIDAY DECORATION**

Decoration normally associated with the holiday season.

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## **HOSPITAL**

A health care facility the purpose of which is to provide for care, treatment, testing for physical, emotional, or mental injury, illness, or disability, and overnight boarding of patients, either on a for-profit or not-for-profit basis; but not including group homes.

## **HOTEL OR INN**

See "Motel."

## **IMPERVIOUS SURFACE**

A surface that has been compacted or covered with a layer of material that prevents or significantly impedes the infiltration of water into the soil. It includes semi-impervious surfaces such as gravel and compacted clay, as well as most conventionally surfaced streets, roofs, sidewalks, parking lots and other similar structures, alterations, or improvements.

## **INCIDENTAL HOME OCCUPATION**

Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character of the residence, and that meets all applicable requirements of this Ordinance.

## **INCIDENTAL OUTDOOR ENTERTAINMENT**

Shall include music, dance, drama, or similar artistic programs that are clearly incidental and secondary to the primary commercial use of the property, do not change the primary commercial property use, and meet all applicable requirements of this Ordinance.

## **INDIRECT LIGHTING**

Lighting in which the light emitted by a source is reflected and diffused from direct line of sight, unobtrusive or unoffensive to adjoining properties and non-hazardous to the motoring public.

## **LAND DISTURBING ACTIVITY**

Any use of land by any person that results in a change in the natural cover or topography and that may cause or contribute to sedimentation or soil compaction that affects the critical root zone.

## **LAND OWNER OR OWNER**

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

## **LANDSCAPING**

The installation and maintenance, usually of a combination of trees, shrubs, plant materials, or other ground cover, including grass, mulch, decorative stone and similar materials, but excluding bare soil, uncultivated vegetation, impervious pavement materials, and gravel. Any live plant material such as trees, shrubs, ground cover, and grass areas left in their natural state.

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## LATTICE TYPE STRUCTURE

A self-supporting, three- or four-sided open steel frame structure used to support telecommunications equipment.

## LEGISLATIVE DECISION

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

## LEGISLATIVE HEARING

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

## LETTER OF MAP CHANGE (LOMC)

Means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- (a) Letter of Map Amendment (LOMA):** An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (b) Letter of Map Revision (LOMR):** A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (c) Letter of Map Revision Based on Fill (LOMR-F):** A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (d) Conditional Letter of Map Revision (CLOMR):** A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

## LICENSED HEALTH CARE PROFESSIONALS

Means those persons licensed by the State of North Carolina to practice in the health care field such as doctors, dentists, chiropractors, podiatrists, occupational therapists, nurses, acupuncturists, and massage therapists.

## LIMIT OF MODERATE WAVE ACTION (LiMWA)

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Means the boundary line given by FEMA on coastal map studies marking the extents of Coastal A Zones.

**LOADING SPACE**

An off-street space or berth used for the loading or unloading of cargo, products, or materials from vehicles.

**LOCAL AND STATE GOVERNMENT ADVISORY COMMITTEE (LSGAC)**

An FCC-established group that works with both carriers and communities on antenna siting solutions.

**LOT**

Means a parcel of land in single ownership occupied or intended for occupancy by a principal building, together with its accessory buildings; including the open space required under this Ordinance. For the purpose of this Ordinance, the word "lot" shall be taken to mean any number of contiguous lots of record for location of one (1) principal building and its accessory buildings.

**LOT, CORNER**

A lot that occupies the interior angle at the intersection of two (2) street lines. The street line forming the least frontage shall be deemed the front of the lot except where the two (2) street lines are equal, in which case, the owner shall be required to specify which is the front when requesting a building permit.

**LOT DEPTH**

The distance measured in the mean direction of the side lines of the lot from the midpoint of the front line to the midpoint of the rear lot line.

**LOT, DOUBLE FRONTAGE**

A lot other than a corner lot with frontage on more than one (1) street. Through lots abutting two (2) streets are referred to as "double frontage lots."

**LOT, FINGER**

See "Sawtooth lot."

**LOT OF RECORD**

A lot that is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds of Carteret County or a lot described by metes and bounds, the description of which has been recorded.

**LOT, SAWTOOTH**

See "Sawtooth lot."

**LOT WIDTH**

The distance between side lot lines as measured at the front building setback line.

**LOWEST ADJACENT GRADE (LAG)**

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Means the lowest elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

### **LOWEST FLOOR**

The subfloor, top of slab or grade of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.

### **MANUFACTURED HOME**

A structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle." A structure as defined in G.S. 143-145(7).

### **MANUFACTURED HOME PARK**

A parcel or subdivision of land to accommodate manufactured housing per the provisions of this Ordinance.

### **MANUFACTURED HOME SUBDIVISION**

Any parcel of land that is subdivided, with utilities extended for the installation or placement of manufactured homes.

### **MAP REPOSITORY**

Means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products carry the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website (<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

### **MARINA**

A facility for the storing, servicing, fueling, berthing, and securing of boats and that may include, docks, slips, ramps, eating, sleeping, and retail facilities for owners, crews, and guests. This use may include other structures used for commercial storage and related sales, service and provisioning of boats, watercrafts of all types and related facilities and activities including, but not limited to, selling, chartering, repairing, provisioning and servicing of boats, watercraft of all types, motors, engines, electronics and related marine, water sports and fishing apparel, tackle and equipment, providing restaurant and food service facilities and operation and other horizontally and vertically related operations and facilities. See "Water related structure, pier and pier facilities."

### **MARKET VALUE**

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The building value, excluding the land, as established by the tax assessment value in the current county tax records.. Market value can be established by independent certified appraisal or replacement cost depreciated by age of building (actual cash value).

### **MEAN ROOF HEIGHT**

The average of the roof eave height and the height to the highest point on the roof surface, except that eave height shall be used for roof angles of less than or equal to ten (10) degrees.

### **MEAN SEA LEVEL**

For purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988 or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

### **MENU-BOARD/SPECIALS BOARD**

To be affixed to the building and shall be considered as a portion of the allowed temporary sign square footage.

### **MERCHANDISE**

Goods and commodities bought and sold within a business not to be construed as signage or advertising.

### **MITIGATION**

Actions taken on-site and/or off-site to offset the effects of temporary or permanent loss of a buffer.

### **MIXED USE**

A mix of land uses on the same property or within a single development to include residential and non-residential uses.

### **MOBILE HOME**

A detached residential dwelling unit designed, after fabrication, for transportation on streets or highways on its own wheels or on flatbeds or other trailers, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations including, but not limited to, location on jacks or other temporary or permanent foundations. Connections to utilities are to be in accordance with local codes and ordinances. Recreation vehicles are not to be considered mobile homes.

### **MOBILE HOME AND RECREATION VEHICLE PARK CONSTRUCTION PERMIT**

A permit issued by the enforcement officer to a developer for construction of a mobile home or recreation vehicle park.

### **MOBILE HOME LOT**

A plot of land designed for the accommodation of one (1) mobile home.

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## **MOBILE HOME PARK**

Any site or tract of land upon which is located the minimum number of mobile home spaces required by this Ordinance that are to be occupied for dwelling or sleeping purposes regardless of whether or not a charge is made for such service. Mobile home subdivisions shall be subject to the subdivision regulations in this Ordinance.

## **MOBILE HOME PERMIT**

A permit issued by the enforcement officer or ~~his~~ their delegate to an owner for the placement of a mobile home to be occupied or leased by such owner.

## **MOBILE HOME SPACE**

A plot of land within a mobile home park designed for the accommodation of one (1) mobile home.

## **MODULAR HOME**

A dwelling unit that is constructed in compliance with the North Carolina Building Ordinance and composed of components substantially assembled in an off site manufacturing plant and transported to the building site for final assembly on a permanent foundation.

## **MONOPOLE**

A style of free-standing antenna-supporting structure that is composed of a single shaft that is attached to a foundation. This type of antenna-supporting structure is designed to support itself without the use of guy wires or other stabilization devices. These structures are mounted to a foundation that rests on or in the ground or on a building's roof.

## **MOTEL**

A building containing furnished sleeping accommodations commonly available for overnight lodging by the owner/operator thereof to short-term or transient guests for compensation that has a registration desk, on-site management services, daily cleaning services and other convenience services for guests. Restaurant and similar facilities may or may not be provided on site. The term shall also include condominium hotel or condotel which is operates as a commercial transient hotel even though the rooming units and/or lodging are individually owned. The term does not include condominiums use as the principal or secondary residence of the owner where the owner of the condominium unit has the right of residential occupancy in any respect other than as a transient quest similar to a nonowner transient guest. As use here, "rooming units or lodging" is defined as a compartment within a building containing no facilities other than bedrooms, a bathroom, a sitting area and cooking and/or kitchen equipment therein. Provided that, in no case may the number of bedrooms per "rooming units or lodging" exceed two (2) bedrooms.

## **NATURAL AREA**

The portion of the lot that is required to remain undisturbed in its natural state and retain its natural vegetation. Disturbance of the natural area and the removal of natural vegetation shall be permitted only as specifically authorized in this Ordinance.

## **NATURAL SYSTEMS**

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Systems that predominantly consist of or use those communities of plants, animals, bacteria and other flora and fauna that occur indigenously on the land, in the soil or in the water.

**NEPA**

The National Environmental Policy Act of 1969.

**NEW CONSTRUCTION**

Structures for which the "start of construction" commenced on or after the effective date of the relevant provision of this Ordinance, or from the regulation from which it arises, and includes any subsequent improvements to such structures.

**NONCONFORMING BUILDING OR STRUCTURE**

A structure occupied by an existing use that does not conform or comply with the dimensional regulations of this Ordinance for the district in which it is located, either at the effective date of this Ordinance or the regulation from which it derives, or as a result of one (1) or more subsequent amendments to them, or as a result of some act or condition occurring to the structure or the lot on which the structure is located, which makes the structure nonconforming.

**NONCONFORMING SIGN**

Any sign lawfully existing on the effective date of this Ordinance or of the regulations from which it arises, or amendment to them, that renders such sign nonconforming because it does not conform to all the standards and regulations of the adopted or amended Ordinance or regulation.

**NONCONFORMING USE**

The use of a building or land that does not conform or comply with the permitted or special uses for the district in which the same is located, either at the effective date of this Ordinance or the effective date of the regulation from which it derives, or as a result of subsequent amendments to this Ordinance or those regulations

**NON-CONVERSION AGREEMENT**

Means a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk's or recorder's stamps and/or notations that the filing has been completed.

**NON-RESIDENTIAL DEVELOPMENT**

All development other than residential development or agriculture.

**NUISANCE**

An interference with the enjoyment and use of property.

**OBSTRUCTION**

For purposes of flood prevention and stormwater management, this term includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection,

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excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse that may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

### **OCCUPANCY PERMIT**

A permit issued by the enforcement officer or ~~his~~-their delegate after final inspection of a mobile home has been completed and the mobile home is found by the officer to be in compliance with the terms of this Ordinance.

### **OCEANFRONT**

A lot of record which is adjacent to the Atlantic Ocean or inlet hazard area. For the purposes of side setback determination, lots with an undevelopable lot or parcel located between the lot line and the water shall be considered to be on the oceanfront.

### **OFF-PREMISES DIRECTIONAL SIGN**

A free standing sign that displays only the name of a business and directional arrow Intended to note the direction of the business from the location of the off-premises directional sign that is located at a place other than the property on which such sign is located and is applicable only to those businesses located more than one thousand (1,000) feet from Emerald Drive.

### **OFF-STREET PARKING**

Parking that occurs on a lot and not on a street or other public right-of-way.

### **OPEN SPACE**

An area (land and/or water) generally lacking in man-made structures and reserved for enjoyment in its unaltered state.

### **OTHERWISE PROTECTED AREA (OPA)**

See Coastal Barrier Resources System (CBRS).

### **OUTDOOR RECREATION**

Swimming pools, tennis courts, ball fields and ball courts that are not enclosed in buildings and are operated on a commercial or membership basis primarily for the use of persons who do not reside on the same lot as that on which the recreational use is located. "Outdoor recreation" shall include any accessory uses, such as snack bars, pro shops, and club houses that are designed and intended primarily for the use of patrons of the principal recreational use.

### **OUTDOOR STORAGE**

The storage of goods, products, or vehicles by their owner or on a commercial basis for others outside of a permanently constructed building. This includes auto and boat sales and storage areas. The keeping of any goods, material, merchandise, or vehicles in an unenclosed area or in the same place for more than twenty-four (24) hours.

### **OVERLAY DISTRICT**

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A zoning district that encompasses one (1) or more base zoning district(s) and that imposes additional or different requirements from those required in the base zoning district(s).

**OWNER**

The person in whom is vested the fee ownership, dominion, or title of real or personal property, including but not limited to a mobile home. This term may also include a tenant, if chargeable under ~~his~~ their lease or occupancy agreement for the maintenance of the property, and any designated agent of the owner or tenant including a developer acting on an owner's behalf.

**PARAPET**

A low wall encircling the perimeter of a flat building roof, generally used to screen roof-mounted mechanical equipment.

**PARCEL**

Any quantity of land and/or water capable of being described in definitive terms with respect to its location and boundaries. It may be established as distinct from other parcels that are designated by its owner or developer as land to be used or developed as a unit, or that has been used or developed as a unit.

**PARKING AREA OR PARKING LOT**

All the area in square footage of land designated for the storage of cars. The parking area also includes all areas for storage and trash facilities. Any public or private area, under or outside of a building or structure, designed and used for parking or storing motor vehicles including parking lots, garages, private driveways, and legally designated areas of public streets.

**PARTY WALL**

A common shared wall between two (2) separate structures, buildings or dwelling units and lacking cross access between structures without exiting each structure.

**PAVED**

Any surface area covered by crushed compacted gravel, concrete, asphalt, brick or stone pavers, or similar material in durability, appearance, and permeability.

**PERMITTED USES**

Uses allowed to occur by right within a designated zoning or other planning district.

**PERSON**

An individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.

**PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION (PCIA)**

A trade group that represents PCS, SMR, private radio and other wireless users and carriers.

**PERVIOUS SURFACE**

Any material that permits full or partial absorption of stormwater into previously unimproved land.

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## **PIER**

A water-related structure extending into the water from the shore, whether floating or fixed to the bottom, for use as a boat landing place or promenade, constructed of pylons and decking for mooring and access to a boat or watercraft. May also include structures designed and constructed to serve as a means of recreational access (fishing, etc.) to the ocean and sound waters.

## **PLANNED UNIT DEVELOPMENTS**

A residential development composed of townhouses, condominiums, single-family dwellings, or a combination thereof, and providing for the ownership of streets, drives, areas, open spaces, or other facilities in the association of property owners within the association.

## **PLANNING BOARD**

The Emerald Isle Planning Board.

## **PLANNING AND DEVELOPMENT REGULATION JURISDICTION**

The geographic area within which the Town of Emerald Isle may undertake planning and apply the development regulations authorized by this Chapter.

## **PLANNING DIRECTOR**

The Planning Director of the Town of Emerald Isle or ~~his or her~~ their designee.

## **PLAT**

A map or plan of a parcel of land that is to be, or has been subdivided.

## **PLAT, FINAL**

A map of all or a portion of a subdivision of land that is the legal instrument for recordation.

## **PLAT, PRELIMINARY**

A map indicating the proposed layout of the subdivision that is submitted to the approving authority for preliminary approval.

## **PLATTED LOT**

A lot that is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds of Carteret County or a lot described by metes and bounds, the description of which has been recorded.

## **PLAYGROUND**

An active recreational area with a variety of facilities, including equipment for younger children as well as court and field games.

## **POST-FIRM**

Construction or other development for which the "start of construction" occurred on or after April 1, 1977, the effective date of the initial Flood Insurance Rate Map.

## **PREDEVELOPMENT CONDITIONS**

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Those conditions that existed before alteration, resulting from human activity, of the natural topography, vegetation and rate, volume or direction of surface or ground water flow, as indicated by the best available historical data.

**PRE-FIRM**

Construction or other development for which the "start of construction" occurred before April 1, 1977, the effective date of the initial Flood Insurance Rate Map.

**PRIMARY FRONTAL DUNE**

A continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and over-topping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

**PRINCIPAL BUILDING**

The structure in which the principal use on the property is located.

**PRINCIPAL USE**

The primary purpose or function that a lot serves or is proposed to serve.

**PRIVATE DRIVEWAY**

A privately maintained roadway serving two (2) or fewer lots, building sites or other division of land and not intended to be public ingress or egress.

**PRIVATE STREET**

A street that has not been accepted by the Town or the State for public maintenance and serves as the principal means of access to abutting properties.

**PROJECT AREA**

Any area of land and/or water, regardless of the number of individual parcels contained in the area, on which development is proposed under these regulations.

**PROPERTY**

All real property subject to land-use regulation by a local government. The term includes any improvements or structures customarily regarded as a part of real property.

**PROVIDER**

As used in connection with telecommunications services or structures, any business, corporation, partnership, or other entity licensed by the FCC to provide wireless services in the Town.

**PUBLIC HEARING**

A meeting open to the public advertised in advance in the local printed media, or as otherwise required by statute, concerning proposed ordinances, amendments or other official Town business that require public participation and input.

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## **PUBLIC STREET**

A street that has been dedicated for use and maintenance by the Town or the State and serves as the principal means of access to abutting properties.

## **PUBLIC UTILITIES**

Above ground or underground publicly licensed utilities including water, sanitary sewer collection and distribution line, natural gas, cable television, stormwater drainage, transit or transportation, or electrical services and any associated structures such as pumping stations, treatment plants, transformer stations for providing to the public a utility service deemed necessary for the public health, safety, and welfare. Utility service to the public has been defined broadly to mean all consumers-industrial, commercial, or residential.

## **QUASI-JUDICIAL DECISION**

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

## **RECEIVING BODIES OF WATER**

Any water bodies, watercourses or wetlands into which surface waters flow either naturally, in manmade ditches, or in a closed conduit system.

## **RECREATION VEHICLE**

Means a vehicle, which is:

- (a) Built on a single chassis;
- (b) Four hundred (400) square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck;
- (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use; and
- (e) Is fully licensed and ready for highway use.

## **RECREATION VEHICLE PARK**

Any site or tract of land upon which is located the minimum number of recreation vehicle spaces or land area required by this Ordinance, regardless of whether or not a charge is made for such service.

## **RECREATION VEHICLE SPACE**

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A plot of land within a recreation vehicle park designed for the accommodation of one (1) recreation vehicle.

### **RECREATIONAL FACILITIES**

An area of land or combination of land and water resources for public use that is developed for active and/or passive recreational pursuits with various manmade features that accommodates such activities. Such areas shall be designed in the form of playgrounds, parks, squares, greenbelts, and parkways. They shall be designed to serve the immediate neighborhood in which they are located, or can be regional in scope, serving several neighborhoods. A place or an area of land or combination of land and water resources designed and equipped for the conduct of sports and leisure-time activities that is developed for active and/or passive recreational pursuits. Such areas shall be designed in the form of playgrounds, parks, squares, greenbelts, and parkways. They shall be designed to serve the immediate neighborhood in which they are located, or can be regional in scope, serving several neighborhoods.

### **REDEVELOPMENT**

The acquisition, clearance, rehabilitation, or rebuilding of an area for residential, recreational, commercial, industrial, or other purposes, including the provision of streets, utilities, parks, recreational areas, or other open spaces.

### **REFERENCE LEVEL**

The portion of a structure or other development that must be compared to the regulatory flood protection elevation to determine regulatory compliance of such building. Within special flood hazard areas designated as zones A1-A30, AE, A, A99, AO, or AH, the reference level is the top of the lowest floor. Within special flood hazard areas designated as zones VE or V1—V30, the reference level is the bottom of the lowest horizontal structural member.

### **REGULATORY FLOOD**

A flood representative of large floods reasonably characteristic of what can be expected to occur on a particular stream, with an average recurrence interval of 100 years, determined from an analysis of floods on a particular stream and other streams in the same general region.

### **REGULATORY FLOOD PROTECTION ELEVATION**

The elevation to which all structures and other development located within the special flood hazard areas must be elevated or floodproofed, if non-residential. Within areas where base flood elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. In areas where no BFE has been established, all structures and other development must be elevated or floodproofed, if non-residential, to two (2) feet above the highest adjacent grade.

### **REMEDY A VIOLATION**

As used in connection with flood damage prevention, to bring the structure or other development into compliance with state or Town floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the

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enforcement provisions of the flood damage prevention regulations, or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

**RESERVATION**

The setting aside of parcels of land for a specific purpose. Reservations of land are encouraged for future development of streets, parks, and civic buildings. A reservation of land does not involve any transfer of property rights. It simply constitutes an obligation to keep property free from development for a stated period of time.

**RESIDENTIAL DEVELOPMENT**

Buildings for residential use such as attached and detached single-family dwellings, apartment buildings, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. Residential development includes group homes and family care homes.

**RESIDENTIAL USE**

Means any use permitted by this Ordinance that involves the housing of families or groups of individuals, and is grouped in Table 4.1 as a residential use.

**RESTAURANT**

An establishment where food and drink are prepared, served, and consumed primarily within the principal building.

**RETAIL SALES**

Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

**RETAIL SALES, INDOOR, NOT LISTED ELSEWHERE**

Any retail sales use conducted inside a building and not listed as a separate land use in this Ordinance, including without limitation retail sales uses such as appliance sales, bakery shop, confectioners, bicycle sales, drug store, electrical item sales, hardware sales, jewelry and watch sales, music store, newsstand, office equipment and supplies sales and service, photographic studios and camera supply, and seafood market. May include incidental repairs to items sold.

**RETENTION**

The collection and storage of runoff without subsequent discharge to surface waters.

**ROOF LINE**

The highest point of a flat roof and mansard roof and the highest point of a pitched roof, excluding any cupolas, chimneys or other minor projections.

**RIGHT-OF-WAY (R-O-W)**

An area of land dedicated for public or private infrastructure such as streets, sidewalks, railroads, sewer lines, water lines, electric lines, and gas lines.

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**SA WATERS**

Means all waters classified by the NC Department of Environment and Natural Resources for commercial shellfish harvesting, including Bogue Sound and Archer's Creek.

**SALVAGE YARD**

Property used for the storage, collection, and/or recycling of any type of equipment whatsoever, whether industrial or noncommercial, and including but not limited to vehicles, appliances and related machinery.

**SAND DUNES**

Means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

**SANITARY SEWAGE SYSTEM**

A complete system of sewage collection, treatment and disposal including approval privies, septic tank systems, connection to public or community sewage systems, sewage reuse or recycle systems, mechanical or biological treatment systems, or other such systems.

**SAWTOOTH OR FINGER LOT**

Means an irregular shaped lot the majority portion of which meets the dimensional requirements for a subdivision lot under the unified development ordinance, but that has a finger or extension thereon primarily for access to a street or body of water, and with the width of the extension or finger being more narrow than the width of the lot at the required building setback line.

**SB WATERS**

Means all waters classified by the NC Department of Environment and Natural Resources for recreation, including the Atlantic Ocean and Bogue Inlet.

**SCHOOL**

A public or private institution for education or learning including athletic or recreational facilities, which does not include lodging. This institution includes any school licensed by the state and that meets the state requirements for elementary and secondary education.

**SCREENING**

A fence, wall, hedge, landscaping, buffer area or any combination of these provided to create a visual separation between certain land uses. A screen may be located on the property line or elsewhere on the site, as determined by the use to be screened.

**SEDIMENT**

Fine particulate material, whether mineral or organic, that is in suspension or has settled in a water body.

**SEPTIC TANK SYSTEM**

A ground absorption sewage disposal system consisting of a holding or settling tank and a ground absorption field.

**SETBACK**

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The shortest horizontal distance from the property line or right-of-way to the nearest point (leading edge) of the structure or its supporting member whichever is nearest to the property line or right-of-way.

**SEWAGE**

The waste water, and its contents from kitchen, bathroom, toilet, lavatory and laundry of any residence, business establishment, industrial plant, institution, or any public building.

**SHEAR WALL**

Means walls used for structural support but not structurally joined or enclosed at the end (except by breakaway walls). Shear walls are parallel or nearly parallel to the flow of water.

**SIGN**

Includes every billboard, freestanding ground sign, wall sign, roof sign, illuminated sign, projecting sign, temporary sign and shall include any announcement, declaration, demonstration, display, illustration or insignia used to advertise or promote the interests of any persons, or business, when the same is placed out of doors in view of the general public.

**SIGN, ADVERTISING**

A sign, other than a directional sign, that directs attention to or communicates information about a business, commodity, service, or event that exists or is conducted, sold, offered, maintained or provided at a location other than the premises where the sign is located. Any advertising sign allowed under this Ordinance may display either a commercial or noncommercial copy.

**SIGN, AWNING**

A sign that is mounted, painted, or attached to an awning, canopy, or marquee that is otherwise permitted by Ordinance. For the purposes of the Ordinance, the permitted size of a canopy or awning sign will be calculated on the basis of the size of the building wall to which the canopy is attached. It will, for measuring purposes, be considered a wall sign.

**SIGN, CONSTRUCTION**

A sign placed at a construction site identifying or announcing the project or the name of the architect, engineer, contractor, financier, or others involved in the development of the project.

**SIGN COPY**

Any words, letters, numbers, figures, characters, symbols, logos, or insignia that are used on a sign display surface area.

**SIGN, DIRECTIONAL**

A sign that is located off-premises, and indicates the location of public buildings, parks, schools, hospitals, and scenic or historic places.

**SIGN, FREESTANDING**

A sign that is supported by a sign structure placed in the ground and that is wholly independent of any building, fence, vehicle or object other than the structure for support.

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**SIGN, GANG**

Any sign with two (2) or more tenants.

**SIGN, HOME OCCUPATION**

Permitted in association with a legitimate home occupation conducted on the premises of a single-family dwelling occupied by the operator of the business.

**SIGN, IDENTIFICATION**

A sign that displays only the name, address, and/or crest, or insignia, trademark, occupation or profession of an occupant or the name of any building on the premises.

**SIGN, OFF-PREMISES**

A sign that identifies, advertises, and/or directs the public to a business, merchandise, service, entertainment or product that is located at a place other than the property on which such sign is located. See "Billboard."

**SIGN, ON-PREMISES**

A sign that draws attention to or communicates information about a business, service, commodity, accommodation, attraction, or other enterprise or activity that exists or is conducted, sold, offered, maintained or provided on the premises where the sign is located.

**SIGN, POLITICAL**

Refers only to the issues or candidates involved in a religious, charitable, civic, fraternal, political and similarly organized elections.

**SIGN, PORTABLE**

A sign that is designed or intended to be readily relocated. This shall include signs on wheels, or on portable structures, tent signs, A-frame signs, and similar devices and any signs not secured or securely affixed to the ground on a permanent structure.

**SIGN, PROJECTING**

A sign that is mounted or attached to an exterior wall of a building or structure and that projects out from the wall more than twelve (12) inches.

**SIGN, REAL ESTATE**

A sign that is used to offer for sale, lease, or rent the premises upon which such sign is placed.

**SIGN, ROOF**

A sign erected or maintained in whole or in part upon or over the roof or parapet of a building.

**SIGN, TEMPORARY**

A sign that is an advertising display constructed of plastic, wood, metal, vinyl, or other rigid material intended to be displayed to inform the public of an unusual or special event sponsored by a non-profit, public, charitable, or religious organization. The sign wording, message, or contents advertising or promoting the special event shall be completed using stencil, commercially fabricated letters or numbers, or other methods that result in a professional

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appearance as opposed to free hand, expedient, awkward, and unartful appearance or display. Each such event shall be limited to a maximum of eight (8) signs. Three (3) of these signs shall not exceed twenty four (24) square feet in area per display surface. The other five (5) of these signs shall not exceed six (6) square feet in area per display surface. The signs may be erected not more than thirty (30) days prior to the event and must be removed within three (3) days following the completion of the event. Such signs may be placed in a street right-of-way; provided that the property owner directly adjacent to the street right-of-way where the sign is placed does not object to the sign, and provided that the sign is placed in such a manner as to not obstruct driver vision of any vehicle entering a roadway from any street, alley, driveway, or parking lot.

**SIGN, WALL**

A sign that is attached flat to a wall, or facade facing of a building and projecting not more than twelve (12) inches from a wall.

**SIGN, WINDOW**

Any sign attached to or directly applied onto a window or glass door of a building intended for viewing from the exterior of the building.

**SITE**

Any tract, lot or parcel of land or combination of tracts, lots, or parcels of land that are in one (1) ownership, or are contiguous and in diverse ownership where development is to be performed as part of a unit, subdivision, or project.

**SITE PLAN, SITE SPECIFIC PLAN**

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

**SITE SPECIFIC DEVELOPMENT PLAN**

A plan of land development submitted to the Town for purposes of obtaining one (1) of the following zoning or land use permits or approvals:

- (1) A preliminary plat, prepared and approved in accordance with this Ordinance;
- (2) A special use permit, obtained in accordance with the provisions of this Ordinance;
- (3) A planned unit development (PUD), prepared and approved in accordance with this Ordinance; and
- (4) A site plan that requires prior approval by the Town under this Ordinance and is submitted to and approved by the Town according to this Ordinance.

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Notwithstanding the foregoing, 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.

**SLEEPING UNIT**

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

**SOLID WASTE DISPOSAL FACILITY**

Means any facility involved in the disposal of solid waste, as defined in G.S. 130A-290(a)(35).

**SOLID WASTE DISPOSAL SITE**

Means as defined in G.S. 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method.

**SPECIAL FLOOD HAZARD AREA (SFHA)**

The land in the floodplain subject to a one (1) percent or greater chance of being flooded in any given year as determined in section 6.2.3(2).

**SPECIAL USE**

A use subject to specific conditions and that requires the approval of the Board of Commissioners before the issuance of a zoning permit for such use.

**SPECIAL USE PERMIT**

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

**START OF CONSTRUCTION**

Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

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## **STORMWATER MANAGEMENT PLAN**

The analysis required to meet the standards outlined in section 6.3.3 for each activity described in section 6.3.2(1). The elements to be included in a stormwater management plan are described in section 6.3.2(2)(C).

## **STORMWATER RUNOFF**

Rain that falls onto impervious surfaces and is not absorbed into the ground immediately. Storm water runoff carries pollutants off of paved surfaces into streams and rivers, and causes flooding by speeding up the rate of water flow into streams and rivers.

## **STORY**

Means that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. A flood resistant enclosure designed to break away so as not to cause collapse, an access stair enclosure of less than three hundred (300) square feet, and an elevator shaft shall not be considered as a story when determining building height.

## **STORY HEIGHT**

The vertical distance from top to top of two (2) successive tiers of beams or finished floor surfaces; and for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

## **STREAM**

A drainage feature on the land surface for conveying water.

## **STREET**

Means a roadway, whether dedicated as public or platted as private, that affords the principal means of access to abutting property.

## **STREET, PRIVATE**

A street that has not been accepted by the Town or the State for public maintenance and serves as the principal means of access to abutting properties.

## **STREET, PUBLIC**

A street that has been dedicated for use and maintenance by the Town or the State and serves as the principal means of access to abutting properties.

## **STRUCTURAL ADDITIONS**

Any roofed, canopied, enclosed porch and/or room or structure that is used in connection with a mobile home. A concrete slab porch, with no roof shall not be considered a structural addition.

## **STRUCTURE**

Anything that is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. Includes without limitation a walled and roofed building, a manufactured home, a gas or liquid storage tank that is principally above ground, any construction enclosed and isolated by exterior walls,

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lunch wagons, dining cars, trailers, and unattached carports consisting of a roof and supporting members, and similar built items, whether stationary or movable, but shall not include fences or signs.

**SUBDIVIDE**

To divide the ownership of a parcel of land, whether improved or unimproved, into two (2) or more contiguous lots or parcels of land, whether by reference to a plat, by metes and bounds or otherwise, or, if the establishment of a new street, easement, or right-of-way is involved, any division of a parcel of land. Subdivision includes a re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land subdivided.

**SUBDIVIDER**

Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision as herein described.

**SUBDIVISION**

All divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions for the purpose of sale, or building development (whether immediate or future) shall include all divisions of land involving the dedication of a new street or a change in existing streets, unless exempted by section 7.1.3.

**SUBDIVISION, MOBILE HOME**

A subdivision designed and intended for residential use where residence is in mobile homes exclusively.

**SUBSTANTIAL DAMAGE**

Damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. See definition of "substantial improvement." Substantial damage also means flood-related damage sustained by a structure on two (2) separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five (25) percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT**

Any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period whereby the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any correction of existing violations of state or community health, sanitary, or safety code specifications that have been identified by the community code enforcement official and that are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

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## **TECHNICAL BULLETIN AND TECHNICAL FACT SHEET**

Means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by state and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations. It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive state or local regulations apply to the building or site in question. All applicable standards of the state or local building code must also be met for any building in a flood hazard area.

## **TELECOMMUNICATIONS ACT OF 1996 (ACT)**

A broadscoped federal act that regulates the placement of wireless communications antennae and their facilities, and that provides certain mandates on local authorities while preserving considerable local zoning authority.

## **TEMPERATURE CONTROLLED**

Means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

## **THROUGH LOT**

See "Double frontage lot or through lot."

## **TOWAIR**

Landing facility slope calculations designed to avoid obstruction by towers to aircraft.

## **TOWN**

Town of Emerald Isle, North Carolina.

## **TOWNHOUSE DEVELOPMENT**

Means one (1) or more residential structures, comprised of three (3) or more attached single-family residences, with each townhouse or rowhouse unit occupying an individual land area, and providing for streets, drives, and recreational areas, open spaces, and other facilities for ownership by the association of property owners within the development.

## **TRACT**

All contiguous land and water bodies under single or diverse ownership being developed as a unit consisting of one (1) or more parcels or lots.

## **TREE**

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Any woody plant with a caliper of three (3) inches or greater at a height of thirty-six (36) inches above the ground.

### **UNDERPINNING**

The skirting around the base of a manufactured home or temporary structure that forms a continuous wall around the structure from the foundation or grade level, to the base, or bottom floor level, of the structure. Underpinning material is prescribed by this Ordinance.

### **UNIT OWNERSHIP**

Means the provision for separate ownership of an enclosed space consisting of one (1) or more rooms occupying all or part of a floor or floors in a building of one (1) or more floors or stories designed for residence, and shall include such accessory spaces and areas as may be described in the declaration creating unit ownership pursuant to G.S. ch. 47A, such as garage space, storage space, balcony, terrace, patio, or other use accessory space.

### **USED OR OCCUPIED**

The terms include the words intended, designed or arranged to be used or occupied.

### **VARIANCE**

A grant of relief from the requirements of this Ordinance.

### **VEGETATION**

The natural species of flora and plant life that exists on parcels of property within the Town of Emerald Isle. The word "vegetation" as used within this Ordinance shall include:

- (1) *Existing Vegetation.* Vegetation that is currently located on a parcel of property prior to any earth-disturbing activity;
- (2) *Natural Vegetation.* The originally occurring, indigenous plant life that exists on the lot;
- (3) *Nuisance Vegetation.* Vegetation that causes or creates a situation that can be classified as a general nuisance as defined in section 9-21 of the Town Code and includes, but is not limited to, the following types of vegetation: Noxious weeds, choking vines, poisonous plants, briars, dead trees, and other similar harmful vegetation.

### **VESTED RIGHT**

The right to undertake and complete a development or use of property under the terms and conditions of an approved Site Specific Plan currently in effect or as otherwise allowed by North Carolina law and this Ordinance.

### **VIOLATION**

As used in connection with flood damage prevention regulations, the failure of a structure or other development to be fully compliant with the Town's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this Ordinance is presumed to be in violation until such time as that documentation is provided.

### **WASTEWATER TREATMENT FACILITY**

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A facility operated by a licensed utility, in compliance with all applicable state, county, and City regulations, and intended or used for the treatment and surface or subsurface disposal of wastewater and that serves more than one (1) use or more than four (4) dwelling units; or a facility intended or used for the treatment and subsurface disposal of wastewater that serves only one (1) use or up to four (4) dwelling units.

### **WATER BODY**

Any natural or artificial pond, lake, reservoir or other area that ordinarily or intermittently contains water and that has a discernible shoreline.

### **WATER SURFACE ELEVATION (WSE)**

The height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

### **WATERCOURSE**

Any natural or artificial stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, swale, or wash in which water flows.

*Ephemeral watercourse:* A watercourse that flows only during and for short periods following precipitation and flows in low areas that may or may not have a well defined channel.

*Intermittent watercourse:* A watercourse that flows in a well defined channel during wet seasons of the year but not the entire year.

*Perennial watercourse:* A watercourse that flows in a well-defined channel throughout most of the year under normal climatic conditions.

### **WATERS**

Any and all water on or beneath the surface of the ground. It includes the water in any watercourse, water body or drainage system. It also includes diffused surface water and water percolating, standing or flowing beneath the surface of the ground, as well as coastal waters.

### **WATERSHED**

A drainage area or drainage basin contributing to the flow of water into a receiving body of water.

### **WATER-RELATED STRUCTURE**

Any structure for which the use requires access to or proximity to or sitting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, marine railways, piers, floats and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water related structures.

### **WETLANDS**

Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of

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vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

### **WIRELESS COMMUNICATIONS**

Any personal wireless service, radio or television broadcast services, and any other radio frequency signals, including amateur radio. Wireless communications does not include signals transmitted to or from a satellite earth station.

### **WIRELESS TELECOMMUNICATIONS SUPPORT STRUCTURE (WTSS)**

All freestanding monopole, self-supported, guyed, or similar structures whose primary design is to provide for support and placement of wireless telecommunications antennae.

### **WIRELESS TELECOMMUNICATIONS ATTACHMENTS (WTA)**

Devices mounted onto a support structure, principally intended to radiate or receive a source of non-ionizing electromagnetic radiation (NIER), and accessory equipment related to broadcast services, including but not limited to private radio services, cellular or digital telephone services, pagers, beepers, wireless data repeaters and common carriers (as regulated by the FCC), including AM, FM, two-way radio, fixed point microwave dishes, commercial satellite, high definition television (HDTV), cellular and PCS communication systems. The term WTA does not include electrical or telephone transmission lines or supporting distribution structures, antennae of amateur radio (ham) operators, and amateur club services licensed by the FCC.

### **YARD**

An open space on the same lot with a principal building, unoccupied and unobstructed from the ground upward except as otherwise provided in this Development Ordinance.

### **YARD, FRONT**

A yard across the full width of the lot, extending from the front building setback line, to the [lot line along the](#) street upon which the lot fronts.

### **YARD, REAR**

A yard extending across the full width of the lot from the rear building setback line to the rear lot line.

### **YARD, REQUIRED**

The open space between a lot line and the yard line and the facade of a building within which no structure may be located except as permitted in this Development Ordinance.

### **YARD, SIDE**

An open unoccupied space on the same lot with a principal building, situated between the side building setback line and the adjacent side line of the lot.

### **ZONING MAP AMENDMENT OR REZONING**

An amendment to a zoning regulation for the purpose of changing the zoning district that is applied to a specified property or properties. The term also includes (i) the initial application of zoning when land is added to the territorial jurisdiction of a local government that has previously

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adopted zoning regulations and (ii) the application of an overlay zoning district or a conditional zoning district. The term does not include (i) the initial adoption of a zoning map by a local government, (ii) the repeal of a zoning map and readoption of a new zoning map for the entire planning and development regulation jurisdiction, or (iii) updating the zoning map to incorporate amendments to the names of zoning districts made by G.S. 160D-102 Page 4 zoning text amendments where there are no changes in the boundaries of the zoning district or land uses permitted in the district.

### **ZONING PERMIT**

Written permission issued by the Town for the construction, or enlargement of a structure, including signs, ~~or the grading or excavation of a site in preparation of construction or for the installation of underground utilities.~~

### **ZONING VESTED RIGHT**

A right pursuant to G.S. 160D-102, 160D-100(D) to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

( Ord. of 7-10-12(1), § 3 ; Ord. of 7-14-15(1) ; Ord. of 3-8-16(1) , § 1; Ord. of 6-14-16(1) , § 2; Ord. of 10-10-17(1) , § 1; Ord. of 6-9-20(6) , § 1; Ord. of 3-9-21(1) , § 5)

## Chapter 11: APPENDIX

### 11.1 APPENDIX I

#### ~~Checklist of Requirements for New Wireless Telecommunication Support Structures (WTSS)~~

- ~~• Application fee.~~
- ~~• Complete application for WTSS.~~
- ~~• Copy of FCC license.~~
- ~~• Copy of all applications filed with federal and state agencies.~~
- ~~• FAA letter ascertaining "No Hazard" to air navigation.~~
- ~~• Statement of financial responsibility or surety bond.~~
- ~~• Engineer's letter describing lack of technically feasible co-location opportunities within a 3,000-foot radius of the proposed site location.~~
- ~~• Owner(s) letter describing inability to negotiate in good faith co-location on all possible site which are technically feasible.~~
- ~~• Owner(s) letter describing and the availability and opportunity for co-location sites on the proposed structure.~~
- ~~• Engineer's site plan for the proposed WTSS depicting the location parcel, its size, zoning, adjacent zoning, and fall radius.~~
- ~~• FAA or other federal agency letter describing minimal lighting and color requirements for the proposed WTSS.~~
- ~~• Engineer's letter denoting structural integrity of the proposed WTSS and all potential tenants, and certification of its integrity in a 50-year storm.~~
- ~~• Engineer's letter attesting to the fact that exposures to the public of any radiofrequency levels will at or below the lesser of the FCC and ANSI standards.~~
- ~~• Letter from insurer that the owner(s) will have a minimum one million dollar (\$1,000,000.00) general liability policy, and that the insurer will notify the town thirty (30) days prior to cancellation of this insurance.~~
- ~~• Engineer's scaled site plan including elevations, visual analysis, rendering, or photo simulation of the proposed WTSS from varying distances as viewed by the public.~~
- ~~• Engineer's site plan including elevations, and showing total heights of the proposed WTA and its support structure, and the WTA proposed color(s) and illumination scheme.~~

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## 11.2 APPENDIX II

### ~~Checklist of Requirements for New Wireless Telecommunication Antenna (WTA)~~

- ~~• Application fee.~~
- ~~• Complete application for WTA.~~
- ~~• Copy of FCC license.~~
- ~~• Copy of all applications filed with federal and state agencies.~~
- ~~• FAA letter ascertaining "No Hazard" to air navigation.~~
- ~~• FAA or other federal agency letter describing minimal lighting and color requirements for the proposed WTA.~~
- ~~• Engineer's letter denoting structural integrity of the proposed WTA and all potential tenants, and certification of its integrity in a 50-year storm.~~
- ~~• Engineer's letter attesting to the fact that exposures to the public of any radiofrequency levels will at or below the lesser of the FCC and ANSI standards.~~
- ~~• A copy of the lease agreement between the owner(s) of the WTA and the owner(s) of the structure on placement is proposed.~~
- ~~• Engineer's depiction of the minimal size and other requirement for equipment housing structures.~~
- ~~• Engineer's site plan including elevations, and showing total heights of the proposed WTA and its support structure, and the WTA proposed color(s) and illumination scheme.~~

## 11.3 APPENDIX III

### ~~Checklist of Requirements for Renewal of Wireless Telecommunications Antennae and Wireless Telecommunication Support Structures~~

- ~~• Renewal application fee.~~
- ~~• Complete renewal application form.~~
- ~~• Letter of continued insurance coverage for minimal general liability.~~
- ~~• Letter from the inspections department that the WTSS or WTA has remained in compliance with Town Code since the later of the last renewal or the certificate of occupancy.~~
- ~~• Engineer's letter stating that the WTSS or WTA had remained in compliance with all federal, state, and Town Code requirements for structural integrity, and for radiofrequency exposure requirements.~~
- ~~• Letter from the owner(s) that the WTSS or WTA has remained in compliance with all FCC, FAA, and NEPA requirements since the later of either the last renewal or the certificate of occupancy. Letter from the owner(s) that they intend to maintain full financial responsibility for the WTSS or WTA for the entire renewal period.~~

## **Chapter 6 BUILDING REGULATIONS<sup>1</sup>**

### **ARTICLE I. ADOPTION OF STATE CODES**

#### **Sec. 6-1. State of North Carolina codes adopted.**

The current edition of the following State codes adopted by the North Carolina Building Code Council are hereby adopted by reference as fully as though set forth herein:

- (1) State Building Code
- (2) State Plumbing Code
- (3) State Mechanical Code
- (4) State Electrical Code
- (5) State Residential Building Code
- (6) State Rehabilitation Code
- (7) State Energy Conservation Code
- (8) State Fuel Gas Code
- (9) State Administrative Code and Policies
- (10) State Regulations for Manufactured Homes

( Ord. of 4-8-14 , § 1)

#### **Sec. 6-2. Amendments to codes.**

Amendments to the regulatory codes adopted by reference herein, which are from time to time adopted and published by the agencies or organizations referred herein, shall be effective in the town at the time such amendments are filed with the town clerk or planning and inspections director, as provided in section 6-4.

( Ord. of 4-8-14 , § 1)

#### **Sec. 6-3. Compliance with codes.**

All buildings, structures, appurtenances, systems, equipment, components, installations, or other improvements subject to the State of North Carolina codes outlined in section 6-1 that are constructed, reconstructed, erected, altered, extended, enlarged, repaired, demolished, or moved shall conform to the requirements, minimum standards, and other provisions of the applicable codes outlined in section 6-1.

( Ord. of 4-8-14 , § 1)

#### **Sec. 6-4. Copies of codes filed with town clerk or planning and inspections director.**

An official copy of each regulatory code adopted herein, and official copies of all amendments thereto, shall be kept on file in the office of the town clerk or planning and inspections director. Such copies shall be the official copies of the codes and the amendments.

( Ord. of 4-8-14 , § 1)

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<sup>1</sup>Editor's note(s)—An ordinance adopted July 14, 2015 , retitled chapter 6 to read as herein set out. Formerly, such chapter was titled planning and inspections/building regulations.

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**Secs. 6-5—6-30 Reserved.**

***ARTICLE II. PLANNING AND INSPECTIONS DEPARTMENT<sup>2</sup>***

***Sec. 6-31. Organization.***

~~The planning and inspections department shall include at least one (1) inspector certified by the State of North Carolina and any other positions authorized by the Board of Commissioners to administer State codes and town development ordinances. The town manager shall appoint a planning and inspections director to oversee the operations of the planning and inspections department.~~

~~(Ord. of 4-8-14 , § 1)~~

***Sec. 6-32. General duties.***

~~It shall be the duty of the planning and inspections department to enforce all of the provisions of this chapter and of the regulatory codes adopted herein, and to make all inspections necessary to determine whether or not the provisions of this chapter and such codes are being met.~~

~~(Ord. of 4-8-14 , § 1)~~

***Sec. 6-33. Conflicts of interest.***

~~No officer or employee of the planning and inspections department shall be financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of a building or any part thereof, or in the making of plans or specifications therefor, unless he is the owner of such building. No officer or employee of the department shall engage in any work which is inconsistent with his duties or with the interests of the town.~~

~~(Ord. of 4-8-14 , § 1)~~

***Sec. 6-34. Reports and records.***

~~The planning and inspections department, and each officer or employee shall keep complete, permanent, and accurate records in convenient form of all applications received, permits issued, inspections and reinspections made, and all other work and activities of the department. Periodic reports shall be submitted to the town manager and board of commissioners and to other agencies as required.~~

~~(Ord. of 4-8-14 , § 1)~~

***Sec. 6-35. Oversight not to legalize violation.***

~~No oversight or dereliction of duty on the part of any official or employee of the planning and inspections department shall be deemed to legalize the violation of any provision of this chapter or any provision of any regulatory code herein adopted.~~

~~(Ord. of 4-8-14 , § 1)~~

***Sec. 6-36. Powers of inspection officials.***

~~(a) — *Authority.* Certified inspectors are hereby authorized, empowered, and directed to enforce all the provisions of this chapter and the regulatory codes adopted in this chapter.~~

~~(b) — *Right of entry.* With an appropriate warrant or permission from the owner or occupant, inspectors shall have the right of entry on any premises within the jurisdiction of the regulatory codes herein adopted at reasonable hours for the purpose of inspection or enforcement of the requirements of this chapter and the applicable regulatory codes.~~

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<sup>2</sup>State law reference(s) — Municipal building inspections and inspectors, G.S. 160A-411 et seq.

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(c) ~~Stop orders. Whenever any work subject to the state codes or any other town ordinance is being completed in a hazardous manner or in violation of any provision of this chapter or any other town ordinance, or in violation of any provision of any regulatory code herein adopted, or in violation of the terms of the permit issued therefor, or in such manner as to endanger life or property, the appropriate inspector may order such work to be immediately stopped. Such order shall be in writing to the owner of the property or to his agent, or to the person doing the work, and shall state the reasons therefor and the conditions under which the work may be resumed.~~

~~(Ord. of 4-8-14, § 1)~~

~~**Secs. 6-37—6-50. Reserved.**~~

**ARTICLE III. ENFORCEMENT**

~~**Sec. 6-51. Permits required.**~~

~~No person shall commence or proceed with the construction, reconstruction, erection, alteration, extension, enlargement, repair, demolition, or movement of any building, structure, appurtenance, system, equipment, component, installation, or other improvement subject to the State of North Carolina codes, as outlined in G.S. 160A-417, without:~~

- ~~(1) A written permit therefor from the planning and inspections department, and~~
- ~~(2) Securing all other permits to comply with applicable federal, state, and local regulations.~~

~~(Ord. of 4-8-14, § 1)~~

~~**Sec. 6-52. Application for permit.**~~

~~Written application for a permit shall be made for all permits required by this chapter, and shall be made on forms provided by the planning and inspections department. Such application shall be made by the owner of the building or structure affected or by his authorized agent or representative, and shall include sufficient information to enable the planning and inspections department to determine compliance with the applicable state codes and the responsible parties.~~

~~(Ord. of 4-8-14, § 1)~~

~~**Sec. 6-53. Issuance of building permit.**~~

~~When proper application for a permit has been made, and the appropriate inspector is satisfied that the application and the proposed work comply with the provisions of this chapter and the appropriate regulatory codes, he shall issue such permit, upon payment of the proper fees as established by the board of commissioners in the town's official fee schedule.~~

~~(Ord. of 4-8-14, § 1)~~

~~**Sec. 6-54. Revocation of building permit.**~~

~~A certified inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for such revocation. Permits shall be revoked for any material departure from the approved application, plans, or specifications; for refusal or failure to comply with proper orders of the inspector; for refusal or failure to comply with requirements of this chapter and the appropriate regulatory codes; or for false statements or misrepresentations made in securing such permit.~~

~~(Ord. of 4-8-14, § 1)~~

~~**Sec. 6-55. Failure to obtain permits.**~~

~~Any person who commences or proceeds with the construction, reconstruction, erection, alteration, extension, enlargement, repair, demolition, or movement of any building, structure, appurtenance, system, equipment, component, installation, or other improvement subject to the State of North Carolina codes, as outlined in G.S. 160A-417, without first~~

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obtaining the required permits will be subject to double permit fees (double the standard permit fee in effect at the time of permit issuance), and potentially, at the discretion of the planning and inspections department:

- (1) — Any remedy or penalty provided for in section 1-6 of the Town of Emerald Isle Code of Ordinances, or
- (2) — Any remedy or penalty provided for in the relevant section of the Code of Ordinances or Unified Development Ordinance.

(Ord. of 4-8-14, § 1)

### **Sec. 6-56. Time limitations on validity of permits.**

All permits issued under this article shall expire by limitation six (6) months after the date of issuance if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of twelve (12) months, the permit therefor shall immediately expire. No work authorized by any permit which has expired shall thereafter be performed until a new permit therefor has been secured.

(Ord. of 4-8-14, § 1)

### **Sec. 6-57. Changes in work.**

After a building permit has been issued, changes or deviations from the terms of the application and permit, or changes or deviations from the plans or specifications involving any work under the jurisdiction of this chapter or of any regulatory code adopted herein, shall not be made until specific written approval of such changes or deviations has been obtained from the appropriate inspector.

(Ord. of 4-8-14, § 1)

### **Sec. 6-58. Permit fees.**

Permit fees shall be set from time to time by the board of commissioners and included in the town's official fee schedule on file in the town clerk's office.

(Ord. of 4-8-14, § 1)

### **Sec. 6-59. Sanitary facilities.**

Every site which is the subject of a building permit which has been issued by the planning and inspections department shall have adequate sanitation facilities for workers on the job site to use.

(Ord. of 4-8-14, § 1)

### **Sec. 6-60. Compliance with zoning regulations required.**

No permit for alteration, repair, or construction of any building or structure shall be issued unless the plans and specifications show that the building or structure, and its proposed use, will be in compliance with applicable zoning provisions of the town's Unified Development Ordinance.

(Ord. of 4-8-14, § 1)

Cross reference(s) — Zoning, Ch. 19.

### **Secs. 6-61—6-70. Reserved.**

## **ARTICLE II-III. Reserved.**

## **ARTICLE IV. CONDEMNATION, REPAIR, AND DEMOLITION OF UNSAFE BUILDINGS<sup>3</sup>**

### **Sec. 6-71. Duty of planning and inspections department.**

The planning and inspections department shall be charged with enforcing the provisions of G.S. 160A-426 through G.S. 160A-434 relating to the condemnation, repair, and demolition of unsafe buildings.

( Ord. of 4-8-14 , § 1)

### **Secs. 6-72—6-80. Reserved.**

## **ARTICLE V. PERMITS FOR MOVEMENT OF HOMES**

### **Sec. 6-81. Permit required for mobile homes transported into the town.**

Every person transporting a mobile home into the town from an area outside the town or within the town shall first be required to obtain a mobile home permit from the planning and inspections department prior to transportation and placement of the mobile home in a location within the town. The planning and inspections department shall first determine that the mobile home meets applicable federal, state and local codes and regulations before transportation of the same into the town is authorized.

( Ord. of 4-8-14 , § 1)

### **Sec. 6-82. Permit required for removal of mobile homes.**

Every person removing a mobile home from the town shall first be required to obtain a permit for removal from the planning and inspections department. Such permit shall be issued upon presentation of a tax permit issued by Carteret County for movement of the mobile home in accordance with G.S. 105-316.1, a determination that all town taxes have been paid, and if the mobile home is to be moved to another location within the town, that the mobile home meets applicable federal, state and local codes and regulations for movement and placement of the same.

( Ord. of 4-8-14 , § 1)

### **Sec. 6-83. Permit required for house moving.**

Every person moving a fixed home within, into, or from the town shall first be required to obtain a permit for the removal and/or transport of the home from the planning and inspections department. The planning and inspections department shall prescribe the most appropriate route, date, and time of day for movement of said fixed home, and shall also insure that said movement meets all applicable federal, state, and local codes and regulations for the removal and/or transport and/or new placement of the home.

( Ord. of 4-8-14 , § 1)

### **Sec. 6-84. Permit fees.**

The fees for permits issued under this article shall be established from time to time by the board of commissioners and included in the town's official fee schedule.

( Ord. of 4-8-14 , § 1)

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<sup>3</sup>State law reference(s)—Repair, closing and demolition of unsafe buildings, G.S. 160A-443.

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**Secs. 6-85—6-120. Reserved.**

**~~ARTICLE VI. YARD SALES, GARAGE SALES, AND OCCASIONAL SALES<sup>4</sup>~~**

**~~Sec. 6-121. Definition.~~**

~~Yard sales, garage sales, and occasional sales shall include the sales of goods and wares on premises zoned or used for residential purposes on an infrequent and unscheduled basis.~~

~~(Ord. of 4-8-14, § 1)~~

**~~Sec. 6-122. Time limitations.~~**

~~It shall be unlawful for any person to conduct or allow any yard sale, garage sale, or occasional sale for a continuous period in excess of three (3) days, or to conduct more than two (2) such separate sales on the same premises within any twelve-month period between January 1 and December 31.~~

~~(Ord. of 4-8-14, § 1)~~

**~~Sec. 6-123. Limitations on display of goods.~~**

~~A person may place on display any goods, wares, or merchandise under the provisions of this article up to the front property line. Articles for sale may be displayed inside the garage, inside the back yard, and on a driveway so as not to hinder emergency equipment access to any structures on the property.~~

~~(Ord. of 4-8-14, § 1)~~

**~~Sec. 6-124. Temporary signs for yard sales, garage sales, and occasional sales.~~**

~~Temporary directional signs for yard sales, garage sales, and occasional sales are exempt from the town's sign ordinances, and may be placed within the street right of way, provided that the property owner directly adjacent to the street right of way where the sign is placed does not object to the sign, and provided such signs are no larger than four (4) sq. ft. in area, are limited to one (1) sign per placement location, do not obstruct any line of vision for the driver of any vehicle, are placed no more than three (3) days prior to the sale, and are removed within two (2) hours after conclusion of the sale.~~

~~(Ord. of 4-8-14, § 1; Ord. of 3-8-16(2), § 1)~~

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<sup>4</sup>Editor's note(s)—An ordinance adopted July 14, 2015, repealed §§ 6-101—6-107, which pertained to itinerant merchants and satellite merchants. See Code Comparative Table for complete derivation. Subsequently, Article VII is renumbered as Article VI.

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## 11.2 APPENDIX II

### ~~Checklist of Requirements for New Wireless Telecommunication Antenna (WTA)~~

- ~~• Application fee.~~
- ~~• Complete application for WTA.~~
- ~~• Copy of FCC license.~~
- ~~• Copy of all applications filed with federal and state agencies.~~
- ~~• FAA letter ascertaining "No Hazard" to air navigation.~~
- ~~• FAA or other federal agency letter describing minimal lighting and color requirements for the proposed WTA.~~
- ~~• Engineer's letter denoting structural integrity of the proposed WTA and all potential tenants, and certification of its integrity in a 50-year storm.~~
- ~~• Engineer's letter attesting to the fact that exposures to the public of any radiofrequency levels will at or below the lesser of the FCC and ANSI standards.~~
- ~~• A copy of the lease agreement between the owner(s) of the WTA and the owner(s) of the structure on placement is proposed.~~
- ~~• Engineer's depiction of the minimal size and other requirement for equipment housing structures.~~
- ~~• Engineer's site plan including elevations, and showing total heights of the proposed WTA and its support structure, and the WTA proposed color(s) and illumination scheme.~~

## 11.3 APPENDIX III

### ~~Checklist of Requirements for Renewal of Wireless Telecommunications Antennae and Wireless Telecommunication Support Structures~~

- ~~• Renewal application fee.~~
- ~~• Complete renewal application form.~~
- ~~• Letter of continued insurance coverage for minimal general liability.~~
- ~~• Letter from the inspections department that the WTSS or WTA has remained in compliance with Town Code since the later of the last renewal or the certificate of occupancy.~~
- ~~• Engineer's letter stating that the WTSS or WTA had remained in compliance with all federal, state, and Town Code requirements for structural integrity, and for radiofrequency exposure requirements.~~
- ~~• Letter from the owner(s) that the WTSS or WTA has remained in compliance with all FCC, FAA, and NEPA requirements since the later of either the last renewal or the certificate of occupancy. Letter from the owner(s) that they intend to maintain full financial responsibility for the WTSS or WTA for the entire renewal period.~~

## **Chapter 6 BUILDING REGULATIONS<sup>1</sup>**

### **ARTICLE I. ADOPTION OF STATE CODES**

#### **Sec. 6-1. State of North Carolina codes adopted.**

The current edition of the following State codes adopted by the North Carolina Building Code Council are hereby adopted by reference as fully as though set forth herein:

- (1) State Building Code
- (2) State Plumbing Code
- (3) State Mechanical Code
- (4) State Electrical Code
- (5) State Residential Building Code
- (6) State Rehabilitation Code
- (7) State Energy Conservation Code
- (8) State Fuel Gas Code
- (9) State Administrative Code and Policies
- (10) State Regulations for Manufactured Homes

( Ord. of 4-8-14 , § 1)

#### **Sec. 6-2. Amendments to codes.**

Amendments to the regulatory codes adopted by reference herein, which are from time to time adopted and published by the agencies or organizations referred herein, shall be effective in the town at the time such amendments are filed with the town clerk or planning and inspections director, as provided in section 6-4.

( Ord. of 4-8-14 , § 1)

#### **Sec. 6-3. Compliance with codes.**

All buildings, structures, appurtenances, systems, equipment, components, installations, or other improvements subject to the State of North Carolina codes outlined in section 6-1 that are constructed, reconstructed, erected, altered, extended, enlarged, repaired, demolished, or moved shall conform to the requirements, minimum standards, and other provisions of the applicable codes outlined in section 6-1.

( Ord. of 4-8-14 , § 1)

#### **Sec. 6-4. Copies of codes filed with town clerk or planning and inspections director.**

An official copy of each regulatory code adopted herein, and official copies of all amendments thereto, shall be kept on file in the office of the town clerk or planning and inspections director. Such copies shall be the official copies of the codes and the amendments.

( Ord. of 4-8-14 , § 1)

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<sup>1</sup>Editor's note(s)—An ordinance adopted July 14, 2015 , retitled chapter 6 to read as herein set out. Formerly, such chapter was titled planning and inspections/building regulations.

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**Secs. 6-5—6-30 Reserved.**

***ARTICLE II. PLANNING AND INSPECTIONS DEPARTMENT<sup>2</sup>***

***Sec. 6-31. Organization.***

~~The planning and inspections department shall include at least one (1) inspector certified by the State of North Carolina and any other positions authorized by the Board of Commissioners to administer State codes and town development ordinances. The town manager shall appoint a planning and inspections director to oversee the operations of the planning and inspections department.~~

~~(Ord. of 4-8-14, § 1)~~

***Sec. 6-32. General duties.***

~~It shall be the duty of the planning and inspections department to enforce all of the provisions of this chapter and of the regulatory codes adopted herein, and to make all inspections necessary to determine whether or not the provisions of this chapter and such codes are being met.~~

~~(Ord. of 4-8-14, § 1)~~

***Sec. 6-33. Conflicts of interest.***

~~No officer or employee of the planning and inspections department shall be financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of a building or any part thereof, or in the making of plans or specifications therefor, unless he is the owner of such building. No officer or employee of the department shall engage in any work which is inconsistent with his duties or with the interests of the town.~~

~~(Ord. of 4-8-14, § 1)~~

***Sec. 6-34. Reports and records.***

~~The planning and inspections department, and each officer or employee shall keep complete, permanent, and accurate records in convenient form of all applications received, permits issued, inspections and reinspections made, and all other work and activities of the department. Periodic reports shall be submitted to the town manager and board of commissioners and to other agencies as required.~~

~~(Ord. of 4-8-14, § 1)~~

***Sec. 6-35. Oversight not to legalize violation.***

~~No oversight or dereliction of duty on the part of any official or employee of the planning and inspections department shall be deemed to legalize the violation of any provision of this chapter or any provision of any regulatory code herein adopted.~~

~~(Ord. of 4-8-14, § 1)~~

***Sec. 6-36. Powers of inspection officials.***

~~(a) — *Authority.* Certified inspectors are hereby authorized, empowered, and directed to enforce all the provisions of this chapter and the regulatory codes adopted in this chapter.~~

~~(b) — *Right of entry.* With an appropriate warrant or permission from the owner or occupant, inspectors shall have the right of entry on any premises within the jurisdiction of the regulatory codes herein adopted at reasonable hours for the purpose of inspection or enforcement of the requirements of this chapter and the applicable regulatory codes.~~

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<sup>2</sup>State law reference(s) — Municipal building inspections and inspectors, G.S. 160A-411 et seq.

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(c) ~~Stop orders. Whenever any work subject to the state codes or any other town ordinance is being completed in a hazardous manner or in violation of any provision of this chapter or any other town ordinance, or in violation of any provision of any regulatory code herein adopted, or in violation of the terms of the permit issued therefor, or in such manner as to endanger life or property, the appropriate inspector may order such work to be immediately stopped. Such order shall be in writing to the owner of the property or to his agent, or to the person doing the work, and shall state the reasons therefor and the conditions under which the work may be resumed.~~

~~(Ord. of 4-8-14, § 1)~~

~~**Secs. 6-37—6-50. Reserved.**~~

**ARTICLE III. ENFORCEMENT**

**Sec. 6-51. Permits required.**

~~No person shall commence or proceed with the construction, reconstruction, erection, alteration, extension, enlargement, repair, demolition, or movement of any building, structure, appurtenance, system, equipment, component, installation, or other improvement subject to the State of North Carolina codes, as outlined in G.S. 160A-417, without:~~

- ~~(1) A written permit therefor from the planning and inspections department, and~~
- ~~(2) Securing all other permits to comply with applicable federal, state, and local regulations.~~

~~(Ord. of 4-8-14, § 1)~~

**Sec. 6-52. Application for permit.**

~~Written application for a permit shall be made for all permits required by this chapter, and shall be made on forms provided by the planning and inspections department. Such application shall be made by the owner of the building or structure affected or by his authorized agent or representative, and shall include sufficient information to enable the planning and inspections department to determine compliance with the applicable state codes and the responsible parties.~~

~~(Ord. of 4-8-14, § 1)~~

**Sec. 6-53. Issuance of building permit.**

~~When proper application for a permit has been made, and the appropriate inspector is satisfied that the application and the proposed work comply with the provisions of this chapter and the appropriate regulatory codes, he shall issue such permit, upon payment of the proper fees as established by the board of commissioners in the town's official fee schedule.~~

~~(Ord. of 4-8-14, § 1)~~

**Sec. 6-54. Revocation of building permit.**

~~A certified inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for such revocation. Permits shall be revoked for any material departure from the approved application, plans, or specifications; for refusal or failure to comply with proper orders of the inspector; for refusal or failure to comply with requirements of this chapter and the appropriate regulatory codes; or for false statements or misrepresentations made in securing such permit.~~

~~(Ord. of 4-8-14, § 1)~~

**Sec. 6-55. Failure to obtain permits.**

~~Any person who commences or proceeds with the construction, reconstruction, erection, alteration, extension, enlargement, repair, demolition, or movement of any building, structure, appurtenance, system, equipment, component, installation, or other improvement subject to the State of North Carolina codes, as outlined in G.S. 160A-417, without first~~

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obtaining the required permits will be subject to double permit fees (double the standard permit fee in effect at the time of permit issuance), and potentially, at the discretion of the planning and inspections department:

- (1) — Any remedy or penalty provided for in section 1-6 of the Town of Emerald Isle Code of Ordinances, or
- (2) — Any remedy or penalty provided for in the relevant section of the Code of Ordinances or Unified Development Ordinance.

(Ord. of 4-8-14, § 1)

### **Sec. 6-56. Time limitations on validity of permits.**

All permits issued under this article shall expire by limitation six (6) months after the date of issuance if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of twelve (12) months, the permit therefor shall immediately expire. No work authorized by any permit which has expired shall thereafter be performed until a new permit therefor has been secured.

(Ord. of 4-8-14, § 1)

### **Sec. 6-57. Changes in work.**

After a building permit has been issued, changes or deviations from the terms of the application and permit, or changes or deviations from the plans or specifications involving any work under the jurisdiction of this chapter or of any regulatory code adopted herein, shall not be made until specific written approval of such changes or deviations has been obtained from the appropriate inspector.

(Ord. of 4-8-14, § 1)

### **Sec. 6-58. Permit fees.**

Permit fees shall be set from time to time by the board of commissioners and included in the town's official fee schedule on file in the town clerk's office.

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Cross reference(s) — Zoning, Ch. 19.

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( Ord. of 4-8-14 , § 1)

### **Sec. 6-84. Permit fees.**

The fees for permits issued under this article shall be established from time to time by the board of commissioners and included in the town's official fee schedule.

( Ord. of 4-8-14 , § 1)

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<sup>3</sup>State law reference(s)—Repair, closing and demolition of unsafe buildings, G.S. 160A-443.

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**~~ARTICLE VI. YARD SALES, GARAGE SALES, AND OCCASIONAL SALES<sup>4</sup>~~**

**~~Sec. 6-121. Definition.~~**

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**~~Sec. 6-124. Temporary signs for yard sales, garage sales, and occasional sales.~~**

~~Temporary directional signs for yard sales, garage sales, and occasional sales are exempt from the town's sign ordinances, and may be placed within the street right of way, provided that the property owner directly adjacent to the street right of way where the sign is placed does not object to the sign, and provided such signs are no larger than four (4) sq. ft. in area, are limited to one (1) sign per placement location, do not obstruct any line of vision for the driver of any vehicle, are placed no more than three (3) days prior to the sale, and are removed within two (2) hours after conclusion of the sale.~~

~~(Ord. of 4-8-14, § 1; Ord. of 3-8-16(2), § 1)~~

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<sup>4</sup>Editor's note(s)—An ordinance adopted July 14, 2015, repealed §§ 6-101—6-107, which pertained to itinerant merchants and satellite merchants. See Code Comparative Table for complete derivation. Subsequently, Article VII is renumbered as Article VI.