

AN ORDINANCE AMENDING THE KILL DEVIL HILLS TOWN CODE,  
CHAPTER 153, ZONING

BE IT HEREBY ORDAINED BY the Kill Devil Hills Board of Commissioners that Chapter 153, Zoning, of the Kill Devil Hills Town Code, shall be amended by adding the underlined language and deleting the following stricken language to the sections identified below, as follows:

**CHAPTER 153: ZONING CODE**

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**GENERAL PROVISIONS**

**§ 153.001 AUTHORITY AND PURPOSE.**

(A) In accordance with the provisions of NCGS § Ch. ~~160A, Art. 19~~ **160D-301**, the Board of Commissioners, having designated the Planning Board as the planning agency to prepare a zoning

plan showing proposed district boundaries and recommending a method of procedure by which the zoning regulations and restrictions and the boundaries of the zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, and having received from the Planning Board a certified plan taking into consideration the character of each district and its peculiar suitability for particular uses and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the town, adopts this chapter.

(B) This chapter has been prepared in accordance with a comprehensive plan for the development of Kill Devil Hills and is designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

### § 153.002 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in the present tense include the future tense. Words used in the singular number shall include the plural, and words used in the plural include the singular. The word **PERSON** includes a firm, co-partnership, company, organization, trust, association, corporation or other entity as well as an individual. The word **LOT** includes the words "plot," "parcel," or "tract." The word **BUILDING** includes the word "structure." The word **USED** or **OCCUPIED** as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied." The word **SHALL** is always mandatory. The word **MAY** is permissive.

**ACCELERATED EROSION.** Any increase over the rate of natural erosion as a result of land-disturbing activity.

**ACCELERATION LANE.** An added roadway lane which permits integration and merging of slower moving vehicles into the main vehicular traffic flow.

**ACT.** The North Carolina Sedimentation Pollution Control Act of 1973, NCGS § 113A-50 *et seq.*, and all rules and orders adopted pursuant to it.

**ACTIVITY.** The quality or state of causing action or change as applied to site development, whether a portion of a site or its entirety, as will be determined by the Board of Commissioners on an individual basis depending on the action under consideration.

**ACCESSORY DWELLING UNIT (ADU).** A secondary dwelling unit established on one parcel in conjunction with a principal single-family dwelling unit. Accessory dwelling units shall be subordinate in floor area, bulk, and height to principal single-family dwelling unit. An accessory dwelling unit may be included as part of the principal single-family dwelling unit, attached to the principal single-family dwelling unit by an enclosed walkway, or entirely detached from the principal single-family dwelling unit. The use of manufactured or mobile homes, travel trailers, motorhomes, campers or similar vehicles as an accessory dwelling unit is prohibited.

**ADDITION.** Any construction that increases the size of a building or site features in terms of site coverage (parking, walkways, structures, etc.), height, length, width, or gross floor area.

**ADEQUATE EROSION CONTROL MEASURE, STRUCTURE OR DEVICE.** One which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

**ADJOINING PROPERTY.** Any lot within town boundaries having a border that touches at any point the border of the property that is the subject of a proposed permit, appeal, variance or rezoning, as well as any tract that would have such a common border point with the subject property if one were to disregard:

- (1) Any intervening street or other public or utility right-of-way; and
- (2) Any intervening property that is under the same ownership as the subject property.

**AERIAL ADVERTISING DISPLAY.** An outdoor advertising display affixed to a balloon, kite, airplane, vehicle or other apparatus in such a manner as to be displayed in air space.

**AESTHETIC.** The perception of artistic elements or elements in the natural or man-made environment which are pleasing to the eye.

**AFFILIATE.** A person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

**AIRCRAFT.** Any contrivance used or designed for navigation of or flight in the air by one or more persons.

**AIRPORT.** An area of land or water other than an airstrip that is designed or used on a recurring basis for the landing and take-off of aircraft.

**AIRSTRIP.** An area of land or water, located on private property, which the owner of such land uses (or authorizes the use of) for the landing and take-off of:

- (1) Not more than two aircraft owned or leased by the owner of such property; or
- (2) Aircraft engaged in crop dusting of land owned or leased.

**ALLEY.** Any access or thoroughfare 20 feet or less in width which has been dedicated or deeded for public or private use.

**ALTERATION, STRUCTURAL.** Any change in the supporting members of a building, such as bearing walls, columns, beams, girders, rafters, or changes in roof or exterior building lines except for repair and replacement.

**ALTERNATIVE TOWER STRUCTURE.** Clock towers, sculptures, bell steeples, light poles and similar alternative-design mounting structures that conceal the presence of antennas or towers.

**ANTENNA.** Equipment used for transmitting or receiving radio frequency signals which is attached to a tower, building or other structure usually consisting of a series of directional panels, microwave or satellite dishes or omnidirectional "whip" antennas.

**ANTENNA, STEALTH.** Wireless telecommunications antenna and related equipment designed to blend into the surrounding environment or integrated into the physical structure to which it is attached.

**APARTMENT.** A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation intended

and designed to be used as a permanent residence. For the purposes of this chapter, apartment will also be referred to as multi-family dwelling.

**APARTMENT HOUSE.** See the definition for **DWELLING, MULTIPLE**.

**APPRAISED VALUE.** The cost of a structure as estimated by an appraiser certified by the State of North Carolina or designated and specified by the American Institute of Real Estate Appraisers.

**AS-BUILT SITE PLAN.** See the definition for **SITE PLAN, AS-BUILT**.

**ASSISTED LIVING FACILITY.** Residences designed, constructed and occupied exclusively for persons with disabilities and/or elderly that provide rooms, meals, personal care, supervision of self-administered medication and a range of health-care services on-site. An assisted living facility may provide other services, such as recreational activities, financial services, transportation, and housing for older persons as defined in the Fair Housing Act, Section 807(b)(2), or as may be amended.

**AUTOMATED ICE VENDING STRUCTURE.** Enclosed, free standing, unmanned structure with minimum gross floor area of 75 square feet, that produces and vends bagged and bulk ice.

**AUTOMOBILE REPAIR AND MAINTENANCE.** A retail or wholesale establishment designed and operated to repair or maintain passenger vehicles and sell related automotive supplies and fluids.

**BASE FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year. Also known as the 100-year flood.

**BASE TRANSCEIVER STATION.** Equipment that provides the link between wireless communications and land-based public telephone switching networks, including radio frequency transceivers, back-up power sources, power amplifiers and signal processing hardware, typically contained in a small building or cabinet.

**BED AND BREAKFAST.** A single-family detached dwelling that consists of a single dwelling unit, together with the rental of one or more dwelling rooms on a daily or weekly basis to tourists, vacationers or other transients; where the provision of meals, if provided at all, is limited to the breakfast meal; and where the bed and breakfast operation is conducted by persons who own and reside within the dwelling unit, with the assistance of not more than the equivalent of one full-time employee.

**BEING CONDUCTED.** A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

**BERM.** A ledge or deposit of material, especially sand or small rocks, on a horizontal surface for the purpose of separating two surfaces such as a space between the edge of pavement and a roadway ditch.

**BLOCK, DECORATIVE.** Concrete masonry units which are split faced or rock faced on exterior exposures.

**BOARD OF ADJUSTMENT.** The Board of Adjustment of the town.

**BOARDING HOUSE.** A residential unit that consists of at least one dwelling unit together with more than two rooms that are rented out or are designed or intended to be rented but which rooms, individually or collectively, do not constitute separate dwelling units; where the rooms are occupied by longer term residents (at least month-to-month tenants) as opposed to overnight or weekly guests; and where the dwelling unit is occupied by the owners or operators of the boarding house.

**BORROW.** Fill material which is required for construction and is obtained from locations other than the construction site.

**BREWERY.** A building or establishment or portion thereof for brewing beer and other malt beverages.

**BUFFER STRIP.** A device of material and/or space used to provide sight and sound screening from adjoining properties. The required height and width of the buffer strip and the materials used vary according to use.

**BUFFER ZONE.** The strip of land adjacent to a lake or natural watercourse.

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

**BUILDING.** Any structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind which has enclosing walls for 50% of its perimeter. The term **BUILDING** shall be construed as if followed by the words "or part thereof." (For the purposes of this chapter, each portion of a building separated from other portions by a fire wall shall be considered as a separate unit.) For the purpose of area and height limitations this definition shall be applicable to sheds and open sheds.

**BUILDING FRONTAGE.** The side where the main building entrance is located and in the general direction in which the principal building faces.

**BUILDING, HEIGHT OF.** The distance between the average elevation of the finished grade, such point to be computed at the corners of the proposed building foundation and the highest point of the structure, excluding chimneys, cupolas, cooling towers, elevators, bulkheads, scenery lots, monuments, domes, spires and parapet walls.

**BUILDING, PRINCIPAL.** A building in which is conducted the principal use of the lot on which it is located.

**BUILDING SITE.** Area of disturbed land and vegetation required for placement of a structure, its accessways and utilities, including area disturbed for parking lots, power lines, driveways, septic tank nitrification fields, cemeteries and hiking trails.

**BULKHEAD.** A wall that retains and stabilizes earth slopes.

**CAMPER.** A self-propelled vehicle or structure or a structure which is or may be situated upon or hauled by the body of a self-propelled vehicle, which contains sleeping or kitchen quarters or both sleeping and kitchen quarters.

**CANDLEPOWER.** Luminous intensity expressed in candelas.

**CANOPY.** Roof-like cover, including an awning, that projects from a wall of a building over a door, entrance or window; or a free-standing or projecting cover above an outdoor service area, such as at a gasoline service station.

**CHANGE OF USE.** A change to the essential character or nature of the activity conducted on a lot.

**CLUSTER HOMES.** Buildings containing separate bathing, kitchen, sanitary, and sleeping facilities designed to be occupied by not more than one family, with the buildings located in such a manner that all sides of any building and any appurtenant thereto are directly on a lot line.

**COASTAL AREA.** That territory adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean or estuarine water.

**CO-LOCATION.** The location of wireless telecommunications equipment from more than one provider on one common tower, building or structure.

**COMMERCIAL ACTIVITY.** Any activity done for compensation (or as a result of compensation paid to another in order to engage in such activity) where the activity undertaken is conducted outside or inside of the perimeter walls of the structure.

**COMMISSION.** The North Carolina Sedimentation Control Commission.

**COMMUNICATION BROADCAST STUDIOS AND SALES OFFICES.** Studios including sales offices where communication and broadcast activities for radio and television are conducted.

**COMMUNITY RECREATIONAL FACILITIES.** A recreational facility which is constructed for, open to and available for public recreation.

**COMPLETION OF CONSTRUCTION OR DEVELOPMENT.** No further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

~~CONDITIONAL~~ **SPECIAL USE PERMIT.** A permit issued by the Board of Commissioners that authorizes the recipient to make use of property in accordance with the requirements of this chapter as well as any additional requirements imposed by the Board.

**CONDOMINIUM.** A form of property ownership providing for individual ownership of space in a structure together with an individual interest in the land or other parts of the structure in common with other owners. (See NCGS § Ch. 47C, or as amended.)

**CONVENIENCE STORE.** A retail store containing less than 3,000 square feet of gross floor area that is designed and stocked to sell small amounts of food, beverages and other household supplies and may sell gasoline, oil and other automotive fluids and accessories.

**COTTAGE COURT.** A group of three or more detached, single-family dwelling units, each with one or more bedrooms, located on a single lot, being under single ownership and used primarily for rental purposes.

**DAY CARE CENTER.** A child day care facility as defined in NCGS § 110-86(3). An adult day care facility as defined in NCGS § 131D-6(b).

**DEALERSHIP, MARINE.** A retail business for marketing new or used boats or the repair and service of same primarily housed in a structure and characterized by a mixture of uses upon a commercial site.

**DEALERSHIP, MOTOR VEHICLE.** A retail business for marketing new or used motor vehicles or the repair and service of same primarily housed in a structure and characterized by a mixture of uses upon a commercial site.

**DECELERATION LANE.** An added roadway lane that permits cars to slow down and leave the main vehicle traffic flow.

**DECK/PATIO, COVERED.** An unheated, open-air structure that may be partially enclosed with a roof and railing or walls not exceeding 42 inches in height from the deck/patio floor on at least one

side. The area between the roof and the railings or wall may be covered with screening materials only, and can not be enclosed with windows or other materials.

**DENSITY.** The number of dwelling units or hotel units which may be constructed upon a parcel of land, as allowed by the various zoning districts.

**DEPARTMENT.** The North Carolina Department of Environment and Natural Resources.

**DEVELOPER.** A person who is responsible for any undertaking that requires a zoning permit, special use permit, conditional use permit or building permit.

**DEVELOPMENT.** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations which adds to or changes the amount of impervious or partially impervious cover on a land area, thereby decreasing the infiltration of precipitation into the soil and altering the hydrologic characteristics of the area. [The subdivision of land and or the initiation or substantial change in the use of the land or the intensity of the use of the land.](#)

**DIRECTOR.** The Director of the Division of Land Resources of the Department of Environment and Natural Resources.

**DISCHARGE POINT.** That point at which runoff leaves a tract of land.

**DISTRICT.** The Dare County Soil and Water Conservation District created pursuant to NCGS § Ch.139.

**DOG DAY CARE FACILITY.** A facility providing such services as canine day care for all or part of a day, obedience classes, training, grooming, or behavioral counseling, provided that overnight boarding is not permitted.

**DRAINAGE AREA OR WATERSHED.** That area contributing water runoff to a given area measured in a horizontal plane which is enclosed by a ridge line.

**DRIVEWAY.** An area of land used for vehicular ingress and egress which may be improved in accordance with the specifications of this chapter.

**DRIVEWAY, RESIDENTIAL.** A driveway providing vehicular ingress and egress to and from property used for residential purposes.

**DUNES, OCEAN.**

(1) **PRIMARY.** First mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level for the area plus six feet.

(2) **FRONTAL.** In areas where there is a primary dune, that dune shall be deemed to be the frontal dune. Where there is no primary dune, the frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value. Man-made mounds seaward of the natural line of frontal dunes and dunes created after June 1, 1979 shall not be considered to be frontal or primary dunes, except where no frontal or primary dune exists.

**DUNE(S), INLAND.** Mound(s) of sand other than primary or frontal dunes having an elevation of 15 feet or more above mean sea level.

**DWELLING, MULTIPLE FAMILY (MULTI-FAMILY).** A structure under one roof or portion thereof used or designed as a residence for three or more families living independently of each other in individual dwelling units including apartments and townhouses.

**DWELLING, SINGLE-FAMILY.** A detached building other than a mobile home designed for or occupied exclusively by one family.

**DWELLING, TWO-FAMILY (DUPLEX).** A detached building, divided horizontally or vertically, and designed for or occupied by two single-family housekeeping units contained entirely under one roof and having one dividing partition common to each unit or having the ceiling structure of the lower unit and the floor structure of the unit above.

**DWELLING UNIT.** One room, or rooms connected together, constituting a separate, independent housekeeping unit for owner occupancy or rental or lease and physically separated from any other units which may be in the same structure and containing independent cooking, sleeping facilities and sanitation for a single family. Hotel, motel or other accommodation for transient public are not included in this definition.

**ELIGIBLE HOUSEHOLD.** A family who occupies one housing unit on a year-round basis with a total combined adjusted gross annual income at or below 125% of Median Family Income for Dare County. For purposes of this section, the income of all individuals age 18 or older residing in the housing unit shall be counted toward the total adjusted gross annual income for the eligible household, excluding income earned by any member of the household who is enrolled in good standing and pursuing a degree program at an accredited college or university.

**ENERGY DISSIPATOR.** A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down energy from high velocity flow.

**EROSION.** The wearing away of land surface by the action of wind, water, gravity or any combination thereof.

**EVENT GARDEN(S).** An outdoor, landscaped area with facilities designed for events such as weddings, birthday parties, family reunions, and similar functions.

**FAMILY.** Individuals living together as a single housekeeping unit.

**FISHING PIER.** A structure extending into the ocean, sound or other waters for the specific purpose of providing a platform for fishing or other related activities.

**FLOOD or FLOODING.** The general and temporary condition of partial or complete inundation of normally dry land areas from precipitation or the overflow of ocean, sounds, creeks, watercourses or lakes or abnormally high tidal water or rising coastal water resulting from severe storms, hurricanes, tidal waves or flash flooding.

**FLOOD, HUNDRED-YEAR.** The highest level of flooding that, on the average, is likely to occur once in every 100 years, for example, that has a 1% chance of occurring each year.

**FLOODPLAIN AREAS.** See Ch. 151, Flood Damage Prevention.

**FLOODPLAIN MANAGEMENT.** The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, floodproofing, flood control work and land use and control measures.

**FLOODPROOFING.** See Ch. 151, Flood Damage Prevention.

**FLOOD PROTECTION ELEVATION, REGULATORY.** The highest water surface elevation likely to be reached during a 100-year flood.

**FLOOR AREA RATIO (FAR).** On any developed parcel of land the gross floor area of a building or buildings divided by the usable land area.

**FLOOR AREA, GROSS.** The sum of the horizontal areas of several stories of a building measured from the exterior walls. **GROSS FLOOR AREA** shall include: (a) heated areas, (b) enclosed porches, (c) enclosed stairwells, (d) elevator shafts, and (e) outdoor restaurants and customer seating areas covered or uncovered. In atriums, the projected area of each floor, where the resulting space would be of habitable height, shall be included in **GROSS FLOOR AREA**. **GROSS FLOOR AREA** shall not include: (a) interior or partially enclosed parking spaces, (b) attic or storage areas where the floor to ceiling height is less than six feet, (c) covered or open decks not part of restaurant seating, or (d) outdoor pools or pool decks.

**FOOTPRINT.** The outline of a building, including decks, roof eaves, overhangs, porches and steps, when extended to the ground.

**FOREST CANOPY.** Collective term for the light-intercepting layer formed by all of the tree tops and ultimate leaf-bearing branches in a forest; the uppermost layer of vegetation in a forest; tightly woven network of interlocking tree branches that function as the roof of a forest.

**FOREST SUBCANOPY.** A light-intercepting understory layer formed by shade-tolerant saplings, shrubs and small trees such as dogwood, muscle wood, hop hornbeam and holly beneath the canopy of a forest.

**FOUNDATION.** The base upon which a building stands or is supported.

**FRONTAGE.** That boundary of a parcel of land that adjoins a street's right-of-way.

**FURNITURE STORE.** A retail business with a minimum of 75% of the floor area dedicated to display and sale of sofas, chairs, dressers, beds, rugs and mattresses.

**GARAGE, PRIVATE.** An enclosed space used as an accessory to or a part of the main building permitted in any residence district and providing for the storage of motor vehicles and in which no business, occupation or service for profit is in any way conducted.

**GARAGE, PUBLIC.** Any building or premises, except those described as a private or storage garage, used for the storage or care of motor vehicles or where any such vehicles are equipped for operation, repaired or kept for hire or sale or for remuneration.

**GARAGE, STORAGE.** Any building or premises, other than a private or public garage, used exclusively for the parking or storage of motor vehicles.

**GENERAL USE DISTRICT.** A zoning district with designated permitted uses and designated ~~conditional~~ **special** uses.

**GLARE.** Light for a particular use or area that is reflected or directed off of an object or site onto adjacent streets or property. The effect produced by brightness sufficient to cause annoyance, discomfort or loss in visual performance and visibility.

**GLAZING.** Furnished or fit with glass.

**GOLF COURSE.** A tract of land used for playing golf, improved with fairways having a minimum length of 50 yards and having tees, greens and hazards and the tract of land may include clubhouses and shelters.

**GOLF COURSE, MINIATURE.** A tract of land used for playing golf, improved with fairways having a maximum length of 50 yards and having tees, greens and hazards and the tract of land may include clubhouses and shelters.

**GOLF COURSE, NATURAL GRASS PUTTING.** A grassed tract of land used for playing golf, improved with fairways, tees, greens and hazards and such tract of land may include clubhouses and shelters. A **NATURAL GRASS PUTTING COURSE** has no aboveground man-made structures or impervious areas on the playing area.

**GROUND COVER.** Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

**GROUND STABILIZATION PLAN.** A plan which details the stabilization and subsequent re-vegetation of all disturbed areas in accordance with town regulations.

**GUEST HOUSE (TOURIST HOME).** Any dwelling occupied by the owner or operator in which rooms are rented for guests and for lodging of transients and travelers for compensation where not more than three rooms are used for such purpose and no other accommodations are provided for such guests.

**HABITABLE FLOORS AND LEVELS.** Enclosed areas, within a building, which are located below the top of the top plate and above the bottom of the sill girder or, where there is no sill girder, above the bottom plate of each such floor or level. These enclosed areas contain rooms or areas which have been designed, constructed, wired, plumbed, equipped with cooking appliances and furnished to provide for three or more of the following functions:

- (1) Preparation, cooking and consumption of food;
- (2) Sleeping;
- (3) Human waste disposal;
- (4) Bathing and showering;
- (5) Heating and air conditioning.

**HAUNTED HOUSE.** An indoor entertainment facility utilizing sets, props and displays for a family-oriented environment with guided tours limited to ten participants per tour with an on-site retail area.

**HIGH QUALITY WATERS.** Those classified as such in 15A NCAC 2B.0101(e)(5) General Procedures, which is incorporated herein by reference to include further amendments pursuant to NCGS § 150B-14(c), now repealed, or any applicable successor regulations adopted pursuant to NCGS §§ 150B-18 *et seq.*

**HIGH QUALITY WATER (HQW) ZONES.** Areas in the coastal counties that are within 575 feet of high quality waters and for the remainder of the state, areas that are within one mile and drain to HQW's.

**HOME CENTER.** A retail outlet carrying products for home improvement, remodeling, maintenance, decorating, home care, recreational/leisure and related needs, including hardware,

appliances, lumber and other building materials but only in such amounts as will meet the needs for self- pickup of the individual, do-it-yourself customer and not amounting to a lumber yard or building materials storage yard from which deliveries are made to commercial customers.

**HOME OCCUPATION.** Any activity that is designed to produce income in which no person other than a member of the family residing on the premises is engaged, no visible evidence (for example, signs of any size, material or equipment) in the outside appearance of the premises of the conduct of such occupation is displayed, no additional parking is required over and above that of residential use and activities are confined to the principal dwelling unit. Uses that do not meet this definition constitute business or commercial activities and must be conducted in an appropriate zone with prior approval.

**HOTEL.** Any building containing three or more guest rooms which are used, rented, or hired for sleeping purposes by transient guests and with access to units primarily from interior lobbies, courts or halls. Hotels shall include a lobby/check-in area, maid's room, vending area, 24-hour on-site staffing/management and shall provide daily housekeeping services to all guests.

**HOTEL/MOTEL UNIT.** A one-story room, which may contain a kitchen or kitchenette and not more than one bathroom. Units shall be determined by the following formulas:

- (1) Private guest areas up to 650 square feet: one unit.
- (2) Private guest areas greater than 650 square feet: each 650 square foot area of floor space shall be considered one unit.

**HYDROLOGIC SOIL GROUPS.** Refers to soils grouped according to their runoff-producing characteristics.

**IMPROVEMENT.** Any change in physical property which requires a permit to be issued by the town, county or state.

**IMPROVEMENT, SUBSTANTIAL.** Any repair, reconstruction or improvement of a structure having a cost which equals or exceeds 50% of the current appraised value of the structure or such value immediately preceding any loss, whichever is the greater.

**INDOOR PUBLIC ASSEMBLY.** The use of a public building or structure, or any portion thereof, for the gathering together of persons for purposes such as civic, social or religious functions, recreation, food and/or drink consumption or awaiting transportation.

**INFILTRATION RATE.** The rate at which water penetrates the surface of the soil, at any given interval, usually expressed in inches per hour.

**INFILTRATION SYSTEMS.** Stormwater treatment systems designed to allow runoff to pass or move (infiltrate) into the soil surface.

**INTENT.** That which states goal, purpose, aim or design.

**INTERNET OR ELECTRONIC GAMING OPERATIONS.** Any for-profit business enterprise, whether principal or accessory, where persons utilize electronic machines or devices, including but not limited to, computers and gaming terminals, to conduct games of odds or chance, including sweepstakes, and where cash, merchandise, or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. Such business or enterprises have as a part of its operation the running of

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

**INTERNET OR ELECTRONIC MACHINE OR DEVICE.** A mechanically, electrically- or electronically-operated machine or device, that is owned, leased, or otherwise possessed by a sweepstakes sponsor or promoter, or any of the sweepstakes sponsor's or promoter's partners, affiliates, subsidiaries or contractors, that is intended to be used by a sweepstakes entrant, that uses energy, and that is capable of displaying information on a screen or other mechanism. This section is applicable to an electronic machine or device whether or not:

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

**JUNK.** Any material or item, such as but not limited to old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber or debris; junked, dismantled or wrecked motor vehicles, or parts

thereof; iron, steel and other old or scrap ferrous or nonferrous material; old or salvaged building materials, appliances, dismantled or wrecked boats, machinery and machinery parts or parts thereof; and any item which is either in a wholly or partially rusted, wrecked, dismantled or inoperative condition.

**JUNKYARD.** Any lot, land or structure or part thereof used for storing, keeping, buying, processing or selling junk.

**KENNEL, BOARDING.** Any kennel where pets or animals owned by another person are temporarily boarded (overnight) for pay, trade, barter, commission, or remuneration of any sort; however, this definition shall not apply to a veterinary hospital as defined in this chapter.

**LAKE or NATURAL WATERCOURSE.** Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension and which could be damaged by accumulation of sediment.

**LAND-DISTURBING ACTIVITY.** Any use of the land by any person in residential, industrial, educational, institutional or commercial development or highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation or erosion.

**LAND USE AND CONTROL MEASURES.** Zoning ordinances, subdivision regulations, building codes, health regulations and other applications and extensions of the normal police power to provide standards and effective enforcement provisions for the prudent use and occupancy in the various zoned areas of the town.

**LIGHTING FIXTURE.** Any part of a lighting unit, including bulb or lamp, housing, mounting bracket, pole and pole base or foundation.

**LIGHT SOURCE.** That element which provides uninterrupted light and illuminates a particular object or area.

**LOADING SPACE, OFF-STREET.** Space conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used and accessible to such vehicles when required off-street parking spaces are filled.

**LOCAL GOVERNMENT.** Any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns and cities, acting through a joint program pursuant to the provisions of the Act.

**LOCAL PERMIT OFFICER.** The designated CAMA official who administers and enforces the minor development permit program in areas of environmental concern (AEC) as established by the Coastal Area Management Act.

**LOT.** A plot, tract or parcel of land or any number of contiguous plots, tracts or parcels of land or plots, tracts, or parcels that would be contiguous if not separated by a public right-of-way in single ownership with or without improvements.

**LOT AREA.** The total horizontal area included within lot lines.

**LOT, CORNER.** A lot of which at least two adjoining sides abut for their full lengths on a street, provided that the interior angle at the intersection of two such sides is less than 135 degrees.

**LOT COVERAGE.** That portion of the lot area, expressed as a percentage, that is occupied and obstructed by any structure above the ground, including but not limited to building(s), decks, parking areas, accessways, sidewalks, roadways, pools and structures requiring location on or above the ground. Wastewater drainfield and repair area, any area occupied or used by the town or any underground use for utilities with no paved surface are not considered lot coverage.

**LOT DEPTH.** The average distance from the street line of the lot to its rear line measured in the general direction of the side lines of the lot.

**LOT, FLAG.** A lot fronting on or abutting a public road and where access to the public road is by a narrow strip of land.

**LOT LINES.** The lines bounding a lot as defined herein:

(1) **LOT LINE, FRONT.** Boundary of a parcel that adjoins a street or public right-of-way. Where a rectangular lot has two such boundaries, that with the least length shall be the front.

(2) **LOT LINE, REAR.** The lot boundary opposite and most distant from the front lot line. In the case of a pointed or irregular lot, it shall be an imaginary line parallel to and farthest from the front lot line, not less than 30 feet long and wholly within the lot.

(3) **LOT LINE, SIDE.** Any lot boundary line not a front lot line or rear lot line.

**LOT OF RECORD.** A parcel of land whose description has been recorded with the Register of Deeds of Dare County.

**LOT, DOUBLE FRONTAGE.** An interior lot having frontage on two streets.

**LOT WIDTH.** The width of a lot at the required building setback line measured at right angles to its depth.

**MARINAS.** Any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than ten boats and providing permanent or transient docking spaces, dry storage, fueling facilities, haul-out facilities and/or repair service but excluding boat ramp facilities allowing access only temporary docking and none of the preceding services.

**MARKET RATE UNIT.** The price of a housing unit determined by the value at which a unit would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

**MARQUEE.** A canopy or covered structure projecting from and supported by a building.

**MEDIAN FAMILY INCOME (MFI).** The median family income for Dare County as determined annually by the US Department of Housing and Urban Development.

**MEDICAL CLINIC.** A building or structure or portion thereof where medical services are provided for out-patients only and where instruction may be provided for medical students.

**MOBILE HOME (INCLUDES DOUBLE-WIDE and TRIPLE-WIDE UNIT).** A habitable unit with integrated chassis and integrated device to receive a trailer hitch; body width exceeding eight feet or body length exceeding 32 feet; and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities.

**MOBILE HOME LOT.** A parcel of land for the placement of a mobile home for the exclusive use of its occupant as may be allowed by zoning.

**MOBILE HOME PARK.** A parcel, tract or contiguous parcels of land which has been designated and improved for the placement of mobile homes for dwelling purposes.

**MODULAR UNIT.** A factory-fabricated building, designed to be transported to the site by separate conveyance, to be used by itself or to be joined at a building site with other similar units to form a unified structure. The term does not apply to prefabricated sub-elements such as trusses which are to be incorporated into a structure at the building site.

**MOTEL.** Any building containing three or more guest rooms which are used, rented, or hired for sleeping purposes by transient guests which is distinguished from a hotel primarily by reason of providing exterior ingress and egress to each unit. Motels shall include a lobby/check-in area, maid's room, vending area, 24-hour on-site staffing/management and shall provide daily housekeeping services to all guests.

**NATURAL EROSION.** The wearing away of the earth's surface by water, wind or other natural agents under natural environmental conditions undisturbed by man.

**NEON.** Includes lighting and/or signage that contain gas discharge tubing and/or fiber optic tubing of various colors and intensity where the tubing is visible.

**NONPROFIT SERVICE ORGANIZATION.** Organization or group that exists for community service benefit and which has nonprofit status as defined by the U.S. Internal Revenue Service.

**OBSTRUCTION.** Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel, rectification, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuge, fill, structure or matter in, along, across or projecting into any channel, water course or floodplain area which may impede, retard or change the direction of the flow of water, either by itself or by catching or collecting material carried by such water; or any such structure that is placed where the flow of water might carry the same downstream to the damage of life or property.

**OCEAN DUNE PLATFORM.** A platform constructed on the frontal dune.

**OPEN SPACE.** An unimproved space open to the sky.

**OPEN SPACE, COMMON.** Land within or related to a development, not individually owned or dedicated for public use, that is designed and intended for the common use or enjoyment of the residents and their guests of the development and may include such complementary improvements as are necessary and appropriate.

**OUTDOOR DINING ACTIVITY AREA.** Unenclosed seasonally-utilized area outside the primary structure, including elevated decks, excluding covered entrances not to exceed 200 square feet used as a dining and recreation area for patrons of the restaurant where food and drink service and courts for outdoor games and/or live music are provided. Game components must be temporary and moveable like those for cornhole, horseshoes, croquet, bocce, etc.

**OUTDOOR DISPLAY.** Merchandise located outdoors, visible from public rights-of-way.

**OUTDOOR STORAGE.** Merchandise located outdoors, not visible from public rights-of-way by screening or location within an enclosure.

**OUTDOOR WAITING ACTIVITY AREA.** Unenclosed seasonally-utilized area outside the primary structure, including elevated decks, excluding covered entrances not to exceed 200 square feet, used as a waiting area for patrons of the restaurant where no food or drink service is provided but where

courts for outdoor games and/or live music are provided. Game components must be temporary and moveable like those for cornhole, horseshoes, croquet, bocce, etc.

**PARENT.** An affiliate that directly, or indirectly through one or more intermediaries, controls another person.

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

**PARKING LOT.** An area or plot of land used for the temporary placement of motor vehicles.

**PARKING SPACE.** A vehicular storage space plus the necessary access space located outside any dedicated right-of-way.

**PERFORMANCE GUARANTEE.** Any security that may be accepted by a municipality as a guarantee that improvements required as part of an application for development will be satisfactorily completed.

**PERMEABILITY.** The quality of the soil that enables water to move downward through the strata which is measured as the number of inches per hour that water moves downward through the saturated soil.

**PERMIT.** An official document or certificate issued by the authority having jurisdiction to authorize performance of a specified activity.

**PERSON.** An individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization or other entity acting as a unit.

**PERSON CONDUCTING LAND-DISTURBING ACTIVITY.** Any person who may be held responsible for a violation unless expressly provided otherwise by this chapter, the Act or any order adopted pursuant to this chapter or the Act.

**PERSON RESPONSIBLE FOR THE VIOLATION.** As used in this chapter and NCGS § 113A-64 means:

(1) The developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; and/or

(2) The landowner or person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has benefitted from it or he has failed to comply with any provision of this chapter, the Act or any order adopted pursuant to this chapter or the Act as imposes a duty upon him.

**PHASE OF GRADING.** One of the two types of grading, rough or fine.

**PLACES OF WORSHIP.** Churches, synagogues, temples and the like.

**PLAN.** An erosion and sedimentation control plan.

**PLANNED UNIT DEVELOPMENT (PUD).** An area of minimum contiguous size, as specified by ordinance, to be planned, developed, operated and maintained as a single entity and containing one or more residential clusters or planned residential developments and one or more public, quasi-

public, or commercial areas in such ranges or ratios of nonresidential uses to residential uses as specified in the zoning regulations.

**PLANNING BOARD.** The Planning Board of the town.

**PLAYGROUND.** A place, public or private, especially designed and equipped for children's games and recreation.

**POND.** Small body of standing water.

**PORCH, ENCLOSED.** A deck or porch fully enclosed by materials other than screening, which may or may not be conditioned space.

**PRE-EXISTING TOWERS AND ANTENNAS.** Any tower or antenna on which a permit has been properly issued prior to the effective date of this chapter.

**PRIVATE CLUB.** A noncommercial club owned and operated by a nonprofit legal entity composed of and with restricted membership.

**PROPERTY OWNERS.** Those listed as having title to property as recorded in the Dare County Register of Deeds.

**PUBLIC SERVICES DEPARTMENT.** The Kill Devil Hills Public Services Department.

**RECONSTRUCTION/REPAIR.** The rebuilding of a structure in such a manner and to such an extent as to replace all or some portion of the existing structure, within the same dimensions, appearance and similar materials of the existing structure. Reconstruction/repair is not considered an addition by this chapter.

**REFRESHMENT STAND.** See the definition for **RESTAURANT, DRIVE-IN.**

**RELATED IMPROVEMENTS.** Equipment and improvements used or necessary to transmit electrical power through the use of above-ground transmission lines.

**REMODEL.** Any improvement to the exterior or interior of a building that requires a building permit and that is not a structural alteration, reconstruction or addition.

**RESTAURANT.** An establishment where meals are served to seated patrons. The word **RESTAURANT** shall not include drive-in facilities, carry-out facilities, snack bars, refreshment stands or any establishment where food is prepared primarily for consumption off premises.

**RESTAURANT, DRIVE-IN.** Any place or premises used for the sale, dispensing or serving of food, refreshments or beverages in automobiles, including those establishments where customers may serve themselves and may eat or drink the food, refreshments or beverages on the premises.

**RIGHT-OF-WAY.** A parcel of land, typically recorded in the public records of Dare County, over which a road may be built or which provides a legal right of passage.

**ROAD.** All ways used to provide vehicular access to:

- (1) Two or more lots; or
- (2) Two or more distinct areas or buildings in unsubdivided developments.

**ROOF.** The outside top covering of a building.

**SALT MARSH.** A flat bed of salt-resistant grasses, sedges and/or rushes that is periodically flooded by salt or brackish water.

**SEASONAL USE.** A periodic use characterized by its major activity being associated with the holiday, vacation or recreation industry.

**SEDIMENT.** Solid particulate material, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

**SEDIMENTATION.** The process by which sediment resulting from erosion has been or is being transported off the site of a land-disturbing activity or into a lake or other natural or man-made watercourse.

**SETBACK.** The minimum distance by which any portion of a building or structure must be separated from a street right-of-way or lot line. For the purpose of this chapter, setbacks shall be measured from the furthest projection of the structure and shall be open and unobstructed from the lowest level skyward except as outlined in § 153.082.

**SETBACK, OCEANFRONT.** A portion of oceanfront land whose improvement is limited and regulated by the North Carolina Coastal Resources Commission.

**SEWERAGE DISPOSAL SYSTEMS.** Any system designed for waste disposal which may be used by an owner for disposition of sewage and waste material as required either by the North Carolina Department of Health or the Department of Air and Water Resources or such other regulatory agency as may have jurisdiction thereof.

**SHEAR ZONE.** The seaward edge of the forest where effects of salt spray are most severe.

**SHOPPING CENTER/OFFICE COMPLEX.** A group of retail, office, and other commercial establishments that is planned and managed as a single property.

**SIGN.** Any device used for displaying advertising which is designed to be visible from the right-of-way to inform or to attract attention or any letter, figure, character, mask, plane, point, marquee sign, design, poster, pictorial, picture, stroke, strip, line, trademark, reading matter, aerial display, kite, balloon or illuminated service which shall be constructed, placed, attached, painted, erected, fastened, established or manufactured in any manner whatsoever so that the same will be used for the attraction of the public to any place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever and which is displayed in any manner whatsoever out-of-doors. Every such device shall be classified and shall conform to the requirements of the classifications in accordance with this chapter.

**SIGN, ANIMATED OR MOVING.** Any sign or part of a sign which changes physical position by any movement or rotation or which gives the visual impression of such movement or rotation.

**SIGN AREA.** The surface area of signs, composed in whole or in part of freestanding letters, devices or sculptured matter not mounted on a measurable surface. The area of said freestanding letters, devices or sculptured matter not mounted on a measurable surface shall be construed to be the least area that will enclose the letters, devices, sculptured matter or logo.

**SIGN, BULLETIN BOARD.** A sign used to announce meetings or programs to be held on the premises of a place of worship, school, auditorium, library, museum, community recreational facility or similar noncommercial places of public assembly.

**SIGN, BUSINESS.** An on-premises sign which directs attention to a business, profession or industry as to the type of products sold, manufactured or assembled and/or to service or entertainment offered but not a sign pertaining to the preceding if such activity is only minor and incidental to the principal use of the premises.

**SIGN, DIRECTIONAL.** Signs which contain only the name of the establishment and directional information.

**SIGN, ELECTRONIC MESSAGE BOARDS.** A sign or portion of a sign that displays electronically generated text, images, graphics, video, whereby the message is formed using a panel or matrix consisting of fiber optics, light bulbs, LED bulbs or other illumination devices within the display area. Electronic message boards signs include but are not limited to, signs also known as Electronic Reader Boards, Electronic Message Centers Signs, Tri-Panel Message Systems, and Commercial Electronic-Variable Message Signs (CEVMS).

**SIGN, FREESTANDING, OFF PREMISES, DIRECTIONAL.** Any outdoor advertising display sign which is supported by uprights or braces in or upon the ground which contains only the name of the establishment and directional information.

**SIGN, FREESTANDING, ON PREMISES.** Any outdoor advertising display sign which is supported by uprights or braces in or upon the ground.

**SIGN, IDENTIFICATION.** A sign used solely to identify the name of an individual, family, organization or enterprise occupying the premises, the profession of the occupant or the name of the building on which the sign is displayed.

**SIGN, LED/LCD.** Signs that have alphabetical, pictographic, or symbolic content that can be changed or altered on a display screen using light emitting diodes technology, liquid crystal display technology, or other technology that produces an electronic image on a display screen.

**SIGN, MANUAL MESSAGE BOARD.** A sign or portion of a sign in which message copy is changed or rearranged manually in the field, through the utilization of attached letters, numbers, symbols and other similar characters or changeable pictorial panels, without altering the face or surface of the sign.

**SIGN, MARQUEE.** A projecting sign attached to or hung from a marquee.

**SIGN, NONCOMMERCIAL.** A sign structure designed and intended to promote, support, call attention to or give notice to a cause, nonprofit and noncommercial service or political message of an individual, charitable organization, political group or other entity.

**SIGN, OUTDOOR ADVERTISING, WITH STRUCTURE.** A sign and structure which directs attention to a business, commodity, service or entertainment conducted, sold or offered either off premises or as a minor or incidental activity upon the premises where the sign is displayed.

**SIGN PERMIT.** A permit issued by the town that authorizes the recipient to erect, move, enlarge or substantially alter a sign.

**SIGN, PORTABLE.** An outdoor advertising display sign on wheels or otherwise not affixed to a permanent foundation.

**SIGN, PROJECTION.** An outdoor advertising display sign which is affixed to any building wall or structure and extends beyond the building wall, structure or building line more than 12 inches.

**SIGN, ROOF.** An outdoor advertising display sign erected, constructed or maintained above or on the roof of any building.

**SIGN, SHINGLE.** A projection or wall sign not over six feet in area, constructed of metal or other noncombustible material, attached securely to a building.

**SIGN, TEMPORARY.** A sign or advertising display constructed of cloth, canvas, fabric, plywood or other light material and designed or intended to be displayed for a period not to exceed 30 days.

**SIGN, VEHICULAR.** Any message, symbol or design painted or constructed upon any vehicle, including a trailer, which is parked in the public right-of-way or parked in a manner where an advertising message is understandable from the road or street and which does not have a current license, current inspection sticker or current registration and which such vehicle is not used in normal day-to-day operation of the business for the purpose of delivering goods or services. A **VEHICULAR SIGN** shall include any vehicle or a trailer that is used primarily for the purpose of displaying advertisement.

**SIGN, WALL.** An outdoor advertising display sign painted or affixed to the wall of any building that projects not more than 12 inches from the building.

**SIGN, WINDOW.** A sign that is placed, painted or attached to or within 24 inches of glazing and is visible from the exterior of the building.

**SIGNS, TOURIST ORIENTED DIRECTIONAL-GUIDE.** Signs that display the business identification of and directional information for tourist oriented businesses and tourist oriented facilities (as defined by NCGS § 136-140.15) or for a class of business or facility that are tourist oriented.

**SILL GIRDER.** The lowermost structural beam of a building which rests on the foundation wall or pilings and which supports the floor and exterior structure walls.

**SILTATION.** Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed and maintained control measures which has been transported from its point of origin within the site of a land-disturbing activity and which has been deposited into or is in suspension in water.

**SITE.** The area or parcel of land on which any improvement has been or is about to be located and operated and comprising one or more subdivided lots, unsubdivided parcels, tracts or areas of land which join and are being developed under a common scheme of development.

**SITE PLAN.** The development plan for one or more lots on which is shown the existing and proposed conditions of the lot including: topography, vegetation, drainage, floodplains, marshes and waterways, open spaces, walkways, means of ingress and egress, utility services, landscaping, structures and signs, lighting and screening devices and any other information that reasonably may be required in order that an informed decision can be made by the approving authority. A site plan and the site plan procedures for approval contained in this chapter shall confer upon the applicant the rights which are provided in Chapter 996 of the 1989 Session Laws, being NCGS § ~~160A-385.1~~ [160D-108](#), or amendments thereto relating to vested rights for a site specific development plan.

**SITE PLAN, AS-BUILT.** The development plan for one or more lots on which is shown the changes made during construction of the lot or lots, including topography, vegetation, drainage, floodplains, marshes and waterways, open spaces, walkways, means of ingress and egress, utility services, landscaping, structures and signs, lighting and screening devices and any other information

that reasonably may be required so that a determination can be made on whether or not the site was developed in accordance with the approved site plan.

**SITE PLAN, NATURAL FEATURES.** A site plan and accompanying report detailing existing vegetation, watercourses and topography.

**SITE SPECIFIC DEVELOPMENT PLAN.** A preliminary subdivision plat or commercial site plan approved by the Board of Commissioners.

**SKIRTING AREA.** That area beneath a mobile home from the underside of the floor area to the ground.

**STORAGE.** The safekeeping of goods.

**STORAGE, OPEN.** An unroofed storage area, whether fenced or not.

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

**STORM, TEN-YEAR.** The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average once in ten years and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions (usually two hours). Volume of runoff for the design storm will equal 4.3 inches of rainfall as determined by the U.S. Weather Bureau.

**STORMWATER COLLECTION SYSTEM.** Any pipe, channel, curb or gutter for the primary purpose of transporting (not treating) stormwater runoff.

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

**STORMWATER SYSTEMS, OFF-SITE.** The systems necessary to control stormwater from more than one development. Such systems may be owned and operated as a duly licensed utility or by a local government.

**STORMWATER SYSTEMS, ON-SITE.** The systems necessary to control stormwater within an individual development project.

**STORY, BUILDING.** That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof above. The basement of a building shall be considered a story if it is used for purposes other than storage or heating.

**STREET.** Any improved and permanently dedicated public right-of-way which has been accepted for maintenance by the North Carolina Department of Transportation or the town.

**STREET LINE.** That line common to a street and abutting land.

**STRUCTURE.** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

**STRUCTURE, ACCESSORY.** A building or other structure, the use of which is clearly incidental to and customarily found in conjunction with the principal structure or use located on the same lot. All setbacks shall be measured from the furthest projection, from the ground upward, of the accessory structure.

**STRUCTURE, ACCESSORY EQUIPMENT.** A building or cabinet-like structure located adjacent to, or in the immediate vicinity of, a wireless telecommunications tower or antenna to house equipment customarily incidental to the receiving or transmitting of wireless broadcasts, cellular telephone calls, voice messaging and paging services.

**STRUCTURE, COMMERCIAL.** Includes all development with the exception of single-family dwellings and two-family dwellings as defined in this section.

**STRUCTURE, PRINCIPAL.** A structure in which the primary use of the lot on which the building is located is conducted. **PRINCIPAL STRUCTURE** includes all structures greater than six inches above finished grade and less than two feet from the main building. Fencing, poles, post and other ornamental features shall not be considered part of the **PRINCIPAL STRUCTURE**. All setbacks shall be measured from the furthest projection, from the ground upward, of the **PRINCIPAL STRUCTURE**.

**STRUCTURE VALUATION.** The valuation of the structure appearing on the Dare County January 1 tax assessment of the property for the current tax year or an appraisal certified and submitted by a qualified appraiser. Value shall be only on the structure not including any land or other associated site value.

**SUBSIDIARY.** An affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

**SUNROOM.** A room or a portion of a structure where more than 75% of the roof and walls are composed of glass, plexiglass or other transparent material.

**SWALE.** A natural or constructed waterway, typically broad and shallow, seeded to grass as protection against erosion, which conducts surface water away from development sites or provides an area for stormwater percolation.

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

**TOP PLATE.** The structural member of a building located at the point where the structural wall framing and the structural roof framing join together at the top of the uppermost habitable floor. If the building is designed having top plates at more than one horizontal level, the uppermost one shall be considered the top plate in so far as usage in this chapter is concerned.

**TOURIST HOME.** See the definition for **GUEST HOUSE**.

**TOWER, GUY.** A tower design that features supporting cables and wires anchored to the ground surrounding the tower.

**TOWER, LATTICE.** Three- or four-legged steel girdered structures typically supporting multiple communications users and services generally ranging from 60 to 200 feet in height.

**TOWER, MONOPOLE.** Single pole design, approximately 3 feet in diameter at the base narrowing to approximately 1½ feet at the top, generally ranging from 25 to 150 feet in height.

**TOWER, TELECOMMUNICATIONS.** Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers. The term includes radio and television transmission towers, personal communications service (PCS) towers, microwave towers, common-carrier towers, cellular telephone

towers, alternative tower structures and the like. This definition does not include any structure erected solely for a residential, noncommercial individual use, such as television antennas, satellite dishes or amateur radio antennas.

**TOWNHOUSE.** A single structure consisting of three or more dwelling units, each with no other dwelling or portion of dwelling directly above or below, each dwelling unit of which having direct ground level access to the outdoors and connecting to the other units by at least one common wall with no openings. For the purposes of this chapter, **TOWNHOUSE** will be referred to as multi-family dwelling.

**TRACT.** All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

**TRAILER.** A house car, camper, camp car, house trailer, trailer home, mobile home or other similar vehicle which may or may not be mounted on wheels, skids or rollers, either self-propelled or located by other means, including any such dismantled vehicle or unit, whether prefabricated, prebuilt or otherwise or placed upon a masonry or other stationary foundation which is used or designed to be used for permanent or semipermanent living or sleeping quarters, including bedrooms or kitchens or both. This definition shall not include vehicles designed primarily for the transportation of goods and merchandise, luggage and the like. This definition shall include a single unit or combination of units so defined as trailers.

**TRAILER PARK.** A parcel or tract of land under single ownership which has been planned and improved for the temporary placement of campers or trailers as a service to the traveling public.

**TRAILER, TRAVEL.** Any vehicle equipped with an axle which may have been used for sleeping quarters and being either self-propelled or designed to be towed by a motor vehicle.

**TRANSMISSION LINE.** Above-ground electric transmission lines, connected to a common system of linear towers and other appurtenant structures (collectively, an **OVERHEAD TRANSMISSION SYSTEM**).

**TREE.** Any woody plant of single or multiple trunks with a diameter of four inches or more at one foot above the ground.

**TREE REMOVAL.** Any act which causes a tree to die or cease to exist within a period of two years of that act, including but not limited to felling, girdling, logging, poisoning, burning.

**TWENTY-FIVE YEAR STORM.** The storm water runoff resulting from precipitation of an intensity expected to be equaled or exceeded on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

**UNCOVERING.** The removal of ground cover from, on or above the soil surface.

**UNDERTAKING.** The initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

**UNIT.** Each apartment within a multi-family structure.

**USE.** Any purpose for which a building or other structure or a tract of land is or may be designed, arranged, intended, maintained or occupied or any activity, occupation, business or operation carried on or intended to be carried on in a building or other structure or on a tract of land.

**USE, ACCESSORY.** A use which is clearly subordinate to, incidental to and customarily found in connection with the principal use and located on the same lot with such principal use.

**USE, CHANGE OF.** The replacement of an existing use by a new use that is a change in the category of permitted use, but not including change of ownership, tenancy, or management where the previous use, line of business, or other function is substantially unchanged.

**USE, COMMERCIAL.** Includes all uses with the exception of single-family dwellings and two-family dwellings as defined in this section.

**USE, ~~CONDITIONAL~~ SPECIAL.** A use described in a list of such ~~conditional~~ **special** uses in this chapter for specific zoned districts and as may be allowed by the Board of Commissioners.

**USE, NONCONFORMING.** A use of building or land which does not conform to the regulations of the district in which such building or land is situated but which is lawful since it existed before adoption or amendments of this chapter.

**USE, PRINCIPAL.** The business activity which comprises the primary or majority of the commercial activity that occurs on a site as permitted by the Town of Kill Devil Hills.

**UTILITY POLE.** Pole used to support essential services such as power, telephone or cable TV lines or used to support street or pedestrian way lighting, typically located in public rights-of-way.

**VARIANCE.** A relaxation of the terms of the zoning code where such variance will not be contrary to the public interest.

**VEGETATION.** A collection of natural growth species.

**VEGETATION LINE.** The first line of stable natural vegetation representing the boundary between the normal dry-sand beach and the more stable upland areas being generally located at or immediately oceanward of the seaward toe of the frontal dune and/or erosion escarpment, and where there is no stable natural vegetation present, this line shall be established by connecting or extending the lines from the nearest adjacent vegetation on either side of the site and by extrapolating (by either on-ground observation or by aerial photographic interpretation) to establish the line. The **VEGETATION LINE** shall be established by the local CAMA permit officer on a case-by-case basis.

**VEGETATIVE FILTER.** An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that runoff does not become channelized and which provides for infiltration of runoff and filtering of pollutants. The direction of stormwater flow defines the width of the filter.

**VELOCITY.** The average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

**VETERINARY HOSPITAL/CLINIC.** An establishment for the care and treatment of the diseases and injuries of domestic animals and where the animals may be boarded during their convalescence.

**WAREHOUSE.** Any structure, store, depot or supply dump used for storage of merchandise, commodities, materials for business, stock for the production of any articles and/or any items requiring temporary or permanent shelter where there is no public access and no retail sales.

**WAREHOUSE, INDUSTRIAL COMPLEX.** A single development site having combined enclosed gross floor area exceeding 50,000 square feet. A **WAREHOUSE, INDUSTRIAL COMPLEX** must have at least 60% of its enclosed gross floor area used as warehouse, large warehouse and/or industrial warehouse, including office space required for warehouse operation. Warehouse office space shall not exceed 100 square feet or 15% of the gross floor area of the associated business's warehouse space whichever is larger to be included as part of the area of the warehouse industrial complex. The remainder of the gross floor area may be used for additional office space for associated businesses or any other permitted use within the zoning district.

**WAREHOUSE, LIGHT INDUSTRIAL.** A business use or activity involving manufacturing, fabrication, assembly, warehousing and/or storage including boat manufacturing, cabinet work, stone or concrete works, machine or blacksmith shops, motor or freight terminals, and similar uses where there is no public access and no retail sales.

**WAREHOUSE, RETAIL.** A wholesale retail/warehouse establishment offering merchandise to the public and office areas.

**WASTE.** Surplus materials resulting from on-site construction and disposed of at other locations.

**WATER SURFACE ELEVATION.** The height in relation to mean sea level expected to be reached by floods of various magnitudes and frequencies at pertinent points in the floodplain.

**WET RETENTION POND.** A structure that provides for the storage and/or treatment of runoff and includes a permanent pool of water.

**WETLAND SWALE.** Seasonally flooded or water saturated ground depressions.

**WIRELESS TELECOMMUNICATIONS SERVICES (WTS).** Licensed or unlicensed wireless telecommunications services, including cellular, digital cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), commercial or private paging services or similar services marketed or provided to the general public. This definition does not include services by noncommercial entities in the Amateur Radio Service, Public Safety Radio Service or licenses assigned to nonprofit organizations, such as the Red Cross, Civil Air Patrol and Military Affiliated Radio Service (MARS), that are licensed by the Federal Communications Commission (FCC).

**WORKFORCE MULTI-FAMILY HOUSING.** Multi-family development for an eligible household which: rents for a total annual amount at or below 30% of 125% of Median Family Income for Dare County; or, sells at a price no more than three times 125% of Median Family Income for Dare County.

**WORKING DAYS.** Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

**YARD.** A required open space, other than a court, unoccupied and unobstructed by any structure or portion of a structure from 30 inches above the ground level of the graded lot upward, provided, however, that fences, walls, poles, posts and other customary yard accessories, ornaments and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility or any other requirement of this chapter.

**YARD, FRONT.** A yard area where the width is measured the entire length of the property line between the side property lines; and its depth is measured as the distance between the street right-of-way line and the required front setback line.

**YARD, REAR.** A yard extending across the rear of the lot between side lot lines. Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line.

**YARD, SIDE.** A yard extending from the rear line of the required front yard to the rear yard. Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.

**ZONING NONCONFORMITY.** Any use, facility, building, lot, sign, structure, outdoor lighting, fence, landscaping, impervious surface, off-street parking lot, or other element of this chapter, which lawfully existed at the time it was created and because of revisions to this chapter currently fails to comply with one or more applicable regulations, restrictions or standards of this chapter.

(Ord. 91-08, passed 11-18-91; Am. Ord. 93-06, passed 6-14-93; Am. Ord. 94-01, passed 1-26-94; Am. Ord. 94-06, passed 4-11-94; Am. Ord. 96-12, passed 6-10-96; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-05, passed 6-27-01; Am. Ord. 01-10, passed 8-13-01; Am. Ord. 01-12, passed 11-14-01; Am. Ord. 02-02, passed 1-14-02; Am. Ord. 02-05, passed 2-27-02; Am. Ord. 02-14, passed 7-24-02; Am. Ord. 03-05, passed 4-14-03; Am. Ord. 03-07, passed 6-25-03; Am. Ord. 03-11, passed 6-25-03; Am. Ord. 03-16, passed 10-15-03; Am. Ord. 04-01, passed 2-25-04; Am. Ord. 04-02, passed 4-24-04; Am. Ord. 04-06, passed 4-28-04; Am. Ord. 04-08, passed 5-26-04; Am. Ord. 04-18, passed 10-11-04; Am. Ord. 05-12, passed 8-8-05; Am. Ord. 05-19, passed 10-4-05; Am. Ord. 05-20, passed 11-14-05; Am. Ord. 06-05, passed 4-10-06; Am. Ord. 06-08, passed 5-8-06; Am. Ord. 06-20, passed 8-14-06; Am. Ord. 07-07, passed 5-23-07; Am. Ord. 07-17, passed 10-24-07; Am. Ord. 07-18, passed 10-24-07; Am. Ord. 08-03, passed 1-14-08; Am. Ord. 08-11, passed 3-26-08; Am. Ord. 08-13, passed 4-14-08; Am. Ord. 08-22, passed 8-11-08; Am. Ord. 08-35, passed 12-8-08; Am. Ord. 09-19, passed 10-28-09; Am. Ord. 10-03, passed 4-12-10; Am. Ord. 11-04, passed 4-11-11; Am. Ord. 11-08, passed 5-25-11; Am. Ord. 11-21, passed 10-10-11; Am. Ord. 12-01, passed 1-25-12; Am. Ord. 12-13, passed 5-23-12; Am. Ord. 12-22, passed 11-14-12; Am. Ord. 13-01, passed 1-14-13; Am. Ord. 13-3, passed 3-20-13; Am. Ord. 13-4, passed 4-24-13; Am. Ord. 13-16, passed 10-14-13; Am. Ord. 14-07, passed 6-17-14; Am. Ord. 14-25, passed 2-9-15; Am. Ord. 15-6, passed 9-21-15; Am. Ord. 16-6, passed 11-15-17; Am. Ord. 16-19, passed 6-27-18; Am. Ord. 16-21, passed 7-19-18; Am. Ord. 16-23, passed 1-14-19)(Am. Ord. 17-28, passed 3-8-21)

### **§ 153.003 INTERPRETATION.**

The interpretations and application of the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity and general welfare. It is not intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties, provided that where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or premises or requires larger open spaces than are imposed or required by other provisions of this code, ordinances, rules, regulations or by easements, covenants or agreements, the provisions of this chapter shall govern. Where duplications/conflicts occur within this chapter or with state or federal regulations, the more restrictive provisions apply.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

#### § 153.004 COMPLIANCE WITH DISTRICT REGULATIONS.

(A) No building, structure or land shall be used or occupied, and no structure or part thereof shall have to be constructed, except in conformity with all regulations herein specified for the district in which it is located. Permitted and ~~conditional~~ **special** uses are listed by districts within a schedule of district regulations. Any use not specifically designated a permitted or ~~conditional~~ **special** use shall be deemed to be prohibited.

(B) Notwithstanding the provisions of division (A) of this section or any other provisions of this chapter, street improvement projects initiated by the town shall not be subject to the provisions of this chapter. For the purpose of this section, the term **STREET IMPROVEMENT PROJECT** shall mean all improvements undertaken by the town within public streets rights-of-way (whether such rights-of-way are acquired by dedication, purchase, gift or otherwise), including, without limitation, paving or repaving, the installation of utilities or landscaping or the construction of curbs and gutters, construction parking places or facilities or sidewalks.

(C) All activities related to the construction of public streets, parking, landscaping, curbs and gutters, sidewalks or facilities within town rights-of-way (whether acquired by purchase, gift or dedication or otherwise) shall be a permitted use in all zoning districts.

(Ord. 91-08, passed 11-18-91; Am. Ord. 96-10, passed 6-10-96; Am. Ord. 01-02, passed 2-28-01)

### ESTABLISHMENT OF ZONING DISTRICT

#### § 153.020 ZONES CREATED; ENUMERATED.

In order to regulate and limit the height and size of buildings and determine the areas of open spaces and surrounding buildings and to classify, regulate and restrict the location of trades and businesses and the location of buildings designed for specified business, residential and other uses, the town is divided into zones which shall be known as follows:

(A) Ocean Impact Residential (OIR) Zone;

(B) Low Density Residential (RL) Zone;

(C) High Density Residential (RH) Zone;

(D) Commercial (C) Zone;

(E) Light Industrial Two (LI-2) Zone;

(F) Light Industrial One (LI-1) Zone;

**(G)** Government and Institutional **Public Ownership** (G&I - **Public**) Zone;

~~G-~~ **(H) Government and Institutional Zone – Private Ownership (G&I – Private) Zone;**

~~(H)~~ **(I)** Maritime Forest Environmental District (MFED).

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

#### § 153.021 ZONING MAP ADOPTION.

The boundaries of the zones are shown upon a map titled "Zoning Map, Town of Kill Devil Hills, North Carolina." The zoning map and all notations, references and amendments thereto and other

information shown thereon is made a part of this chapter the same as if such information set forth on the map were fully described and set out in this chapter. The zoning map, properly attested, shall be kept on file in the office of the Town Clerk and shall be available for inspection by the public. [Maps may be in paper or a digital format approved by local government.](#)

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 08-21, passed 8-11-08)

### **§ 153.022 ADOPTION OF BOUNDARIES.**

The boundaries of the various zones as shown on the Zoning Map are adopted and the provisions of this chapter governing the use of land and buildings, the height of buildings, building site areas, the sizes of yards about buildings and other matters as hereinafter set forth are established and declared to be in effect upon land included within the boundaries of each and every zone shown upon the Zoning Map.

(Am. Ord. 01-02, passed 2-28-01)

### **§ 153.023 INTERPRETATION OF BOUNDARIES.**

Where uncertainty exists as to the boundaries of any zone shown on the Zoning Map, the following rules shall apply:

(A) Where such boundaries are indicated as approximately the following street lines, alley lines and lot lines, such lines shall be construed as boundaries.

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

(C) In case any further uncertainty exists, the Board of Adjustments shall interpret the intent of the map as to location of such boundaries.

(D) Where any street or alley is, after November 30, 1953, officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to the resulting parcel of land which has had added to its original boundaries the area within the abandoned street or alley.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

## **APPLICATION OF REGULATIONS**

### **§ 153.035 COMPLIANCE WITH ZONE REGULATIONS REQUIRED.**

Except as provided in this chapter, no building or structure shall be erected, reconstructed or structurally altered, nor shall any building or land be used which does not comply with all the zone regulations established by this chapter for the zone in which the building or land is located.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

### **§ 153.036 YARDS, OPEN SPACES, INTENSITY OF USE AND THE LIKE.**

The minimum yards and other open spaces including the intensity of use provisions contained in this chapter for each and every building erected or structurally altered after November 30, 1953 shall not be encroached upon or considered as yard or open space requirement or intensity of use requirement for any other building.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.037 CONVERSION OF EXISTING STRUCTURE TO CONDOMINIUM OWNERSHIP.**

Existing structures not in condominium ownership under the Unit Ownership Act of the State of North Carolina may be converted to unit ownership, provided the owner or developer shall comply with all applicable state codes, including but not limited to fire codes and building codes.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.038 AMENDMENTS.**

**(A)** The Board **of Commissioners**, from time to time, on its own motion or upon petition, after public notice and hearing provided by law may amend, supplement, change, modify or repeal the boundaries or regulations in this chapter or subsequently established after submitting the same to the Town Planning Board for its recommendation.

**1. Before adopting, amending or repealing any ordinance or development regulations, the governing board shall hold a legislative hearing in accordance with § 153.363 of this chapter.**

**2. Before adopting or amending a Zoning Map change, the governing board shall hold a legislative hearing in accordance with § 153.363 of this chapter.**

**3. When adopting or rejecting any zoning text or map amendment, the governing board shall also approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan and reasonableness of the amendment (NCGS § 160D-605).**

~~(A)~~ **(B) The Planning Board shall review and comment on all amendments to any zoning ordinance or redevelopment regulations prior to the governing board consideration. The Planning Board may hold legislative hearings as it deems necessary. The Planning Board shall review each proposed amendment to consistency with any comprehensive plan that has been adopted and any other official adopted plan that is applicable. A written recommendation to the governing board that addresses plan consistency as well as a recommendation on the proposed amendment. A recommendation by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.**

~~(B)~~**(C)** A petition for the reclassification of property or amendments to the text of these regulations or Zoning Map that has been denied in whole or in part, or approved to a classification other than the one originally requested, shall not be resubmitted within two years of the date of the Board of Commissioners' action on the original petition, except as permitted in **this subsection**. However, nothing in this division can be deemed to preclude seeking a lower classification in the hierarchy of zoning districts.

~~(C)~~**(D)** The Board of Commissioners may allow resubmission of the petition within the two-year time frame if it determines that, since the date of action on the prior petition, one or more of the following guidelines have been met:

(1) There has been a similar or more intensive change in the zoning district classification of an adjacent property;

(2) The Board of Commissioners has adopted a public policy plan, including area plan, district plan or transportation plan that changes public policy regarding how the property affected by the amendment should be developed;

(3) Construction or expansion of a road, waterline, sewer line or other infrastructure has occurred to serve the property and which infrastructure can accommodate the intensity of development allowed under the proposed classification; or

(4) There has been some other substantial change in conditions or circumstances which justifies waiver of the two-year restriction on a new petition; this shall not include a change in the ownership of the subject property or, in the case of a petition for reclassification to a conditional use or parallel conditional use district, a change in the scale or features of the development proposed in the prior petition.

~~(D)~~(E) The Board of Commissioners shall receive a report from the Planning Board containing its recommendations on resubmission of the petition.

~~(E)~~(F) Any petition allowed by the Board of Commissioners under division (C) of this section must be reviewed and approved in accordance with the procedures and standards required under this chapter for the review of proposed amendments.

(Ord. 91-08, passed 11-18-91; Am. Ord. 92-05, passed 5-1-92; Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.039 ZONING AMENDMENT APPLICATION FEE.**

(A) A fee as set from time to time by the Board, plus associated procedural costs, shall be paid to the town for each application for amendment to the Zoning Map or text. Legal advertisement shall be the responsibility of the planning staff, including notification by the planning staff to adjoining property owners which is paid for by the applicant and evidenced at the required public hearing.

(B) A copy of the zoning amendment application is included in Appendix D, following this chapter.  
(Am. Ord. 01-02, passed 2-28-01)

## **NONCONFORMITIES**

#### **§ 153.050 INTENT.**

This chapter establishes standards and guidelines on the use and development of land by establishing minimum standards as guidelines for managing growth in a direction that will result in an environment satisfactory to the residents and visitors of the town. In many instances, land and improvements were developed or proposals for such were initiated prior to the adoption of this chapter. These situations may not meet the minimum standards contained in this chapter because they were developed under no specific standards or under standards which were less restrictive. The Board recognizes that the strict application of these standards to such situations may create certain hardships for the property owner. Therefore, it is the intent of this subchapter to permit, under certain circumstances, these nonconformities to continue and be brought into greater compliance.

(Ord. 91-08, passed 11-18-91; Am. Ord. 93-11, passed 9-13-93; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 07-18, passed 10-24-07)

**§ 153.051 NONCONFORMING LOTS OF RECORD.**

(A) In any district, other than Maritime Forest Environmental District, in which single-family dwellings are permitted, a single-family dwelling and accessory structures may be erected on any single lot of record in the Dare County Registry of Deeds as of the effective date of this chapter notwithstanding limitations imposed by other provisions of this chapter. These provisions shall apply even though such lot fails to meet the requirements for lot area or lot dimension that are applicable in the district, provided that requirements other than those applying to lot area or lot dimension shall conform to the regulations for the district in which such lot is located.

(B) Any expansion of any building occupying a nonconforming lot, as of the effective date of this chapter, must comply with the minimum requirements of the ordinance, other than lot area and lot dimension, for the district in which the lot is located.

(C) Combined lots shall not be subdivided or exempt from the subdivision requirements if such division will create any nonconformity.

(D) No such lot with a width of less than 45 feet shall be occupied by any structure without first obtaining a variance from the Zoning Board of Adjustment. Such lots having a width of 45 feet or greater shall not be required to seek a variance from the Zoning Board of Adjustments regarding the width of the lot.

(Ord. 91-08, passed 11-18-91; Am. Ord. 93-11, passed 9-13-93; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 11-01, passed 1-10-11; Am. Ord. 12-17, passed 8-13-12)

**§ 153.052 NONCONFORMING USES.**

Where, at the effective date of this chapter, existing uses of land are no longer permissible under the terms of this chapter, such use may be continued provided that:

(A) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area than was occupied at the effective date of this chapter;

(B) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of this chapter;

(C) If such nonconforming use of land ceases for any reason for a period of more than 60 days, any subsequent use of such land shall conform to the requirements specified by this chapter for the district in which such land is located unless good faith attempts are made to rent or lease the land for the same nonconforming use. In no event will the period exceed 180 days. Land occupied by seasonal uses shall be exempt from this provision.

(D) No additional structures not conforming to the requirements of this chapter shall be erected in connection with such nonconforming use of land;

(E) A conforming or nonconforming use of land may not be changed to any other nonconforming use.

(Ord. 91-08, passed 11-18-91; Am. Ord. 93-11, passed 9-13-93; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 07-18, passed 10-24-07)

**§ 153.053 ZONING NONCONFORMITY.**

Where, on the effective date of this chapter, there is a zoning nonconformity, such nonconformity may be continued so long as it remains lawful, subject to the following provisions:

(A) Single-family and duplex nonconforming structures shall be subject to the following provisions:

(1) Any zoning nonconformity where the cost of the addition, structural alteration, reconstruction/repair or remodel exceeds 50% of the structural valuation the site shall be brought into compliance with the regulations of this chapter. Multiple projects/approvals cannot cumulatively exceed 50% of the structural valuation within 365 days.

(2) Any zoning nonconformity may be modified by an addition, structural alteration, reconstruction/repair or remodel in a manner which does not increase its nonconformity where the cost of that addition, structural alteration, reconstruction/repair or remodel is less than 50% of structural valuation and subject to the following provisions.

(a) Increases to the gross floor area of the principal structure and/or addition of a bedroom(s), with the exception of unheated storage areas, shall require all parking and driveways be brought into compliance with this chapter.

(B) Commercial, industrial and institutional zoning nonconformities shall be subject to the following provisions:

(1) Any zoning nonconformity where the addition to the gross floor area exceeds 50% of the gross floor area, the site shall be brought into compliance with the regulations of this chapter. Multiple projects/approvals cannot cumulatively exceed 50% of the gross floor area within 365 days.

(2) Any zoning nonconformity may be modified by an addition, structural alteration, reconstruction/repair, remodel or change of use subject to the following provisions:

(a) Any repair/reconstruction or change of use shall be permitted provided that the repair/reconstruction or change of use does not increase any nonconformity.

(b) Remodels interior and/or exterior and structural alteration shall be permitted provided that the remodel does not increase any nonconformity and conforms to all applicable regulations of the Town Code.

(c) Additions less than 20% of the gross floor area or 1,500 square feet, whichever is less, and site feature additions less than 50% of the footprint of existing site features shall be permitted provided that the addition does not increase any nonconformity and conforms to all applicable regulations of the Town Code.

(d) Using the nonconformity worksheet (hereby "the worksheet") and associated rules located in [Appendix F](#), the following improvements will be required to be within the proposed corresponding points from total ordinance required points for the site and have a minimum 2 point differential between existing and proposed points as follows:

1. Additions:

A. Principal building:

i. Additions of 20%–35% of the gross floor area or greater than 1,500 square feet, shall have a proposed point value within 10 points from total ordinance required points as calculated on the worksheet;

ii. Additions of 36%–50% of the gross floor area or greater than 1,500 square feet, shall have a proposed point value within 5 points from total ordinance required points as calculated on the worksheet.

iii. Additions greater than 50% of the gross floor area or greater than 1,500 square feet, shall comply with the zoning ordinance.

B. Site features greater than 50% shall have a proposed point value within 20 points from total ordinance required points as calculated on the worksheet.

(3) Nonconforming sunrooms constructed prior to November 18, 1991 may be reconstructed/repared with another type of construction provided that the resultant footprint is equal to or less than the footprint of the existing sunroom.

(C) Historic structures.

(1) Commercial structures designated Local Historic Landmarks in accordance with § 31.42 and commercial structures built prior to the adoption of zoning ordinance, November 30, 1953 shall comply with the provisions:

(a) Any historic structure zoning nonconformity where the cost of the addition, structural alteration, reconstruction/repair or remodel exceeds 50% of the structural valuation the site shall be brought into compliance with the regulations of this chapter. Multiple projects/approvals cannot cumulatively exceed 50% of the structural valuation within 365 days.

(b) Any historic structure zoning nonconformity may be modified by an addition, structural alteration, reconstruction/repair or remodel in a manner which does not increase its nonconformity where the cost of that addition, structural alteration, reconstruction/repair or remodel is less than 50% of structural valuation and subject to the following provision:

1. All applicable regulations of the Town Code shall be met for the addition to the structure.

(D) In the event a natural disaster, casualty loss or accidental occurrence leads to extensive damage to a structure that is nonconforming in any respect or a structure that is used in a nonconforming manner, that structure or use may be repaired or reconstructed to 100% of its status as of the date of enactment of this chapter. In a State of Emergency declared by the Mayor, see § 153.359(C). The following conditions shall apply:

(1) The total amount of space devoted to a nonconforming use may not be restricted;

(2) The reconstructed building may not be more nonconforming with respect to dimensional restrictions, such as yard requirements, height limitations, lot coverage or density requirements, and such dimensional nonconformities must be less nonconforming;

(3) Reconstruction work may be done only after issuance of a permit by the Board of Commissioners. The Board of Commissioners shall issue the permit if it finds that the work will be done in accordance with this section and that all reasonable efforts have been made to reduce nonconforming items using the nonconformity worksheet as a guide (Appendix F of this chapter).

(E) Any such nonconforming structure located on a lot adjacent to the Atlantic Ocean or sound waters may be moved on the same lot, provided that such movement does not increase the nonconformity.

(Ord. 91-08, passed 11-18-91; Am. Ord. 93-11, passed 9-13-93; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 04-15, passed 9-13-04; Am. Ord. 05-15, passed 9-12-05; Am. Ord. 07-18, passed 10-24-07; Am. Ord. 08-03, passed 1-14-08; Am. Ord. 08-06, passed 2-11-08; Am. Ord. 08-08, passed 2-27-08; Am. Ord. 09-01, passed 1-28-09; Am. Ord. 10-20, passed 11-10-10; Am. Ord. 11-06, passed 4-11-11; Am. Ord. 14-07, passed 6-17-14)

**§ 153.054 (RESERVED)**

**§ 153.055 NONCONFORMING SIGNS.**

A sign which existed legally prior to the adoption of this chapter but which could not be erected or displayed under the terms of this chapter may be allowed to continue subject to the following provisions:

(A) Minor repairs and maintenance of nonconforming signs, including but not limited to repainting, electrical repairs or neon tubing repairs will be allowed. No structural repairs or changes in size, shape or message of a sign will be permitted except to make the sign comply with the requirements of this chapter.

(B) New signs related to legally established nonconforming uses may be erected, provided they comply with the sign regulations which apply to the use in the most restricted district in which the use is permitted.

(C) Nonconforming signs will be removed if the activity, business or use to which it relates has been discontinued for a period of more than 180 consecutive days.

(D) When it becomes necessary to reconstruct any sign for a particular business, every associated sign related to this business, including directional, must also be brought into compliance with this chapter.

(Ord. 91-08, passed 11-18-91; Am. Ord. 93-11, passed 9-13-93; Am. Ord. 01-02, passed 2-28-01)

**§ 153.056 CHANGE OF TENANCY OR OWNERSHIP.**

A change of tenancy, ownership or management of any existing nonconformities is allowed, provided there is no change in the nature or character of such nonconformities.

(Ord. 91-08, passed 11-18-91; Am. Ord. 93-11, passed 9-13-93; Am. Ord. 01-02, passed 2-28-01)

**§ 153.057 (RESERVED)**

**§ 153.058 PERMITTED ~~CONDITIONAL~~ SPECIAL USES NOT NONCONFORMING.**

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

(Ord. 91-08, passed 11-18-91; Am. Ord. 93-11, passed 9-13-93; Am. Ord. 01-02, passed 2-28-01)

**§ 153.059 CREATION OF NONCONFORMITIES.**

Boundary lines of lots or parcels shall not be altered if the resulting parcels create a nonconformity.

(Ord. 91-08, passed 11-18-91; Am. Ord. 93-11, passed 9-13-93; Am. Ord. 01-02, passed 2-28-01)

**GENERAL REGULATIONS**

**§ 153.070 STORMWATER MANAGEMENT.**

(A) The purpose of this chapter is to:

- (1) Mitigate damage to property caused by flooding;
- (2) Reduce pollutants and ecological hazards;
- (3) Reduce existing and future maintenance of, and capital expenditures for, stormwater drainage systems;
- (4) Cooperate in the coordination of related goals expressed by state and federal regulations and that require certain actions with regard to but not limited to stormwater management, soil erosion and sedimentation control and floodplain management;
- (5) Guide growth in an orderly manner consistent with the Kill Devil Hills Land Use Plan; and
- (6) Encourage nonconforming sites to comply as much as practicable when a change of use or alteration occurs.

(B) All commercial development (new or substantial improvements) and one or two-family dwellings greater than 6,000 square feet lot coverage (new or substantial improvements) shall provide a comprehensive plan for the proper drainage of all surface water to systems on and off the property in question. The design criteria as stated in the following divisions or that as may be specified by state or federal agencies, whichever is the most restrictive, will be used. Every reasonable effort will be made to retain a maximum of the runoff on site to the extent feasible and practical. The Stormwater Management Plan shall be certified by a North Carolina registered design professional *for compliance to requirements of this section*.

(C) All surface water drainage into the site being developed or generated on said site must be accommodated in accordance with these guidelines. All surface water drainage leaving the site shall be channeled to points of approved discharge, including but not limited to, a natural or man-made watercourse, a lake, pond, ditch, stormwater drainage system, or other appropriate and approved points of discharge. Filling of a natural or man-made watercourse, lake, pond, ditch, stormwater drainage system is hereby permitted if it meets the following requirement: A plan must be submitted to the town sealed by North Carolina Licensed Engineer demonstrating that such project will not diminish the town's ability to manage stormwater.

(D) No surface water shall be channeled or directed into a sanitary sewer or septic tank system. Distances between open ditches and septic tank systems must be specified on the plans and approved by the Dare County Sanitarian. This approval must be obtained by the developer prior to approval of the drainage system by the town.

(E) For management and control of stormwater runoff, techniques such as but not limited to retention, detention and infiltration systems will be used.

(F) The drainage design criteria for open and closed drainage systems shall conform to generally accepted stormwater engineering practices.

(G) Development plans shall show the flow direction of stormwater on and off the property; size, slope, invert and rim elevations of system components; and ditch cross sections in the vicinity of the development and/or to a distance as is necessary to evaluate the impact of runoff to existing surface water drainage systems.

(H) Drainage calculation, drainage area maps, flood routing calculations, infiltration calculations, storm sewer back water curve calculations and other information that may be required from time to time shall accompany or be a part of site plans submitted.

(I) Estimated runoff calculations may be computed by the Rational Method ( $Q=CIA$ ) (see below) or other approved methodologies. Sizing of structures will be based on the Manning Equation. Culverts shall be evaluated for inlet and outlet control as necessary.

- (1) Q means flow in cubic feet per second.
- (2) C means runoff coefficient.
- (3) I means rainfall intensity in inches per hour.
- (4) A means drainage area in acres.

(J) Systems shall be designed to retain, as a minimum, runoff expected from a ten-year, two-hour storm (4.3 inches of rainfall). There may be some situations which would warrant a different requirement due to the size of the system. The design engineer will contact the town planning staff in the preliminary design stages to determine if a change is warranted.

(K) A modified rational method hydrograph procedure may be used in sizing retention and detention systems for sites up to one acre in size. For sites greater than one acre, a runoff hydrograph shall be computed using the tabular method as defined in the most recent edition of SCS TR-55 or other accepted engineering analysis.

(L) All underground storm sewers, open drainage ways and related structures shall be constructed to the applicable provisions of the most recent edition of *Roadway Standard Drawings and Standard Specifications for Road and Structures* produced by the North Carolina Department of Transportation.

(M) During the construction, preparation, arrangement and installation of improvements and facilities in developments, the developer shall maintain each stream, creek, ditch or channel contiguous to or located within the subdivision in an unobstructed state and shall remove from such watercourses and the banks of the watercourses all debris, logs, timber and other accumulations that would, in time of flood, clog or dam the passage of waters in their downstream course. Installation of appropriately sized conduits, culverts, bridges or other required structures shall not be constructed in a way which will obstruct the flow of drainage.

(N) During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this chapter, the Act or any order adopted pursuant to this chapter or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sedimentation control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(O) Whenever the town determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

(P) In all cases, including one- and two-family dwellings, the developer shall be required to provide culvert pipes, swales, any improvements in the adjoining right-of-way and other related drainage improvements as required by the Public Services Department. Such improvements must be in place

and inspected for compliance and completion by the Public Services Department before a Certificate of Occupancy is issued.

(Q) Stormwater Management maintenance. To ensure the proper operation, the owner shall be responsible for the operation and maintenance of all required stormwater management features:

- (1) All features of the approved stormwater management plan must be regularly maintained and repaired as necessary in order for the system to function as originally designed and shall comply with the criteria of the North Carolina Division of Water Quality Stormwater Design Manual (current edition).

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 02-08, passed 6-10-02; Am. Ord. 14-09, passed 5-12-14; Am. Ord. 17-9, passed 9-11-19)

### **§ 153.071 SOIL EROSION AND SEDIMENTATION CONTROL.**

(A) *Purpose.*

(1) Regulate certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses and other public and private property by sedimentation.

(2) Reduce damage to storm drainage facilities.

(3) Cooperate in the coordination of the related goals expressed by state and federal regulations and that require certain actions with regard to stormwater management, soil erosion and sedimentation control, floodplain management and the like.

(4) Establish procedures through which this regulation can be fulfilled.

(B) *Scope and exclusions.*

(1) Geographical Scope of Regulated Land-Disturbing Activity. This section shall apply to land-disturbing activity within the territorial jurisdiction of the town and to the extraterritorial jurisdiction of the town as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.

(2) Exclusions from regulated land-disturbing activity. Notwithstanding the general applicability of this section to all land-disturbing activity, this section shall not apply to the following types of land-disturbing activity:

(a) An activity, including breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:

1. Forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
2. Dairy animals and dairy products.
3. Poultry and poultry products.
4. Livestock, including beef cattle, sheep swine, horses, ponies, mules, and goats.
5. Bees and apiary products.
6. Fur producing animals.

(b) An activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this section shall apply to such activity and any related land-disturbing activity on the tract.

(c) An activity for which a permit is required under the Mining Act of 1971, G.S. Ch. 75, Art. 7.

(d) A land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. § 113A-56(a).

(e) An activity which is essential to protect human life during an emergency.

(f) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.

(g) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2.

(3) Plan approval exceptions. Notwithstanding the general requirement to obtain a plan approval prior to undertaking land-disturbing activity, a plan approval shall not be required for land-disturbing activity that does not exceed 1/2 acre in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

(C) *General requirements.*

(1) No person shall initiate any land-disturbing activity which uncovers more than 1/2 acre without having an erosion control plan approved by the town.

(2) Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

(3) Whenever conflicts exist between federal, state or local laws, ordinances or rules, the more restrictive provision shall apply.

(D) *Mandatory standards for land-disturbing activity.* No land-disturbing activity subject to the control of this section shall be undertaken except in accordance with the following mandatory standards:

(1) No land-disturbing activity shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25% of the buffer zone nearer the land-disturbing activity, provided that this subsection shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over or under a lake or natural watercourse.

(2) The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 days of any phase of grading, be planted or otherwise provided with ground cover, devices or structures sufficient to restrain erosion. The angle for the graded slopes and gills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.

(3) Unless a permit from the Department's Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.

(4) Whenever land-disturbing activity is undertaken on a tract comprising more than 1/2 acre, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within 15 working days or 90 calendar days, whichever is shorter.

(5) No person shall initiate any land-disturbing activity if more than 1/2 acre is to be uncovered, unless 30 or more days prior to initiating the activity an erosion and sedimentation control plan for such activity is filed with and approved by the town.

(6) Buffer measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25% of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(7) The land disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

(E) *Erosion and sedimentation control plans.*

(1) An erosion control plan shall be prepared for all land-disturbing activities subject to this section whenever the proposed activity is to be undertaken on a tract comprising more than 1/2 acre, if more than 1/2 acre is to be uncovered. The plan shall be filed with the town and the Dare County Soil and Water Conservation District 30 days prior to the commencement of the proposed activity.

(2) The town shall forward to the Director of the Division of Water Quality a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering to lowering the water table of the tract.

(3) Prior plan approval. No persons shall initiate land-disturbing activity if more than 1/2 acre is to be uncovered unless, 30 or more days prior to initiating the activity, a plan for such activity is filed with and approved by the town. The town shall forward to the Director of the Division of Water Quality a copy of each plan for a land-disturbing activity that involves utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

(4) Financial Responsibility and ownership. Plans shall be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible, the owner of the land, and any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this section, or rules or orders issued pursuant to this section. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.

(5) Environmental Policy Act Document. Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. § 113A-1, *et seq.*) shall be deemed incomplete until a complete environmental document is available for review. The town shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to this section shall not begin until a complete environmental document is available for review.

(6) Soil and Water Conservation District comments. The District shall review the plan and submit any comments and the District and the town may agree upon recommendations to the town within 20 days after the District received the plan, or within any shorter period of time. Failure of the District to submit its comments within 20 days or within any agreed upon shorter period of time shall not delay final action on the plan.

(7) The Town Department of Planning and Inspections will review each plan submitted to them and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations or disapproved. Failure to approve or disapprove a complete erosion and sedimentation control plan within 30 days of receipt shall be deemed approval. Denial of a plan will specifically state in writing the reasons for denial. The town will approve or deny a revised plan within 15 days of receipt or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved plan, the town determines that the plan is inadequate to meet the requirements of this section, it require such revisions as are necessary to comply with this section.

(8) The town shall only approve a Plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. The town shall condition approval of Plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The town shall establish an expiration date, not to exceed three (3) years, for Plans approved under this ordinance.

(9) The town may disapprove a Plan or draft Plan based on its content. A disapproval based upon a Plan's content must specifically state in writing the reasons for disapproval.

(10) Other disapprovals. The town shall disapprove a plan or draft plans if implementation of the plan would result in a violation of the rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A local government shall disapprove a plan upon finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:

(a) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to the Act and has not complied with the notice within the time specified in the notice;

(b) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;

(c) Has been convicted of a misdemeanor pursuant to G.S. § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act or;

(d) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.

For purposes of this subsection, an applicant's record shall be considered for only the two years prior to the application date.

In the event that a plan is disapproved pursuant to this subsection, the town shall notify the Director of such disapproval within ten days. The town shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved.

(11) Notice of activity initiation. No person may initiate a land-disturbing activity before notifying the agency that issued the plan approval of the date that land-disturbing activity will begin.

(12) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this section. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation will be provided on request.

(13) Preconstruction conference. When deemed necessary by the approving authority a preconstruction conference may be required.

(14) Display of plan approval. A plan approval issued under this article shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.

(15) Required revisions. After approving a plan, if the town either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the town shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved plan, the town determines that the plan is inadequate to meet the requirements of this section, the town shall require any revision of the plan that is necessary to comply with this section.

(16) Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as an amendment is approved, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

(17) Any person engaged in land-disturbing activity who fails to file a plan in accordance with this section or who conducts a land-disturbing activity, except in accordance with provisions of an approved plan, shall be deemed in violation of this section.

(18) The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

(F) *Basic control objectives.* An erosion and sedimentation control plan may shall be disapproved if the plan fails to address the following objectives:

(1) *Identify critical areas.* On-site areas which are subject to severe erosion and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive special attention.

(2) *Limit time of exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

(3) *Limit exposed areas.* All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

(4) *Control surface water.* Surface water runoff originating updrain of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(5) *Control sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.

(6) *Manage stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include the measures to control the velocity at the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(G) *Design and performance standards.*

(1) Except as provided in this section, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's *National Engineering Field Manual for Conservation Practices*, or other acceptable procedures.

(2) HQW zones. In high quality water (HQW) zones the following design standards shall apply:

(a) Limit on uncovered area. Uncovered areas in HQW zones shall be limited at any time to a maximum total area of 20 acres within the boundaries of the tract. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.

(b) Maximum peak rate of runoff protection. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the USDA, Soil Conservation Service's *National Engineering Field Manual for Conservation Practices* or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(c) Settling efficiency. Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.04 millimeter) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the USDA, Soil Conservation Service's *National Engineering Field Manual for Conservation Practices* or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(d) Grade. Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is

used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(e) Ground cover. Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development., whichever period is shorter.

(H) *Storm Water Outlet Protection.*

(1) Intent. Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.

(2) Persons shall conduct land-disturbing activity such that the post-construction velocity of the ten-year storm runoff in the receiving watercourse to the point of discharge shall not exceed the greater of:

(a) The velocity established by the Maximum Permissible Velocities Table set out within this subsection; or

(b) The velocity of the ten-year storm runoff in the receiving watercourse prior to development. If conditions (a) and (b) of this paragraph cannot be met then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by 10%.

**Maximum Permissible Velocities Table**

The following is a table for maximum permissible velocity for stormwater discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<b>MATERIAL</b>	<b>F.P.S.</b>	<b>M.P.S.</b>
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5

<b>MATERIAL</b>	<b>F.P.S.</b>	<b>M.P.S.</b>
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7

Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source – Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

(3) Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. It is recognized that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:

- (a) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (b) Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections;
- (c) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities at the point of discharge. These may range from simple rip-rapped sections to complex structures;
- (d) Protect watercourses subject to accelerated erosion by improving cross section and/or providing erosion-resistant lining; and
- (e) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

(4) This rule shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

(I) *Borrow and waste areas.* When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and any waste areas for surplus materials other than landfills regulated by the Department of Human Resources, Division of Health Services, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

(J) *Access and haul roads.* Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

(K) *Operations in lakes or natural watercourses.* Land-disturbing activity in connection with construction in, on, over or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow of characteristics, except when justification for significant alteration to flow characteristic is provided.

(L) *Responsibility for maintenance.* During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this section, the North Carolina Sedimentation Pollution Control Act of 1973 or any order adopted pursuant thereto. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sedimentation control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(M) *Additional measures.* Whenever the town determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action or cease the activity.

(N) *Existing uncovered areas.*

(1) All uncovered areas existing on the effective date of this section which resulted from land-disturbing activity, exceed  $\frac{1}{2}$  contiguous acre, are subject to continued accelerated erosion and are causing off-site damage from sedimentation shall be provided with a ground cover or other protective measures, structures or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(2) The town shall serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this section, a rule or order adopted or issued pursuant to the Act by the Commission or by the town. The notice to comply shall be sent by registered or certified mail, return receipt requested or other means provided in G.S. § 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology and quantity of work required and shall set reasonable and attainable time limits of compliance.

(3) The town reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.

(4) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

(O) *Permits.*

(1) No person shall undertake any land-disturbing activity subject to this section without first obtaining a permit from the town, except that no permit shall be required for any land-disturbing activity that does not exceed 5,500 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

(2) The town shall establish a fee on a general or individual basis as may be considered necessary.

(P) *Appeals.*

(1) The disapproval or modification of any proposed erosion control plan by the Director of Planning and Inspections shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of a written notice of disapproval or modifications.

(2) Hearings held pursuant to this section shall be conducted by the Board of Commissioners within 20 days after the date of the appeal or request for a hearing.

(3) The Board of Commissioners shall render its final decision within ten days after the date of the hearing.

(4) If the town upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the applicant shall then be entitled to appeal that decision to the North Carolina Sedimentation Control Commission as provided in G.S. § 113A-61(c) and Title 15 NCAC 4B.0018(b).

(Q) *Inspections and investigations.*

(1) Agents and officials of the town will periodically inspect the sites of land-disturbing activity for which permits have been issued to determine whether the activity is being conducted in accordance with the plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity.

(2) Willful resistance, delay, or obstruction. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the town, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

(3) Notice of violation. If the town determines that a person engaged in land-disturbing activity has failed to comply with the Act, this section, or rules, or orders adopted or issued pursuant to this section, a notice of violation shall be served upon that person. The notice shall be served by any means authorized under G.S. § 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, this section, or rules or orders adopted pursuant to this section, and inform the person of the actions that need to be taken to comply with the Act, this section, or rules or orders adopted pursuant to this section. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. § 113A-64 and this section.

(4) The town shall have the power to conduct such investigation as it deems necessary to carry out its duties as prescribed in this section and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. No person shall refuse entry or access to any authorized representative or agent of the town who requests entry for purposes of inspection, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(5) The town shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

(6) The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. § 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that will be required to correct the deviation, and document the completion of those matters. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. § 113A-61.1.

(R) *Penalties.*

(1) *Civil penalties.*

(a) Civil penalty for a violation. Any person who violates any of the provisions of this section, or rule or order adopted or issued pursuant to this section, or who initiates or continues a land-disturbing activity for which a plan is required except in accordance with the terms conditions and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty that the town may assess is \$5,000. A civil penalty may be assessed from the date the violation. Each day of a continuing violation shall constitute a separate violation.

(b) Civil penalty assessment factors. The governing body of the town shall determine the amount of the civil penalty based on the following factors:

1. The degree and extent of harm caused by the violation,
2. The cost of rectifying the damage,
3. The amount of money the violator saved by noncompliance,
4. Whether the violation was committed willfully, and the prior record of the violator in failing to comply with this section.

(c) Any person who fails to submit an erosion control plan for approval as required by this section shall be subject to a single, non-continuing civil penalty of not more than \$5,000. Any person who is subject to a civil penalty under this subsection may be subject to additional civil penalties for violation of any other provision of this section or rules or orders adopted or issued pursuant to this section.

(d) Hearing. A hearing on a civil penalty shall be conducted by the town within 15 days after the date of the written demand for the hearing. The agency conducting the hearing shall make its recommendation to the governing body of the town within 21 days after the date of the hearing.

(e) Final decision. The governing body shall render its final decision on the civil penalty within ten days of the receipt of the recommendation from the agency.

(f) Appeal of final decision. Appeal from the final decision of the governing body shall be to the Superior Court of the county where the violation occurred, or the location of the violator's residence or principal place of business.

(g) Credit of civil penalties. Civil penalties collected pursuant to this section shall be credited to the Civil Penalty and Forfeiture Fund. [Note: Case law on an air quality delegated program

determined that civil penalties assessed by local governments pursuant to a state delegation had to be remitted to the Civil Penalty and Forfeiture Fund for the benefit of the local school boards pursuant to the State Constitution's provision on state penalties, fines and forfeitures.]

(2) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this section, or rule or order adopted or issued pursuant to this section, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control plan is required, except in accordance with the terms, conditions and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in G.S. § 113A-64.

(S) *Injunctive relief.*

(1) Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate this section or any rule or order adopted or issued pursuant to this section, or any term, condition or provision of an approved erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action in the name of the town for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Dare County.

(2) Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violation of this section.

(T) *Restoration after non-compliance.* The town shall require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. § 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this section.

(U) *Severability.* If any section or sections of this section is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

(V) *Effective date.* This section shall take effect on the date of adoption by the Board of Commissioners.

(Ord. 91-08, passed 11-18-91; Am. Ord. 95-11, passed 11-15-95; Am. Ord. 00-01, passed 1-10-00; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 08-11, passed 3-26-08; Am. Ord 17-17, passed 2-12-20)

## **§ 153.072 SEWAGE DISPOSAL.**

(A) Each application for site plan review shall be accompanied by plans of the proposed methods of sewage disposal with an approval or tentative approval by the appropriate County or State agencies having jurisdiction of such facilities over the land being developed. The plans submitted shall be of sufficient detail to demonstrate compliance with applicable sewage disposal regulations and show the exact location of all subsurface facilities, including but not limited to treatment facilities, tanks, piping, laterals and disposal areas.

(B) Any such application shall specify the method or methods to be used and shall describe any special conditions to be met. Such methods, and the approvals required, include but are not limited to the following:

(1) Connection to public sewer operated by a municipality, sanitary district or other governmental agency: connection approval by an authorized officer of such system;

(2) Connection to community sewer operated by a responsible person, firm or corporation other than a governmental agency: connection approval by an authorized officer of such system;

(3) Installation of other than public or community sewer systems: design approval by the appropriate County or State agencies and the town.

(C) The sewer system to which connections are to be made shall be authorized as follows:

(1) For on-site sewer disposal systems regulated by the Dare County Health Department, approval from the Dare County Health Department is required.

(2) For sewage systems regulated by the North Carolina Department of Environmental Quality (NCDEQ), approval from NCDEQ and/or appropriate applications with engineering certifications satisfactory for NCDEQ permitting is required.

(D) Privately owned facilities treating, processing or transmitting sewage or wastewater are permitted in all zoning districts, subject to the following conditions:

(1) Any new private utility or privately owned facility must be a part of and located within the boundaries of a subdivision or property immediately within or adjacent to the facility or homes being serviced. The person, firm or corporation operating a sewer system for which a rate is charged shall hold a certificate of public convenience and necessity from the State Utilities Commission, and there shall be recorded with a plat of the property the written affidavit of a registered engineer, engaged in the independent practice of civil engineering, that sewer mains and laterals comply with pertinent standards of the North Carolina Department of Environmental Quality and a bond or bonds, or trust instruments, or other form of written assurance, satisfactory to the Board, assuring the continuous proper maintenance and operation of such sewer systems. Where a community sewerage system furnishing services for two or more customers within a multi-family or group development project is assessed a periodic fee by a property owners' association and a portion of that fee is used for the purpose of paying the cost and expense of operating, maintaining and repairing the community sewerage system, then all requirements of this subsection must be satisfied;

(2) This facility shall be used and serve only the occupants of the subdivision, multi-family development project or commercial development for which it was constructed and approved by the town;

(3) This section shall not be applicable to individual septic tanks.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 17-8, passed 9-11-19)

### **§ 153.073 LANDSCAPING REQUIREMENTS.**

(A) *Intent and objectives.*

(1) The intent of this section is to improve the appearance of parking areas and properties abutting public rights-of-way; to provide buffering between non-compatible land uses; to provide spatial separation of land uses; to protect, preserve and promote the aesthetic and visual character of lands particularly adjacent to major thoroughfares; and to promote public health and safety through the reduction of noise pollution, air pollution, visual pollution, air temperature and artificial light glare within the town.

(2) Landscaping includes not only trees, shrubbery, grass and ground cover but open paving stones, benches, fountains and exterior lighting fixtures as well. Buildings, vehicles, boats, equipment, parking areas or storage areas shall not be included in required landscaped areas. No

more than 20% of a required perimeter landscaped area may be utilized for sidewalks, walkways or private roads. Landscaping standards may be satisfied within required setbacks.

(3) Any existing natural landscape shall be preserved whenever possible. Preservation of trees and further landscaping is the goal rather than destruction of existing trees or plant life. The planting of drought-tolerant vegetation common to the immediate natural coastal environment is encouraged to ensure proper plant life development and maturation.

(4) While the above objectives are general in form, proper design and location of trees, shrubbery and other landscape amenities will be subject to the town's plan review procedure.

(5) Landscaped areas may be used for nitrification fields.

(B) *Jurisdiction.* The requirements of this section shall apply to all zones.

(C) *Applicability.* All new development and redevelopment shall comply with the requirements of this section, except single-family detached residences and duplexes with less than 6,000 square feet of lot coverage, which shall meet the requirements of division (M) below.

(D) *Plan review and approval.*

(1) A landscape plan shall be submitted at the time application is made for site plan approval covering new development or redevelopment.

(2) The plan shall include the location and size of all proposed structures or improvements, landscape materials, including botanical and common names, and all existing vegetation by their common names as specified by the following:

(a) A tree survey: show all existing trees which have a diameter of six inches or greater, measured three feet from the base and also all major vegetation with an index of those trees and vegetation;

(b) Total site area;

(c) Parking area;

(d) Landscape area required and provided for in the project;

(e) Number of trees which are provided for the project;

(f) Irrigation plan, if any;

(g) Total amount of interior landscaped area.

(E) *Parking lot landscape requirements.*

(1) If more than 40 parking spaces are provided, landscaping of 10% of the total parking areas, including aisles, shall be required. This landscaping shall be established within the interior of the parking lot.

(2) The interior landscaped areas shall be located in a manner that:

(a) Assists and helps to control the movement of vehicular and pedestrian traffic;

(b) Provides visual relief from a large expanse of paving;

(c) Preserves existing trees, where possible; and

(d) Screens loading and service areas.

(3) A landscaped aisle shall be provided at the end of each parking row adjacent to the travel lane serving the parking aisle.

(4) In order to encourage the required landscaped areas to be properly dispersed, no required landscape area shall be larger than 350 square feet unless a larger area is necessary to save or protect existing vegetation.

(5) Interior landscaped areas shall contain a minimum of 75 square feet. Within these landscaped areas there shall be a minimum of one small tree per ten parking spaces in addition to other plant materials and ground cover. See division (L) of this section and Appendix A of this chapter.

(6) Required perimeter landscape areas shall not be used in the calculation of required interior landscape areas.

(F) *Perimeter landscaped areas.*

(1) *General.* A perimeter landscaped area, with a minimum depth of five feet, shall be required along property lines. Along property lines abutting any street, the minimum depth shall be ten feet. Driveways, sidewalks and similar facilities may traverse perimeter landscaped areas.

(2) *Screening requirements.*

(a) *Buffer between incompatible uses.* Restaurants, retail sales, shopping centers, automotive sales or repair, taverns, amusement or entertainment establishments, industrial uses, warehouses, wholesale businesses or trucking facilities, business or professional offices, places of worship, schools, daycare centers, parking lots, townhouse or multi-family developments, and single-family and duplex dwellings with greater than 6,000 square feet of lot coverage must provide screening on their property for certain adjacent uses. Where abutting single-family dwellings or duplexes with less than 6,000 square feet of lot coverage to the rear or to the side, such property line shall have a wall constructed of wood, masonry wall, vinyl or composite materials or a vegetative buffer six feet in height along the property line. Along property lines abutting single-family or duplex dwellings with less than 6,000 square feet of lot coverage a fence or dense vegetative screen shall be provided. Fences shall be constructed of wood, masonry, vinyl or composite materials and be a minimum of six feet in height. In addition, ornamental landscaping shall be provided if a fence is utilized as a buffer. Dense vegetative screens shall contain shrubs at least 30 inches high at the time of installation planted two-and-one-half feet on center. The type of shrub used needs to be capable of attaining a height of at least six feet at maturity. A dense vegetative screen utilized as a buffer will also satisfy the ornamental landscaping requirements below. In all cases where a fence is constructed, the required landscaped area shall be located between the fence and property line.

(b) *Ornamental landscaping.* Along property lines not abutting single-family or duplex dwellings with less than 6,000 square feet of lot coverage, the landscape plan shall indicate at least one tree for each 30 linear feet of landscape area and one shrub for each ten feet of landscape area. For new construction or substantial improvements in the Commercial Zone, the landscape plan shall indicate at least one tree and one shrub for each ten linear feet of landscape area along the front property line. Ornamental landscaping need not be evenly spaced, but rather dispersed throughout the landscape area to create a natural appearance. In all cases where a fence is constructed, the required landscaped area shall be located between the fence and property line.

(c) No vehicles, motor or otherwise, shall be parked on landscaped areas. In all cases where a fence is constructed, the required landscaped area shall be located between the fence and property line. No temporary signs or other structures shall be placed on any landscaped area without issuance of a permit by the Building Inspector or Zoning Administrator.

(G) *Grass and ground cover.* Ground cover shall be placed or planted on all disturbed portions of exposed ground or earth not occupied by natural or other landscape material.

(H) *Screening of refuse containers.*

(1) All dumpsters shall be screened on three sides by a fence. The screening shall exceed the height of the intended container by 12 inches.

(2) The opening for the removal of trash pickup shall allow for a clearance of 12 inches on each side of the container and 24 inches at the rear of the container. Design shall be approved by the Department of Public Services, Public Works Division.

(I) *Landscaping at driveways and intersections.*

(1) A minimum sight triangle shall be maintained at all driveways and street intersections. Within the sight triangle, no plant material, signage or any other obstruction shall interfere with an individual's vehicle sight line. No plant material shall exceed 30 inches in height at maturity; trees shall be trimmed so that branches are at least seven feet above curb level.

(2) The minimum sight triangle for driveways shall be 10 feet by 20 feet on each side of the driveway and shall be measured as follows:

(a) Begin at the point where the edge of the driveway intersects with the street right-of-way line;

(b) From this point, measure 20 feet along the street right-of-way line, away from the driveway edge;

(c) From the same point, measure ten feet toward the interior of the property, along the driveway edge;

(d) Connect the two points established by the above method to form the required sight triangle.

(3) The minimum sight triangle required at street intersections, other than those that intersect state-maintained roads, shall be 20 feet by 20 feet and shall be measured as follows:

(a) Begin at the property corner point where the right-of-way lines of both streets intersect;

(b) From this point, measure 20 feet along the right-of-way line in each direction;

(c) Connect the two points established by the method above to form the required sight triangle.

(J) *Irrigation.*

(1) All required landscape areas shall be irrigated or utilize plants which are drought tolerant.

(2) Irrigation plans shall be submitted for review. This is in addition to the landscaping plan. Irrigation plans shall show location, size and type of sprinkler heads and whether the system is automatic or manual.

(3) Irrigation systems shall minimize spray onto any pedestrian or vehicular access or abutting property.

(4) Water preservation should be considered in the design of all irrigation systems.

(K) *Landscape maintenance.* To encourage the continued maintenance of landscaped areas, the owner shall be responsible for:

(1) *Landscape areas shall be properly maintained.* The owner shall be notified in writing by the zoning official of the town of any areas which are not being properly maintained, and the owner shall, within 15 calendar days of receipt of the notice, restore the landscaped area to a satisfactory condition, meet the requirements of this code.

(2) Replacement of plant material shall occur only after approval of a landscaping plan by the zoning official of the town.

(3) A vegetative buffer which has been in place for three years or more, as set out in division (F)(2)(a) of this section, shall be replaced with plant material that meets the minimum maturity requirements set out in this chapter. An exception will be made when vegetation is damaged or destroyed by fire, flood, hurricane or other acts of God when the damage or removal was not caused by or contributed to by the owner, occupant or user, and shall be replaced with plants that meet minimum requirements of this code after approval of a landscaping plan by a zoning official.

(L) *Plant material.*

(1) No artificial plant life or other facsimile shall be permitted except by prior approval. Suggested plant lists are provided in Appendix A, Table A and Table B, which give numerous choices as to the type of plants native to the area which best suit the climatic conditions. These choices are recommended suggestions.

(2) Plants shall be sufficiently sized to ensure screening within three years. Where a vegetative screen is required, plant materials shall be sufficiently sized as practicable to ensure obscuring within three years. Seedling plants may be used where berms or structures are required or where the proposed use is contiguous to a street or vacant land that does not have proposed development in the review process. (See Appendix A).

(3) On a corner lot which abuts a state maintained right-of-way in any district, no planting, structure, sign, fence, wall or other obstruction to vision more than 3 feet in height shall be placed or maintained within the triangular area formed by the intersecting street right-of-way lines and a straight line connecting a point 10 feet from the intersection along the intersecting street with a point 70 feet from the intersection along the state maintained right-of-way.

(M) *Tree preservation within town rights-of-way.*

(1) The town may remove existing trees within town rights-of-way.

(2) Property owners or their agents may also remove trees within town-owned rights-of-way as follows:

(a) The installation of a driveway(s) shown on an approved site plan with the prior written permission of the town.

(b) With an approved restoration plan showing the replacement of removed trees at a one to one ratio or in compliance with division (F)(2)(b) and Appendix A.

(c) With an approved plan for tree thinning or removal of dead or deceased trees.

(3) An on-site meeting with the owner or their agent shall be held with a member of town staff to identify all trees to be removed. Trees marked for removal shall be noted on the site plan and flagged on site. The Planning and Inspections Department shall issue a tree removal permit after approval of the site plan. The permit will expire 180 days from the date of issuance. (Brush, vines and trees with less than a two-inch diameter measured at four and a half feet existing grade may be removed without restriction.)

(N) *Regulation of above-ground appurtenances, facilities and/or structures associated with a gas utilities system.* Any above ground appurtenances, facilities or structures (except buildings which are occupied and are governed by other provisions of the Kill Devil Hills Town Code), the meter and valve attached to an individual customer's structure and any required markers indicating or designating that a natural gas pipeline is buried below, constructed as a part of a gas utilities system within the town for the production, transmission, distribution and sale of gas, shall be screened with vegetative buffers as follows:

(1) All appurtenances, facilities or structures shall not be visible from ground level to a point eight feet above ground level.

(2) Buffers shall consist of trees or shrubs permitted in Appendix A of this chapter.

(3) Plants shall be of a size and planted at such intervals that they will reach full maturity and/or provide the full screening required herein within three years from the date of the completion of construction of such appurtenance, facility or structure.

(4) The franchisee for such gas utility system shall keep, replace and maintain the vegetative buffer required herein such that at all times the vegetation is alive and, after the first three years, that the full eight-foot buffer is at all times in place.

(5) Failure to comply with the terms of this section, in addition to any other remedies available under the provisions of the town code, the town may plant or replace such vegetative buffer to comply with the terms of this section and all costs thereof shall be charged to franchisee.

(Ord. 91-08, passed 11-18-91; Am. Ord. 97-14, passed 1-12-98; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 05-04, passed 4-11-05; Am. Ord. 05-05, passed 5-25-05; Am. Ord. 13-6, passed 5-13-13; Am. Ord. 14-08, passed 5-12-14; Am. Ord. 14-15, passed 7-14-14) Am. Ord. 17-20, passed 5-27-20)

#### **§ 153.074 LIGHTING.**

(A) *Intent.* Lighting standards are established to provide for safe lighting levels with minimum glare onto streets and neighboring property. All outdoor lighting shall be planned, erected, altered and maintained in accordance with the following provisions except for single-family dwellings and duplex dwellings.

(B) *Lighting plan.* The town shall require an outdoor lighting plan produced by an engineer or architect licensed to practice in the State of North Carolina. The plans must include the stamp/seal, license number and signature of the engineer or architect responsible for the plan and shall be required as part of the site plan review process.

(C) *Inspection required.* All outdoor lighting fixtures may be subject to annual inspection by the Planning and Inspections Department to assure that the fixtures are in compliance with these provisions. When a fixture fails to comply, the Planning and Inspections Department shall give written

notice to the owner of the site on which the fixtures are located stating that the fixture shall be brought into compliance or removed at the owner's expense within 30 days of receipt of the notice.

(D) *Lighting prohibited.*

- (1) No fixture shall be erected which is an imitation of an official highway or traffic-control light or sign.
- (2) No fixture shall be in a direct line of vision with any traffic-control sign or light.
- (3) No fixture shall have a flashing or intermittent pattern of illumination.
- (4) No fixture shall be located within a public right-of-way unless approved by the Department of Public Services, Public Works Division.
- (5) No fixture shall be erected, either indoors or outdoors, which because of the design of light source, orientation or intensity causes glare onto adjacent property or streets.
- (6) Search lights are prohibited except when used by federal, state or local authority.
- (7) No fixture shall violate any law of the State of North Carolina relative to outdoor lighting.
- (8) All neon lighting is prohibited except as allowed in § 153.077;
- (9) Light fixtures shall not exceed building height limits for the zone in which they are constructed except that accredited school athletic facilities may not exceed a height of 90 feet.

(E) *General provisions.*

- (1) All lighting new and existing shall be brought into compliance within three years of February 28, 2001.
- (2) When placed in a cluster the combined wattage shall not exceed the permitted footcandle level for the object or area they are designed to illuminate.
- (3) All light produced on-site shall be contained within the perimeter of the site by design, orientation or shielding of the light source.
- (4) All wiring for outdoor lighting shall be placed underground.
- (5) Principal buildings in commercial or industrial use shall be lighted on all sides for security at the permitted intensity shown in the table below.
- (6) Lighting fixtures shall be designed to withstand a maximum wind velocity of 110 miles per hour and in no case shall exceed the allowable building height limit.
- (7) The following average footcandles or lighting intensity levels shall be maintained: (Changes to the intensity levels may be effected by the Board of Commissioners for good cause shown.)

<b><i>Type of Outdoor Area or Use</i></b>	<b><i>Permitted Range of Average Footcandles Minimum - Maximum</i></b>
<b><i>Parking Areas</i></b>	

Drive-in restaurants	7-10
Sexually oriented businesses	7-10
Retail uses not otherwise listed	4-7
Commercial parking lots	4-7
Industrial and warehouses	0.5-1
Residential (other than single-family and duplex)	0.5-1
Hotels and motels	4-7
Places of worship	0.5-7
Event gardens	1.0-4.0
<b><i>Building Exteriors</i></b>	
Loading platforms	10
Commercial entrances	5
Inactive storage	1
Architectural	1
<b><i>Security</i></b>	
Commercial	1
Industrial	1
Walkways/roads	1
<b><i>Recreational</i></b>	
Accredited school athletic facilities	40-50
Baseball/football/soccer	20
Tennis/handball/volleyball	20
Basketball	10
Archery/badminton	10
Golf (miniature)/swimming pool	10
Fishing pier	10
Playground	5
Roller hockey/skateboard park	40-50
Marina	2

(8) With any 1,000 square foot area, lighting intensity levels cannot exceed twice the maximum footcandles allowed for the respective use.

(Ord. 91-08, passed 11-18-91; Am. Ord. 99-04, passed 2-8-99; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 02-10, passed 6-26-02; Am. Ord. 06-19, passed 8-14-06; Am. Ord. 13-3, passed 3-20-13)

**§ 153.075 TELECOMMUNICATIONS TOWERS.**

(A) *Intent.* The purpose of this section is to establish general guidelines for the siting of telecommunications towers and antennas. The goals of this section are to:

- (1) Encourage the location of towers in nonresidential/nonhistorical areas and minimize the total number of towers throughout the community;
- (2) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently;
- (3) Strongly encourage the joint use of new and existing tower sites;
- (4) Encourage the location of telecommunications towers and antennas, to the extent possible, in areas where the adverse impact on the community is minimal;
- (5) Encourage the location of telecommunications towers and antennas in configurations that minimize the adverse visual impact of the towers and antennas; and
- (6) Whenever possible, prioritize space on towers for public purpose use.

(B) *Application procedures and site plan requirements.*

(1) Communication companies are encouraged to locate telecommunications antennas on or in structures other than a tower. The structures may include church steeples, transmission line towers, utility/light poles, water towers and the like hidden in such a manner so as to not be readily visible (stealth). Where such facilities are not available, co-location of facilities is encouraged.

(2) When a new tower is proposed to be sited, a determination of whether the location will provide a minimal level of coverage vs. optimal coverage shall be taken into consideration. The following standards shall be used in the approval of the siting of new towers:

(a) Each applicant for approval of an antenna and or a tower shall provide to the Planning Department an inventory of its existing antennas and towers that are within 1,000 feet of the proposed site, including specific information about the location, height and design of each tower or antenna. The applicant should also include potential future tower sites in this inventory.

(b) Evidence that the applicant has investigated the possibilities for locating the proposed facilities on an existing tower, the use of stealth technology or location in another zoning district where the tower would be permitted as an administratively approved use. Such evidence shall consist of copies of letters sent to owners of all existing towers within a radius of one mile of the proposed site, requesting the following information:

1. Tower height;
2. Existing and planned tower users;
3. Statement as to whether the existing tower could accommodate the proposed antenna without causing instability or radio frequency interference and if the proposed antenna cannot be accommodated on the existing tower;
4. Statement as to whether the existing tower could be structurally strengthened to accommodate the antenna; and
5. Related equipment which could be protected from electromagnetic interference and a general description of the means and projected cost of shared use of the existing tower.

(c) A copy of all responses within 30 days from the mailing date of the letter required by subsection (2)(b) of this section.

(d) A summary explanation of why the applicant believes that the proposed facility cannot be located on an existing tower.

(e) A summary explanation of why the applicant believes that the use of an alternative tower structure is not possible.

(f) A blue line survey prepared by a licensed North Carolina surveyor showing the location of all existing property lines and improvements within a radius equal to the height of the proposed tower and all proposed improvements, including the tower, antennas, accessory structures and equipment. In addition, the survey must detail all proposed vegetation removal activities, including an inventory of existing trees to be removed.

(g) Drawings of all proposed towers, antennas and accessory structures and equipment indicating elevations, height, colors and design.

(h) Documentation provided by the applicant that the proposed tower and all antennas and equipment comply with all applicable Federal Communications Commission (FCC) regulations. In order to protect the public from unnecessary exposure to electromagnetic radiation, the tower owner shall provide documentation indicating that the power density levels do not exceed levels permitted by the FCC.

(i) Documentation provided by the applicant that the proposed tower, antennas and equipment meet Federal Aviation Administration (FAA) aviation and navigation requirements. No proposed improvements shall restrict or interfere with air traffic or air travel from or to any existing or proposed airport. No lighting shall project onto any surrounding residential property. To the extent required by the FAA, strobes shall be used for nighttime lighting. Whenever strobes are not required by the FAA, flashing beacons are the preferred type of lighting.

(j) A copy of the approved National Environmental Policy Act of 1969 (NEPA) compliance report for all towers, antennas, accessory structures or equipment proposed for the site.

(k) Documentation signed and sealed from a North Carolina licensed engineer that the proposed tower and antennas meets the structural requirements of the North Carolina Building Code and the co-location requirements of this section.

(l) Written indemnification of the town and proof of liability insurance or financial ability to respond to claims up to \$1,000,000 in the aggregate which may arise from operation of the facility during its life at no cost to the town on a form approved by the Town Attorney.

(m) Provision of sound engineering evidence demonstrating that location in the proposed district is necessary in the interest of public safety or is a practical necessity.

(n) Evidence that the telecommunications tower is structurally designed to support at least one additional telecommunications services provider and an affidavit that the owner of the tower is willing to permit other user to attach communication facilities, on a commercially reasonable basis, which do not interfere with the primary purpose of the tower. The tower owner may require that such other users agree to negotiate regarding reasonable compensation to the owner from any liability that may result from such attachment. The site plan shall indicate a location for at least one equipment building

in addition to that proposed for use by the applicant. Priority for co-location on the proposed tower shall be given to antennas that will serve a public safety need for the community.

(o) Approval for the proposed tower within a radius of 1,000 feet of an existing tower or other suitable structure (measured in a straight line distance) shall not be issued unless the applicant certifies that the existing tower or structure does not meet the applicant's structural specifications or technical design requirements or that a co-location agreement could not be obtained at a reasonable market rate and in a timely manner.

(p) The proposed tower shall be designed to accommodate additional antennas equal in number to the applicant's present and future requirements.

(q) In addition to the other considerations of this section, the approving body, in determining whether a tower is in harmony with the area or the effects and general compatibility of a tower with adjacent properties, may consider the aesthetic effects of the tower as well as mitigating factors concerning aesthetics and may disapprove the tower on the grounds that such aesthetic effects are unacceptable. Factors relevant to the aesthetic effects include: the protection of the view in sensitive or particularly scenic areas and areas specifically designated in adopted plans such as unique natural features, scenic roadways and historic sites; the concentration of towers in the proposed area; and whether the height, design, placement or other characteristics of the proposed tower could be modified to have a less intrusive visual impact.

(r) The approving body may request the applicant to conduct a balloon height test or similar tests on the proposed tower site to demonstrate the proposed height of the tower.

(C) *Use guidelines and dimensional requirements.*

(1) Antennas and towers may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot size and coverage requirements and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this section shall not be deemed to constitute the expansion of a nonconforming use or structure.

(2) In order to provide spatial separation and create visual block from adjacent properties and streets, a buffer shall be installed around the outside of all improvements on the site, including the tower and guy anchors, any ground buildings or equipment and security fencing. Ground buildings located in a residential district may be located outside the buffered area if they are constructed so the exterior appearance of the building has the appearance of a residential dwelling, including pitched roof and frame or brick veneer construction. The tower's guy anchors may be screened or fenced separately in order to comply with the requirements of this subsection.

(3) The base of the tower and each guy anchor shall be surrounded by a security fence or wall at least eight feet in height, unless the tower and all guy anchors are mounted entirely on a building over eight feet in height. The tower's guy anchors may be screened or fenced separately in order to comply with the requirements of this subsection.

(4) No outside storage shall be allowed on any telecommunications facility site.

(5) Accessory equipment structures shall not be used as an employment center for any worker. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments.

(6) The proposed tower, antenna or accessory structure and equipment shall be placed in a location and in a manner that will minimize the visual impact on the surrounding area.

(7) No commercial advertising, company logo or signage shall be allowed on the tower or its related facilities. However, signs shall be posted that list a telephone number for the owner of the proposed tower and "No Trespassing" information. This sign shall be located on the accessory equipment structure, building or fencing and shall not exceed four square feet in area.

(8) The proposed tower shall be set back from all publicly owned roads or rights-of-way a distance equal to the tower height divided by three. If visible from any public road or right-of-way, a landscape plan is required indicating how the applicant proposes to screen any accessory structure or equipment from view.

(9) Setbacks of the base of the tower from all adjacent property lines shall be one foot for each foot of tower height. To encourage shared use of towers, applications for towers which will operate with more than one user immediately upon completion may have a 15% reduction in the required setbacks, but in no case shall the setback be less than those required for the underlying zoning district. Also, to encourage the construction of monopole structures, monopole towers may have a 25% reduction in the required setbacks. Monopole towers which will immediately operate with more than one user may have a 40% reduction in the required setbacks. To encourage location of towers in forested areas with a minimum depth of 65 feet, the tower may have a 20% reduction in the required setbacks. In no case shall the setback be less than those required for the underlying zoning district. The setback reductions shall only be allowed upon a certification by a North Carolina licensed design professional which states that the structure's design and construction are such that, in the event of structural loadings in excess of design and resulting failure or collapse, all portions of the tower will fall within an identified area (the Fall Zone), and that no buildings or structures on adjacent zoning lots lie within said Fall Zone. Such certification shall consider potential future structures which may be constructed on such adjacent lots, subject to the limitations of existing setbacks and permanent easements on such lots.

(10) Except where setback reductions are allowed under the previous paragraph, the proposed tower shall be set back from all property lines a distance equal to the proposed tower's radius or extent of the Fall Zone as certified by a North Carolina licensed design professional.

(11) The proposed tower shall be set back a distance equal to the tower's height plus 50 feet from any residential structure.

(12) Notice shall be provided to the Planning Department when the tower is placed out of service. Towers that are not used for a period of six months or more shall be removed by the owner within 120 days of owner's receipt of notification to that effect. Any tower, antenna, accessory structure or equipment that is not used for communication purposes for more than 120 days shall be considered abandoned and shall be removed by the owner within 60 days of owner's receipt of notification. The Building Inspector may establish a shorter period of time for removal of a tower that is structurally unsound.

(D) *Nonconforming towers.* Continuation, relocation and reconstruction of and enlargements and modifications to towers and associated equipment that do not meet current requirements of this

section (towers constructed prior to the effective date of this chapter) are subject to the following requirements:

- (1) A site plan shall be submitted for any relocation or reconstruction of a nonconforming tower;
- (2) Increases in height shall not exceed 10% of the height of the tower as it existed in 1999 and shall not equal or exceed a height that would either require a special use permit or would require the tower, if unlit, to add lights;
- (3) Any relocation or structural change must be on the tower's current site; must eliminate the need for an additional tower or provide both additional co-location opportunities and additional antenna space beyond what is provided by the current tower; and may not change the style of the tower, if the tower is currently a monopole;
- (4) Any relocation must comply with current setback requirements, if physically possible, or if compliance is not possible, the relocation must not increase the amount by which setbacks are nonconforming, other than increases necessitated solely by changes in size of the base to support the new tower. If the foregoing setback requirements cannot be met, then setbacks may only be decreased by up to 10% of the originally constructed tower height;
- (5) If a nonconforming tower is damaged beyond 50% of its replacement value, a replacement tower constructed on the same site or lot may not exceed the height of the previous tower and must comply with all requirements of the current provisions, except the requirement for a use permit.

(Ord. 99-09, passed 5-10-99; Am. Ord. 01-02, passed 2-28-01) Am. Ord. 17-1, passed 5-13-19)

#### **§ 153.076 OFF-STREET PARKING AND LOADING.**

(A) *Detailed specifications.* Required off-street parking spaces are permanent areas and shall not be used for any other ground purpose; and shall be constructed in accordance with generally accepted engineering practices.

(1) *Dimensions: standard parking spaces.* In all zones, parking space dimensions will be 200 square feet, 10 feet by 20 feet. However, for commercial and multi-family residential, only 18 feet of the length need to be paved or constructed of turfstone, permeable pavements, including porous concrete, porous asphalt, concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids. The remaining two feet of length shall remain pervious, and a concrete curb stop shall be placed at the front end of each space to accommodate vehicle overhang on the remaining two feet of length.

(2) *Design.* Every parking space shall be designed so that vehicles cannot extend beyond the perimeter of such area onto adjacent properties or public rights-of-way. Such areas shall also be designed so that vehicles do not extend over sidewalks or tend to bump against or damage any wall, vegetation, or other obstruction. Parking is not a permitted use within buffer or landscaped areas.

(3) *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 inspector 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.

(4) *Remote parking space.* Remote parking space shall be a ~~conditional~~ **special** use, if the off-street parking space required by this chapter cannot be reasonably provided on the same lot on which the principal structure is located. Such space may be provided on any land entirely within 1,000 feet of the main entrance to such principal structure. Remote parking areas shall comply with all aspects of the zoning code. In no case shall remote parking spaces be separated from the principal structure by US 158. Remote parking areas shall not be used for any transfer of development rights. The following minimum conditions shall be required:

(a) Adequate pedestrian facilities from the primary structure to the remote parking area shall be provided.

(b) Safety lighting shall be provided within the public right-of-way from the primary structure to the remote parking area.

(5) *Width of commercial and multi-family driveways.* The width of commercial and multi-family driveways shall be no less than 12 feet in a one-way traffic flow and 24 feet in a two-way traffic flow.

(6) *Width and length of driveway serving a one- or two-family dwelling.* The width of a residential driveway shall be no less than ten feet; if used as part of the parking area, shall be of sufficient length to keep the number of parked cars provided for in division (A)(1) off the street right-of-way.

(7) *Materials for driveways and parking lots.*

(a) Commercial driveways, parking areas and turn around areas shall be made of asphalt, concrete or permeable blocks, pavements, including porous concrete, porous asphalt, concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids as defined in § 153.180(E)(3)(b). No types of temporary materials, such as landing mats and boards, shall be used for the construction of driveways.

(b) Overflow parking areas for commercial sites, in excess of required parking, may utilize grassed or unimproved areas of the site for parking. Parking shall not be allowed in required stormwater, landscaped or wastewater areas. If improvements are made to overflow parking areas standards and materials for required parking areas shall be utilized.

(c) Single-family and duplex residential driveway and parking areas can utilize approved commercial materials as in division (7)(a) above or a minimum of four inches of compacted Aggregate Base Course (ABC) with one inch of pea gravel as an approved surface. When ABC pea gravel option is utilized, the following conditions shall apply:

1. All improvements in the right-of-way shall meet one of the commercial specifications listed in division (7)(a).

2. Loose stone surface shall be bordered by concrete or salt-treated timbers in a manner which retains the stone in the driveway or parking area.

(d) Gravel driveways and parking areas shall be allowed in the G&I Public and MFED Zoning Districts for recreational facilities that will be unoccupied.

(8) *Curbs.* In any commercial zone and for all hotels, motels and auditoriums in a high-density residential zone (RH), a curb of at least six inches in height shall be constructed along the entire width of the building lot on all highway or street sides of the lot. The curbing shall be constructed of concrete. Curbing may also be required to aid in stormwater management.

(9) Parking requirement for multifamily and commercial establishments.

(a) *Yards.* Commercial and multi-family. No parking lot shall be located closer than ten feet to a public right-of-way. The area between the parking lot and street right-of-way shall be planted and maintained in lawn or other appropriate planting, or shall be improved otherwise as approved in site plan review.

(b) *Lighting.* Any lighting shall be arranged so as to direct the light and glare away from streets and adjacent property. (See § 153.074, Outdoor lighting.)

(c) *Drainage.* Parking lots shall not drain onto or across public rights-of-way, or into adjacent property except into a natural watercourse or a drainage easement;

(d) *Markings.* For multi-family and commercial establishments, each parking space shall be clearly marked and maintained.

(e) *Entrances for multi-family and commercial establishments.* On all corner lots, no vehicular openings shall be located at closer than 36 feet from the point of intersection of the established street right-of-way lines. No entrances or exits, whether or not on a corner lot, shall exceed 30 feet in width at the property line. The outside radius (R) an entrance/exit connection shall be a minimum of five feet, not to exceed a maximum of 15 feet except where required for ingress/egress by fire apparatus as determined by the Fire Code Official, and then not to exceed 25 feet. There shall be a minimum distance between one-way driveways of 25 feet measured along the curb line.

(f) *Special commercial and multi-family entrance requirements - US 158/Croatan Highway.* Where a lot abuts U.S. 158/Croatan Highway and does not abut any other dedicated public right-of-way, one entrance shall be allowed consistent with the following dimensional requirements: the width of a commercial driveway shall not exceed 36 feet measured at the property line. The outside radius (R) of an entrance/exit connection shall be a minimum of five feet, not to exceed a maximum of 25 feet.

(g) *Special entrance requirements – Government and Institutional Zone (G&I); public ownership.* Entrance(s) for lots located in the G&I Public Zoning District used for storage of publicly-owned vehicles and equipment shall be allowed consistent with the following dimensional requirements: the width of a driveway shall not exceed 36 feet measured at the point of tangency; and the outside radius of an entrance/exit connection shall be a minimum of five feet, not to exceed a maximum of 45 feet.

(10) *Parking requirements for single-family and duplex structures.*

(a) *Yards.*

1. Dwellings with four bedrooms or less:

a. Driveways and parking areas shall not exceed a single or combined width of 80% of the total lot width, not to exceed 40 feet, whichever is less; and

b. Driveways and parking areas shall maintain a minimum of a two-foot side yard setback and must maintain a five-foot setback in rear yards.

2. Dwellings with five to ten bedrooms:

a. A minimum of one but no more than two paved driveways of at least ten feet in width and not exceeding a single or combined width of 20 feet shall be permitted in this area. Driveway

width shall be maintained from the point on entry at the property line for five linear feet. Parking setback shall be equal to the total width of the driveway(s) measured from the property line. Driveways in the required parking setback area cannot be used for calculation of required parking.

b. Parking setbacks shall be a minimum of five feet from the property line for both driveways and parking areas.

c. Turn around area for properties abutting highways, thoroughfares and/or collector streets shall be within the designated parking area outlined in this section. Driveways with a minimum width of 20 feet may utilize the driveway area within the required setback as the turn around area.

3. Dwellings with eleven bedrooms or more:

a. A minimum of one but no more than two paved driveways of at least ten feet in width and not exceeding a single or combined width of 20 feet shall be permitted in this area. Driveway width shall be maintained from the point on entry at the property line for five linear feet. Parking setback shall be equal to the total width of the driveway(s) measured from the property line. Driveways in the required parking setback area cannot be used for calculation of required parking.

b. Parking setbacks shall be a minimum of seven feet from the property line for both driveways and parking areas.

c. Exception: Parking setbacks shall be a minimum of five feet from the property line for driveways, access aisles, and parking areas provided with a clearly marked access aisle including "no parking" with the following design requirements. There shall be a minimum of one access aisle designed open and unobstructed within twenty feet of primary dwelling. Minimum access aisle width shall be ten feet.

d. Turn around area for properties abutting highways, thoroughfares and/or collector streets shall be within the designated parking area outlined in this section. Driveways with a minimum width of 20 feet may utilize the driveway area within the required setback as the turn around area.

(11) *Solid waste requirements.* Sufficient space shall be provided on the premises for the location of solid waste containers as required by § 50.15 of this code, regulating the collection and disposal of trash and garbage. Such solid waste container location may be in a required parking lot; provided that such location does not occupy a required parking space or maneuvering space; and provided further that such solid waste container location shall provide convenient and safe access to the servicing vehicle.

(12) *Vehicle circulation and movement.*

(a) Vehicle accommodation areas, specifically turn around areas, shall be designed so that, without resorting to extraordinary movements, vehicles may exit such areas without backing onto a public street.

(b) Vehicle accommodation areas of all development shall be designed so that sanitation, emergency, and other public service vehicles can serve such developments without the necessity of backing unreasonable distances or making other dangerous or hazardous turning movements.

(c) Circulation areas shall be designed so that vehicles can proceed safely without posing a danger to pedestrians or other vehicles and without interfering with parking areas.

(d) Spaces for restaurant employee parking may be arranged in a stacked configuration (spaces one in front of another) not to exceed 15% of the total required spaces. Stacking may not be

deeper than two spaces, both of which shall be considered stacked. Signs shall indicate the location of employee parking spaces.

(13) *Sidewalk requirements for commercial and multi-family development abutting US 158 in the Commercial Zoning District.* Sidewalk improvements shall be installed along the entire length of properties fronting US 158. The sidewalk improvements shall be a minimum width of five feet and meet all NCDOT standards.

(B) *Minimum parking requirements and specific use standards.*

(1) All developments in all zoning districts shall provide the number of parking spaces, as specified in the Table of Parking Requirements, to accommodate the number of vehicles that are likely to be attracted to the development in question.

(2) When determination of the number of parking spaces required by this table results in a requirement of a fractional space, any fraction of one-half or less may be disregarded, while a fraction in excess of one-half shall be counted as one parking space.

(3) All space requirements which are based upon employment shall be computed on the basis of the greatest number of persons on duty at any one period during the day or night.

(4) The required parking space for any number of separate uses may be combined in one lot but the required space assigned to one use may not be assigned to another use, except that one-half of the parking space required for places of worship, theaters or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night and on Sundays.

(5) It is recognized that the table cannot and does not cover every possible situation that may arise. Therefore, in cases not specifically or reasonably covered, the Board of Commissioners will determine the parking requirements using this table as a guide.

(C) *Parking reduction schedule.* A reserve area shall be created when using any reduction in parking. Each reserve area shall be clearly indicated on the site plan including layout and the number of parking spaces utilized in the reduction. All reserve area shall be calculated as impervious area for purposes of lot coverage and stormwater management.

<b><i>If the required parking facilities total:</i></b>	<b><i>Required parking for the proposed use can be reduced by:</i></b>
100 to 150 parking spaces	10%
151 to 250 parking spaces	20%
251 or more parking spaces	30%

(D) *Table of parking requirements.*

<b><i>Residential and related uses</i></b>	<b><i>Required parking</i></b>
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Automated ice vending structure	1 parking space per 200 square feet of gross floor area with a minimum of 4 spaces and reserved lane capacity equal to 3 spaces per window for any drive-through or drive-up dispensing.
Dwellings – multi-family (Commercial and Ocean Impact Residential Districts only)	2 parking spaces per dwelling, plus one parking space for each bedroom over 2. With the exception of stacked or assigned parking the number of spaces may then be reduced as follows: For 15-19 units a 10% reduction, for 20-24 units a 15% reduction, and for 25 units or more a 20% reduction. This may not be combined with the reductions permitted by § 153.076(C).
Dwellings – single-family, duplex and multi-family (including mobile homes)	2 parking spaces per dwelling unit, plus 1 parking space for each bedroom over 2
Dwellings – Accessory Dwelling Unit (ADU)	1 parking space per Accessory Dwelling Unit plus 1 space for each bedroom over 1
Hotel and motel	1.2 parking spaces for each unit, plus 1 parking space for each employee
Hotel/motel with restaurant	1.2 parking spaces for each unit, plus 1 parking space for each employee, plus 1 parking space per 200 square feet of gross floor area
Hotel/motel with retail, office, meetings	1.2 parking spaces for each unit, plus 1 parking space for each employee plus 1 parking space per 200 square feet of gross floor area for secondary uses
Hotel/motel event gardens	1 parking space for every 3 persons the event garden is designed to accommodate when fully utilized
Retail Office and Related Uses:	1 space per 200 square feet of gross floor area
Exceptions to Retail, Office and Related Use:	
Medical Offices (not urgent care), Dentist, Hairstylist, Barber, Bank and Financial institutions and Business/Professional Offices with 5,000 gross floor area or less	1 space per 250 square feet of gross floor area provided the area that would be required for parking at the ratio above remain open area used for landscaping, stormwater or other use that does not create impervious areas.
5,001-10,000 gross square feet or less	1 space per 250 square feet of gross floor area provided the area that would be required for parking at the ratio above remain open area used for landscaping, stormwater or other use that does not create impervious areas.
10,001 gross square feet and over	1 space per 300 square feet of gross floor area provided the area that would be required for parking at the ratio

	above remain open area used for landscaping, stormwater or other use that does not create impervious areas.	
Furniture stores with a minimum of 4,000 square feet	One parking space per 400 square feet of gross floor area	
Retail, office and related uses	Required parking - One parking space per 200 square feet of gross floor area for the following uses:	
	Antique shops	Hammocks
	Appliance stores	Hardware stores
	Art galleries	Home care systems (wheelchairs and the like)
	Arts and crafts	Jewelry stores
	Astrology and tarot card reading office	Laundromats
	Auto supplies	Medical offices less than 4,000 square feet with a minimum of 5 spaces
	Automobile sales, rentals, and repair	Motorcycle sales and service
	Bait and tackle shops	Music stores
	Bank	Paint and wall treatment stores
	Beauty parlors/barber shops/nail salons	Personal spas
	Blueprint business (reproductions and the like)	Pet stores
	Boat sales, rentals, and repair	Pharmacies/drug store
	Body piercing	Photo shops (film processing, sales and the like)
	Books	Pools and spas
	Broadcast studios	Post office
	Business/professional	Produce markets
	Carpet and flooring	Rental shops
	Clothing	Safety equipment
	Clothing (tailor)	Shoe repair
	Convenience stores	Sign business
	Cycle and skate shops	Tanning salons
Dry cleaners	Taxicab operations	
Electronic equipment, sales and repair	Thrift stores/consignment shop	

	Embroidering/screen printing shops	Toy stores
	Financial institutions	Trophy and engraving shop
	Florists	Surfboard manufacture shop
	Food/produce/grocery store	Video, audio, and lighting
	Frames (picture frames, matting and the like)	Water care products and supplies
	Furniture	Window and door stores
	Gift shops	Wood crafts and hobbies
	Government offices	Dental offices
	Medical offices less than 3,000 square feet	
	<i>One parking space per 400 square feet of gross floor area for the following uses:</i>	
	Furniture stores with a minimum of 4,000 square feet	
<b><i>Residential and related uses</i></b>	<b><i>Required parking</i></b>	
Drive-in and drive-through windows	Reserved lane capacity equal to 5 spaces per window and 3 spaces of reserve lane capacity for drive-through automated teller machines, plus required parking for the enclosed structure/use	
Car wash, conveyor type	1 space for every 3 employees, plus reservoir capacity equal to 5 times the capacity of the washing operation	
Car wash, self-service type	2 spaces for drying and cleaning purposes per stall, plus 2 reservoir spaces in front of each stall	
<b><i>Restaurant uses</i></b>	<b><i>Required parking</i></b>	
Brewery with secondary use(s) (bar, restaurant, retail and the like)	1 parking space per 200 square feet of gross floor area for the brewery, plus parking for secondary uses as required in this chapter	
Restaurants, bars, nightclubs (no substantial carry-out or delivery service, no drive-in service, no service or consumption outside fully enclosed building)	1 parking space per 100 square feet of gross floor area	
Restaurants, bars, nightclubs (carry-out and delivery service, drive-in service, service outside fully enclosed structure)	1 parking space per 100 square feet of gross floor area, including outside dining areas and a reservoir lane capacity equal to 5 spaces per drive-in window	
Restaurants with secondary use(s) (brewery, retail, amusement arcade and the like)	1 parking space per 100 square feet of gross floor area for the restaurant use, plus 1 parking space per 200 square feet of gross floor area for the secondary use(s)	
Carry-out facilities, snack bars, refreshment stands, bakeries, limited	1 parking space per 200 square feet of gross floor area	

food establishments with no indoor or outdoor seating or any establishment where food is prepared for consumption off premises	
<b><i>Wholesale, warehouse or industrial uses</i></b>	<b><i>Required parking</i></b>
Warehouse as defined in § 153.002	1 parking space per 1,000 square feet of gross floor area, 1 parking space per 200 square feet of gross floor area for office areas, but not less than 6 parking spaces
Light Industrial Warehouse as defined in § 153.002	1 parking space per 400 square feet of gross floor area, 1 parking space per 200 square feet of gross floor area for office areas, but not less than 5 parking spaces
Retail Warehouse as defined in § 153.002	1 parking space per 200 square feet of gross floor area for retail and office areas and 1 parking space per 400 square feet of gross floor area for storage area with no public access
Warehouse, industrial complex	1 parking space per 600 square feet of gross floor area for industrial complex and office as defined. 1 parking space per 400 square feet of gross floor area for additional office space and/or all other uses
<b><i>Recreational uses</i></b>	<b><i>Required parking</i></b>
Skating rinks, tennis, billiards and pool halls, indoor athletic and exercise facilities, fishing piers, miniature golf, driving range, amusement arcade, batting cages, ball fields, water rides, skateboard ramps, swimming pools, haunted houses, trampoline with harness and tether, small amusement rides with maximum capacity of 24 persons	1 parking space for every 3 persons that the facilities are designed to accommodate when fully utilized, plus 1 space per 200 square feet of gross floor area used in a manner not susceptible to such calculation
Auditorium or convention centers	1 parking space for each 2 spectator seats
Assembly halls, libraries, museums, nonprofit organizations, art centers, social and fraternal area clubs, union halls and similar uses	1 parking space per 300 square feet of gross floor
Theaters	1 parking space for each 4 seats
<b><i>Institutional uses</i></b>	<b><i>Required parking</i></b>
Medical clinics or health clinics	1 parking space per 150 square feet of gross floor area
Hospitals and other medical facilities in excess of 10,000 square feet of gross floor area	2 spaces per bed or 1 parking space per 150 square feet of gross floor area, whichever is greater
Nursing homes/Assisted living	3 parking spaces for each 5 beds intended for patient use
Places of worship	1 parking space for every 4 seats in the portion of the religious complex to be used for services, plus spaces for

	any residential use as determined in accordance with the parking requirements set forth for residential use, plus 1 space for every 200 square feet of gross floor area designed to be used neither for services nor residential purposes
Nursery schools and day care centers	1 parking space per 200 square feet of gross floor area, plus 1 space per employee
Services and enterprises related to animals	1 parking space per 200 square feet of gross floor area, plus 1 space per employee
Elementary and secondary schools	25 parking spaces, plus 1.75 spaces for each classroom and administrative office
High schools	25 parking spaces, plus 1 space for each 5 students for which the building was designed, plus 1 space for each classroom and administrative office
Trade or vocational schools, colleges, community colleges and universities	1 parking space per 150 square feet of gross floor area
<b>Shopping Centers/Office Complex</b>	<b>Required parking</b>
Shopping center/office complex - 5,000 gross square feet or less (no restaurant uses)	1 space per 200 square feet of gross floor area
Shopping center/office complex - 5,000 gross square feet or less w/restaurant uses	1 space per 200 square feet of gross floor area for retail and office uses
	1 space per 100 square feet of gross floor area for restaurant use
Shopping center/office complex - 5,000 to 10,000 gross square feet (no restaurant uses)	1 space per 250 square feet of gross floor area
Shopping center/office complex - 5,000 to 10,000 gross square feet w/restaurant uses	1 space per 250 square feet of gross floor area for retail and office uses
	1 space per 100 square feet of gross floor area for restaurant use
Shopping center/office complex - greater than 10,000 gross square feet	1 space per 250 square feet of gross floor area

(E) *Off-street loading.* One or more loading berths or other spaces shall be provided for standing, loading and unloading operations either inside or outside a building or structure erected in accordance with the requirements of the following table. A loading berth shall have minimum plan dimensions of 12 feet by 60 feet and an overhead clearance of 14 feet. 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 Board of Commissioners 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.

<b>Use Classification</b>	<b>Space Requirements</b>
Retail operations, including restaurant and dining facilities within hotels and office buildings, with a total useable floor area of 20,000 square feet or more devoted to such purpose	One loading berth every 10,000 square feet of floor area
Retail operations and all first floor nonresidential uses with a gross floor area of less than 20,000 square feet and all wholesale and light industrial operations with a gross floor area of less than 10,000 square feet	One loading berth every 10,000 square feet of floor area
Office buildings and hotels with a total useable floor area of 100,000 square feet or more devoted to such purposes	One loading berth for every 100,000 square feet of floor area
Industrial and wholesale operations with a gross floor area of:	
10,000 to 40,000 square feet	One loading berth
40,001 to 100,000 square feet	Two loading berths
100,001 to 160,000 square feet	Three loading berths
160,001 to 240,000 square feet	Four loading berths
240,001 to 320,000 square feet	Five loading berths
320,001 to 400,000 square feet	Six loading berths
Each 90,000 square feet above 400,000 square feet	One additional berth

(Ord. 91-08, passed 11-18-91; Am. Ord. 97-02, passed 2-26-97; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 02-06, passed 3-13-02; Am. Ord. 02-09, passed 6-10-02; Am. Ord. 03-01, passed 2-10-03; Am. Ord. 03-09, passed 6-25-03; Am. Ord. 03-16, passed 10-15-03; Am. Ord. 04-08, passed 5-26-04; Am. Ord. 04-11, passed 5-26-04; Am. Ord. 04-12, passed 7-12-04; Am. Ord. 04-18, passed 10-11-04; Am. Ord. 05-01, passed 1-10-05; Am. Ord. 05-12, passed 8-8-05; Am. Ord. 05-13, passed 8-8-05; Am. Ord. 05-19, passed 10-4-05; Am. Ord. 06-23, passed 10-9-06; Am. Ord. 06-24, passed 11-15-06; Am. Ord. 07-17, passed 10-24-07; Am. Ord. 08-17, passed 7-14-08; Am. Ord. 09-03, passed 1-28-09; Am. Ord. 10-03, passed 4-12-10; Am. Ord. 10-06, passed 5-26-10; Am. Ord. 10-15, passed 9-13-10; Am. Ord. 11-05, passed 4-11-11; Am. Ord. 11-09, passed 5-25-11; Am. Ord. 12-02, passed 2-13-12; Am. Ord. 12-04, passed 3-28-12; Am. Ord. 13-01, passed 1-14-13; Am. Ord. 13-3, passed 3-20-13; Am. Ord. 13-4, passed 4-24-13; Am. Ord. 13-15, passed 10-14-13; Am. Ord. 13-16, passed 10-14-13; Am. Ord. 14-05, passed 3-10-14; Am. Ord. 14-25, passed 2-9-15; Am. Ord. 15-15, passed 5-16-16; Am. Ord. 16-21, passed 7-19-18; Am. Ord. 16-25, passed 4-24-19) Am. Ord. 17-18, passed 5-27-20; Am Ord. 17-27, passed 3-8-21; Am. Ord. 17-28, passed 3-8-21)

**§ 153.077 SIGNS.**

In an effort to ensure public health and welfare and a pleasing aesthetic environment and to promote traffic safety, the town has adopted the regulations and standards contained in this section.

(A) *Permit required.*

(1) No sign shall be erected, constructed, altered or maintained, except as provided in this section, until a permit for the same has been issued by the Zoning Administrator and the fee paid. A minimum fee for any sign permit shall be determined from time to time by the Board.

(2) Any freestanding or wall sign which will require a permit will also require inspection by the Building Inspector.

(B) *Exempt signs.* The following signs shall be exempt:

(1) Signs bearing only property numbers, names of occupants or premises or other identification of premises not having commercial connotations;

(2) Flags.

(a) Legal governmental flags displayed in a manner compliant with all laws.

(b) Decorative flags no more than 24 square feet located within the property lines and in no case shall any part of the flag be closer than ten feet from the edge of pavement within any right-of-way.

(c) Two decorative flags per single business site or one flag per business if located within a shopping center or office complex with multiple businesses per site (to be effective as of January 1, 2015).

(3) Legal notices or identifications, information or directional signs erected or required by governmental bodies or public utilities;

(4) Integral decorative or architectural features of buildings, except letters, trademarks, moving parts or moving lights;

(5) Electronic message boards displaying time, temperature and wind direction and velocity signs;

(6) "For Sale" or "For Rent" signs that meet the limitations on square footage as defined in subsection (C)(1)(b) of this section shall be exempt from the permit requirements of division (A) of this section;

(7) During the construction, repair or alteration of a structure, a temporary construction sign which denotes the architect, engineer, contractor or builder or which denotes the name of the structure and its use or occupants-to-be may be placed on the site as a ground or wall sign. Such sign shall not exceed 64 square feet and shall not exceed 20 feet in height above street grade. All construction site signs shall be removed when the building has been approved for occupancy by the Building Inspector or within 60 days of termination of work on the site, whichever shall occur first;

(8) Signs on county, municipal or school ballfield fences, provided the signs do not exceed 24 square feet in area, have been given prior approval by the Board of Commissioners, and are valid for a period of four consecutive months;

(9) Advertising messages or symbols painted or constructed on a business vehicle that is used in day-to-day business operations with valid registration, license and inspection. These shall be reviewed by the Zoning Administrator;

(10) Neon or LED signs, provided they are no larger than two square feet and indicate "Open," "Closed" or "No Vacancy." These signs may not suggest movement, be animated in any way or blink on and off.

(11) Strings of electric light bulbs on commercial sites that are not flashing or intermittently illuminated or appear to be flashing or glittering or moving shall be permitted on the following dates and at no other time:

- (a) November 22 through January 7; and
- (b) July 2 through July 6.

(12) One "Open House" sign that does not exceed 36 square feet and is set back a minimum of seven feet from any property line or one "Open House" banner attached to the primary structure that does not exceed 75 square feet shall be exempt from the permit requirements of division (A) of this section. At no time shall the sign be illuminated.

(13) Signage and/or electronic screens not exceeding 2 square feet on order pedestals at food service establishments.

(C) *Generally allowed.*

(1) The following signs shall be allowed in all zones:

(a) Directional and informational signs may be erected and maintained by public agencies and governmental bodies;

(b) One lease or rent sign and one for sale sign may be used per lot, each of which shall not exceed 6 square feet plus frame. These signs shall be located at least seven feet from the street line and side property lines and shall be removed 14 days after the property has been sold, rented or leased. Sale or lease signs for commercial property shall be limited to 36 square feet and shall be removed 14 days after the property has been sold, rented or leased.

(c) Places of worship, schools, community centers and other public and institutional uses may erect one sign or bulletin board not exceeding 12 square feet in area for the purpose of displaying the name of the institution and related information. The signs shall be used as wall signs or shall be located at least 7½ feet from property lines. Any sign over 12 square feet will require a permit.

(d) Subdivision signs advertising the sale of lots or buildings within new subdivisions on which they are located are permitted, provided that:

1. They are nonilluminated or indirectly illuminated;
2. They do not exceed 64 square feet;
3. Not more than one such sign shall be located at each major approach to the subdivision;
4. They meet all requirements applying to principal structures with regard to yard, setback and height requirements;
5. Display of such signs shall be limited to a period of two years;
6. A permit is required.

(2) Prior to the expiration date of the permit for subdivision signs, the applicant may request one extension of two years. Signs shall be removed prior to the expiration of the two-year period or extension thereof. If the sign has not been removed, the town may enter the premises upon which the sign is located and remove such sign at no liability to the town and at the expense of the owner.

(3) Permanent subdivision signs without advertising may remain as long as they are adequately maintained. Subdivisions remote from a main thoroughfare may locate one off-premises sign, provided the sign meets the specifications for subdivision signs detailed below:

- (a) They are nonilluminated or indirectly illuminated;
- (b) They do not exceed 64 square feet;
- (c) Not more than one such sign shall be located at each major approach to the subdivision;
- (d) They meet all requirements applying to principal structures with regard to yard, setback and height requirements;
- (e) They are landscaped and well-maintained in the best interest of the developer and the community;
- (f) A permit is required.

(4) In the event a freestanding sign is destroyed by fire, flood or storm and such damage was not caused nor contributed to by the owner, occupant or user, one temporary message board may be permitted, subject to the following conditions:

- (a) It shall be displayed only during daylight hours (sunup to sundown);
- (b) It shall not exceed six square feet in area;
- (c) It shall not be displayed within any highway or local road right-of-way and shall be on the property of the advertising business;
- (d) It shall not be displayed when conditions could cause public injury or property damage;
- (e) It shall not be displayed longer than 60 days;
- (f) No fees or permits are necessary.

(5) Roof signs will be permitted on gambrel and A-frame roofs subject to the following conditions:

- (a) Gambrel roofs and A-frame roofs have a minimum pitch of 29/12;
- (b) Signs only be allowed on the steepest portion of the roof;
- (c) Maximum height of any sign shall be 20 feet from the average finished grade.
- (d) Signs shall not be located on the ridge of the roof.

(D) *Detailed specifications for commercial zone and light industrial zones signs.*

(1) For each lot, tract or parcel, the maximum square footage of signage that may be displayed shall be based on the following formula. (For shopping centers see subsection (D)(11).)

(a) On lots with 100 feet or less of road or highway frontage, 36 square feet of signage, including any combination of freestanding and manual message board, may be displayed on one

freestanding sign, such sign not to exceed 20 feet in elevation above street grade, measured from ground elevation to the top of the sign structure. An additional two square feet of wall sign may be displayed on the building for each lineal foot of building frontage. However, no single wall sign shall exceed 100 square feet.

(b) On lots with 101 feet to 150 feet of road or highway frontage, 50 square feet of signage, including any combination of freestanding and manual message board, may be displayed on one freestanding sign, such sign not to exceed 20 feet in elevation above street grade, measured from ground elevation to the top of the sign structure. An additional two square feet of wall sign may be displayed on the building for each lineal foot of building frontage. However, no single wall sign shall exceed 100 square feet.

(c) On lots with 151 feet or more of road frontage, 64 square feet of signage, including any combination of freestanding and manual message board, may be displayed on one freestanding sign, such sign not to exceed 20 feet in elevation above street grade measured from ground elevation to the top of the sign structure. An additional two square feet of wall sign may be displayed on the building for each lineal foot of building frontage. However, no single wall sign shall exceed 100 square feet.

(d) On any lot with 151 feet or more of road frontage, greater than five acres, where the principal building is a minimum of 150 feet from the right-of-way, 64 square feet of signage, including any combination of freestanding and manual message board, may be displayed on one freestanding sign, such sign not to exceed 20 feet in elevation above street grade measured from ground elevation to the top of the sign structure. An additional two square feet of wall sign may be displayed on the building for each lineal foot of building frontage. However, no single wall sign shall exceed 250 square feet. In no case shall total area of wall signs exceed 600 square feet per building frontage.

(e) One flag per business shall be allowed (effective date January 1, 2015).

(2) Measurements of sign size for computation of compliance with this chapter is based on the size of the letters and then the total area of the letters. This total shall be the total signage permitted based upon the business building frontage measurement. (See illustration in Appendix C.) In no case shall the solid surface of base and frame exceed double the permitted sign area.

(3) Lighting shall be shielded so as to prevent a direct view of the light from a residence or a street in a residential district.

(4) Temporary signs, banners, placards, decorations or the like, constructed of light materials, for the promotion of noncommercial enterprises or events taking place in the town, may be displayed in any commercial zone. No such signs may be erected on or affixed to public property nor exceed 100 square feet and must not encroach on the right-of-way. These temporary signs must be removed within five days after the event has taken place. The sign shall be attached to a building.

(5) Temporary signs, banners, placards, decorations or the like, constructed of light materials, for the promotion of commercial enterprises, grand openings or similar uses taking place in the town, may be displayed for a period not to exceed 90 days, upon the responsible party having secured a permit for such from the Zoning Administrator. No such sign shall exceed 100 square feet. The sign shall be attached to a building.

(6) A general informational sign located on site, such as "no parking," "entrance," "loading only," "telephone" or other similar directives shall not exceed 3 square feet, and total square footage of all informational signs shall not exceed 33 square feet.

(7) For each food service business, menu boards and preview boards for each drive-through may be permitted, provided that the menu board does not exceed 35 square feet in total display area and does not exceed 5 feet in height above street or driveway elevation.

(8) For the purpose of determining the number of signs, a sign shall be considered to be a single display surface or display device containing elements organized, related or composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements, each element shall be considered to be a single sign.

(9) The surface area of a sign shall be computed as including the entire area within a regular geometric form comprising all of the informational display area of the sign and all of the elements of the matter displayed. The area of a double-faced sign shall be the area of one face of the sign, provided that the two faces are of the same size and are parallel to one another with no more than 24 inches between each sign face.

(10) Window signs shall be allowed on the inside or the outside of glazing provided that they do not comprise more than 25% of the gross glazing area of the building and are not separately illuminated or backlit by lighting installed for that purpose. Miscellaneous business signs, such as credit card signs, open and closed signs, hours of operation, etc., are not included in this calculation, provided that each group/set of miscellaneous business signs do not exceed two square feet in area and only one group/set of such signs are allowed per entrance. Signs placed on the outside of the window must be made of weatherproof materials and shall be maintained in good order. Window signs shall not contain luminous or fluorescent colors or materials that glow when illuminated by any light source. The signs may not suggest movement, be animated in any way, blink or change when viewed from different angles. All window signs shall be brought into compliance by June 1, 2010.

(11) Neon signs for internal illumination visible from the right-of-way cannot exceed a total area of 20 square feet. These signs may not suggest movement, be animated in any way or blink on and off.

(12) Shopping center/office complex signs.

(a) Areas within a shopping center/office complex shall be identified as primary or secondary areas. Primary areas are those composed of 20,000 square feet or more of retail or office space. Secondary areas are those composed of less than 20,000 square feet of retail or office space.

1. For primary uses within a shopping center/office complex, 2 square feet of business sign area may be displayed for each lineal foot of store/office frontage. However, no sign shall exceed 150 square feet. Multiple signs on the store/office frontage may be displayed, so long as the total area for each individual sign does not exceed 150 square feet and the total area of all combined signs on the face of the store/office does not exceed 2 square feet for each lineal foot of store/office frontage. Stores/offices which are located on a corner with a wall facing a different street or road from the front of the building shall be permitted to display a sign with an area no larger than 36 square feet on the sidewall.

(b) 1. Secondary uses may display 36 square feet of sign area on the front of the building; however, if the store/office frontage exceeds 30 linear feet, permitted sign area shall be calculated at 1¼ square feet of sign area for each linear foot of store frontage, up to a maximum of 50 square feet.

2. Store/office located on a corner with a wall facing a different road or street from the front of the building shall be permitted to display a sign with an area no larger than 36 square feet on the

side wall. Total sign area on secondary use corner stores/offices, with a wall facing a different road or street from the front of the building, shall not exceed 72 square feet of signage.

(c) One freestanding sign, including any combination of freestanding and manual message board, not to exceed a total sign area of 64 square feet, will be authorized for a shopping center/office complex. A freestanding sign must identify the name of the shopping center/office complex and may also identify the names of the individual stores/offices, but may not exceed the square footage set forth above. A freestanding sign may not exceed 20 feet in elevation above street grade, measured from ground elevation to the top of the sign structure.

(d) 1. For the purpose of determining the number of signs, a sign shall be considered to be a single display surface or display device containing elements organized, related or composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements, each element shall be considered to be a single sign.

2. The surface area of a sign shall be computed as including the entire area within a regular geometric form comprising all of the display area of the sign and including frames and all of the elements of the matter displayed. The area of a double-faced sign shall be the area of one face of the sign, provided that the two faces are of the same size and are parallel to one another with no more than 24 inches between each sign face.

(13) Remote parking identification signs shall be located on the remote parking lot and no more than 30 square feet and no greater than ten feet in elevation above street grade, measured from ground to the top of the sign structure.

(14) For event gardens as an accessory use to hotels or motels, the wall sign size allowance for the principal use may be shared between the hotel/motel and the accessory use with no greater than 36 square feet allocated to the accessory use. Wall signage may be placed on permanent entrances ways only, such as an entrance trellis or arch. Signage shall not be placed on fencing.

(15) *LED String Accent Lighting* defines as lines of LED lighting no greater than two (2) inches in diameter that are continuous. For purposes of this chapter the LED Accent Lighting shall be permitted in the Commercial Zoning District with the following conditions:

- a) LED String accent lights shall be straight continuous colored lined.
- b) LED String Accent Lights shall be parallel to the ground (no shaped or other outlining permitted)
- c) LED String Accent Lights shall only be allowed on one structure per commercial site. No more than two (2) lines of LED String Accent Lights shall be permitted and lines cannot be separated by more than four (4) feet on the structure.
- d) LED String Accent Lights shall be limited to one color per commercial site.
- e) LED String Accent Lights may not suggest movement, flashing, be intermittently illuminated or appear to be flashing or glittering.
- f) LED String Accent Lights shall be located no higher than 15 feet from finished grade on the site.
- g) LED String Accent Lights shall be permanently affixed to the structure not hanging or temporary attached to the structure (temporary attachment includes adhesive).
- h) LED String Accent Lights must be maintained and proper working order. Strings that are partially lit or not functioning properly will be required to be turned off until removed or repaired.

(E) *Prohibited signs.*

(1) Signs which are flashing or intermittently illuminated or appear to be flashing or glittering or moving and strings of lights are prohibited in commercial and light industrial sites except as exempt in § 153.077(B)(11). No strings of flags shall be permitted in any zone.

(2) Billboards.

(3) Portable signs, except those allowed in division (C)(4).

(4) Roof signs except as permitted in division (C)(5).

(5) No sign shall make use of the words "Stop," "Slow," "Caution," "Danger" or any other word, phrase, symbol or character in such manner as is reasonably likely to be confused with traffic directional and regulatory signs.

(6) Signs that impair vision clearance at intersection.

(7) Vehicular signs.

(8) Signs which advertise an activity, business, product or service no longer produced or conducted on the premises upon which the sign is located. The signs may remain in place for not more than 90 days.

(9) Signs which are attached to utility poles, trees, fences, publicly-owned signs or in an unauthorized manner to walls or other signs.

(10) Off-premises accessory use directional signs are prohibited. Existing off-premises accessory use directional signs and support structures shall be removed by June 25, 2002.

(11) Tourist Oriented Directional Signs (TODS).

(12) Projection signs.

(13) Exposed neon, argon, krypton or similar gas lighting except as outlined in (B)(10) above.

(14) LCD and electronic message boards except as outlined in (B)(5) above.

(15) LED signs, string accent lights, or lighting unless used as a light source to internally or directly illuminate wall or freestanding signage or as provided in (D)(15) above.

(16) Flags that are torn greater than two inches or that are frayed (threadbare, worn, tattered, unraveled, etc.) in excess of one inch and flags not hanging in the manner it was designed or not hanging in a legal manner.

(F) *Unsafe signs.* Should any sign become insecure or in danger of falling or otherwise be unsafe, in the opinion of the Building Inspector, then the owner thereof, or the person maintaining the same, shall, upon written notice from the Building Inspector, forthwith in the case of immediate danger or in any case within ten days, secure the same in a manner to be approved by the Building Inspector in conformity with the provisions of this section or remove the sign. If such order is not complied with within ten days, the Building Inspector shall remove such sign at the expense of the owner or lessee thereof.

(G) *Maintenance.* All signs, together with all their supports, braces, guides and anchors, shall be kept in repair and, unless of galvanized or noncorroding metal, shall be thoroughly painted at least once every two years.

(H) *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 State Building Code.

(I) *Obstruction of fire escapes, windows, doors and the like.* No outdoor advertising sign shall be installed, erected or constructed so as to obstruct any fire escapes or any window or door opening used as a means of egress or so as to prevent free passage from one part of a roof to any other part thereof. No sign shall be attached in any manner to a fire escape or be placed in such manner as to interfere with any opening required by law for ventilation.

(J) *Alteration or removal of unlawful signs.*

(1) If any sign shall be installed, erected or constructed in violation of any of the terms of this section, the Zoning Administrator shall notify by registered mail or written notice, served personally, the owner or lessee thereof to alter such sign so as to comply with those zoning regulations and to secure the necessary permit therefor or to remove the sign immediately.

(2) Any sign located within a town right-of-way shall be subject to immediate removal by the Zoning Administrator.

(3) The failure to remove such sign as provided in this section shall be a misdemeanor. Each day the violation exists shall constitute a separate offense.

(4) The Zoning Administrator shall have the authority to remove and discard any sign in violation of the sign regulations or which is located upon public property.

(5) All signs shall be brought into compliance within three years of February 28, 2001.

(K) *General penalty; enforcement of ordinance; continuing violations.* See § 10.99.

(Ord. 91-08, passed 11-18-91; Am. Ord. 92-12, passed 7-22-92; Am. Ord. 94-02, passed 2-14-94; Am. Ord. 94-05, passed 4-11-94; Am. Ord. 94-06, passed 4-11-94; Am. Ord. 97-04, passed 6-25-97; Am. Ord. 99-13, passed 7-12-99; Am. Ord. 00-07, passed 5-24-00; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-03, passed 4-25-01; Am. Ord. 01-09, passed 7-25-01; Am. Ord. 02-04, passed 2-11-02; Am. Ord. 03-07, passed 6-25-03; Am. Ord. 04-09, passed 5-26-04; Am. Ord. 04-17, passed 10-11-04; Am. Ord. 06-16, passed 8-14-06; Am. Ord. 08-02, passed 1-14-08; Am. Ord. 09-19, passed 10-28-09; Am. Ord. 10-14, passed 7-12-10; Am. Ord. 11-05, passed 4-11-11; Am. Ord. 11-10, passed 6-13-11; Am. Ord. 11-18, passed 8-8-11; Am. Ord. 12-01, passed 1-25-12; Am. Ord. 12-13, passed 5-23-12; Am. Ord. 13-3, passed 3-20-13; Am. Ord. 14-10, passed 6-9-14) Penalty, see § 10.99 Am. Ord. 17-24, passed 9-14-20)

### **§ 153.078 ACCESS TO US 158/CROATAN HIGHWAY AND NC 12/VIRGINIA DARE TRAIL.**

(A) Due to the heavy traffic volume on the major thoroughfares in the town and the attendant traffic hazard involved in frequent entrances and exits from and to a major thoroughfare, it is the intent of this section to keep driveways and street intersections along US 158/Croatan Highway and the west side of NC 12/Virginia Dare Trail to the minimum possible. In any district established by this chapter where a corner lot abutting either US 158/Croatan Highway or the west side of NC 12/Virginia Dare

Trail also abuts any other dedicated public right-of-way, such right-of-way shall be used for access rather than the highway.

(B) For properties not abutting any other dedicated public right-of-way (only abutting US 158/Croatan Highway) egress direction onto US 158/Croatan Highway shall be determined on a case-by-case basis and approved by the Board of Commissioners.

(C) With regard to the east side of NC 12/Virginia Dare Trail, see § 91.17 of this code.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 13-5, passed 5-13-13; Am. Ord. 15-12, passed 3-14-16)

### **§ 153.079 DUNE PROTECTION.**

(A) *Purpose.* The dunes along the oceanfront and in inland areas of the town are a feature unique to coastal areas. Dunes serve as important protective barriers against the dangers of wind, flood and erosion. Some dunes are also important tourist attractions and all make a vital contribution to the character and appearance of the area. The practice of destroying or altering the existing contours of dunes and removing vegetation therefrom can constitute a serious threat to adjacent properties that depend on the dunes as protection against wind, flood and erosion. Accordingly, the town declares that the dunes should be preserved and development on the dunes controlled in a manner compatible with the preservation of the dunes.

(B) *Intent.* This section is adopted to permit development that is compatible with the environmentally-sensitive nature of sand dunes and to preserve the dunes in their existing state where such dunes are considered a vital protective barrier against wind, flood and erosion or where such dunes are considered an important existing topographic feature of the town. More specifically this chapter is adopted to:

(1) Preserve and protect the heritage of the town by maintaining the existence of natural and constructed dunes both along the oceanfront and in inland sections of the town;

(2) Protect the health, safety and welfare of persons living, visiting or sojourning to and in the town and for the protection of public and private property;

(3) Protect the interest of persons whose property would be detrimentally affected by the destruction or removal of oceanfront or inland dunes;

(4) Permit development and encourage the preservation of natural conditions;

(5) Prohibit commercial and industrial excavation/mining on sand dunes.

(C) *Prohibition of damage to sand dunes.*

(1) It shall be unlawful for any person, firm or corporation in any manner to damage, destroy, remove or change the existing contour of any sand dune or part of any dune thereof or to kill, destroy or remove any trees, shrubs or other vegetation growing on the dunes, except in:

(a) The area within the foundation perimeter of any existing building or any building to be constructed as shown on a site plan reviewed and approved by the Planning Board or town zoning official;

(b) The area around the perimeter of an existing building or proposed principal building not to exceed a width of ten feet from the building foundation perimeter in accordance with a site plan approved by the Planning Board or town zoning official;

(c) The area within the boundaries of existing driveways and parking areas or within the boundaries of driveways and parking areas to be constructed in accordance with a site plan approved by the Planning Board or town zoning official;

(d) Landscaped areas and garden plots, provided the dune contour extant is not altered;

(e) The area required for the construction and installation of water, sewage or wastewater disposal systems, drainfields and stormwater control systems, provided that every reasonable effort is made not to alter the contour of the dune and the site is stabilized with plantings of vegetation approved by the Planning Board or town zoning official.

(2) Development at any site in areas of the town that contain oceanfront or inland dunes may require the submission of a development plan and/or site plan with proposed improvements for review and approval by the Planning Board or town zoning official;

(3) Any activity that requires the removal or relocation of greater than ten cubic yards of sand per year shall require prior approval by the town zoning official. All sand removed from an area pursuant to this section shall be redeposited at locations within the same sand dune system from which it is removed. Exceptions to this rule shall be allowed only if the Planning Board or town zoning official determine that adequate space is not available within the same sand dune system from which the sand was removed;

(4) No dune-disturbing activity shall be permitted that results in a vertical cut in excess of five feet. Any dune-disturbing activity that results in a cut in excess of three feet shall be backfilled to achieve a horizontal-vertical slope of at least four to one;

(5) It shall be a violation of this chapter to fail to repair or restore dunes or vegetation damaged by development activity not specifically allowed by exceptions in this section.

(6) The town promotes and realizes the need for Assisted Living Facilities; therefore, for Assisted Living Facilities in the Government and Institutional Zone - Private Ownership, up to 10,000 square feet of dune can be disturbed or relocated per five-acre lot. Dune removal shall be limited to the building footprint, street, parking areas and infrastructure location and shall be relocated as defined in division (C)(3) of this section. Division (C)(4) of this section shall not apply to dune disturbance authorized in this section. The Planning Board and Board of Commissioners shall approve the dune disturbance plan prior to issuance of a building permit and commencement of work.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 03-18, passed 12-8-03) Penalty, see § 10.99

### **§ 153.080 ELECTRICAL AND COMMUNICATION SERVICE.**

All new electrical, communication services, telephone and TV distribution lines and all conduits used for the distribution of such signals located within the town shall be placed underground from the point of separation from the distribution line to the structure of the ultimate user. Existing distribution lines that are in place overhead on the effective date of this regulation may be extended only if such extensions are placed underground. Transformers and enclosures containing switches, meters, capacitors and the like may be pad mounted as an exception to the above.

(Ord. 99-07, passed 4-12-99; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 06-20, passed 8-14-06; Am. Ord. 06-26, passed 12-11-06) Am. Ord. 17-1, passed 5-13-19)

### **§ 153.081 TRAILERS.**

(A) *Prohibitions.*

(1) No person shall build, erect, construct, locate or place in use within the town a trailer of the type used as a house trailer, except as provided in division (B) of this section.

(2) No person shall use a trailer of the type known and described as a house trailer for living purposes within the town, except as provided in division (B) of this section.

(3) No storage trailers will be allowed in any zone, except those permitted in division (B) of this section.

(B) *Permitted uses.* The following uses of trailers of the type used as house trailers shall be permitted:

(1) Unless otherwise prohibited in this chapter;

(2) When in transit through the town, campers may be parked on property within the town with the permission of the owner of such property or the lessee or tenant thereof, provided that such vehicle, camper or self-contained unit is not used during such period for living or sleeping purposes;

(3) The owner of a residence, or tenant with owner's permission, in the town shall be permitted to park a travel trailer belonging to him, provided it does not encroach on the front yard setback and shall not be located on the side street setback of a corner lot on which his residence is located, while the occupant is occupying the residence, provided that:

(a) The trailer is the registered property of the owner or tenant of the residence;

(b) Permission shall be limited to one trailer per residence;

(c) The trailer shall not be over 31 feet in length;

(d) Such trailer is not to be used for living or sleeping purposes while parked on the owner's or tenant's premises.

(4) At the time construction commences in a commercial zone, storage trailers may be permitted. All trailers must be removed before occupancy of structures. Required setbacks shall not be less than ten feet from property lines.

(5) At the time construction commences in a commercial zone, one trailer may be located on property to be used as an office. Trailer must be removed before occupancy of structures. Required setbacks shall not be less than ten feet from property lines.

(6) At the time construction commences in the Ocean Impact Residential Zone or in the Commercial Zone, one real estate sales information trailer may be located on the project property subject to the following conditions:

(a) The trailer must be removed before the occupancy of the principal structure;

(b) The real estate sales information trailer site must be separated from the construction site by a six-foot tall fence. The trailer shall be set back an additional 20 feet from the fence;

(c) Vehicular ingress and egress access to the real estate sales information trailer site must not conflict with the construction vehicular access;

(d) There shall be a minimum of five parking spaces including one handicapped space;

(e) Parking areas and drive aisles shall meet the dimensional requirements location in § 153.076(A)(1) and (A)(5). Surface material of the parking area and drive isle shall be specified;

(f) The real estate sales information trailer shall meet all applicable North Carolina Building Code regulations;

(g) Required setbacks of the real estate sales information trailer shall not be less than ten feet from all property lines;

(h) Site plans shall be approved by the Dare County Health Department prior to issuance of a permit;

(i) The structure must comply with Chapter 151, Flood Damage Prevention Ordinance of this Code;

(j) A standard size, town-issued, roll-out refuse container shall be provided on-site;

(k) There shall be an administrative site plan review and approval of the real estate sales information trailer site to ensure compliance with all codes; and

(l) The temporary sales trailer shall be for the sole purpose of sales of real estate on the site at which the trailer is located.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 07-19, passed 11-14-07)

#### **§ 153.082 EXCEPTIONS.**

(A) *Height.* The height regulations of this chapter shall be subject to the following exceptions and regulations: chimneys, cupolas, cooling towers, elevators, bulkheads, scenery lots, monuments, domes, spires, parapet walls and necessary mechanical appurtenances may be erected to a height which may exceed the prescribed height limit subject to Planning Board approval. The additional heights may not be more than 15% of the prescribed building height limit.

(B) *Area.* The area regulations of this chapter shall be subject to the following exceptions and regulations:

(1) Every part of a required yard shall be open and unobstructed from its lowest level to the sky and no other portion of the structure shall project into the yard setbacks, except for ordinary projections as follows:

(a) Sills, belt courses, buttresses, deck rails, lattice, sheathing, siding and corner boards provided that none of these shall project into a minimum yard setback more than three inches;

(b) Chimney flues, ornamental features and eaves provided that none of these shall project into a minimum yard setback more than 24 inches.

(c) Mechanical equipment, including HVAC and LP Gas equipment, provided that none of the equipment or associated structures project into a minimum yard setback more than four feet.

(d) Stairs and handicap ramps may project into the front yard no more than 50% of the depth of the setback not to exceed ten feet. Stairs shall have no more than two landings not to exceed a maximum of four feet by eight feet each. Handicap ramp landing shall comply with the North Carolina Building Code.

(e) An outdoor waiting activity area and outdoor dining activity area may extend into street side and front yard setbacks up to 33% of the depth of the setback. Improvement to this area is limited to raked earth, gravel, mulch, lawn or other plantings.

(2) Accessory structures may be built subject to the following requirements:

(a) Accessory structures not exceeding six inches in height above finished grade shall be located in the side and/or rear yard and maintain a distance of not less than five feet from side, street side and rear lot lines;

(b) A single walkway not exceeding six inches in height above finished grade and no more than five feet in width may be located in the front yard of single family and duplex dwellings.

(c) Accessory structures that are greater than six inches in height above finished grade shall be located in the rear yard and maintain a distance of not less than eight feet from the primary structure to the accessory structure and maintain a distance of not less than five feet from side and rear lot lines. Street side yard shall comply with principal structure setbacks;

(d) In the Ocean Impact Residential Zone, elevated open decks as permitted by the North Carolina Division of Coastal Management may be located seaward of the rear yard setback abutting the primary structure while maintaining a minimum of five feet from all property lines.

(e) In the Ocean Impact Residential Zone, lots with a rear yard abutting the Atlantic Ocean shall locate accessory structures seaward of the primary structure while maintaining a minimum of five feet from all property lines.

(f) Accessory structures to a commercial establishment that are greater than six inches in height above finished grade shall be limited to a total of three not exceeding a combined size of 20% of the gross floor area of the primary structure and maintain a distance of not less than five feet from rear or side property lines, not less than eight feet from the primary structure, not less than ten feet from any street right-of-way except US 158 and NC 12 where they shall comply with the principal building setbacks along US 158 and NC 12.

(g) Fences and vegetative landscaping shall be exempted from setbacks. Split rail or rope fencing not exceeding four feet in height shall be permitted on lots without a primary structure.

(3) Underground utilities may be run through the side yards required in this chapter and attachments of a pad may be made to the building and extended into the side yard not more than an area of six feet by six feet at the entrance of such underground utilities to the building. Such permissive use of the land shall be made only where underground utilities are installed and replace overhead poles and wires. Such pad is to be installed a minimum of one-third of the distance from the front or highway side of the building.

(4) Open or lattice-enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers projecting into a yard not more than five feet shall be permitted where so placed as not to obstruct light and ventilation.

(C) *Lot coverage: rules for reconstruction of structures, projects or uses, resulting from damage by casualty.*

(1) The lot coverage sections of this chapter are not intended to render nonconforming any use or structure in existence at the time of adoption. It is not intended to prohibit the repair or rebuilding of a structure or use solely upon the lot coverage requirements imposed where such reconstruction is

necessary by damage from fire, flood, hurricane, acts of God and such damage that was not caused nor contributed to by the owner, occupant or user.

(2) The requirements of the lot coverage sections of this chapter shall not be applicable to a project begun through the planning and development process established by this chapter.

(3) The requirements of this section are applicable to lot coverage matters relating to repair and reconstruction.

(4) Reconstruction may occur by the issuance of a permit no later than two years from the date of such damage, subject, however, to the provisions of the chapter with respect to nuisances, uninhabitable buildings and the like. The coverage requirements shall not apply upon the applicant meeting the following conditions:

(a) A building permit for restoration is applied for and secured within two years from the date of the damage;

(b) Applicant shall furnish a "footprint" plat of the structure or project or use that shows adjoining property lines, streets or other topographical features from which the location of the structure, use or project may be physically identified upon the land. Photographs of the structure, project or use will be useful but cannot be the sole evidence of the damaged use, structure or project;

(c) Restoration and reconstruction shall be substantially in compliance with the original "footprint;"

(d) Applicant complies with guidelines established by the Board of Commissioners designed to minimize stormwater runoff for structure, use or projects similar in nature which may be constructed after the adoption of this chapter. (Such guidelines shall not, however, prohibit the quantity or quality of the destroyed structure or project;)

(e) Any change in the outside dimensions of the structure, or the enclosed area, must conform to the lot coverage ordinance adopted March 13, 1989.

(D) *Lot coverage - driveways.* Internal driveway connections between commercial establishments meeting all of the following requirements shall not be calculated as lot coverage:

(1) No more than 24 feet in width for each connection shall be exempt from lot coverage calculations.

(2) The connections shall be measured from the abutting property line to the end of the parking bay or 20 linear feet; whichever is less.

(3) The area exempt from lot coverage shall be clearly shown on a site plan.

(4) Driveway connections shall be open and clear of obstruction at all times.

(5) Internal driveway connections shall meet all other requirements of the Town Code.

(E) *Lot coverage — town easements.* Lot coverage created by the town within an easement granted to the town shall not be calculated as lot coverage on the property on which the easement is located.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 03-10, passed 6-25-03; Am. Ord. 06-09, passed 5-24-06; Am. Ord. 07-14, passed 8-13-07; Am. Ord. 08-04, passed 1-14-08; Am. Ord. 08-13, passed 4-14-08; Am. Ord. 08-27, passed 9-24-08; Am. Ord. 09-06, passed 5-27-09;

Am. Ord. 10-05, passed 5-26-10; Am. Ord. 12-18, passed 9-10-12; Am. Ord. 12-21, passed 11-14-12; Am. Ord. 13-4, passed 4-24-13; Am. Ord. 13-9, passed 6-10-13; Am. Ord. 13-12a, passed 9-9-13; Am. Ord. 13-16, passed 10-14-13; Am. Ord. 14-27, passed 2-9-15)

### § 153.083 OUTDOOR STORAGE AND DISPLAY

(A) **OUTDOOR STORAGE** as defined in § 153.002 shall:

- (1) Be located in the side or rear of the primary structure; and
- (2) Be screened or located within an enclosure.

(B) **OUTDOOR DISPLAY** as defined in § 153.002 shall be allowed with the following conditions:

- (1) Merchandise shall not be torn greater than two inches or frayed (threadbare, worn, tattered, unraveled, etc.) in excess of one inch, broken, damaged or not functioning in the manner it was designed;
- (2) Merchandise shall be unpackaged;
- (3) Maximum of ten of the same general items, i.e. umbrellas, chairs, bikes, boats, etc., shall be allowed per business;
- (4) Merchandise shall not be located within required parking areas; and
- (5) Display shall be within property lines.

(C) *Exceptions for outdoor display.* The following types of merchandise/business shall be exempt from divisions (B)(1) - (3) of the above regulations:

- (1) Lumber yards;
- (2) Garden centers (for plant materials and associated materials);
- (3) Automobile sales, automobile rentals and automobile repairs businesses.

(Ord. 15-6, passed 9-21-15)

## OCEAN IMPACT RESIDENTIAL ZONE (OIR)

### § 153.095 INTENT.

(A) The Ocean Impact Residential (OIR) Zone is established in an effort to promote health, safety and welfare and to limit the level of peril to the public welfare associated with dwellings and other structures located in that part of the town that borders on the Atlantic Ocean and which is subject to tropical storms, storm surges, hurricanes and shoreline migration.

(B) In the OIR Zone, buildings or lands shall be used for one or more of the following specified permitted uses or ~~conditional~~ **special** uses and none other.

(Ord. 91-08, passed 11-18-91; Am. Ord. 99-08, passed 5-10-99; Am. Ord. 01-02, passed 2-28-01)

### § 153.096 PERMITTED USES.

In the OIR Zone, building and/or land shall be used for the following purposes:

- (A) Single-family dwellings;

- (B) Duplex dwellings;
  - (C) Multi-family dwellings of three or more units per dwelling;
  - (D) Hotels and motels;
  - (E) On-site accessory uses or buildings to divisions (A), (B), (C), (D) or (F) of this section;
  - (F) Fishing piers;
  - (G) Swimming pools, tennis courts;
  - (H) Bed and breakfasts (See § 153.312 for requirements);
  - (I) Town-owned and leased facilities, including but not limited to recreational parks, beach access areas and bathhouses and governmentally contracted services;
  - (J) Rooming houses, boarding houses;
  - (K) Home occupations;
  - (L) Cottage court. (see § 153.310 for additional regulations); and
  - (M) Cluster homes (see § 153.311 for additional regulations).
- (Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 05-12, passed 8-8-05; Am. Ord. 14-29, passed 5-13-15; Am. Ord. 16-19, passed 6-27-18; Am. Ord. 16-23, passed 1-14-19)

**§ 153.097 ~~CONDITIONAL~~ SPECIAL USES.**

(A) *Playgrounds.* All playgrounds and parks in the OIR Zone shall be operated by a governmental entity or nonprofit organization (except day care centers and private schools). The sponsoring agency shall provide in writing a maintenance schedule and shall designate those parties who shall be responsible for the periodic policing and maintenance of the grounds and the resolution of any use conflict.

(B) *Places of worship.*

(C) *Private lifeguard services.*

(1) Applications for operation of private lifeguard services as a conditional use within the OIR Zone shall be submitted in accordance with requirements of § 153.353 and additionally shall be reviewed by the Zoning Administrator for purposes of compliance with this chapter and Title XIII of this code, including rentals and advertising; by the Town Fire Chief for purposes of compliance with the established policies and procedures of the town's lifeguard service, including training, emergency incidents, communications and identification; and by the Town Police Chief for purposes of compliance with Title VII of this code, including beach driving. Applications for operation of private lifeguard services as a ~~conditional~~ **special** use shall be approved by the Board of Commissioners.

(2) The following standards shall apply to private lifeguard services in the OIR Zone:

(a) *Training.* Private lifeguard services shall comply with the same qualifications and training standards that the town requires of its public lifeguard service.

(b) *Communication.* Private lifeguard services shall equip their personnel with radios interoperable with the system utilized by the town lifeguard service.

(c) *Emergency incidents.* Dispatch and response procedures, missing persons search procedures and other issues shall conform to policies established by the town in order to minimize confusion and increase efficiency.

(d) *Identification.* Equipment and stands must be clearly marked with a sign stating "Private Lifeguard" and include the name, address and telephone number of the responsible party. Delineated private response areas shall be clearly written out on the sign and the area of coverage shall be marked along the ocean front by an approved two-flag system.

(e) *Beach driving.* Except for initial equipment placement and removal, and in case of severe/threatening weather (hurricane, tropical storm and the like), no beach driving will be allowed except in accordance with the provisions of Title VII of this code.

(f) *Rentals.* Rentals shall be limited to umbrellas and beach chairs. No sale of drinks, food or other refreshments or any other retail sales or rentals shall be permitted. Rental activities conducted by private lifeguard services shall be in compliance with the provisions of Title XIII of this code.

(g) *Advertising.* Private lifeguard stands and uniforms shall not be used for commercial advertising for any other business or product.

(Ord. 91-08, passed 11-18-91; Am. Ord. 97-05, passed 6-25-97; Am. Ord. 00-05, passed 2-14-00; Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.098 NONCONFORMITIES.**

For nonconformities, see §§ 153.050*et seq.*

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.099 BUILDING HEIGHT LIMITS.**

(A) No structure shall exceed a living space height of 35 feet as measured from average ground elevation to top plate.

(B) No structure shall exceed a total height of 42 feet.

(C) Structures complying with all the following shall be exempt from (A) above:

(1) Structure meets requirements set forth in § 153.186;

(2) Structure has a minimum of 50% of the required parking located within the building footprint; and

(3) Structure has a minimum of 75% of the building footprint dedicated to parking and drive aisles.

(D) Antennas for personal use, chimneys and elevator towers are exempt from height restrictions.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 02-16, passed 9-25-02; Am. Ord. 04-19, passed 10-27-04; Am. Ord. 06-18, passed 8-14-06)

#### **§ 153.100 SITE REQUIREMENTS.**

(A) *Useable land.* All minimum lot size requirements and site requirements shall be based on the amount of useable land. **USEABLE LAND** is defined as the entire amount of land extending to each

property line on the north, south, west and on the east to the rear lot line, which is the first line of stable vegetation west of the high water mark.

(B) *Lot dimensions.* All parcels shall have a minimum width of 50 feet except as outlined in § 153.051(D).

(C) *Lot area.*

(1) The minimum building site shall be 15,000 square feet.

(2) The minimum building site for a duplex shall be 20,000 square feet.

(D) *Density.* For any multi-family or hotel development, the maximum Floor Area Ratio (FAR) shall be up to 0.40 with the following exceptions.

(1) Increase the minimum required side yard setbacks by two feet on each side, the FAR shall be up to 0.45; and

(2) Provide a dedicated/recorded five-foot public easement along a side property line for public access to the Atlantic Ocean, the FAR shall be up to 0.50.

(E) *Exceptions.* Where a lot or parcel of land has an area of less than the above required minimum area and was of record on June 14, 1983, such lot may be occupied by one single-family dwelling, provided the minimum side, front and rear requirements are complied with as set forth in § 153.101.

(F) *Lot coverage.*

(1) Maximum allowable lot coverage by principal use, all accessory structures, vehicular circulation areas and parking - 55% west of the vegetation line. (For exceptions see § 153.082.)

(2) In no case shall there be more than two main buildings and permitted accessory structures on a lot.

(3) Soils classified as wetlands shall be factored into lot coverage calculation based on the following schedule:

(a) If the lot is composed of less than 25% of its total area in wetland soils, then 75% of that area classified as wetlands may be used in calculating lot coverage;

(b) If the lot has between 25% to 50% of its total area in wetland soils, then 50% of that area classified as wetlands may be used in calculating lot coverage;

(c) If the lot has between 50% to 75% of its total area in soils classified as wetlands, then 25% of that area classified as wetlands may be used in calculating lot coverage;

(d) If the lot has 75% or more of its total area classified as wetlands, none of that area classified as wetlands may be used in calculating lot coverage.

(4) *Permeable pavement lot coverage calculations.*

(a) The use of permeable paving systems, including porous concrete, porous asphalt, concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids for parking spaces, drive aisles and vehicular circulation areas, shall allow for a reduction in the calculated lot coverage. Plastic reinforcing grids shall be limited to low-density applications with low traffic speeds. Examples

include, but are not limited to, parking stalls in commercial parking lots, overflow parking areas, utility access, emergency vehicle and fire access lanes, and loading areas. Material to fill the open cells of the pavement system types shall consist of open graded fine aggregate, open graded washed aggregate, sod turf grasses native to the southeast coastal environment and exhibit medium to high permeability rates. All permeable paving systems shall comply with the criteria of the North Carolina Division of Water Quality Stormwater Best Management Practices Manual (current edition). The following calculated reductions are allowed:

1. Porous concrete without washed stone base - 40% reduction.
2. Porous concrete with at least six inches of washed stone base - 60% reduction.
3. Porous asphalt, concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids with at least four inches of washed stone base - 40% reduction.
4. Porous asphalt concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids with at least seven inches of washed stone base - 60% reduction.
5. The pavement section shall consist of the surface course or layer for infiltration, a bedding course (as required), an aggregate storage layer, and a woven geotextile fabric layer to prevent clogging.
6. Edge restraints shall be provided on all concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids to confine the pavement installation. The pavement surface course structural properties shall be designed to withstand the applied vehicular loading pursuant to the specified application.

(b) In no case shall the total area that is occupied and obstructed by any structure above the ground, including but not limited to parking and drive aisles:

1. Exceed 65% of the area of the lot for lots of 15,000 square feet or greater.
2. Exceed 60% of the area of the lot for lots less than 15,000 square feet.

(G) *Drainage/stormwater runoff.* All development is required to follow the provisions in § 153.070.

(H) *Land disturbance.* See § 153.071.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 05-12, passed 8-8-05; Am. Ord. 06-05, passed 4-10-06; Am. Ord. 12-17, passed 8-13-12; Am. Ord. 14-24, passed 2-9-15; Am. Ord. 14-28, passed 3-9-15)

### **§ 153.101 SETBACKS.**

(A) *Side yard.*

- (1) The minimum side yard setback requirements on a lot less than 75 feet in width shall be 10 feet from each side.
- (2) For all lots 75 feet to 99 feet in width, the minimum side yard widths shall be 12 feet.
- (3) For all lots or aggregate of lots combined for single development 100 feet or greater in width, the minimum side yard setback shall be 12 feet.
- (4) All multi-family dwellings in excess of a duplex, hotels and motels shall install and maintain a vegetative buffer of evergreen, salt-tolerant species along the side yards of useable property in

conjunction with development in this zone and such may be located within the area of the required setback lines.

(5) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area shall have an additional 2 feet of side-yard setback.

(6) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area equipped with a fire suppression system reviewed, approved, and inspected annually by the Fire Chief or his / her designee, shall be exempt from §153.101 (A) (5).

(B) *Front yard.* All oceanfront lots shall front on NC Highway 12 (Virginia Dare Trail) and all structures erected on these lots shall be set back from the front property line a minimum of 30 feet.

(C) *Rear yard.*

(1) Lots that border the Atlantic Ocean shall be designated as having a rear yard on the Atlantic Ocean.

(2) The minimum rear yard setback requirements on any lot shall be 20% of the total depth of the lot but shall not exceed 30 feet from the rear property line.

(3) For each lot developed that has a rear yard on the Atlantic Ocean, the rear yard shall be determined by the setback multiplier established for ocean hazard areas of environmental concern (AEC) as administered by the local permit officer representing the North Carolina Office of Coastal Management as per the North Carolina Coastal Area Management Act of 1974.

(D) *Double frontage.* Not applicable.

(E) *Corner lot.* For lots 50 feet or less in width, the side street setback requirements shall be 10 feet on those sides that abut a street or beach access. For lots greater than 50 feet in width, the minimum side street setback requirements shall be 15 feet on those sides that abut a street or beach access.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 03-02, passed 2-10-03; Am. Ord. 03-10, passed 6-25-03; Am. Ord. 07-03, passed 3-28-07) Am. Ord. 17-19, passed 5-27-20)

## **§ 153.102 SIGNS.**

See § 153.077.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

## **§ 153.103 OFF-STREET PARKING, DRIVEWAYS, CURBS.**

See § 153.076.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

## **§ 153.104 BUFFERS AND SCREENING.**

See § 153.073.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

## LOW DENSITY RESIDENTIAL ZONES (RL)

### § 153.115 INTENT.

(A) The Low Density Residential (RL) Zone is established as an area in which the principle use of the land is for single-family residences and is intended to preserve and enhance low-to-medium density neighborhoods.

(B) In the RL Zone, buildings or lands shall be used for one or more of the following specified permitted uses or conditional uses and none other.

(Ord. 99-08, passed 5-10-99; Am. Ord. 01-02, passed 2-28-01)

### § 153.116 PERMITTED USES.

In the RL Zone, buildings and/or land shall be used for the following purposes:

(A) Single-family dwellings;

(B) Duplex dwellings;

(C) On-site accessory uses or buildings to divisions (A) or (B) of this section;

(D) Swimming pools, tennis courts (residential or private);

(E) Publicly-owned access areas and supporting facilities; publicly-owned recreation parks; privately-owned access areas;

(F) Home occupations as defined herein;

(G) Town-owned and leased facilities; and

(H) Places of worship and accessory uses.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 06-02, passed 2-22-06)

### § 153.117 ~~CONDITIONAL~~ SPECIAL USES.

(A) *Playgrounds*. All playgrounds and parks in the RL Zone shall be operated by a governmental entity or nonprofit organization (except daycare centers and private schools) and the sponsoring agency shall provide in writing a maintenance schedule and shall designate those parties who shall be responsible for the periodic maintenance and policing of the grounds and resolution of any conflicts.

(B) Overhead transmission systems in accordance with §§ 153.280 - 153.288, **local authority granted to the Town pursuant to G.S. 160D-932.**

(Ord. 91-08, passed 11-18-91; Am. Ord. 97-05, passed 6-25-97; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 06-20, passed 8-14-06; Am. Ord. 16-18, passed 6-27-18)

### § 153.118 NONCONFORMITIES.

See §§ 153.050*et seq.*

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

### § 153.119 BUILDING HEIGHT LIMITS.

(A) No structure shall exceed a living space height of 35 feet, as measured from average ground elevation to top plate.

(B) No structure shall exceed a total height of 42 feet.

(C) No structure shall have more than three levels of living space.

(D) Antennas for personal use and chimneys are exempt from height restrictions.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 02-16, passed 9-25-02)

**§ 153.120 SITE REQUIREMENTS.**

(A) *Lot dimensions.* All parcels shall have a minimum width of 50 feet.

(B) *Lot area.*

(1) The minimum building site shall be 15,000 square feet.

(2) The minimum building site for a duplex or two single-family dwellings shall be 20,000 square feet.

(3) Exempt recombination plats for lots platted prior to June 14, 1983 shall have a minimum lot size of 7,500 square feet.

(C) *Density.* Multi-family: Six units per acre.

(D) *Exceptions.*

(1) Where a lot or parcel of land has an area of less than the above required minimum area and was of record on June 14, 1983, such lot may be occupied by one family, provided the minimum side, front and rear requirements are complied with as set forth in § 153.121.

(2) Residential subdivisions are provided for in § 152.37(H)(3), the minimum lot size shall be 7,500 square feet.

(E) *Lot coverage.*

(1) A building erected or structurally altered shall be located on a lot and in no case shall there be more than two principal structures with associated accessory structures on a lot.

(2) Maximum allowable lot coverage by principal use, all accessory structures, vehicular circulation areas and parking - 40%. (For exceptions, see § 153.082.)

(3) Soils classified as wetlands shall be factored into lot coverage calculation based on the following schedule:

(a) If the lot is composed of less than 25% of its total area in wetland soils, then 75% of that area classified as wetlands may be used in calculating lot coverage;

(b) If the lot has between 25% to 50% of its total area in wetland soils, then 50% of that area classified as wetlands may be used in calculating lot coverage;

(c) If the lot has between 50% to 75% of its total area in soils classified as wetlands, then 25% of that area classified as wetlands may be used in calculating lot coverage;

(d) If the lot has 75% or more of its total area classified as wetlands, none of that area classified as wetlands may be used in calculating lot coverage.

(4) *Permeable pavement lot coverage calculations.*

(a) For lots 7,500 square feet in area or greater, the use of permeable paving systems, including porous concrete, porous asphalt, concrete grid pavers and permeable interlocking concrete pavers for parking spaces, drive aisles, and vehicular circulation areas, shall allow for a reduction in the calculated lot coverage. Material to fill the open cells of the pavement system types shall consist of open graded fine aggregate, open graded washed aggregate, sod turf grasses native to the southeast coastal environment and exhibit medium to high permeability rates. All permeable paving systems shall comply with the criteria of the North Carolina Division of Water Quality Stormwater Best Management Practices Manual (current edition). The following calculated reductions are allowed:

1. Porous concrete without washed stone base: 40% reduction.
2. Porous concrete with at least six inches of washed stone base: 60% reduction.
3. Porous asphalt, concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids with at least four inches of washed stone base: 40% reduction.
4. Porous asphalt concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids with at least seven inches of washed stone base: 60% reduction.
5. The pavement section shall consist of the surface course or layer for infiltration, a bedding course (as required), an aggregate storage layer, and a woven geotextile fabric layer to prevent clogging.
6. Edge restraints shall be provided on all concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids to confine the pavement installation. The pavement surface course structural properties shall be designed to withstand the applied vehicular loading pursuant to the specified application.

(b) In no case shall the total area that is occupied and obstructed by any structure above the ground, including but not limited to parking and drive aisles exceed 45% of the area of the lot.

(c) For additional coverage under the previous pavement reduction, 50% of the required parking shall be outside of the footprint of any structure or covering.

(F) *Drainage/stormwater runoff.* All development is required to follow the provisions in § 153.070.

(G) *Land disturbance.* See § 153.071.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 04-10, passed 5-26-04; Am. Ord. 11-07, passed 4-11-11; Am. Ord. 16-5, passed 9-11-17; Am. Ord. 16-20, passed 7-19-18)

**§ 153.121 SETBACKS.**

(A) *Side yard.*

(1) The minimum side yard setback requirements on a lot with an area of 5,000 square feet or less shall be 6 feet from each side.

(2) The minimum side yard setback requirements on a lot with an area of more than 5,000 square feet but not more than 7,500 square feet shall be 8 feet from each side.

(3) The minimum side yard setback requirements on a lot with an area exceeding 7,500 square feet shall be 10 feet from each side.

(B) *Front yard.*

(1) The minimum front yard setback requirements on a lot with an area of 5,000 square feet or less shall be 15 feet from the front property line.

(2) The minimum front yard setback requirements on a lot with an area of more than 5,000 square feet but not more than 7,500 square feet shall be 30 feet from the front property line.

(3) The minimum front yard setback requirements on a lot with an area exceeding 7,500 square feet shall be 30 feet from the front property line.

(C) *Rear yard.* The minimum rear yard setback requirements on any lot shall be 20% of the total depth of the lot but shall not exceed 30 feet from the rear property line.

(4) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area shall have an additional 2 feet of side yard setback.

(5) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area equipped with a fire suppression system reviewed, approved, and inspection annually by the Fire Chief or his / her designee, shall be exempt from §153.121 (A) (4).

(D) *Double frontage.*

(1) The minimum rear yard setback requirements on any double-frontage lot with an area of 5,000 square feet or less shall be 20% of the lot depth.

(2) On all lots over 5,000 square feet, the required front yard setback shall be provided on both front and rear of a double frontage lot.

(E) *Corner lot.*

(1) The minimum setback requirements on a corner lot with an area of 5,000 square feet or less shall be as follows:

(a) Side yard: 6 feet.

(b) Side street: 7½ feet.

(2) The minimum setback requirements on a corner lot with an area of more than 5,000 square feet but not more than 7,500 square feet shall be as follows:

(a) Side yard: 8 feet.

(b) Side street: 15 feet.

(3) The minimum setback requirements on a corner lot with an area exceeding 7,500 square feet shall be as follows:

(a) Side yard: 10 feet.

(b) Side street: 15 feet.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 03-10, passed 6-25-03)

**§ 153.122 SIGNS.**

(A) No illuminated sign shall be permitted in the RL Zone. House numbers may be illuminated.

(B) See § 153.077.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.123 OFF-STREET PARKING, DRIVEWAYS, CURBS.**

See § 153.076.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.124 BUFFERS AND SCREENING.**

See § 153.073.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01) Am. Ord. 17-19, passed 5-27-20)

**MARITIME FOREST ENVIRONMENTAL DISTRICT (MFED)**

**§ 153.135 INTENT AND BASIS.**

(A) *Intent.* The Maritime Forest Environmental District (MFED) is established to conserve the natural resources and environment located within the town collectively known as the Maritime Forest. The MFED is created to require that any development be compatible with the environmentally-sensitive setting of Nags Head Woods Maritime Forest. Specifically, the MFED is designed to:

(1) Conserve the integrity of the natural canopy of the area and protect features, including but not limited to the following:

(a) Components of the groundwater storage and recharge system which are necessary for growth and maintenance of maritime forest vegetation. Such components include ponds, lowlands, marshes, bay forests and wetlands;

(b) Vegetation acting as soil stabilizers or which provides significant storm or salt protection value, including dune ridge plant communities and scrub forests;

(2) Permit very low density residential development of those portions of the district suitable for residential use and to encourage open space and limited recreational use of portions not suitable for residential use.

(B) *Basis.*

(1) The Nags Head Woods is an irreplaceable maritime forest. It is one of the few remaining maritime forests in North Carolina and consists of ecologically important marshland, pine hammocks, bay forest, ridge forest, hardwood and pine forests, ponds and dunes.

(2) Each part of this natural system is important to the survival of the whole system. Guidelines must be established to protect the fragile nature of the ecosystem and prevent the possibility of imbalance. The Maritime Forest is integral and vital for the groundwater replenishment cycle of the Outer Banks.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.136 PERMITTED USES.**

(A) *General.* In MFED buildings and/or land shall be used for the following purposes:

- (1) Single-family dwellings;
- (2) Duplex dwellings;
- (3) On-site accessory structures to subsections (1) or (2) of this division;
- (4) Swimming pools, tennis courts;
- (5) Wildlife and ecological preserves;
- (6) Watershed conservation areas; and
- (7) Town-owned and leased facilities.

(B) *Special use standards.* All development shall be undertaken in such a manner that development and land-clearing activities do not degrade the function of any wetland, swale or pond and that the sum of associated clearing shall not exceed 15% of the total lot area. (See § 153.140(D) for exceptions.) All permitted and conditional uses in MFED are governed by this section and shall abide by the special development standards as follows:

(1) Site alteration shall not occur prior to the issuance of a building permit unless authorized in writing by the Zoning Administrator. Trees shall not be removed except as necessary for the construction of the principal structure, accessory structure, parking area, septic tank, nitrification system and driveway access area. In no case shall a tree in excess of 12 inches in diameter be removed. (See § 153.140(D) for exceptions.) Pine trees 12 inches or greater in diameter can be removed when authorized in writing by the Zoning Administrator. Tree diameter shall be determined by measuring the tree 4 feet above the ground surface. Land-disturbing activities and site alteration shall not exceed the minimum necessary to provide for the location of the principal use structure, any accessory use structure, parking area, utility service improvements, septic tank, nitrification system and driveway access.

(2) In addition to normal requirements for a building permit, development of a building site requires the submission of a natural features site plan sealed by a registered North Carolina land surveyor or engineer. The proposed improvements shall be reviewed by the Zoning Administrator and, if required, the town CAMA officer. The natural features shall be drawn to a scale of at least 1 inch equals 50 feet and include at minimum the following information:

- (a) Topographical condition of the entire lot;
- (b) Existing vegetation on the lot, including forest canopy and its height, subcanopy, scrub forest, ridge line trees, salt marshes, rare plants and ground cover;
- (c) Components of the groundwater recharge system, including streams, ponds, marshes, dunes, lowlands, bay forests and wetland swales.
- (d) Location and slopes of any dunes;
- (e) Direction of movement and location of any migrating dunes on or near the lot;

- (f) Soil types;
- (g) Proposed building site;
- (h) Area to be cleared or disturbed.

(Am. Ord. 01-02, passed 2-28-01)

**§ 153.137 ~~CONDITIONAL~~ SPECIAL USES.**

(A) *Multi-family dwellings.* Multi-family dwellings may be developed at a density of one unit per two acres or 87,120 square feet of land area, provided that the structures are located on the lot in such a manner that development and land-clearing activities do not degrade any wetland, swale or pond and that any associated clearing does not exceed 15% of the total lot area. All multi-family dwelling sites in MFED governed by this section shall abide by the special development standards as stipulated in § 153.136(B).

(B) *Playgrounds and parks.* All playgrounds and parks in the MFED Zone shall be operated by a governmental entity or nonprofit organization. The sponsoring agency shall provide in writing a maintenance schedule and shall designate those parties who shall be responsible for the periodic maintenance and policing of the grounds and resolution of any conflicts.

(C) *Places of worship.*

(D) Overhead transmission systems in accordance with §§ 153.280 - 153.288.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 06-20, passed 8-14-06)

**§ 153.138 NONCONFORMITIES.**

See §§ 153.050*et seq.*

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.139 BUILDING HEIGHT LIMITS.**

(A) No structure shall exceed a living space height of 35 feet as measured from average ground elevation to top plate.

(B) No structure shall exceed a total height of 42 feet.

(C) No structure shall have more than three levels of living space.

(D) Antennas for personal use and chimneys are exempt from height restrictions.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 02-16, passed 9-25-02)

**§ 153.140 SITE REQUIREMENTS.**

(A) *Lot dimensions.* All parcels shall have a minimum width of 150 feet.

(B) *Lot area.*

(1) The minimum building site shall be 2 acres or 87,120 square feet.

(2) The minimum building site for a duplex shall be 4 acres or 174,240 square feet.

(C) *Density.*

- (1) Single-family: One unit per (each single-family dwelling) 2 acres or 87,120 square feet.
- (2) Duplex (two families): One duplex unit per 4 acres or 174,240 square feet.
- (3) Multi-family: One triplex unit per 6 acres, or 261,360 square feet.

(D) *Exceptions.*

(1) Where a lot or parcel of land has an area and width of less than the above requirements and was of record on November 18, 1991, such lot may be occupied by one family, provided the minimum side, front and rear yard and lot coverage requirements are complied with as set forth in § 153.121 (RL Zone). Accessory structure setbacks shall be governed by regulations of the Maritime Forest Environmental District. Tree removal regulations will follow the regulations set out in this subchapter as much as practicable; however, tree removal regulations shall not prohibit development of a single-family dwelling and accessory use structures on a lot that was of record on November 18, 1991.

(2) Where a lot or parcel of land has an area and width of less than the above requirements and was of record on November 18, 1991, such lot may be occupied by two dwelling units per 40,000 square feet, provided the minimum side, front and rear requirements are complied with as set forth in § 153.121 (RL Zone). Accessory structure setbacks shall be governed by regulations of the Maritime Forest Environmental District. Tree removal regulations will follow the regulations set out in this subchapter as much as practicable; however, tree removal regulations shall not prohibit development of two-dwelling units and accessory use structures on a lot that was of record on November 18, 1991.

(E) *Lot coverage.* Maximum allowable lot coverage by principal use, all accessory structures, vehicular circulation areas and parking - 15%. In cases where a lot was platted prior to November 18, 1991, the maximum allowable lot coverage shall be 40%.

(F) *Drainage/stormwater runoff.* All development is required to follow the provisions in § 153.070.

(G) *Land disturbance.* See § 153.071.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.141 SETBACKS.**

(A) *Side yard.* The minimum side yard setback requirements shall be 20 feet.

(1) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area shall have an additional 2 feet of side yard setback.

(2) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area equipped with a fire suppression system reviewed, approved, and inspected annually by the Fire Chief or his/her designee, shall be exempt from 153.141 (A) (1).

(B) *Front yard.* The minimum front yard setback requirements shall be 30 feet from the front property line. For flag lots the front yard setback shall be measured from the point where the lot width meets the minimum width requirements.

(C) *Rear yard.* The minimum rear yard setback requirements shall be 20% of the total depth of the lot but shall not exceed 30 feet from the rear property line.

(D) *Double frontage*. The minimum rear yard setback requirements on any double-frontage lot shall be 20% of the lot depth not to exceed 30 feet.

(E) *Corner lot*. The minimum setback requirements on a corner lot shall be 30 feet.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 03-10, passed 6-25-03; Am. Ord. 03-13, passed 7-14-03)

**§ 153.142 SIGNS.**

(A) No illuminated sign shall be permitted in the MFED Zone. House numbers may be illuminated.

(B) See § 153.077.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.143 OFF-STREET PARKING, DRIVEWAYS, CURBS.**

See § 153.076.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.144 BUFFERS AND SCREENING.**

See § 153.073.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01) Am. Ord. 17-19, passed 5-27-20)

**HIGH DENSITY RESIDENTIAL ZONE (RH)**

**§ 153.155 INTENT.**

(A) The High Density Residential (RH) Zone is established as an area to preserve, enhance and encourage high density neighborhoods.

(B) In the RH Zone, buildings or lands shall be used for one or more of the following specified permitted uses or conditional uses and none other.

(Ord. 91-08, passed 11-18-91; Am. Ord. 99-08, passed 5-10-99; Am. Ord. 01-02, passed 2-28-01)

**§ 153.156 PERMITTED USES.**

In the RH Zone, buildings and/or land shall be used for the following purposes:

(A) Single-family dwellings;

(B) Duplex dwellings;

(C) Multi-family dwellings of three or more units per dwelling;

(D) Hotels and motels;

(E) On-site accessory uses or structures to divisions (A), (B) or (C) of this section;

(F) Playgrounds;

(G) Auditoriums, convention centers, assembly halls;

(H) Places of worship, daycare centers, schools (public or private); and

(I) Swimming pools, tennis courts.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 05-12, passed 8-8-05)

**§ 153.157 ~~CONDITIONAL~~ SPECIAL USES.**

None.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.158 NONCONFORMITIES.**

See §§ 153.050*et seq.*

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.159 BUILDING HEIGHT LIMITS.**

(A) No structure shall exceed a total height of 50 feet.

(B) No structure shall have more than four levels of living space.

(C) Antennas for personal use, chimneys and elevator towers are exempt from height restrictions.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.160 SITE REQUIREMENTS.**

(A) *Lot dimensions.* All parcels shall have a minimum width of 50 feet.

(B) *Lot area.*

(1) The minimum building site shall be 15,000 square feet.

(2) The minimum building site for a duplex shall be 15,000 square feet.

(3) Exempt recombination plats for lots platted prior to June 14, 1983 shall have a minimum lot size of 7,500 square feet.

(C) *Density.*

(1) Multi-family dwelling: 18 units per acre.

(2) Hotel and motel: 36 units per acre.

(D) *Exceptions.* Where a lot or parcel of land has an area of less than the above required minimum area and was of record on June 14, 1983, such lot may be occupied by one family, provided the minimum side, front and rear requirements are complied with as set forth in § 153.161

(E) *Lot coverage.*

(1) Maximum allowable lot coverage by principal use, all accessory structures, vehicular circulation areas and parking - 55%. (For exceptions see § 153.082.)

(2) Soils classified as wetlands shall be factored into lot coverage calculation based on the following schedule:

(a) If the lot is composed of less than 25% of its total area in wetland soils, then 75% of that area classified as wetlands may be used in calculating lot coverage;

(b) If the lot has between 25% to 50% of its total area in wetland soils, then 50% of that area classified as wetlands may be used in calculating lot coverage;

(c) If the lot has between 50% to 75% of its total area in soils classified as wetlands, then 25% of that area classified as wetlands may be used in calculating lot coverage;

(d) If the lot has 75% or more of its total area classified as wetlands, none of that area classified as wetlands may be used in calculating lot coverage.

(F) *Drainage/stormwater runoff.* All development is required to follow the provisions of § 153.070.

(G) *Land disturbance.* See § 153.071.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 05-12, passed 8-8-05) Am. Ord. 17-29, passed 3-8-21)

### **§ 153.161 SETBACKS.**

(A) *Side yard.*

(1) The minimum side yard setback requirements on a lot with an area of 5,000 square feet or less shall be 6 feet from each side.

(2) The minimum side yard setback requirements on a lot with an area of more than 5,000 square feet but not more than 7,500 square feet shall be 8 feet from each side.

(3) The minimum side yard setback requirements on a lot with an area exceeding 7,500 square feet shall be 10 feet from each side.

(4) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area shall have an additional 2 feet of side yard setback.

(5) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area equipped with a fire suppression system reviewed, approved, and inspection annually by the Fire Chief or his / her designee, shall be exempt from §153.161 (A) (4).

(B) *Front yard.*

(1) The minimum front yard setback requirements on a lot with an area of 5,000 square feet or less shall be 15 feet from the front property line.

(2) The minimum front yard setback requirements on a lot with an area of more than 5,000 square feet but not more than 7,500 square feet shall be 30 feet from the front property line.

(3) The minimum front yard setback requirements on a lot with an area exceeding 7,500 square feet shall be 30 feet from the front property line.

(C) *Rear yard.* The minimum rear yard setback requirement on any lot shall be 20% of the total depth of the lot, but shall not exceed 30 feet from the rear property line.

(D) *Double frontage.*

(1) The minimum rear yard setback requirements on any double-frontage lot with an area of 5,000 square feet or less shall be 20% of the lot depth.

(2) The required front yard setback for all lots over 5,000 square feet shall be provided on both front and rear of a double frontage lot.

(E) *Corner lot.*

(1) The minimum setback requirements on a corner lot with an area of 5,000 square feet or less shall be as follows:

(a) Side yard: 6 feet.

(b) Side street: 7½ feet.

(2) The minimum setback requirements on a corner lot with an area of more than 5,000 square feet but not more than 7,500 square feet shall be as follows:

(a) Side yard: 8 feet.

(b) Side street: 15 feet.

(3) The minimum setback requirements on a corner lot exceeding 7,500 square feet shall be as follows:

(a) Side yard: 10 feet.

(b) Side street: 15 feet.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 03-10, passed 6-25-03)

#### **§ 153.162 SIGNS.**

See § 153.077.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.163 OFF-STREET PARKING, DRIVEWAYS, CURBS.**

See § 153.076.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.164 BUFFERS AND SCREENING.**

See § 153.073.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01) Am. Ord. 17-19, passed 5-27-20)

### **COMMERCIAL ZONE (C)**

#### **§ 153.175 INTENT.**

(A) The Commercial Zone is established primarily to encourage convenient and accessible sales, service, entertainment, professional and business facilities to the general populace of the town in such a manner that will not infringe upon nor degrade the natural qualities of residential neighborhoods.

(B) In the Commercial Zone, buildings or lands shall be used for one or more of the following specified permitted uses or conditional uses and none other.

(Ord. 91-08, passed 11-18-91; Am. Ord. 99-08, passed 5-10-99; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 02-09, passed 6-10-02)

**§ 153.176 PERMITTED USES.**

Within the Commercial Zone, no lot, building or structure shall be used and no building or structure shall be erected which is intended or designed for any other than one or more of the following specified purposes:

- (A) Single-family dwellings;
- (B) Duplex dwellings;
- (C) Multi-family dwellings of three or more units per dwelling;
- (D) Hotels and motels;
- (E) On-site accessory structures, accessory dwelling units;
- (F) Clinics, hospitals (with a maximum of 30 beds) and nursing homes;
- (G) Home occupations as defined herein;
- (H) Town-owned and leased facilities;
- (I) Playgrounds;
- (J) Auditoriums or convention centers, assembly halls, museums;
- (K) Places of worship, daycare centers, schools (public or private);
- (L) Banks, financial institutions, business or professional offices, post office;
- (M) Theaters;
- (N) Retail business, including drug or grocery stores, hardware stores, gift shops, clothing shops, book stores, music stores, bait and tackle shops, furniture stores, arts and crafts, florists, pet stores, produce markets, cycle and skate shops, photo shops, rental shops, electronic equipment, automobile sales, automobile rentals and repairs, hammocks, boat sales, boat rentals and repairs, automobile supplies, thrift/consignment stores, appliance store, toy stores, convenience store, taxicabs, car washes and home care systems;
- (O) Restaurants, bars, night clubs, drive-ins, bakeries, and outdoor waiting activity area(s);
- (P) Places of business where service is rendered, including barber shops, beauty parlors, nail salons, personal spa salons, electronic repair shops, shoe repair shops, dry cleaner, clothes tailor, laundromat, blue print shop, tanning salons, and realty and construction office without property management;
- (Q) Public or private parking lots;
- (R) Stores or shops for custom work or for producing products to be sold at retail on the premises, including art galleries, antique stores, jewelry shops, trophy and engraving shops, wood crafts and hobbies, sign business, frame shop;
- (S) Swimming pools, tennis courts;

- (T) Bed and breakfasts (see § 153.312 for requirements);
- (U) Communication broadcast studios and sales offices;
- (V) Motorcycle sales and service subject to the following conditions:
  - (1) All partially dismantled vehicles, cycles or parts shall be stored indoors;
  - (2) Applicants' operations comply with § 130.02;
- (W) Rooming houses, boarding houses;
- (X) Billiard parlors, video and amusement arcades;
- (Y) Paint/wall treatment stores, carpet and flooring stores, windows and doors stores, video, audio and lighting stores, and pool and hot tub spa stores, such that the activity would not constitute warehousing as defined by this chapter;
- (Z) Haunted houses; and
- (AA) Indoor athletic and exercise facilities.
- (BB) Shopping center/office complex.
- (CC) Automated ice vending structure.
- (DD) Astrology and tarot card office.
- (EE) Internet and/or electronic gaming operations as defined in § 153.002 Definitions and regulated in § 153.314 Internet and/or Electronic Gaming Accessory Business Use.
- (FF) Cottage court. See § 153.310 for additional regulations.
- (GG) Cluster homes. See § 153.311 for additional regulations.
- (HH) Brewery.

(Ord. 91-08, passed 11-18-91; Am. Ord. 94-01, passed 1-26-94; Am. Ord. 96-1, passed 2-22-96; Am. Ord. 97-01, passed 1-13-97; Am. Ord. 99-01, passed 1-11-99; Am. Ord. 99-08, passed 5-10-99; Am. Ord. 00-02, passed 1-10-00; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 02-06, passed 3-13-02; Am. Ord. 02-09, passed 6-10-02; Am. Ord. 04-08, passed 5-26-04; Am. Ord. 04-21, passed 11-17-04; Am. Ord. 05-12, passed 8-8-05; Am. Ord. 07-17, passed 10-24-07; Am. Ord. 08-04, passed 1-14-08; Am. Ord. 10-03, passed 4-12-10; Am. Ord. 11-17, passed 8-8-11; Am. Ord. 12-02, passed 2-13-12; Am. Ord. 12-22, passed 11-14-12; Am. Ord. 12-24, passed 12-10-12; Am. Ord. 13-16, passed 10-14-13; Am. Ord. 15-7, passed 9-21-15; Am. Ord. 16-19, passed 6-27-18; Am. Ord. 16-23, passed 1-14-19; Am. Ord. 16-25, passed 4-24-19) Am. Ord. 17-28, passed 3-8-21)

### § 153.177 ~~CONDITIONAL~~ **SPECIAL USES.**

(A) *Outdoor recreational activities.* Outdoor recreational activities limited to batting cages, miniature golf, ballfields, bumper boats, driving ranges, skateboard ramps, go-kart tracks, bumper car facilities, small amusement rides with maximum capacity of 24 persons, or trampoline with harness and tether shall be ~~conditional~~ **special** uses in the commercial zone.

- (1) The site for such activity must be at least two acres in size.

(2) No portion of the principal use, except parking and grassed areas, including natural grass putting courses, shall be located within 50 feet of the boundary line. No portion of the principal use, except parking, shall be located within 100 feet of the boundary line if adjoining a residential area or abutting a street that adjoins a residential area.

(3) The height of the structure or device shall not exceed 40 feet above the general ground elevation of the site.

(4) No loudspeaker devices for music or other broadcasting or amplification shall be used in connection with such activity so as to create a noise hazard or nuisance.

(5) The principal use must be screened by a fence no less than six feet in height and buffered with dense vegetation which is no less than ten feet in height to screen the area from adjoining districts. Where natural vegetation does not provide sufficient screening, the boundaries of the site must be planted with dense vegetation which will reach a mature growth of eight to ten feet within three years. Suitable plant types shall be those recommended by the U.S. Department of Agriculture for coastal areas. (Appendix A)

(6) The principal use shall be located in such a manner so as not to act as a traffic hazard for passing motorists and shall not have any spotlights or other lighting devices which shall interfere with either the adjoining uses or property or automotive traffic on adjoining streets or highways.

(7) The Planning Board may recommend to the Board of Commissioners, and the Board of Commissioners may impose, any additional conditions that they determine are appropriate to insure that the off-site effects and any adverse effects to adjoining districts are kept to a minimum. The following conditions shall apply to skateboard ramps as ~~conditional~~ **special** uses in the commercial zone:

- (a) The skateboard ramp structure shall be approved by a North Carolina certified engineer;
- (b) Time of operation shall be limited to 9:00 a.m. to 10:00 p.m.;
- (c) Sound mitigation features shall be incorporated into construction of all skateboard ramps;
- (d) Installation of skateboard ramp must meet current industry standards;

(e) Each owner of a skateboard ramp facility shall be required to submit to the town, annually upon renewal of the appropriate privilege license(s), a certificate of insurance verifying liability insurance coverage relieving the town of all liability;

(f) A provision for security of the skateboard ramp facility during hours of non-use and non-operation shall be included as a part of any application for this conditional use.

(8) The Planning Board may recommend to the Board of Commissioners, and the Board of Commissioners may impose, any additional conditions that they determine are appropriate to ensure that the off-site effects and any adverse effects to adjoining districts are kept to a minimum. The following conditions shall apply to go-kart tracks and bumper car facilities as ~~conditional~~ **special** uses in the commercial zone:

(a) Time of operation shall be limited to 9:00 a.m. to 11:00 p.m. during Daylight Saving Time and 9:00 a.m. to 10:00 p.m. during Eastern Standard Time;

(b) Sound mitigation features shall be incorporated into construction of all go-kart tracks and bumper car facilities;

- (c) Installation of go-kart tracks and bumper car facilities must meet current industry standards;
- (d) A provision for security of the go-kart track and bumper car facilities during hours of non-use and non-operation shall be included as a part of any application for this ~~conditional~~ **special** use;
- (e) Carts and cars shall be powered by electric motors to limit engine noise of facility;
- (f) The track and bumper car area shall be fenced or physically separated from customer observation areas or other features deemed hazardous to the participants/observers; and
- (g) Noise limits shall be consistent with § 153.185.
- (h) The minimum lot size for go-kart track and bumper car facilities shall not be less than 4.4 acres.

(B) *Body piercing business.* Body piercing establishment that is properly licensed in accordance with the regulations outlined within Ch. 114.

(C) Overhead transmission systems in accordance with §§ 153.280 - 153.288.

(D) *Wind turbines.*

(1) The site size for installation of a wind turbine shall be a minimum of one acre and shall have a separation of a minimum of 100 feet from any other wind turbine tower.

(2) Noise limits shall be consistent with § 153.185.

(3) The tower height shall not exceed 80 feet. The rotor size shall not exceed 23 feet in diameter. The combined height of the tower and rotor shall not exceed 92 feet above finished grade at the base of the tower.

(4) The tower shall be set back from all property lines a minimum distance equal to the combined height of the tower and rotor. In addition, the tower shall be set back from US 158 Bypass (Croatan Highway) and NC 12 (Virginia Dare Trail) a minimum distance of 250 feet.

(5) The turbine and tower shall be designed to withstand maximum wind speeds as stipulated in the North Carolina Building Code.

(6) The tower shall be self-supporting tubular tower (monopole); self-supporting lattice tower; or a guyed-lattice type tower with a minimum guy radius of 50% of tower height, and a maximum guy radius of 90% of tower height. No portion of the tower or guyed wires will interfere with fire lanes.

(7) A North Carolina licensed professional engineer must seal all structural plans.

(8) The base of the tower shall be secured in such a way to prevent unauthorized climbing.

(9) The power processor shall not exceed a rated power of ten kilowatts, and shall have an output of 240VAC, 60 hz, 1Ph. The processor shall be UL certified 1741, and in compliance with IEEE 929 & 519.

(10) No lighting (unless required by FAA Regulations) or signage of any kind shall be permitted on the tower or wind turbine.

(11) The tower and turbine shall be neutral in color and not create a visual distraction from the ground level.

(12) At such time the turbine is no longer functioning the tower shall be removed within 120 days.

(13) The tower, turbine and guy wires will meet all applicable FAA Regulations.

(14) No type of communications antennae or array, or antennae of any kind shall be allowed to be installed or connected to the wind turbine structure.

(E) *Dog day care facility.*

(1) Outdoor areas must be enclosed with metal, wood, or masonry fencing. Screening consistent with § 153.073(F)(2)(c) must be provided directly adjacent to the enclosure. Outdoor areas must provide an appropriate setback to any incompatible uses or zones. Vacant parcels shall be screened as if developed as residential.

(2) The number of dogs shall be specified and shall be in proportion to the size of the facility and setting.

(3) Hours of operation shall be specified as to preclude overnight kenneling.

(4) A written management plan addressing operations of facility, specifically to minimize odor and noise must be provided.

(5) Parking shall be provided at a ratio of 1 space per 200 square feet of indoor area.

(6) Dare County Health Department approval is required.

(7) The Planning Board may recommend to the Board of Commissioners, and the Board of Commissioners may impose, any additional conditions that they determine are appropriate to ensure that the off-site effects and any adverse effects to adjoining properties are kept to a minimum.

(F) *Veterinary hospital/clinic.*

(1) All pens and kennels shall be located in an enclosed, heated and air conditioned building.

(2) Outdoor areas must be enclosed with metal, wood, or masonry fencing. Screening consistent with § 153.073(F)(2)(c) must be provided directly adjacent to the enclosure. Outdoor areas must provide an appropriate setback to any incompatible uses or zones. Vacant parcels shall be screened as if developed as residential.

(3) The service of a boarding kennel, as defined in this chapter, shall not be allowed.

(4) A written management plan must be provided addressing operations of facility, specifically to minimize odor and noise.

(5) Parking shall be provided at a ratio of 1 space per 200 square feet of indoor area.

(6) Dare County Health Department approval is required.

(7) The Planning Board may recommend to the Board of Commissioners, and the Board of Commissioners may impose, any additional conditions that they determine are appropriate to ensure that the off-site effects and any adverse effects to adjoining properties are kept to a minimum.

(G) *Event garden(s).*

(1) Event gardens shall be an accessory use to a hotel or motel on the same lot. To meet the definition of “on the same lot”, lots or tracts utilized with this commercial ~~conditional~~ **special** use shall be combined by either (a) a recombination plat prepared by a professional land surveyor for recordation at the Office of the Dare County Register of Deeds, or (b) a restrictive covenant tying the lots together for purposes of the ~~conditional~~ **special** use prepared by an Attorney for recordation at the Office of the Dare County Register of Deeds. The format of the restrictive shall be reviewed and approved by the Town Attorney prior to recordation.

(2) The site designated for an event garden shall be a minimum of one acre in size.

(3) The area designated for the event garden shall be buffered on all sides by either a landscaped, earthen berm and/or decorative fencing constructed of block and/or wood no less than eight feet in overall, combined height.

(4) Any structures, temporary or permanent, associated with an event garden shall comply with § 153.181 Commercial Zone Setbacks.

(5) Event gardens shall comply with § 153.180(E) Commercial Zone Lot Coverage. Any tent erected for more than 30 consecutive days shall be considered lot coverage.

(6) Event gardens shall not begin operation before 7:00 a.m. and must cease at 11:00 p.m.

(7) An event that exceeds the approved capacity of the event garden shall be required to obtain special event permit in accordance with Chapter 111 Peddlers and Itinerant Vendors.

(H) *Outdoor dining activity area(s).*

(1) Outdoor dining activity area(s) shall be accessory to restaurant use only, not including drive-in restaurants.

(2) Outdoor dining activity area(s) shall have no scheduled events or activities before 7:00 a.m. nor after 11:00 p.m. on any day. There will be no music or games between 11:00 p.m. and 7:00 a.m.

(3) No cooking or serving utilities including grilles, bars or drink dispensers shall be permitted. All such cooking and serving utilities shall be contained within the principal building.

(4) Lighting and sound (including music or noise) must comply with the Town Code. Signage shall comply with the Town Code, including signs on umbrellas.

(5) The area must be kept clean of litter and maintained in a safe and sanitary condition.

(6) Appropriate waste receptacles with affixed lids shall be provided.

(7) On sides not adjoining the principal building the area designated as outdoor waiting activity area(s) shall be bordered by a minimum four foot high fence, with the exception of elevated, covered decks for which fencing requirements are already in place, and shall be buffered with landscaping as set forth in § 153.073(F)(2)(b).

(8) Outdoor dining activity area(s) may not be roofed or shaded in any way other than standard table umbrellas. Erection of a tent subject to a special use or event permit from the town is not prohibited.

(9) Outdoor dining activity area(s) shall comply with minimum parking requirements for the primary structure as set forth in § 153.076.

(10) Outdoor dining activity area(s) must have Health Department approval and meet all aspects of the NC Building Code.

(11) Application for a ~~conditional~~ **special** use permit shall include a standard commercial site plan and a written description of the function of the area including hours of operation, types of games or activities provided and what food and beverages if any may be consumed in the area. Means of compliance with outdoor alcoholic beverage consumption shall be included.

(12) The Planning Board may recommend to the Board of Commissioners, and the Board of Commissioners may impose, any additional conditions that they determine are appropriate to ensure that the off-site effects and any adverse effects to adjoining properties are kept to a minimum.

(Ord. 91-08, passed 11-18-91; Am. Ord. 93-06, passed 6-14-93; Am. Ord. 96-05, passed 4-24-96; Am. Ord. 97-05, passed 6-25-97; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-08, passed 7-25-01; Am. Ord. 02-09, passed 6-10-02; Am. Ord. 06-20, passed 8-14-06; Am. Ord. 07-16, passed 10-24-07; Am. Ord. 08-07, passed 2-27-08; Am. Ord. 10-01, passed 1-11-10; Am. Ord. 11-08, passed 5-25-11; Am. Ord. 11-21, passed 10-10-11; Am. Ord. 12-04, passed 3-28-12; Am. Ord. 13-3, passed 3-20-13; Am. Ord. 13-4, passed 4-24-13; Am. Ord. 13-16, passed 10-14-13; Am. Ord. 15-15, passed 5-16-16)

#### **§ 153.178 NONCONFORMITIES.**

See §§ 153.050*et seq.*

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.179 BUILDING HEIGHT LIMITS.**

- (A) No structure shall exceed a total height of 50 feet.
- (B) No structure shall have more than four levels of living space.
- (C) Antennas for personal use, chimneys and elevator towers are exempt from height restrictions.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.180 SITE REQUIREMENT.**

(A) *Lot dimensions.* All parcels shall have a minimum width of 50 feet.

(B) *Lot area.*

- (1) The minimum building site shall be 15,000 square feet.
- (2) The minimum building site for a duplex shall be 15,000 square feet.

(3) Exempt recombination plats for lots platted prior to June 14, 1983 shall have a minimum lot size of 7,500 square feet.

(C) *Density.*

(1) Multi-family dwelling: 18 units per acre.

(2) Hotel and motel: For any hotel/motel development, the maximum floor area ratio (FAR) shall be up to 0.50; exceptions described in division (D) below.

(D) *Exceptions.*

(1) Where a lot or parcel of land has an area of less than the above required minimum area and was of record on June 14, 1983, such lot may be occupied by one family, provided the minimum side, front and rear requirements are complied with as set forth in § 153.181;

(2) Per division (C)(2) above, increase minimum required side yard setbacks by two feet on each side, the FAR shall be up to 0.55; and

(3) Per division (C)(2) above, increase minimum required side yard buffer as set forth in § 153.184 by two feet on each side and items in division (C) above the FAR shall be up to 0.60.

(E) *Lot coverage.*

(1) Maximum allowable lot coverage by principal use, all accessory structures, vehicular circulation areas and parking - 65%. (For exceptions, see § 153.082(D).)

(2) Soils classified as wetlands shall be factored into lot coverage calculation based on the following schedule:

(a) If the lot is composed of less than 25% of its total area in wetland soils, then 75% of that area classified as wetlands may be used in calculating lot coverage;

(b) If the lot has between 25% to 50% of its total area in wetland soils, then 50% of that area classified as wetlands may be used in calculating lot coverage;

(c) If the lot has between 50% to 75% of its total area in soils classified as wetlands, then 25% of that area classified as wetlands may be used in calculating lot coverage;

(d) If the lot has 75% or more of its total area classified as wetlands, none of that area classified as wetlands may be used in calculating lot coverage.

(3) *Permeable pavement lot coverage calculations:*

(a) For lots greater than five acres, the use of permeable paving systems, including porous concrete, porous asphalt, concrete grid pavers and permeable interlocking concrete pavers, for parking spaces, drive aisles and vehicular circulations areas, a reduction in the calculated lot coverage shall be allowed. All permeable paving systems shall comply with the criteria of the North Carolina Division of Water Quality Stormwater Best Management Practices Manual (current edition). The following calculated reductions are allowed.

1. Porous concrete without washed stone base - 40% reduction.

2. Porous concrete with at least six inches of washed stone base - 60% reduction.

3. Porous asphalt, concrete grid pavers and permeable interlocking concrete pavers with at least four inches of washed stone base - 40% reduction.

4. Porous asphalt, concrete grid pavers and permeable interlocking concrete pavers with at least seven inches of washed stone base - 60% reduction.

(b) For lots less than 5 acres, the use of permeable paving systems, including porous concrete, porous asphalt, concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids for parking spaces, drive aisles and vehicular circulation areas, a reduction in the calculated lot coverage shall be allowed. Plastic reinforcing grids shall be limited to low-intensity applications with low traffic speeds. Examples include, but are not limited to, parking stalls in commercial parking lots, overflow parking areas, utility access, emergency vehicle and fire access

lanes, and loading areas. Material to fill the open cells of the pavement system types shall consist of open graded fine aggregate, open graded washed aggregate, sod turf grasses native to the southeast coastal environment and exhibit medium to high permeability rates. All permeable paving systems shall comply with the criteria of the North Carolina Division of Water Quality Stormwater Best Management Practices Manual (current edition). The following calculated reductions are allowed:

1. Porous concrete without washed stone base - 40% reduction.
2. Porous concrete with at least 6 inches of washed stone base - 60% reduction.
3. Porous asphalt, concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids with at least 4 inches of washed stone base - 40% reduction.
4. Porous asphalt, concrete grid pavers, permeable interlocking concrete pavers and plastic reinforcing grids with at least 7 inches of washed stone base - 60% reduction.
5. The pavement section shall consist of the surface course or layer for infiltration, a bedding course (as required), a woven geotextile fabric layer, and aggregate storage layer, and a woven geotextile fabric layer to prevent clogging.
6. Edge restraints shall be provided on all concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grid installations to confine the pavement installation. The pavement surface course structural properties shall be designed to withstand the applied vehicular loading pursuant to the specified application.

(c) In no case shall the total area that is occupied and obstructed by any structure above the ground, including but not limited to parking and drive areas, exceed 75% of the area of the lot.

(F) *Drainage/stormwater runoff.* All development is required to follow the provisions of § 153.070.

(G) *Land disturbance.* See § 153.071.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 04-10, passed 5-26-04; Am. Ord. 05-12, passed 8-8-05; Am. Ord. 10-13, passed 7-12-10; Am. Ord. 11-09, passed 5-25-11; Am. Ord. 15-16, passed 5-16-16) Am. Ord. 17-29, passed 3-8-21)

### **§ 153.181 SETBACKS.**

(A) Buildings erected in the commercial zone for residential purposes, including single-family dwellings, multi-family dwellings, hotels, motels and such other like buildings, shall abide by the setback requirements of the High Density Residential (RH) Zone governing such buildings.

(B) Buildings erected for mixed use, namely for both dwelling and business purposes, shall abide by the setback requirements of the Commercial Zone except when abutting the RL or RH Zoning District where the setback requirements shall abide by the requirements of the RH Zone.

(C) Buildings erected in the Commercial Zone for commercial purposes exclusively shall comply with the following setback requirements.

(1) *Side yard.* The minimum side yard shall be ten feet. For any structure over 35 feet in total building height, there shall be two feet of side yard setback for each foot of building height over 35 feet in addition to the minimum side yard setback.

(2) *Front yard.* The minimum size for a front yard shall be 30 feet.

(3) *Rear yard.* The minimum size for a rear yard shall be 10 feet.

(4) *Double frontage.*

(a) The minimum rear yard setback requirements on any double-frontage lot with an area of 5,000 square feet or less shall be 20% of the lot depth.

(b) The required front yard setback for all lots over 5,000 square feet shall be provided on both front and rear of a double frontage lot.

(5) *Corner lot.* The minimum side street setback requirements shall be 15 feet.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 07-06, passed 4-25-07; Am. Ord. 17-25, passed 10-12-20)

### **§ 153.182 SIGNS.**

See § 153.077.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

### **§ 153.183 OFF-STREET PARKING, DRIVEWAYS, CURBS.**

See § 153.076.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

### **§ 153.184 BUFFERS AND SCREENING.**

See § 153.073.

(Am. Ord. 01-02, passed 2-28-01)

### **§ 153.185 NOISE LIMITS.**

For uses abutting residential uses, a sound pressure range of less than 60 decibels must be maintained utilizing an "A" weight scale and a slow response for measurements. For purposes of this section, sounds generated at or on a site by its employees, agents or operations are included.

(Am. Ord. 01-02, passed 2-28-01)

### **§ 153.186 COMMERCIAL BUILDING EXTERIOR.**

For new construction or substantial improvements in the Commercial Zone, building elevations visible from any right-of-way shall meet the following standards:

(A) *General facade standards.* All building facades shall be covered with one or more of the following materials:

- (1) Decorative block;
- (2) Brick, which shall be standard, utility, closure, modular, oversize or jumbo;
- (3) Stucco, cementitious or synthetic;
- (4) Shakes;
- (5) Clapboard;

(6) Vertical board and batten; or

(7) Wood, vinyl, aluminum, metal, concrete or other materials which appear to be shakes, clapboard or vertical board and batten or stucco.

(8) Fenced areas shall be metal tube fencing and/or grill with a minimum of 1 inch by 1 inch pickets at 5-inch on center minimum. Chain link may be used on the inside of tube fencing if colors are matching.

(B) *Front facade standards.* The following standards apply to the building frontage and all elevations facing US 158 or NC 12 for all commercial buildings:

(1) *Architectural variation.* For structures up to 100,000 square feet of gross floor area with building frontage of 100 feet or greater, architectural variations shall be required every 50 feet.

(a) Physical changes shall be provided in building design and roof line, covered sidewalks at least 8 feet wide with a 4-inch rise for each 12-inch run pitch roof.

(b) For structures with building frontage less than 100 feet, architectural breaks are required but can include or have the appearance of windows with a minimum width of 18 inches wide and minimum height of 4 feet.

(c) There shall be no neon lighting on the exterior of the structure or its roof line.

(d) Three years from February 28, 2001, all existing neon lighting as described in subsection (c) shall be removed.

(2) *Architectural variation.* For structures greater than 100,000 square feet of gross floor area: variations shall be required a minimum of every 75 feet. Of these variations 10% of the elevation shall be roof facade:

(a) Physical changes shall be provided in building design and roofline, covered sidewalks a minimum of 8 feet wide with a pitch roof with 4-inch rise for each 12-inch run will apply.

(b) Changes in wall plane a minimum of 5 feet wide and minimum 8 inches deep with changes in materials and/or color at change in wall plan.

(c) Shutters and/or louvered panels.

(d) Roof facades meeting all of the following criteria:

1. Shall be constructed with one or more of the following roofs: hip, gable, or mansard; and
2. Shall have a minimum pitch of 4 in 12; and maximum pitch of 18 in 12;
3. Shall have a minimum overhang of 10 inches; and
4. Shall have a minimum roof height of 6 feet measured from the top plate to the ridge.

(3) *Glazing and glazing facade.*

(a) Glazing and glazing facades shall comprise not less than ten of the front facade area.

(b) Glazing and glazing facades shall comprise not more than 40% of the front facade area.

(c) All Glazing and glazing facades shall be designed not to exceed a total of 15 feet in height.

(d) Mullions are encouraged but not required.

(C) *Roof standards.* All commercial buildings shall have a roof design as defined in subsection (1) and/or provide roof facades as defined in subsections (2) and (3).

(1) Roofs (as defined in § 153.002) shall meet all of the following criteria:

- (a) Shall be constructed with one or more of the following roofs: hip, gable or mansard; and
- (b) Shall have a minimum pitch of 4 in 12; and
- (c) Shall have a minimum overhang of 10 inches; and
- (d) Shall have a minimum roof height of 6 feet measured from the top plate to the ridge.

(2) Roof facades on all elevations for commercial buildings up to 100,000 square feet of gross floor area, shall meet all the following criteria:

(a) Wall elevations for buildings up to 20 feet in height must be concealed behind a roof facade for a minimum of 50% of the entire wall elevation; wall elevations for buildings greater than 20 feet, up to 30 feet in height must be concealed behind a roof facade for a minimum of 35% of the entire wall elevation; and wall elevations for buildings greater than 30 feet in height must be concealed behind a roof facade for a minimum of 25% of the entire wall elevation; (the percentage concealed by roof facade is calculated from the soffit to the peak of the roof facade); and

(b) Wall elevation shall have no more than 15 horizontal feet without a roof facade projection; and

(c) Minimum pitch of roof facade projections will be no less than 4 in 12 and no more than 18 in 12.

(3) Elevations on building frontage and all elevations facing US 158 or NC 12 for commercial buildings greater than 100,000 square feet in gross floor area shall meet requirements of (B)(2) above.

(4) Roof facades for commercial buildings greater than 100,000 square feet in gross floor area on elevations other than listed in subsection (3) shall meet requirements of (B)(2) above with the following exception:

- (a) Roof facade shall be an average of 10% of all elevation except the front;
- (b) Roof facade pitch shall be a minimum of 4 in 12 and a maximum of 36 in 12.

(5) Exemptions:

(a) Detached canopies greater than 10 feet from the primary structure are exempted from all roof standards defined in herein. All canopies less than 10 feet from the primary structure, including attached canopies, are not exempt from roof standards. If a roof facade is used on attached canopies it must have a minimum height of 3 feet.

(b) Ground level covered patios up to 1,500 square feet in area extending no more than 15 feet from the exterior wall of the main building to which the covered patio is accessory. The roof or roof facade of such patio may have a pitch less than 4 in 12.

(c) Steeples and cupola are exempt from the provisions of this division.

(D) *Mechanical equipment standards.*

- (1) Mechanical equipment shall be not be visible from any right-of-way.
- (2) All mechanical equipment and appurtenances shall be screened.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 02-01, passed 1-14-02; Am. Ord. 02-03, passed 1-14-02; Am. Ord. 02-05, passed 2-27-02; Am. Ord. 04-02, passed 3-24-04; Am. Ord. 10-21, passed 11-10-10; Am. Ord. 11-04, passed 4-11-11; Am. Ord. 14-08, passed 5-12-14)

## **LIGHT INDUSTRIAL TWO ZONE (LI-2)**

### **§ 153.205 INTENT.**

(A) The Light Industrial Two (LI-2) Zone is established to provide standards for the location of commercial services which are required for the development of the town. It is the intent of this section to regulate and buffer such uses so that their location will not be detrimental to adjacent uses.

(B) In the LI-2 Zone, buildings or lands shall be used for one or more of the following specified permitted uses or ~~conditional~~ **special** uses and none other.

(Ord. 91-08, passed 11-18-91; Am. Ord. 99-08, passed 5-10-99; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 02-09, passed 6-10-02)

### **§ 153.206 PERMITTED USES.**

Within the Light Industrial Two Zone, the following uses are permitted:

- (A) Single-family dwellings;
- (B) Duplex dwellings;
- (C) Multi-family dwellings of three or more units per dwelling;
- (D) Hotels and motels;
- (E) On-site accessory structures, accessory dwelling units;
- (F) Clinics, hospitals with a maximum of 30 beds;
- (G) Home occupations as defined herein;
- (H) Town-owned and leased facilities;
- (I) Playgrounds;
- (J) Auditoriums or convention centers, assembly halls;
- (K) Places of worship, daycare centers, schools (public or private), libraries and buildings for nonprofit service organizations;
- (L) Banks, financial institutions, business or professional offices;
- (M) Theaters;
- (N) Retail business, including drug or grocery stores, hardware stores, electronic equipment, gift shops and clothing shops, automobile sales, service and repair, convenience store, taxicabs;

- (O) Restaurants, drive-ins and bakeries;
  - (P) Places of business where service is rendered, including barber shops, beauty parlors, electronic repair shops, shoe repair shops, clothes tailor;
  - (Q) Public or private parking lots;
  - (R) Stores or shops for custom work or for producing products to be sold at retail on the premises;
  - (S) Storage or bonded warehouses;
  - (T) Storage yards for building materials, wood and stone;
  - (U) Light manufacturing such as boat construction, cabinet work, stone and concrete works;
  - (V) Machine or blacksmith shops;
  - (W) Motor or freight terminals;
  - (X) Storage of construction equipment;
  - (Y) Swimming pools, tennis courts;
  - (Z) Mobile home parks and trailer parks, mobile homes, trailers and other portable-type housing.
  - (AA) Billiard parlors, video and amusement arcades;
  - (BB) Bed and breakfasts (See § 153.312 for requirements); and
  - (CC) Telecommunications towers.
  - (DD) Shopping center/office complex.
  - (EE) Internet and/or electronic gaming operations as defined in § 153.002 Definitions and regulated in § 153.314 Internet and/or Electronic Gaming Accessory Business Use.
- (Ord. 99-08, passed 5-10-99; Am. Ord. 99-09, passed 5-10-99; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 02-09, passed 6-10-02; Am. Ord. 05-12, passed 8-8-05; Am. Ord. 07-17, passed 10-24-07; Am. Ord. 08-04, passed 1-14-08; Am. Ord. 12-22, passed 11-14-12) Am. Ord. 17-28, passed 3-8-21)

**§ 153.207 ~~CONDITIONAL~~ SPECIAL USES.**

- (A) *Work force housing.*
  - (1) To qualify, a workforce multi-family housing unit shall:
    - (a) Have a sales price of three times 80% or less of median family income or annual rental of 30% of 80% or less of median family income; and
    - (b) Be used exclusively for year-round occupancy by eligible households, and the rentals or sales prices restricted according to the definitions contained in § 153.002.
  - (2) *Location of workforce housing units.* Workforce housing units shall not be set apart and should be interspersed among the market rate units throughout the workforce housing development and the locations shall be approved by the Board of Commissioners.

(3) *Ratio.* No less than 25% of the units shall be market-rate housing.

(4) *Exterior appearance.* The exterior appearance of the workforce housing units in any covered development shall be visually compatible with the market rate units in the development. External building materials and finishes shall be substantially the same in type and quality for workforce housing units as for market rate units.

(5) *Interior appearance and finishes.* Workforce housing units may differ from market rate units with regard to interior finishes and gross floor area provided that:

(a) There shall be no differences between the workforce housing units and the market rate units related to energy efficiency, including mechanical equipment and plumbing, insulation, windows, and heating and cooling systems.

(b) The gross floor area for the workforce housing units shall be no less than 75% of the gross floor area of similar market rate units.

(6) *Waiver of fees.* Projects meeting the eligibility requirements may request a waiver of town fees, including site plan review fees, building permit fees, water service fees, and subdivision fees for the workforce housing units. Approval of a request to waive town fees shall be subject to approval by the Board of Commissioners. Workforce units must meet the standards of this section and are subject to the following requirements.

(a) The developer shall submit the development plan to the Blessings Ministries Community Development Corporation's designee or its successor for review and certification prior to submission for development concessions.

1. Rental development. The owner must submit to the Blessings Ministries Community Development Corporation's designee or its successor for certification annually. If certification is not issued, any concessions will be rescinded and appropriate fees will be due and payable immediately.

(7) *Restrictive covenants.*

(a) Restrictive covenants shall be recorded, prior to the issuance of any occupancy permit, naming the town as a grantee and party and granting the town the power to enforce, which contain provisions that:

1. Insure that the site shall at all times remain in compliance with this section and the Housing Placement Eligibility System, as it may be amended from time to time, of the Blessings Ministries Community Development Corporation's designee or its successor;

2. Give all subsequent purchasers notice that the site and the living units on the site are subject to the provisions of this section;

3. Prevent the modification of the site or its use or withdrawal or modification of the covenants without the consent of the town;

4. Prohibit the sale or lease of a housing unit without the receipt by the town of a certification from the Blessings Ministries Community Development Corporation's designee or its successor that the purchaser or tenant qualifies under the Housing Placement Eligibility System, as it may be amended from time to time, of the Blessings Ministries Community Development Corporation's designee or its successor.

(b) Such covenants shall be in a form satisfactory to the town.

(c) Such covenants shall be superior to any liens or encumbrances upon the property and prior to the issuance of an occupancy permit; applicant shall provide the town with a title opinion from a licensed North Carolina attorney indicating that the covenants required herein are superior to all other liens or encumbrances upon the property.

(8) *Deed of trust.* The restrictive covenants and the applicant's or its successor's obligation to comply with the terms of this section shall be secured by a deed of trust in favor of the town, in a form satisfactory to the town. Such deed of trust shall be recorded prior to the issuance of an occupancy permit. The town shall subordinate the deed of trust to the lien of any lender financing the purchase of any of the housing units, upon proof of compliance with the terms of this section and upon certification from the Blessings Ministries Community Development Corporation's designee, or its successor, of compliance with the Housing Placement Eligibility System, as it may be amended from time to time. Violation of the terms of this section or the terms of the restrictive covenants required above, shall be an event of default under the terms of such deed of trust and shall authorize the town, in addition to any other remedy available, to foreclose upon the property as provided in the deed of trust.

(9) *Violations.* Each sale or rental of a housing unit in violation of this section shall constitute a separate offense. Each day's continuing violation of this section shall be a separate offense. In addition to the remedies provided in this section or in § 10.99 of this Code of Ordinances, the town shall be authorized to recover from the seller or landlord violating this section, any fees that were waived under the provisions of this section, together with attorney fees and other costs and expenses incurred in the collection of such fees. The remedies available to the town shall be cumulative and may be exercised together or separately in the discretion of the town. The exercise of one remedy shall not be construed to be a waiver of any other remedy.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 07-07, passed 5-23-07; Am. Ord. 08-12, passed 3-26-08; Am. Ord. 16-6, passed 11-15-17; Am. Ord. 16-13, passed 5-14-18)

**§ 153.208 NONCONFORMITIES.**

See §§ 153.050*et seq.*

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.209 BUILDING HEIGHT LIMITS.**

- (A) No structure shall exceed a total height of 50 feet.
- (B) No structure shall have more than four levels of living space.
- (C) Antennas for personal use, chimneys and elevator towers are exempt from height restrictions.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.210 SITE REQUIREMENTS.**

- (A) Lot dimensions. All parcels shall have a minimum width of 50 feet.
- (B) Lot area.
  - (1) The minimum building site shall be 15,000 square feet.
  - (2) The minimum building site for a duplex shall be 15,000 square feet.

(3) Exempt recombination plats for lots platted prior to June 14, 1983 shall have a minimum lot size of 7,500 square feet.

(C) Density.

(1) Multi-family dwelling: The maximum floor area ratio (FAR) shall be up to 0.40.

(2) Hotel and motel: 36 units per acre.

(D) Exceptions. Where a lot or parcel of land has an area of less than the above required minimum area and was of record on June 14, 1983, such lot may be occupied by one family, provided the minimum side, front and rear requirements are complied with as set forth in § 153.211.

(E) Lot coverage.

(1) Maximum allowable lot coverage by principal use, all accessory structures, vehicular circulation areas and parking - 65%. (For exceptions, see § 153.082.)

(2) Soils classified as wetlands shall be factored into lot coverage calculation based on the following schedule:

(a) If the lot is composed of less than 25% of its total area in wetland soils, then 75% of that area classified as wetlands may be used in calculating lot coverage;

(b) If the lot has between 25% to 50% of its total area in wetland soils, then 50% of that area classified as wetlands may be used in calculating lot coverage;

(c) If the lot has between 50% to 75% of its total area in soils classified as wetlands, then 25% of that area classified as wetlands may be used in calculating lot coverage;

(d) If the lot has 75% or more of its total area classified as wetlands, none of that area classified as wetlands may be used in calculating lot coverage.

(F) Drainage/stormwater runoff. All development is required to follow the provisions of § 153.070.

(G) Land disturbance. See § 153.071.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 04-10, passed 5-26-04; Am. Ord. 05-12, passed 8-8-05; Am. Ord. 16-13, passed 5-14-18) ; Am. Ord. 17-29, passed 3-8-21)

### **§ 153.211 SETBACKS.**

(A) Buildings erected in the Light Industrial Two Zone for residential purposes, including single-family dwellings, multi-family dwellings, hotels, motels, mobile home parks and trailer parks, mobile homes, trailers, other portable-type housing and such other like buildings, shall abide by the setback requirements of the High Density Residential (RH) Zone governing such buildings.

(B) Buildings erected for mixed use, namely for both dwellings and business purposes, shall abide by the setback requirements of the RH Zone governing such buildings.

(C) Buildings erected in the Light Industrial Two Zone for business or industrial purposes exclusively shall comply with the following setback requirements:

(1) *Side yard.* The minimum side yard shall be ten feet. For any structure over 35 feet in total building height, there shall be two feet of side yard setback for each foot of building height over 35 feet in addition to the minimum side yard setback.

(2) *Front yard.* The minimum size for a front yard shall be 30 feet.

(3) *Rear yard.* The minimum size for a rear yard shall be five feet.

(4) *Double frontage.* Where lots have double frontage, the required front yard setbacks shall be required on both streets.

(5) *Corner lot.* The minimum side street setback shall be 15 feet.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 06-01, passed 2-22-06; Am. Ord. 07-06, passed 4-25-07)

### **§ 153.212 SIGNS.**

See § 153.077.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

### **§ 153.213 OFF-STREET PARKING, DRIVEWAYS, CURBS.**

See § 153.076.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

### **§ 153.214 BUFFERS AND SCREENING.**

See § 153.073.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

### **§ 153.215 NOISE LIMITS.**

For uses abutting residential uses, a sound pressure range of less than 60 decibels must be maintained utilizing an "A" weight scale and a slow response for measurements. For purposes of this section, sounds generated at or on a site by its employees, agents or operations are included.

(Am. Ord. 01-02, passed 2-28-01)

## **LIGHT INDUSTRIAL ONE ZONE (LI-1)**

### **§ 153.225 INTENT.**

(A) The Light Industrial One (LI-1) Zone is established to provide standards for the location of commercial services which are required for the development of Kill Devil Hills; such facilities as wholesale food and beverage warehousing, building supply facilities and other similar uses which are required elements of a self-sufficient community. It is the intent of this section to regulate and buffer such uses so that their location will not be detrimental to adjacent uses, the environment and sources of potable water, such as the fresh pond and groundwater.

(B) In the LI-1 Zone, buildings or lands shall be used for one or more of the following specified permitted uses or ~~conditional~~ **special** uses and none other.

(Ord. 91-08, passed 11-18-91; Am. Ord. 99-08, passed 5-10-99; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 02-09, passed 6-10-02)

**§ 153.226 PERMITTED USES.**

In the Light Industrial One Zone, the following uses are permitted:

- (A) Single-family dwellings;
- (B) Duplex dwellings;
- (C) Multi-family dwellings of three or more units per dwelling;
- (D) Hotels and motels;
- (E) On-site accessory structures, accessory dwelling units;
- (F) Clinics;
- (G) Home occupations as defined herein;
- (H) Town-owned and leased facilities;
- (I) Playgrounds;
- (J) Auditoriums or convention centers, assembly halls, museums;
- (K) Places of worship, day care centers, schools (public or private), libraries and buildings for nonprofit service organizations;
- (L) Banks, financial institutions, business or professional offices;
- (M) Theaters;
- (N) Retail business, including drug or grocery stores, hardware stores, electronic equipment, gift shops and clothing shops, automobile sales, service and repair, automobile supplies, convenience store, taxicabs, thrift/consignment shop, furniture stores, art and craft stores, florist, cycle and skate stores, photo shops, rental shops, appliance store, and home care systems;
- (O) Restaurants, drive-ins and bakeries;
- (P) Places of business where service is rendered, including barber shops, beauty parlors, electronic repair shops, shoe repair shops, clothes tailor and laundromat;
- (Q) Public or private parking lots;
- (R) Stores or shops for custom work or for producing products to be sold at retail on the premises, art galleries, antique stores, jewelry shops, trophy and engraving shops, wood crafts and hobbies, sign business, frame shop, surfboard manufacture shop, embroidering and screen printing;
- (S) Storage or bonded warehouses;
- (T) Storage yards for building materials, wood and stone;
- (U) Light manufacturing, such as boat construction, cabinet work, stone and concrete works;
- (V) Machine or blacksmith shops;

- (W) Motor or freight terminals;
- (X) Swimming pools, tennis courts, indoor athletics and exercise facilities;
- (Y) Bed and breakfasts (See § 153.312 for requirements);
- (Z) Telecommunications towers;
- (AA) Billiard parlors, video and amusement arcades;
- (BB) Gas appliances and propane sales and service; and
- (CC) Motorcycle repair, maintenance, fabrications and sales.
- (DD) Shopping center/office complex.
- (EE) Internet and/or electronic gaming operations as defined in § 153.002 Definitions and regulated in § 153.314 Internet and/or Electronic Gaming Accessory Business Use.
- (FF) Warehouse, industrial complex.

(Ord. 91-08, passed 11-18-91; Am. Ord. 99-08, passed 5-10-99; Am. Ord. 99-09, passed 5-10-99; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 02-09, passed 6-10-02; Am. Ord. 03-03, passed 2-26-03; Am. Ord. 05-12, passed 8-8-05; Am. Ord. 06-04, passed 2-22-06; Am. Ord. 07-17, passed 10-24-07; Am. Ord. 08-04, passed 1-14-08; Am. Ord. 12-22, passed 11-14-12; Am. Ord. 13-01, passed 1-14-13) Am. Ord. 17-28, passed 3-8-21)

#### **§ 153.227 ~~CONDITIONAL~~ SPECIAL USES.**

- (A) *Outdoor recreational activities.* Outdoor recreational activities limited to batting cages, miniature golf, ballfields, water rides or driving ranges shall be a conditional use in the Light Industrial One Zone.
- (1) The site for such activity must be two acres in size.
  - (2) No portion of the principal use, except parking, shall be located within 50 feet of the boundary line if adjoining a residential use or zone or abutting a street that services a residential zone.
  - (3) The height of the structure or device shall not exceed 40 feet above the general ground elevation of the site.
  - (4) No loudspeaker devices for music or other broadcasting or amplification shall be used in connection with such activity so as to create a noise hazard or nuisance.
  - (5) The principal use must be screened by a fence no less than six feet in height and buffered with dense vegetation which is no less than ten feet in height to screen the area from adjoining districts. Where natural vegetation does not provide sufficient screening, the boundaries of the site must be planted with dense vegetation which will reach a mature growth of eight to ten feet within three years. Suitable plant types shall be those recommended by the U.S. Department of Agriculture for coastal areas. (Appendix A)
  - (6) The principal use shall be located in such a manner so as not to act as a traffic hazard for passing motorists and shall not have any spotlight or other lighting devices which shall interfere with either the adjoining uses or property or automotive traffic on adjoining streets or highways.

(7) The Planning Board may recommend to the Board of Commissioners and the Board of Commissioners may impose any additional conditions that they determine are appropriate to insure that the off-site effects and any adverse effects to adjoining districts are kept to a minimum.

(B) *Sexually oriented businesses.* Only those businesses defined and provided for in Ch. 112 and provided the following conditions are met:

(1) Sexually oriented businesses shall not be located in a building that sells or serves alcohol or alcoholic beverages or allows alcohol or alcoholic beverages to be consumed on the premises;

(2) No sexually oriented businesses shall be permitted in any building which is:

(a) Located within 400 feet in any direction from a building used as a dwelling in the Light Industrial One Zoning District;

(b) Located within 400 feet in any direction from a residential zoning district (Residential Low, Residential High and Ocean Impact Residential), government and institutional zoning district or commercial zoning district;

(c) Located within 200 feet in any direction from a building in which a sexually oriented business is located;

(d) Located within 1,000 feet in any direction from a building in which a place of worship is located;

(e) Located within 1,000 feet in any direction from a building in which a library, school or a state licensed child day care center is located;

(f) Located within 1,000 feet in any direction from any lot or parcel on which a public playground, public swimming pool or public park is located.

(3) Measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted to the nearest portion of a building, structure or zoning district listed above;

(4) Signs are allowed, as permitted in § 153.077, but may not include promotional displays, flashing lights or photographs, silhouettes, drawings or pictorial representations of any manner depicting sexual activity, themes or nudity;

(5) The applicant(s) shall obtain a license in accordance with Ch. 112;

(6) The applicant(s) shall conform to the guidelines and provisions outlined in this chapter.

(C) *Body piercing business.* Body piercing establishment that is properly licensed in accordance with the regulations outlined within Ch. 114.

(D) *Large warehouses.* Large warehouses provided the following conditions are met: a document approved by the Town Attorney shall be recorded at the Dare County Register of Deeds that states the following prior to issuing a building permit:

(1) Limits the use of the structure to Large Warehouse in accordance with the definition in § 153.002; and

(2) The structure shall not be divided into separate warehouse units.

(Ord. 91-08, passed 11-18-91; Am. Ord. 93-02, passed 3-8-93; Am. Ord. 97-05, passed 6-25-97; Am. Ord. 99-05, passed 2-8-99; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-13, passed 11-14-01; Am. Ord. 02-09, passed 6-10-02; Am. Ord. 05-19, passed 10-4-05)

**§ 153.228 NONCONFORMITIES.**

See §§ 153.050*et seq.*

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.229 BUILDING HEIGHT LIMITS.**

- (A) No structure shall exceed a total height of 50 feet.
- (B) No structure shall have more than four stories of living space.
- (C) Antennas for personal use, chimneys and elevator towers are exempt from height restrictions.

(Ord. 91-08, passed 11-18-91)

**§ 153.230 SITE REQUIREMENTS.**

(A) *Lot dimensions.* All parcels shall have a minimum width of 50 feet.

(B) *Lot area.*

- (1) The minimum building site shall be 15,000 square feet.
- (2) The minimum building site for a duplex shall be 15,000 square feet.

(3) Exempt recombination plats for lots platted prior to June 14, 1983 shall have a minimum lot size of 7,500 square feet.

(C) *Density.*

- (1) Multi-family dwelling: 12 units per acre.
- (2) Hotel and motel: 36 units per acre.

(D) *Exceptions.* Where a lot or parcel of land has an area of less than the above required minimum area and was of record on June 14, 1983, such lot may be occupied by one family, provided the minimum side, front and rear requirements are complied with as set forth in § 153.231.

(E) *Lot coverage.*

(1) Maximum allowable lot coverage by principal use, all accessory structures, vehicular circulation areas and parking - 65%. (For exceptions see § 153.082.)

(2) Soils classified as wetlands shall be factored into lot coverage calculation based on the following schedule:

- (a) If the lot is composed of less than 25% of its total area in wetland soils, then 75% of that area classified as wetlands may be used in calculating lot coverage;
- (b) If the lot has between 25% to 50% of its total area in wetland soils, then 50% of that area classified as wetlands may be used in calculating lot coverage;

(c) If the lot has between 50% to 75% of its total area in soils classified as wetlands, then 25% of that area classified as wetlands may be used in calculating lot coverage;

(d) If the lot has 75% or more of its total area classified as wetlands, none of that area classified as wetlands may be used in calculating lot coverage.

(3) Permeable pavement lot coverage calculations:

(a) The use of permeable paving systems, including porous concrete, porous asphalt, concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids for parking spaces, drive aisles and vehicular circulation areas, shall allow for a reduction in the calculated lot coverage. Plastic reinforcing grids shall be limited to low-density applications with low traffic speeds. Examples include, but are not limited to, parking stalls in commercial parking lots, overflow parking areas, utility access, emergency vehicle and fire access lanes, and loading areas. Material to fill the open cells of the pavement system types shall consist of open graded fine aggregate, open graded washed aggregate, sod turf grasses native to the southeast coastal environment and exhibit medium to high permeability rates. All permeable paving systems shall comply with the criteria of the North Carolina Division of Water Quality Stormwater Best Management Practices Manual (current edition). The following calculated reductions are allowed:

1. Porous concrete without washed stone base - 40% reduction.
2. Porous concrete with at least six inches of washed stone base - 60% reduction.
3. Porous asphalt, concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids with at least four inches of washed stone base - 40% reduction.
4. Porous asphalt concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids with at least seven inches of washed stone base - 60% reduction.
5. The pavement section shall consist of the surface course or layer for infiltration, a bedding course (as required), an aggregate storage layer, and a woven geotextile fabric layer to prevent clogging.
6. Edge restraints shall be provided on all concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids to confine the pavement installation. The pavement surface course structural properties shall be designed to withstand the applied vehicular loading pursuant to the specified application.

(b) In no case shall the total area that is occupied and obstructed by any structure above the ground, including but not limited to parking and drive aisles, exceed 75% of the area of the lot.

(F) *Drainage/stormwater runoff.* All development is required to follow the provisions of § 153.070.

(G) *Land disturbance.*

(1) General. See § 153.071.

(2) *LI-1 Fresh Pond Area of Environmental Control (AEC).* Developers shall preserve a maximum amount of vegetation around perimeter of site. Where site configuration does not prohibit, developers shall dedicate 10% undisturbed space along the western boundary of site. Regraded and revegetated areas designed to perform as stormwater retention and management areas shall be constructed in the vicinity of the eastern boundary of site.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 04-10, passed 5-26-04; Am. Ord. 05-12, passed 8-8-05; Am. Ord. 13-14, passed 10-14-13) Am. Ord. 17-29, passed 3-8-21)

### **§ 153.231 SETBACKS.**

(A) Buildings erected in the Light Industrial One Zone for residential purposes, including single-family dwellings, multi-family dwellings, hotels, motels and such other like buildings, shall abide by the setback requirements of the High Density Residential (RH) Zone governing such buildings.

(B) Buildings erected for mixed use, namely for both dwellings and business purposes, shall abide by the setback requirements of the RH Zone governing such buildings.

(C) Buildings erected in the Light Industrial One Zone for business or industrial purposes exclusively shall comply with the following setback requirements:

(1) *Side yard.* The minimum side yard shall be ten feet. For any structure over 35 feet in total building height, there shall be two feet of side yard setback for each foot of building height over 35 feet in addition to the minimum side yard setback.

(2) *Front yard.* The minimum size for a front yard shall be 30 feet.

(3) *Rear yard.* The minimum size for a rear yard shall be 5 feet.

(4) *Double frontage.* Where lots have double frontage, the required front yard setbacks shall be required on both streets.

(5) *Corner lot.* The minimum setback requirements shall be 15 feet on those sides that abut a street.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 07-06, passed 4-25-07)

### **§ 153.232 SIGNS.**

See § 153.077.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

### **§ 153.233 OFF-STREET PARKING, DRIVEWAYS, CURBS.**

See § 153.076.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

### **§ 153.234 BUFFERS AND SCREENING.**

See § 153.073.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

### **§ 153.235 NOISE LIMITS.**

For uses abutting residential uses, a sound pressure range of less than 60 decibels must be maintained utilizing an "A" weight scale and a slow response for measurements. For purposes of this section, sounds generated at or on a site by its employees, agents or operations are included.

(Am. Ord. 01-02, passed 2-28-01)

**GOVERNMENT AND INSTITUTIONAL ZONE (G&I); PUBLIC OWNERSHIP**  
**§ 153.245 INTENT.**

(A) In order to establish a zoning district to provide the proper location and setting for governmental and institutional operation, structures and equipment necessary for providing public services and the maintenance of public health and well-being, the Board of Commissioners has established the zoning district in this division as the Government and Institutional Zone; public ownership.

(B) In the Government and Institutional Zone; public ownership, buildings or lands shall be used for one or more of the following specified permitted uses or ~~conditional~~ **special** uses and none other.

(Ord. 99-08, passed 5-10-99; Am. Ord. 01-02, passed 2-28-01)

**§ 153.246 PERMITTED USES.**

In the Government and Institutional Zone, public ownership, the following uses are permitted:

- (A) Governmental offices and office buildings;
- (B) Hospitals, rescue and emergency medical depots and stations;
- (C) Fire stations, police stations;
- (D) Schools, colleges, libraries, museums;
- (E) Community centers, convention centers, publicly owned parks and recreation centers;
- (F) Storage garages and yards for publicly owned vehicles and equipment;
- (G) Animal shelters;
- (H) Public utility operations, including water plants, impoundment yards, solid waste incinerators, communication towers, aircraft tie-down, storage and maintenance facilities;
- (I) Fueling depots for publicly owned vehicles and any other similar uses that may be deemed necessary for the operation of government services by the Board of Commissioners; and
- (J) Places of worship.

(Am. Ord. 01-02, passed 2-28-01)

**§ 153.247 ~~CONDITIONAL~~ SPECIAL USES.**

- (A) Overhead transmission systems in accordance with §§ 153.280 - 153.288.
- (B) Daycare centers provided the facilities meet the following conditions:
  - (1) All uses must be nonprofit as define by the U.S. Internal Revenue Service.
  - (2) A traffic impact analysis may be required to determine and minimize level of service impacts due to existing governmental and educational uses.
  - (3) Administrative office and classroom areas must clearly be a secondary use.
- (C) Cultural arts centers provided the facilities meet the following conditions:

- (1) All uses must be nonprofit as defined by the U.S. Internal Revenue Service.
  - (2) A traffic impact analysis may be required to determine and minimize level of service impacts due to existing governmental and educational uses.
  - (3) Shall be open to the public to provide cultural enrichment activities.
  - (4) Administrative office and classroom areas must clearly be a secondary use.
- (D) *Wind turbines.*
- (1) The site size for installation of a wind turbine shall be a minimum of one acre and shall have a separation of a minimum of 100 feet from any other wind turbine tower.
  - (2) Noise limits shall be consistent with § 153.185.
  - (3) The tower height shall not exceed 80 feet. The rotor size shall not exceed 23 feet in diameter. The combined height of the tower and rotor shall not exceed 92 feet above finished grade at the base of the tower.
  - (4) The tower shall be set back from all property lines a minimum distance equal to the combined height of the tower and rotor. In addition, the tower shall be set back from US 158 Bypass (Croatan Highway) and NC 12 (Virginia Dare Trail) a minimum distance of 250 feet.
  - (5) The turbine and tower shall be designed to withstand maximum wind speeds as stipulated in the North Carolina Building Code.
  - (6) The tower shall be self-supporting tubular tower (monopole); self-supporting lattice tower; or a guyed-lattice type tower with a minimum guy radius of 50% of tower height and a maximum guy radius of 90% of tower height. No portion of the tower or guyed wires will interfere with fire lanes.
  - (7) A North Carolina licensed professional engineer must seal all structural plans.
  - (8) The base of the tower shall be secured in such a way to prevent unauthorized climbing.
  - (9) The power processor shall not exceed a rated power of ten kilowatts, and shall have an output of 240VAC, 60 hz, 1Ph. The processor shall be UL certified 1741, and in compliance with IEEE 929 & 519.
  - (10) No lighting (unless required by FAA Regulations) or signage of any kind shall be permitted on the tower or wind turbine.
  - (11) The tower and turbine shall be neutral in color and not create a visual distraction from the ground level.
  - (12) At such time the turbine is no longer functioning the tower shall be removed within 120 days. The tower, turbine and guy wires will meet all applicable FAA Regulations.
  - (13) No type of communications antennae or array, or antennae of any kind shall be allowed to be installed or connected to the wind turbine structure.
- (E) *Meteorological towers.*
- (1) The site size for installation of a meteorological tower shall be a minimum of one acre and have a minimum separation from any other tower on the site of 100 feet.

(2) The tower height shall not exceed 100 feet.

(3) The tower shall be set back from all property lines a minimum distance equal to the height of the tower. In addition, the tower shall be set back from US 158 Bypass (Croatan Hwy) and NC12 (Virginia Dare Trail) a minimum distance of 250 feet.

(4) The tower shall be designed to withstand maximum wind speeds as stipulated in the North Carolina Building Code.

(5) The tower shall be self-supporting or guyed tubular (monopole), or self-supporting or guyed lattice tower. Tower guy radius shall be a minimum of 50% of tower height and a maximum of 100% of tower height. No portion of the tower or guy wires shall interfere with fire lanes.

(6) All foundation and/or structural plans shall be sealed by a North Carolina licensed professional engineer.

(7) The base of the tower shall be secured to prevent unauthorized climbing.

(8) The tower and all appurtenances shall meet applicable FAA regulations.

(9) No lighting (unless required by FAA Regulations) or signage of any kind shall be permitted on the tower.

(10) The tower shall be neutral in color and not create a visual distraction from ground level.

(11) At such time as the tower is no longer providing for active data collection, it shall be removed within 120 days.

(12) No type of communications antennae or array (other than that required to transmit data over line-of-sight) shall be allowed to be installed or connected to the tower.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 06-20, passed 8-14-06; Am. Ord. 09-02, passed 1-28-09; Am. Ord. 11-22, passed 10-10-11)

#### **§ 153.248 NONCONFORMITIES.**

See §§ 153.050*et seq.*

(Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.249 BUILDING HEIGHT LIMITS.**

The general height limitation in the Government and Institutional Zone; public ownership, shall be 35 feet. However, a structure exceeding 35 and in no event greater than 60 feet may be permitted as a ~~conditional~~ **special** use, after review of the site plan, elevation plans and appropriate setbacks by the Planning Board and final approval by the Board of Commissioners.

(Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.250 SITE REQUIREMENTS.**

(A) *Lot dimensions.* None.

(B) *Lot area.* None.

(C) *Density.* None.

(D) *Exceptions.* None.

(E) *Lot coverage.*

(1) Maximum allowable lot coverage by principal use, all accessory structures, vehicular circulation areas and parking - 65%. (For exceptions, see § 153.082.)

(2) Soils classified as wetlands shall be factored into lot coverage calculation based on the following schedule:

(a) If the lot is composed of less than 25% of its total area in wetland soils, then 75% of that area classified as wetlands may be used in calculating lot coverage;

(b) If the lot has between 25% to 50% of its total area in wetland soils, then 50% of that area classified as wetlands may be used in calculating lot coverage;

(c) If the lot has between 50% to 75% of its total area in soils classified as wetlands, then 25% of that area classified as wetlands may be used in calculating lot coverage;

(d) If the lot has 75% or more of its total area classified as wetlands, none of that area classified as wetlands may be used in calculating lot coverage.

(F) *Drainage/stormwater runoff.* All development is required to follow the provisions of § 153.070.

(G) *Land disturbance.* See § 153.071.

(Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.251 SETBACKS.**

(A) *Side yard.* The minimum side yard shall be ten feet. For any structure over 35 feet in total building height, there shall be two feet of side yard setback for each foot of building height over 35 feet in addition to the minimum side yard setback.

(B) *Front yard.* The minimum size for a front yard shall be 30 feet.

(C) *Rear yard.* The minimum size for a rear yard shall be 30 feet.

(D) *Double frontage.* Where lots have double frontage, the required front yard setback shall be provided on both front and rear of a double frontage lot.

(E) *Corner lot.* The minimum side street setback shall be 15 feet.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 07-04, passed 3-28-07; Am. Ord. 07-06, passed 4-25-07)

#### **§ 153.252 SIGNS.**

See § 153.077.

(Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.253 OFF-STREET PARKING, DRIVEWAYS, CURBS.**

See § 153.076.

(Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.254 BUFFERS AND SCREENING.**

See § 153.073.

(Am. Ord. 01-02, passed 2-28-01)

**GOVERNMENT AND INSTITUTIONAL ZONE (G&I); PRIVATE OWNERSHIP  
§ 153.265 INTENT.**

(A) This zoning district is established to provide proper location for privately owned wastewater treatment facilities and multi-family planned unit developments.

(B) In the Government and Institutional Zone; private ownership, buildings or lands shall be used for one or more of the following specified permitted uses or ~~conditional~~ **special** uses and none other.

(Ord. 99-08, passed 5-10-99; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-13, passed 11-14-01)

**§ 153.266 PERMITTED USES.**

In the Government and Institutional Zone (G&I); private ownership, the following uses are permitted:

- (A) Single-family dwellings;
- (B) Duplex structures;
- (C) Office buildings;
- (D) Hospitals;
- (E) Medical depots and stations;
- (F) Colleges;
- (G) Libraries;
- (H) Museums;
- (I) Convention centers;
- (J) Town-owned and leased facilities.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-13, passed 11-14-01)

**§ 153.267 ~~CONDITIONAL~~ SPECIAL USES.**

(A) *Privately-owned wastewater treatment facilities.* Privately-owned wastewater treatment facilities may be permitted in the Government and Institutional Zone following a review by the Planning Board and approved as a ~~conditional~~ **special** use by the Board of Commissioners, provided such facilities meet the following conditions:

(1) The owner of any proposed privately-owned wastewater treatment facility shall submit to the Public Services Department a master plan of all proposed transmission lines and customers to be served by the facility; such plan shall indicate the location and relationship of these transmission lines to the town's streets and rights-of-way, and this plan shall be prepared by, and bear the seal of, a North Carolina registered engineer.

(2) The owner or operator of any privately-owned wastewater treatment facility shall submit all operational and management reports required by the Division of Environmental Management to the

Town Manager in the same manner such reports are submitted to the North Carolina Department of Environment and Natural Resources, Division of Environmental Management.

(3) The owner of any proposed privately-owned wastewater treatment facility shall cause to be prepared and submit to the Town Manager emergency operation plans detailing procedures that will ensure health and safety in the event of a prolonged power failure or other occurrence that may have a negative impact on the operational status of the facility.

(4) All transmission lines associated with any proposed privately-owned wastewater treatment facility shall conform with the town's specifications for wastewater facilities and their associated line and fixtures.

(5) The owner of any proposed privately-owned wastewater treatment facility shall execute an easement agreement approved by the Town Attorney that indicates all private sector parties associated with the proposed facility jointly and severally assume obligation for the maintenance of the proposed facility and all transmission lines associated with its operation.

(B) *Planned unit developments.* Planned unit developments located within this zoning district shall meet the following conditions:

(1) *Assisted living.* A minimum number of units shall be dedicated as assisted living, as defined by § 153.002, as follows:

(a) Density of 10 units per acre shall have 20% of the total number of units designed and used as assisted living facilities;

(b) Density of 12 units per acre shall have 25% of the total number of units designed and used as assisted living facilities;

(c) Density of 14 units per acre shall have 30% of the total number of units designed and used as assisted living facilities.

(2) *Ocean/sound access.* All PUD shall make provisions for ocean or sound access by residents and guests. Provisions shall be made at a rate of one parking space per five units with a minimum of five spaces. Other provisions such as shuttle services or shared parking may be approved on a case-by-case basis if deemed appropriate by the Board of Commissioners.

(C) Overhead transmission systems in accordance with §§ 153.280 - 153.288.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-13, passed 11-14-01; Am. Ord. 06-20, passed 8-14-06)

### **§ 153.268 NONCONFORMITIES.**

See §§ 153.050*et seq.*

(Am. Ord 01-02, passed 2-28-01; Am. Ord. 01-13, passed 11-14-01)

### **§ 153.269 BUILDING HEIGHT LIMITS.**

The general height limitation in the Government and Institutional Zone; public ownership shall be 35 feet. However, a structure exceeding 35 and in no event greater than 50 feet may be permitted as a conditional use, after review of the site plan, elevation plans and appropriate setbacks by the Planning Board and final approval by the Board of Commissioners.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-13, passed 11-14-01)

**§ 153.270 SITE REQUIREMENTS.**

(A) *Lot dimensions.* All parcels shall have a minimum width of 75 feet.

(B) *Lot area.*

(1) The minimum building site shall be 15,000 square feet.

(2) The minimum building site for a duplex shall be 20,000 square feet.

(C) *Reserved.*

(D) *Lot coverage.*

(1) Maximum allowable lot coverage by principal use, all accessory structures, vehicular area and parking - 50%.

(2) Formula for lot coverage calculation when wetland soils are a portion of any lot. Soils classified as wetlands shall be factored into lot coverage calculations based on the following schedule:

(a) If the lot is composed of less than 25% of its total area in wetland soils, then 75% of that area classified as wetlands may be used in calculating lot coverage;

(b) If the lot has between 25% to 50% of its total area in soils classified as wetlands, then 50% of that area classified as wetlands may be used in calculating lot coverage;

(c) If the lot has between 50% and 75% of its total area in soils classified as wetlands, then 25% of that area classified as wetlands may be used in calculating lot coverage;

(d) If the lot has 75% or more of its total area classified as wetlands, none of that area classified as wetlands can be used in calculating lot coverage.

(3) Lot coverage within an estuarine area of environmental concern (AEC), as defined by the Coastal Area Management Act (CAMA), shall be limited to 20% and a minimum setback from the estuarine waters shall be 50 feet. (Exceptions: boardwalks, gazebos and other pedestrian access structures shall be permitted within the 50-foot setback but must be in accordance with CAMA regulations.)

(E) *Drainage and stormwater runoff.* All sites are required to follow the provisions of § 153.070.

(F) *Land disturbance.* See § 153.071.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-13, passed 11-14-01; Am. Ord. 04-10, passed 5-26-04)

**§ 153.271 SETBACKS.**

(A) *Side yard.* The minimum size for a side yard shall be ten feet. For any structure over 35 feet in total building height, there shall be two feet of side yard setback for each foot of building height over 35 feet in addition to the minimum side yard setback.

(1) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area shall have an additional 2 feet of side yard setback.

(2) Single-family and duplex dwellings greater than 6,000 square feet of total gross floor area equipped with a fire suppression system reviewed, approved, and inspection annually by the Fire Chief or his / her designee, shall be exempt from §153.271 (A) (1).

(B) *Front yard.* The minimum front yard setback shall be 30 feet from the property line. For flag lots, the front yard setback shall be measured from the point where the lot width meets the minimum width requirements.

(C) *Rear yard.* The minimum rear yard setback requirements on any lot shall be 20% of the total depth of the lot but shall not exceed 30 feet from the rear property line.

(D) *Double frontage.* The required front yard setback for all lots shall be provided on both front and rear of a double frontage lot.

(E) *Corner lot.* The minimum side yard setback requirements on a corner lot shall be 15 feet.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-13, passed 11-14-01; Am. Ord. 03-10, passed 6-25-03; Am. Ord. 06-17, passed 8-14-06; Am. Ord. 07-06, passed 4-25-07) Am. Ord. 17-19, passed 5-27-20)

#### **§ 153.272 SIGNS.**

See § 153.077.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-13, passed 11-14-01)

#### **§ 153.273 OFF-STREET PARKING, DRIVEWAY, CURBS.**

See § 153.076.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-13, passed 11-14-01)

#### **§ 153.274 BUFFERS AND SCREENING.**

Screening and buffers shall be in accordance with § 153.073.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-13, passed 11-14-01)

### **OVERHEAD TRANSMISSION SYSTEM**

#### **§ 153.280 INTENT.**

The Town of Kill Devil Hills is blessed with natural features and a rich history that is treasured by residents and visitors alike. The town's boundaries largely follow two of these natural features: the Atlantic Ocean on the east, and Albemarle Sound on the west. Positioned on the flat, narrow thread of land between these two waterways, the town confronts peculiar challenges with respect to the use of land. One such challenge is balancing the need to transmit electricity along the entire length of the town against the recreational, historical and esthetic values of this barrier island community. The Kill Devil Hills Board of Commissioners find that establishing a single corridor for all above-ground electrical transmission lines within the town accommodates these competing factors. In addition to the foregoing, the Kill Devil Hills Board of Commissioners declares the purposes and intent of this subchapter to be as follows:

(A) To preserve and enhance scenic views of the Ocean, the Sound, the Wright Brothers' National Park and other natural and historical venues;

- (B) To prevent the proliferation of unsightly overhead transmission lines, towers and related structures;
- (C) To encourage the co-location of overhead transmission lines;
- (D) To protect the environment;
- (E) To safeguard and enhance property values and to protect public and private investments;
- (F) To preserve and protect the unique identity of the town and the economic base attracted to the town by such factors: and
- (G) To ensure that utility providers desiring to transmit electrical power through the use of above-ground transmission lines, towers and related improvements have a clearly-defined procedure for locating and relocating such improvements.

(Ord. 06-20, passed 8-14-06)

**§ 153.281 APPLICATION.**

The requirements of this subchapter shall apply to all land public and private located within the boundaries of the town. This subchapter does not apply to underground electric transmission lines.

(Ord. 06-20, passed 8-14-06)

**§ 153.282 APPROVAL AS A ~~CONDITIONAL~~ SPECIAL USE REQUIRED.**

Above-ground electric transmission lines, connected to a common system of linear towers and other appurtenant structures (collectively, an overhead transmission system) may not be constructed, erected, moved, substantially altered or otherwise used except in accordance with this subchapter.

(Ord. 06-20, passed 8-14-06)

**§ 153.283 PROCEDURE.**

(A) The applicant shall apply for a ~~conditional~~ special use permit as outlined in § 153.362.

(B) Construction of an overhead transmission system requires approval of a single application of a transmission system (TS) special~~conditional~~ use permit application, which shall be reviewed by the Board of Commissioners through a quasi-judicial process.

(C) Construction of an overhead transmission system also shall require the approval of an application for a TS ~~conditional~~ special use permit. The application for the TS conditional use permit shall specify the nature of the proposed overhead transmission system and shall propose:

(1) Conditions to ensure compatibility between the overhead transmission system and the surrounding area, and

(2) Satisfy the requirements of § 153.287.

(Ord. 06-20, passed 8-14-06)

**§ 153.284 NO USE OF OVERHEAD TRANSMISSION SYSTEM UNTIL REQUIREMENTS FULFILLED.**

Issuance of a TS ~~conditional~~ special use permit authorizes the applicant to commence the activity resulting in a change in use of land and commence work on the construction, erection, moving, or

substantially altering an overhead transmission system. No overhead transmission system shall be constructed or used until all of the requirements of this subchapter and all additional requirements imposed pursuant to the issuance of a TS ~~conditional~~ **special** use permit have been complied with.

(Ord. 06-20, passed 8-14-06)

**§ 153.285 APPLICATIONS TO BE COMPLETE.**

(A) All applications for TS ~~conditional~~ **special** use permit must be complete before the Board of Commissioners is required to consider the application.

(B) Subject to division (C) below, an application is complete when it contains all the information necessary for the Board of Commissioners to decide whether or not the overhead transmission system, if completed as proposed, will comply with all of the requirements of this subchapter.

(C) It is not necessary that detailed or technical design drawings be provided to determine compliance, so long as information contained in the plans and other written materials will allow the Board of Commissioners to evaluate the application for compliance with the requirements set forth in this subchapter.

(Ord. 06-20, passed 8-14-06)

**§ 153.286 TS ~~CONDITIONAL~~ SPECIAL USE PERMITS.**

(A) An application for a TS conditional use permit shall be submitted to the Board of Commissioners by filing a copy of the application in accordance with § 153.362.

(B) The Board of Commissioners shall not approve a TS conditional use permit unless it first conducts a public hearing in the manner provided in §153.362 and shall only authorize issuance of the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the overhead transmission system:

(1) Will not materially endanger the public health, safety, or welfare;

(2) Will not injure the value of property in the vicinity of the proposed overhead transmission system;

(3) Will be in harmony with the area in which it is to be located;

(4) Will be in general conformity with the comprehensive plan; and

(5) Will not result in the existence of more than one overhead transmission system through the town for a period of greater than one year.

(Ord. 06-20, passed 8-14-06)

**§ 153.287 RECOMMENDATIONS ON TS ~~CONDITIONAL~~ SPECIAL USE PERMITS.**

(A) Before the Board of Commissioners issues or denies a request for a TS ~~conditional~~ **special** use permit, the application shall be referred to the Planning Board for action in accordance with §§ 153.357 and 153.358. At the request of the Planning Board, the Board of Commissioners may continue the public hearing to allow the Planning Board more time to consider or reconsider the application.

(B) When presented to the Planning Board, the application shall be accompanied by a report setting the planning staff's proposed findings concerning the applications' compliance with all the requirements of this subchapter. If the planning staff report proposes a finding or conclusion that the application fails to comply with any requirement of this subchapter, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

(Ord. 06-20, passed 8-14-06)

**§ 153.288 BOARD OF COMMISSIONERS ACTION ON TS ~~CONDITIONAL~~ SPECIAL USE PERMITS.**

After observing the applicable procedures for consideration of application for a TS ~~conditional~~ **special** use permit, the Board of Commissioners may, by a simple majority, act on a motion in accordance with § 153.362(E) and (F).

(Ord. 06-20, passed 8-14-06)

**SPECIAL REGULATIONS**

**§ 153.310 COTTAGE COURT(S).**

*Cottage court(s).* In addition to the below specific standards, cottage court(s) shall also abide by regulations associated with the zoning district where the development is located.

(A) *Lot dimensions.* All parcels shall have a minimum width of 75 feet abutting NC 12.

(B) *Lot area.* The minimum building site shall be 20,000 square feet.

(C) *Size and arrangement.* Each detached single-family dwelling unit shall be designed and arranged for occupancy by one family operating as a housekeeping unit and shall contain at least 500 square feet, but no more than 2,500 square feet of gross floor area. One structure may be up to 5,000 square feet if it includes two or more separate but complementary accessory or principal uses, e.g. a dwelling unit and an on-site management office. Each detached single-family dwelling unit shall be an independent dwelling unit.

(D) *Building separation.* Within a cottage court, detached single-family dwelling units shall be separated from one another by a minimum of ten feet.

(E) *Driveway access.* Each detached single-family dwelling unit shall have access to a shared driveway. The shared driveway must be designed to a minimum width of 20 feet to allow fire-fighting apparatus to locate within 150 feet of all sides of all structures on the property. The shared driveway may be reduced to a minimum width of 12 feet where it is closer than 150 feet to all sides of all structures on the property. A shared driveway width less than 20 feet may be reviewed and approved by the Fire Marshal in conjunction with an approved alternative life safety plan or an approved fire suppression system. The shared driveway material shall support the weight of fire apparatus as determined by the Fire Marshal.

(Ord. 16-19, passed 6-27-18) Am. Ord. 17-21, passed 5-27-20)

**§ 153.311 CLUSTER HOMES.**

*Cluster homes.* In addition to the below specific standards, shall also abide by the regulations associated with the zoning district where the development is located.

(A) *Lot dimensions.* All parcels shall have a minimum width of 75 feet abutting NC 12.

(B) *Lot area.* The minimum building site shall be 20,000 square feet.

(C) *Size and arrangement.* Each detached single-family dwelling unit shall be designed and arranged for occupancy by one family operating as a housekeeping unit and shall contain at least 500 square feet, but no more than 2,500 square feet of gross floor area. One structure may be up to 5,000 square feet if it is combined with on-site management or another complementary accessory or principal use. Each detached single-family dwelling unit shall be an independent dwelling unit.

(D) *Building separation.* Within a cluster home development, detached single-family dwelling units shall be separated from one another by a minimum of ten feet.

(E) *Driveway access.* Each detached single-family dwelling unit shall have access to a shared driveway. The shared driveway must be designed to a minimum width of 20 feet to allow fire-fighting apparatus to locate within 150 feet of all sides of all structures on the property. The shared driveway may be reduced to a minimum width of 12 feet where it is closer than 150 feet to all sides of all structures on the property. A shared driveway of less than 20 feet may be reviewed and approved by the Fire Marshal in conjunction with an approved alternative life safety plan or an approved fire suppression system. The shared driveway material shall support the weight of fire apparatus as determined by the Fire Marshal.

(Ord. 16-23, passed 1-14-19) Am. Ord. 17-21, passed 5-27-20

### **§ 153.312 BED AND BREAKFASTS.**

(A) All bed and breakfasts shall be subject to the following requirements:

(1) The rental of a dwelling room in the bed and breakfast shall be on a daily or weekly basis to tourists, vacationers or similar transients;

(2) The rental period for such tourists, transients or vacationers shall not exceed seven consecutive days;

(3) If meals are provided, such meals shall be limited to breakfast only and such meals shall not be provided except to registered guests of the bed and breakfast;

(4) There shall be no in-room kitchen facilities or other kitchen-type appliances in the rented dwelling room;

(5) The total rented dwelling rooms in the bed and breakfast shall not exceed three rooms and the total occupancy, including the owner and/or employee, shall not exceed eight persons;

(6) The bed and breakfast operation shall be conducted by persons who own and reside within the dwelling unit with the assistance of not more than the equivalent of one full-time employee. The employee or resident who operates the bed and breakfast shall be on-site at all times when there are guests upon the premises;

(7) Prior to the issuance of such permit, all adjoining property owners shall be notified of the property owner's intent to use the dwelling as a bed and breakfast and such adjoining property owners shall be given the opportunity to be heard at the Planning Board meeting where the property owner's request to use the dwelling as a bed and breakfast is reviewed;

(8) No dwelling may be used as a bed and breakfast without the issuance of a permit from the Dare County Health Department and in no event shall a bed and breakfast be operated on a lot which is smaller than 7,500 square feet;

(9) Parking shall be provided at the rate of one parking place for each dwelling room rented, plus one additional space;

(10) No signs shall be allowed upon the premises;

(11) The principal use of such dwelling is residential and any substantial modifications to the exterior appearance of the dwelling shall be subject to architectural review by the Planning Board in order to determine and to ensure that the exterior architecture of the dwelling shall remain in harmony with the architecture of the surrounding property. No expansion of existing dwellings to accommodate bed and breakfasts is permitted;

(12) The use of the dwelling as a bed and breakfast shall comply with all applicable health, sanitation and fire regulations;

(13) Prior to the use of a dwelling as a bed and breakfast, the owner shall obtain a permit from the town to operate the dwelling as a bed and breakfast. The Planning Board shall review the application and site plan and make a recommendation to the Board of Commissioners concerning its approval;

(14) The town shall issue a permit if all of the requirements of this chapter and other applicable provisions of the town code have been met. The permit shall remain in effect for a period of one year and may be revoked if a violation of this chapter is found or if the bed and breakfast is operated in such a manner as to constitute a public nuisance. The town's Building Inspector shall renew the permit each year upon request, unless it is determined that the use of the dwelling is not in compliance with this chapter;

(B) Home occupations, as defined herein;

(C) Town-owned and leased facilities; and

(D) Rooming houses, boarding houses.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 05-12, passed 8-8-05)

### **§ 153.313 PLANNED UNIT DEVELOPMENT.**

(A) *Intent.* A planned unit development (herein after "PUD") is defined in § 153.002 of this chapter. It is the intent of the town to encourage the development of larger parcels of land with greater density and greater degree of consideration of physical features and natural constraints, by enhancing community benefits while fostering the most economically productive land use in the process. It is further the intent of the PUD to promote greater flexibility of design so as to provide a higher level of amenities and more creative design than would be possible by development of the land with traditional district regulations and design standards.

(B) *Uses.*

(1) *Multi-family developments.*

(a) Multi-family development may be authorized as allowed in this chapter following review by the Planning Board and approval as a ~~conditional~~ **special** use by the Board of Commissioners.

(b) Multi-family development dwellings of five or more units per building may include the following accessory uses designed for residents and guests of the PUD:

1. Retail shops, restaurants, clinics, nursing care and daycare facilities. These accessory uses will offer goods and services designed exclusively to meet requirements of occupants and guests for which such establishment is located. There shall be no signs or evidence of such establishment outside the limits of the development. The aggregate maximum square footage of the accessory commercial use structures listed above shall be limited to 5% of the total site area. Occupancy of the commercial use structures shall be in conjunction with completion of the first 50 units or as otherwise approved by the Board of Commissioners.

2. On-site accessory uses or buildings to multi-family development dwellings;
3. Playgrounds;
4. Club houses with assembly areas;
5. Swimming pools and tennis courts;
6. Town-owned and leased facilities.

(C) **Special**~~Conditional~~ uses. None.

(D) *Nonconformities*. See §§ 153.050et seq.

(E) *Building height limits - PUD developments*.

(1) One-third of the structures may have four levels of living space with an aggregate living space height not to exceed 43 feet measured to the top plate, and a total building height not to exceed 55 feet, to accommodate various architectural roof designs, with no additional living space. In addition, no more than 50% of the number of units may be located in these four-story buildings.

(2) The remaining structures shall have no more than three levels of living space, with an aggregate living space not to exceed 35 feet, and a total building height not to exceed 50 feet, to accommodate various architectural roof designs, with no additional living space.

(F) *Site requirements*.

(1) *Lot dimensions*. All parcels shall have a minimum width of 75 feet.

(2) *Lot area*. The minimum building site for a PUD shall be five acres.

(3) *Density*.

(a) *Generally*. Ten units per acre.

(b) *Density bonus*.

1. Twelve units per acre may be permitted provided 30% of the total site is maintained as open space. The following conditions shall apply to the required 30% open space:

a. Ten percent upland natural vegetation shall be maintained (natural vegetation is encouraged between uses);

b. Minimum of 15% common public spaces including walking and jogging trails and other passive recreational activities;

c. The remaining 5% can include wetlands calculated into total site area.

2. Fourteen units per acre may be permitted provided 40% of the total site is maintained as open space. The following conditions shall apply to the required 40% open space:

- a. Fifteen percent upland natural vegetation shall be maintained (encouraged between uses);
- b. Minimum of 20% common public spaces including walking and jogging trails and other passive recreational activities;
- c. The remaining 5% can include wetlands calculated into total site area.

(c) *Calculation.* Formula for density calculation when wetland soils are a portion of any lot. Soils classified as wetlands shall be factored into density calculation based on the following schedule:

1. If the lot is composed of less than 25% of its total area in wetland soils, then 75% of that area classified as wetlands may be used in calculating density.
2. If the lot has between 25% to 50% of its total area in soils classified as wetlands, then 50% of that area classified as wetlands may be used in calculating density.
3. If the lot has between 50% and 75% of its total area in soils classified as wetlands, then 25% of that area classified as wetlands may be used in calculating density.
4. If the lot has 75% or more of its total area classified as wetlands, none of that area classified as wetlands can be used in calculating density.

(4) *Building separation.* Single-family detached structures in a PUD shall have a minimum separation of ten feet, provided the structures are protected by an approved fire suppression sprinkler system. All other structures in a PUD shall have a minimum separation of 24 feet. Patios constructed of noncombustible material and privacy fences shall be exempt from the building separation requirements. Every part of a required 24-foot separation shall be open and unobstructed from its lowest level to the sky.

(5) *Lot coverage.*

(a) Maximum allowable lot coverage by principal use, all accessory structures, vehicular area and parking—50%.

(b) Formula for lot coverage calculation when wetland soils are a portion of any lot. Soils classified as wetlands shall be factored into lot coverage calculations based on the following schedule:

1. If the lot is composed of less than 25% of its total area in wetland soils, then 75% of that area classified as wetlands may be used in calculating lot coverage.
2. If the lot has between 25% to 50% of its total area in soils classified as wetlands, then 50% of that area classified as wetlands may be used in calculating lot coverage.
3. If the lot has between 50% and 75% of its total area in soils classified as wetlands, then 25% of that area classified as wetlands may be used in calculating lot coverage.
4. If the lot has 75% or more of its total area classified as wetlands, none of that area classified as wetlands can be used in calculating lot coverage.

(c) Lot coverage within an estuarine area of environmental concern (AEC), as defined by the Coastal Area Management Act (CAMA), shall be limited to 20% and a minimum setback from the estuarine waters shall be 50 feet. (Exceptions: boardwalks, gazebos, and other pedestrian access structures shall be permitted within the 50-foot setback but must be in accordance with CAMA regulations.)

(6) *Drainage/stormwater runoff.* All sites are required to follow the provisions of § 153.070, Stormwater Management.

(7) *Land disturbance.* See § 153.071, Soil Erosion and Sedimentation Control.

(G) *Setbacks.*

(1) *Side yard.*

(a) The minimum side yard shall be ten feet. For any structure over 35 feet in total building height, there shall be two feet of side yard setback for each foot of building height over 35 feet in addition to the minimum side yard setback.

(2) *Front yard.* The minimum front yard setback shall be 30 feet from the property line.

(3) *Rear yard.*

(a) The minimum rear yard setback requirements on any lot shall be 20% of the total depth of the lot, but shall not exceed 30 feet from the rear property line.

(b) Detached garages and accessory buildings may be built in rear yards; however, any such building shall be erected so as to provide a distance of not less than eight feet from the main building to the garage or accessory building and be not less than five feet from any lot line.

(4) *Double frontage.* The required front yard setback for all lots shall be provided on both front and rear of a double frontage lot.

(5) *Corner lot.* The minimum side yard setback requirements on a corner lot shall be 15 feet.

(6) *Setback for PUD development abutting residential uses, zones or rights-of-way.*

(a) The minimum required setback for a PUD which abuts any residential use, zone or right-of-way shall be 30 feet or required side yard setback whichever is greater.

(b) The following exception will be allowed: Accessory uses for single-family detached dwellings shall maintain a minimum setback of 15 feet from a residential use, zone or right-of-way. Accessory uses shall provide a privacy fence no less than six feet in height in addition to buffering requirements.

(H) *Signs.*

(1) *Generally allowed.* The following signs shall be allowed in a PUD:

(a) *Project master sign.* One master project sign shall be allowed in a PUD in accordance with the following provisions:

1. Sign overall dimensions including architectural features shall not exceed 99 square feet with overall dimensional rectangle not to exceed 9 feet in height by 11 feet in width.

2. Sign shall include architectural features consistent with the general "theme" architecture of the project. Architectural features shall be included in overall dimensions.

3. Sign shall be located at or near the PUD entrance at a location which will not interfere with site distance triangles.

4. Actual lettering surface of the sign shall not exceed 40 square feet per side and shall be contained within a geometric rectangle not to exceed eight feet in width by five feet in height.

(b) *Project village signage.* Each named village or section within a PUD shall have one sign with the following provisions:

1. Sign overall dimensions including architectural features shall not exceed 45 square feet with overall dimensional rectangle not to exceed 9 feet in height by 5 feet in width.

2. Sign shall include architectural feature consistent with the project master sign and consistent with the general theme architecture of the individual villages or sections. Architectural features shall be included in overall dimensions.

3. Signs shall be located at or near the PUD village or section entrances at a location which will not interfere with the site distance triangles.

4. Actual lettering surface of the sign shall not exceed 24 square feet per side and shall be contained within a geometric rectangle not to exceed six feet in width by four feet in height.

(2) *Special provisions for signs located within the public right-of-way.* One project master sign may be located within the right-of-way of Ocean Bay Boulevard in accordance with the following provisions:

(a) Signs located within a town right-of-way shall be placed within the divided roadway, curbed landscape island or grass median.

(b) Signs must be owned and maintained by the PUD homeowners association.

(c) The town reserves the right to remove the signage at the owner's expense if the sign or surroundings landscaped area become a public nuisance or creates an unsafe condition.

(d) Signs within a town right-of-way must be located within 100 feet of the property line of the PUD with prior approval by town staff.

(3) *Lighting provisions for project master and project village signage within a PUD.* Signage within a PUD may be illuminated in accordance with the following provisions:

(a) A project master sign shall be illuminated with no more than three low-wattage (75 watt or less) external spotlights, directed towards the sign face, on each side of the sign.

(b) A project village sign shall be illuminated with no more than two low-wattage (75 or less) external spotlights, directed towards the sign face, on each side of the sign.

(c) Lighting shall be shielded so as to prevent a direct view of the light from a residence or street.

(4) *Unsafe signs.* Should any sign become insecure or in danger of falling or otherwise be unsafe in the opinion of the Building Inspector, then the owner thereof, or the person maintaining the same, shall, upon written notice from the Building Inspector, forthwith in the case of immediate

danger or in any case within ten days, secure the same in a manner to be approved by the Building Inspector in conformity with the provisions of this section or remove the sign. If such order is not complied with within ten days, the Building Inspector shall remove such sign at the expense of the owner.

(I) *Off-street parking, driveway and curbs.* See § 153.076, Off-Street Parking and Loading.

(J) *Buffers and screening.* All PUDs developed under this subchapter shall provide and maintain along the side and rear lot lines a continuous visual buffer. The buffer shall be compact evergreen hedge or other type of evergreen foliage screen, or shall be a combination fence and shrubbery screen. The preservation of existing vegetation is encouraged and may be utilized to meet this provision. The visual buffer shall be subject to periodic inspection by the Building Inspector. The minimum height shall be no less than 6 feet with a minimum width of 15 feet. Buffers shall not be aligned so as to block vision at or along the right-of-way. All other screening and buffer requirements shall be in accordance with § 153.073, Landscaping Requirements.

(K) *Studies of impacts.* Site plans submitted for this subchapter shall include, for information to the town, comprehensive studies based on project completion of projected impacts to the environment, traffic and governmental services.

(L) *Architectural design.*

(1) Chimneys and elevator towers are exempt from height restrictions.

(2) Architectural appearance shall be consistent with § 153.186, Commercial Building Exteriors.

(Ord. 01-11, passed 11-14-01; Am. Ord. 04-10, passed 5-26-04; Am. Ord. 04-14, passed 9-13-04; Am. Ord. 04-23, passed 12-13-04; Am. Ord. 06-03, passed 2-22-06; Am. Ord. 06-10, passed 5-24-06; Am. Ord. 06-11, passed 5-24-06; Am. Ord. 07-06, passed 4-25-07; Am. Ord. 07-13, passed 8-13-07)

#### **§ 153.314 INTERNET AND/OR ELECTRONIC GAMING ACCESSORY BUSINESS USE.**

Internet and/or electronic gaming machines or devices may be permitted as an accessory business use in the specified zoning districts of the town according to the following conditions:

(A) Internet and/or electronic gaming machines shall be located within the same building as the principal business use. The area in which internet and/or electronic gaming machines are located shall be accessed through the same means of ingress-egress as the principal use business.

(B) The maximum number of internet and/or electronic gaming machines shall not exceed two (2) machines.

(C) For multi-unit/multi-tenant commercial sites where more than one unit is located within one large commercial structure, the cumulative total of machines shall not exceed two internet and/or electronic gaming machines for the entire structure. For commercial group developments, the cumulative total of machines located within all of the buildings within the commercial group development site shall not exceed two internet and/or electronic gaming machines.

(D) The hours of operation for the accessory internet and/or electronic gaming operation shall be the same as hours of operation for the principal business use in which it is located.

(E) Public restrooms for patrons of the internet and/or electronic gaming operation shall be provided within the principal business use in which it is located.

(F) The placement of internet and/or electronic gaming machines as an accessory use within a principal business use shall be subject to review and approval by the town. A copy of the floor plan and site plan of the principal business use depicting the area where the internet and/or electronic gaming machines/device will be located shall be submitted to the Planning Department for approval. Applications for internet and/or electronic gaming machines shall be submitted at the time the floor plan for the accessory use is submitted to the Planning Department.

(G) Off-street parking shall be provided at a ratio of one 10' x 20' space for each internet and/or electronic gaming machine/device in addition to the other required parking spaces for the principal use. An up-to-date copy of a site plan prepared by a North Carolina licensed surveyor or engineer shall be submitted to the Planning Department for approval.

(H) Any internet and/or electronic gaming operation shall be not located within a minimum of 500 feet measured in a straight line in any direction from all property lines of the principal business use site, from any residential dwelling including mobile homes; any church, place of worship or other religious building; any child care home or facility; public or private school; public playground or park; or another principal business use that includes internet and/or electronic gaming machines as an accessory. The applicant shall submit an up-to-date, straight-line drawing prepared by a North Carolina registered surveyor or engineer that depicts each use that is within 500 feet of the principal business use site to demonstrate compliance with this separation standard.

(I) On-premise alcohol consumption is prohibited within the area dedicated as the internet and/or electronic gaming operation. Signage to this effect shall be posted in a conspicuous manner to alert all users of this restriction.

(J) Users of the internet and/or electronic gaming machines shall be at least 18 years of age. Signage to that effect shall be posted in a conspicuous manner to alert all users of this age restriction.

(K) Any internet and/or electronic gaming operations that existed in the town before November 14, 2012 shall be submitted for review according to the conditions of this section and will be granted 24 months from November 14, 2012 in which to bring their internet and/or electronic gaming operations into compliance with these regulations.

(Ord. 12-22, passed 11-14-12)

### **§153.315 ACCESSORY DWELLING UNITS.**

(A) *Purpose.* The purpose of these provisions for all accessory dwelling units (ADUs) is to allow the efficient use of existing housing stock, parcels of land, and community infrastructure, and to increase the number and variety of residential units while respecting the scale and character of existing neighborhoods.

(B) *General provisions.* Accessory dwelling units (ADUs) are allowed as permitted uses in Commercial, Light Industrial 1 and Light Industrial 2 Zoning Districts, subject to the following standards:

1. An ADU can only be located on a property containing one single-family detached dwelling. The property may contain other accessory structures and uses as permitted in this section.
2. No more than one ADU shall be permitted per residential lot.
3. ADUs shall not be larger than 50 percent of the living area of the primary residence, or 800 square feet, whichever is lesser.
4. An ADU must comply with all applicable minimum building setback requirements and a detached ADU cannot extend beyond of the front of the primary residence.

5. An ADU must be properly permitted, inspected, and comply with all applicable standards of the N.C. Building Code and Kill Devil Hills Town Code.
6. The owner must obtain a permit from the Dare County Environmental Health Department that the existing wastewater system can accommodate or be improved to accommodate the establishment of an ADU.
7. ADUs shall be parked in accordance with 153.076 Off Street Parking and Loading.
8. Recreational vehicles, travel trailers and/or manufactured homes shall not be used or approved as an ADU.
9. An ADU shall not be subdivided or segregated in ownership from the principal dwelling unit.

(Ord. 17-28, passed 3-8-21)

## BOARD OF ADJUSTMENT

### § 153.320 INTENT.

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

(Ord. 13-20, passed 11-13-13)

### § 153.321 DUTIES AND RESPONSIBILITIES OF THE BOARD OF ADJUSTMENT.

(A) *Interpretations.* The Board shall interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of this chapter. The Board shall hear and decide all matters referred to it or upon which it is required to pass under this chapter.

(B) *Administrative Review; Appeals.* Pursuant to its powers and duties, the Board of Adjustment shall hear and decide appeals to ~~decisions of administrative officials charged with the enforcement of this chapter~~ administrative decisions where it is alleged there is an error in any order, decision, determination or interpretation made by the Zoning Administrator or such other designated administrative officer in the enforcement of this chapter. As used in this section, the term **DECISION** includes any final and binding order, requirement, or determination.

(C) *Variances.* To authorize upon appeal in specific cases, variances from the terms of the Zoning Code according to the standards and procedures herein so that the spirit of the Code is observed, public safety and welfare secured, and substantial justice done.

(1) The Board of Adjustment may impose appropriate conditions on any variance, provided the conditions are reasonably related to the variance.

(a) A violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this chapter.

(2) The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

(D) *Chapter 151, Flood Damage Prevention Ordinance.* Pursuant to the terms, conditions and procedures contained in Chapter 151, Flood Damage Prevention Ordinance, the Board of Adjustment shall act as the appeal board and shall hear and decide requests for variances of the provisions of that chapter; and, shall hear appeals and modify or affirm the corrective order issued by the Floodplain Administrator.

**(E) The Board of Adjustment shall comply with all the procedures and processes applicable to the board of adjustment hearing appeals in accordance with NCGS § 160D-405 and 406.**

(Ord. 13-20, passed 11-13-13)

### **§ 153.322 APPEALS.**

(A) *Appeals procedures.*

(1) An appeal may be initiated by any aggrieved party or by any officer or the Board of Commissioners of the Town of Kill Devil Hills.

(2) The Board of Adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning, subdivision or flood damage prevention ordinance, pursuant to all of the following:

(a) Any person who has standing under NCGS § 160D-1402(c) ~~NCGS 160A-393(d)~~, or the town, may appeal a decision to the Board of Adjustment. A written notice of appeal stating the grounds for the appeal must be filed with the Town Clerk.

(b) The official who made the decision must give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice must be delivered by personal delivery, electronic mail, or by first-class mail.

(c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(d) The official who made the decision must transmit to the Board all the documents and exhibits constituting the record upon which the action appealed was taken. The official must also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(e) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed and accrual of any fines. ~~from~~ unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this chapter. In that case, enforcement

proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment must meet to hear the appeal within 15 days after such request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this chapter shall not stay the further review of an application for permits or permissions to use such property. In these situations, the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(f) The Board of Adjustment must hear and decide the appeal within a reasonable time. **The Board shall follow quasi-judicial procedures in determining appeals of administrative decisions (NCGS § 160D-406).**

~~(g) Notice of the public **evidentiary** hearing shall follow procedures outlined in § 153.363. must be mailed to the person or entity whose application is the subject of the hearing; to the owner of the property that is subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land adjoining the property that is the subject of the hearing; and to any other persons entitled to receive notice at least ten days, but not more than 25 days, prior to the hearing for any appeal. For the purpose of applying this standard, an adjoining property is deemed to be any parcel that abuts the subject property or is located directly across a public right-of-way from the subject property. In the absence of evidence to the contrary, the town may rely on Dare County tax listings to determine owners of the property entitled to be mailed notice.~~

~~1. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact a Kill Devil Hills official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten days. Posting of the sign shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the Kill Devil Hills official who made the decision.~~

(h) The official who made the decision must be present at the hearing as a witness.

(i) The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment 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.

(j) When hearing an appeal pursuant to **NCGS § 160D-1402** ~~NCGS § 160A-400.9(c)~~ or any other appeal in the nature of certiorari, the hearing shall be based on the record and the scope of review shall be as provided in **NCGS § 160D-1402** ~~NCGS § 160A-393(k)~~.

**(3) Staff shall transmit to the board all applications, reports and written materials relevant to the matter being considered. Administrative materials shall become part of the hearing record. The applicant, local government, and any person who would have standing to appeal the decision shall have the right to participate as a part of the evidentiary hearing.**

**(4) Upon voting, the decision shall be made by the majority of the board for appeals.**

~~(3)~~**(5) Standards for granting an appeal.**

(a) The Board of Adjustment shall reverse or modify the order, decision, determination, or interpretation under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, decision, determination, or interpretation.

(b) In modifying the order, decision, determination, or interpretation, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

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

(Ord. 13-20, passed 11-13-13)

**§ 153.323 VARIANCES.**

**(A) Procedures.**

(1) A petition for variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.

(2) When unnecessary hardships would result from carrying out the strict letter of this chapter, the Board of Adjustment shall vary any of the provisions upon a showing of all of the following:

(a) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.

(d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

1. The Board of Adjustment may impose appropriate conditions on any variance, provided the conditions are reasonably related to the variance, which include, as appropriate, requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities.

2. A violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this chapter.

3. The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

(3) *Restrictions.*

(a) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in the district.

(b) The existence of a non-conforming use of neighboring land, buildings, or structures in the same district, or of permitted or non-conforming uses in other districts, shall not constitute sufficient reason for granting the requested variance.

(c) The fact that property may be utilized more profitably will not be considered adequate to justify the Board of Adjustment in granting a variance.

(4) Notice and public hearing shall follow regulations procedures outlined in §153.363.

~~(a) Notice of the public hearing shall be posted on the subject property at least ten days, but not more than 25 days, in advance of the public hearing at which the Board is to consider the variance. Notice of the public hearing must be mailed to the person or entity whose application is the subject of the hearing; to the owner of the property that is subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land adjoining the property that is subject of the hearing; and to any other persons entitled to receive notice at least ten days, but not more than 25 days, prior to the hearing for any variance. For the purpose of applying this standard, an adjoining property is deemed to be any parcel that abuts the subject property or is located directly across a public right-of-way from the subject property. In the absence of evidence to the contrary, the town may rely on Dare County tax listings to determine owners of the property entitled to be mailed notice.~~

(Ord. 13-20, passed 11-13-13)

**§ 153.324 ACTION BY THE BOARD OF ADJUSTMENT.**

(A) A concurring vote of four-fifths of the Board members shall be required to grant a variance. The Board may grant the variance as requested, deny the variance, or grant the variance with conditions. 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. The Board of Adjustment shall grant or deny the variance or shall reverse, affirm, or modify the order, decision, determination, or interpretation under appeal by recording in the minutes of the meeting the reasons that the Board of Adjustment used and the findings of fact and conclusions of law made by the Board of Adjustment to reach its decision. For purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Board" for calculation of the requisite supermajority majority if there are no qualified alternates available to take the place of such members.

(B) A member of the Board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection, as outlined in § 153-364. Conflict of Interest.

(C) *Quasi-judicial decisions.* The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent material and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair, or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the Board, or such other office or official as the ordinance specifies. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(D) *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 of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

(E) *Subpoenas.* The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under [NCGS 160D-406\(g\)](#) ~~NCGS 160A-393(d)~~ may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment 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.

(Ord. 13-20, passed 11-13-13)

### **§ 153.325 EFFECT OF GRANTING OF VARIANCE OR REVERSAL OR MODIFICATION OF ADMINISTRATIVE DECISION.**

(A) After the Board of Adjustment approves a variance, or reverses or modifies an order, decision, determination, or interpretation of an administrative officer, the appellant or petitioner shall be responsible for a building permit and/or certificate of occupancy, as applicable, in order to proceed with the development of the subject property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the variance, reversal, or modification granted to the appellant or petitioner by the Board of Adjustment.

(B) *Rehearing.* The Board of Adjustment shall refuse to hear an appeal or variance petition which has been previously denied unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

(C) *Appeal from Board of Adjustment.* Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to [NCGS § 160d-406\(k\)](#) ~~NCGS 160A-393~~. A petition for review shall be filed with the Clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with § 153.323(C). When first class mail is used to deliver notice, three days shall be added to the time to file the petition.

(Ord. 13-20, passed 11-13-13)

**§ 153.326 FEES.**

A fee established by the Board of Commissioners shall be paid by the applicant, property owner, or appellant to the town at the time of filing of any proceeding for hearing before the Board of Adjustment.

(Ord. 13-20, passed 11-13-13)

**ADMINISTRATION AND ENFORCEMENT**

**§ 153.350 ZONING ADMINISTRATOR.**

The Zoning Administrator designated by the town shall administer and enforce this chapter. The Building Inspector may be directed to discharge the duties and obligations of the Zoning Administrator's office, or a Zoning Administrator may be appointed and provided with the assistance of such other persons as the town may direct. The term **ZONING ADMINISTRATOR** shall include the Building Inspector when that official has been directed to perform the duties and obligations of the Zoning Administrator. The Zoning Administrator shall have all necessary authority to administer and enforce this chapter, including the ordering of, in writing or verbally, and the remedying of any condition found in violation of this chapter and the bringing of legal action with prior Board approval to insure compliance with this chapter, including injunction, abatement or other appropriate action or proceeding.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

**§ 153.351 BUILDING PERMIT.**

(A) *Time limitation to obtain building permit.*

(1) No building or other structure shall be erected or moved, nor shall any existing building or structure hereafter be altered in any manner, nor will any substantial grading or excavation take place unless and until a building permit, as required by state law, or the rules and regulations promulgated by the appropriate state agency and this chapter has been approved by the Zoning Administrator.

(2) Upon final approval of the site plan the Building Inspector may issue a building permit within 365 days from the date of such approval, provided that all other requirements of this chapter and other applicable town ordinances are met. If a building permit is not secured within 365 days from the final approval of the site plan, the applicant must resubmit the site plan for review by the Planning Board and the Board of Commissioners. In the event the applicant certifies to the Planning Director that there have been no intervening ordinance or regulatory changes affecting siting and use, and there is no significant change in the site plan design, then the Planning Director may certify such conditions to the Board of Commissioners. Upon such certification, the Board of Commissioners may give the applicant 90 days in which to secure a building permit. In the event no building permit is secured within the 90-day period the site plan approval extension shall expire and the site plan must be resubmitted through the prescribed site plan approval process as specified in this chapter.

(B) *Time limitation to commence and continue construction.* If the start of construction has not commenced within 180 days from the date of issuance of a building permit, the building permit shall expire. If, after commencement, the work is discontinued for a period of 12 months, the building permit shall immediately expire. No work authorized by any permit or site plan that has expired shall

be performed until a new site plan has been approved. If no change has been made in application or town ordinances affecting, the site plan, the Planning Director may reauthorize the site plan and a new building permit issued upon payment of applicable minimum fee and written notification to Board of Commissioners.

(Ord. 91-08, passed 11-18-91; Am. Ord. 93-01, passed 2-8-93; Am. Ord. 01-02, passed 2-28-01)

### **§ 153.352 NECESSARY GOVERNMENTAL APPROVAL.**

The Zoning Administrator shall not approve a building permit for any building for which the Dare County Health Department or any other necessary governmental approval is required until such approval has been given by the Health Department, the appropriate government or the appropriate governmental agency.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

### **§ 153.353 CERTIFICATE OF OCCUPANCY.**

No land shall be used or occupied and no building structurally altered, erected, moved, be used or its use changed until an as-built site plan is submitted showing compliance with requirements of federal, state and local government approved plans and the Building Inspector issues a certificate of occupancy stating that the building and land or proposed use thereof complies with the provisions of this chapter and other federal, state and local ordinances as applicable. A certificate of occupancy, either for the whole or a part of a building, shall be applied for coincident with the application for a building permit and shall be issued within three business days after the erection or structural alterations of such building or part shall have been completed in conformity with the provisions of this chapter. A record of all commercial certificates shall be kept on file in the office of the Zoning Administrator or Building Inspector, and copies shall be furnished, on request, to any person having a proprietary or tenancy interest in the building erected. No permit for excavation for or erection of any building or part of a building or for repairs to or alterations of a building shall be issued until after a statement of its intended use has been filed by the applicant.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 05-06, passed 5-25-05; Am. Ord. 07-18, passed 10-24-07) Penalty, see § 10.99

### **§ 153.354 FEES.**

All site plans, development plans, plats or other plans required to be presented by this chapter for approval by the town shall be accompanied by a filing fee. This filing fee shall be payable to the town and shall be due and payable upon submission of the site plan, plan or plat. The fee required by this section shall be the amount specified in the regularly adopted fee schedule of the town.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

### **§ 153.355 SITE PLAN REQUIREMENTS.**

(A) Upon submission of commercial, industrial and multi-family site plans for initial staff review, the developer shall have the site plan prepared, stamped or sealed and signed by persons duly authorized by state law. The site plan shall be submitted with tentative Health Department approval and the developer shall pay all site plan review fees as required by the adopted fee schedule. Fifteen copies of the site plan shall be delivered to the Planning Director who shall distribute same to the

heads of the Public Services Department, the Police Department, the Fire Department and such other town officials and departments as the Board may direct. Each such department head and town official shall review the site plan and report any comments or recommendations in writing to the planning staff at which time the planning staff shall meet with the site plan preparer to address recommendations and comments for revision.

(B) In addition to any other requirements of the Planning Board or Planning Director, the commercial, industrial and multi-family site plans shall contain the following information:

(1) Proper ownership and information, including:

- (a) Name, address, telephone number and consent of present recorded owner and the map book reference and subdivision title of the site property and the property identification number;
- (b) Boundary of the entire lot by course and distance;
- (c) Width and location of the existing rights-of-way;
- (d) Nature or purpose, location and size of existing easements;
- (e) Iron pins, 3/8-inch in diameter and 36 inches in length shall be shown and installed at all lot corners, points of tangents and any angle point along a given course of the lot;
- (f) Plan drawn to at least 1 inch = 10 feet, 1 inch = 20 feet, 1 inch = 30 feet, 1 inch = 40 feet, or 1 inch = 50 feet scale showing north arrow; and
- (g) Site zoning.

(2) Existing features information, including:

- (a) Streets showing the width of pavement and elevations within the boundaries of the project site;
- (b) Location of all existing and proposed utilities, including propane and gasoline tanks, above and below grade;
- (c) All proposed utilities shall be located underground; and
- (d) Presence or absence of wetlands.

(3) Site improvements, including:

- (a) Proposed building type (masonry, metal or wood) and number of floors and dimensions;
- (b) Proposed building plan elevations and floor plan;
- (c) Location and type of all sidewalks and curbs within the site;
- (d) Location of sanitary sewer facilities with connection to sewer system or septic tank;
- (e) Locations of signs;
- (f) Layout and number of parking spaces shown in accordance with this chapter;
- (g) Outdoor lighting plan, security lights and NCDOT approved lights;
- (h) Existing and finished grades shown for the entire site;

- (i) Dumpster pad locations;
  - (j) A tabulation of the total number of dwelling units of various types in the project and the overall project density in dwelling units per acre;
  - (k) Uniform street address;
  - (l) Landscaping plan;
  - (m) Lot coverage;
  - (n) Inventory of significant natural features or vegetated areas affecting the site;
  - (o) N.F.I.P. Flood Zone;
  - (p) Boundaries of all AECs; and
  - (q) Sedimentation and erosion control plan.
- (4) Right-of-way improvements shall be made in accordance with the duly adopted written policy, as amended from time to time by the Board of Commissioners, which is on file with the Town Clerk.
- (5) Stormwater management plan and calculations as specified in § 153.070.
- (6) In addition to the building permit, a permit for any construction within the public right-of-way shall be obtained prior to commencing any work.
- (7) Inspections of sites involving public rights-of-way and inspections of any on-site construction shall be made by the town.

(C) Upon submission of a new structure, moved structure or addition to single-family or duplex dwelling site plans for initial ~~staff~~ [administrative](#) review prior to any inspections, the applicant shall have the site plan/building plan prepared, sealed and signed by persons duly authorized by state law as necessary and a survey sealed and signed by a North Carolina licensed surveyor locating the house and all appurtenances on the lot. The site plan shall be submitted with Health Department permits, consent of present recorded owner, and the applicant shall pay all site plan review fees as required by the adopted fee schedule. Two copies of the site building plan stamped by the health department shall be delivered to the Planning Department, who shall distribute to the heads of the Public Services Department and such other town officials and departments as may be appropriate.

(D) In addition to any other requirements of the Planning Department, the new structures, moved structures and additions to single-family or duplex dwelling site plan shall contain the following information:

- (1) Survey information:
  - (a) Owner(s);
  - (b) Lot number(s), block, subdivision;
  - (c) PIN number and parcel number;
  - (d) Zoning district;
  - (e) Flood zone (ground elevation and first floor elevations);
  - (f) Street address;

- (g) Lot square footage;
  - (h) Lot coverage calculations;
  - (i) Setbacks;
  - (j) Areas of environmental concern;
  - (k) Building footprint;
  - (l) Covered decks;
  - (m) Open decks;
  - (n) Pools, hot tubs, accessory structures;
  - (o) Paved/maintained street;
  - (p) Water tap location;
  - (q) Septic tank and drainfield location;
  - (r) Required parking clearly drawn;
  - (s) Driveways, sidewalks and patios.
- (2) Building plans minimum requirements:
- (a) Heated square footage;
  - (b) Unheated square footage;
  - (c) Building height;
  - (d) Floor plans;
  - (e) Number of bedrooms;
  - (f) Elevations;
  - (g) Foundation plan.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 04-03, passed 3-24-04; Am. Ord. 14-26, passed 2-9-15)

**§ 153.356 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

Dimensional requirements and development standards shall be in accordance with the zoning district in which the building is located. For new construction, substantial improvements, or substantial damage, a development utilizing more than one lot shall be recombined in accordance with § 152.59 Recording of Exempt Plats or the lots shall be encumbered by legal agreement approved by the town for the duration of the development on the lots.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 15-8, passed 9-21-15; Am. Ord. 15-14, passed 4-11-16)

**§ 153.357 SITE PLAN REVIEW PROCESS FOR COMMERCIAL, MULTI-FAMILY AND CONDITIONAL SPECIAL USE APPLICATIONS.**

(A) Prior to preparing a site plan for commercial, multi-family and special use applications, the preparer should obtain a site plan requirements list from the Planning Department. This check list covers most items required on site plans, and the site plan preparer should address all items on the list before submitting a site plan. Applicants are encouraged to review their particular cases with the staff in a sketch plan meeting prior to submission of formal application. A sketch plan review by the Planning Board may be recommended.

(B) (1) On or before the third Tuesday of the month prior to Planning Board review, site plan preparer submits the following to the Planning Department staff:

(a) Fifteen copies of the site plan, all items on checklist addressed and an engineer's seal on the plan;

(b) Letter of tentative Health Department approval, from the local or state agency having jurisdiction;

(c) Site plan review fee.

(2) The application is then circulated to the appropriate town departments for staff review I.

(C) Staff comments I due to Planning Department on Monday following receipt of plans.

(D) On the fourth Tuesday of the month, site plan preparer meets with the planning staff for a preliminary review of the site plan. This meeting will include discussion of recommendations from the town departments.

(E) On the first Tuesday of the following month, the site plan preparer submits 15 copies of the site plan, revised to address issues raised by the staff at the preliminary site plan review meeting.

(F) On the following Wednesday, staff review II begins.

(G) On the following Monday, staff comments II are due to the Planning Department.

(H) On the second Friday of the month, Planning Board packets will be ready. Copies of the Planning Department staff comments to the Planning Board will be available to site plan preparers. Comments can be obtained after 1:00 p.m. Friday at the Planning Department.

(I) On the third Tuesday of the month, the Planning Board will review the site plan. They will make recommendations to the Board of Commissioners such as: approval as submitted, approval with conditions, disapproval or that the plan be tabled to allow the preparer to address the Planning Board's concerns. In the event that the plan is tabled by the Planning Board, the tabling motion shall expire two years from the date of the tabling motion. Such plan shall be reconsidered only after the applicant:

(1) Pays the full site plan review fee; and

(2) Resubmits the plan through the prescribed site plan approval process as specified in this chapter.

(J) If the Planning Board forwards the plan to the Board of Commissioners, the site plan preparer must submit 15 copies of the site plan, addressing any and all conditions, to the Planning Department by the fourth Tuesday of the month in order to be considered at the Board of Commissioners' regular meeting the next month.

(K) On the first Monday of the following month, staff comments and revised site plan will be sent to the Administration Department by 5:00 p.m.

(L) After 1:00 p.m. on the Friday before the Board of Commissioners meeting, copies of staff comments can be obtained at the Administration Department.

(M) The Board of Commissioners will review site plans on the second Monday of the month. At that time the Board of Commissioners will approve, conditionally approve, disapprove or table the proposed project.

(N) Once a site plan has the Board of Commissioners' approval, the Building Inspector may issue a building permit during the next 365 days, provided that all other requirements of this chapter and other applicable town ordinances are met. If a building permit is not secured within 365 days from final approval of the site plan, the site plan approval expires and the applicant must resubmit the site plan for review by the Planning Board and the Board of Commissioners. In the event the applicant certifies to the Planning Director that there have been no intervening ordinance or regulatory changes affecting siting and use and there is no significant change in the site plan design, then the Planning Director may certify such conditions. Upon such certification, the Planning Director may give the applicant 90 days in which to secure a building permit. In the event no building permit is secured within the 90-day period, the site plan approval extension shall expire and the site plan must be resubmitted through the prescribed site plan approval process as specified in this chapter.

(O) Rejected site plans may be resubmitted in accordance with this chapter when redrafted to meet the specifications of this chapter and upon payment of the required fees.

(Ord. 91-08, passed 11-18-91; Am. Ord. 92-06, passed 5-11-92; Am. Ord. 93-01, passed 2-8-93; Am. Ord. 97-16, passed 1-28-98; Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.358 ACTION BY PLANNING BOARD AND BOARD OF COMMISSIONERS.**

(A) The Planning Board shall review site plans. Upon completion of the review, the Planning Board may recommend approval, recommend approval with specific requirements and conditions, table for further study or additional information, or recommend disapproval. The Planning Board's recommendation shall be transmitted to the Board of Commissioners. The Board of Commissioners shall review site plans after the review and recommendation by the Planning Board. They may approve, approve with specific requirements and conditions, table for further study or additional information, return to the Planning Board for further study or review, or disapprove any site plan. A rejected site plan may be resubmitted in accordance with this chapter when redrafted to meet the specifications of this chapter and upon payment of the required fees.

(B) Tentative approval of a tri-party agreement for Wastewater Treatment or Health Department tentative approval shall be included with submission of the site plan. A final, recordable copy of the tri-party agreement shall be presented by the developer prior to the issuance of a building permit or presentation of a valid wastewater disposal permit.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 04-13, passed 9-13-04)

#### **§ 153.359 CHANGES IN PLAN BY OWNER OR DEVELOPER.**

If following the ~~conditional~~ or final approval, the owner or developer desires to make a change to the structure, associated site features or use, the change must be reviewed by the Planning Board in

accordance with the provisions of this chapter and approved by the Board of Commissioners or meet the following criteria for administrative approvals:

(A) *Administrative approval for non-conforming structures and uses.*

(1) Non-conforming single-family and duplex dwellings. Administrative approval may be authorized for remodel, reconstruction/repair or additions where additional non-conformities are not created.

(2) Non-conforming commercial and institutional structure:

(a) Administrative approval may be authorized for remodel, change of use, reconstruction/repair (no change to total dimensions) within the existing footprint of the structure in accordance with § 153.053.

(b) Administrative approval may be authorized for additions which will not create or increase any nonconformity in accordance with § 153.053 as follows:

1. Additions to site features not exceeding 50% of the existing site feature less than six inches above finished grade may be granted if the addition meets all the requirements of this chapter.

2. Additions greater than six inches above finished grade may be granted if additions do not exceed 500 square feet of gross floor area and meet all the requirements of this chapter.

(c) Administrative approval may be authorized for outdoor waiting activity areas provided that it will not create or increase any nonconformity in accordance with § 153.053 and meets the following conditions:

1. Outdoor waiting activity area(s) shall be accessory to restaurant use only, not including drive-in restaurants.

2. Outdoor waiting activity area(s) shall have no scheduled events or activities before 7:00 a.m. nor after 11:00 p.m. on any day. There will be no music or games between 11:00 p.m. and 7:00 a.m.

3. No cooking or serving utilities including grills, bars or drink dispensers shall be permitted. All such cooking and serving utilities shall be contained within the principal building.

4. Lighting and sound (including music or noise) must comply with the Town Code. Signage shall comply with the Town Code, including signs on umbrellas.

5. The area must be kept clean of litter and maintained in a safe and sanitary condition.

6. Appropriate waste receptacles with affixed lids shall be provided.

7. On sides not adjoining the principal structure the area designated as outdoor waiting activity area(s) shall be bordered by a minimum four foot high fence, with the exception of elevated, covered decks for which fencing requirements are already in place, and shall be buffered with landscaping as set forth in § 153.073(F)(2)(b).

8. Outdoor waiting activity area(s) may not be roofed or shaded in any way other than standard table umbrellas. Erection of a tent subject to a special use or event permit from the town is not prohibited.

9. Outdoor waiting activity area(s) shall comply with minimum parking requirements for the primary structure as set in § 153.076.

(d) Changes in plan not meeting division (A)(2)(a), (b) or (c) above must follow the site plan review process in this chapter.

(B) *Administrative approval for conforming structures.*

(1) Administrative approval may be authorized for remodel, change of use, reconstruction/repair (no change to total dimensions) within the existing footprint of the structure.

(2) Administrative approval may be authorized for additions to commercial and institutional structures as follows:

(a) Additions less than six inches above finished grade may be granted if the addition meets all the requirements of this chapter.

(b) Additions greater than six inches above finished grade may be granted if additions do not exceed 500 square feet of gross floor area and meet all the requirements of this chapter.

(c) Outdoor waiting activity area subject to the following:

1. Outdoor waiting activity area(s) shall be accessory to restaurant use. This section shall not apply to drive-in restaurants.

2. Outdoor waiting activity area(s) shall have no scheduled events or activities before 7:00 a.m. nor after 11:00 p.m. on any day. There will be no music or games between 11:00 p.m. and 7:00 a.m.

3. No cooking or serving utilities including grills, bars or drink dispensers shall be permitted. All such cooking and serving utilities shall be contained within the principal building.

4. Lighting and sound (including music or noise) must comply with the Town Code. Signage shall comply with the Town Code, including signs on umbrellas.

5. The area must be kept clean of litter and maintained in a safe and sanitary condition.

6. Appropriate waste receptacles with affixed lids shall be provided.

7. On sides not adjoining the principal structure the area designated as outdoor waiting activity area(s) shall be bordered by minimum four foot fence, with the exception of elevated, covered decks for which fencing requirements are already in place, and shall be buffered with landscaping as set forth in § 153.073(F)(2)(b).

8. Outdoor waiting activity area(s) may not be roofed or shaded in any way other than standard table umbrellas. Erection of a tent subject to a special use or event permit from the town is not prohibited.

9. Outdoor waiting activity area(s) shall comply with minimum parking requirements for the primary structure as set forth in § 153.076.

(C) State of emergency approvals.

(1) When a state of emergency is declared by the Mayor, permits for all reconstruction/repair to damaged commercial industrial and institutional sites may be administratively approved subject to the following conditions:

(a) The repair will not make the property more nonconforming than prior to the damage.

(b) The reconstruction/repairs are in the same footprint and same dimensions as prior to the damage.

(c) The damage is less than 50% of the structure valuation prior to the damage.

(2) If these conditions (items (a) to (c), above) cannot be met, the Planning Board and Board of Commissioners shall review the application subject to regulations in § 153.357.

(D) Administrative approval procedures.

(1) All plans for remodel, change of use, reconstruction/repair and additions shall meet regulations outlined in § 153.355, including the following minimum requirements:

(a) Current survey and site plan (seven copies for commercial) with proposed changes drawn to scale sealed by a North Carolina licensed surveyor, engineer, or architect;

(b) Written health department approval for improvements;

(c) Changes to floor plan and building elevations when applicable;

(d) Applicable review fees paid.

(2) Commercial plans will be reviewed by:

(a) The Public Services Department;

(b) The Police Department;

(c) The Fire Department;

(d) Other departments or agencies, if applicable.

(3) All staff and departmental conditions shall be addressed prior to issuance of a building permit.

(4) The Planning Director or his designee will provide written approval to the building inspector prior to issuance of a building permit.

(5) The administrative approval time frame shall be approximately ten business days if all requirements are met.

(6) Other projects not meeting the regulations of this section will be subject to § 153.357.

(7) If administrative approval is denied, the application shall be reviewed by the Planning Board and Board of Commissioners subject to regulations in § 153.357.

(E) *Administrative approval for conforming conditional use site plans.* Additions to site features, not exceeding 50% of the existing site feature, less than six inches above finished grade may be granted if the addition meets all the requirements of this chapter.

(Ord. 92-03, passed 1-22-92; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 03-17, passed 12-8-03; Am. Ord. 07-18, passed 10-24-07; Am. Ord. 11-11, passed 6-13-11; Am. Ord. 13-16, passed 10-14-13; Am. Ord. 14-04, passed 3-10-14)

**§ 153.360 VESTING OF RIGHTS AND PERMIT CHOICE.**

(A) Rights granted in accordance with the provisions of this chapter shall vest for a period of ~~two~~ one years only upon site plan approval by the Board of Commissioners or administrative approval, excepting site specific vesting plans. This provision is not intended to extend or reduce any time requirements set forth in the North Carolina General Statutes [(NCGS § ~~160A-385(b)(5)~~ **160D-108**], North Carolina Building Code, the town code or any other governmental regulation applicable to the project for which the site plan approval is granted.

(B) Permit Choice. If development regulations change after the time of full application submittal, in accordance with § 153.355, and prior to the time in which the decision is made by the appropriate authority, the applicant may choose which version of the development requirements will apply to the application. [(NCGS § 160D-208(b))]

(C) A site specific vesting plan. A vested right established by a site specific vesting plan shall run for a period of two years from the date of the approval of the development application. For the purposes of this ordinance, a site specific vesting plans shall be as follows:

1. A special use permit approved by the Board of Commissioners.
2. Subdivision final plat approval.

(D) Multi-phase development plan. A multi-phase development plan is vested for a period of seven years from the date of approval by the Board of Commissioners. A multi-phase development plan is vested for the entire development with the zoning and subdivision regulations in place at the time of approval. For the purposes of this subsection, a multi-phase development shall mean a development containing 15 acres or more that is submitted for development approval to occur in more than one phase and is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of approval of the master development approval plan. Multi-phase developments shall be subject to approval as special use permits according to § 153.363.

(E) Development agreement as approved by the Kill Devil Hills Board of Commissioners according to the provisions of NCGS § 160D, Article 10.

(F) The procedures for administrative development approval are set forth in §153.363 of this ordinance.

(G) The procedures for final plat approval are established in the Subdivision Ordinance, Chapter 152, of the Kill Devil Hills Code of Ordinances.

(H) The procedures for a special use permit are set forth in §153.363 of this ordinance.

1. Each site-specific vesting plan shall include the information required by Kill Devil Hills for approval as a special use permit.
2. East site-specific vesting plan shall follow the notice and hearing procedures for special use permits.

3. An approved site specific vesting plan and its conditions may be amended with the approval of the applicant and Kill Devil Hills in the same manner as required for the special use permit.

4. The Kill Devil Hills Board of Commissioners may extend the vesting period up to five years following the same notice and hearing procedures used for the original vesting approval upon finding that:

a. The permit (approval) has not yet expired;

b. Conditions have not changed so substantially to warrant a new application; and

c. The extension is warranted in light of other relevant circumstances as determined by the Board of Commissioners.

5. Following the establishment of a vested right upon the approval of a site specific vesting plan, the Planning Director shall issue a written statement acknowledging the vested right which describes the duration of the vesting plan and other information deemed necessary to administer the vested right.

6. The vested right shall confer upon the landowner the right to undertake and complete the development use of the property as established in the site-specific vesting plan. Failure to comply with the approved terms and conditions of the site-specific vesting plan shall result in a forfeiture of vested rights. A vested right shall attach to and run with the land.

#### I. Limits of site-specific vesting plans.

1. Nothing in this ordinance shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval of the Kill Devil Hills Zoning Ordinance. The development remains subject to subsequent review and approvals to ensure compliance with the terms and conditions of the original approval.

2. The establishment of a vested right according to the ordinance 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 that are general in nature and applicable to all property subject to land use regulations by Kill Devil Hills.

3. New and amended zoning regulations that would apply except for the vested right shall become effective upon the expiration or termination of the vested right established by the ordinance.

4. Upon issuance of a building permit, the expiration provisions of NCGS § 160D-1111 and NCGS § 160D-1115 shall apply except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right is outstanding.

5. Any vested right for a site-specific vesting plan is subject to the exceptions set forth in NCGS § 160D-108.1.

6. Notwithstanding any provision of this section, the establishment of a vested right under this section shall not preclude change, or impair the authority of Kill Devil Hills to adopt and enforce development regulation provisions governing non-conforming uses or situations.

**7. A sketch plan or document that fails to describe the type and intensity of use for a specific parcel or parcels of land does not constitute a vesting plan. A variance shall not constitute a site-specific vesting plan or a condition of approval to secure a variance constitute a site-specific vesting plan.**

(Ord. 98-04, passed 6-22-98; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-04, passed 6-27-01; Am. Ord. 02-14, passed 7-24-02)

**§ 153.361 PERMIT APPLICATIONS FOR PERMITTED USES.**

*(A) Single-family detached and duplex residential dwellings.*

(1) All applications for building permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon. The application shall include such other information as may be required by the laws of the United States, the state, the county or this chapter, including:

(a) Existing or proposed buildings or alterations;

(b) Existing or proposed uses of the building and land;

(c) The number of families, housekeeping units or rental units the building is designed to accommodate;

(d) Conditions existing on the lot; and

(e) Any other matters which may be necessary to determine conformance with, and provide for, the enforcement of this chapter. Any application and supporting materials may be submitted by the official administering this chapter to the various department supervisors of the town, and those department supervisors shall respond to the submitting official prior to the expiration of the building permit letting period.

(2) One copy of the plans shall be returned to the applicant by the Building Inspector, after the Building Inspector and the Zoning Administrator have marked the copy either as approved or disapproved and attested to the same by their signatures on such copy. The second copy of the plans, similarly marked, shall be retained by the Inspections Department.

(Ord. 91-08, passed 11-18-91)

*(B) Multi-family, group development projects, group housing projects and commercial buildings; generally.*

(1) Site plans for the uses listed in this section, when listed as permitted uses within a district, must be **approved reviewed** by the Planning Board in accordance with the provisions of this chapter and approved by the Board of Commissioners, including:

(a) Multi-family residential dwelling containing three or more dwelling units;

(b) Group development projects consisting of two or more principal buildings devoted to a common or similar use and constructed on a single lot where permitted in the specified districts established by this chapter;

(c) Apartment buildings;

- (d) Condominiums;
- (e) Townhouses;
- (f) Hotels, motels or motor lodges;
- (g) Business, commercial or industrial buildings;
- (h) Recreation or entertainment parks, centers or structures and night clubs;
- (i) Docks, piers, marinas and all over-the-water structures except private over-the-water piers, boathouses and bulkheads accessory to a single- or two-family private dwelling; and
- (j) All other uses except single-family detached and duplex residential dwellings.

(Ord. 92-03, passed 1-22-92)

~~(C) *Phasing.* Phased projects are considered an unusual circumstance and shall be approved only if deemed in the best interest of the town. Phased approval shall be valid for a period at least two years from the date of approval by the Board of Commissioners. All existing phased projects approval shall be null and void two years from the date of approval of this section. These projects with a specific expiration date are exempt.~~

(Ord. 91-08, passed 11-18-91)

(Am. Ord. 01-02, passed 2-28-01)

#### **§ 153.362 PERMIT APPLICATIONS FOR ~~CONDITIONAL~~ SPECIAL USES.**

(A) *Submission.* Submission of a site plan for ~~conditional~~ special use shall be subject to those requirements outlined in § 153.355 through § 153.358. The application shall indicate the section of this chapter under which a permit is being sought and shall contain the information required by the appropriate section and such other information as may be required to insure compliance with this chapter.

(B) *Prerequisite filings.*

(1) Prior to ~~the consideration of an item~~ review by the Planning Board and the placing of a site plan upon the agenda of the Planning Board for ~~consideration~~ comment, all town department reports and recommendations shall be filed with the Planning Director.

(2) All evidence of applications and all supplementary, nonlocal permits and approvals necessary for the particular project shall be filed with the Planning Director.

(3) On any site containing more than ½ acre, the necessary land disturbing permit shall have been secured, and the plans approved commensurate with local ordinances shall be filed as a part of the application.

(4) If there is any change in the office of the Planning Department, such items shall be filed with the appropriate municipal official prior to the matter being considered and placed on the agenda of the Planning Board.

(C) *Review.* The Planning Board shall review the application for a ~~conditional~~ special use permit or other permits submitted in accordance with this procedure and shall refer the application to the department heads and the town officials referred to in § 153.355 for their review. These

department heads and town officials designated by the Board of Commissioners shall submit their recommendation in writing as part of the evidentiary hearing, ~~to the Planning Board. The Planning Board shall review all recommendations as well as the application for a conditional use permit and shall submit its recommendation as to approval or disapproval along with such conditions as it may deem necessary to the Board of Commissioners.~~

(D) ~~Public hearing and required findings.~~ Approval process.

(1) A quasi-judicial hearing by the Board of Commissioners will be required for all special use decisions.

~~(2) (4) When it is deemed desirable by~~ The Planning Board may provide preliminary forum for review of quasi-judicial decision, provided that no part of the forum recommendation may be used as a basis for the deciding board. ~~or the Board of Commissioners, a public hearing may be held. Notice shall be given at least 15 days in advance of such public hearing. The owner of the property for which the conditional use is sought or his agent shall be notified by mail. Notice of the hearing shall be posted on such property for at least ten days prior to the public hearing. The cost of giving any such notice shall be paid by the applicant to the Planning Board prior to the Planning Board meeting at which the application is reviewed.~~

(3) The quasi-judicial hearing shall be conducted in accordance with provisions of § 153-363.

~~(2)~~ (4) Any party may appear in person, or by agent or attorney.

~~(3)~~ (5) Before the Board of Commissioners may grant any ~~conditional~~ special use permit, the Board shall make affirmative findings that:

(a) The applicant has met the requirements of this chapter and any other applicable ordinances and state law;

(b) The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted;

(c) The use, as proposed, will not overburden the firefighting capabilities and the municipal water supply capacity of the town as such facilities and capabilities will exist on the completion date of the ~~conditional~~ special use for which application is made.

(E) *Granting ~~conditional~~ special use permits.* In granting any ~~conditional~~ special use permit, the Board of Commissioners may prescribe appropriate conditions and safeguards, including time and deed limitations imposed in conformity with this chapter. Violation of those conditions and safeguards, when made a part of the terms under which the ~~conditional~~ special use permit is granted, shall be considered a violation of this chapter and will be punishable under § 10.99. The Board of Commissioners may prescribe a time limit within which the action for which the ~~conditional~~ special use permit is required shall be begun or completed. Failure to comply within the time limit set shall void the ~~conditional~~ special use permit.

(F) *Approval of ~~conditional~~ special use permits.* The Board of Commissioners may approve permits for ~~conditional~~ special uses in the zoning districts where such ~~conditional~~ special uses are specified by this chapter. Where additional permits are required for group development projects in districts where such development may be allowed, those applications for such permits shall also be processed under the procedures of the subchapter. The Board of Commissioners may impose such

reasonable and appropriate conditions and safeguards upon these **conditional special** use permits as to insure that the spirit and intent of this chapter is preserved and that such **conditional special** use will not adversely affect the public interest.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 03-17, passed 12-8-03) Penalty, see § 10.99

## **§ 153.363 DECISION AND NOTIFICATION PROCEDURES**

### **(A) Administrative**

**1. Planning Director or designee shall give written notice to the landowner and applicant (if different than owner) of the determination of the development application. The written notice shall be delivered by personal delivery, electronic mail or first-class mail. If delivered by first class mail, the determination shall be deemed received 10 days from date of deposit with the United States Postal Service. Electronic notification shall be deemed received on date sent.**

### **(B) Legislative**

**1. Shall be reviewed by the Planning Board and Board of Commissioners.**

**2. Zoning Map Amendments.**

**a. Zoning map amendment hearing notification shall be mailed via first class mail to the owners of the affected property and all parcels of land abutting that parcel of land at least 10 days but not more than 25 days prior to the hearing.**

**b. The Town shall prominently post the notice of a zoning map amendment hearing on the site proposed for amendment or an adjacent public street or highway. The notice shall be posted in the same time period as the mailed notices.**

**c. The Town shall publish the notice of a zoning map amendment hearing once a week for two consecutive weeks not less than 10 days or more than 25 days before the scheduled hearing date.**

**d. The Town shall post notice of a zoning map amendment hearing on the Kill Devil Hills webpage not less than 10 days or more than 25 days before the scheduled hearing date.**

**e. Large scale zoning map amendments of 50 lots or greater, shall follow notification procedures as outlined in NCGS § 160D-602(b) (as amended).**

**3. Zoning Text Amendments.**

**a. The Town shall publish the notice of a legislative hearing once a week for two consecutive weeks not less than 10 days or more than 25 days before the scheduled hearing date.**

**b. The Town shall post notice of a legislative hearing on the Kill Devil Hills webpage not less than 10 days or more than 25 days before the scheduled hearing date.**

**c. Mailed notification are not required by North Carolina Law.**

d. Other notice procedures may be implemented based on the specifics of the request and the number of properties involved in the amendment.

(C) Quasi-judicial (Evidentiary) Hearing

1. Special use permits shall be heard by the Board of Commissioners. The Planning Board shall provide a preliminary forum for review of special use permits.

2. Variances and appeals of administrative decisions shall be heard by the Zoning Board of Adjustment.

3. Certificates of Appropriateness shall be heard by the Historic Landmark Commission.

4. Notification of Evidentiary Hearing as listed above.

a. Hearing notification shall be mailed via first class mail to the owners of the affected property and all parcels of land abutting that parcel of land at least 10 days but not more than 25 days prior to the hearing. The Board may continue a hearing that has been convened without further notification. 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.

b. The Town shall prominently post the notice of hearing on the site proposed for amendment on an adjacent public street or highway right of way. The notice shall be posted in the same time period as the mailed notices.

c. The Town shall publish the notice of a legislative hearing once a week for two consecutive weeks not less than 10 days or more than 25 days before the scheduled hearing date.

d. The Town shall post notice of a legislative hearing on the Kill Devil Hills webpage not less than 10 days or more than 25 days before the scheduled hearing date.

§ 153.364 CONFLICTS OF INTEREST

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

(B) Appointed Boards. Members of appointed boards shall not vote on any advisory or legislative decisions regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board

member shall not vote on any zoning amendment is a person with whom the member shall a close familial, business, or other associational relationship.

(C) Administrative Staff. No staff member shall make a final decision on an administrative decision required by the Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact of 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, decision shall be assigned to the supervisor of the staff person or such person as may be designated by designated by the development regulation or other ordinance. Not staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the Town.

(D) Quasi-judicial Decisions. A member of any board exercising quasi-judicial function pursuant to this chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate the affected person's 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 than is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person or financial interest in the outcome of the matter.

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

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

(NCGS § 160D-109)

#### § 153.365 ENFORCEMENT

(A) Any work or activity subject to regulations pursuant to this chapter or other applicable local development regulations or any State law delegated to the local government in undertaken in substantial violation of any State to local law, or in a manner that endangers life or property, staff may order that work or activity to be immediately stopped.

(B) When an activity is undertaken in violation of the development regulations adopted pursuant to this chapter or other local development regulations or any State law delegated to the local government for enforcement purposes, a notice of violation can be issued in accordance with § 10.99. Notice of violation may be posted on the property.

**APPENDIX A: LANDSCAPING GUIDE**

The following table shall serve as a guide for determining minimum plant size.

<b>Plant Material</b>	<b>Perimeter Landscaping Areas, Abutting Vacant Lands, Fences and Berms</b>	<b>All Other Planting</b>
Tree		
Deciduous	1½ inches (diam.)	2 inches (diam.)
Evergreen	5 feet (hgt)	8 feet (hgt)
	1½ inches (diam.)	1½ inches (diam.)
	3 feet	5 feet
Shrub:		
Deciduous	15 inches (hgt)	24 inches (hgt)
Evergreen	12 inches (hgt)	18 inches (hgt)

<b>MAJOR TURF GRASSES AND GROUND COVERS</b>			
<b>Major Turf Grasses</b>	<b>Establishment</b>	<b>Culture</b>	<b>Fertilization Requirements</b>
Common Bermuda grass	Seeding, sprigs, plugs, sod	Most soil types, sun/drought resistant (will turn brown, but "green-up" rapidly, pH-6.5	Medium
Hybrid Bermuda grasses (several varieties - differ in cold tolerances and leaf texture)	Sprigs, plugs, March - April 15, sod anytime	Sun, irrigate to maintain color, soil types pH-6.5	High
Centipede grass	Sprigs, sod, seed (not usually successful)	Sun to light shade pH-5.5	Low (sparse nitrogen requirements) avoid late summer fertilization
St. Augustine grass (Charleston grass)	Sprigs, plugs, sod	Sun-shade moist soils pH-6.5 up (tolerates alkaline soils)	Medium
Zoysia grass	Seed, springs slow to germinate	Sun to medium	Low to medium
American beach grass	Sprigs, plugs	Sun to light shade, salt tolerant, dense sand	Medium (substantial nitrogen requirements)

Weeping love grass		Warm growing season, drought/salt tolerant	Low maintenance
--------------------	--	--	-----------------

*Notes:*

(A) Sprigging and plugging of all turf grass varieties is most successful when accomplished between March 15 and April 15. Sod may be laid at any time, though irrigation is essential for sod establishment during the growing season.

(B) The winter rye grain and fescue grass are cool-season adaptable, for example, they can be used for overseeding permanent lawn areas for winter color. They will not perform year round as their shallow root system cannot tolerate the heat of our summer months.

(C) Ground covers can be substituted for lawn grasses. Several adaptable plants are:

- (1) English ivy (*Hedera Helix*): grows rapidly once established, needs shade first year or two of growth, 4 inches high.
- (2) Common periwinkle (*Vinca Minor*): shade, blue flower, 6 inches to 8 inches high.
- (3) Border grasses (*liriope Muscare*, *Ophiopogon*): spreads slowly, sun or shade, many variety species, 4 inches to 12 inches high.
- (4) Japanese spurge (*Euphorbia Japonica*): shade, 8 inches high.
- (5) Junipers (*Juniperus*, spp.): (same genera) sun, dry, 4 inches to 12 inches high.
- (6) Blue fescue (*Festuca*, spp.): sun, will not form solid carpet.

**TABLE A: DROUGHT-TOLERANT PLANTS**

<b><i>Botanical Name</i></b>	<b><i>Common Name</i></b>
<i>Berberis thungergii</i>	Japanese barberry
<i>B. X. mentorensis</i>	Mentor barberry
<i>Buddleia davidii</i>	Butterfly bush
<i>Chaenomeles japonica</i>	Japanese quince
<i>Cotinus coggygria</i>	Smoke bush (or smoke tree)
<i>Elaeagnus angustifolia and pungens*</i>	Russian olive thorny eleagnus
<i>Hamamelis virginiana</i>	Common witch hazel
<i>Hebe spp.</i>	Hebe
<i>Hypericum spp.</i>	Saint-John's wort
<i>Juniperus spp.*</i>	Juniper
<i>Kolkwitzia amabilis</i>	Beauty bush
<i>Ligustrum spp.</i>	Privet
<i>Myrica cerifera*</i>	Wax myrtle

<i>Myrtus communis</i>	Common myrtle
<i>Nerium oleander</i>	Oleander
<i>Pinus Thunbergi</i>	Japanese Black Pine
<i>Pittosporum tobira</i> *	Japanese pittosporum
<i>Potentilla fruticosa</i>	Bush cinquefoil
<i>Prunus maritima</i>	Beach plum
<i>Punica granatum</i>	Pomegranate
<i>Raphiolepis umbellata</i> or <i>indica</i>	Yeddo-hawthorne, Indian hawthorne
<i>Rhamnus</i> spp.	Buckthorn
<i>Rhus</i> spp.	Sumac
<i>Robinia kelseyi</i>	Locust
<i>Rosa</i> spp.	Carolina rose, Rugosa, Cherokee, Lady Banks, Japanese rose
<i>Rosmarinus officinalis</i>	Rosemary
<i>Salix tristis</i>	Dwarf grey willow
<i>Santolina chamaecyparissus</i> *	Lavender cotton
<i>Sophora davidii</i>	Vetch
<i>Tamarix</i> sp.	Tamarix
<i>Vaccinium ashei</i>	Blueberry
<i>Viburnum lentago</i>	Nannyberry
<i>Vitex agnus-castus</i>	Chaste tree
<i>Yucca aloiflia</i>	Spanish dagger
<i>Yucca filamentosa</i>	Adams needle
<i>Celastrus scandens</i>	American bittersweet
<i>Clematis paniculata</i>	Sweet autumn clematis
<i>Cotoneaster</i> spp.	Cotoneaster
<i>Hibiscus syriacus</i>	Shrub althea
<i>Hex glabra</i> and <i>opaca</i> *	Inkberry, American holly
<i>Hex vomitoria</i> *	Yaupon holly
<i>Hex vomitoria nana</i> *	Dwarf yaupon
<i>Pinus mugo</i>	Muhgo pine
<i>Eunymus japonicus</i> *	Japanese Euonymus
<i>Smilax</i> spp.	Smilax, catbriar
<i>Spireas</i> spp.	Spirea
<i>Syringa vulgaris</i>	Common lilac
<i>Trachycarpus fortunei</i>	Windmill palm

\*Plants have proven to withstand salt exposure and would be appropriate for landscaping in close proximity to the Atlantic Ocean.

<b>TABLE B: DROUGHT-TOLERANT TREES, VINES AND SHRUBS</b>	
<b><i>Botanical Name</i></b>	<b><i>Common Name</i></b>
<b><i>Trees Tolerant of Dry Ground (Once Established)</i></b>	
Albizia julibrissen	Mimosa, silk tree
Amelanchier Canadensis	Service berry
Cedrus atlantica	Atlas hackberry
Gleditsia triacanthos	Honey locust
Koelreuteria paniculata	Golden raintree
lagerstroemia indica	Crape myrtle
Malus sp. and vars.	Crab apple
Melia azedarack	Chinaberry
Morus spp.	Mulberry
Populus sp.	Poplar
Quercus spp.*	Oak
Robinia sp.	Locust
Salix pentandra	Laurel willow
Sorbus sp.	Mountain ash
Tilia cordata	Little leaf linden
Ulmus parvifolia	Chinese elm
Zelkova serrata	Japanese zelkova
<b><i>Vines Needing Only a Moderate Amount of Water (Once Established)</i></b>	
Anisostichus capreolatus	Cross vine
Lonicera spp.	Honeysuckle
Gelsemium sempervirens	Carolina Jasmine
Trachelospermum jasminoides	Confederate jasmine
Rosa banksiac	Lady Banks rose
Polygonum aubertii	Silver lace vine
Smilax lanceolata	Greenbriar smilax
Campsis radicans	Trumpet vine
Wisteria floribunda	Japanese wisteria (white, purple, pink)
<b><i>Shrubs Needing Moderate Water (Once Established)</i></b>	
Illicium anisatum	Japanese anise

Aucuba japonica	Japanese aucuba
Michelin figo	Banana shrub
Callicarpa americana	Beautybush
Cortaderia selloana	Pampas grass
Euonymus spp.*	Euonymus
Pyracantha spp.	Firethorn
Jasminum floridum	Showy jasmine
Jasminum nudiflorum	Winter jasmine
Prunus caroliniana	Southern cherry laurel
Mahonia bealei	Leatherleaf mahonia
Nandina domestica	Nandina
Osmanthus fragrans	Sweet olive, tea olive
Osmanthus americanus	Devilwood
Photinia glabra	Japanese photinia
Photinia serrulata	Chinese photinia
Podocarpus macrophyllus	Japanese yew
Lonicera fragrantissima	Winter honeysuckle
<b><i>Shrubs Somewhat Drought-Resistant in Good Loamy Soil</i></b>	
Abelia x grandiflora	Glossy abelia
Raphiolepis indica and vars.	Indian hawthorne
Cleyera japonica	Cleyera
Ternstroemia gymnanthera	
<b><i>Drought-Tolerant Trees</i></b>	
Pyrus calleryana	Bradford pear
Sapium sebiferum	Chinese tallow tree (sometimes called "popcorn tree")
<b><i>Trees Moderately Drought-Tolerant</i></b>	
Eriobotrya japonica	Loquat
Sabal palmetto*	Cabbage palm
Cedrus deodara	Deodar cedar
Ginkgo biloba	Maidenhair tree
Pinus spp.*	Pines
Juniperus virginiana	Red cedar
Juniperus chinensis	Hollywood Juniper
*Plants have proven to withstand salt exposure and would be appropriate for landscaping in close proximity to Atlantic Ocean.	

(Am. Ord. 01-02, passed 2-28-01)

**APPENDIX B: FINANCIAL RESPONSIBILITY/OWNERSHIP FORM FOR SOIL EROSION AND SEDIMENTATION CONTROL**

No person may initiate any land-disturbing activity on 1/2 or more contiguous acres as covered by the soil erosion and sedimentation control ordinance before this form and an acceptable erosion and sedimentation control plan have been completed and approved by the Zoning Administrator of the town of Kill Devil Hills. (Please type or print and, if question is not applicable, place N/A in the blank.)

**PART A.**

1. Project Name \_\_\_\_\_

2. Location of land-disturbing activity: \_\_\_\_\_

\_\_\_\_\_ and Highway  
Street \_\_\_\_\_

3. Approximate date land-disturbing activity will be commenced: \_\_\_\_\_

4. Purpose of development (residential, commercial, industrial and the like): \_\_\_\_\_

5. Approximate acreage of land to be disturbed or uncovered: \_\_\_\_\_

6. Has an erosion and sedimentation control plan been filed? \_\_\_\_\_  
Yes \_\_\_\_\_ No \_\_\_\_\_

7. Person to contact should sediment control issues arise during land-disturbing activity:

Name \_\_\_\_\_

Telephone \_\_\_\_\_

8. Landowner(s) of Record (use blank page to list additional owners):

Name(s) \_\_\_\_\_

Current Mailing Address

Current Street Address

\_\_\_\_\_

\_\_\_\_\_

City State Zip

City State Zip

9. Recorded in Deed Book No. \_\_\_\_\_ Page No. \_\_\_\_\_

**PART B.**

1. Person(s) or firm(s) who are financially responsible for this land-disturbing activity (use a blank page to list additional persons or firms): \_\_\_\_\_

Name of Person(s) or Firm(s)

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Telephone

2. (a) If the Financially Responsible Party is not a resident of North Carolina, give name and street address of the North Carolina Registered Agent.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Telephone

(b) If the Financially Responsible Party is a Partnership, give the name and street address of each General Partner (use blank sheet to list additional partners). If the Financially Responsible Party is a Corporation, give name and street address of the Registered Agent.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip

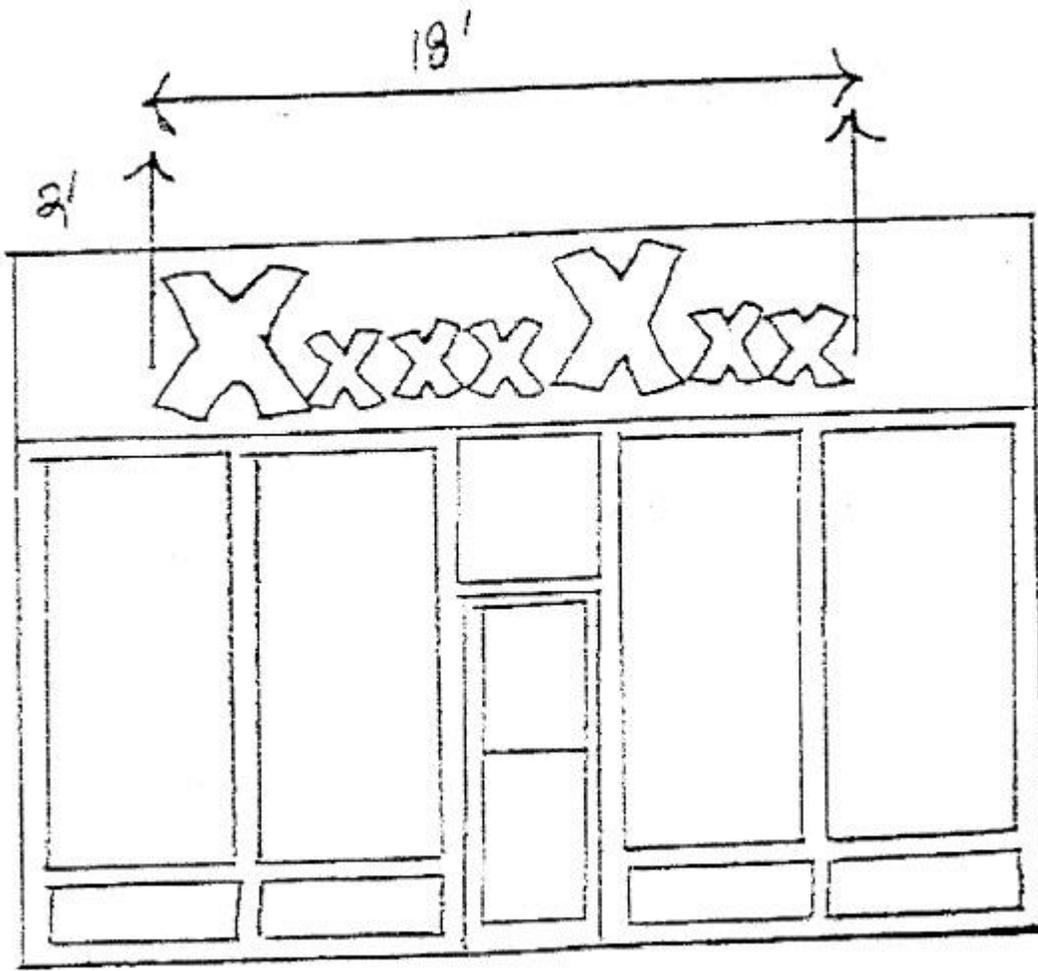
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City State Zip

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Telephone

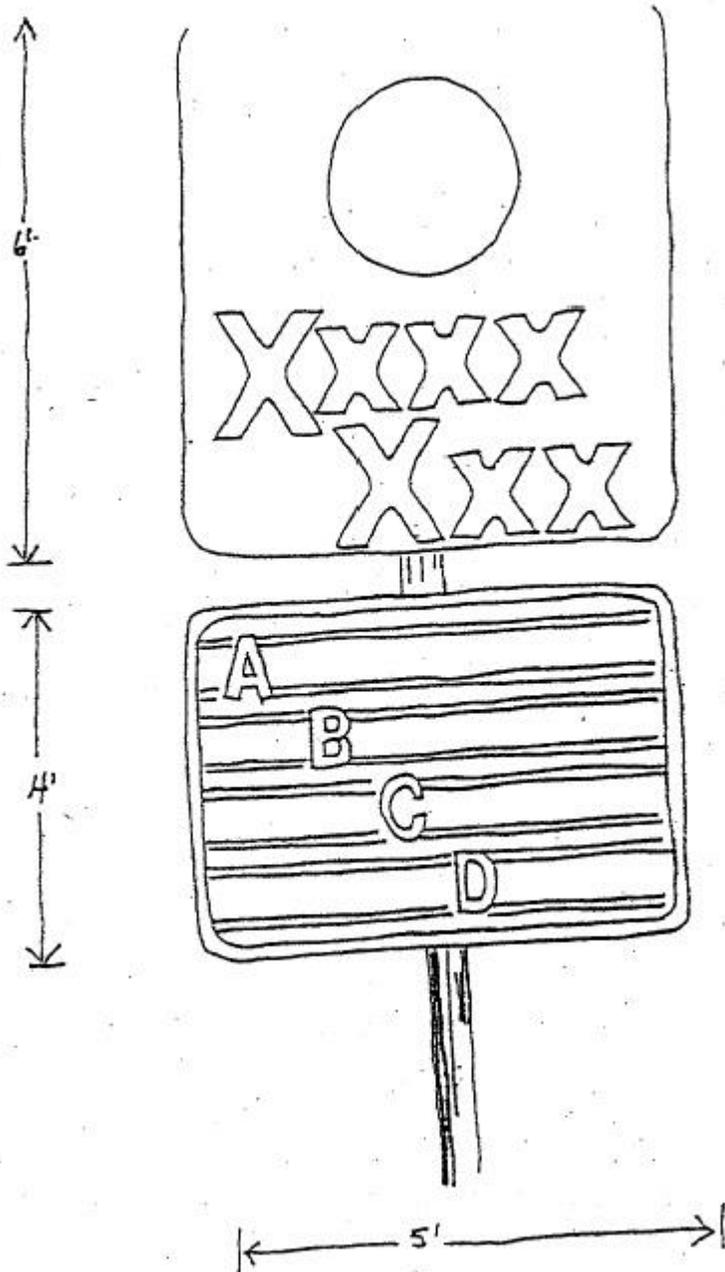
\_\_\_\_\_  
Telephone

The above information is true and correct to the best of my knowledge and belief and was provided by me under oath. (This form must be signed by the financially responsible person if an individual or

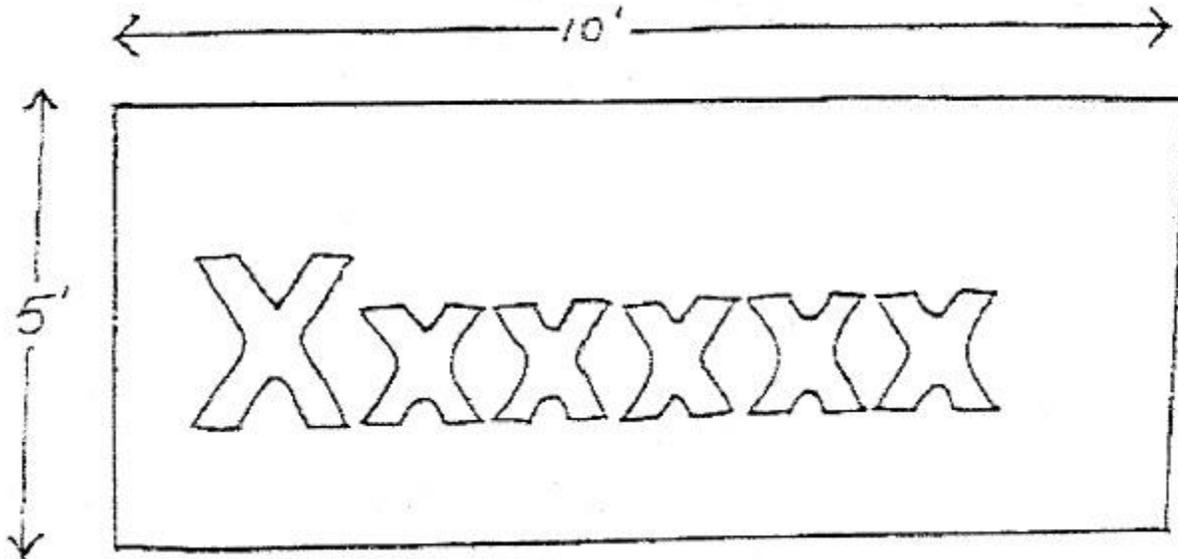




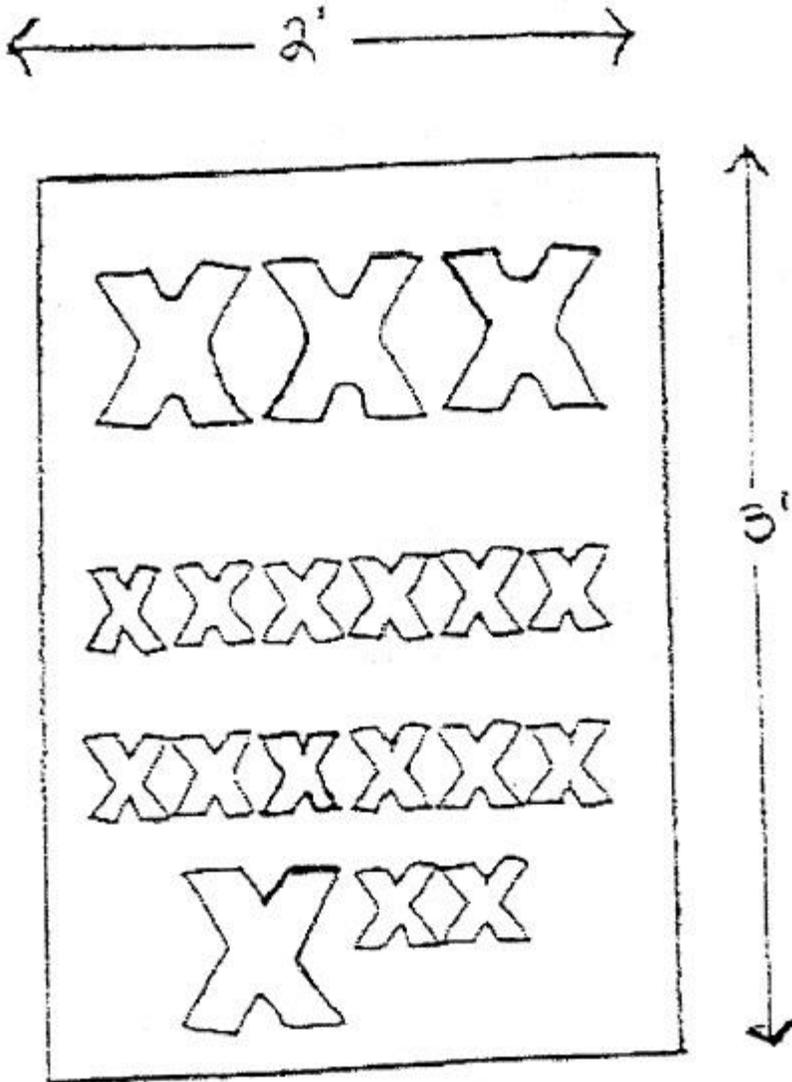
*Free-Standing Sign*



**Banners**



***Temporary Message Board (For Emergencies)***



(Am. Ord. 01-02, passed 2-28-01)

**APPENDIX D: ZONING AMENDMENT APPLICATION**

KILL DEVIL HILLS  
ZONING AMENDMENT APPLICATION

Name \_\_\_\_\_

Address \_\_\_\_\_

Explanation of request \_\_\_\_\_  
\_\_\_\_\_

Present zoning classification \_\_\_\_\_

Zoning change request \_\_\_\_\_



( ) the following section(s) of the text of the ordinance:

---

insofar as the map and/or the ordinance relates to the use of the property described in the attached form entitled "Application for a Hearing."

STATEMENT BY APPELLANT: (In the space provided below, or on the back of this form, present your interpretation of the ordinance provisions in question and state what reasons you have for believing that your interpretation is the correct one. In addition, state what facts you are prepared to prove to the board of adjustment that should lead the board to conclude that the decision of the zoning administrator was erroneous.)

STATEMENT BY THE PLANNING DEPARTMENT STAFF:

(1) Staff believes that the ordinance sections in question should be interpreted as follows:

(2) The reasons for the above stated interpretation are as follows:

(3) Based upon this interpretation of the ordinance, Appellant was denied a permit. For the following reasons, based upon the following facts which Staff is prepared to demonstrate to the Board of Adjustment, the decision of the Zoning Administrator should be upheld:

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.

\_\_\_\_\_  
Signature of Applicant

See Attachments

Form 2

TOWN OF KILL DEVIL HILLS  
STATE OF NORTH CAROLINA

ORDER INTERPRETING THE ZONING ORDINANCE

The Board of Adjustment for the town of Kill Devil Hills, having held a public hearing on \_\_\_\_\_ to consider application number \_\_\_\_\_ submitted by \_\_\_\_\_

a request for an interpretation of (the zoning map) (Section(s) \_\_\_\_\_ of the zoning ordinance) insofar as the map and/or the ordinance affect the use of the property located at \_\_\_\_\_ and

having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. There was substantial evidence in the record to show the following FACTS:

2. (a) The resolution of this case depends solely upon an interpretation of the ordinance language, without regard to the particular facts of this case. Therefore, it is the Board of Adjustment's CONCLUSION that the following section or provisions of the ordinance shall in this case and hereafter be interpreted as follows:

or

(b) The resolution of this case depends upon an interpretation of words or phrases in the ordinance that can only be interpreted in the light of a particular factual context. Consequently, for purposes of this case only, and for the following reasons, it is the board of adjustment's CONCLUSION that the ordinance language in question shall be interpreted in the following manner:

The following facts and conclusions are set forth on an attached sheet to this order identified as:

THEREFORE, IT IS ORDERED that the decision of the Zoning Administrator is hereby

( ) Affirmed

( ) Reversed

( ) Modified as follows: \_\_\_\_\_

In addition, IT IS FURTHER ORDERED that the following action be taken:

Ordered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

NOTE: If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Dare County within thirty (30) days from after a written copy of the decision is mailed to him in accordance with the Rules of Civil Procedure. See Section 153.327 of the Kill Devil Hills Town Code.

Application No. \_\_\_\_\_

Form 3

TOWN OF KILL DEVIL HILLS  
STATE OF NORTH CAROLINA  
APPLICATION FOR A VARIANCE

Month                      Day                      Year

TO THE KILL DEVIL HILLS BOARD OF ADJUSTMENT:

I/we \_\_\_\_\_, hereby petition the Board of Adjustment for a variance from the literal provisions of the Kill Devil Hills zoning ordinance because, under the interpretation given to me by the Zoning Administrator, I am prohibited from using the parcel of land described in the attached form ("Application for a Hearing") in a manner shown by the site plan attached to that form. I request a variance from the following provisions of the ordinance (cite paragraph numbers):

so that the above mentioned property can be used in a manner indicated by the site plan attached to the "Application for a Hearing" form, or if the site plan does not adequately reveal the nature of the variance, as more fully described herein (if variance is requested for limited time only specify duration requested):

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board of Adjustment is required to reach three (3) conclusions as a prerequisite to the issuance of a variance: (a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, (b) that the variance is in harmony with the general purposes and intent of the ordinances and preserves its spirit, and (c) that in granting of the variance the public safety and welfare have been assured and substantial justice has been done. In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the board of adjustment that it can properly reach these three (3) required conclusions.

A. THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE. The courts have developed three (3) rules to determine whether in a particular situation "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

(1) If he complies with the provisions of the ordinance, the property owner can secure no reasonable return from, or make no reasonable use of, his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

Staff comment:

(2) The hardship of which the applicant complains results from unique circumstances related to the Applicant's land. (Note: hardships suffered by the applicant in common with his neighbors do not

justify a variance. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the land.)

Staff comment:

(3) The hardship is not the result of the Applicant's own actions.

Staff comment:

B. THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES ITS SPIRIT. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

Staff comment:

C. THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

Staff comment:

Date: \_\_\_\_\_

Signature of Applicant

Attach any additional information necessary for a proper consideration of this application.

Form 4

TOWN OF KILL DEVIL HILLS  
STATE OF NORTH CAROLINA

ORDER GRANTING/DENYING A VARIANCE

The Board of Adjustment for the town of Kill Devil Hills, having held a public hearing on \_\_\_\_\_ to consider application number \_\_\_\_\_, submitted by \_\_\_\_\_

a request for a VARIANCE to use the property located at:

in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS.

1. It is the Board of Adjustment's CONCLUSION that, if the Applicant complies with the literal terms of the ordinance, specifically section(s) \_\_\_\_\_, he (can/cannot) secure a reasonable return from, or make reasonable use of, his property. This conclusion is based on the following FINDINGS OF FACTS:

2. It is the Board of Adjustment's CONCLUSION that the hardship of which the applicant complains (results/does not result) from unique circumstances related to the applicant's land. This conclusion is based on the following FINDINGS OF FACT:

3. It is the Board of Adjustment's CONCLUSION that the hardship is not the result of the Applicant's own actions. This conclusion is based on the following FINDINGS OF FACT:

4. It is the Board of Adjustment's CONCLUSION that, if granted, the variance (will/will not) be in harmony with the general purpose and intent of the ordinance and (will/will not) preserve its spirit. This conclusion is based upon all of the FINDINGS OF FACT listed above, as well as the following:

5. It is the Board of Adjustment's CONCLUSION that, if granted, the variance (will/will not) secure the public safety welfare and (will/will not) do substantial justice. This conclusion is based upon all of the FINDINGS OF FACTS listed above, as well as the following:

THEREFORE, based upon all of the foregoing, IT IS ORDERED that the application for a variance be (GRANTED/DENIED), subject to the following conditions:

Ordered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

NOTE: If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Dare County within thirty (30) days from the date of the filing of the order or the date of delivery of the order to the applicant whichever is later. See Section 153.327 of the Kill Devil Hills Town Code.

(Am. Ord. 01-02, passed 2-28-01)

This amendment to Chapter 153, Zoning, shall be in full force and effect from and after the \_\_\_\_ day of \_\_\_\_\_, 2021. Adopted and approved by the Board of Commissioners of the Town of Kill Devil Hills at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2021, by a vote of \_\_\_\_ in favor and \_\_\_\_ opposed.

SEAL

\_\_\_\_\_  
Ben Sproul  
Mayor

ATTEST:

\_\_\_\_\_  
James Michael O'Dell  
Deputy Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Casey C. Varnell  
Town Attorney

The undersigned hereby certifies that the foregoing official amendment, designated AN ORDINANCE AMENDING CHAPTER 153, ZONING, was placed in the Kill Devil Hills Town Code Book on the \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_.m.

\_\_\_\_\_  
James Michael O'Dell  
Deputy Town Clerk