MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Michael Zehner, Director of Planning & Development

Holly White, Principal Planner

Date: July 24, 2019

Subject: FOCUS Unified Development Ordinance (UDO)

Staff is pleased to provide the attached final clean version draft of the Unified Development Ordinance ("UDO") for your review and consideration, along with a draft of the adoption ordinance. Electronic versions of these documents, as well as previous drafts of the UDO and related materials, will be made available here: https://www.nagsheadnc.gov/338/Unified-Development-Ordinance-UDO-Projec

This final version of the UDO incorporates the revisions previously identified by the Town Attorney, the correction of identified typos and related errors, and the correction of any internal reference/citation errors. Along with adopting the UDO, the adoption ordinance addresses those chapters and sections of the existing Town Code to be repealed or deleted because they are incorporated within the UDO or otherwise obsolete, as well as any references and citations that need to be updated based on the adoption of the UDO.

As the Board is aware, a public hearing on the adoption of the UDO and associated amendments to the Town Code has been scheduled for the meeting on August 7, 2019.

Background

A draft version of the Unified Development Ordinance ("UDO") was produced and delivered to the Technical Committee, Planning Board, and Board of Commissioners on December 18, 2018. The December 18 version of the UDO was reviewed by the Technical Committee, Planning Board, Board of Commissioners, and Town Attorney. Comments from each entity were provided to Staff. These comments were incorporated into a revised final draft that was provided to the Board of Commissioners, Planning Board, and Technical Committee on Friday, May 3, 2019.

The updated final draft UDO was provided again to the Planning Board for discussion at meetings on May 21, 2019 and June 18, 2019; Staff also provided the Planning Board access to a *tracked change* version of the UDO identifying typos and grammatical errors to be addressed, and areas where the Town Attorney had provided comments. Beyond support for the UDO and the efforts involved, there was minimal discussion among the Planning Board members at the meetings, and no comments or suggested edits. The Planning Board unanimously recommended approval of the UDO at their June 18, 2019 meeting.

The Board of Commissioners held a workshop on June 19, 2019 to discuss the draft UDO. The Board of Commissioners were also provided with access to the *tracked change* version of the UDO. The Board of Commissioners did not direct Staff to make any edits to the draft UDO beyond addressing identified grammatical errors, other minor corrections (references), and revisions suggested by the Town Attorney. At the July 3, 2019 Board of Commissioners meeting, the Board scheduled a public hearing for August 7, 2019.

Staff presented a draft version of the adoption ordinance to the Planning Board on July 16, 2019, noting that Staff believed it to be important for the Board to recognize and acknowledge that other chapters of the Town Code would be amended as part of the process to adopt the UDO. Staff summarized that the adoption ordinance would 1) adopt the UDO and delete and replace existing chapters incorporated into the UDO, 2) change citations and references throughout the Town Code from those made obsolete by the deletion of existing chapters and transition to the UDO, 3) delete provisions from the Town Code because of their inclusion in the UDO, and 4), in one instance, readopt relevant sections of the Zoning Ordinance as an attachment to a chapter of the Town Code. The Planning Board acknowledged the scope of the process to adopt the UDO and it was the Board's consensus to reaffirm its previous recommendation of approval.

Next Steps

Prior to the August 7 public hearing Staff will provide materials outlining the scope of the UDO, similar to those materials provided for the Board of Commissioners June 19 workshop. Additionally, tracked change versions of the previous draft of the UDO (identifying changes incorporated into the final version) and of the Town Code (based upon changes incorporated within the adoption ordinance) are available if members of the Board wish to review these documents.

If the Board finds it appropriate to adopt the UDO at the August 7 meeting following the public hearing, the adoption ordinance indicates that the UDO would become effective after 60 days. This will allow Staff to develop the companion Development Manual and hold one or more public workshops to review the UDO and other matters related to land development and permitting.

(DRAFT)
AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; and

WHEREAS, pursuant to N.C.G.S. § 160A-174, the Town may also enact and amend ordinances that define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the Town; and

WHEREAS, pursuant to N.C.G.S. § 160A-371 to 160A-377, the Town may also enact provisions to address the subdivision of land; and

WHEREAS, under the enabling authority granted by other state statutes, the Town may also enact ordinances regulating and addressing flood prevention, soil erosion and sedimentation, stormwater, and grading; and

WHEREAS, pursuant to N.C.G.S. § 160A-363, the Town may elect to combine certain land development ordinances into a unified ordinance; and

WHEREAS, the Town initiated the FOCUS Nags Head project in 2015 to assess progress toward the town's long-term goals, determine emerging needs, and unify the town's goals and actions as it moves forward; FOCUS Nags Head had two main components: the development of a comprehensive plan and the preparation of a unified development ordinance (UDO) to help implement many of the comprehensive plan goals and policies; and

WHEREAS, the FOCUS Nags Head Comprehensive Plan is an official policy document adopted by the Town to strategically plan for and enhance the quality of life and physical character of the community and is built upon many common community values; and

WHEREAS, the town is committed to the implementation of the Comprehensive Plan and desires to address the policy objectives of the plan; and

WHEREAS, in June 2017, the Town of Nags Head initiated the development of a Unified Development Ordinance, as a furtherance of the FOCUS Nags Head planning process; and

WHEREAS, the town finds that the regulations adopted herein will preserve and protect the Nags Head character, environment, tourism-based economy, and sense of place as described in the town's vision; and

WHEREAS, the Town finds that these amendments are consistent with the goals, objectives and policies of the Town's adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's ordinances as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipsis ("..."), shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Town Code.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Town Code shall be amended as follows:

PART I. That Chapter 22, *Floods*, Chapter 28, *Soil Erosion and Sedimentation Control*, Chapter 34, *Stormwater, Fill, and Runoff Management*, Chapter 38, *Subdivisions*, and Chapter 48, *Zoning*, including the *Town of Nags Head Residential Design Guidelines* appendix, are hereby repealed and removed, to be marked as "Reserved", said chapters to be recodified, with modification in some instances, into a Unified Development Ordinance with appendices, dated "Published: July 19, 2019," attached hereto and incorporated herein, to be adopted and incorporated into the Town Code as Part II, Unified Development Ordinance.

PART II. That Section 1-6, *General penalty; enforcement of ordinances; continuing violations*, (b), be amended as follows:

(b) Violations of any provision of the following chapters and sections of this Code or the Unified Development Ordinance shall be a misdemeanor and punishable as provided by G.S. 14-4:

(1) Chapter 4, Articles II, III, and VI and chapter 26, subsection 26-8(b);

(2) Chapter 8, all sections with the exception of sections 8-1, 8-2, 8-4, and 8-62. As to any violation of sections 8-82, 8-83, or 8-84, such violation shall be a class III misdemeanor punishable by a fine of up to $200.00;

(3) Chapter 10, subsection 10-252(d);

(4) Chapter 14, all provisions;

(5) Chapter 20, section 20-2;

(6) Chapter 42, Articles I, II and III, all sections except sections 42-41 and 42-92;

(7) Chapter 26, all sections with the exception of sections 26-1, 26-5 and 26-6 and Chapter 16, section 16-1;

(8) ~~Chapter 34, Section 34-11~~ Section 11.10, Discharge of Stormwater, Pool Water, Hot Tub Water, and De-Watering Effluent, of the Unified Development Ordinance;

(9) Chapter 32, subsections 32-3(c) and (d).

PART III. That Section 1-6, *General penalty; enforcement of ordinances; continuing violations*, (c), be amended as follows:

(c) Violations of the following provisions of this Code or the Unified Development Ordinance shall subject the offender to a civil penalty upon the issuance of a citation for such violation as hereinafter provided. The civil penalty, if not paid to the town treasurer within 15 days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt. Unless otherwise provided by a specific provision of this Code or the Unified Development Ordinance, such civil penalties shall be no more than $500.00 for each violation, and each day any single violation continues shall be a separate violation; except, that for violations of parking ordinances as set out in section 42-163, the civil penalty provisions and procedures therein shall apply:

(1) Chapter 10, all sections with the exception of subsection 10-252(d);

(2) Chapter 18;

(3) Chapter 20; all sections with the exception of section 20-2;

(4) Chapters 12 and 40;

(5) Chapter 42, Article IV and Chapter 16, Article IV;

(6) Chapter 16, Article II;

(7) Chapter 26, sections 26-5, 26-6 and 26-9 and Chapter 16, section 16-1;

(8) Chapter 22, Article II~~, and Chapter 34~~;

(9) Chapter 30;

(10) Chapter 32, all sections with the exception of subsection 32-3(c) and (d);

(11) Chapter 36;

~~(12) Chapter 38;~~

~~(13) Chapter 24;~~

~~(14)~~(12) Chapter 44, all sections with the exception of section 44-76;

~~(15)~~(13) ~~Chapter 48, Zoning~~ Unified Development Ordinance, with the exception of Article 11, Part II, Sedimentation and Erosion Control.

PART IV. That Section 1-6, *General penalty; enforcement of ordinances; continuing violations*, (d), be amended as follows:

(d) Violations of the following provisions of this Code or the Unified Development Ordinance shall subject the offender to either a civil penalty or a criminal penalty, or both, in accordance with the penalty provisions of subsections (b) and (c) of this section, or in accordance with the specific penalty provisions contained within the respective chapter and article, where applicable:

(1) Chapter 6;

(2) Chapter 8, sections 8-1, 8-2, 8-4, 8-7, and 8-62;

(3) Chapter 40, Article II;

(4) Chapter 16, Article III;

(5) Chapter 20, section 20-85;

(6) Chapter 26, sections 26-1, 26-2.1, and 26-13;

(7) ~~Chapter 28~~ Article 11, Part II, Sedimentation and Erosion Control, of the Unified Development Ordinance;

(8) Chapter 42, sections 42-41 and 42-92;

(9) Chapter 44, section 44-76;

(10) Chapter 46.

PART V. That Section 1-6, *General penalty; enforcement of ordinances; continuing violations*, (m), be amended as follows:

(m) Upon determination of a violation of any section of this Code or any other town ordinances, the penalty for which is a civil penalty, the town shall cause a warning citation to be issued to the violator, setting out the nature of the violation, the date of the violation and an order to immediately cease the violation or, if the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, stating a reasonable period of time in which the violation must be abated. The warning citation shall specify that a second citation shall incur a civil penalty. The initial issuance of a warning citation upon a violator as provided above shall not be required for the immediate imposition of civil penalties for a determination of a violation of any of the provisions of ~~Chapter 48, Zoning~~ the Unified Development Ordinance.

PART VI. That Sections 2-231 through 2-234, of Chapter 2, *Administration, Article IV, Boards, Commissions and Committees*, Division 2, *Planning Board*, are deleted in their entirety and replaced with the following:

Refer to Section 2.4, Planning Board, of the Unified Development Ordinance; Secs. 2-231—2-234. - Reserved

PART VII. That the definition of "temporary sign", as contained in Section 4-1, *Definitions*, of Chapter 4, *Amusements, Entertainments, Mass Gatherings and Commercial Outdoor Recreational Uses*, be amended as follows:

Temporary sign means a banner or other advertising device constructed of cloth, canvas, fabric, or other material, which is displayed for a limited period of time. The following signs shall be prohibited:

(1) Prohibited signs as outlined in ~~article VIII, chapter 48 of this Code~~ Article 10, Part III, Sign Regulations, of the Unified Development Ordinance.

(2) Air or gas inflated signs.

(3) Air supported signs including, but not limited to, kites and balloons.

PART VIII. That Article VI, *Commercial-Outdoor Recreational Uses*, of Chapter 4, *Amusements, Entertainments, Mass Gatherings and Commercial Outdoor Recreational Uses*, be deleted in its entirety.

PART IX. That references to "chapter 48, zoning" as contained in Section 4-82, *Additional requirements*, paragraphs (2) and (5), be amended to read "the Unified Development Ordinance".

PART X. That Section 10-1, *Building inspector*, (b) be amended as follows:

(b) *Right of entry for inspection purposes.* The building inspector of the town has the right at any hour of the day and any day of the week to enter upon and on a lot or site for which a building permit has been requested or issued but for which a certificate of occupancy has not yet been issued, for the purposes of inspection of the premises in accordance with this chapter, ~~the zoning chapter and~~ the building code of the town, and applicable zoning provisions contained in the Unified Development Ordinance.

PART XI. That Section 10-72, *Application*, paragraph (a), (3) be amended as follows:

(3) An approved zoning permit pursuant to ~~section 48-522~~ the Unified Development Ordinance.

PART XII. That Section 10-72, *Application*, paragraph (b), be amended to replace the words "town zoning ordinance" with "Unified Development Ordinance".

PART XIII. That the definition of "zoning districts", as contained in Section 10-332, *Definitions*, of Chapter 10, *Buildings and Building Regulations*, be amended as follows:

Zoning districts means those districts depicted on the official zoning map and described in ~~the zoning chapter, chapter 48 of this Code~~ Article 6, Zoning Districts/Table of Uses and Activities, of the Unified Development Ordinance.

PART XIV. That the term "zoning chapter" and definition thereof, as contained in Section 10-332, *Definitions*, of Chapter 10, *Buildings and Building Regulations*, be deleted in its entirety.

PART XV. That Article II, *Massage Therapy Centers and Related Businesses*, contained in Chapter 12, Businesses and Licensing, be deleted in its entirety, to be replaced with the following:

ARTICLE II. - RESERVED

Secs. 12-61—12-100. - Reserved.

PART XVI. That the first paragraph of Section 12-142, *Definitions*, be amended as follows:

As incorporated in ~~section 48-2~~ Appendix A, Definitions, of the Unified Development Ordinance, the following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

PART XVII. That the definition of "nonadult use businesses", as contained in Section 12-142, *Definitions*, be amended as follows:

Nonadult use businesses means any business or establishment not defined as a sexually oriented business in this section and in ~~section 48-2, definitions and specific terms, of the zoning ordinance~~ Appendix A, Definitions, of the Unified Development Ordinance. The term...

PART XVIII. That Section 12-143, *Licensing of sexually oriented businesses*, paragraph (1) be amended as follows:

(1) No person shall operate a sexually oriented business unless such person has received conditional use and site plan approval in accordance with ~~chapter 48 of this Code~~ the applicable requirements of the Unified Development Ordinance and received a sexually oriented business license as provided by this section.

PART XIX. That Section 12-143, *Licensing of sexually oriented businesses*, paragraph (2), h., be amended as follows:

h. A site plan showing the floor layout, customer area, and location of the structure to be used as a sexually oriented business on the property in accordance with all the requirements outlined in this article ~~and in section 48-525~~.

PART XX. That Section 12-144, *Issuance of license*, paragraph (c), be amended as follows:

(c) The planning and development department's report will include the recommendation of the town planning board on the approval or denial of the conditional use site plan application as outlined in ~~section 48-525~~ Section 3.8.3., Planning Board Review and Comment, of the Unified Development Ordinance.

PART XXI. That Section 12-146, *Fees*, paragraph (b), be amended as follows:

(b) In addition to the application and investigation fee required in subsection (a) of this section, the applicant shall be required to pay a one-time nonrefundable conditional use application fee in accordance with ~~section 48-525~~ the town's Consolidated Fee Schedule.

PART XXII. That Section 12-149, Location of a sexually oriented business, paragraph (a), be amended as follows:

(a) As specified in ~~section 48-433(c)(8)~~ Section 7.23, Sexually Oriented Businesses, of the Unified Development Ordinance, a sexually oriented business…

PART XXIII. That the definition of "zoning districts", as contained in Section 16-71, *Definitions*, be amended as follows:

Zoning districts means land classifications within the town that regulate the uses and the locations of structures. Zoning districts are established in ~~chapter 48 of this Code~~ Article 6, Zoning Districts/Table of Uses and Activities of the Unified Development Ordinance.

PART XXIV. That Section 18-1, *Purpose of chapter*, be amended as follows:

The purpose of this chapter is to provide excavation regulations which are consistent with stormwater management regulations of ~~chapter 34 of this Code~~ Article 11, Part I, Stormwater, Fill, and Runoff Management, of the Unified Development Ordinance.

PART XXV. That Section 18-5, Manmade ponds and stormwater basin, wet, (1), be amended as follows:

(1) Defined. The term "manmade pond" shall mean any regularly inundated manmade impoundment containing or designed to contain 200 cubic feet or more of water, and having or designed to have standing water for any period of more than five consecutive days after a rainfall of 4.3 inches in a two-hour period. This definition is not intended to include swimming pool structures, whether in-ground or above ground ~~or stormwater basin,wet as defined in section 34-3~~.

PART XXVI. That Section 18-5, *Manmade ponds and stormwater basin, wet*, (2) be amended as follows:

(2) *Where permitted.*

a. Manmade ponds shall be allowed in all zoning districts where such manmade ponds are approved as part of any site plan or development pursuant to ~~other chapters of this Code~~ the Unified Development Ordinance.

b. Stormwater basin, wet shall be allowed in any zoning district where such basin has been approved as part of any site plan, subdivision, or development pursuant to ~~other chapters of this Code~~ the Unified Development Ordinance.

PART XXVII. That Chapter 24, *Mobile Homes, Mobile Home Parks and Trailers*, be deleted in its entirety, to be noted as "Reserved."

PART XXVIII. That Section 26-7, *Camping*, (a) *Definitions*, be amended by inserting the following terms and definitions for "mobile home" and "travel trailer," in alphabetical order, and that the definition of the term "open air camping" as contained therein be amended as follows:

Mobile home means a modular unit built on a chassis, with body width exceeding eight feet or body length exceeding 32 feet, designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities. A travel trailer is not to be considered as a mobile home.

Open air camping means any act of living, residing or sleeping at night, in the open air or in an automobile or vehicle which does not meet the requirements of a mobile home, as defined ~~in chapter 24 of this Code~~. The term "camping in the open air" includes, but is not limited to, sleeping out of doors in a tent, sleeping bag, blanket or hammock, or without any paraphernalia other than the clothes worn on the body.

Travel trailer means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, and, when factory equipped for the roads, it shall have a body width not exceeding eight feet and a body length not exceeding 32 feet.

PART XXIX. That Section 26-10, Sexually oriented businesses, paragraph (a), be amended as follows:

(a) It shall be unlawful for any person, partnership, corporation, association, or other entity to operate a sexually oriented business, except as specifically permitted by ~~chapter 48~~ the Unified Development Ordinance and licensed in accordance with chapter 12 of this Code.

PART XXX. That Section 32-3, paragraph (c) is amended to change all references to "chapter 48", "sections of chapter 48, zoning", "sections of the chapter 48, zoning", and "sections of the zoning chapter of this Code" to read "provisions of the Unified Development Ordinance".

PART XXXI. Article XX, *Hurricane and Storm Reconstruction and Redevelopment; General Use Standards for Ocean Hazard Areas*, as contained in Chapter 48, *Zoning*, shall be readopted as an appendix to Chapter 32, Storm Reconstruction, without changes to the numbering of Article XX; all references to "article xx of chapter 48" or "article xx of Chapter 48, zoning" as contained in Section 32-3, Hurricane and storm reconstruction, paragraph (c), shall be amended to read "Article XX, Hurricane and Storm Reconstruction and Redevelopment, an Appendix to this Chapter".

PART XXXII. That Section 36-2, *Applicability of chapter provisions*, be amended as follows:

This chapter shall apply to the creation, design, construction and paving of all streets in the town; except, that the provisions of ~~chapter 38 of this Code~~ Article 10, Part V, Subdivision Regulations, of the Unified Development Ordinance shall apply within all subdivisions proposed for

development under such ~~chapter~~ provisions and the zoning provisions of the ~~zoning ordinance~~ Unified Development Ordinance shall apply to developments, construction, and uses for which a permit is required under ~~such chapter~~ the Unified Development Ordinance.

PART XXXIII. That paragraphs (1) and (3) of Section 36-4, *Design standards*, (d), *Erosion considerations*, be amended as follows:

(1) Procedures and requirements of ~~chapter 28 of this Code~~ Article 11, Part II, Sedimentation and Erosion Control, of the Unified Development Ordinance shall apply in the construction of street improvements where land disturbing activity exceeds 5,000 square feet.

(3) As a result of street construction, all disturbed areas shall be treated with stabilizing material to prevent wind or water erosion and such materials shall be in accordance with the approved soil erosion and sedimentation control plan, if required. If a soil erosion and sedimentation control plan is not required the town engineer or public works director may approve, at the request of the developer, street construction, providing that soil erosion and sedimentation basic control objectives contained in ~~chapter 28 of this Code~~ Article 11, Part II, Sedimentation and Erosion Control, of the Unified Development Ordinance have been met.

PART XXXIV. That Section 36-4, *Design standards*, (f) *Driveway connections*, paragraph (3) be amended as follows:

In accordance with ~~chapter 34, Stormwater, Fill, and Runoff Management~~ Article 11, Part I, Stormwater, Fill, and Runoff Management, of the Unified Development Ordinance, on-site permanent runoff control measures shall be installed, in conjunction with other on-site stormwater management practices, to intercept rainfall runoff from driveways that are sloped or graded towards the street or right-of-way. On-site permanent runoff control practices include, but are not limited to, slotted drains, driveway speed bumps or other approved methods of diverting, collecting and managing on-site runoff.

PART XXXV. That references to “chapter 38, Subdivisions, of this Code” and “Chapter 38 of this Code” as contained in Section 44-63, *Connection to town system required; exception*, (2), Section 44-103, *Approval generally*, and Section 44-109, *Subdivider of subdivision proposed or under development to bear cost*, be amended to read “Article 10, Part V, Subdivision Regulations, of the Unified Development Ordinance”.

PART XXXVI. That Section 44-187, Execution; installation, (c), (3), a., be amended as follows:

a. Hydrants shall be installed where shown on drawings or as directed by the town and in accordance with ~~section 38-154~~ Section 10.69 of the Unified Development Ordinance. Locations shall be within the right-of-way as shown on Schedule III.

ARTICLE IV. Severability.
All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the Town of Nags Head, North Carolina which shall remain in full force and effect.

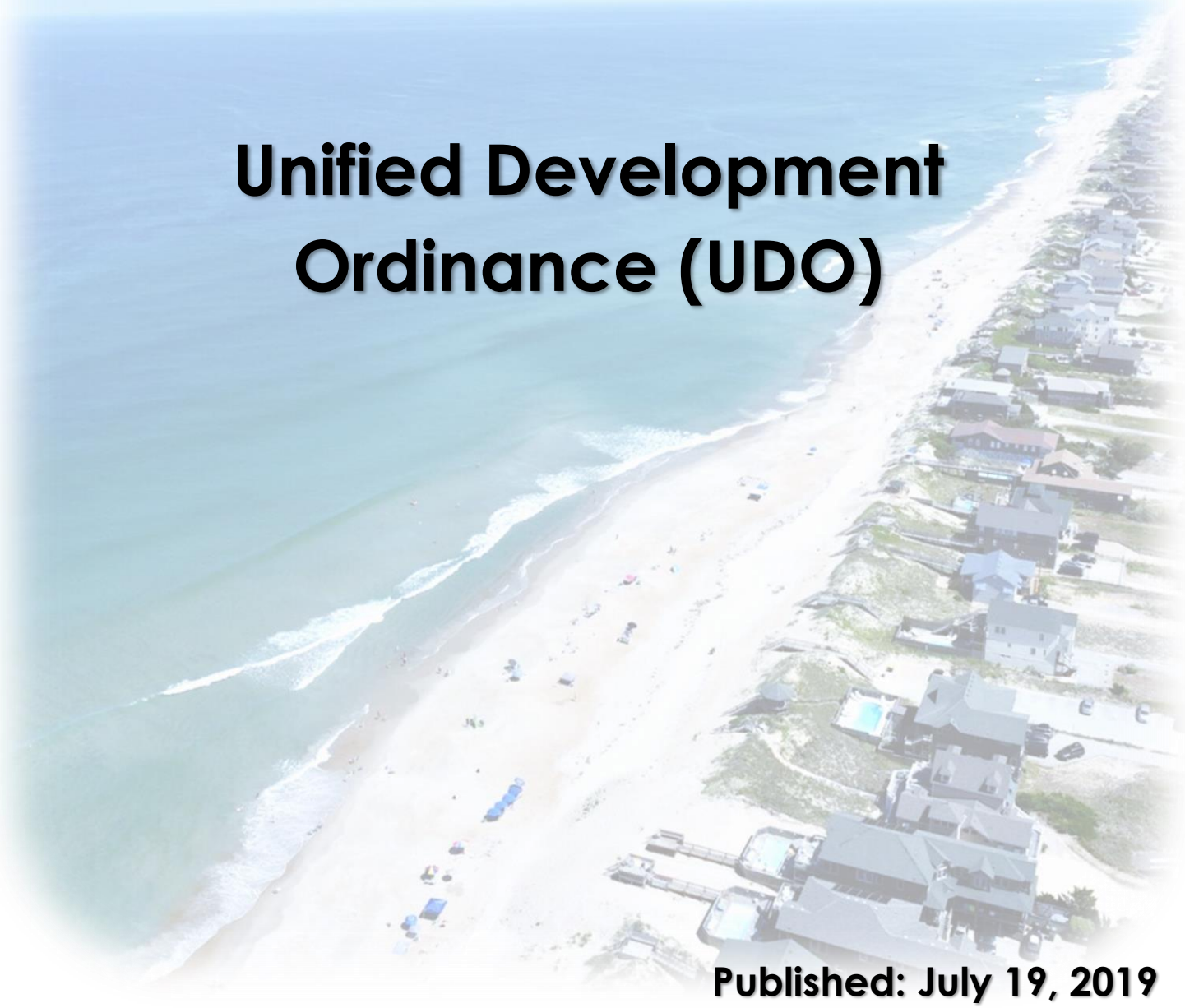
ARTICLE V. Effective Date.

This ordinance amendment shall be in full force and effect 60 days from the date of adoption by the Board of Commissioners. Complete applications for land development, such applications or development subject to ordinances or regulations incorporated within the Unified Development, received prior to 60 days from the date of adoption shall be subject to the applicable regulations in effect as of the date of the application, unless the applicant elects in writing that the application or development be subject to the Unified Development Ordinance.

_____
Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST:
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:
Town Attorney
Date adopted:_____
Motion to adopt by Commissioner_____
Motion seconded by Commissioner_____
Vote:____ AYES ____ NAYS



Unified Development Ordinance (UDO)

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Adoption: TBD

TABLE OF CONTENTS

ARTICLE 1. PURPOSE AND APPLICABILITY 1-1

ARTICLE 2. ADMINISTRATIVE, LEGISLATIVE, & QUASI-JUDICIAL AUTHORITY 2-1

ARTICLE 3. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES 3-1
Part I. General Provisions 3-2
Part II. Legislative Procedures 3-5
Part III. Quasi-Judicial Procedures 3-11

ARTICLE 4. DEVELOPMENT REVIEW PROCESS 4-1
Part I. General Provisions 4-3
Part II. Development Review Process 4-4
Part III. Development Permitting Requirements 4-11
Part IV. Subdivision Procedures 4-18
Part V. Construction Drawing Review Requirements 4-26

ARTICLE 5. NONCONFORMITIES 5-1

ARTICLE 6. ZONING DISTRICTS/TABLE OF USES AND ACTIVITIES 6-1

ARTICLE 7. SUPPLEMENTAL REGULATIONS 7-1
Part I. Introduction 7-5
Part II. Residential 7-5
Part III. Retail 7-21
Part IV. Service 7-22
Part V. Food Service 7-30
Part VI. Commercial Mixed Use 7-35
Part VII. Institutional 7-37
Part VIII. Recreation 7-45
Part IX. Telecommunications 7-57
Part X. Warehouse/Light Industrial 7-59
Part XI. Accessory Uses 7-63

ARTICLE 8. DISTRICT DEVELOPMENT STANDARDS 8-1

ARTICLE 9. VILLAGE AT NAGS HEAD SPD-C ZONING ORDINANCE 9-1
Part I. Generally 9-4
Part II. Establishment of Districts 9-7
Part III. Application of Regulations 9-8
Part IV. General Standards and Regulations 9-9
Part V. Schedule of District Regulations 9-15
Part VI. Tables of Uses and Activities 9-43

ARTICLE 10. PERFORMANCE STANDARDS 10-1
Part I. Buffering and Vegetation Preservation General Requirements 10-6
Part II. Off-Street Parking and Loading Requirements 10-9
Part III. Sign Regulations 10-28

TABLE OF CONTENTS

Part IV. Outdoor Lighting....10-37
Part V. Subdivision Regulations....10-45
Part VI. Commercial Design Standards....10-59
Part VII. Wireless Telecommunications Facilities....10-91

ARTICLE 11. ENVIRONMENTAL REGULATIONS....11-1
Part I. Stormwater, Fill, and Runoff Management....11-5
Part II. Soil Erosion and Sedimentation Control....11-24
Part III. Flood Damage Prevention....11-39

APPENDIX A. DEFINITIONS
APPENDIX B. RESIDENTIAL DESIGN GUIDELINES

ARTICLE 1. PURPOSE AND APPLICABILITY

Section 1.1 Short Title 1-2
Section 1.2 Authority 1-2
Section 1.3 Purpose and Intent 1-3
Section 1.4 Jurisdiction and Exemptions 1-3
Section 1.5 Severability 1-4
Section 1.6 Conflicts with Other Regulations/Laws 1-4
Section 1.7 Conformance with Adopted Plans 1-5
Section 1.8 North Carolina State Building Code 1-5
Section 1.9 Fees 1-5
Section 1.10 Violation of UDO Regulations 1-5
1.10.1. Violations Generally 1-5
1.10.2. Enforcement 1-5
1.10.3. Persons Liable for Violations 1-5
1.10.4. Penalties and Remedies for Violations of the UDO 1-6
1.10.5. Penalties and Remedies for Violation of Article 11, Part II 1-8
1.10.6. Permit Revocation 1-10
Section 1.11 Effective Date 1-10

ARTICLE 1. PURPOSE & APPLICABILITY

SECTION 1.1 SHORT TITLE.

This Ordinance shall be known as the Town of Nags Head Unified Development Ordinance (UDO) and may be referred to as "the Unified Development Ordinance" or "this Ordinance" or "UDO".

SECTION 1.2 AUTHORITY.

1.2.1. Zoning and other land use regulatory provisions enacted herein are under the authority of North Carolina General Statutes (NCGS) Chapter 160A, Article 19, which extends to towns/cities the authority to enact regulations which promote the health, safety, morals, or the general welfare of the community. This UDO is further enacted pursuant to NCGS 160A-382 which authorizes the establishment of zoning classifications within the Town jurisdiction, as it may from time to time exist:

> ***1.2.1.1.*** To regulate and restrict the height, number of stories, and size of buildings and other structures;
>
> ***1.2.1.2.*** To regulate and restrict the percentage of a lot or site that may be occupied, the size of yards, courts, and other open spaces;
>
> ***1.2.1.3.*** To regulate and restrict the density of population;
>
> ***1.2.1.4.*** To regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, and land for trade, industry, residence, and other purposes; and
>
> ***1.2.1.5.*** To do all other things authorized by law in these matters.

1.2.2. NCGS 160A-382 further authorizes the establishment of overlay districts in which additional regulations may be imposed upon properties that lie within the boundary of the district. The statutes also require that all such regulations shall be uniform for each class or type of building and/or land use throughout each district, but that the regulations in one district may differ from those in other districts.

1.2.3. Subdivision provisions enacted herein are under the authority of NCGS 160A-371 to 160A-377 which provide for the coordination of streets within proposed subdivisions with existing or planned street and with other public facilities, the dedication or reservation or recreation areas serving residents of the immediate neighborhood within the subdivision, or alternatively, for the provision of funds to be used to acquire recreation areas serving residents of more than one neighborhood in the immediate area, and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding.

1.2.4. This UDO is further enacted under NCGS 160A-363, Supplemental Powers, which allows cities/towns to combine any of the land development ordinances authorized by Chapter 160, Article 19, into a unified ordinance.

SECTION 1.3 PURPOSE AND INTENT.

1.3.1. The purpose of this Ordinance is to protect the public health, safety, and general welfare of the citizens of the Town and is developed in accordance with the policies and actions of the 2017 Town of Nags Head Comprehensive Plan. The intent of this Ordinance more specifically is to:

1.3.1.1. Preserve our community's distinctive heritage and unique lifestyle;

1.3.1.2. Protect our critical natural resources and coastal ecosystem;

1.3.1.3. Build and promote a sustainable economy that supports residents and visitors;

1.3.1.4. Facilitate the adequate provision of transportation, utilities, parks, recreation, emergency services, stormwater management, and other public facilities;

1.3.1.5. Better manage or lessen congestion in the streets;

1.3.1.6. Plan for orderly and sustainable growth and redevelopment;

1.3.1.7. Ensure the provision of adequate open space between uses for light, air, and fire safety;

1.3.1.8. Protect development and residents from flooding and other natural hazards; and

1.3.1.9. Maintain a well-run and efficient government that provides high quality and cost-effective services.

1.3.2. The regulations are made with reasonable consideration as to the character of the Town, its peculiar suitability for particular uses, and with a desire to conserve the value of buildings while encouraging the most appropriate use of land throughout the Town. This UDO is one of the instruments for the implementation of the Town's Comprehensive Plan.

1.3.3. The existing land development regulations of the Town relating to use of land, water, structures and buildings, the provision of off-street parking and loading and related matters, including flood damage prevention, stormwater management, sedimentation and erosion control, are replaced by this UDO, effective _____. The adoption of this UDO shall not affect nor prevent any pending or future prosecution of, or action to abate, violations of the previous land development ordinances of the Town which occurred prior to _____.

SECTION 1.4 JURISDICTION AND EXEMPTIONS.

1.4.1. This UDO shall be effective throughout the corporate boundaries of the Town. The regulations and provisions found in this UDO shall apply to all the properties within the corporate limits of the Town of Nags Head, North Carolina, and the Town's extraterritorial jurisdiction (ETJ) as delineated on the Town of Nags Head Official Zoning Map.

1.4.2. In addition to other locations required by law, a copy of a map showing the boundaries of the Town's planning jurisdiction shall be available for public inspection in the Planning and Development Department.

1.4.3. Except as hereinafter provided, no building or structure shall be erected, moved, altered, or extended, and no land, building, or structure or part thereof shall be occupied or used unless in conformity with the regulations specified for the district in which it is located. Additionally, no use of land shall be initiated or changed, and no building or other structure shall be erected, moved, added to, or structurally altered, without having either a conditional use permit approved by the Board of Commissioners as provided for under Section 3.8, Conditional Use Permits, or a zoning permit approved and issued by the UDO Administrator.

1.4.4. Excepting the provisions contained in Section 3.6, Establishment of Vested Rights, nothing contained in this Ordinance shall require any change in the plans, construction, size or designated use of any building, structure or part of one for which a building permit has been legally granted by the Town prior to the time of passage of this Ordinance.

1.4.5. Exemptions.

> ***1.4.5.1.*** These regulations shall not apply to any land or structure for which, prior to the effective date hereof, there is a properly approved site specific plan as required by the requirements previously adopted or previously approved vested rights in accordance with NCGS 160A-385.1. Any preliminary or final subdivision plat approvals required for such approved or exempted site specific plans shall be conducted in accordance with the requirements of the previous Zoning Ordinance or Subdivision Ordinance.
>
> ***1.4.5.2.*** In accordance with NCGS 160A-392, all provisions of this UDO are hereby made applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions. Notwithstanding the provisions of any general or local law or ordinance, no land owned by the State of North Carolina may be included within an overlay district or a special use or conditional use district without approval of the Council of State.

SECTION 1.5 SEVERABILITY.

If any section or specific provision or standard of this Ordinance or any regulating district boundary arising from it is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, standard, or district boundary of these regulations except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

SECTION 1.6 CONFLICTS WITH OTHER REGULATIONS/LAWS.

In interpreting and applying the provisions of this Ordinance, the regulations 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 Ordinance to interfere with, repeal, or annul any easements,

covenants, or other agreements between parties; provided, however, that where this Ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, restrictive covenants, or agreements, the provisions of this Ordinance shall govern.

SECTION 1.7 CONFORMANCE WITH ADOPTED PLANS.

1.7.1. It is the intent of this UDO to ensure that all development within the Town's jurisdiction is consistent with the vision, goals, and actions of the Comprehensive Plan.

1.7.2. To the extent this UDO becomes or is inconsistent with adopted plans, it should be amended to remain consistent with the Comprehensive Plan.

SECTION 1.8 NORTH CAROLINA STATE BUILDING CODE.

1.8.1. The North Carolina State Building Code is incorporated herein by reference and serves as the basis for Building Inspector authority to regulate building construction and repair.

1.8.2. This UDO is not intended to conflict with or supersede the North Carolina State Building Code regulations.

SECTION 1.9 FEES.

1.9.1. Reasonable fees, sufficient to cover the costs of administration, inspection, publication of notice, and similar matters, may be charged to applicants for the following permits and processes including but not limited to; zoning permits, sign permits, conditional use permits, major and minor subdivision plat approval, zoning amendments, variances, appeals, and other administrative relief, and site plan review.

1.9.2. The amount of the fees charged shall be determined by the Town's consolidated fee schedule which is available in the Office of the Town Clerk.

SECTION 1.10 VIOLATION OF UDO REGULATIONS.

1.10.1. Violations Generally.
When the UDO Administrator receives a complaint, the UDO Administrator shall investigate the complaint and take whatever action is warranted to resolve any violation.

1.10.2. Enforcement.
Enforcement is through warning, notice of violation, civil penalty, injunctive relief, and any other equitable remedy as provided for in Section 1.10.4 of this UDO.

1.10.3. Persons Liable for Violations.
The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance may jointly and/or independently be

held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

1.10.4. Penalties and Remedies for Violations of the UDO.

1.10.4.1. Unless otherwise specifically provided, violation of any provision of this UDO shall subject the offender to the remedies hereinafter provided, except, that where the General Statutes of North Carolina provide specific civil remedies for violations of provisions of this UDO adopted pursuant to such statutes, such remedies available to the Town for enforcement of this UDO shall be in addition to the remedies stated in this section, provided, however, that no criminal penalties shall be applicable unless hereinafter stated in this section as being applicable to specific articles or provisions of this UDO.

1.10.4.2. Violations of this UDO shall subject the offender to a civil penalty upon the issuance of a citation for such violation as provided herein. The civil penalty, if not paid within fifteen (15) days of the issuance of a citation, may be recovered by the Town in a civil action in the nature of debt. Such penalty amounts shall be determined by the Town's consolidated fee schedule and is available in the Town Clerk's office. Unless otherwise provided by a specific provision of this UDO, such civil penalties shall be no more than $500.00 for each violation, and each day any single violation continues shall be a separate violation.

1.10.4.3. In addition to any civil penalties set out in this section, any provision of this UDO or any other Town ordinance may be enforced by an appropriate equitable remedy issued from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

1.10.4.4. In addition to any civil and criminal penalties set out in this section, any provision of this UDO or any other Town ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the Town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and NCGS Rule 65 in particular.

1.10.4.5. In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that:

1.10.4.5.1. Buildings or other structures on the property be closed, demolished or removed;

1.10.4.5.2. Fixtures, furniture or other movable property be removed from buildings on the property;

1.10.4.5.3. Grass and weeds be cut;

1.10.4.5.4. Improvements or repairs be made; or

1.10.4.5.5. Any other action be taken that is necessary to bring the property into compliance with this UDO.

If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

1.10.4.6. The provisions of this UDO and any other Town ordinances may be enforced by one, all or a combination of the remedies authorized and prescribed by this section; except, that any provision the violation of which incurs a civil penalty shall not be enforced by criminal penalties.

1.10.4.7. Except as otherwise specifically provided, each day's continuing violation of any provision of this UDO or any other Town ordinance shall be a separate and distinct offense.

1.10.4.8. Any ordinances hereafter adopted by the Board of Commissioners of the Town, the violation of which shall incur a penalty, shall specify whether the enforcement shall be pursuant to the civil penalty or criminal penal provisions of this section.

1.10.4.9. A violation of this UDO, the penalty for which is a civil penalty, shall be enforced as provided in subsections 1.10.4.10, 1.10.4.11, and 1.10.4.12 of this section.

1.10.4.10. Upon determination of a violation of any section of this UDO, the penalty for which is a civil penalty, the Town shall cause a warning citation to be issued to the violator, setting out the nature of the violation, the date of the violation and an order to immediately cease the violation or, if the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, stating a reasonable period of time in which the violation must be abated. The warning citation shall specify that a second citation shall incur a civil penalty. The issuance of a warning citation upon a violator as provided above shall not be a prerequisite to the immediate imposition of civil penalties for a determination of a violation of any of the provisions of this UDO.

1.10.4.11. Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the appropriate official of the Town and either served directly on the violator or his duly designated agent, or registered agent if a corporation, in person or posted in the United

States mail service by first class mail addressed to the last known address of the violator as contained in the Dare County property tax listing, or obtained from the violator at the time of the issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of such citation. The citation shall direct the violator to appear before the Town Finance Director, located in the Town Hall, within 15 days of the date of the citation or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid; otherwise, further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated. Within a 12-month period, any repeat violation for which a notice of violation, warning citation, or civil citation has been issued shall be considered a continuation of the original violation.

1.10.4.12. If the violator fails to respond to a citation within 15 days of its issuance and pay the penalty prescribed therein, the Town may institute a civil action in the nature of debt in the appropriate division of the state general court of justice for the collection of the penalty.

1.10.4.13. The assessment of a civil penalty may be appealed to the Board of Adjustment.

1.10.5. Penalties and Remedies for Violation of Article 11, Part II, Soil Erosion and Sedimentation Control.

1.10.5.1. Civil Penalties.

1.10.5.1.1. Civil Penalty for a Violation. Any person who violates any of the provisions of Article 11, Part II, Soil Erosion and Sedimentation Control, or rule or order adopted or issued pursuant to Article 11, Part II, or who 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 subject to a civil penalty. The maximum civil penalty amount that the Town may assess per violation is $5,000.00. A civil penalty may be assessed from the date of the violation. Each day of continuing violation shall constitute a separate violation.

1.10.5.1.2. Civil Penalty Assessment Factors. The Board of Commissioners shall determine the amount of the civil penalty based upon the following factors:

1.10.5.1.2.1. The degree and extent of harm caused by the violation;

1.10.5.1.2.2. The cost of rectifying the damage;

1.10.5.1.2.3. The amount of money the violator saved by noncompliance;

1.10.5.1.2.4. Whether the violation was committed willfully; and

1.10.5.1.2.5. The prior record of the violator in complying or failing to comply with the Article 11, Part II, Soil Erosion and Sedimentation Control.

1.10.5.1.3. Notice of Civil Penalty Assessment. Notice of assessment shall be by either registered or certified mail, return receipt requested, or other means reasonably calculated to give notice and shall direct the violator to either pay the assessment or contest the assessment, within 30 days after receipt of the notice of assessment, by written demand for a hearing.

1.10.5.1.4. Hearing. Hearings held pursuant to this section shall be conducted by the Board of Commissioners within 45 days after the receipt of a request for a hearing.

1.10.5.1.5. Final Decision. Within 45 days after the hearing, the Board of Commissioners of the Town will render its final decision on the erosion control plan upon which a hearing was requested.

1.10.5.1.6. Appeal of Final Decision. Appeal from the final decision of the Board of Commissioners shall be to the Superior Court of the County where the violation occurred. Such appeals must be made within 30 days of the final decision.

1.10.5.1.7. Collection. If the payment is not received within 30 days after demand for payment is made, the Town may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the County where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

1.10.5.1.8. Credit of Civil Penalties. Civil penalties collected pursuant to Article 11, Part II, Soil Erosion and Sedimentation Control shall be credited to civil penalty and forfeiture fund.

1.10.5.2. Criminal Penalties. Any person who knowingly or willfully violates any provision of Article 11, Part II, Soil Erosion and Sedimentation Control, or rule or order adopted or issued pursuant to Article 11, Part II, 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 $5,000.00, as provided in NCGS 113A-64.

1.10.5.3. Injunctive Relief.

1.10.5.3.1. Violation of Local Program. Whenever the Board of Commissioners has reasonable cause to believe that any person is violating or threatening to violate Article 11, Part II, Sedimentation & Erosion Control, or any rule or order adopted or issued by the Town, 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 Article 11, Part II, 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 the County.

1.10.5.3.2. Abatement of Violation. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of Article 11, Part II Soil Erosion and Sedimentation Control.

1.10.6. Permit Revocation.

1.10.6.1. Any permit issued under this Ordinance, including a conditional use permit, may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit recipient fails to (1) develop or maintain the property in accordance with the approved plans and/or permit and any associated conditions, the requirements of this Ordinance, or any additional requirements lawfully imposed by the permit-issuing board, or (2) the permit was issued based on incorrect information or in error.

1.10.6.2. Before permits other than conditional use may be revoked, the UDO Administrator shall give the permit recipient ten (10) days' notice of intent to revoke the permit, shall inform the recipient of the reasons for the revocation and of the recipient's right to obtain a hearing before the Board of Adjustment on the allegations, and shall comply with the notice and hearing requirements set forth in Section 3.4, Notice of Hearing. The UDO Administrator shall provide to the permittee a written statement of the decision and the reasons therefor.

1.10.6.3. No person may continue to make use of land or building in the manner authorized by any permit issued under this Ordinance after such permit has been revoked in accordance with this Ordinance.

SECTION 1.11 EFFECTIVE DATE.

The provisions of this Ordinance were originally adopted and became effective on _____, 2019.

ARTICLE 2. ADMINISTRATIVE, LEGISLATIVE, & QUASI-JUDICIAL AUTHORITY

Section 2.1 Purpose and Intent; Duties Specified 2-2
Section 2.2 UDO Administrator 2-2
Section 2.3 Conflicts of Interest 2-3
Section 2.4 Planning Board 2-4
2.4.1. Established; Jurisdiction 2-4
2.4.2. Composition; Terms; Vacancies; Attendance of Members; Extraterritorial Member 2-4
2.4.3. Chair; Officers; Rules; Records; Meetings; Quorum 2-4
2.4.4. Power and Duties 2-5
2.4.5. Advisory Committees 2-6
Section 2.5 Board of Adjustment 2-6
2.5.1. Established 2-6
2.5.2. Composition; Terms; Vacancies; Attendance of Members; Extraterritorial Member 2-6
2.5.3. Chair; Officers; Records; Meetings; Quorum 2-7
2.5.4. Powers and Duties 2-8
Section 2.6 Board of Commissioners 2-8

ARTICLE 2. ADMINISTRATIVE, LEGISLATIVE, & QUASI-JUDICIAL AUTHORITY

SECTION 2.1 PURPOSE AND INTENT; DUTIES SPECIFIED.

2.1.1. It is the intent of this Article that all questions arising in connection with the enforcement of this UDO shall be presented first to the UDO Administrator, and that such questions shall be presented to the Board of Adjustment only on appeal from a decision of the UDO Administrator. From the decision of the Board of Adjustment, recourse shall be had to courts as provided by law.

2.1.2. It is the intent of this Article that the duties of the Board of Commissioners in connection with this UDO shall not include the hearing and deciding on disputed questions that may arise in connection with enforcement, but that the procedure for determining such questions shall be as set out in Section 2.5, Board of Adjustment and Article 3, Part III, Quasi-Judicial Procedures. The duties of the Board of Commissioners in connection with this UDO shall be to render decisions on site plans, conditional use applications, and vested right applications, as well as decisions pertaining to any proposed amendment of this UDO or zoning map as outlined in Article 3, Legislative/Quasi-Judicial Procedures, and Article 4, Development Review Process.

2.1.3. It is the intent of this Article that the Planning Board review, gather information, and make recommendations to the Board of Commissioners on site plans, conditional use applications, and vested right applications as required by Article 3, Legislative/Quasi-Judicial Procedures, and Article 4, Development Review Process. The Planning Board also shall review and make recommendations to the Board of Commissioners concerning any proposed amendment of this UDO or map as required by Section 3.5, UDO Text Amendment/Zoning Map Amendment. The duties of the Planning Board are of an advisory nature to assist the Board of Commissioners in making its determinations.

2.1.4. Any recourse afforded the public seeking relief from a decision of the Board of Commissioners shall not be to the Board of Adjustment, but only to the courts as provided by law.

2.1.5. Recourse to the courts from any decision of the Board of Commissioners shall be in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board of Commissioners is made. Any such decision is that which is determined by a majority vote of a quorum of the Board of Commissioners in an open session at which the matter under consideration has appeared on the agenda of the Board of Commissioners.

SECTION 2.2 UDO ADMINISTRATOR.

2.2.1. The Director of Planning and Development shall be designated as the UDO Administrator and shall be responsible for the administration and enforcement of the provisions of this UDO. The UDO Administrator may be provided with the assistance of such other persons as may be directed or authorized by the Town Manager.

2.2.2. In administering the provisions of this UDO, the UDO Administrator shall:

2.2.2.1. Enforce the provisions of this UDO in accordance with Section 1.10, Violation of UDO Regulations.

2.2.2.2. Make and maintain records of all applications for permits, conditional uses, and requests listed herein, and records of all permits issued or denied, with notations of all special conditions or modifications involved.

2.2.2.3. File and safely keep copies of all plans and permits/applications submitted, and the same shall form a part of the records of the UDO Administrator's office and shall be available for inspection at reasonable times by any interested party.

2.2.2.4. Conduct pre-application and sketch plan meetings with applicants for development approval as necessary or appropriate in accordance with Article 4, Development Review Process.

2.2.2.5. Transmit to the Planning Board, Board of Commissioners, and/or the Board of Adjustment all applications and plans for which their review and approval is required along with a report of recommendations as may be required.

2.2.2.6. Review, make recommendations on, and approve zoning permit applications, minor site plans, minor subdivisions, engineering drawings, and final plats.

2.2.2.7. Provide administrative interpretations of the UDO.

2.2.2.8. Provide nonconformity determinations, including expansions of nonconforming uses and structures.

2.2.2.9. Conduct inspections of premises and, upon finding that any of the provisions of this Ordinance are being violated, notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The UDO Administrator shall order discontinuance of illegal use of land, buildings or structures; inform the Building Inspector of illegal buildings or of additions, alterations, or structural changes thereto which are not compliant with the UDO; order discontinuance of any illegal work being done; or shall take any other action authorized by this UDO to insure compliance with or to prevent violation of its provisions.

2.2.2.10. Maintain the public records of the Planning Board and Board of Adjustment.

2.2.2.11. Perform site inspections.

SECTION 2.3 CONFLICTS OF INTEREST.

Members of the Board of Commissioners, Planning Board, and Board of Adjustment must act in the public interest and not to advance their own financial interests. A member of an elected board, planning board, or board of adjustment may not vote on an UDO action where there is a potential

financial conflict of interest. A board member with a financial interest in the outcome of the decision may not participate in making decisions on rezonings and other legislative zoning matters. With quasi-judicial zoning decisions, board members may not participate in a matter involving someone with whom they have a close family, associational, or business relationship, nor may they participate if they have a bias (defined as fixed opinion that is not susceptible to change upon hearing the facts at the hearing). When a member is disqualified for a conflict of interest, that member must not participate in the hearing in any way, neither asking questions, nor debating, nor voting on the case. If a member states a conflict of interest or if an objection is raised to a member's participation, the remaining members shall by majority vote decide if the member is excused from participation.

SECTION 2.4 PLANNING BOARD.

2.4.1. Established; Jurisdiction.

There is hereby established a board known as the Town Planning Board, whose jurisdiction shall include the area within the corporate limits of the Town and areas of extraterritorial jurisdiction as the law provides.

2.4.2. Composition; Terms; Vacancies: Attendance of Members; Extraterritorial Member.

2.4.2.1. The Planning Board shall be composed of seven (7) members who shall be residents of the Town and shall be appointed by the Board of Commissioners. The members shall be appointed for a term of three (3) years. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term. Faithful attendance (as defined in the Town of Nags Head Policy on Boards and Committees) at the meetings of the Planning Board is considered a prerequisite for the maintenance of membership on the Planning Board.

2.4.2.2. In addition to the seven (7) regular members of the Planning Board, one (1) member shall be appointed to represent the extraterritorial area of jurisdiction. Such additional member shall be a resident of the County and shall be appointed by the County Board of Commissioners. If the County Board of Commissioners fails to make such appointment within ninety (90) days after receiving a resolution from the Town Board of Commissioners requesting that the appointment be made, the Town Board of Commissioners shall make the appointment. The appointment shall be for a term of three (3) years. The extraterritorial member shall function and vote only with regard to matters within the extraterritorial area and shall not be eligible for office.

2.4.2.3. Compensation. The members of the Planning Board may be compensated according to a schedule adopted by the Board of Commissioners.

2.4.3. Chair; Officers; Rules; Records; Meetings; Quorum.

The Planning Board shall elect a Chair and a Vice-Chair and create and fill such other offices as it may determine, consistent with any applicable Town rules, regulations, or policies. The term of the Chair, Vice-Chair, and other officers shall be one (1) year, with eligibility for re-election. The Planning Board

shall conduct business consistent with the most recent version of the *Rules of Procedure for the Town of Nags Head Board of Commissioners and the Town's Boards and Committees*; the Planning Board may adopt rules and regulations for all other business consistent with the aforementioned rules of procedure, which shall be a public record. The Planning Board shall hold at least one (1) meeting monthly, and all meetings of the Planning Board shall be open to the public. The quorum required for the Planning Board to take official action is four members.

2.4.4. Powers and Duties.

2.4.4.1. It shall be the duty of the Planning Board to prepare plans and to coordinate the plans of the Town and those of others to bring about a coordinated and harmonious development of the area. The Planning Board is hereby designated as the planning agency for the preparation of a zoning plan for the Town under the authority of NCGS 160A-387. In addition, the Planning Board is empowered to:

2.4.4.1.1. Acquire and maintain in current form such basic information and materials as are necessary to understand past trends, present conditions and forces at work to cause changes in these conditions.

2.4.4.1.2. Prepare and, from time to time, amend and revise a comprehensive and coordinated plan for the physical development of the area. The Comprehensive Plan shall be the Planning Board's recommendations to the Board of Commissioners for the development of the Town including, among other things, the general location, character and extent of streets, bridges, parkways, playgrounds, parks and other public ways, grounds and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power and other purposes; the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, buildings, grounds, open spaces, property, utilities or terminals; and the most desirable pattern of land use within the area.

2.4.4.1.4. Prepare and recommend ordinances promoting orderly development of the Town as recommended by the Comprehensive Plan including the ordinances contained within the UDO. The Planning Board may initiate-proposals for amendment of the UDO based upon its studies and Comprehensive Plan. In addition, the Planning Board shall review and make recommendations to the Board of Commissioners concerning all proposed amendments to the UDO and zoning map.

2.4.4.1.5. Determine whether specific proposed developments referred to it by governmental or private agencies in the area conform to the principles and requirements of the Comprehensive Plan for the area and to make recommendations concerning them.

2.4.4.1.6. Keep the Board of Commissioners and the public informed and advised as to these matters.

2.4.4.1.7. Make any other recommendations which it sees fit for improving the development of the area.

2.4.4.1.8. Perform any other duties which may lawfully be assigned to it.

2.4.4.2. The Planning Board may perform any of the actions authorized for municipal planning boards by NCGS 160A-370.

2.4.5. Advisory Committees.

2.4.5.1. From time to time, the Board of Commissioners may appoint one (1) or more individuals to assist the Planning Board to carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the Board of Commissioners may appoint advisory committees to consider thoroughfare plan(s), bikeway plan(s), housing plans, and economic development plans, etc.

2.4.5.2. Members of such advisory committees shall sit as nonvoting members of the Planning Board when such issues are being considered and lend their talents, energies, and expertise to the Planning Board. However, all formal recommendations to the Board of Commissioners shall be made by the Planning Board.

2.4.5.3. Nothing in this Article shall prevent the Board of Commissioners from establishing independent advisory groups, committees, or boards to make recommendations on any issue directly to the Board of Commissioners.

SECTION 2.5 BOARD OF ADJUSTMENT.

2.5.1. Established.

There is hereby established a board known as the Board of Adjustment, whose jurisdiction shall include the area within the corporate limits of the Town and areas of extraterritorial jurisdiction as the law provides.

2.5.2. Composition; Terms; Vacancies; Attendance of Members; Extraterritorial Member.

2.5.2.1. Board Members. The Board of Adjustment shall have five (5) regular members and four (4) alternates who shall be citizens of the Town appointed by the Board of Commissioners. The term of office for each member and alternate member shall be for a period of three years. Members and alternates serving on the board at the time of the adoption of this UDO shall continue the term to which they are appointed. Vacancies shall be filled for the unexpired term only. Members may be removed for cause by the Board of Commissioners upon written charges and after public hearing.

2.5.2.2. Compensation. The members of the board may be compensated according to a schedule adopted by the Board of Commissioners.

2.5.2.3. Alternate Membership. Alternate members may serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.

2.5.2.4. Extraterritorial Membership. In addition to the five (5) regular members of the board, one (1) member shall be appointed to represent the extraterritorial area of jurisdiction. Such additional member shall be a resident of the County and shall be appointed by the County Board of Commissioners. If the County Board of Commissioners fails to make such appointment within 90 days after receiving a resolution from the Town Board of Commissioners requesting that the appointment be made, the Town Board of Commissioners shall make the appointment. The appointment shall be for a term of three years. The extraterritorial member shall function and vote only with regard to matters within the extraterritorial area and shall not be eligible for office.

2.5.3. Chair; Officers; Records; Meetings; Quorum.

2.5.3.1. At a Board of Commissioners' regular meeting, the Board of Commissioners shall designate one of the members of the board as Chair and another as Vice-chair who shall serve for one year. In the event that the Board of Commissioners does not make such a designation, the Chair and Vice-chair shall continue in their respective offices. In the absence, disqualification or vacancy of the Chair and Vice-chair, the most senior member seated and present shall act as Chair for any meeting until a duly appointed Chair or Vice-chair is available.

2.5.3.2. All meetings of the board shall be held at a regular place and shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, an indication of that fact. Any party may appear in person or be represented by an attorney.

2.5.3.3. A quorum of three (3) members shall be seated and present in order to open a meeting of the board and to take action on non-quasi-judicial matters. In order to take action on a quasi-judicial matter, the board must have a quorum of five (5) members seated and present unless the appellant or applicant consents to moving forward with less than five (5) members. For calculating a quorum to take action on a quasi-judicial matter, the number of members seated and present includes members who were seated at the opening of the meeting that have been disqualified from voting on the particular matter if there are no qualified alternates available to take the place of such members. In the event that a quorum cannot be met due to vacant positions or a lack of qualified members, the board may continue its meeting in order for absent members to become available and, if necessary, for the Board of Commissioners to make appointments filling vacant seats and/or to make appointments of temporary alternate members who can fulfill the board's duties.

2.5.4. Powers and Duties.

2.5.4.1. The Board of Adjustment shall hear and decide:

2.5.4.1.1. Requests for variances of the provisions of this UDO and appeals of decisions of administrative officials charged with enforcement of this UDO. The board shall follow quasi-judicial procedures when deciding appeals and requests for variances. As used in this subsection, the term "decision" includes any final and binding order, requirement, or determination. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

2.5.4.1.2. Any other matter the Board is required to act upon by any other Town ordinance.

2.5.4.2. The Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Article.

SECTION 2.6 BOARD OF COMMISSIONERS.

2.6.1. The Board of Commissioners has the authority to initiate, review, and decide applications for the following: UDO text amendments, zoning map amendments, and conditional use permits in accordance with Article 3, Legislative/Quasi-Judicial Procedures, as well as major site plans, major subdivision preliminary plats, and subdivision waivers in accordance with Article 4, Development Review Process.

2.6.2. The Board of Commissioners, in considering conditional use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Section 3.13, Procedures for Quasi-Judicial Hearings.

2.6.2. In considering proposed changes in the text of this UDO or in the zoning map, the Board of Commissioners acts in its legislative capacity and must proceed in accordance with the requirements of Section 3.5, UDO Text Amendments/Zoning Map Amendments.

2.6.3. Unless otherwise specifically provided in this Article, in acting upon conditional use permit requests or in considering amendments to this Ordinance or the zoning map, the Board of Commissioners shall follow the regular voting and other requirements as set forth in other provisions of the Town code, the Town charter, Rules of Procedure, or general law as applicable.

2.6.4. The Board of Commissioners, in considering the approval of a site-specific development plan (as defined in Section 3.6, Establishment of Vested Rights), shall follow the procedural requirements set forth in Section 3.8, Conditional Use Permits for the issuance of a conditional use permit.

2.6.5. A failure to vote by a Board member who is physically present in the Commissioners chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an abstention, not an affirmative vote.

ARTICLE 3. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

PART I. GENERAL PROVISIONS 3-2
Section 3.1 Purpose and Intent 3-2
Section 3.2 Requests to be Within a Reasonable Time 3-2
Section 3.3 Public Hearing Required 3-2
Section 3.4 Notice of Hearing 3-4
3.4.1. Notice and Public Hearings – UDO Text Amendment 3-4
3.4.2. Notice and Public Hearings – Zoning Map Amendment 3-4
3.4.3. Notice and Public Hearings – Appeals, Variances, Conditional Use Permits, and Subdivision Waivers 3-4
3.4.4. Notice and Public Hearings – Summary 3-5
PART II. LEGISLATIVE PROCEDURES 3-5
Section 3.5 UDO Text Amendment/Zoning Map Amendment 3-5
3.5.1. Procedure 3-5
3.5.2. Action by Applicant 3-6
3.5.3. Action by the Planning Board 3-6
3.5.4. Action by the Board of Commissioners 3-7
3.5.5. Citizen Comments 3-8
3.5.6. Withdrawal of Application 3-8
3.5.7. Denial of Application 3-8
Section 3.6 Establishment of Vested Rights 3-9
Section 3.7 Moratorium 3-11
PART III. QUASI-JUDICIAL PROCEDURES 3-11
Section 3.8 Conditional Use Permits 3-11
3.8.1. Purpose and Applicability 3-11
3.8.2. Application Process/Completeness 3-11
3.8.3. Planning Board Review and Comment 3-12
3.8.4. Board of Commissioners Action 3-12
3.8.5. Effect of Approval 3-14
3.8.6. Binding Effect 3-14
3.8.7. Certificate of Occupancy 3-14
3.8.8. Change in Conditional Use Permit 3-14
Section 3.9 Appeals of Administrative Decisions 3-14
3.9.1. Administrative Decisions 3-14
3.9.2. Appeals of Administrative Decisions 3-15
Section 3.10 Variances 3-17
Section 3.11 Burden of Proof in Appeals and Variances 3-19
Section 3.12 Board of Adjustment Action/Voting 3-19
Section 3.13 Procedures for Quasi-Judicial Hearings 3-20
3.13.1. Evidence/Presentation of Evidence 3-20
3.13.2. Continuances 3-21
3.13.3. Modification of Application at Hearing 3-21
3.13.4. Record 3-21
3.13.5. Quasi-Judicial Decision 3-22
Section 3.14 Rehearings 3-22
Section 3.15 Appeals of Quasi-Judicial Decisions 3-22

PART I. GENERAL PROVISIONS

SECTION 3.1 PURPOSE AND INTENT.

Article 3, Legislative/Quasi-Judicial Procedures pertains to requirements for legislative and quasi-judicial procedures. Legislative procedures include UDO text and zoning map amendments. Quasi-judicial procedures include appeals, variances, conditional use permits, and subdivision waivers.

TABLE 3-1: REVIEW PROCEDURES
D = DECISION R = RECOMMENDATION < > = PUBLIC HEARING

PROCEDURE	UDO ADMINISTRATOR	PLANNING BOARD	BOARD OF COMMISSIONERS	BOARD OF ADJUSTMENT
UDO Text Amendment	R	R	<D>	
Zoning Map Amendment	R	R	<D>	
Conditional Use Permit	R	R	<D>	
Appeal	R			<D>
Variance	R			<D>
Subdivision Waiver	R	R	<D>	

SECTION 3.2 REQUESTS TO BE WITHIN A REASONABLE TIMEFRAME.

As provided in Article 2, Administrative, Legislative, & Quasi-Judicial Authority, the Planning Board, Board of Commissioners, and Board of Adjustment (as applicable) shall hear and decide all applications, appeals, and variance requests, within a reasonable timeframe, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Section 3.4, Notice of Hearing, and obtain the necessary information to make sound decisions.

SECTION 3.3 PUBLIC HEARING REQUIRED.

3.3.1. Before making a decision on an application for an amendment, appeal, variance, conditional use permit, or subdivision waiver, the Board of Commissioners or Board of Adjustment (as appropriate) shall hold a public hearing on the application within a reasonable time. Holding the hearing within ninety (90) days of the submittal of a completed application (provided that the public advertising requirements are met) shall be presumed to be reasonable. Depending on the circumstances, a reasonable time may exceed 90 days. The required application and all supporting materials must be received by the UDO Administrator before an application is considered complete and a hearing scheduled.

3.3.2. The hearing shall be open to the public and all persons interested in the outcome of the application shall be given an opportunity to present evidence, the ability to make arguments, make motions, request continuances, cross-examine witnesses, and to call witnesses as delineated in NCGS 160A-393.

3.3.3. The decision-making board may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay. Any review body conducting the public hearing shall act in accord with any time limits established in this Ordinance or the body's own rules of procedure. Action shall be taken as promptly as possible in consideration of the interests of the applicant, the citizens of the Town, and shall include a recommendation or decision of approval, approval with conditions, or disapproval (whichever is appropriate).

3.3.4. The decision-making board may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. Notice shall be given in accordance with Table 3-3 in subsection 3.4.4. If the decision-making board recesses a regular, special, or emergency meeting held pursuant to the public notice given, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required. Unless further specified, the continued hearing shall be at the next regular meeting.

3.3.5. The board may grant a continuance to any party for good cause shown or upon the board's own motion. Requests for continuances should be made in writing but may be made orally at a meeting of the board. The board chair may grant a continuance request prior to a meeting if the applicant or appellant makes a written request showing good cause. The chair may always defer ruling on such a request to allow for the decision to be made by the board.

> ***3.3.5.1. Good Cause.*** Good cause for a continuance includes, but is not limited to: (a) the official issuing the decision subject to an appeal is unavailable; (b) there is insufficient membership of the board seated and present to hear a matter; or (c) if any party or the Town would be unduly prejudiced by the presentation of matters not presented in a notice of appeal.
>
> ***3.3.5.2. Re-notification Fees.*** If notices of hearing have already been issued, the party granted a continuance is responsible for the administrative costs of noticing an additional hearing if such costs are incurred.

3.3.6. Required Public Hearings - Summary.

TABLE 3-2: REQUIRED PUBLIC HEARINGS
L = LEGISLATIVE PUBLIC HEARING Q = QUASI-JUDICIAL PUBLIC HEARING

APPLICATION TYPE	BOARD OF COMMISSIONERS	BOARD OF ADJUSTMENT
UDO Text Amendment	L	
Zoning Map Amendment	L	
Conditional Use Permit	Q	
Appeal		Q
Variance		Q
Subdivision Waiver	Q	

SECTION 3.4 NOTICE OF HEARING.

3.4.1. Notice and Public Hearings – UDO Text Amendment.

No amendment shall be adopted by the Board of Commissioners until after public notice and hearing consistent with the procedures and schedules established by Table 3-3 in subsection3.4.4.

3.4.2. Notice and Public Hearings - Zoning Map Amendment.

3.4.2.1. In any case where the Board of Commissioners will consider a change in the zoning classification of a parcel of land, the party applying for the change in zoning classification shall submit, with the request for rezoning, a list of the names of the owners, their addresses, and the tax parcel numbers of the property involved in the change and all properties abutting the property to be considered for rezoning, as shown on the Dare County property tax listing. The application shall be considered incomplete without such material.

3.4.2.2. The UDO Administrator shall post, publish, and mail (consistent with Table 3-3 in subsection 3.4.4) notification to the owners, on the supplied list, containing a description of the request and the time, date, and location of the public hearing. When multiple parcels are included in a proposed zoning map amendment, a posting of each individual site is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons. The UDO Administrator shall certify to the Board of Commissioners in writing that such notices have been made and such certification shall be deemed conclusive in the absence of fraud.

3.4.2.3. The first class mail notice required under subsections 3.4.2.1 and 3.4.2.2 of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the Town elects to use the expanded published notice. In this instance, the Town may elect to either make the mailed notice provided for in this section or may, as an alternative, elect to publish a notice of the hearing as referenced in Table 3-3 in subsection 3.4.4. (NCGS 160A-364), but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent Dare County property tax listing for the affected property, shall be notified according to the provisions of subsections 3.4.2.1 and 3.4.2.2.

3.4.3. Notice and Public Hearings - Appeals, Variances, Conditional Use Permits, and Subdivision Waivers.

3.4.3.1. Notice of hearings conducted pursuant to Section 3.8, Conditional Use Permits, Section 3.9, Appeals of Administrative Decisions, Section 3.10, Variances, and Section 4.28, Subdivision Waivers, shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the

parcel of land that is the subject of the hearing; and any other persons entitled to receive notice as provided by this UDO. In the absence of evidence to the contrary, the Town may rely on the Dare County property tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

3.4.3.2. In the case of conditional use permits, notice shall be given to other potentially interested persons by publishing a notice in a newspaper having general circulation in the area one (1) time not less than 10 nor more than 25 days prior to the hearing.

3.4.3.3. The notice required by this section shall state the date, time, and place of the hearing, reasonably identify the lot(s) that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

3.4.4. Notice and Public Hearings – Summary.

TABLE 3-3: PUBLIC NOTIFICATION TIMING REQUIREMENTS

APPLICATION TYPE	TYPES OF REQUIRED PUBLIC NOTICE		
	PUBLISHED NOTICE	MAILED NOTICE	POSTED NOTICE
UDO Text Amendment	Once a week for 2 successive calendar weeks, with first notice between 10 and 25 days before hearing		
Zoning Map Amendment	Once a week for 2 successive calendar weeks, with first notice between 10 and 25 days before hearing	Between 10 and 25 days before hearing (exception – see subsection 3.4.2.3)	At least 10 days before hearing
Conditional Use Permit	Once a week for 2 successive calendar weeks, with first notice between 10 and 25 days before hearing	Between 10 and 25 days before hearing	At least 10 days before hearing
Appeal		Between 10 and 25 days before hearing	At least 10 days before hearing
Variance		Between 10 and 25 days before hearing	At least 10 days before hearing
Subdivision Waiver		Between 10 and 25 days before hearing	At least 10 days before hearing

PART II. LEGISLATIVE PROCEDURES

SECTION 3.5 UDO TEXT AMENDMENT/ZONING MAP AMENDMENT.

3.5.1. Procedure.

The Board of Commissioners may by ordinance amend, supplement, change, modify or repeal the regulations and maps of this UDO after public notice and hearing and compliance with any other applicable rules prescribed in this UDO. Such amendment may be initiated by motion of the Board of Commissioners, by motion of the Planning Board, or by application by any person within the zoning jurisdiction of the Town. A person submitting application for a zoning map amendment must be the

owner, or an agent of the owner with the owner's written consent, of the property which is the subject of the proposed zoning map amendment. A notice of the hearing shall be given in accordance with Section 3.4, Notice of Hearing. As used in this section, "comprehensive plan" includes a unified development ordinance and any other officially adopted plan that is applicable.

3.5.2. Action by Applicant.

The following action shall be taken by the applicant:

3.5.2.1. For any proposed text amendment, the application shall provide the name(s) and address(es) of the applicant(s) and the actual text of the proposed amendment in a form such that one can determine what provisions of this UDO will be changed and how they will be changed by the amendment.

3.5.2.2. An application for any map change or amendment shall contain a description and statement of the present and proposed zoning regulation or district boundary to be applied, the name(s) and address(es) of the applicant(s), the owner (s) of the parcel of land involved in the change if different from the applicant, and all adjacent property owners as shown on the Dare County property tax listing. If the applicant for a map change or amendment is not the property owner, documentation shall be provided in accordance with subsection 3.5.1.

3.5.2.3. One (1) hard copy and one (1) electronic copy of such application shall be filed with the UDO Administrator not later than 45 calendar days prior to the Planning Board meeting at which the applicant desires for the application to be considered.

3.5.3. Action by the Planning Board.

3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.

3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.

3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the mater being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

3.5.4. Action by the Board of Commissioners.

Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.

3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

3.5.4.3. The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.

3.5.4.4. No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.

3.5.4.5. Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.

3.5.4.5.1. A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.2. A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.3. A statement approving the amendment and containing at least all of the following:

***3.*5.4.5.3.1.** A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.

3.5.4.5.3.2. An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.

3.5.4.5.3.3. Why the action was reasonable and in the public interest.

3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:

3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.

3.5.5. Citizen Comments.

This ordinance may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the Town submits a written statement regarding a proposed amendment, modification, or repeal to this UDO to the Town Clerk at least two business days prior to the proposed vote on such change, the Town Clerk shall deliver such written statement to the Board of Commissioners. If the proposed change is the subject of a quasi-judicial proceeding under NCGS 160A-388, the Town Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the Board shall not disqualify any member of the Board from voting.

3.5.6. Withdrawal of Application.

An applicant may withdraw his or her application at any time by written notice to the UDO Administrator and may resubmit at a subsequent date in compliance with the submittal schedule contained herein. These limitations shall not apply to the withdrawal of an application submitted by Town staff or any Town Board.

3.5.7. Denial of Application.

When the Board of Commissioners denies an application, the Board shall not consider another application for the same or similar amendment until the expiration of a 12-month period, extending from the date of denial. If the request involves a zoning map amendment request, no similar amendment request affecting the same property or a portion thereof, shall be considered within the same time period. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

SECTION 3.6 ESTABLISHMENT OF VESTED RIGHTS.

3.6.1. A vested right, in accordance with NCGS 160A-385.1, may be established upon the approval or conditional approval of a site-specific development plan by the Board of Commissioners in accordance with the provisions outlined in this section. Approval by the Board of Commissioners of a site-specific development plan shall follow the procedural requirements for the issuance of a conditional use permit as outlined in Section 3.8, Conditional Use Permits. Changes in or modifications to an approved site-specific development plan shall be made only with the concurrence of the Board of Commissioners in accordance with the provisions of subsection 3.8.8. A right which has been vested as provided for in this section shall, as a general rule, remain valid for two (2) years and shall attach to and run with the land. A vested right shall expire at the end of two (2) years if no building permit applications have been filed with the Town to construct the use or uses proposed in the approved site-specific development plan. If building permits are issued, the provisions of NCGS 160A-418 and NCGS 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the lack of progress during the two-year vesting period.

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

> ***3.6.2.1. Landowner.*** Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site-specific development plan.
>
> ***3.6.2.2. Property.*** All real property subject to the regulations and restrictions of this Ordinance as well as the zoning district boundaries established by this Ordinance and depicted on the official zoning map.
>
> ***3.6.2.3. Site-Specific Development Plan.*** A site-specific development plan which has been submitted to the Town by a landowner in accordance with NCGS 160A-385.1(b)(5) describing in detail the type and intensity of use for a specific parcel or parcels of property. Such plan shall be in the form of a site plan required to obtain a conditional use permit and shall include the information required by subsection 3.8.2 and Article 4, Development Review Process. All site-specific development plans require the consideration and approval of the Board of Commissioners.
>
> ***3.6.2.4. Vested Right.*** The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

3.6.3. A vested right shall be deemed established upon the effective date of approval by the Board of Commissioners of a site-specific development plan. Following the approval of a site-specific development plan, the UDO Administrator shall issue a vested right certificate to the landowner which indicates the duration of the vesting period, the conditions, if any, imposed by the Board of

Commissioners on the approval of the site-specific development plan, and any other information determined by the UDO Administrator to be necessary to administer the vested right.

3.6.4. A vested right shall confer upon the landowner the right to undertake and complete the development and use of the property as delineated in the approved site-specific development plan. The Board of Commissioners may approve a site-specific development plan upon such terms and conditions as may be determined necessary to protect the public health, safety, and welfare. Failure to comply with the approved terms and conditions shall result in a forfeiture of vested rights.

3.6.5. A vested right, once established or provided for in this section, precludes any zoning action by the Town which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in this approved site-specific development plan, except:

> ***3.6.5.1.*** With the written consent of the affected landowner;
>
> ***3.6.5.2.*** Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific development plan;
>
> ***3.6.5.3.*** To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;
>
> ***3.6.5.4.*** Upon findings, by ordinance after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Town of the site-specific development plan; or
>
> ***3.6.5.5.*** Upon the enactment or promulgation of a state or federal law or regulation which precludes development as contemplated in the site-specific development plan, in which case the Town may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a public hearing.

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

3.6.7. Notwithstanding any provisions of this section, the establishment of a vested right shall not preclude, change, or impair the authority of the Town to enforce provisions of this Ordinance governing nonconforming situations or uses.

3.6.8. A vested right obtained under this section is not a personal right but shall attach to and run with the applicable property. After approval of a site-specific development plan, all successors to the original landowner shall be entitled to exercise such vested rights.

3.6.9. The Town shall not require a landowner to waive his vested rights as a condition of developmental approval.

SECTION 3.7 MORATORIUM.

The Town may adopt temporary moratoria on any Town development approval required by law in accordance with NCGS 160A-381(e).

PART III. QUASI-JUDICIAL PROCEDURES

SECTION 3.8 CONDITIONAL USE PERMITS.

3.8.1. Purpose and Applicability.

This Ordinance provides for a number of uses to be located by-right in each general zoning district subject to the use meeting certain prescriptive criteria including area, height, yard requirements, buffering, and off-street parking and loading requirements. In addition to these uses, this Ordinance allows certain uses subject to the issuance of a conditional use permit which, without additional careful consideration, may not be consistent with the goals of the community. The conditional use permit allows the Board to establish conditions which will mitigate any negative effects of the proposed use on adjacent properties or to the community at-large. The Board of Commissioners' consideration of conditional use permits are quasi-judicial decisions. The purpose of having the uses be conditional is to ensure that they would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which they are located and would meet other criteria as set forth in this section.

3.8.2. Application Process/Completeness.

> ***3.8.2.1.*** The deadline for which a conditional use permit application shall be filed with the UDO Administrator is not later than 45 calendar days prior to the Planning Board meeting at which the application will be heard. Permit application forms shall be determined and prepared by the UDO Administrator. Such forms are available upon request made to the UDO Administrator. In the course of evaluating the proposed conditional use, the Planning Board or Board of Commissioners may request additional information from the applicant to determine whether the applicant has met the requirements of this UDO. With the applicant's agreement, the Board may continue the hearing until such time as the applicant can provide the information. Without the agreement of the applicant, the Board may make a determination of whether the UDO

requirements are met for permit issuance. In that case, the applicant bears the risk that their evidence could be insufficient to the met UDO requirements and that had they provided the information requested they might have cured a deficiency.

3.8.2.2. The written application shall include a listing of the names and addresses of all abutting property owners affected being the subject of the conditional use application. The list shall be supplied by the applicant and shall be current according to the most recent Dare County property tax listing. The Board of Commissioners shall hold a public hearing on the conditional use permit request after providing notice as required by Section 3.4, Notice of Hearing.

3.8.2.3. No application shall be deemed complete unless it contains or is accompanied by a site plan, if applicable, drawn to scale which complies with the site plan requirements contained in Article 4, Development Review Process and a fee as specified in subsection 3.3.1.

3.8.2.4. Eight (8) hard copies and one (1) digital copy of the application, and all attachments and maps, shall be submitted to the UDO Administrator.

3.8.3. Planning Board Review and Comment.

3.8.3.1. The Planning Board may, in its review, suggest reasonable conditions to the location, nature, and extent of the proposed use and its relationship to surrounding properties, parking areas, driveways, pedestrian and vehicular circulation systems, screening and landscaping, timing of development, and any other conditions the Planning Board may find appropriate. The conditions may include dedication of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development.

3.8.3.2. The Planning Board shall forward its recommendation to the Board of Commissioners within 45 days of reviewing the application. If a recommendation is not made within 45 days, the application shall be forwarded to the Board of Commissioners without a recommendation from the Planning Board.

3.8.3.3. Review of the conditional use application by the Planning Board shall not be a quasi-judicial procedure. Comments of the Planning Board may be considered with other evidence submitted at the public hearing.

3.8.4. Board of Commissioners Action.

3.8.4.1. Board of Commissioners consideration of conditional use permits are quasi-judicial decisions approved by a simple majority vote. Quasi-judicial decisions must be conducted in accordance with Section 3.13, Procedures for Quasi-Judicial Hearings. For the purposes of this section, vacant positions on the Board of Commissioners 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 majority.

3.8.4.2. Once the comments of the Planning Board have been made, or the 45-day period elapses without a recommendation, at the next regularly scheduled meeting of the Board of Commissioners, the Board of Commissioners shall consider the scheduling of a public hearing. Notice of the public hearing shall be as specified in Section 3.4, Notice of Hearing.

3.8.4.3. In approving an application for a conditional use permit in accordance with the principles, conditions, safeguards, and procedures specified herein, the Board of Commissioners may impose reasonable and appropriate conditions and safeguards upon the approval. Prior to the granting of any conditional use, the Board of Commissioners may require conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the conditional use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified above. The reasons/justification for special conditions must be stated/tied to subsection 3.8.4.6. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Board of Commissioners. Violations of those conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be considered a violation of this Ordinance and shall be subject to Section 1.10, Violation of UDO Provisions of this Ordinance. The Board of Commissioners may prescribe a time limit within which the action for which the conditional use permit is required shall be begun or completed. Failure to comply within the time limit set shall void the conditional use permit.

3.8.4.4. If the Board of Commissioners does not prescribe a time limit for any part of such conditional use permit pursuant to subsection 3.8.4.3 of this section, then the time limitations prescribed in Section 4.15, Time Limitations for Site Plans, Zoning Permits, and Building Permits, or Section 3.6, Establishment of Vested Rights shall apply.

3.8.4.5. The applicant has the burden of producing competent and substantial evidence of facts establishing that the proposed development meets the requirements of subsection 3.8.4.6 below by a preponderance of the evidence.

3.8.4.6. The Board of Commissioners shall issue a conditional use permit if it has evaluated an application through a quasi-judicial process and determined that:

> ***3.8.4.6.1.*** The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.
>
> ***3.8.4.6.2.*** 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 use for which application is made.
>
> ***3.8.4.6.3.*** The conditional use will be in harmony with the existing development and uses within the area in which it is to be located.
>
> ***3.8.4.6.4.*** Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.

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

3.8.4.7. The Board of Commissioners may not attach additional conditions that modify or alter the specific requirements set forth in this Ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.

3.8.5. Effect of Approval.

If an application for a conditional use permit is approved by the Board of commissioners, the property shall be developed in accordance with the application to the extent not modified by the conditional use permit and the conditional use permit including any conditions placed upon the development.

3.8.6. Binding Effect.

Any conditional use permit shall be binding to the property included in the permit unless subsequently changed or amended by the Board of Commissioners.

3.8.7. Certificate of Occupancy.

No certificate of occupancy for a use listed as a conditional use shall be issued for any building or land use on a piece of property which has received a conditional use permit for the particular use unless the building is constructed or used, or the land is developed or used, in conformity with the conditional use permit approved by the Board of Commissioners. In the event that only a segment of a proposed development has been approved, the certificate of occupancy shall be issued only for that portion of the development constructed or used as approved.

3.8.8. Change in Conditional Use Permit.

Requests to modify or change a conditional use permit once it has been issued shall be presented in writing to the UDO Administrator, who shall then determine within ten (10) business days whether the change is minor or material, and therefore, major. Minor changes may be approved by the UDO Administrator. Major changes must first be submitted, reviewed, and approved in accordance with subsections 3.8.3 and 3.8.4, including payment of a fee in accordance with the fee schedule approved by the Board of Commissioners.

SECTION 3.9 APPEALS OF ADMINISTRATIVE DECISIONS

3.9.1. Administrative Decisions.

3.9.1.1. Defined. An appealable "administrative decision" is any final and binding order, requirement, or determination issued in writing by an administrative official charged with enforcement of this UDO. Administrative decisions include, but are not limited to: (i) permit issuance or denial, (ii) issuance of a notice of violation, warning citation, or civil citation or (iii) issuance of a formal interpretation of a provision of this UDO.

3.9.1.2. Formal Interpretation. Only formal interpretations issued in accordance with this subsection are subject to being appealed as an administrative decision. Any written or oral interpretations that do not meet the strict requirements of this subsection are merely advisory

and represent only the view, opinion or belief of the administrative official issuing them. Advisory interpretations have no binding force or effect and there is no right to appeal advisory interpretations to the board. There is no right to have an informal interpretation issued.

3.9.1.2.1. Request. Any person may request a formal interpretation of any provision of this UDO or of the location of zoning district boundary unassociated with a permit application or enforcement action. Such request must relate to a specific parcel of property, must be made in writing, must state all of the necessary facts to make the determination and must specifically state the ordinance provisions subject to the interpretation request. If the applicant for the formal interpretation is not the owner of the property, the applicant must certify that a copy of the request has been provided to the property owner.

3.9.1.2.2. Response. Only the UDO Administrator is authorized to issue a formal interpretation under this subsection. The UDO Administrator may in their discretion decide whether or not to respond to a request for a formal interpretation. A response to a request may only be made with the approval of the Town Manager. A response to a request is not a formal interpretation unless it is made in writing and includes a notation on its face that states "This is a Formal Unified Development Ordinance Interpretation."

3.9.1.2.3. Notice. Formal interpretations are not appealable under this subsection unless they include a certificate of service certifying that a copy of the formal interpretation has been provided to the Town Manager and the owner of the land subject to the interpretation if the applicant for the interpretation was not the owner of the land. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

3.9.1.3. Notice of Decisions. The official who made the decision shall 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 shall be delivered by personal delivery, electronic mail, or by first-class mail. Landowners or applicants for a decision may provide for actual or constructive notice to persons who have standing to appeal the decision by acting in accordance with subsection 3.9.2.3.

3.9.2. Appeals of Administrative Decisions.

The Board of Adjustment shall hear and decide appeals of administrative decisions of administrative officials charged with enforcement of this UDO and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

3.9.2.1. Who May Appeal. Any person who has standing under G.S. 160A-393(d) or the Town may appeal an administrative decision to the Board of Adjustment. Any other party who has such standing may also intervene in an existing appeal by filing a written request to do so with the Town Clerk prior to the expiration of that party's time to appeal under subsection 3.9.2.3 or

within 10 days of receiving actual or constructive notice of the appeal, whichever is later. If the property subject to the appeal is owned by someone other than the applicant, the owner of the property is considered a party to the proceeding without intervention.

3.9.2.2. Form of Appeal. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal. Each notice of appeal shall include a listing of the names and addresses of all of the persons listed in subsection 3.4.3.1 who are entitled to receive notice. The list shall be supplied by the appellant and shall be current according to the most recent property tax listing as filed in the office of the Dare County Tax Department.

3.9.2.3. Time to Appeal. 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. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

3.9.2.4. Duties of Official Who Made Decision. No less than one week before an appeal is to be heard, the official who made the decision being appealed shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner. The official who made the decision being appealed shall be present at the hearing as a witness.

3.9.2.5. Stay Pending Appeal. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board after notice of appeal has been filed that because of the facts stated in an affidavit: (i) a stay would cause imminent peril to life or property or (ii) because the violation is transitory in nature, a stay would seriously interfere with enforcement of the UDO. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the UDO 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.

3.9.2.6. Timing of Hearing. Subject to the provisions of subsection 3.9.2.5 of this section, the Board shall hear and decide the appeal within a reasonable time.

3.9.2.7. Appeals in the Nature of Certiorari. When hearing an appeal from a UDO provision that requires the appeal be heard in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in NCGS 160A-393(k).

3.9.2.8. Alternative Dispute Resolution. The Town and other parties to an appeal may agree to mediation in accordance with the applicable rules for mediated settlement conferences in Superior Court. If the parties agree to mediation, a hearing on the merits of the matter will be delayed until the regular board meeting following the mediation.

3.9.2.9. Authority of the Board. The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.

3.9.2.10. Hearing on Appeal. 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.

SECTION 3.10 VARIANCES

3.10.1. Standards for Granting a Variance.

When unnecessary hardships would result from carrying out the strict letter of this UDO, the Board of Adjustment shall vary any of the provisions of the UDO upon a showing of all of the following:

3.10.1.1. Unnecessary hardship would result from the strict application of the UDO. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

3.10.1.2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

3.10.1.3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

3.10.1.4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

3.10.2. Under no circumstances shall the Board of Adjustment grant a variance to allow a use either expressly or by implication not permissible under the terms of this UDO in the district involved.

3.10.3. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Violation of such conditions shall be deemed a violation of this UDO and punishable under Section 1.10, Violation of UDO Regulations.

3.10.4. A variance that is granted shall be the minimum variance that will resolve the unnecessary hardship resulting from the strict application of this UDO to the land, building or structure.

3.10.5. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

3.10.6. Application Requirements.
Each application for a variance must be in writing, accompanied by any associated administrative fee and shall include all of the following information:

3.10.6.1. A listing of the specific section(s) and subsection(s) of this UDO that the applicant is seeking to vary.

3.10.6.2. For each provision, the applicant is requesting to vary, a listing of how the provision applies to the property without the requested variance and how the applicant proposes the provision should be varied.

3.10.6.3. A description of how the property can be used without the requested variance compared with how it could be used with the requested variance.

3.10.6.4. A description of the unnecessary hardship which results from the strict application of this UDO.

3.10.6.5. A description of the conditions that are peculiar to the property, such as location, size, or topography which cause the unnecessary hardship.

3.10.6.6. A certification that the hardship did not result from actions taken by the applicant or the property owner other than the act of purchasing property with knowledge that circumstances exist requiring a variance.

3.10.6.7. A narrative explaining how the requested variance is consistent with the spirit, purpose, and intent of this UDO, such that public safety is secured, and substantial justice is achieved.

3.10.6.8. A certification that the requested variance, if granted, will not allow an increase or extension of an existing nonconforming structure or use of land.

3.10.6.9. A certification that the requested variance, if granted, will not allow a use of the land otherwise prohibited in the applicable zoning district to occur on the property.

3.10.6.10. A listing of the names and addresses of all of the persons listed in subsection 3.4.3.1 who are entitled to receive notice. The list shall be supplied by the applicant and shall be current according to the most recent property tax listing as filed in the Dare County Tax Department.

3.10.7. In addition to the foregoing requirements, when considering a variance from Article 11, Part III, Flood Damage Prevention, the Board shall follow the additional provisions of such article.

3.10.8. Amendments.
The owner of land which has been granted a variance may apply for an amendment to the previously granted variance. All of the standards for granting a variance shall apply to the consideration of an amendment to an existing variance. An amendment may only be granted if:

3.10.8.1. The circumstances on the property have substantially changed since the time of the granting of the prior variance in such a way that the use of the property in accordance with prior variance is itself an unnecessary hardship; or

3.10.8.2. The amendment requested will be equal to or less of a variance than the previously granted variance.

SECTION 3.11 BURDEN OF PROOF IN APPEALS AND VARIANCES

3.11.1. When an appeal is taken to the Board of Adjustment in accordance with Section 3.9, Appeals of Administrative Decision, the burdens of production, persuasion and proof for all quasi-judicial decisions of the board lie with the applicant or appellant seeking such a decision.

SECTION 3.12 BOARD OF ADJUSTMENT ACTION/VOTING

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

SECTION 3.13 PROCEDURES FOR QUASI-JUDICIAL HEARINGS.

3.13.1. Evidence/Presentation of Evidence.

3.13.1.1. Applicability. The provisions of this section apply to all hearings for which a notice is required by Section 3.4, Notice of Hearing.

3.13.1.2. Oaths. All persons who intend to present evidence to the decision-making board shall be sworn in. The Chair of the Board, any member acting as Chair, the Clerk to the Board, and public notaries 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 decision-making board, willfully swears falsely is guilty of a Class 1 misdemeanor.

3.13.1.3. Competent Evidence. All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (necessary findings) shall be based upon competent, substantial evidence. The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (1) the evidence was admitted without objection or (2) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

3.13.1.3.1. The use of property in a particular way would affect the value of other property.

3.13.1.3.2. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

3.13.1.3.3. Matters about which only expert testimony would generally be admissible under the rules of evidence.

3.13.1.4. Other Requirements. The entirety of a quasi-judicial hearing and deliberation shall be conducted in open session. Parties to a quasi-judicial hearing have reasonable and typical due process rights of parties to administrative and judicial proceedings, including, but not limited to present evidence, to call witnesses, to cross examine witnesses, to object to evidence, to make appropriate motions, and make appropriate arguments. This does not preclude the decision-making body from entering into a justifiable closed session pursuant to NC GS 143-318.11.

3.13.1.5. Subpoenas. The decision-making board through the Chair, or in the Chair's absence, anyone acting as the Chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under 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 decision-making board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the decision-making board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all property parties.

3.13.2. Continuances.

The decision-making board may grant a continuance to any party for good cause shown or upon the Board's own motion. Requests for continuances should be made in writing but may be made orally at a meeting of the Board. The Board Chair may grant a continuance request prior to a meeting if the applicant or appellant makes a written request showing good cause. The Chair may always defer ruling on such a request to allow for the decision to be made by the Board.

3.13.2.1. Good Cause. Good cause for a continuance includes, but is not limited to: (i) the official issuing the decision subject to an appeal is unavailable; (ii) there is insufficient membership of the board seated and present to hear a matter; or (iii) if any party or the Town would be unduly prejudiced by the presentation of matters not presented in a notice of appeal.

3.13.2.2. Re-notification Fees. If notices of hearing have already been issued, the party granted a continuance is responsible for the administrative costs of noticing an additional hearing if such costs are incurred.

3.13.3. Modification of Application at Hearing.

3.13.2.1. In response to questions or comments made in sworn testimony at the hearing, the applicant may agree to modify the application, including the plans and specifications submitted.

3.13.2.2. Unless such modifications are so substantial or extensive that the decision-making board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the decision-making board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the UDO Administrator.

3.13.4. Record.

3.13.4.1. A record shall be made of all hearings required by Section 3.3, Public Hearing Required, and such recordings shall be kept as provided by state law. Minutes shall also be kept of all such proceedings. A transcript may be made but is not required.

3.13.4.2. All documentary evidence, including any exhibits, presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the Town in accordance with NCGS 160A-393(i).

3.13.5. Quasi-Judicial Decision.

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 Board shall determine contested facts and make its decision within a reasonable time. A reasonable time in which to issue an oral decision shall not be less than 45 days following the completion of the public hearing on the matter. A reasonable time in which to issue a final decision shall not be less than 45 days following the issuance of an oral decision. Otherwise, a reasonable time greater than those specified in this subsection shall be determined by the circumstances of the matter under consideration. Every quasi-judicial decision shall be based upon competent, substantial evidence in the record. The written decision shall be signed by the Chair or other duly authorized member of the Board. In absence of specific board direction, the written decision will be prepared by the Town via the Clerk to the Board after review by the Town's attorney and board attorney and will be presented to the chair for execution if the chair deems it appropriate. The chair, in their discretion, may seek the approval of the board for all or any portion of a decision so prepared. Otherwise, the board may at the time of its oral decision direct any party to prepare a proposed written decision and may consider the written decision at its next regular meeting. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board or such other office or official as this 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.

SECTION 3.14 REHEARINGS.

When an application involving a quasi-judicial procedure/petition is denied by the Board of Commissioners or Board of Adjustment, reapplication involving the same property, or portions of the same property, may not be submitted unless the petitioner can demonstrate a substantial change in the proposed use, conditions governing the use of the property, or conditions surrounding the property itself.

SECTION 3.15 APPEALS OF QUASI-JUDICIAL DECISIONS.

3.15.1. Every quasi-judicial decision shall be subject to review by the Superior Court of Dare County by proceedings in the nature of certiorari pursuant to NCGS 160A-393.

3.15.2 A petition for review shall be filed with the Dare County Clerk of Superior Court by the later of thirty (30) days after the decision is effective or after a written copy thereof is given in accordance with subsection 3.13.5. When first class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

ARTICLE 4. DEVELOPMENT REVIEW PROCESS

PART I. GENERAL PROVISIONS 4-3
Section 4.1 Purpose and Applicability 4-3
PART II. DEVELOPMENT REVIEW PROCESS 4-4
Section 4.2 Purpose and Intent 4-4
Section 4.3 Pre-Application Meeting and Sketch Plan 4-4
Section 4.4 Applications Reviewed by Staff 4-5
4.4.1. Administrative Approval Flowchart 4-6
4.4.2. Pre-Application Meeting and Sketch Plan 4-6
4.4.3. Minor Site Plan, Minor Subdivision Plat, or Construction Drawings Submitted 4-6
4.4.4. Staff/Technical Review Committee (TRC) Review 4-7
4.4.5. Action by the UDO Administrator 4-7
4.4.6. Appeal of Administrative Decision 4-7
Section 4.5 Applications Reviewed by the Planning Board/Board of Commissioners 4-8
4.5.1. Board of Commissioners Review and Approval Flowchart 4-8
4.5.2. Pre-Application Meeting and Sketch Plan 4-8
4.5.3. Major Site Plan, Major Subdivision Preliminary Plat, or Construction Drawings Submitted 4-9
4.5.4. Staff/Technical Review Committee (TRC) Review 4-9
4.5.5. Review and Approval by the Board of Commissioners 4-9
4.5.6. Board of Commissioners Denial 4-10
4.5.7. Zoning Permit 4-10
Sections 4.6-4.8 Reserved 4-10
PART III. DEVELOPMENT PERMITTING REQUIREMENTS 4-11
Section 4.9 Purpose and Intent 4-11
Section 4.10 Zoning and Building Permits Required 4-12
Section 4.11 Permit Types 4-12
4.11.1. Zoning Permit 4-12
4.11.2. Building Permit 4-12
4.11.3. Floodplain Development Permit 4-13
4.11.4. Land Disturbance Permit 4-13
Section 4.12 Application Requirements for Zoning and Building Permits 4-13
4.12.1. General Site Plan Requirements for All Projects 4-13
4.12.2. Specific Site Plan Requirements Based on the Proposed Activity 4-13
Section 4.13 Certificate of Compliance Required 4-14
Section 4.14 Administrative Adjustments 4-15
4.14.1. Purpose 4-15
4.14.2. Timing and Review 4-15
4.14.3. Applicability 4-15
4.14.4. Administrative Adjustment Review Standards 4-16
4.14.5. Expiration of Development Approval 4-16
Section 4.15 Time Limitations for Site Plans, Zoning Permits, & Building Permits 4-17
4.15.1. Time Limitations to Obtain Building Permit 4-17
4.15.2. Time Limitation to Commence and Continue Construction 4-17
Sections 4.16-4.20 Reserved 4-17

PART IV. SUBDIVISION PROCEDURES 4-18
Section 4.21 Administrative Approval of Recombinations or Resubdivision of Nonconforming Lots of Record 4-18
Section 4.22 Initial Conference; Preliminary Sketch 4-18
Section 4.23 Review Procedure for Minor Subdivisions 4-19
Section 4.24 Review Procedure for Major Subdivisions 4-20
4.24.1. Preliminary Plat 4-20
4.24.2. Final Plat 4-22
4.24.3. Time Limitation/Approval of Preliminary Plat 4-23
4.24.4. As-Built Drawing Submittal 4-23
4.24.5. Property Owners Association Covenants Review 4-23
4.24.6. Performance Guarantees 4-23
4.24.7. Transfer of Lots in Unapproved Subdivisions, Conveyance of Unapproved Lots Subject to this Ordinance 4-24
Section 4.25 Procedure for Plat Recordation 4-25
Section 4.26 Issuance of Permits 4-25
Section 4.27 Dedication of Land for Park, Recreation, and Open Space 4-25
Section 4.28 Subdivision Waivers 4-26
4.28.1. Waivers Generally 4-26
4.28.2. Conditions 4-26
PART V. CONSTRUCTION DRAWING REVIEW REQUIREMENTS 4-26
Section 4.29 Applicability and Process 4-26
Section 4.30 Submittal Requirements 4-26

PART I. GENERAL PROVISIONS

SECTION 4.1 PURPOSE AND APPLICABILITY.

4.1.1. The purpose of this Article is to establish an orderly process to develop land within the Town of Nags Head. It is also the intent of this Article to provide a clear and comprehensive development process that is fair and equitable to all interests, including the petitioners, affected neighbors, Town staff, related agencies, the Planning Board, and the Board of Commissioners.

4.1.2. The development review process applies to all development actions within the planning jurisdiction of the Town of Nags Head. Table 4-1, Development Review Procedures, depicts the reviewing body/administrative official for type of development activity.

4.1.3. Projects involving development other than one and two-family dwellings must go through a separate and formal development review process, in accordance with Article 4, Development Review Process, prior to proceeding through the permitting process. This development review process is described in Part II of this Article.

4.1.4. Projects involving construction of one and two-family dwellings generally proceed straight to the permitting process which is described in Part III of this Article.

4.1.5. Approved plans shall be the guiding documents for final approval and permitting.

TABLE 4-1: DEVELOPMENT REVIEW PROCEDURES
D = DECIDE R = RECOMMENDATION

PROCEDURE	UDO ADMINISTRATOR	BUILDING INSPECTOR	TECHNICAL REVIEW COMMITTEE	PLANNING BOARD	BOARD OF COMMISSIONERS
SITE DEVELOPMENT					
Site Plan					
Major Site Plan	R		R	R	D
Minor Site Plan	D		R		
Subdivision					
Major Subdivision					
Preliminary Plat	R		R	R	D
Construction Drawings	D		R		
Final Plat	D		R		
Minor Subdivision	D		R		
PERMITS					
Building Permit		D			
Zoning Permit	D				
Sign Permit	D				
Floodplain Dev. Permit	D				
Land Disturbance Permit	D				
Temporary Use Permit	D				
ADMINISTRATIVE					
Administrative Adjustment	D				

PART II. DEVELOPMENT REVIEW PROCESS.

SECTION 4.2 PURPOSE AND INTENT.

The formal development review process is designed for non-residential development (i.e., projects other than one- and two-family dwellings) applications that require review by the Planning Board and Board of Commissioners. The permitting process for one- and two-family dwellings is provided in Part III, Permitting Process.

SECTION 4.3 PRE-APPLICATION MEETING AND SKETCH PLAN.

4.3.1. The purpose of a pre-application meeting is to review projects at a conceptual level early in the design process for consistency with requirements of the UDO. The pre-application meeting is conducted with the UDO Administrator or his/her designee.

> ***4.3.1.1. Optional.*** A pre-application meeting for all development is strongly encouraged. This recommended pre-application meeting is a non-binding and informal review of a development proposal intended to provide information to the applicant on the procedures and policies of the Town of Nags Head, and does not confer upon the applicant any development rights. This meeting is a courtesy intended to inform the applicant of the approval criteria prior to submittal of the development plan; furthermore, pre-application review does not constitute approval of the development plan and may not be substituted for any required approvals.

> ***4.3.1.2. Mandatory***. A pre-application meeting and sketch plan review with the Planning Board is required in accordance with 10.84.1., Sketch Plan Review, prior to the submission of a formal site plan. A sketch plan is mandatory for all new development other than one and two-family dwellings in cases where new construction and/or additions have a total habitable building area that is five thousand (5,000) square feet or greater.

4.3.2. The applicant may schedule a pre-application meeting with the UDO Administrator to review the requirements that may apply to proposed development and methods that may be used to meet the Town's requirements. For the purposes of this meeting, the applicant shall prepare a Sketch Plan which includes the items listed in subsection 4.3.4. The UDO Administrator may advise the applicant of potentially applicable Town regulations and policies, suggest development alternatives, and discuss application procedures and fees (see Section 1.9, Fees). However, the burden remains upon the applicant to familiarize themselves with these matters and to obtain the assistance of relevant professionals if necessary. For projects that require Planning Board review, the Sketch Plan will be forwarded to the Planning Board at its next regularly scheduled meeting with staff comments in accordance with the annual Planning and Development Submittal Calendar.

4.3.3. The applicant is encouraged to incorporate the recommendations of the UDO Administrator and/or the Planning Board (if applicable) into the development plan before submittal of a formal site plan.

4.3.4. To ensure an appropriate level of review, applicants are encouraged to submit as much information as possible. Applicants are encouraged to provide more than one project alternative or variations of the proposed project for review. A digital copy of the sketch plan, drawn to scale, should be submitted to the UDO Administrator, including the following:

> ***4.3.4.1.*** Rough site plan sketches. A site plan prepared to scale, preferably the same scale as required for development plan submittal, with existing and proposed development including but not limited to property boundaries, total acreage, existing and proposed streets, adequate space allocations for the requisite wastewater and stormwater improvements, vegetation/buffering requirements, site access, and the boundaries of any proposed phasing.
>
> ***4.3.4.2.*** Building renderings.
>
> ***4.3.4.3.*** A narrative describing the proposed project and how it is consistent with Town development requirements and the Comprehensive Plan.

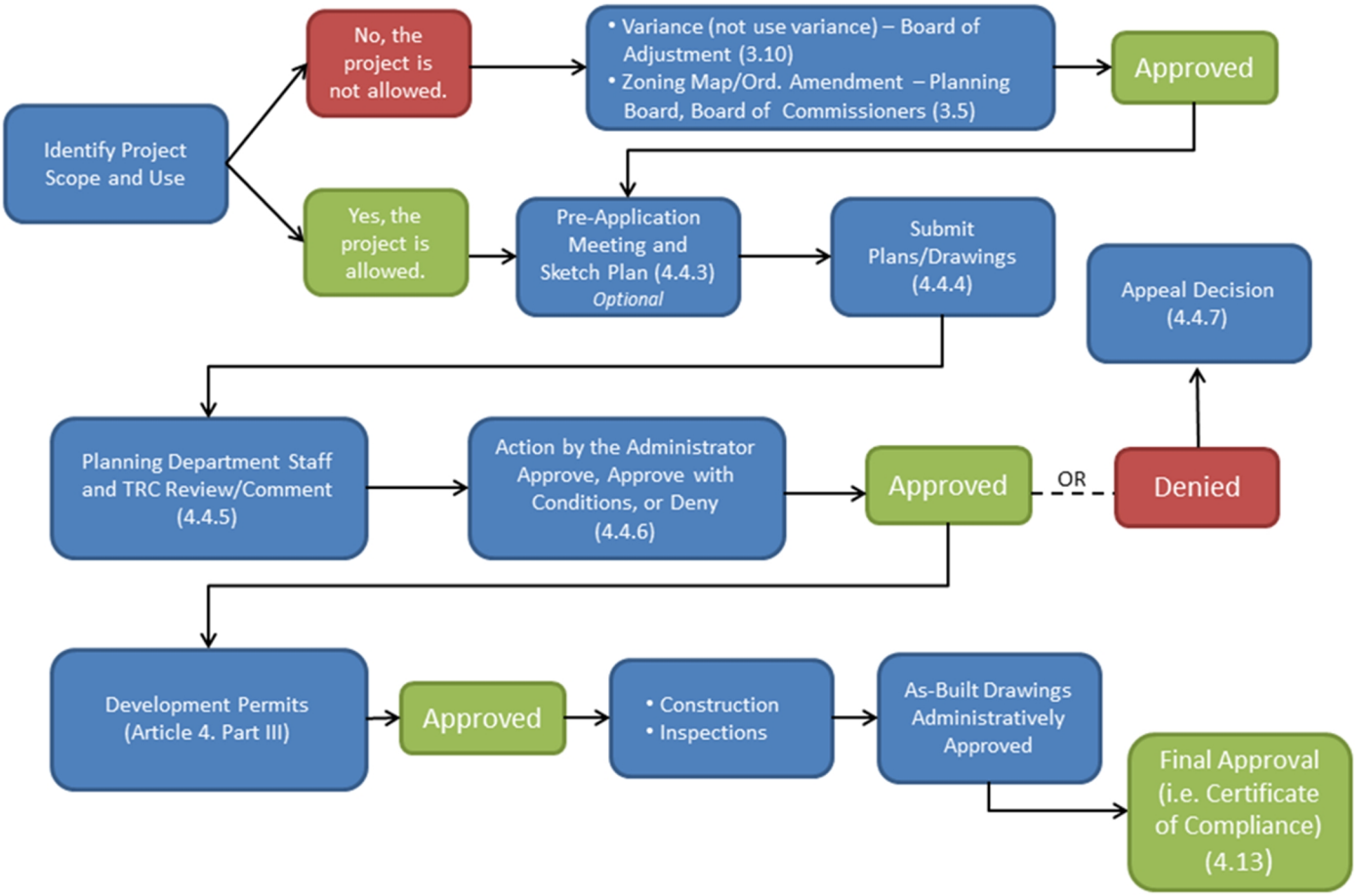
SECTION 4.4 APPLICATIONS REVIEWED BY STAFF.

Administrative approval includes the following types of development:

- Minor Site Plans (increases in lot coverage or building floor area not greater than 1,000 square feet, changes to stormwater management measures, landscape buffering, vegetation preservation area, signage, or site lighting for existing development).
- Change of use applications not involving establishment of a new conditional use.
- Administrative Adjustments (see Section 4.14).
- Temporary Use Permits.
- Minor Subdivisions.
- Major Subdivision Final Plats.

The UDO Administrator has the authority to determine when projects meeting the above requirements shall require Major Site Plan review due to other project activities or unique circumstances; the UDO Administrator shall make such a determination in writing.

4.4.1. Administrative Approval Flowchart.



4.4.2. Pre-Application Meeting and Sketch Plan.

Pre-application meeting and sketch plan review is optional and in accordance with Section 4.3, Pre-Application Meeting and Sketch Plan.

4.4.3. Minor Site Plan, Minor Subdivision Plat, or Construction Drawings Submitted for Review.

A plan of the proposed development shall be submitted in accordance with this Article, as applicable, and shall be accompanied by the completed application and payment of a fee as adopted by the Board of Commissioners (see Section 1.9, Fees).

4.4.4. Staff/Technical Review Committee (TRC) Review.

The UDO Administrator may circulate the plan or plat to relevant Town staff and officials. These officials/staff shall constitute a Technical Review Committee (TRC). The TRC may include, but not necessarily be limited to, the following:

- UDO Administrator
- Police Department
- Fire Department
- Building Inspections Department
- Town Engineer
- Public Works Department
- Town Attorney

Other governmental agencies, organizations, and officials who may be requested to review plans/plats, at the discretion of the UDO Administrator, include the following:

- Utilities Providers
- Dare County Health Department
- Dare County Board of Education
- Dare County Planning Department
- Albemarle Rural Planning Organization
- NC Department of Transportation
- NC Department of Environmental Quality
- US Army Corps of Engineers

4.4.5. Action by the UDO Administrator.

Within thirty (30) days of the receipt of a complete and application, the UDO Administrator shall in writing approve, approve with conditions, or deny such applications contained in Section 4.4, Applications Reviewed by Staff.

4.4.6. Appeal of Administrative Decision.

Administrative decisions under this section may be appealed to the Board of Adjustment in the manner provided by Section 3.9, Appeals of Administrative Decisions.

SECTION 4.5 APPLICATIONS REVIEWED BY THE PLANNING BOARD/BOARD OF COMMISSIONERS.

Board of Commissioners approval upon Planning Board review and recommendation applies to the following:

- Major site plans (if involving a conditional use, see Section 3.8, Conditional Use Permits, for additional procedural and notification requirements).
- Vested Rights Site Plans in accordance with Section 3.6, Establishment of Vested Rights.
- Major Subdivisions.

4.5.1. Board of Commissioners Review and Approval Flowchart.

4.5.2. Pre-Application Meeting and Sketch Plan.

A pre-application meeting and sketch plan is mandatory, in accordance with Section 4.3, Pre-Application Meeting and Sketch Plan, for all new development where new construction and/or additions have a total habitable building area that is five thousand (5,000) square feet or greater.

4.5.3. Major Site Plan, Major Subdivision Preliminary Plat, or Construction Drawings Submitted for Review.

4.5.3.1. All major site plans and major subdivision preliminary plats shall be submitted in accordance with this Article, as applicable, and shall be accompanied by the completed application and payment of a fee as adopted by the Board of Commissioners (see Section 1.9, Fees).

4.5.3.2. All major site plans and major subdivision preliminary plats shall be not later than 45 calendar days prior to the Planning Board meeting at which the applicant desires for the application to be considered.

4.5.4. Staff/Technical Review Committee (TRC) Review.

The UDO Administrator will circulate the plan to relevant Town staff and officials for comments and recommendations. These reviewing officials/staff shall constitute the Technical Review Committee (TRC). The TRC may include, but not necessarily be limited to, those parties listed in subsection 4.4.4. The UDO Administrator will provide comments to the applicant.

4.5.5. Review and Approval by the Board of Commissioners Upon Planning Board Recommendation.

4.5.5.1. Following a complete review by the staff, the UDO Administrator shall schedule the application for review by the Planning Board at the next regularly scheduled meeting.

4.5.5.2. The Planning Board shall forward its recommendation to the Board of Commissioners within thirty (30) days of reviewing the application. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

4.5.5.3. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation must be received by the Board of Commissioners. The Board of Commissioners shall hold a public hearing to consider the application at its next regularly scheduled meeting. Notice of the public hearing shall be as specified in Section 3.4, Notice of Hearing.

4.5.5.4. The Board of Commissioners may take the following actions:

4.5.5.4.1. Approve the application;

4.5.5.4.2. Approve the application with conditions acceptable to the applicant;

4.5.5.4.3. Deny the application;

4.5.5.4.4. Table or continue the consideration of the application until a specific meeting date and time or until the next regular meeting of the Board of Commissioners. In the course of evaluating the proposed conditional use, the Planning Board or Board of Commissioners may request additional information from the applicant to determine whether the applicant has met the requirements of this UDO. With the applicant's agreement, the Board may continue the hearing until such time as the applicant can provide the information. Without the agreement of the applicant, the Board may make a determination of whether the UDO requirements are met for permit issuance. In that case, the applicant bears the risk that their evidence could be insufficient to the met UDO requirements and that had they provided the information requested they might have cured a deficiency.

4.5.5.4.5. Return the application to the Planning Board for further consideration. This deferral does not restart the initial Planning Board 45-day review period. The Board of Commissioners may direct that the Planning Board return a recommendation by a certain date.

4.5.6. Board of Commissioners Denial.

Following denial by the Board of Commissioners, the applicant may file a new application and associated fee or appeal the decision to the Superior Court. Unless the Board of Commissioners explicitly states conditions that must be met prior to the resubmission of an application, the applicant shall not submit a new application for the same property within one (1) year of the date of denial by the Board of Commissioners unless the application is (i) significantly different from the previously denied application as determined by the UDO Administrator or (ii) the applicant pays a double fee. All applications shall be resubmitted for full review unless the application is resubmitted to address conditions set forth by the Board of Commissioners for reapplication.

4.5.7. Zoning Permit.

Approval of a site plan or final subdivision plat shall be a prerequisite of a zoning permit consistent with the requirements of Article 4, Part III, Development Permitting Requirements.

SECTIONS 4.6 - 4.8 RESERVED

PART III. DEVELOPMENT PERMITTING REQUIREMENTS.

SECTION 4.9 PURPOSE AND INTENT.

This section establishes the permitting process for developing one- and two-family dwellings as well as projects that complete the development review process in Part II of this Article. The permitting process involves a comprehensive review of projects for compliance with the regulations of this UDO. Projects will be reviewed for compliance with zoning, floodplain management, stormwater management, erosion and sedimentation control, as well as building code compliance. One or more permits are commonly required for most site improvements including, but not limited to, the following:

- Single-family/duplex construction – includes additions/expansions, enclosures, stairs, ramps.
- Commercial development – includes additions/expansions, storage, renovations or changes of use.
- Accessory structures – includes pool, storage buildings, gazebo, dune deck, tennis courts.
- Driveways, parking and parking additions or reconfigurations.
- Fences and pool barriers.
- Signs.
- Satellite dishes/minor communication towers.
- Bulkheads and retaining walls.
- Outdoor showers, HVAC, and pool equipment platforms.
- Improvements or modifications to buffer yards
- Removal of trees greater than 6 inches in caliper.
- Land disturbing activity including but not limited to clearing, grading, grubbing of tree/shrub roots, and/or filling.

In order for an application to be complete, the Development Permit Application may include submission of one or more of the following items:

- Dare County Health Department (Septic) Improvement Permit for projects outside of The Village at Nags Head, or letter of connection approval from Carolina Water Service Co. for projects within The Village.
- Copy of CAMA permit (if applicable).
- NFIP – V-Zone certification (if applicable).
- Written detailed description of project scope and use.
- Completed Residential Design Guidelines Point Tabulation Form (if applicable).
- Survey.
- Two sets of building plans.
- Sedimentation and erosion control for disturbance >5,000 square feet.
- Stormwater plans with grading and drainage (if applicable).
- Signs, including dimensioned renderings and foundation or attachment details.
- Other information as required by local ordinance, CAMA, or State codes.

A description of the permit application and procedural requirements is provided in the Town's Reference Manual. 2019 Edition, for Development Permit Applications.

SECTION 4.10 PERMITS REQUIRED.

4.10.1. No use of land shall be initiated or modified and no building or other structure shall be erected, moved, added to or structurally altered without having either a conditional use permit approved by the Board of Commissioners as provided for under Section 3.8, Conditional Use Permits, or the necessary permits identified in Section 4.11, Permit Types, approved and issued by the UDO Administrator.

4.10.2. Furthermore, no building permit shall be issued except in conformity with the provisions of this UDO, the state building code, and applicable federal, state and local regulations.

4.10.4. A fee for conditional use permits, zoning permits and building permits is required, which shall be in accordance with a regularly adopted fee schedule of the Town.

SECTION 4.11 PERMIT TYPES.

All development related activities require permits from the Town of Nags Head. Depending on the activity, one or more of the following permit types may be required. All applicable UDO required permits are prerequisites of a building permit.

4.11.1. Zoning Permit.

Zoning permits are typically issued for all projects and can be issued as a stand-alone permit or in conjunction with other permit types. Typically, zoning permits for all new construction/additions to one and two-family dwellings and commercial development will be issued in conjunction with other permits as applicable to the scope of work. Stand-alone zoning permits may be issued for several types of development including, but not limited to, driveways, fences, signs, lighting, and pools. Zoning permits incorporate two (2) other review approvals:

(1) Public Works Approval (if applicable).

(2) Stormwater Approval (if applicable).

The Public Works approval is for culverts, driveway connections, drainage improvements, and water system connections. The Stormwater Approval ensures that stormwater control measures to capture and retain run-off from the site are provided in accordance with Article 11, Part I, Stormwater, Fill, and Runoff Management.

4.11.2. Building Permit.

Building permits are typically issued for all projects as required under the North Carolina State Building Code. In most cases, building permits for new construction/additions to one and two-family dwellings and commercial development will be issued in conjunction with the other permit types as applicable to the scope of work. Stand-alone building permits may be issued for development including but not limited to trade permits (i.e., electrical, plumbing, HVAC, refrigeration).

4.11.3. Floodplain Development Permit.

Floodplain Development Permits are can be issued in combination with a zoning, land disturbance, and/or building permit or as a stand-alone permit for any development within the Special Flood Hazard Area (SFHA).

4.11.4. Land Disturbance Permit.

Land Disturbance Permits can be issued in combination with a zoning, building, and/or floodplain development permit for filling, grading, land disturbing, tree clearing, or drainage improvement projects. A stormwater management approval may be required for a land disturbance permit if not associated with a building permit. The stormwater approval ensures that stormwater control measures to capture and retain run-off from the site are provided in accordance with Article 11, Part I, Stormwater, Fill, and Runoff Management.

SECTION 4.12 APPLICATION REQUIREMENTS FOR ZONING AND BUILDING PERMITS.

4.12.1. General Site Plan Requirements for All Projects.

A site plan is required for all development requiring location or modification of site or building improvements or grading and drainage activities. Site plans are not required for trade permits, interior modifications, or repair and maintenance activities. The UDO Administrator shall determine when a site plan is required and when specific information is necessary for a complete review. Generally, the items listed in Section 4.12.2, Specific Site Plan Requirements Based on the Proposed Activity, should be depicted on a site plan for all permit applications. Applicants are required to meet the requirements of this ordinance along with any items in the Town's Reference Manual, 2019 Edition, for Development Permit Applications.

4.12.2. Specific Site Plan Requirements Based on the Proposed Activity.

Depending on the proposed development activity, additional information may be required for permitting. Site plan information submitted as part of the development review process for non-residential development will be sufficient to complete the permitting process (excluding full construction drawings). The follow items may be required if applicable:

4.12.2.1 For All Types of Development Activity.

- Site plan/survey
  - Property information- address, ownership, lot number/map book/page reference
  - Existing and proposed development including but not limited to streets, topographic and natural features, and drainage
- Coastal Area Management Act (CAMA) Permit.
- Wastewater approval from Dare County Health Department or NC Department of Environmental Quality.
- Erosion control approval is issued with general development for projects disturbing more than 5,000 square feet (see Article 11, Part II).
- Flood (if in a Special Flood Hazard Area, see Article 11, Part III).

- Stormwater management (for projects which propose filling greater than one foot or for all new commercial construction, see Article 11, Part I).
- Architecture (for residential structures greater than 3,500 square feet, see UDO Section 7.4 , Dwelling, Large Residential)
- Utility connections (see Town Code Chapter 44).
- Any other State or Federal Permits

4.12.2.2 For All New Development Other Than One and Two-Family Dwellings (In addition to the items listed in 4.12.2.1.)

- Architecture (for principal commercial structures, see Article 10, Part VI, Division II).
- Site Plan/Layout (see Article 10, Part VI, Division III).
- Landscaping/buffering plan (for commercial projects and large residential dwellings, see UDO Section 10.93, Landscaping, Buffering, and Vegetation Preservation and UDO Section 7.4, Dwelling, Large Residential, respectively).
- Lighting plan (for commercial projects only, see Section 10.94, Lighting and Article 10, Part IV, Outdoor Lighting).
- Driveway connections to Town streets (see Town Code Chapter 36 and UDO Section 10.92, Street Access, Parking Lot Design, and Pavement Standards).
- Drainage infrastructure connections (see Town Code Chapter 36 and UDO Article 11, Part I).

SECTION 4.13 CERTIFICATE OF COMPLIANCE REQUIRED.

4.13.1. No land shall be used or occupied, and no building hereafter structurally altered, erected, moved, be used or have its use changed, until a certificate of compliance shall have been issued by the UDO Administrator stating that the building and/or the proposed use thereof complies with the provisions of this UDO.

4.13.2. A certificate of compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or structural alterations of such building, or part, shall have been completed in conformity with the provisions of this UDO.

4.13.3. A record of all certificates shall be kept on file in the office of the building inspector, and copies shall be furnished on request to any person wishing to review such records.

4.13.5. In instances where a change of use or other development is proposed that triggers permits or approvals under this UDO, but no building permit is required, then only those UDO permits or approvals required to verify that the proposed use and requirements pertaining thereto comply with the provisions of this UDO.

4.13.6. Prior to issuance of a certificate of compliance for any new construction project or for any non-residential project which involves an increase in lot coverage, the UDO Administrator shall inspect the entire site to determine if the development complies with the Town approved site plan. The applicant shall also furnish the Town with a final, original, sealed and signed as-built survey of the entire site. In

cases where the proposed building is within six inches of the height limit for the district in which it is located, the UDO Administrator may require a height certificate prepared by a licensed surveyor.

4.13.7. Prior to issuance of a certificate of compliance for any remodel, addition, or accessory structure, the UDO Administrator shall inspect the entire site to determine if the development complies with the Town approved site plan. If the UDO Administrator finds that the site or a structure on the site has deviated from the approved site plan, or in cases where the project is close to exceeding lot coverage, height, or directly adjacent to a setback, the UDO Administrator may require a final, original, sealed and signed as-built survey and/or height certificate.

SECTION 4.14 ADMINISTRATIVE ADJUSTMENTS.

4.14.1. Purpose.

The purpose of this section is to provide an administrative mechanism for allowing minor variations, or adjustments, to certain dimensional requirements or numerical standards (i.e., setbacks, parking, etc.) of the zoning provisions based on specific standards, with the intent of providing relief where application of a requirement or standard creates practical difficulties in allowing development that would otherwise advance the purposes served by the standards and is compatible with the surrounding area.

4.14.2. Timing and Review.

4.14.2.1. An administrative adjustment may be requested either as a stand-alone application or in conjunction with other application(s).

4.14.2.2. If an administrative adjustment application is submitted in conjunction with another application, it shall be reviewed and decided prior to the other application. (For example, if an administrative adjustment application is submitted in conjunction with a site plan application because the administrative adjustment is needed to achieve the plan for development in the site plan, the administrative adjustment application shall be reviewed and decided upon prior to review of the site plan application.)

4.14.2.3. Such requests shall be submitted in writing and acted upon by the UDO Administrator within 14 calendar days.

4.14.2.4. The UDO shall administer shall either approve or deny such requests in writing.

4.14.3. Applicability.

Administrative adjustment requests may be granted by the UDO Administrator or his or her designee only for the following requirements or standards:

4.14.3.1. Modifications in a minimum yard by up to ten percent of the setback requirement;

4.14.3.2. Modifications to non-residential parking requirements by no more than two spaces; and

4.14.3.3. Modifications to the building height by no more than six inches of the maximum limitation of the district in which the structure is located. This only applies in instances where an error occurred during the construction process.

4.14.4. Administrative Adjustment Review Standards.

An application for an administrative adjustment shall be approved upon finding that the applicant demonstrates that all of the following standards are met:

4.14.4.1. The administrative adjustment does not exceed the limitations established in subsection 4.5.2;

4.14.4.2. The administrative adjustment is consistent with the character of development on surrounding land, and is compatible with surrounding land uses;

4.14.4.3. The administrative adjustment is consistent with one or more of the following purposes:

4.14.4.3.1. Compensates for some unusual aspect of the site or the proposed development that is not shared by landowners in general;

4.14.4.3.2. Supports an objective or goal of the zoning district where it is located;

4.14.4.3.3. Saves healthy existing trees; or

4.14.4.3.4. Is necessary to rectify a building siting or placement error that occurred subsequent to the issuance of a building permit where the noncompliance occurred in good faith and through no fault of the property owner.

4.14.4.4. The administrative adjustment will not pose a danger to the public health or safety;

4.14.4.5. Any adverse impacts will be mitigated, to the maximum extent practicable;

4.14.4.6. The site is not subject to a series of multiple, incremental administrative adjustments that result in a reduction in development standards by the maximum allowed; and

4.14.4.7. The administrative adjustment is not designed to increase the building footprint of structures or the overall intensity of development.

4.14.5. Expiration of Development Approval for Administrative Adjustments.

Unless otherwise specified in the approval, an application for a building permit shall be approved within one year of the date of the approval of the administrative adjustment, or the administrative adjustment shall become null and void, and automatically expire. Permitted timeframes do not change with successive owners.

SECTION 4.15 TIME LIMITATIONS FOR SITE PLANS, ZONING PERMITS, AND BUILDING PERMITS.

The following provisions pertaining to time limitations to obtain building permits, and to commence, continue and complete construction, shall apply in all cases in which a site plan approval or development permit is required unless otherwise provided for in Section 3.6, Establishment of Vested Rights.

4.15.1. Time Limitation to Obtain Building Permit.

Final approval of a site plan by the Board of Commissioners or approval of a zoning permit by the UDO Administrator shall be valid for twelve (12) months from date of approval. The Building Inspector may issue a building permit within twelve (12) months from the date of such approval, provided that all other requirements are met. If a building permit is not issued within twelve (12) months from the date of final approval of the site plan or zoning permit, the site plan or zoning permit shall expire and the applicant must submit a new site plan conforming to the then current provisions of this Ordinance for review by the Planning Board and Board of Commissioners or a new zoning permit application for review by the UDO Administrator and pay the applicable fees. Upon the issuance of a building permit, the approval of the underlying site plan or zoning permit shall remain valid as long as the corresponding building permit remains valid as provided for in this section.

4.15.2. Time Limitation to Commence and Continue Construction.

If construction has not commenced within six (6) months from the date of issuance of a building permit, the building permit shall expire and the approval of the accompanying site plan or zoning permit shall also expire if the approval date of the zoning approval is greater than twelve (12) months. If, after commencement, the work is discontinued for a period of twelve (12) months, the building permit and accompanying site plan or zoning permit shall immediately expire. For the purposes of this subsection, work shall be deemed as discontinued, if after the commencement of work, during any twelve (12) consecutive month period there is a failure by the permit holder to have at least one required inspection for the work being conducted under the permit performed and approved by the Building Inspector. No work authorized by any permit or site plan that has expired shall be performed until a new site plan or zoning permit has been approved in conformity with the current provisions of this UDO and a new building permit issued and all applicable fees paid.

SECTIONS 4.16 - 4.20 RESERVED

PART IV. SUBDIVISION PROCEDURES.

SECTION 4.21 ADMINISTRATIVE APPROVAL OF RECOMBINATIONS OR RESUBDIVISION OF NONCONFORMING LOTS OF RECORD.

4.21.1. For subdivisions which involve only the recombination or resubdivision of no more than four (4) contiguous lots which are nonconforming lots of record as described in Article 5, Nonconformities, and which do not include the addition of other unsubdivided lands and further, where the proposed lots as recombined or resubdivided fail to meet the current dimensional requirements of the zoning district in which the lots are located, the recombination or resubdivision of such lots may be administratively approved by the UDO Administrator, provided that the following conditions are met:

> ***4.21.1.1.*** The lands involved in the recombination or resubdivision are all included within lots or portions of lots previously subdivided and recorded in the office of the Dare County Register of Deeds.
>
> ***4.21.1.2.*** The total number of lots is not increased.
>
> ***4.21.1.3.*** The resultant lots, with the exception of the minimum area and lot width requirements, shall equal to or exceed the standards of the Town as shown in this UDO.
>
> ***4.21.1.4.*** All lots involved in the recombination or resubdivision are in single ownership and provided further that all adjoining property is in different ownership.
>
> ***4.21.1.5.*** No resultant lot shall be smaller in area nor narrower in lot width than the smallest lot of any of the lots prior to recombination or resubdivision.

4.21.2. All subdivisions for which administrative approval is given herein shall be depicted on a map or plat thereof which shall meet all the requirements of the subdivision regulations and state law for recording in the Dare County Register of Deeds. Upon administrative approval being given, such map or plat shall be filed for record in the office of the Dare County Register of Deeds.

SECTION 4.22 INITIAL CONFERENCE; PRELIMINARY SKETCH.

4.22.1. Any owner of land shall, prior to subdividing or resubdividing land, confer with the UDO Administrator. Such conference shall include the submission of a preliminary sketch of the proposed subdivision, which preliminary sketch meets the requirements of this section.

4.22.2. The preliminary sketch shall conform to the minimum requirements in this subsection. It shall be an informal sketch, not necessarily to scale which shows:

> ***4.22.2.1.*** The location and dimensions of the proposed subdivision and also of future additions of the proposed subdivision which are tentatively planned;
>
> ***4.22.2.2.*** The location and dimensions of all lots;

4.22.2.3. Street rights-of-way and street pavement widths;

4.22.2.4. A listing of all proposed improvements;

4.22.2.5. The nearest existing streets and existing and proposed restrictions, including easements, covenants and zoning lines.

4.22.3. The UDO Administrator shall advise whether or not the preliminary sketch and plan of development meets the policy and standards of these regulations and further may make suggestions to the subdivider in order to facilitate such conformity.

4.22.4. The UDO Administrator, after he/she advises that the preliminary sketch conforms to the policy and standards of these regulations shall, in the case of a minor subdivision, authorize the subdivider to prepare a final plat as specified in Section 4.23, Review Procedure for Minor Subdivisions, and submit it to the UDO Administrator. In the case of a major subdivision, the UDO Administrator shall grant authorization to the subdivider to prepare a preliminary plat to be submitted to the Planning Board for consideration in accordance with Section 4.24, Review Procedure for Major Subdivisions.

SECTION 4.23 REVIEW PROCEDURE FOR MINOR SUBDIVISIONS.

4.23.1. After the initial preliminary sketch review has been completed, the subdivider or their authorized representative shall prepare a final plat as specified above and submit it to the UDO Administrator. At the time of submission, the subdivider shall pay to the Town an application fee as established by the Board of Commissioners in accordance with Section 1.9, Fees. Refer to Section 10.52, Requirements for and Contents of Final Plat and Supporting Documents for plat requirements.

4.23.2. The UDO Administrator shall approve or disapprove the final plat, as provided in Section 4.4, Applications Reviewed by Staff.

4.23.3. The UDO Administrator shall not approve any minor subdivision which is an integral part of an overall development scheme for a major subdivision. The UDO Administrator, in his/her discretion, when it is deemed necessary for the protection of the public health, safety and welfare, may require that a minor subdivision comply with all or some of the requirements specified for a major subdivision, in which case the subdivider must submit a preliminary plat in accordance with Section 4.24, Review Procedure for Major Subdivisions.

4.23.4. Commencement of Development; Resubmission on Rejection.
Upon final approval of the minor subdivision plat, the subdivider may commence development consistent with other applicable requirements of the UDO; provided, however, that the subdivider has met the requirements of other applicable statutes, ordinances and this Part. A preliminary sketch which is rejected may be resubmitted in accordance with Section 4.22, Initial Conference; Preliminary Sketch, at the option of the subdivider and after it has been revised to conform to the regulations of this section.

SECTION 4.24 REVIEW PROCEDURE FOR MAJOR SUBDIVISIONS.

4.24.1. Preliminary Plat.

4.24.1.1. At the time of submission of the preliminary plat, the subdivider shall pay to the Town an application fee as established by the Board of Commissioners in accordance with Section 1.9, Fees. Refer to Section 10.51, Requirements for and Contents of Preliminary Plat and Supporting Documents, for plat requirements.

4.24.1.2. The subdivider or his or her authorized agent shall submit four (4) hard copies and one (1) digital copy of the preliminary plat to the UDO Administrator who shall evaluate the plan to determine whether or not it meets the requirements of this Ordinance. The UDO Administrator will solicit and receive comments from other persons or agencies before making final recommendations. If the application is complete, the UDO Administrator will submit it to the Planning Board according to the schedule established in Section 4.5, Applications Reviewed by the Planning Board/Board of Commissioners.

4.24.1.3. After the UDO Administrator determines that the preliminary plat is complete, it shall be submitted to the Planning Board for review and recommendation to the Board of Commissioners. At least ten (10) days prior to the Planning Board meeting, the Town shall prominently post a notice on the site proposed for subdivision or on an adjacent public street or highway right-of-way. The Planning Board shall forward its recommendation to the Board of Commissioners within thirty (30) days after first consideration by the Planning Board. If the Planning Board fails to act within the 30-day period, the subdivision will be placed on the next available Board of Commissioners agenda. The Board of Commissioners shall consider the preliminary plat and approve, approve with conditions acceptable to the applicant, or disapprove the plan.

4.24.1.4. The Planning Board shall determine whether the preliminary plat meets the policy, purposes, and standards established by this Part and shall study its practicability, taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location and width of streets, their relation to the topography of the land, water supply, sewage disposal, drainage, lot sizes and arrangement, the future development of adjoining lands, construction plans, erosion control plans, and the requirements of the master plan and the official map, if such exist, the zoning requirements and this UDO. The Planning Board shall submit its findings and recommendations to the Board of Commissioners at their next regularly scheduled meeting. The Board of Commissioners may approve, reject or grant conditional approval of the preliminary plat. The Planning Board or the Board of Commissioners, in its discretion, if it deems that health and sanitary conditions in the area, the subdivision plans and planned population density warrant, may require percolation tests of the soil by the subdivider and the installation of appropriate sanitary and waste disposal facilities as a condition of approval. For any major subdivisions of land within the Town's SED-80 district, the subdivider shall be required to submit to the Town an environmental assessment in accordance with the terms, guidelines, policies and

conditions of NCGS Ch. 113A. If a completed environmental assessment demonstrates to the satisfaction of the Town that the subdivision has the potential to result in a significant adverse effect on the quality of the environment, the developer shall prepare, in accordance with NCGS Ch. 113A, and submit to the Town an environmental impact statement. The Town may submit all documents to the state clearinghouse for review of adequacy and consideration by appropriate state permitting agencies.

4.24.1.5. Conditional Approval. When recommending conditional approval of a preliminary plat, the Planning Board shall state in writing the conditions of such approval, if any, with respect to:

4.24.1.5.1. The specific changes which it will require in the preliminary plat;

4.24.1.5.2. The character and extent of these required changes; and

4.24.1.5.3. The amount of all bonds which will be required as a prerequisite to the approval of the preliminary plat.

Conditional approval of a preliminary plat shall not constitute approval of the final subdivision plat, but rather it shall be deemed an expression of approval of the design submitted on the preliminary plat as a guide to the preparation of the final plat, which will be submitted for approval by the UDO Administrator, and for recording upon fulfillment of the requirements of this Part and the conditions of the conditional approval, if any. The Planning Board or the Board of Commissioners may require additional changes as a result of further study of the subdivision plans or as a result of new information obtained subsequent to the time of conditional approval. The fulfillment of these conditions and the incorporation of these conditions into the preliminary plat shall be determined by the UDO Administrator in accordance with the instructions of the Board of Commissioners. At such time, the Board of Commissioners' approval shall become final, as to the preliminary plat, and the UDO Administrator shall so signify on the plat.

4.24.1.6. Notation of Approval of Preliminary Plat. The date of final preliminary plat approval shall be noted on all copies of the preliminary plat by the UDO Administrator.

4.24.1.7. Certification of Water and Sewer Approval; Erosion Control. As a specific prerequisite to approval of the preliminary plat, the subdivider must exhibit an endorsement showing tentative approval of water and wastewater facilities by the Dare County Health Department or other appropriate agency, and also exhibit plans, satisfactory to the Planning Board, for the control of erosion within the proposed subdivision, particularly as related to the control of shifting sand by winds and water.

4.24.1.8. Commencement of Improvements. Upon final approval of the preliminary plat, the subdivider may commence construction of improvements shown on the preliminary plat; provided, however, that the subdivider has met the requirements of all other applicable statutes, ordinances and this Part.

4.24.1.9. Resubmission After Rejection. A preliminary plat which is rejected may be resubmitted for reconsideration in accordance with Section 4.22, Initial Conference; Preliminary Sketch Plan, at the option of the subdivider and after it has been revised to conform to this Part.

4.24.2. Final Plat.

4.24.2.1. At the time of submission of the final plat, the subdivider or his or her authorized agent shall pay the Town an application fee as established by the Board of Commissioners in accordance with Section 1.9, Fees. Refer to Section 10.52, Requirements for and Contents of Final Plat and Supporting Documents for plat requirements.

4.24.2.2. Within twenty-four (24) months after approval of the preliminary plat by the Board of Commissioners, the subdivider shall submit a final plat showing that the subdivision has been completed according to the preliminary plan and phasing plan (if applicable). The final plat may include all or only a portion of the subdivision as proposed and approved on the preliminary subdivision plat, provided that all required improvements have been installed as called for in the approved preliminary plat or a surety bond or similar financial instrument has been approved by the Board of Commissioners, in accordance with subsection 4.24.6.

4.24.2.2.1. The UDO Administrator shall determine whether or not the final plat substantially agrees with the approved preliminary plat. If the final plat substantially agrees with the preliminary plat, the UDO Administrator shall approve the final plat after the Board of Commissioners has accepted the publicly dedicated improvements or approved a performance bond agreement.

4.24.2.2.2. If substantial differences exist, the UDO Administrator may deny the final plat and require that a new preliminary plat be submitted in accordance with subsection 4.24.1.

4.24.2.2.3 Lots shall be transferred, conveyed, or developed only after the final plat has been approved and recorded at the Dare County Register of Deeds office. No building permits may be issued until final plat approval.

4.24.2.3. Four (4) sets of the final plat on paper with original signatures shall be submitted; in addition to the original sets one (1) digital copy, one (1) mylar copies, and two (2) paper copies of the final plat. One of the copies with original signatures shall be returned to the subdivider, and one mylar copy shall be recorded by the developer at the Dare County Register of Deeds office.

4.24.2.4. The final plat shall be prepared by a surveyor licensed and registered to practice in the state. It shall conform to the provisions of plats, subdivisions, and mapping requirements as set forth in GS 47-30, as amended, and the most recent edition of *Standards of Practice of Land Surveying in North Carolina.*

4.24.2.5. The final plat shall depict or contain the information specified in Section 10.52, Requirements for and Contents of Final Plat and Supporting Documents. Plats not illustrating or containing the information required in Section 10.52 shall be returned to the subdivider or his or her authorized agent for completion and resubmission.

4.24.3. Time Limitation/Approval of Preliminary Plat.

Preliminary plat approval shall be valid for twenty-four (24) months unless a greater time period is granted through a Vested Rights request. If final plat approval has not been obtained within the twenty-four (24) month period, preliminary plat approval is void. A new preliminary plat shall be required to be submitted and such plat shall be in conformance with all current and applicable standards in this Ordinance. Notwithstanding, the developer may submit a request to the UDO Administrator for a time extension for up to one (1) year for final plat submittal. Said request must be submitted to the UDO Administrator thirty (30) days prior to the original plat expiration date. No more than one (1) such extension may be granted by the UDO Administrator per subdivision. The developer may submit a final plat for one or more phases of a subdivision given preliminary plat approval. Said submission shall extend the expiration date for the remaining phases of the subdivision for an additional twenty-four (24) months past the date of said final plat approval or approval of one or more phases.

4.24.4. As-Built Drawing Submittal.

Prior to final plat approval or release of performance guarantees, the subdivider shall submit the final plat along with as-built drawings of all improvements, the as-built drawings to be administratively approved.

4.24.5. Property Owners Association Covenants Review.

Prior to approval of any final plat for a major subdivision, the UDO Administrator shall review the covenants of the Property Owners Association to ensure the covenants include provisions for the ownership and maintenance of all privately held property and facilities, including engineered stormwater control measures (SCMs). The UDO Administrator may refer the covenants to the Town Attorney for review and comment.

4.24.6. Performance Guarantees.

In lieu of requiring the completion, installation, and dedication of all improvements prior to final plat approval, the Town of Nags Head may enter into an agreement with the subdivider whereby the subdivider shall agree to complete any remaining required improvements as specified by the approved preliminary plat for that portion of the subdivision to be shown on the final plat within a mutually agreed upon specified time period not to exceed one (1) year. Once agreed upon by both parties and the security required herein is provided, the final plat may be approved by the Board of Commissioners, if all other requirements of this Ordinance are met. The Town shall require a certified cost estimate from a licensed contractor or engineer for the cost of completion of such improvements. This provision does not apply to stormwater improvements.

4.24.6.1. Upon reaching an agreement with the Town to allow for final plat approval prior to completion of required improvement, the subdivider shall provide its choice of one of the following Performance Guarantees, in the amount required by subsection 4.24.6.3:

4.24.6.1.1. Surety bond issued by any company authorized to do business in this State.

4.24.6.1.2. Letter of credit issued by any financial institution licensed to do business in this State.

4.24.6.1.3. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.

4.24.6.2. The performance guarantee shall be returned or released, as appropriate, within thirty (30) days upon the acknowledgment by the Town that the improvements for which the performance guarantee is being required are complete. If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer.

4.24.6.3. The amount of the performance guarantee shall not equal one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. Any extension of the performance guarantee necessary to complete required improvements shall equal one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

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

4.24.6.5. For subdivisions which are underwritten or constructed with federal funds and for which the specifications for facilities or improvements are equal to or of a higher standard than those required by the Town, the bond-posting requirement may be waived and the final plat approved prior to completion of facilities or improvements by the Board of Commissioners following a written request by the subdivider.

4.24.7. Transfer of Lots in Unapproved Subdivision Plats, Conveyance of Unapproved Lot Subject to this Ordinance.

After the effective date of this Ordinance, it shall be illegal for any person being the owner or agent of the owner of any land located within the territorial jurisdiction of this Ordinance, to subdivide land in violation of this Ordinance or to transfer or sell land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this Ordinance.

The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this Ordinance.

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the Town, thereafter subdivides land in violation of applicable Town ordinances or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under applicable Town ordinances and recorded in the office of the Dare County Register of Deeds, or who transfers land otherwise subject to this Ordinance by reference to metes-and-bounds description shall be guilty of a Class 1 misdemeanor and in violation of this Ordinance, and are subject, upon conviction, to fine and/or imprisonment as provided by NCGS 14-4.

The Board of Commissioners, through its attorney or other official so designated, may take any action to enforce this Ordinance as provided in Section 1.10, Violation of UDO Provisions. Civil penalties may be issued in accordance with Section 1.10. The Board of Commissioners may direct the enforcement of this Ordinance by any method listed in NCGS 160A-174, including enjoining the transfer or sale of land in an illegal subdivision. Building permits required pursuant to NCGS 160A-417 may be denied for lots that have been illegally subdivided.

SECTION 4.25 PROCEDURE FOR PLAT RECORDATION.

After the effective date of this Ordinance, no subdivision plat of land within the Town's jurisdiction shall be filed or recorded until it has been submitted to and approved by the appropriate agencies, and until this approval is entered in writing on the face of the plat by the chairperson or head of that agency. All publicly dedicated improvements must be accepted by the Board of Commissioners contingent upon final plat recordation or acceptance of an approved performance bond.

A plat shall not be filed or recorded by the Dare County Register of Deeds of any subdivision located within the Town's jurisdiction that has not been approved in accordance with this Ordinance, nor shall the Clerk of Superior Court order or direct the recording of a plat if the recording would be in conflict with the requirements of this Ordinance.

SECTION 4.26 ISSUANCE OF PERMITS.

Development permits and building permits may be issued by the Town of Nags Head for the erection of any building on any lot within a proposed subdivision prior to the final plat of said subdivision being approved in a manner as prescribed by this Ordinance and recorded at the Register of Deeds office, provided an improvement permit has been issued by the Dare County Health Department, if required. A certificate of occupancy may not be issued until the final plat has been approved and recorded.

SECTION 4.27 DEDICATION OF LAND FOR PARK, RECREATION, AND OPEN SPACE.

A developer may provide funds to the Town whereby the Town may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area. All funds received by the Town pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes.

A combination or partial payment of funds and partial dedication of land when the governing body of the Town determines that this combination is in the best interests of the citizens of the area to be served.

SECTION 4.28 SUBDIVISION WAIVERS.

4.28.1. Waivers Generally.

Where the Planning Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may recommend and the Board of Commissioners may waive such requirements subject to appropriate conditions. Any decision of the Board of Commissioners must be rendered by a simple majority of those members present and constituting three-fourths of the total membership of the Board. Waiver requests shall be handled in accordance with the procedures established in Section 3.13, Procedures for Quasi-Judicial Hearings.

4.28.2. Conditions.

In granting such waivers, the Planning Board may recommend and the Board of Commissioners may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.

PART V. CONSTRUCTION DRAWING REVIEW REQUIREMENTS.

SECTION 4.29 APPLICABILITY AND PROCESS.

The Construction Drawings for Minor Site Plans, Major Site Plans, and Major Subdivision Preliminary Plats shall be submitted with the site plan or preliminary plat. The construction drawings shall be reviewed concurrent with the major site plan or major subdivision preliminary plat. Construction drawings shall be approved administratively prior to the issuance of a building permit.

SECTION 4.30 SUBMITTAL REQUIREMENTS.

Construction Drawings shall include the information contained in Section 4.9, Purpose and Intent. More detailed information regarding submittal requirements can be found in the Town's Reference Manual, 2019 Edition, for Development Permit Applications.

ARTICLE 5. NONCONFORMITIES

Section 5.1 Intent 5-2
Section 5.2 Nonconforming Lots of Record 5-2
Section 5.3 Nonconforming Structure with Conforming Use 5-3
Section 5.4 Nonconforming Site and Parking Areas 5-4
Section 5.5 Nonconforming Use of Land 5-4
Section 5.6 Nonconforming Use of Structure 5-5
Section 5.7 Nonconforming Sign and Sign Structure 5-6
Section 5.8 Vested Right 5-7
Section 5.9 Historic Structures 5-7
Section 5.10 Application of Commercial Design Standards 5-8

ARTICLE 5. NONCONFORMITIES

SECTION 5.1 INTENT.

5.1.1. It is the intent of this UDO to regulate lots, structures, sites and uses of land which were conforming at the time of their creation or construction but no longer adhere to the requirements of this UDO. The Town desires to allow nonconformities to continue until they are removed. Nonconforming uses and nonconforming portions of structures shall not be enlarged, expanded or extended, except as specifically provided for in Section 5.6, Nonconforming Use of a Structure.

5.1.2. Nonconformities are allowed to continue and are encouraged to receive routine maintenance in accordance with the requirements of this UDO as a means of preserving safety, appearance, and sense of community.

5.1.3. However, nothing in this UDO shall be deemed to require a change in the plans, construction or designated use of any structure for which approval has been granted in accordance with Article 4, Development Review Process subject to the time limitations specified in Section 4.15 Time Limitations for Site Plans, Development Permits, & Building Permits.

5.1.4. Except as provided in subsection 5.6.3.2, nothing in this UDO shall prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be dangerous to life by the Building Inspector charged with protecting the public safety, or upon order of such official when he has determined that there is a clear and immediate danger to the public safety. However, required repairs and maintenance shall be done in conformity with the provisions of this UDO or in conformity with the regulations of the district in which it is located.

SECTION 5.2 NONCONFORMING LOTS OF RECORD.

5.2.1. When a nonconforming lot is adjacent to one or more conforming or nonconforming lots under the same ownership as the nonconforming lot, and when any portion of a proposed structure or required use is located on two or more lots, the lots shall be combined into one single lot of record, and a plat combining such lots shall be recorded in the Dare County Register of Deeds prior to the issuance of a building permit. Existing commercial uses and structures may be exempted from this requirement as provided for under subsection 5.2.4.

5.2.2. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory building may be erected on any single lot which met all legal requirements at the time of its creation and recording in the Dare County Register of Deeds, subject to the following provisions:

> ***5.2.2.1.*** All dimensional requirements applying to that district, other than lot area and lot width, shall be met.
>
> ***5.2.2.2.*** The lot must not be less than 5,000 square feet in area.
>
> ***5.2.2.3.*** The lot must abut either an improved public right-of-way as shown on the most recent Powell Bill Map or on a street or access approved by the Board of Commissioners.

5.2.2.4. A current permit for a sewage system shall be issued by the Dare County Health Department or authorization received from the NC Department of Environmental Quality prior to the issuance of a building permit.

5.2.3. In any commercial zoning district, any lot which was legal at the time of its creation and recorded in the Dare County Register of Deeds may accommodate any commercial use permitted within that district, subject to the provisions contained in subsection 5.2.2 of this section.

5.2.4. Existing commercial uses and structures developed on multiple adjoining conforming or nonconforming lots under the same ownership, when developed under a common scheme of development and site plan, shall not be required to recombine parcels into a singular lot and may be used and developed as a single site subject to the following terms and conditions:

5.2.4.1. Applicable front yard, rear yard, side yard and buffering requirements for uses and structures shall not be applied to each individual lot line within the site, but shall be applied in the same manner to the outer boundaries of the identified site. This provision allows for the crossing of uses and structures over existing internal lot lines located within the site.

5.2.4.2. Lot coverage shall be allowed to be calculated for the entire site in the same manner that it is calculated for individual lots. Parking, stormwater management, and all other development regulations applicable to the commercial use and development on individual lots shall be allowed to be applied in the same manner to the site.

5.2.4.3. Multiple structures shall be permitted on a site as provided for in this section.

5.2.4.4. Once a site is developed as a retail shopping center or other unified commercial development requiring shared parking and in use as allowed by this section, all lots within such site must remain in the same ownership and may not be individually sold. Lots within the site may only be individually sold if all use, site, and structural nonconformities which would have otherwise resulted if the lots had not developed as a singular site as allowed by this section are removed. The provisions of this section shall apply to only those lots presently developed with commercial uses and shall not be applicable to undeveloped and unimproved lots.

SECTION 5.3 NONCONFORMING STRUCTURE WITH CONFORMING USE.

A nonconforming structure may be continued, subject to the following provisions:

5.3.1. A nonconforming structure may not be enlarged or altered in a way which increases the degree of nonconformity. Reconstruction and additions occurring within the existing building footprint, excluding enclosed space additions above or below open decks, shall be allowed and shall not constitute an increase in structural nonconformity.

5.3.2. A nonconforming structure occupied by a conforming principal use destroyed or otherwise modified by any means may be repaired, maintained, or replaced with an identical or similar structure regardless of value provided the repair, maintenance or replacement does not create any new structural nonconformities or increase the degree of existing structural nonconformities.

5.3.3. Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved, except as provided in subsection 5.3.4.

5.3.4. Any nonconforming structure located on a lot adjacent to the Atlantic Ocean or Roanoke Sound may be moved landward on the same lot, provided that such movement does not increase the degree of nonconformity of the structure in any way. However, when dimensional requirements can be met, they shall be met, except as provided for in Article 8, Section 8.6.3.7, Reductions in Yard Setbacks***.***

SECTION 5.4 NONCONFORMING SITE AND PARKING AREAS.

Where a nonconforming site exists that was legal at the time of its creation but which would not be permitted by the regulations imposed by this UDO, the nonconforming site may continue, subject to the following provisions:

5.4.1. No structure on a nonconforming site may be enlarged or altered in a way which increases the nonconformity of the site.

5.4.2. No use on a nonconforming site may be expanded, enlarged, or increased in a way which increases the nonconformity of the site.

5.4.3. Any changes to a nonconforming site or parking area must comply with all of the requirements of this UDO.

5.4.4. The change of use of a structure on a nonconforming site from one permitted use to another permitted use shall be allowed, provided that there is no increase in the degree of nonconformity of the site. Where the site is nonconforming due to an insufficient number of parking spaces for the proposed new use, the Board of Commissioners may approve a change of use without requiring additional parking spaces in accordance with the procedures set forth in section 10.15.6.

SECTION 5.5 NONCONFORMING USE OF LAND.

Where use of land exists that was legal at the time of its creation but which would not be permitted by regulations imposed by this UDO, and where such use involves no individual structure or combinations of structures with a cumulative assessed tax value not exceeding $5,000.00, the use may continue, subject to the following provisions:

5.5.1. No such nonconforming use shall be enlarged or altered in a way which increases the degree of nonconformity, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this UDO. An example of an increase in degree of nonconformity would be installing additional rides in an amusement park.

5.5.2. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this UDO.

5.5.3. If any such nonconforming use of land ceases for any reason for a period of more than 12 consecutive months, any subsequent use of such land shall conform to the regulations specified by this UDO for the district in which such land is located. For the purpose of this article, indicators of the cessation shall include, but not be limited to, no Town water or no electrical service has been legally provided and consumed for the nonconforming use or structure in question for a period of 12 consecutive months.

5.5.4. No structure requiring a building permit shall be erected until the nonconforming use of land is eliminated or converted to a use permitted by the regulations of the district in which such land is located.

SECTION 5.6 NONCONFORMING USE OF A STRUCTURE.

5.6.1. If a use involving individual structures or combinations of structures with a cumulative replacement cost of $5,000.00 or more exists that was legal at the time of its creation but would not be allowed in the district under the terms of this UDO, the lawful use may continue, subject to the following provisions:

> ***5.6.1.1.*** No existing structure devoted to a use not permitted by this UDO in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted by the regulations of the district in which it is located.
>
> ***5.6.1.2.*** Any nonconforming use may be extended throughout any part of a structure which was manifestly arranged or designed for such use at the time of adoption or amendment of this UDO, but no such use shall be extended to occupy any land outside such building. A conforming structure cannot be expanded to allow expansion of a nonconforming use.
>
> ***5.6.1.3.*** Where a nonconforming use is superseded by a permitted use, the nonconforming use may not thereafter be resumed.
>
> ***5.6.1.4.*** If the nonconforming use of any structure ceases for any reason for a period of more than 12 consecutive months, any subsequent use of the structure shall conform to the regulations specified by this UDO for the district in which such structure is located. For the purpose of this article, indicators of the cessation shall include, but not be limited to, no Town water or no electrical service has been legally provided and consumed for the nonconforming use or structure in question for a period of 12 consecutive months.

5.6.2. A conforming structure with a nonconforming use may be repaired and maintained, subject to the following provisions:

> ***5.6.2.1.*** On any structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing, provided that the cubic content or intensity existing when it became nonconforming shall not be increased.

5.6.2.2. If a structure containing a nonconforming use becomes dangerous to life, destroyed or unlawful due to lack of repairs and maintenance, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure may thereafter be restored, repaired or rebuilt provided that the cubic content or intensity of the existing nonconforming use is not increased, or that the use is changed to a use permitted by the regulations the district in which it is located.

5.6.2.3. Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be dangerous to life by any official charged with protecting the public safety, or upon order of such official when he has determined that there is a clear and immediate danger to the public safety.

5.6.3. A nonconforming structure with a nonconforming use may be repaired and maintained, subject to the following provisions:

5.6.3.1. On any nonconforming structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing, to an extent not exceeding 50 percent of either the annually adjusted Dare County assessed tax value or independent appraisal value of the nonconforming structure as determined by a North Carolina Licensed Appraiser, provided that the degree of nonconformity existing when it became nonconforming shall not be increased.

5.6.3.2. If a nonconforming structure containing a nonconforming use becomes dangerous to life, destroyed or unlawful due to lack of repairs and maintenance, where such destruction or lack of repairs and maintenance exceeds 50 percent of either the annually adjusted Dare County assessed tax value or independent appraisal value as determined by a North Carolina Licensed Appraiser, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

SECTION 5.7 NONCONFORMING SIGN AND SIGN STRUCTURE.

If a sign and/or sign structure exists that was legal at the time of its erection that would not be allowed under the terms of this UDO, the sign may continue, subject to the following provisions:

5.7.1. A nonconforming sign shall not be moved or replaced except to bring the sign into conformity with this UDO. No additional signage shall be added to a site which has a nonconforming sign.

5.7.2. If a sign and structure become physically unsafe, damaged, destroyed or unlawful due to storm-related damage or damage incurred at no fault of the owner where such damage exceeds 50 percent of the replacement cost, the sign shall be declared destroyed by the building inspector and shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of this UDO.

5.7.3. If a sign and/or sign structure becomes physically unsafe, damaged, destroyed, or unlawful due to lack of repairs and/or maintenance, where the cost of repair exceeds 25 percent of the replacement

cost, the sign shall be declared destroyed by the building inspector and shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of this UDO.

SECTION 5.8 VESTED RIGHT.

Nothing in this Article shall conflict with the provisions in Section 3.6 pertaining to a vested right.

SECTION 5.9 HISTORIC STRUCTURES.

Identified historic structures and/or maids' quarters which were legal at the time of their placement or construction, but which would not be permitted by the regulations imposed by this UDO may continue, subject to the following provisions:

5.9.1. Historic structures or maids' quarters may not be enlarged or altered in a way which increases the degree of nonconformity. An example of the increase in the degree of nonconformity would be to enclose above or below a nonconforming deck whether or not the footprint is increased. Additions above or below nonconforming portions of enclosed floor space shall not constitute an increase in the degree of nonconformity.

5.9.2. For the purpose of this section, historic structures and detached maids' quarters will be considered collectively when determining thresholds for repair, maintenance, and destruction.

5.9.3. Historic structures and maids' quarters listed on the National Register of Historic Places located on lots abutting the Atlantic Ocean or Roanoke Sound may be moved provided that such movement does not increase the degree of nonconformity of these structures in any way. When utilizing this provision, a minimum ten-foot separation shall be maintained between individual structures. All historic structures, when moved, shall adhere to the minimum setback requirements prescribed for single-family dwellings in the applicable zoning district if those setbacks can be met.

5.9.4. If a historic structure or maids' quarters becomes dangerous to life, destroyed, or unlawful due to lack of repairs or maintenance, where such destruction or lack of repairs and maintenance exceed either the annually adjusted Dare County assessed tax value or the independent appraisal value as determined by a North Carolina Licensed Appraiser, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure shall not thereafter be restored, repaired, rebuilt or replaced, except in conformity with the regulations of this UDO and any other applicable federal or state regulations.

5.9.5. For a historic structure having an attached or detached maids' quarters to make use of these provisions, no repair, alteration, restoration or replacement shall be made to these structures that would jeopardize its listing on the National Register of Historic Places.

5.9.6. Existing maids' quarters may be replaced subject to the other requirements of this UDO provided the following conditions are met:

5.9.6.1. The maids' quarters must be listed on the National Register of Historic Places.

5.9.6.2. The maids' quarters shall be architecturally compatible with the principal dwelling to the maximum extent feasible.

5.9.6.3. Replacement maids' quarters shall be similar in appearance to the maids' quarters which are being replaced.

5.9.6.4. The square footage limitations as defined in Appendix A, Definitions, Dwelling, Large Residential, shall be calculated separately for the maids' quarters and principal building.

5.9.6.5. The number of bedrooms in the maids' quarters cannot exceed the number of documented bedrooms in the original maids' quarters.

5.9.6.6. Total floor area of the maids' quarters shall not exceed 25 percent of the gross floor area of the principal building. Floor area for both the maids' quarters and principal building shall include the floor area of all habitable rooms and garages.

5.9.6.7. Setbacks shall meet the requirements for accessory structures in accordance with subsection 8.6.3.

5.9.6.8. Parking for the maids' quarters and principal building shall be calculated collectively in accordance with Section 10.16, Required Parking by Use.

SECTION 5.10 APPLICATION OF COMMERCIAL DESIGN STANDARDS.

Change of use of any commercial structure or building, in and of itself, shall not require adherence to the provisions of Article 10, Part VI, Commercial Design Standards.

ARTICLE 6. ZONING DISTRICTS

Section 6.1 Establishment of Zoning Districts 6-2
Section 6.2 Zoning Districts 6-2
6.2.1. General Provisions 6-2
6.2.2. Zoning Districts Established 6-2
6.2.3. Residential Districts 6-3
6.2.4. Commercial Districts 6-3
6.2.5. Special Districts 6-5
Section 6.3 Overlay Districts 6-6
6.3.1. CO Commercial-Outdoor Recreational Uses Overlay District 6-6
6.3.2. HO Hotel Overlay District 6-7
6.3.3. SRO Soundside Residential Dwelling Overlay District 6-7
Section 6.4 Permit Types 6-7
6.4.1. Permitted by Right 6-7
6.4.2. Permitted with Supplemental Regulations 6-7
6.4.3. Conditional Uses 6-7
6.4.4. Uses Allowed Within the SPD-C, Village at Nags Head 6-8
6.4.5. Prohibited Uses 6-8
Section 6.5 Classification and Review of Unlisted Uses 6-8
Section 6.6 Table of Uses and Activities 6-11

ARTICLE 6. ZONING DISTRICTS

SECTION 6.1 ESTABLISHMENT OF ZONING DISTRICTS.

In accordance with the requirements of NCGS Section 160A-382 that zoning regulation be by districts, the Town of Nags Head, as shown on the Zoning Map, is hereby divided into districts which shall be governed by all of the uniform use and dimensional requirements of this UDO. In the creation of the respective districts, careful consideration is given to the peculiar suitability of each and every district for the particular regulations applied thereto, and the necessary, proper, and comprehensive groupings and arrangements of various uses and densities of population in accordance with a well-considered comprehensive plan for the physical development of the area.

The purposes of establishing the zoning districts are:

- To implement adopted plans;
- To promote public health, safety, and general welfare;
- To provide for orderly growth and development;
- To provide for the efficient use of resources; and
- To facilitate the adequate provision of services.

SECTION 6.2 ZONING DISTRICTS.

6.2.1. General Provisions.

No land within the Town shall be developed except in accordance with the zoning district regulations of this Article and all other regulations of this UDO, including but not limited to:

- Article 7 Supplemental Regulations
- Article 8 District Development Standards
- Article 10 Performance Standards

6.2.2. Zoning Districts Established.

In order to implement the purpose and intent of this UDO and the Comprehensive Plan, the following districts are established.

TABLE 6-1: ZONING DISTRICTS ESTABLISHED

DISTRICT NAME	ABBREVIATION
RESIDENTIAL DISTRICTS	
Low Density Residential	R-1
Medium Density Residential	R-2
High Density Residential	R-3
COMMERCIAL DISTRICTS	
Neighborhood Commercial	C-1
General Commercial	C-2
Commercial Services	C-3
Arts and Culture	C-4
Commercial Residential	CR

DISTRICT NAME	ABBREVIATION
SPECIAL DISTRICTS	
Special Planned Development	SPD-20
Special Environmental	SED-80
Special Planned Development - Community	SPD-C
Ocean and Sound Waters	O&S

6.2.3. Residential Districts.

The Residential district designation is established to accommodate residential uses or other uses that are compatible with residential development. The district designations (R-1, R-2, R-3) and the associated uses and standards are tiered with R-1 being the least intense residential district and R-3 being the most intense residential district.

6.2.3.1. R-1 Low-Density Residential District. The R-1 low-density residential district is intended to accommodate low-density residential neighborhoods.

6.2.3.2. R-2 Medium-Density Residential District. The R-2 medium-density residential district is intended to encourage the development of moderate-density residential neighborhoods that serve as a transition zone between the low-density area and more intensely developed areas. Structures in this district adjacent to the Atlantic Ocean are encouraged to be smaller in scale and designed to be adaptable to changing conditions.

6.2.3.3. R-3 High-Density Residential District. The R-3 high-density residential district is established as an area in which the principal use of the land is for high-density single-family and duplex residential development. The R-3 district also provides for the development of less intensive non-residential uses as well as compatible supporting uses.

6.2.4. Commercial Districts.

The Commercial district designation is established to accommodate commercial development located primarily along the two major roadway corridors, US Highway 158 (US 158) and NC Highway 12 (NC 12). Neighborhood Commercial (C-1) is the least intense commercial designation that focuses on less intensive uses that serve the needs of the immediate residential neighborhoods. General Commercial (C-2) allows the broadest range of uses of all the commercial designations and provides both local and regional services. Commercial Services (C-3) is the most intense commercial district allowing warehouse, production, utility and light industrial uses. The C-3 district is the only district that does not adjoin a major roadway corridor. The Arts and Culture (C-4) is established as a neighborhood commercial district with the purpose of encouraging art, galleries, and cultural activities. The Commercial Residential (CR) is established to accommodate oceanfront development and associated commercial uses.

6.2.4.1. C-1 Neighborhood Commercial District. The C-1 neighborhood commercial district is intended to accommodate neighborhood scale, pedestrian-oriented development that serves the needs of the immediate residential neighborhoods with an emphasis on expanding

neighborhood commercial activities along NC 12. The purpose of this district is to provide needed goods and services within walkable distances to residential neighborhoods. Development must be designed in use, scale, character, and intensity to be compatible with and protect surrounding residential areas, natural resources, and scenic viewsheds. Activities such as shopping, strolling, and dining are leisure activities as much as other needed services. Typical uses in this designation include restaurant (walk-up or sit down), commercial, office, retail, personal services establishments, gallery/museum, beach equipment rentals, cottage courts, hotels, and single-family residential (5,000 square feet or less). Commercial development should be designed to activate the street fronts, encourage walkability, and be situated closer to street grade while still elevated to minimize flood risk. It is also the intent of this C-1 district to encourage the development of unique, locally owned businesses that are designed to be reflective of the community's heritage and lifestyle both in scale and massing as well site layout. This could include the use of accessory residential dwelling units to commercial businesses or other arrangements of mixed use that are designed to be pedestrian oriented and in close proximity to one another

6.2.4.2. C-2 General Commercial District. The C-2 general commercial district is intended to foster a thriving commercial business community with a variety of uses, activities, and scales. The general commercial designation allows the broadest range of uses and is located throughout the Town paralleling US 158 and US 64. This district represents areas that are anticipated to have future concentrations of uses that serve as destinations or hubs of activity for the Town and are appropriate for shopping centers or larger footprint retail stores. Form is as important as use within this designation and there should be a high degree of design quality for the building façade. Planned, mixed use developments are encouraged with a range of uses including retail, office, restaurant, banking, personal service establishments, gymnasium, indoor entertainment, gallery/museum, hotel, institutional uses, and multi-family. Future development should accommodate pedestrian access from existing pedestrian infrastructure to storefronts. Further, adequate pedestrian infrastructure should be provided to safely traverse and interconnect commercial sites.

6.2.4.3. C-3 Commercial Services District. The C-3 commercial services district is intended to provide for higher intensity land uses that are not compatible with other areas of the Town. The commercial services district accommodates utilities, light industrial uses such as processing/fabricating facilities, warehousing, bulk storage, municipal facilities, studio (dance/gymnasium, martial arts), and commercial service buildings (20,000 square feet or less). Due to the proximity of this district to Fresh Pond, allowed uses shall not be detrimental to adjacent uses, the environment, and the sources of potable water, i.e., Fresh Pond and groundwater.

6.2.4.4. C-4 Arts and Culture District. The C-4 Arts and Culture district is a district focused on arts and culture. This district is intended to provide a healthy mixture of residential and commercial uses where shopping, strolling, and dining are leisure activities as much as other needed services. Appropriate uses for this area include restaurant (walk-up/sit down),

accessory dwellings, commercial (10,000 square feet or less) office, retail, personal service establishments, gallery/museums, equipment rentals, cottage courts, small scale (boutique) hotels, and residential. Commercial development should be designed to activate the street fronts, encourage walkability, and be situated closer to street grade while still elevated to minimize flood risk. It is also the intent of this C-4 district to encourage the development of unique, locally owned businesses that are designed to be reflective of the community's heritage and lifestyle both in scale and massing as well site layout. This could include the use of accessory residential dwelling units to commercial businesses or other arrangements of mixed use that are designed to be pedestrian oriented and in close proximity to one another. The C-4 district is further intended to provide an area in which small but similar businesses will be allowed to take advantage of the steady flow of low-volume vehicular and pedestrian traffic by locating within close proximity of each other.

6.2.4.5. CR Commercial Residential District. The CR commercial residential district is intended to accommodate adaptable, oceanfront development consisting of small-scale residential uses and compatible commercial uses that support the needs of residents and visitors.

6.2.5. Special Districts.

Special districts are established to protect special lands that have unique or special characteristics to be preserved or enhanced (SPD-20, SED-80, and O&S Districts), or require special attention due to unique development issues (SPD-C).

6.2.5.1. SPD-20 Special Planned Development District. The SPD-20 special planned development district is intended to protect the environmentally sensitive nature of the unique coastal landforms contained within the district while accommodating low density residential development. Residential development should be designed in a way to minimize its impact on the environment, coastal landforms, and scenic viewsheds. This SPD-20 district is characterized by unique topographical and vegetative features including vegetated and unvegetated dunes, migrating sand dunes, as well as a pine forest. The largest portion of this district contains Jockey's Ridge State Park which has been designated by the North Carolina Coastal Resources Commission as a Unique Coastal Geologic Formation Area of Environmental Concern and as a National Natural Landmark by the United States Department of the Interior. The northwestern portion of the district borders on Nags Head Woods, a maritime forest.

6.2.5.2. SED-80 Special Environmental District. This SED-80 district is intended to protect Nags Head Woods, an irreplaceable maritime forest occupying the northwest corner of the Town. Nags Head Woods was the home of the first settlers and one of a few remaining maritime forests in the state that consists of ecologically important marshlands, pine hammocks, bay forest, the ridge forest, hardwood and pine forests, ponds and dunes. Each part of this natural system is important to the survival of the whole system. The least adverse environmental impacts would result from development in the bay and hardwood forests and away from the ponds and marshes. Nags Head Woods was designated by the United States Congress as a National Natural Landmark in 1974 and is also recognized as a unique coastal geologic formation area of environmental concern (AEC) by the NC Coastal Resources Commission. The SED-80

district permits low-density residential development that is compatible with the environmentally sensitive nature of Nags Head Woods and preserves land in a natural state. The preservation of this land as open space is important as a vital link in the groundwater replenishment cycle of the Outer Banks. The destruction of natural vegetation would have a harmful effect on the stability of the soil and its resistance to erosion and ability to both filter and absorb stormwater.

6.2.5.3. SPD-C Special Planned Development – Community District. The SPD-C district, encompassing the Village at Nags Head, is established to create regulations adapted to unified planning and development that are intended to accomplish the purposes of zoning and other applicable regulations to the same degree as in districts in which conventional regulations are intended to control development on a lot-by-lot basis. This district is intended to promote economical and efficient land use, a higher level of amenities, appropriate and harmonious variety in physical development, design, and an improved living and working environment. Article 9, SPD-C Zoning Ordinance includes a series of zoning districts and associated regulations for the SPD-C District.

6.2.5.4. O&S Ocean and Sound Waters District. The Ocean and Sound Waters District encompasses the ocean and sound waters and is established to provide for the proper use of these waters, including islands that adjoin the Town, to ensure the continued scenic, conservation and recreational value that these waters provide to the Town, its residents, visitors and the surrounding area. Regulations in this district shall not prohibit or regulate commercial fishing and navigation. The Ocean and Sound Waters District shall encompass and be applied to the area defined as the extraterritorial zoning area as referenced in Town Code Article 2-1 Zoning; boundary extension; establishment; application.

SECTION 6.3 OVERLAY DISTRICTS.

Three (3) overlay districts are hereby established as outlined in the table below. These overlay districts are intended to be superimposed over the underlying base zoning district. Land within any base district may be classified into one or more overlay zoning districts. Each overlay district includes standards which apply in addition to those specified in the underlying base zoning district. The specific objectives of each of these overlay districts are explained in the remainder of this section.

TABLE 6-2: OVERLAY DISTRICTS ESTABLISHED

DISTRICT NAME	ABBREVIATION
Commercial-Outdoor Recreational Uses	CO
Hotel	HO
Soundside Residential Dwelling	SRO

6.3.1. CO Commercial-Outdoor Recreational Uses Overlay District.

The Commercial-Outdoor Recreational Uses Overlay District is established to provide a set of comprehensive land use regulations for the operation of commercial-outdoor recreational uses while protecting the residentially zoned areas of the Town. This shall be the only area within the Town where these uses are allowed.

6.3.2. HO Hotel Overlay District.

The purpose of the Hotel Overlay District is to allow for the development of larger-scale hotels that exceed the 35-foot height restriction allowed in other zoning designations. This area generally includes the C-2 general commercial district south of the Village SPD-C district (Forrest Street) to Whalebone Junction. This area of the Town is deemed appropriate for taller, more intensive hotel uses that will not diminish important viewsheds in the area surrounding Jockey's Ridge or detract from the low density character of the historic district and the neighborhoods within the R-2 medium density residential zoning district.

6.3.3. SRO Soundside Residential Dwelling Overlay District.

The purpose of the Soundside Overlay District is to preserve and protect the unique character and historical significance of the residential enclave located in the vicinity of the unimproved portion of Soundside Road and Chowan Avenue.

SECTION 6.4 PERMITTED TYPES.

Zoning districts have uses specified as permitted by right, conditional uses, and uses permitted with supplemental regulations. Detailed use tables are provided in Section 6.6, Table of Uses and Activities, showing the uses allowed in each district. The following describes the processes of each of the categories that the uses are subject to:

6.4.1. Permitted by Right.

A "P" in a cell of the use table indicates that the corresponding use classification, category, or type is permitted in the corresponding zoning district following administrative review and approval. Permitted uses are subject to compliance with all use-specific standards and applicable development regulations of the UDO.

6.4.2. Permitted with Supplemental Regulations.

A "PS" in a cell of the use table indicates that the corresponding use classification, category, or type is permitted in the corresponding zoning district following administrative review and approval subject to district provisions, other applicable requirements, and compliance with supplemental regulations outlined in Article 7, Supplemental Regulations. These supplemental regulations are in addition to all other requirements of this UDO.

6.4.3. Conditional Uses.

A "C" in a cell of the use table indicates that the corresponding use classification, category, or type is permitted in the corresponding zoning district following Planning Board review and recommendation and Board of Commissioners review and approval of a Conditional Use Permit for the proposed use. Uses requiring a conditional use permit are subject to compliance with all use-specific standards and applicable development regulations of the UDO, as well as the conditional use approval process and criteria found in Section 3.8, Conditional Use Permits. Some Conditional Uses may also be subject to compliance with the supplemental regulations outlined in Article 7, Supplemental Regulations and are denoted by a "CS" in the use table. These supplemental regulations are in addition to all other requirements of the UDO.

6.4.4. Uses Allowed Within the SPD-C, Village at Nags Head.

Uses permitted within the SPD-C Village at Nags Head zoning district are provided in Article 9, The Village at Nags Head SPD-C Zoning Ordinance. The table in Section 9.36, Table of Uses and Activities for the SPD-C District, should be used to determine which Village at Nags Head district the use is allowed and whether the use is permitted by right or as a conditional use.

6.4.5. Prohibited Uses.

A blank in a cell of the use table indicates that the corresponding use classification, category, or type is prohibited in the corresponding zoning district.

SECTION 6.5 CLASSIFICATION AND REVIEW OF UNLISTED USES.

6.5.1. The UDO Administrator shall determine whether or not an unlisted use is substantially similar to an already defined use category or use type. A proposed use will not be denied solely because it is not included in this UDO as a listed use, unless listed in subsection 6.5.3. An unlisted use will be denied if the UDO Administrator determines that the unlisted use is substantially similar to a use which is expressly prohibited in that district. The UDO Administrator shall use the following factors as a guideline when classifying a new or unlisted use to determine if such use is classified in a manner consistent with other similar uses in the applicable zoning district.

- Consistency with the stated intent of the zoning district.
- Consistency with the adopted vision statement and policies of the Comprehensive Plan.
- Density of development (number of units, square footage, etc.).
- Intensity of use consistent with the zoning district in which the use is to be located.
- Type of activity associated with the use.
- Number of customers and length of stay.
- Generation of pedestrian and vehicular traffic.
- Potential impacts such as noise, light, odor, etc.
- Public safety.
- Environmental effects.
- Negative impacts on adjacent land uses.

6.5.2. If the UDO Administrator rejects a proposal for a use that is not clearly disallowed in a particular district, then the UDO Administrator will:

- Ensure that the citizen is provided with a copy of the interpretation in writing.
- Inform the citizen of the right to appeal the decision to the Board of Adjustment, as specified in Section 3.9, Appeals of Administrative Decisions.
- Advise the applicant on the requirements for the preparation of a proposed zoning text change for consideration by the Planning Board and Board of Commissioners allowing policy-makers to determine whether the proposed use should be an allowable use in the district or not. Financial responsibility for a proposed zoning text change shall be on the applicant.

6.5.3. The following uses are expressly prohibited in the Town of Nags Head planning jurisdiction:

- RESIDENTIAL:
  - Mobile/Manufactured Homes.
  - Trailers and Trailer Parks.
  - Convents & Monasteries.
  - Fraternity & Sorority Houses.
  - Other Residential Uses.
- AGRICULTURAL:
  - Agricultural Buildings.
  - Commercial Animal Production.
  - Commercial Crop Production (Outdoor).
  - Livestock Shelters & Stables.
  - Other Agricultural Uses (Excluding Backyard Chickens and Beekeeping).
- INSTITUTIONAL:
  - Alcohol & Drug Detoxification, Rehabilitation and Treatment Facilities with Overnight Stays.
  - Crematoriums (Human or Animal).
  - Other Institutional Uses.
- COMMERCIAL:
  - Horseback Tours.
  - Nightclubs.
  - Commercial Marina.
  - Jet-Pack Rentals.
  - Campgrounds.
  - Drug Paraphernalia Sales.
  - Automobile/Boat Dealership.
  - Automated Ice Vending (excluding such use accessory to and incorporated within a principal building).
  - Smoke and Vapor Shops.
  - Other Commercial Uses.
- INDUSTRIAL:
  - Satellite Dish Farms.
  - Solar Energy Facility (as a principal use).
  - Wind Energy Facilities (Commercial).
  - Other Energy Facilities.
  - Foundries.
  - Manufacturing, Processing, Assembly and Other Industrial Facilities.
  - Metal Products Facilities (Fabrication and Assembly).
  - Recycling Materials Collection and Processing.
  - Resource Extraction Facilities.
  - Waste Recovery Facility.

- Landfills and Solid Waste Disposal Facilities.
- Other Warehousing/Storage Facilities.

- TRANSPORTATION:
  - Aircraft Hangars.
  - Airports & Airfields.
  - Bus, Truck, & Transportation Terminals, Yards & Parking Lots.
  - Distribution Centers, Parcel Delivery Centers, & Delivery Warehouses.
  - Pedicab Storage and Dispatch.
  - Private Transit Stops.
  - Parking Garages, Single and Multi-Story.
  - Powered Scooter Share Programs.
  - Other Transportation Related Facilities.

P - Permitted Use C - Conditional Use S - Supplemental Regulations

Blank- Not allowed in that district

			Residential Districts			Commercial Districts					Special Districts				Overlay Districts			Supplemental
	Use Category/Class	**Use Type**	**R-1**	**R-2**	**R-3**	**CR**	**C-1***	**C-2**	**C-3**	**C-4**	**SPD-20**	**SED-80**	**SPD-C***	**O&S**	**CO**	**HO**	**SRO**	**Regulations**
1	Residential	Cluster Housing		PS														Section 7.1
1	Residential	Cottage Courts				CS	CS	CS										Section 7.2
1	Residential	Dwelling, Accessory																Section 7.3
1	Residential	Dwelling, Large Residential	PS	PS	PS	PS		PS			PS	PS		PS			PS	Section 7.4
1	Residential	Dwelling, Multi-Family				CS	CS	CS										Section 7.5
1	Residential	Dwelling, Single-Family (detached)	P	P	P	P	P	P		P	P	P		P			P	
1	Residential	Dwelling, Two-Family (duplex)		P	P	P	P	P		P								
1	Residential	Granny Pods/Temporary Health Care Structures	PS	PS	PS	PS	PS	PS		PS	PS	PS						Section 7.6
1	Residential	Home Occupation - Class 1	PS	PS	PS	PS	PS	PS		PS	PS							Section 7.7
1	Residential	Home Occupation - Class 2	CS	CS	CS		CS	CS			CS							Section 7.7
1	Residential	Home Occupation - Class 3				CS	CS	CS		CS								Section 7.7
1	Residential	Short-term rental	P	P	P	P	P	P		P	P	P	P	P	PS	P	P	
1	Residential	Townhouse						CS			CS							Section 7.5
1.1	Residential - Group	Adult Care Home (over six residents)		P	P													
1.1	Residential - Group	Bed and Breakfast				C	C	C		C								
1.1	Residential - Group	Boarding Houses	CS	CS	CS	CS	CS	CS		CS								Section 7.8
1.1	Residential - Group	Child Care Facility, Family Child Care Home		PS	PS													Section 7.9
1.1	Residential - Group	Dormitory					CS	CS				CS						Section 7.10
1.1	Residential - Group	Family Care Homes/Halfway Homes	PS	PS	PS	PS	PS	PS		PS	PS	PS						Section 7.11
1.1	Residential - Group	Family Foster Home	P	P	P	P	P	P		P	P	P						
1.1	Residential - Group	Hotels					CS	CS								CS		Section 7.12
1.1	Residential - Group	Multi-Unit Assisted Housing with Services		P	P													
2	Retail	Art Gallery				P	P	P		P								
2	Retail	Art Gallery - Owner Occupied				P	P	P		P								
2	Retail	Artisan's Workshop (3,000 sq. ft. or less)				PS	PS	PS		PS								Section 7.13
2	Retail	Artisan's Workshop (exceeding 3,000 square feet)				CS	CS	CS		CS								Section 7.13
2	Retail	Auction House						PS										Section 7.14
2	Retail	Beach Recreation Equipment Rentals/Sales				P	P	P										
2	Retail	Bicycle Shop (repair, retail, rental)					P	P		P								
2	Retail	Convenience Store					P	P										
2	Retail	Firearms Sales and Service						P										
2	Retail	Food/Grocery Store				P	P	P										
2	Retail	Furniture Store						P										
2	Retail	General Retail, including clothing, gifts, candy, toys, shoes, jewelry, notions, beach equipment, bakery, antiques, hobby goods, magazines/comics, crafts, dry goods, gifts, musical instruments, bookstores, sporting goods (and the incidental manufacturing, repair, or service of goods on the premises)				P	P	P		P								
2	Retail	Greenhouse/Plant Nursery					P	P	P									
2	Retail	Hardware Store					P	P										
2	Retail	Pet Shop/Dog Grooming					PS	PS		PS								Section 7.15
2	Retail	Pharmacy					P	P										
2	Retail	Production/Repair/Sales Eyeglasses, Hearing Aids, Prosthetics					P	P	P									
3	Service	Automobile Repair						CS										Section 7.16
3	Service	Bail Bonds						P										
3	Service	Banking Institution					P	P										
3	Service	Battery Charging/Exchange Station					PS	PS	PS									Section 7.17
3	Service	Broadcasting Studios						P										
3	Service	Car Washes (Automated and Self-Service)						CS										Section 7.18
3	Service	Carpet Sales and Installation							P									
3	Service	Child Care Facility, Child Care Center					CS	CS										Section 7.9
3	Service	Dry Cleaners and Laundromats (Pickup only)					P	P										
3	Service	Fire Safety Equipment Sales and Service							P									

P - Permitted Use C - Conditional Use S - Supplemental Regulations

Blank- Not allowed in that district

			Residential Districts			Commercial Districts					Special Districts				Overlay Districts			Supplemental
	Use Category/Class	Use Type	R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4	SPD-20	SED-80	SPD-C*	O&S	CO	HO	SRO	Regulations
3	Service	Food Bank						CS										Section 7.19
3	Service	Fueling Station						CS										Section 7.20
3	Service	Funeral Home						P										
3	Service	Group Fitness- Aerobics/Dance/Karate/Yoga					P	P	P	P								
3	Service	Hair Salon					P	P		P								
3	Service	Indoor Fitness/Gymnasium					P	P	P	P								
3	Service	Indoor Public Assembly Facility				C	P	P		P								
3	Service	Locksmiths						P	P									
3	Service	Massage and Bodywork Therapy					PS	PS		PS					PS			Section 7.21
3	Service	Metaphysical Wellness Services						CS										Section 7.22
3	Service	Parking Lots					P	P										
3	Service	Real Estate Rental Management Facility							P									
3	Service	Security System Sales/Service							P									
3	Service	Sexually Oriented Business							CS									Section 7.23
3	Service	Shoe Repair					P	P		P								
3	Service	Spa					P	P		P								
3	Service	Tailor					P	P		P								
3	Service	Tattoo/Body Piercing							C									
3	Service	Taxi/Limousine Service						C										
3	Service	Telecommunications Sales and Service						P	P									
3	Service	Veterinary Clinic with Animal Boarding						CS										Section 7.24.1
3	Service	Veterinary Clinic with no Animal Boarding					PS	PS		PS								Section 7.24.2
3	Service	Wallpaper Sales and Installation							P									
3	Service	Water Well Drillers Office, Storage, Sales and Install							P									
4	Food Service	Coffee Shop/Juice Bar					PS	PS		PS								Section 7.25
4	Food Service	Food Truck				PS	PS	PS		PS								Section 7.26
4	Food Service	Ice Cream Shop				P	P	P		P								
4	Food Service	Microbreweries					CS	CS		CS								Section 7.27
4	Food Service	Restaurant - Drive In					CS	CS										Section 7.28
4	Food Service	Restaurant - Drive Through						CS										Section 7.29
4	Food Service	Restaurant - Neighborhood				PS	PS	PS		PS								Section 7.30
4	Food Service	Restaurant - Sit Down				PS	PS	PS		PS								Section 7.31
4	Food Service	Restaurant - Take Out				P	P	P		P								
5	Office	Building Contractor's Office						P	P									
5	Office	Office w/ Outdoor Storage of Materials/Equip./Vehicles							P									
5	Office	Professional Office, including General Business, Financial, Real Estate Sales, Insurance, Attorney, Accountant, Mortgage					P	P		P								
5	Office	Trade Association Office							P									
6	Commercial Mixed Uses	Commercial with Accessory Residential					PS	PS		PS								Section 7.32, 7.33
6	Commercial Mixed Uses	Group Development					C	C										Section 7.32
6	Commercial Mixed Uses	Mixed Use Development					CS	CS		CS								Section 7.32, 7.34
6	Commercial Mixed Uses	Multiple Principal Uses				CS	CS	CS	CS	CS								Section 7.32, 7.35
6	Commercial Mixed Uses	Shopping Center						CS										Section 7.32
7	Institutional	Adult Day Service Center						CS										Section 7.36
7	Institutional	Cemetery			CS							CS						Section 7.37
7	Institutional	Colleges, Universities, Community Colleges						C										
7	Institutional	Education and Research Facilities					C	C	C									
7	Institutional	School						CS										Section 7.38
7	Institutional	Municipally Operated Farmer's Market						P										
7	Institutional	Fire Station		CS														Section 7.39.1
7	Institutional	Governmental Administrative Office			PS													Section 7.42
7	Institutional	Libraries					C	C										
7	Institutional	Museum					P	P		P	P							
7	Institutional	Nonprofit/Community Outreach Center					P	P										

P - Permitted Use C - Conditional Use S - Supplemental Regulations

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			Residential Districts			Commercial Districts					Special Districts				Overlay Districts			Supplemental
	Use Category/Class	**Use Type**	**R-1**	**R-2**	**R-3**	**CR**	**C-1***	**C-2**	**C-3**	**C-4**	**SPD-20**	**SED-80**	**SPD-C***	**O&S**	**CO**	**HO**	**SRO**	**Regulations**
7	Institutional	Nonprofit/Community Outreach Center w/ Outdoor Aquatic Fitness Facility		CS				PS				CS						Section 7.40
7	Institutional	Nursing Home/Medical Offices										CS						Section 7.41
7	Institutional	Police Shooting Range										PS						Section 7.42
7	Institutional	Post Office						P										
7	Institutional	Private Club (Non-Profit)	PS	PS	PS													Section 7.43
7	Institutional	Private Clubhouse for 501(c)8 Fraternal Beneficiary Societies as defined by IRS						PS										
7	Institutional	Public Utility Facility	CS	CS	CS	CS	CS	CS	CS		CS	CS						Section 7.44
7	Institutional	Public Works Facility							CS									Section 7.39.2
7	Institutional	Religious Complex		CS	CS		CS	CS	PS		CS							Section 7.45
7	Institutional	Religious Complex w/ Accessory School/Daycare		CS	CS			CS	PS		CS							Section 7.45
7	Institutional	Well Fields, Public Water Supply										CS						Section 7.46
7	Institutional	Wastewater Treatment Plants (accessory to pier)						CS										Section 7.47
8	Medical	Alcohol & Drug Outpatient Treatment						P										
8	Medical	Dialysis Center						P										
8	Medical	Medical Offices					P	P		P								Section 7.41
9	Recreation	Bowling Alley						C										
9	Recreation	Community Garden	CS	CS	CS	CS	CS	CS	CS	CS	CS							Section 7.48
9	Recreation	Environmental Awareness Area									CS	CS						Section 7.49
9	Recreation	Fishing Pier		CS		CS		CS						CS				Section 7.50
9	Recreation	Indoor Entertainment					PS	PS										Section 7.51
9	Recreation	Nonprofit Private Outdoor Recreation									P							
9	Recreation	Private Beach Access Facilities				CS												Section 7.52
9	Recreation	Public Beach/Sound Access/Bathhouse	P	P	P	P	P	P				C						
9	Recreation	Private Pier/Docks (Principal Use)	PS	PS										PS				Section 7.53
9	Recreation	Private Park/Playgrounds, Accessory to a Residential Subdivision or a Multi-Family Development	PS	PS	PS	PS					PS							Section 7.54
9	Recreation	Municipal Park		CS				PS				CS						Section 7.55
9	Recreation	Skate Park Facility						CS										Section 7.56
9	Recreation	Theater						P										
9.1	Recreation-Land Dependent	Aerial Adventure Park													CS			Section 7.57
9.1	Recreation-Land Dependent	Designated Public Events Site													CS			Section 7.58
9.1	Recreation-Land Dependent	Go Kart Track													CS			Section 7.59
9.1	Recreation-Land Dependent	Grass Surface Putting Course													CS			Section 7.60
9.1	Recreation-Land Dependent	Mini-Golf													C			
9.1	Recreation-Land Dependent	Outdoor Amusement Rides/Games													CS			Section 7.61
9.1	Recreation-Land Dependent	Outdoor Sport Climbing Wall													CS			Section 7.62
9.2	Recreation-Water Dependent	Parasail Rental												C	C			
9.2	Recreation-Water Dependent	Tour Boat, (49 Passengers or Less)												C	C			
9.2	Recreation-Water Dependent	Watercraft Rental, Non-Powered												CS	CS			Section 7.63
9.2	Recreation-Water Dependent	Watercraft Rental, Powered												CS	CS			Section 7.63
9.2	Recreation-Water Dependent	Watercraft, Personal (Jet-Ski)												CS	CS			
10	Telecommunications	Communication Towers, Major			CS				CS									Section 7.64
10	Telecommunications	Concealed Building Mounted Antenna, Installed Flush with Roofline				PS		PS										Section 7.65
10	Telecommunications	Concealed Building Mounted Antenna, Not Installed Flush with Roofline						C										
10	Telecommunications	Small Wireless Facilities	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS						Section 7.66
10	Telecommunications	Telephone Switching Stations and Electric Substations							CS									Section 7.67
11	Warehouse/Light Industrial	Asphalt/Concrete Processing							CS									Section 7.68
11	Warehouse/Light Industrial	Assembly or Packaging of Articles							C									
11	Warehouse/Light Industrial	Beverage Manufacturing, Bottling and Processing							C									
11	Warehouse/Light Industrial	Brick and Masonry Facilities							C									
11	Warehouse/Light Industrial	Canvas, Fabric and Upholstery Fabrication							P									

P - Permitted Use C - Conditional Use S - Supplemental Regulations

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			Residential Districts			Commercial Districts					Special Districts				Overlay Districts			Supplemental
	Use Category/Class	**Use Type**	**R-1**	**R-2**	**R-3**	**CR**	**C-1***	**C-2**	**C-3**	**C-4**	**SPD-20**	**SED-80**	**SPD-C***	**O&S**	**CO**	**HO**	**SRO**	**Regulations**
11	Warehouse/Light Industrial	Commerical Crop Production, Indoor					P	P	P	P								
11	Warehouse/Light Industrial	Electrical Equipment Assembly							C									
11	Warehouse/Light Industrial	Fine Craft and Folk Art Production					P	P	P	P								
11	Warehouse/Light Industrial	Indoor Training Facility for Dog Agility							P									
11	Warehouse/Light Industrial	Junk Yards, Scrap Yards and Salvage Facilities							CS									Section 7.69
11	Warehouse/Light Industrial	Mini Storage (Self- Storage) Complex							CS									Section 7.70
11	Warehouse/Light Industrial	Open Space Infrastructure							P									
11	Warehouse/Light Industrial	Outdoor Storage in Crates, Trailers, etc.							P									
11	Warehouse/Light Industrial	Outdoor Storage of Construction Equip./Materials							C									
11	Warehouse/Light Industrial	Outdoor Storage of Vehicles, Equip. and Other Goods							P									
11	Warehouse/Light Industrial	Screen Printing Facility							CS									Section 7.71
11	Warehouse/Light Industrial	Stone Cutting, Shaping and Finishing Facilities							P									
11	Warehouse/Light Industrial	Trade Centers							CS									Section 7.72
11	Warehouse/Light Industrial	Warehousing & Storage Facilities							C									
12	Accessory Uses	Bulkhead/Estuarine Bulkhead	P	P	P	P	P	P	P	P	P	P		P	P		P	
12	Accessory Uses	Customary Accessory Church Facilities		C	C			C	P		C							
12	Accessory Uses	Docking Facility, Accessory to Restaurant						P							P			Section 7.73
12	Accessory Uses	Garage	P	P	P	P	P	P	P	P	P	P			P		P	
12	Accessory Uses	Greenhouses	P	P	P	P	P	P	P	P	P							
12	Accessory Uses	Heliport, Accessory to Hospital and Medical Offices										CS						Section 7.74
12	Accessory Uses	Onsite Rental of Beach Chairs & Umbrellas					PS	PS										Section 7.75
12	Accessory Uses	Outdoor Stands - Accessory to Shopping Centers and Group Developments					PS	PS										Section 7.76
12	Accessory Uses	Portable Storage Units/Temporary Construction Trailers	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS						Section 7.77
12	Accessory Uses	Shed	P	P	P	P	P	P	P	P	P	P					P	
12	Accessory Uses	Solar Energy Facility, Accessory	P	P	P	P	P	P	P	P	P	P					P	
12	Accessory Uses	Swimming Pool	P	P	P	P	P	P		P	P	P					P	
12	Accessory Uses	Walls and Fences	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS			PS		PS	Section 7.78
12	Accessory Uses	Wind Energy Facility, Rooftop	PS	PS	PS	PS		PS			PS	PS		PS			PS	Section 7.79.1
12	Accessory Uses	Wind Energy Facility, Small	P	P	P	P		P			P	P				CS	P	
12	Accessory Uses	Wind Energy Facility, Vertical Axis	PS	PS	PS	PS		PS			PS	PS					PS	Section 7.79.2
	NOTES:																	
	*Refer to Article 9, Section 9.36 Table of Uses and Activities for the SPD-C District.																	

ARTICLE 7. SUPPLEMENTAL REGULATIONS

PART I. INTRODUCTION 7-5
PART II. RESIDENTIAL 7-5
Section 7.1 Cluster Housing 7-5
Section 7.2 Cottage Courts 7-5
7.2.1. Location 7-5
7.2.2. Size and Arrangement 7-6
7.2.3. Architectural Design 7-6
7.2.4. Density 7-6
7.2.5. Building Separation and Setbacks 7-6
7.2.6. Minimum Lot Size 7-6
7.2.7. Lot Coverage 7-6
7.2.8. Driveway Access 7-6
7.2.9. Off-Street Parking and Loading Facilities 7-7
7.2.10. Refuse and Recycling 7-7
7.2.11. Pools 7-7
7.2.12. Utility Meters 7-7
7.2.13. Management 7-7
7.2.14. Nonconforming Cottage Courts 7-7
Section 7.3 Dwelling, Accessory (Reserved) 7-9
Section 7.4 Dwellings, Large Residential 7-10
7.4.1. Intent 7-10
7.4.2. Exceptions of Applicability 7-10
7.4.3. Large Residential Dwellings 7-10
7.4.4. Dimensional Requirements 7-10
7.4.5. Open Space Preservation/Landscaping Requirements 7-11
7.4.6. Sewage Disposal Permitting Requirements 7-11
7.4.7. Parking 7-11
Section 7.5 Dwellings, Multi-Family/Townhouse 7-12
Section 7.6 Granny Pods/Temporary Health Care Structures 7-13
Section 7.7 Home Occupations, Class 1, 2 & 3 7-14
7.7.1. General Provisions 7-14
7.7.2. Class 1 Home Occupations 7-15
7.7.3. Class 2 Home Occupations 7-16
7.7.4. Class 3 Home Occupations 7-16
Section 7.8 Boarding Houses 7-17
Section 7.9 Child Care Facilities 7-17
7.9.1. Child Care Center 7-17
7.9.2. Family Child Care Home 7-18
Section 7.10 Dormitory 7-18
Section 7.11 Family Care Homes/Halfway Homes 7-19
Section 7.12 Hotels 7-19
7.12.1. Dimensional Requirements 7-19
7.12.2. Dormitory for Employee Housing 7-20
PART III. RETAIL 7-21
Section 7.13 Artisan's Workshop 7-21
Section 7.14 Auction House 7-21

Section 7.15 Pet Shop 7-21
PART IV. SERVICE 7-22
Section 7.16 Automobile Repair 7-22
Section 7.17 Battery Charging/Battery Exchange 7-22
Section 7.18 Car Washes (Automated and Self-Service Only) 7-23
Section 7.19 Food Bank 7-24
Section 7.20 Fueling Station 7-24
Section 7.21 Massage and Bodywork Therapy 7-25
7.21.1. General Requirements 7-25
7.21.2. Massage of Private Parts for Hire 7-27
7.21.3. Revocation of Permit 7-27
Section 7.22 Metaphysical Wellness Services 7-28
Section 7.23 Sexually Oriented Businesses 7-29
Section 7.24 Veterinary Clinic 7-30
7.24.1. Veterinary Clinic with Animal Boarding 7-30
7.24.2. Veterinary Clinic with No Animal Boarding 7-30
PART V. FOOD SERVICE 7-30
Section 7.25 Coffee Shops/Juice Bars 7-30
Section 7.26 Food Trucks 7-31
7.26.1. General Provisions 7-31
7.26.2. Permitted Events 7-31
7.26.3. Restaurants 7-31
Section 7.27 Microbreweries 7-32
Section 7.28 Restaurant, Drive-In 7-33
Section 7.29 Restaurant, Drive-Through 7-33
Section 7.30 Restaurant, Neighborhood 7-33
Section 7.31 Restaurant, Sit Down 7-34
PART VI. COMMERCIAL MIXED-USE 7-35
Section 7.32 General Provisions 7-35
7.32.1. Residential 7-35
7.32.2. Retail 7-35
7.32.3. Service 7-35
7.32.4. Office 7-36
7.32.5. Institutional 7-36
7.32.6. Medical 7-36
7.32.7. Accessory Uses 7-36
Section 7.33 Commercial with Accessory Dwelling (Attached or Detached) 7-36
Section 7.34 Mixed Use Development 7-37
Section 7.35 Multiple Principal Uses 7-37
PART VII. INSTITUTIONAL 7-37
Section 7.36 Adult Day Service Center 7-37
Section 7.37 Cemetery 7-38
Section 7.38-School 7-38
Section 7.39 Fire Stations/Public Works Facilities 7-39
7.39.1. Fire Stations 7-39
7.39.2. Public Works Facilities 7-39
Section 7.40 Non-profit/Community Outreach Center with Aquatic Fitness Facility 7-40
Section 7.41 Nursing Homes/Medical Offices 7-40

Section 7.42 Police Shooting Range 7-41
Section 7.43 Private Clubs (Non-profit) 7-41
Section 7.44 Public Utility Facility 7-43
Section 7.45 Religious Complexes 7-44
7.45.1. Dimensional Requirements 7-44
7.45.2. Accessory Uses in the SPD-20 District 7-44
Section 7.46 Well Fields, Public Water Supply 7-44
Section 7.47 Wastewater Treatment Plants (Accessory to Pier) 7-45
PART VIII. RECREATION 7-45
Section 7.48 Community Garden 7-45
7.48.1. Minimum Lot Size 7-45
7.48.2. Setbacks 7-46
7.48.3. Lot Coverage 7-46
7.48.4. Stormwater, Fill, and Runoff Management 7-46
7.48.5. Permitted Structures 7-46
7.48.6. Fencing 7-46
7.48.7. Parking 7-46
7.48.8. Hours of Operation 7-46
7.48.9. Signage 7-46
7.48.10. Water Usage 7-46
7.48.11. Composting 7-46
7.48.12. Trash/Recycling Receptacles 7-47
7.48.13. Screening 7-47
7.48.14. Lighting 7-47
7.48.15. Sale of Produce and Plants 7-47
7.48.16. Prohibited Plants 7-47
Section 7.49 Environmental Awareness Area 7-47
Section 7.50 Fishing Piers 7-47
Section 7.51 Indoor Entertainment 7-49
Section 7.52 Private Beach Access Facilities 7-49
Section 7.53 Private Docks/Piers 7-50
Section 7.54 Private Parks/Playgrounds 7-50
Section 7.55 Municipal Parks 7-51
7.55.1. Municipal Parks in the R-2 Zoning District 7-51
7.55.2. Municipal Parks in the C-2 Zoning District 7-51
7.55.3. Municipal Parks in the SED-80 Zoning District 7-52
Section 7.56 Skate Park Facility 7-52
Section 7.57 Aerial Adventure Park 7-52
Section 7.58 Designated Public Events Site 7-53
Section 7.59 Go Kart Track 7-54
Section 7.60 Grass-Surface Putting Course 7-55
Section 7.61 Outdoor Amusement Rides/Games 7-56
Section 7.62 Outdoor Sport Climbing Wall 7-56
Section 7.63 Watercraft Rental, Non-Powered/Powered 7-56
7.63.1. Non-powered and Wind Driven Boat Rental 7-56
7.63.2. Small Fishing Skiff Rental Establishments 7-57
7.63.3. Boat Rental Establishments 7-57

PART IX. TELECOMMUNICATIONS 7-57
Section 7.64 Communication Tower, Major 7-57
7.64.1. R-3 High-Density Residential District 7-57
7.64.2. C-3 Commercial Services District 7-58
Section 7.65 Concealed Building Mounted Antenna 7-59
Section 7.66 Wireless Telecommunications Facilities 7-59
Section 7.67 Telephone Switching Stations and Electric Substations 7-59
PART X. WAREHOUSE/LIGHT INDUSTRIAL 7-59
Section 7.68 Concrete Processing Facilities and Supporting Accessory Uses 7-59
Section 7.69 Junkyards, Scrap Yards, & Salvage Facilities 7-60
Section 7.70 Mini-Storage (Self-Storage) Complexes 7-61
Section 7.71 Screen Printing Facility 7-62
Section 7.72 Trade Centers 7-62
PART XI. ACCESSORY USES 7-63
Section 7.73 Docking Facility, Accessory to Restaurant 7-63
Section 7.74 Heliport, Accessory to Hospital and Medical Offices 7-63
Section 7.75 On-Site Rental of Beach Chairs and Umbrellas 7-64
Section 7.76 Outdoor Stands, Accessory to Shopping Center & Group Development 7-65
Section 7.77 Portable Storage Units/Temporary Construction Trailers 7-65
Section 7.78 Walls and Fences 7-66
Section 7.79 Wind Energy Facility 7-67
7.79.1. Wind Energy Facility, Rooftop 7-67
7.79.2. Wind Energy Facility, Vertical Axis 7-68

PART I. INTRODUCTION

The following supplemental regulations shall pertain to the uses listed in the Table of Uses and Activities located in Article 6, Zoning Districts which are identified as a permitted use with supplemental regulations (PS) or a conditional use with supplemental regulations (CS).

For any use which requires the issuance of a conditional use permit, the supplemental use regulations listed herein may be in addition to any other conditions placed on the use by the Board of Commissioners in accordance with the standards in Section 3.8, Conditional Use Permits. The conditions may impose greater restrictions on a particular use than those which are listed herein.

All uses include in these supplemental regulations must also comply with all other requirements of this UDO. Where the requirements of these supplemental regulations may conflict with other provisions of the UDO, the requirements contained within the supplemental regulations shall prevail.

PART II. RESIDENTIAL

SECTION 7.1 CLUSTER HOUSING.

Cluster housing is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided the following conditions are met:

7.1.1. Dwelling units eligible for permitting under this use category shall be limited to existing single-family dwelling(s) already located on the lot and existing single-family dwelling(s) endangered by shoreline erosion being relocated on the lot. Single-family dwellings endangered by shoreline erosion can be relocated to another lot provided said lot is east of NC State Road 1243 (SR 1243).

7.1.2. Residential clusters shall be on a single oceanfront lot of which at least fifty (50) percent of the lot is net buildable land.

7.1.3. Residential clusters shall be limited to a maximum of three (3) dwelling units per lot.

7.1.4. Minimum area requirements for residential clusters shall be 20,000 square feet of lot area for the first dwelling unit and an additional minimum 15,000 square feet of lot area for each additional dwelling unit.

7.1.5. The minimum separation between detached units in a cluster shall be twenty (20) feet.

SECTION 7.2 COTTAGE COURTS.

Cottage courts are permitted in accordance with Section 6.6, Table of Uses and Activities, provided the following requirements and conditions are met:

7.2.1. Location.
Cottage courts shall only be located on properties with frontage on NC 12 or SR 1243 or on properties east of NC 12 or SR 1243.

7.2.2. Size and Arrangement.

Cottage courts shall be designed and intended for transient guests on a rental basis, with the exception of living quarters for the property owner or on-site management. Individual dwelling units must be designed and arranged for occupancy by one family operating as a housekeeping unit and shall contain at least five hundred (500) but no more than fifteen hundred (1,500) square feet of gross floor area. One structure may be up to five thousand (5,000) square feet if it is combined with on-site management or another complementary business use. Each cottage court unit shall contain separate sleeping, bathing and living areas.

7.2.3. Architectural Design.

7.2.3.1. Individual units must receive at least 75 architectural design points based on the criteria established in the Town of Nags Head Residential Design Guidelines (see Appendix B).

7.2.3.2. Individual cottages shall not contain more than 1½ stories. At least one-third of the cottage court units shall not exceed one story.

7.2.3.3. Dwelling units shall meet the minimum roof pitch requirements established in the Town of Nags Head Residential Design Guidelines.

7.2.3.4. Dwelling units shall not contain enclosed attached or detached garages but may contain an open parking area underneath the structure. However, an owner or on-site manager living on the property may have one garage or shed serving their individual unit or living quarters.

7.2.3.5. Cottages shall be oriented towards a common open space or shared drive aisle.

7.2.4. Density.

Cottage courts shall contain at least three but not more than ten individual dwelling units.

7.2.5. Building Separation and Setbacks.

Dwelling units shall be separated from one another by a minimum of ten feet, including projections. Dwelling units shall have a minimum 15-foot front yard setback, eight-foot side yard setback, and 25-foot rear yard setback.

7.2.6. Minimum Lot Size.

Cottage court lots must be at least twenty thousand (20,000) square feet in area.

7.2.7. Lot Coverage.

The lot coverage shall not exceed fifty-five (55) percent.

7.2.8. Driveway Access.

Each dwelling unit shall have access to a shared accessway. The shared accessway must be designed to a minimum width of twenty-two (22) feet to allow firefighting apparatus to locate within one hundred fifty (150) feet of all sides of all structures on the property. The shared accessway may be reduced to a minimum width of twelve (12) feet where it is closer than one hundred fifty (150) feet to all sides of all structures on the property. An accessway width less than twenty-two (22) feet may be reviewed and approved by the fire marshal in conjunction with an approved alternative life safety plan.

7.2.9. Off-Street Parking and Loading Facilities.
Individual units shall have a minimum of two (2) parking spaces. Parking spaces for each dwelling unit shall be provided so as not to interfere with the shared accessway or with the access of emergency or service vehicles to the entire property. Shared parking areas may be utilized to accommodate the total parking requirements for the development. Parking spaces and drive aisles shall not be located closer than five (5) feet to side or rear property lines. Parking spaces shall not be located with direct access from the right-of-way.

7.2.10. Refuse and Recycling.
Cottage courts shall provide a suitable location for a dumpster as determined by the UDO Administrator. Dumpster areas shall be appropriately screened and shall not be located in the required front yard of the property.

7.2.11. Pools.
Cottage courts may have one community pool serving all of the units on the property. Individual units may not have pools.

7.2.12. Utility Meters.
Utility meters of any type for individual units are prohibited.

7.2.13. Management.
Cottage courts shall operate under a single, unified management operation which arranges for reservations and attends to guest needs. There shall be a uniform key entry system operated by management staff.

7.2.14. Nonconforming Cottage Courts.
Cottage courts which do not conform to the definition of "cottage court", contained in Appendix A Definitions, and also to the provisions of this section may continue, subject to the following provisions:

7.2.14.1. Existing individual dwelling units in a nonconforming cottage court may be replaced provided that replacement structures conform to the provisions of this section or do not increase the degree of structure or site nonconformity.

7.2.14.2. All replacement, substantially improved, and substantially damaged cottage court units shall conform with the provisions of Article 11, Part III, Flood Damage Prevention.

7.2.14.3. For the purpose of this section, structures will be considered individually when determining thresholds for repair, maintenance and destruction.

7.2.14.4. No existing individual dwelling unit in a nonconforming cottage court shall be enlarged, extended, moved or structurally altered, except as provided below:

7.2.14.4.1. For lots abutting the Atlantic Ocean or Roanoke Sound, individual dwelling units in a cottage court may be moved in cases where such structures are determined to be in imminent danger of collapse, as defined by CAMA, as a result of erosion by wind or water, provided that such movement does not increase the degree of nonconformity of

the structures in any way. When utilizing this provision, a minimum ten-foot separation shall be maintained between individual structures. All structures when moved shall adhere to the minimum setback requirements prescribed in this section.

7.2.14.4.2. Minor modifications to a nonconforming cottage court dwelling unit or cottage court site may be approved administratively by the UDO Administrator or his/her designee. Minor modifications may include the addition of detached storage sheds, not to exceed 150 square feet in area, on-grade patios, decks, porches, driveway or parking modifications, or other additions not involving an increase or expansion of the habitable area of existing cottage court dwelling units.

7.2.14.4.3. Major modifications to a nonconforming cottage court dwelling unit or cottage court site, may be approved by the Nags Head Board of Commissioners through the conditional use process as set forth in Section 3.8, Conditional Use Permits. Major modifications include any proposal which will result in a net increase in habitable area of nonconforming cottage court units.

7.2.14.4.4. All improvements must meet the dimensional requirements of the district in which they are located. When a lot coverage nonconformity exists on a cottage court site, improvements may be allowed as long as there is no net increase in overall lot coverage. All other nonconformities shall be regulated in accordance with Article 5, Nonconformities.

7.2.14.5. On any individual dwelling unit in a nonconforming cottage court, work may be done on ordinary repairs, or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing.

7.2.14.6. If an individual dwelling unit in a nonconforming cottage court becomes dangerous to life, destroyed or unlawful due to lack of repairs or maintenance, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure may thereafter be restored, repaired, rebuilt or replaced in conformity with the regulations of this UDO and any other applicable federal or state regulations.

7.2.14.7. Nothing in this UDO shall prevent the strengthening or restoring to a safe condition of any individual dwelling unit in a nonconforming cottage court or part thereof declared to be dangerous to life by any official charged with protecting the public safety, or upon order of such official when he has determined that there is a clear and immediate danger to the public safety.

SECTION 7.3 DWELLING, ACCESSORY.

RESERVED

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SECTION 7.4 DWELLING, LARGE RESIDENTIAL.

Large residential dwellings are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following provisions:

7.4.1. Intent.

The purpose of establishing this section is to set forth a comprehensive set of regulations designed to promote and encourage the unique and historical elements of residential architecture held to be valued as an integral part of the Town image, to ensure that future residential development is compatible with its natural and developed environments, and to afford the highest level of protection for both permanent residents and seasonal visitors occupying these structures in the furtherance of public safety and welfare.

7.4.2. Exceptions of Applicability.

All existing large residential dwelling uses which do not meet the requirements of this section shall be regulated in accordance with Article 5, Nonconformities.

7.4.3. Large Residential Dwellings.

As defined in Appendix A Definitions, large residential dwellings shall be subject to the requirements set forth in subsections 7.4.4 through 7.4.7 of this section. Large residential dwellings located in an area designated as a historic district on the National Register of Historic Places shall comply with the provisions of the Nags Head Residential Design Guidelines.

7.4.4. Dimensional Requirements.

7.4.4.1. The minimum lot area for large residential dwellings shall be 16,000 square feet. The total enclosed habitable living space for large residential dwellings is 5,000 square feet, except where the large residential dwelling is located in the SED-80 zoning district on a lot which meets the minimum lot area requirements for that district.

7.4.4.2. Enclosed habitable living space for large residential dwellings shall be calculated to also include any enclosed habitable space that may be present in any accessory structure that is located on the same lot as the principal structure.

7.4.4.3. For large residential dwellings, the minimum width of the side yard shall be fourteen (14) feet. For property owners that elect to follow the Nags Head Residential Design Guidelines (see Appendix B), the minimum width of the side yard may be determined using the dimensional requirements contained within Article 8 District Development Standards applicable to the zoning district in which the dwelling is proposed.

7.4.4.4. The maximum height for large residential dwellings shall be thirty-five (35) feet. For property owners that elect to following the Nags Head Residential Design Guidelines (see Appendix B); and, when the proposed large residential dwelling utilizes an eight-twelfths roof pitch as specified in the Town of Nags Head Residential Design Guidelines, the maximum height for a large residential dwelling may be increased to forty-two (42) feet.

7.4.4.5. Within the SRO Soundside Residential Overlay District, large residential dwellings shall not exceed an enclosed habitable living space of 4,200 square feet, and the minimum lot area requirement for the permitting of large residential dwellings shall be 24,000 square feet.

7.4.5. Open Space Preservation/Landscaping Requirements.

All large residential dwellings shall comply with the requirements of one of the following subsections:

7.4.5.1. The preservation of a minimum of ten percent of the lot's total area with existing natural vegetation and/or dune elevations. Areas designated for the preservation of existing vegetation shall contain significant examples of native vegetation and be identified and maintained in accordance with Article 10, Part I, Buffering and Vegetation Preservation General Requirements and Section 10.93, Landscaping, Buffering, and Vegetation Requirements of this UDO.

7.4.5.2. The planting of a minimum of 15 percent of the lot's total area. At minimum 50 percent of the required landscaping shall consist of locally adapted live evergreen tree species that are a minimum height of three feet and one inch in diameter measured at one-half-foot above grade when planted. The remainder of the landscaping may be live forbs and shrubs measuring at least 1-1/2 feet when planted. For properties east of NC 12 and SR 1243, evergreen shrubs shall be substituted for the tree requirement according to the specifications described above.

The above landscaping requirements may be altered due to unique and unusual physical conditions or characteristics of the property, including the reduction of landscaping requirements for oceanfront properties and other lots containing significant dune features that will be preserved in equal proportion.

The property owner shall be responsible for maintaining the landscaped areas required by this section, including the replacement of dead and missing vegetation, accordance with Section 10.5, Maintenance and Replacement, of this UDO.

7.4.6. Sewage Disposal Permitting Requirements.

The maximum permitted wastewater capacity for large residential dwellings shall not exceed 1,080 gallons per day.

7.4.7. Parking.

Parking for all large residential dwellings shall be in conformance with the requirements of Section 10.12, Parking Lot Requirements for Single-Family and Two-Family (Duplex) Dwelling Units, applicable to single-family dwellings and two-family dwellings (duplexes).

SECTION 7.5 DWELLINGS, MULTI-FAMILY/TOWNHOUSE.

Multi-family dwellings are permitted in accordance with Section 6.6, Table of Uses and Activities, provided that the following additional requirements and conditions are met:

TABLE 7-1: REQUIREMENTS FOR MULTI-FAMILY DWELLINGS			
	C-2	Townhouse in SPD-20	C-1
Lot Width	150 feet	150 feet for whole site; minimum 18 feet lot width for individual units.	
Setbacks	Minimum 35 feet to all property lines.	1.75 times the height at the top plate or roof panel in the tallest building. Minimum 35 feet to all property lines.	
Height	40 feet to top plate or roof panel to original grade or finished grade, whichever is the greatest distance. Total height shall not exceed 47 feet. Area above top plate shall not be habitable (unoccupied except for structure or mechanical appurtenance).	28 feet to top plate or roof panel. Maximum 35 feet. Area above top plate shall not be habitable (unoccupied except for structural or mechanical appurtenance).	
Open Space	50% of side yards to remain as open space.	50% of side yards to remain as open space.	
Lot Coverage	55%	30% plus 300 square feet or 33%, whichever is greater.	
Density	Minimum 26,000 square feet for first three units; 3,500 square feet of additional lot size for each additional unit (optional – only 3,000 square feet of additional lot size is required if 20% of units are considered affordable – see definition in Appendix A).	Minimum 20,000 square feet for first unit and 10,000 square feet for the second through sixth units.	

TABLE 7-1: REQUIREMENTS FOR MULTI-FAMILY DWELLINGS			
	C-2	Townhouse in SPD-20	C-1
Buffer	In addition to the buffering requirements included in the Commercial Design Standards, a 10-foot wide commercial transitional protective yard shall be provided adjacent to any street right-of-way.	A 10-foot wide commercial transitional protective yard shall be provided to any adjacent properties or street rights-of-way.	
Unit Size	Minimum 800 square feet.	Minimum 1,000 square feet.	
Building Separation	40 feet; a sidewalk or boardwalk constructed to provide a grade separation from vehicular traffic of at least six inches shall connect all principal buildings on the site. Separate buildings shall be connected with pedestrian passageways that are striped when crossing traffic lanes.		
Accessory Uses	Management/sales office, not including a trailer, provided that the management office shall be included as a permanent structure in the project's design or may occupy one of the dwelling units. A management/ sales office may include, within the particular project, spaces for maintaining supplies, service products and amenities to be used in connection with the units within the project. There shall be sanitary facilities available for customers and employees.	Management/sales office, not including a trailer, provided that the management office shall be included as a permanent structure in the project's design or may occupy one of the dwelling units. A management/ sales office may include, within the particular project, spaces for maintaining supplies, service products and amenities to be used in connection with the units within the project. There shall be sanitary facilities available for customers and employees.	Multi-family allowed as accessory mixed use only.

Multi-family dwellings shall comply with the requirements of Article 10, Part VI, Commercial Design Standards.

SECTION 7.6 GRANNY PODS/TEMPORARY HEALTH CARE STRUCTURES.

Granny pods, also called temporary health care structures, are permitted under the authority of NC General Statutes Section 160A-383.5. Granny pods are considered a temporary health care structure used by a caregiver in providing care for a mentally or physically impaired person on property owned or

occupied by the caregiver as the caregiver's residence and shall be permitted as an accessory use in accordance with Section 6.6, Table of Uses and Activities, subject to the following standards:

7.6.1. The granny pod must comply with all district standards that apply to the principal dwelling unit.

7.6.2. Structures must be transportable residential units assembled off-site and built to the standards of the North Carolina State Building Code.

7.6.3. The structure must be no more than three hundred (300) gross square feet and must not be placed on a permanent foundation.

7.6.4. The structure shall be connected to any public water, sewer, and electric utilities serving the property or water and/or wastewater systems approved by Dare County.

7.6.5. Only one accessory temporary family care structure is allowed per lot.

7.6.6. No signage regarding the presence of the structure is allowed.

7.6.7. The structure must be removed within sixty (60) days after caregiving on the site ceases.

7.6.8. The caregiver must be at least 18 years old and must be a first or second degree relative of the impaired person (a spouse, parent, grandparent, child, grandchild, aunt, uncle, nephew, or niece). A legal guardian of the impaired person also qualifies.

7.6.9. In the commercial districts, granny pods shall only be permitted for properties in single-family residential use.

7.6.10. Documentation of compliance with this section is required on an annual basis as long as the granny pod/temporary health care structure remains on the property. This documentation includes an annual renewal of the doctor's certification. The Town may make periodic inspections at times convenient to the caregiver to assure on-going compliance.

SECTION 7.7 HOME OCCUPATIONS, CLASS 1, 2 & 3.

7.7.1. General Provisions.

The following general provisions shall apply to all Class 1, 2, and 3 Home Occupations, and are in addition to the specific provisions for each class outlined in subsections 7.7.2 through 7.7.4, below.

7.7.1.1. A home occupation shall be secondary to the use of the dwelling for living purposes.

7.7.1.2. No traffic shall be generated by such home occupations in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of a home occupation shall be met off-street parking.

7.7.1.3. No home occupation shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average dwelling unit.

7.7.1.4. No home occupation shall require internal or external alterations or involve construction features or the use of electrical or mechanical equipment that would increase the fire rating of the structure.

7.7.1.5. No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive or other restricted materials, as may be regulated by the NC Department of Environmental Quality, Division of Waste Management, shall be used or stored on the site.

7.7.1.6. All applicable state and local regulations and license requirements for home occupations shall be met.

7.7.1.7. No home occupation shall operate as a sexually oriented business or conduct sexually oriented business activities.

7.7.1.8. No outside storage or display of goods is allowed.

7.7.1.9. No delivery of supplies or materials by tractor trailers is permitted.

7.7.2. Class 1 Home Occupations.

Class 1 home occupations are permitted in any single-family residential dwelling unit in accordance with Section 6.6, Table of Uses and Activities, subject to the following provisions (which are in addition to the general provisions outlined in subsection 7.7.1):

7.7.2.1. Employment shall be limited to individuals who are full-time residents of the principal dwelling.

7.7.2.2. No more than five hundred (500) square feet of the floor area of the dwelling unit or twenty-five (25) percent of the floor area, whichever is greater, may be used in connection with a home occupation, including storage purposes in connection with a home occupation. Floor area of a dwelling unit in this case shall include the floor area of all rooms and areas within the dwelling unit including basements, habitable attic space, garages and accessory buildings and structures.

7.7.2.3. No retail sales other than for goods produced on the premises shall be conducted on the premises.

7.7.2.4. In no case shall a home occupation be open to the public at times earlier than 8:00 a.m. nor later than 10:00 p.m.

7.7.2.5. There shall be no change in the outside appearance of the dwelling or premises, or any visible evidence of the existence of a home occupation other than for a permitted sign in accordance with subsection 7.7.2.6.

7.7.2.6. One non-illuminated sign not over one (1) square foot in area and flush-mounted against the building shall be allowed at a residential property with an approved home occupation.

7.7.3. Class 2 Home Occupations.

The Class 2 home occupation may be located in the principal dwelling or in an accessory structure and will be limited to services without any on-site/wholesale sales of commodities. Conditional use services may include real estate sales, law practice, accounting services, handmade goods, including baked goods (as long as they are sold off-site), and other similar professional occupations. Class 2 Home Occupations are allowed in accordance with Section 6.6, Table of Uses and Activities, subject to the following provisions (which are in addition to the general provisions outlined in subsection 7.7.1):

7.7.3.1. No more than two (2) non-residential employees may be employed by the home occupation.

7.7.3.2. The home occupation may be located in a principal or accessory structure and must comply with the following:

7.7.3.2.1. The enclosed floor area used for the home occupation must not exceed 50% of the enclosed floor area of the principal residential structure up to a maximum of eight hundred (800) square feet.

7.7.3.3. The Class 2 home occupation shall be open to the public at times established by the conditional use permit.

7.7.3.4. One non-illuminated sign not over one (1) square foot in area and flush-mounted against the building shall be allowed at a residential property with an approved home occupation.

7.7.4. Class 3 Home Occupations.

The Class 3 home occupation may involve the creation, display, or sale of artistic wares, crafts, pieces of art, sculptures, or other creations, and handmade goods (including baked goods). Class 3 Home Occupations are allowed in accordance with Section 6.6, Table of Uses and Activities, subject to the following provisions (which are in addition to the general provisions outlined in subsection 7.7.1):

7.7.4.1. No more than two (2) non-residential employees or other artists may be employed by the home occupation.

7.7.4.2. The Class 3 home occupation shall be open to the public at times established by the conditional use permit.

7.7.4.3. The area of the principal dwelling unit utilized for art production and/or display shall not exceed fifty (50) percent of the enclosed area of the principal dwelling or a maximum of 1,000 square feet of enclosed floor area.

7.7.4.4. One non-illuminated sign not over six (6) square feet in area, flush-mounted against the building or freestanding, shall be allowed at a residential property with an approved home occupation.

SECTION 7.8 BOARDING HOUSES.

Boarding houses are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.8.1. In the C-2 district, boarding houses may not exceed four (4) rooms, which are intended to be rented. In all other districts in which they are allowed, boarding houses may not exceed two (2) rooms, which are intended to be rented.

7.8.2. Occupancy by tenants shall not exceed more than two persons per bedroom and shall be for durations of generally greater than one week.

7.8.3. Individual rooms shall not contain independent cooking facilities; this, however, shall not prohibit the serving of meals to tenants or the use of a single kitchen by tenants.

7.8.4. Boarding houses shall be owner-occupied and serve as the primary residence of the owner.

SECTION 7.9 CHILD CARE FACILITIES.

Child care facilities are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.9.1. Child Care Center.

7.9.1.1. Outdoor Play Area Requirements.

7.9.1.1.1. When a center is licensed for six to twenty-nine children, inclusive, there shall be 75 square feet per child of outdoor play area for the total number of children for which the center is licensed. In addition, the total number of children on the playground shall not exceed the number the space will accommodate at 75 square feet per child.

7.9.1.1.2. When a center is licensed for 30 or more children, there shall be 75 square feet per child of outdoor play area for at least one-half of the total number for which the center is licensed, provided that the minimum amount of space on the outdoor play area shall be enough to accommodate at least 30 children.

7.9.1.1.3. The outdoor play area shall provide an area that is shaded by a building, awnings, trees, or other methods.

7.9.1.1.4. The outdoor area shall be designed so that staff are able to see and easily supervise the entire area.

7.9.1.1.5. All outdoor recreational areas shall be buffered from adjacent residential uses and districts (R-1, R-2, R-3, CR, SED-80, SPD-20, and SPD-C) utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93, Landscaping,

Buffering, and Vegetation Preservation. The buffer shall be placed on the exterior side of any required fencing.

7.9.1.2. Hours of Operation. The hours of operation will be established as part of the conditional use permit process.

7.9.1.3. Off-Street Parking Spaces/Loading and Unloading Areas.

7.9.1.3.1. One parking space or queuing lane for the loading and unloading of children for each ten (10) children based on the child care center's regulated capacity with a minimum of four (4) spaces plus one parking space for each employee at maximum staff level.

7.9.1.3.2. The loading and unloading areas shall be designed so that no child is required to cross the parking lot or any other traffic areas.

7.9.2. Family Child Care Home.

In addition to the other standards set forth in this UDO, each Family Child Care Home (FCCH) must meet the following requirements:

7.9.2.1. A Family Child Care Home may have no more than eight (8) children. Of the children present at any one time, no more than five (5) shall be preschool-aged, not including the operator's own preschool-aged children;

7.9.2.2. The maximum hours of operation are 7:00 am to 6:00 pm, Monday through Friday;

7.9.2.3. No signage advertising the Family Child Care Home is allowed;

7.9.2.4. The building in which the Family Child Care Home is located may not be located closer than 500 feet to any other building housing another FCCH or Child Care Center; and

7.9.2.5. The home daycare must be licensed through the NC Department of Health and Human Services.

SECTION 7.10 DORMITORY.

Dormitory is permitted in accordance with Section 6.6, Table of Uses and Activities, provided that the following additional requirements and conditions are met:

7.10.1. A minimum lot area of 25,000 square feet and a minimum lot width of 100 feet shall be required.

7.10.2. Sleeping rooms shall have a minimum floor area of seventy (70) square feet for the first occupant and a minimum floor area of fifty (50) square feet for each additional occupant.

7.10.3. At least one restroom in the facility shall have a minimum of two (2) water closets, two (2) sinks, and two (2) showers. In all cases, reference the North Carolina Plumbing Code for required number of dormitory bathroom fixtures.

7.10.4. A minimum floor area of twenty (20) square feet per occupant is required for adequate common living areas (including kitchen and dining) but not less than 220 square feet per unit or floor. Circulation spaces less than six (6) feet wide shall not be counted as common living areas.

7.10.5. No dormitory facility shall house more than twenty-five (25) occupants.

SECTION 7.11 FAMILY CARE HOMES/HALFWAY HOMES.

Family care home/halfway home is permitted in accordance with Section 6.6, Table of Uses and Activities, provided that the following additional requirements and conditions are met:

7.11.1. All Family Care Homes must be licensed by the State of North Carolina.

7.11.2. As defined by NC General Statutes Chapter 168-21, family care homes must be located no closer than one-half (1/2) mile from any other family care home. As provided for in Section 3.10, Variances, a variance to the 1/2 mile separation requirement may be obtained when the separation is accomplished by man-made features (i.e., railroad yards, freeways) or natural features (i.e., rivers, wetlands) and provides sufficient separation to ameliorate the harmful effects that justified the statutory separation.

SECTION 7.12 HOTELS.

Hotels are permitted in accordance with Section 6.6, Table of Uses and Activities, provided the following additional requirements and conditions are met:

7.12.1. Dimensional Requirements.

TABLE 7-2: DIMENSIONAL REQUIREMENTS FOR HOTELS

	C-1	C-2	HO
Lot Width	100 feet	150 feet	
Front Setback	15 feet; portions of buildings greater than two stories shall be set back an additional 10 feet.	30 feet; portions of buildings greater than two stories shall be set back an additional 10 feet.	15 feet; portions of buildings greater than two stories shall be set back an additional 10 feet for every story over two. In any instance the setback need not exceed 30 feet.
Rear Setback	25 feet		
Side Setback	10 feet; 15 feet for corner lot; portions of buildings greater than two stories shall be set back an additional 10 feet.		10 feet; 15 feet for corner lot; portions of buildings greater than two stories shall be set back an additional 10 feet for every story over two. In any instance the setback need not exceed 30 feet.
Height	35 feet		60 feet
Open Space	50% of side yard to remain as open space.	50% of side yard to remain as open space.	50% of side yard to remain as open space. Minimum 5 feet, Maximum 10 feet.
Lot Coverage	55%		65%

TABLE 7-2: DIMENSIONAL REQUIREMENTS FOR HOTELS			
	C-1	C-2	HO
Density	Maximum 20 units per site.	None	None
Unit Size (Room)	Minimum 300 sq. ft, Maximum 700 sq. ft.		
Unit Size (Efficiency)	Minimum 400 sq. ft, Maximum 700 sq. ft.		
Unit Size (Suite)	Minimum 400 sq. ft, Maximum 900 sq. ft. Up to 33% of units can be suites.		Minimum 400 sq. ft, Maximum 1,200 sq. ft. Up to 33% of units can be suites.
Minimum Units Per Building	2		
Building Separation	20 ft; A sidewalk or boardwalk constructed to provide a grade separation from vehicular traffic of at least six inches shall connect all principal buildings on the site. Separate buildings shall be connected with pedestrian passageways that are striped when crossing traffic lanes.		
Ocean/Sound Access	Hotel parcels east of US 158 must be within 1,000 feet in a straight-line distance to a public ocean access. The access must consist of a minimum five-foot wide improved pedestrian path. Hotels west of US 158 must provide direct, private soundfront access	Hotel parcels east of US 158 must be within 1,000 feet in a straight-line distance to a public ocean access. The access must consist of a minimum five-foot wide improved pedestrian path. Hotels west of US 158 must provide direct, private soundfront access	None.
Accessory Uses	Retail shops, offices, restaurants, indoor entertainment facilities, indoor public assembly for the benefit of occupants, guests and the general public, cottage court. Hotel allowed as accessory to other commercial. Dormitory for employee housing. Single-family dwelling for employee/owner housing.		Uses permitted as accessory to hotels in the C-2 district and outdoor recreation activities as allowed in the HO district. Hotel allowed as accessory to other commercial. Dormitory for employee housing. Single-family dwelling for employee/owner housing.

7.12.2. Dormitory for Employee Housing.

Hotels may have accessory, employee dormitories intended to furnish group housing for employees provided the following conditions are met:

7.12.2.1. All accessory employee dormitories must be located on the same site as the hotel use.

7.12.2.2. An employee dormitory shall not contain more than one (1) kitchen.

7.12.2.3. The square footage of an employee dormitory building shall be limited to no more than twenty-five (25) percent of the square footage of the principal hotel building(s) on the site.

PART III. RETAIL

SECTION 7.13 ARTISAN'S WORKSHOP.

Artisan's workshops shall be permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.13.1. All artisan production is conducted inside an enclosed building.

7.13.2. Workshops exceeding 3,000 square feet require approval of a conditional use permit.

7.13.3. There shall be no outside storage of materials or supplies.

7.13.4. Finished pieces of artwork may be displayed on the exterior of an associated structure and/or anywhere on the property.

7.13.5. Artisan related class offerings are only allowed as an accessory use and require a conditional use permit.

7.13.6. Residential is allowed as an accessory use to an Artisan Workshop and shall conform to the standards of Section 7.33 Commercial with Accessory Residential.

7.13.7. No artisan workshop shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance.

SECTION 7.14 AUCTION HOUSE.

Auction houses are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.14.1. Animals are excluded.

7.14.2. The sale of motor vehicles shall be limited to vehicles licensed to operate in the state of North Carolina only.

7.14.3. Temporary storage shall mean for three weeks or less.

SECTION 7.15 PET SHOP.

Pet shop, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.15.1. All pens and kennels shall be in an enclosed, air-conditioned building.

7.15.2. Unenclosed runs are prohibited.

PART IV. SERVICE

SECTION 7.16 AUTOMOBILE REPAIR.

Automobile repair is permitted in accordance with Section 6.6, Table of Uses and Activities, provided that the following additional requirements and conditions are met:

7.16.1. No principal or accessory building shall be located within fifty (50) feet of an existing residential use or district.

7.16.2. There will be no storage of wrecked or abandoned vehicles.

7.16.3. Fueling stations are allowed as an accessory use in accordance with Section 7.20, Fueling Station.

7.16.4. Automobile service station canopies may be subject to an annual inspection by the building inspector for the purpose of ensuring that the canopy is maintained in a safe condition. Any fee for the annual inspection shall be in accordance with the regularly adopted fee schedule of the Town.

7.16.5. When any portion of an automobile service station canopy, i.e., vertical or horizontal support, or panel becomes unsafe, prior to the issuance of Town warning citation, the building inspector shall give written notice to the owner of the premises that within thirty (30) days of the date of receipt of the notice the canopy shall be:

> ***7.16.5.1.*** Fully restored in accordance with plans submitted by a North Carolina registered engineer who shall certify that the restored canopy meets or exceeds the applicable requirements of the state building code; or
>
> ***7.16.5.2.*** Entirely dismantled and removed from the site.

7.16.6. In addition to the buffering requirements of Section 10.93, Landscaping, Buffering, and Vegetation Preservation, a ten-foot wide commercial transitional protective yard shall be placed along the frontage of any street right-of-way.

SECTION 7.17 BATTERY CHARGING/BATTERY EXCHANGE.

Battery charging stations and battery exchange stations shall be permitted as an accessory use in accordance with Section 6.6, Table of Uses and Activities, subject to the following requirements:

7.17.1. Electric vehicle charging stations should be reserved for parking and charging of electric vehicles only.

7.17.2. Electric vehicles may be parked in any space designated for public parking, subject to the restrictions that would apply to any other vehicle that would park in that space.

7.17.3. Battery Charging Stations.
For land use compatibility purposes, the charging activity should be proportionate to the associated permitted use. Electric vehicle charging station(s) shall be permitted in a single- or multi-family garage designed to service the occupants of the home/dwelling unit as an accessory use. Accessory single-

family charging stations shall not exceed residential building code electrical limitations. Whereas, charging station(s) installed in a parking lot for non-single-family residential use are expected to have intensive use and will be permitted to have multiple "rapid charging stations" to serve expected demand.

7.17.4. Battery Exchange Stations.
Exchange stations are permitted in any commercial or industrial zoning district, provided, however, all other requirements for the building or space the use occupies are satisfied, including but not limited to the UDO, fire code, and building code requirements. This use is specifically prohibited in exclusively residential or conservation/recreation zoning districts.

7.17.5. Design Criteria for Commercial and Multi-Family Development.
The following criteria shall be applied to electric charging facilities.

7.17.5.1. Number Required. This is an optional improvement. No minimum number of stalls applies. Provided, if electric vehicle stalls are reserved for electric vehicles, stalls to be used as charging stations shall not be used to meet the minimum parking requirements for the use.

7.17.5.2. Generally. Location and provision of electric vehicle parking will vary based on the design and use of the primary parking lot, keeping in mind flexibility will be needed in various parking lot layout options.

7.17.5.3. Signage to Identify. Each charging station space should be posted with signage indicating the space is only for electric vehicle charging purposes. Days and hours of operation should be included if time limits or tow away provisions are to be enforced by the owner.

7.17.5.4. Maintenance. Charging station equipment should be maintained in all respects, including the functioning of the charging equipment.

7.17.5.5. Accessibility. Where charging station equipment is provided within an adjacent pedestrian circulation area, such as a sidewalk or accessible route to the building entrance, charging equipment shall not interfere with accessibility.

7.17.5.6. Lighting. Where charging station equipment is installed, adequate site lighting should also be provided unless charging is for daytime use only.

7.17.5.7. Notification of Station Specifics. Information on the charging station identifying voltage and amperage levels and any time of use, fees, or safety information.

SECTION 7.18 CAR WASHES (AUTOMATED AND SELF-SERVICE ONLY).

Car washes (automated and self-service only) are permitted in accordance with Section 6.6, Table of Uses and Activities, provided that the following additional requirements and conditions are met:

7.18.1. An attendant shall visit and assess the site a minimum of two times daily during all hours of operation to ensure a clean, orderly operation.

7.18.2. Security cameras shall be installed and positioned to provide video surveillance of the entire site and operations.

7.18.3. No principal or accessory building shall be located within fifty (50) feet of an existing residential use or district. No freestanding vacuums, air compressors, or other vehicular servicing areas shall be located within fifty (50) feet of an existing residential use or district.

7.18.4. A car wash shall be constructed so as to allow vehicles to pass through the structure in order to create an orderly traffic flow. Furthermore, stacking spaces shall be provided for vehicles entering and exiting the site to minimize traffic congestion on public roads.

7.18.5. A car wash shall be enclosed on at least two sides with open bays and a roof structure. A car wash must comply with the architectural design standards of Article 10, Part VI, Commercial Design Standards.

7.18.6. The car wash shall utilize a recyclable water type system.

7.18.7. Car washes shall only be located on properties with frontage on US 158.

7.18.8. Car washes may have specified hours of operation as necessary to minimize the impacts on any adjacent residential uses.

SECTION 7.19 FOOD BANK.

Food banks, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.19.1. In no case shall a food bank be opened to the public at times earlier than 8:00 a.m. or later than 9:00 p.m.

7.19.2. Outdoor storage is prohibited.

7.19.3. A food bank shall be dedicated exclusively to the storage and disbursement of foodstuffs. No food bank shall provide overnight accommodations, counseling or rehabilitation, services, child care or babysitting, vocational or other schooling or training, preparation of meals, dining areas, worship services, medical services or consultation, or any other similar services or programs.

SECTION 7.20 FUELING STATION.

Fueling stations are permitted in accordance with Section 6.6, Table of Uses and Activities, provided that the following additional requirements and conditions are met:

7.20.1. No principal or accessory building devoted to auto repair shall be located within fifty (50) feet of an existing residential use or district.

7.20.2. There will be no storage of wrecked or abandoned vehicles.

7.20.3. No petroleum pumps shall be nearer than fifty (50) feet to any right-of-way or property line.

7.20.4. All underground fuel storage tanks shall be equipped with leak detection devices. The type of detection device shall be approved by and subject to periodic inspections by the Town.

7.20.5. In addition to the buffering requirements of Section 10.93, Landscaping, Buffering, and Vegetation Preservation, a ten-foot wide commercial transitional protective yard shall be placed along the frontage of any street right-of-way.

SECTION 7.21 MASSAGE AND BODYWORK THERAPY.

Massage therapy centers, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.21.1. General Requirements.
These requirements apply to massage therapists and massage and bodywork therapy business operators. No person permitted under this article shall allow or permit any person to massage or treat any person unless the person giving such massage or treatment has complied with all requirements of this article.

7.21.1.1. Permits required

7.21.1.1.1. All massage and bodywork therapists and owner/operators of massage and bodywork therapy establishments shall possess and provide proof of a North Carolina license to practice massage and bodywork therapy in accordance with NCGS Chapter 90, Article 36 Massage and Bodywork Therapy Practice.

7.21.1.1.2. A zoning permit is required, in accordance with Article 4, Development Review Process of this UDO, for both the practice of massage and bodywork therapy and owner/operators of massage and bodywork therapy establishments.

7.21.1.2.3. An annual Town of Nags Head Business Registration shall be completed by massage and bodywork therapists and/or owner/operators of massage and bodywork therapy establishments. At the time of registration, any fees associated with the registration shall be paid.

7.21.1.2. The following information shall be submitted and considered as part of the application for a permit from the Town:

7.21.1.2.1. The name of the business and location of the business.

7.21.1.2.2. List of North Carolina certified massage therapists and contact information for massage therapists working in massage therapy and bodywork establishments.

7.21.1.2.3. A certificate of insurance indicating that the applicant has professional liability insurance for the practice of massage therapy/bodywork.

7.21.1.2.4. A description of the services to be provided and any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.

7.21.1.2.5. If an applicant is to work under the supervision of a licensed physician, applicant must show scope of services from the licensed physician.

7.21.1.2.6. Verification of criminal history through investigative report by the Nags Head Police Department. Submission of the following information is necessary to complete this investigative report:

7.21.1.2.6.1. A complete statement of all convictions of any person involved in the operation of the business for any felony, or prostitution or any violation of any law relative to prostitution;

7.21.1.2.6.2. A complete statement of any revocation, by any governmental unit, of any license to operate a massage business or to engage in the business or profession of massage by the applicant or any persons associated with or employed by the operation of the massage therapy business.

7.21.1.2.6.3. A complete statement of any conviction for violation of any statute, law, ordinance or regulation of any government concerning the operation of a massage business or the business or profession of massage by the applicant or anyone employed with the business.

7.2.1.1.2.7 The Town reserves the right to request submission of any additional information deemed necessary to process the permit application.

7.21.1.3. The applicant or any person having a legal or beneficial ownership interest in the applicant shall not, for the three-year period preceding the application, have a previously issued license revoked for engaging in the business or profession of massage.

7.21.1.4. The applicant or any person having any legal or beneficial ownership interest in the applicant, shall not in the last ten (10) years have been convicted of any crime involving sexual misconduct including but not limited to, NCGS 14-177 – 14-202.1 and NCGS 14-203 – 14-208, any federal statutes relating to prostitution, or of any violation of any law or ordinance of any governmental unit related to the business or profession of massage.

7.21.1.5. It shall be unlawful for any person, corporation, partnership, or association to employ any person under the age of eighteen (18) years in the operation of a massage business.

7.21.1.6. Hours of operation:

7.21.1.6.1. No person shall massage or treat any person, or engage in the business or profession of massage, before 8:00 a.m. or after 12:00 midnight, prevailing time.

7.21.1.6.2. No person shall admit customers or prospective customers, or remain open for business, or allow, permit or condone any massage or treatment of any person before 8:00 a.m. or after 12:00 midnight, prevailing time.

7.21.1.6.3. No person in charge of managing a massage business shall allow, permit or condone any massage or treatment of any person before 8:00 a.m. or after 12:00 midnight, prevailing time.

7.21.1.7. Posting of license:

7.21.1.7.1. Every massage therapist shall post a copy of their North Carolina license to operate in their work area or on their person.

7.21.1.7.2. Every person, corporation, partnership, or association licensed under this article hereof shall display their business registration and their North Carolina license to operate in a prominent place or on their person.

7.21.1.8. A permit issued pursuant to this article is void if the licensee moves or ceases operating a massage business.

7.21.2. Massage of Private Parts for Hire.

It shall be unlawful for any person to massage or to offer to massage the private parts of another for hire. The term "massage," as used in this section, means the manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping, by hand or mechanical device. The term "private parts" means the penis, scrotum, mons veneris, vulva, or vaginal area. The provisions of this section shall not apply to licensed medical practitioners, osteopaths or chiropractors, or persons operating at their direction, in connection with the practice of medicine, chiropractic or osteopathy.

7.21.3. Revocation of Permit.

7.21.3.1. Violation of any part of this article shall be grounds for revocation of the permit.

7.21.3.2. A permit issued pursuant to this section shall be revoked by the UDO Administrator or designee upon the determination that:

7.21.3.2.1. The permit holder violates any building or fire prevention ordinances or any provision of this UDO.

7.21.3.2.2. The permit holder, or the legal or beneficial owner of any interest in the permit holder is convicted of any crime involving sexual misconduct including, but not limited to, NCGS 14-177 – 14-202.4, and NCGS 14-203 – 14-208 in the last ten years.

7.21.3.2.3. Any employee of the permit holder is convicted of any felony in connection with his employment, or is convicted of any crime involving sexual misconduct including, but not limited to, NCGS 14-177 – 14.202.4 and NCGS 14-203 – 14-208 or of this article.

SECTION 7.22 METAPHYSICAL WELLNESS SERVICES.

Metaphysical wellness services for which there is no professional licensing recognized by the State of North Carolina including hypnosis, past life regression, energy healing practices, phrenology, astrology, and intuitive readings such as psychic, palm, tarot, and oracle cards, are permitted in accordance with Section 6.6, Table of Uses and Activities, provided that the following conditions are met:

7.22.1. Applicants desiring to conduct metaphysical wellness services shall provide the following information to be considered as part of the application for a conditional use permit. The information shall include, but not be limited to, the following:

7.22.1.1. Name, alias or nicknames, resident and business address, phone number, place and date of birth, Social Security number, race, sex, age, height, weight, hair color, and eye color of all people conducting metaphysical wellness services.

7.22.1.2. Written authorization to conduct an investigative report by the Nags Head Police Department of the applicant or any persons conducting metaphysical wellness services, including fingerprints and personal descriptive information for the purpose of obtaining criminal history record information, the costs of which shall be borne by the applicant.

7.22.1.3. A description of the metaphysical wellness services to be provided.

7.22.1.4. Hours of operation can be determined as part of the conditional use permit by the Board of Commissioners.

7.22.1.5. Written declaration, dated and signed by the applicant, certifying that the information contained in the application is true and correct.

7.22.2. Standards for permit review, issuance, and revocation:

7.22.2.1. The UDO Administrator, or his/her designee, shall conduct an independent investigation and determine whether the statements contained in the application are true.

7.22.2.2. The applicant shall not be issued a use permit if the investigation or the information furnished in compliance with this article shows that the applicant has been convicted within the last ten years from the date of the application of a felony or any other crime materially affecting the applicant's ability to conduct the permitted activity including a crime involving moral turpitude, or has been denied a permit or has had a permit revoked under any statute or ordinance similar in substance to the provisions of this article.

7.22.2.3. The UDO Administrator may revoke or suspend any permit issued pursuant to this article (1) for fraud, misrepresentation or any false statements contained in the application; (2) upon conviction of the applicant for any felony or misdemeanor involving moral turpitude after this permit is issued; (3) for failure to comply with the provisions of this article; or (4) if the applicant's business fails to comply with applicable Town, county, or state laws or regulations.

7.22.2.4. If the UDO Administrator revokes a permit, he/she shall notify the permittee in writing of such action, the reasons for the revocation, and the permittee's right to request a hearing. To receive a hearing, the permittee must make a written hearing request which must be received by the UDO Administrator within ten (10) days of the date of the revocation notice. If a timely hearing request is not received by the UDO Administrator, the decision shall be final and the permittee's right to any hearing regarding the revocation shall be waived. If a hearing is properly requested, it shall be held within ten (10) days from receipt of the hearing request. The hearing shall be presided over by the UDO Administrator or his/her designee. The permittee shall have the right to present evidence presented against the permittee, and to present argument or to have an attorney do so. Within a reasonable time after the hearing, the UDO Administrator shall render his decision. The permittee must discontinue operation of its business when the decision to revoke the permit becomes final.

7.22.2.5. The applicant shall have the right to appeal any decision of the UDO Administrator to the Board of Commissioners.

SECTION 7.23 SEXUALLY ORIENTED BUSINESSES.

Sexually oriented businesses, only those businesses defined and provided for in Appendix A Definitions, are permitted in accordance with Section 6.6, Table of Uses and Activities, provided that the following conditions are met:

7.23.1. Sexually oriented businesses shall not be located in a building or on a premises where alcohol or alcoholic beverages are sold or in a building or on a premises that allows alcohol or alcoholic beverages to be consumed.

7.23.2. No sexually oriented businesses shall be permitted in any building which is:

7.23.2.1. Located within four hundred (400) feet in any direction from a building used as a dwelling in the C-3 commercial services zoning district.

7.23.2.2. Located within four hundred (400) feet in any direction from a residential zoning district (R-1, R-2, R-3, C-4, SPD-20, SPD-C, CR).

7.23.2.3. Located within two hundred (200) feet in any direction from a building in which a sexually oriented business is located.

7.23.2.4. Located within one thousand (1,000) feet in any direction from a building in which a religious complex is located.

7.23.2.5. Located within one thousand (1,000) feet in any direction from a building in which a library, school, or a state licensed child day care center is located.

7.23.2.6. Located within one thousand (1,000) feet in any direction from any lot or parcel on which a public playground, public swimming pool, public ocean or estuarine access, or public park is located.

7.23.3. 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 or structure of a use listed in this Section 7.23.

7.23.4. Signs are allowed, as permitted in Article 10, Part III, Sign Regulations of this UDO, but may not include promotional displays, flashing lights, or photographs, silhouettes, drawings, or pictorial representations of any manner depicting sexual activity, themes or nudity.

7.23.5. That the applicant's follow the licensing procedures outlined in Chapter 12 Businesses and Licensing of the Town Code of Ordinances.

SECTION 7.24 VETERINARY CLINIC.

7.24.1. Veterinary Clinic with Animal Boarding.
Animal boarding kennels or veterinary clinics are permitted in accordance with Section 6.6, Table of Uses and Activities, provided that all pens and kennels are in an enclosed, air conditioned building and further provided that all unenclosed runs be set back not less than fifty (50) feet from any existing residential use or district.

7.24.2. Veterinary Clinic with No Animal Boarding.
Veterinary office and clinic is permitted in accordance with Section 6.6, Table of Uses and Activities, provided that all pens and kennels are in an enclosed, air conditioned building; that there are no outdoor runs, pens, or holding areas; and that boarding of animals is limited to that which is necessary for pre- and post-treatment observation and care.

PART V. FOOD SERVICE

SECTION 7.25 COFFEE SHOPS/JUICE BARS.

Coffee shops/juice bars are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.25.1. Customer service areas shall not exceed 385 square feet.

7.25.2. Permitted accessory uses include, but are not limited to, retail sales of packaged coffee and retail merchandise.

7.25.3. There shall be no drive-in or drive-through beverage service.

SECTION 7.26 FOOD TRUCKS.

Food trucks are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the other requirements of this UDO and provided the following conditions are met:

7.26.1. General Provisions.

7.26.1.1. Food trucks may not use audio amplification or freestanding signage.

7.26.1.2. All equipment associated with the food trucks must be located within three (3) feet of the food truck.

7.26.1.3. The food truck operator shall provide a trash receptacle and is responsible for disposing of all trash associated with the operation of the food truck.

7.26.1.4. All areas utilized by the food truck must be kept clean.

7.26.1.5. Grease and liquid must be properly stored within the vehicle and discharged in accordance with regulations established by the Dare County Health Department.

7.26.1.6. Food trucks are subject to the Town-wide noise ordinance.

7.26.1.7. Permitting. The permit must be signed by the property owner and completed and submitted along with a site plan. The site plan must show the limits of the property, the location of the proposed food truck, and label adjoining uses on neighboring properties. The applicant must also submit a NC Department of Agriculture Permit (if applicable), a copy of the vehicle or trailer registration, and proof of compliance with the Dare County Health Department regulations.

7.26.2. Permitted Events.

Food trucks may conduct sales during a permitted special event with the issuance of Crowd Gathering Permit in accordance with Chapter 4 of the Town Code of Ordinances.

7.26.3. Restaurants.

Food trucks shall be allowed to operate on the same lot as a restaurant, either (1) when the principal restaurant is closed or (2) when the principal restaurant is open, provided the site contains a minimum of three (3) parking spaces in excess of the minimum parking required by this UDO. The following additional regulations shall apply:

7.26.3.1. Location. Food trucks must be located at least fifty (50) feet from any property line abutting a residential district or use. Additionally, food trucks must be parked at least fifty (50) feet from any fire hydrant, and five (5) feet away from any driveway, sidewalk, utility box or vault, handicapped ramp, building entrance or exit, or emergency call box. These minimum distance requirements are all measured in a straight line from the closest point of the proposed food truck location to the closest point from the buffered point, or in the case of a restaurant measured from the closest point of the restaurant's main entrance. Only one food truck is allowed per property.

7.26.3.2. Parking. Food trucks may not occupy any required parking stall for the principal use while the primary use is open to the public, thereby resulting in an overloading of parking spaces. Food trucks and the principal use may share parking spaces when operating under separate hours. Parking stalls in excess of what is required by the UDO may be used to park a food truck; however, parking stalls leased to another business or shared with an adjacent use may not be used unless the food truck is operating under separate hours of operation. Food trucks may not park in fire lanes, drive aisles, or loading zones.

7.26.3.3. Hours of Operation. Food trucks may operate between the hours of 7:00 a.m. and 11:00 p.m.

SECTION 7.27 MICROBREWERIES.

Microbreweries are permitted in accordance with Section 6.6, Table of Uses and Activities, provided the use meets the requirements of NCGS 18B-1104 or 18B-1105, respectively, and the following additional conditions are met:

7.27.1. The area for the distilling of alcohol and alcoholic beverages shall not exceed three thousand (3,000) square feet of gross floor area.

7.27.2. The establishment must hold a brewery permit, as authorized in NCGS 18B-1104.

7.27.3. The microbrewery shall include one (1) or more accessory uses such as a tasting room, tap room, food service, retail, demonstration area, education and training facility or other use incidental uses to the facility and open and accessible to the public.

7.27.4. Microbreweries shall have the accessory uses, such as tasting room, tap room, food service, retail, demonstration area, education and training facility, oriented to the street or main pedestrian entrance of the business. A minimum of five hundred (500) square feet shall be provided for accessory use and this area shall be open to the public for business.

7.27.5. Loading and unloading facilities (if applicable) shall be designed to be internal to the site or in the back of building.

7.27.6. Storage of materials, including silos, products for distribution, and other items requiring long-term storage shall be allowed in areas behind the building, in enclosed buildings, or otherwise screened from the public right-of-way or pedestrian way.

7.27.7. No loading or distribution activities shall take place outside an enclosed building of the microbrewery between the hours of 9:00 PM and 7:00 AM.

7.27.8. All microbreweries shall comply with the Noise Ordinance, Chapter 16, Article III of the Code of Ordinances.

7.27.9. No manufacturing of alcohol and alcoholic beverage shall produce or create any noxious smells or odors detectable to the public from the public right-of-way.

7.27.10. Any distilling or manufacturing of alcohol and alcoholic beverages shall be separated by a minimum of fifty (50) feet from any dwelling unit.

SECTION 7.28 RESTAURANT, DRIVE-IN.

Restaurant, drive-in, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.28.1. In addition to the buffering requirements of Section 10.93, Landscaping, Buffering, and Vegetation Preservation, the site shall be buffered from all adjacent properties utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93.

SECTION 7.29 RESTAURANT, DRIVE-THROUGH.

Restaurant, drive-through, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.29.1. In addition to the buffering requirements of Section 10.93, Landscaping, Buffering, and Vegetation Preservation, the site shall be buffered from all adjacent properties utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93.

7.29.2. The drive-through restaurant must front on the US 158 right-of-way.

SECTION 7.30 RESTAURANT, NEIGHBORHOOD.

Restaurant, neighborhood, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.30.1. To be classified as a neighborhood restaurant, the indoor customer service area shall be less than 1,000 square feet.

7.30.2. An on-site outdoor customer service area in an amount up to 50% of the indoor customer service area is also permitted.

7.30.3. A restaurant site may contain more than one principal restaurant building, or one principal restaurant building in combination with another principal drive-in restaurant, drive-through restaurant, or takeout restaurant building.

7.30.4. Uses qualifying as a restaurant shall meet the following criteria:

> ***7.30.2.1.*** A food preparation area that is at least twenty (20) percent of the gross building square footage of the principal building. The square footage of food preparation area located in an on-site accessory restaurant use building or a second on-site drive-in, drive-through, or takeout restaurant may be applied when calculating this minimum 20% requirement. But when calculated together (principal and accessory or second principal buildings), in no event shall the

food preparation area of the principal building be permitted to be less than ten (10) percent of the principal building gross square footage; and,

7.30.2.2. At least seventy-five (75) percent of all customer seats shall be designated for full-service, full-menu dining; and,

7.30.2.3. No more than fifteen (15) percent of the total building square footage shall be devoted to accessory entertainment uses including but not limited to dance floor, lounges, bars, stages, live performance, and disc jockey areas. Accessory entertainment uses referenced in this section shall be permitted in a restaurant establishment provided these uses are clearly subordinated in area, extent, hours of operation, and purpose to areas designated for food and/or beverage preparation, service, and consumption.

SECTION 7.31 RESTAURANT, SIT DOWN.

Restaurant, sit down, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.31.1. A restaurant site may contain more than one principal restaurant building, or one principal restaurant building in combination with another principal drive-in restaurant, drive-through restaurant, or takeout restaurant building.

7.31.2. Uses qualifying as a restaurant shall meet the following criteria:

7.31.2.1. A food preparation area that is at least twenty (20) percent of the gross building square footage of the principal building. The square footage of food preparation area located in an on-site accessory restaurant use building or a second on-site drive-in, drive-through, or takeout restaurant may be applied when calculating this minimum 20% requirement. But when calculated together (principal and accessory or second principal buildings), in no event shall the food preparation area of the principal building be permitted to be less than ten (10) percent of the principal building gross square footage; and,

7.31.2.2. At least seventy-five (75) percent of all customer seats designated for full-service, full-menu dining; and,

7.31.2.3. No more than fifteen (15) percent of the total building square footage devoted to accessory entertainment uses including but not limited to dance floor, lounges, bars, stages, live performance, and disc jockey areas. Accessory entertainment uses referenced in this section shall be permitted in a restaurant establishment provided these uses are clearly subordinated in area, extent, hours of operation, and purpose to areas designated for food and/or beverage preparation, service, and consumption.

PART VI. COMMERCIAL MIXED-USE

SECTION 7.32 GENERAL PROVISIONS.

The following provides the allowable uses for all Commercial Mixed-Use designations as permitted in accordance with Section 6.6, Table of Uses and Activities:

7.32.1. Residential.

- Cottage Courts.
- Dwelling, Single-Family.
- Dwelling, Two Family.
- Dwelling, Multi-Family.
- Home Occupations.

7.32.2. Retail.

- Art Gallery.
- Art Gallery – Owner Occupied.
- Beach Recreation Equipment Rental/Sales.
- Bicycle Shop (repair, retail, rental).
- Convenience Store.
- Food/Grocery Store.
- General Retail, including clothing, gifts, candy, toys, shoes, jewelry, notions, beach equipment, bakery, antiques, hobby goods, magazines/comics, crafts, dry goods, gifts, musical instruments, bookstores, sporting goods (and the incidental manufacturing, repair, or service of goods on the premises).
- Hardware Store.
- Pet Shop/Dog Grooming.
- Pharmacy.

7.32.3. Service.

- Personal Service.
    - Group Fitness – Aerobics/Dance/Karate/Yoga.
    - Hair Salon.
    - Indoor Fitness/Gymnasium.
    - Massage Therapy Center.
    - Metaphysical Wellness Services.
    - Spa.
- Food Service
    - Coffee Shop/Juice Bar.
    - Ice Cream Shop
    - Microbreweries

- Restaurant, Neighborhood
- Restaurant, Sit Down
- Restaurant, Take Out

7.32.4. Office.

- Building Contractor's Office
- Professional Office, including General Business, Financial, Real Estate Sales, Insurance, Attorney, Accountant, Mortgage

7.32.5. Institutional.

- Governmental Administrative Office.
- Libraries.

7.32.6. Medical.

- Medical Offices.

7.32.7. Accessory Uses.

- Outdoor Stands – Accessory to Shopping Centers and Group Development.

SECTION 7.33 COMMERCIAL WITH ACCESSORY RESIDENTIAL (ATTACHED OR DETACHED).

Accessory residential units are single-family attached or detached units that may be allowed on the same property and in conjunction with a commercial use. These are distinctly different than accessory dwelling units, which are accessory uses designed to be subordinate to and located on the same property as a single-family dwelling. Commercial with Accessory Residential, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.33.1. Commercial uses may have up to two (2) accessory residential units that are attached or detached.

7.33.2. Accessory residential uses must be located above or to the rear of the primary commercial use and must meet the setbacks for the principal structure within the zoning district.

7.33.3. Individual accessory residential units may not exceed 1,500 square feet in area.

7.33.4. Parking shall be provided for the accessory residential units using the same parking standard applicable to single-family dwellings.

SECTION 7.34 MIXED USE DEVELOPMENT.

Mixed Use Development is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.34.1. The residential component shall not exceed fifty (50) percent of the total gross floor area of buildings containing one or two habitable floors.

7.34.2. The residential component shall not exceed sixty-six (66) percent of the total gross floor area of a building containing three (3) habitable floors.

SECTION 7.35 MULTIPLE PRINCIPAL USES.

Multiple principal uses may be established within a single commercial structure or unit by conditional use approval provided the use is a listed permitted or conditional use within the district in which it is located and that the following conditions are met:

7.35.1. No more than two (2) principal uses shall be located within any one structure or unit at any given time. This limitation does not apply to permitted accessory uses.

7.35.2. Parking requirements for each principal use shall be calculated separately based upon the standards applicable to each use as set forth in Section 10.16, Required Parking by Use. The applicant may request a parking reduction in accordance with Section 10.15, Alternative and Reduced Commercial Parking Requirements.

7.35.3. All uses within the single commercial structure or unit, both principal and accessory shall be managed and under the control of a single party.

PART VII. INSTITUTIONAL

SECTION 7.36 ADULT DAY SERVICE CENTER.

Adult day service center, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.36.1. The facility shall adhere to the minimum requirements of and be licensed by the NC Department of Health and Human Services, Division of Aging and Adult Services.

7.36.2. Pickup and drop-off areas shall be provided separate from the drive-aisle. The pickup and drop-off areas shall be designed so that no person attending the center is required to cross the parking lot or any other traffic areas.

7.36.3. All outdoor recreational areas shall be buffered from adjacent residential uses and districts (R-1, R-2, R-3, CR, SED-80, SPD-20, and SPD-C) utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93, Landscaping, Buffering, and Vegetation Preservation. The buffer shall be placed on the exterior side of any required fencing.

SECTION 7.37 CEMETERY.

Cemetery, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.37.1. In the R-3 district, cemeteries are allowed as a conditional use, subject to other requirements of this UDO and provided that the following conditions are met:

7.37.1.1. All cemeteries shall have perpetual care.

7.37.1.2. Any grave or burial plot shall be set back not less than forty (40) feet from any exterior property line.

7.37.1.3. Adequate space for the parking and maneuvering of funeral entourages shall be provided within the site.

7.37.1.4. Lighting shall be prohibited except for minimum lighting that may be required for security purposes.

7.37.1.5. The site shall be approved by all necessary regulatory agencies including, but not limited to, the Dare County Health Department and the North Carolina Cemetery Commission.

7.37.1.6. No cemetery shall be located within a special flood hazard area as depicted on the latest FIRM.

7.37.2. In the SED-80 district, cemeteries are allowed as a conditional use, subject to other requirements of this UDO and provided that the following conditions are met:

7.37.2.1. All cemeteries shall have perpetual care.

7.37.2.2. All graves or burial plots shall be set back not less than thirty (30) feet from any public right-of-way and be not less than fifty (50) feet from any lot line.

7.37.2.3. When a cemetery abuts a residential use, a 25-foot wide undisturbed area of natural vegetation shall buffer the cemetery from the residential development.

7.37.2.4. The site shall be approved by all necessary regulatory agencies including, but not limited to, the Dare County Health Department and the North Carolina Cemetery Commission.

SECTION 7.38 SCHOOLS.

Schools are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.38.1. A minimum lot area of ten (10) acres is required for a school complex.

7.38.2. No structure shall be located closer than twenty-five (25) feet to a common property line, nor closer than thirty (30) feet to an abutting street or highway right-of-way.

7.38.3. The maximum height of a structure shall be thirty-five (35) feet. However, if fifty (50) percent or more of the roof is pitched at a six to 12 (6:12) slope or greater, the maximum structure height shall not exceed thirty-five (35) feet to the top plate and shall not exceed a total height of sixty (60) feet to the roof ridge.

7.38.4. Locating of a school system administration office on the same site as a school shall be allowed.

7.38.5. All structures within a school site shall be separated by a minimum of thirty (30) feet.

7.38.6. Lighting shall be in accordance with Article 10, Part IV, Outdoor Lighting of this UDO. No lighting of outdoor recreational areas shall be permitted except for security purposes in accordance with Article 10, Part IV, Outdoor Lighting.

7.38.7. No modular units shall be allowed on school sites.

7.38.8. Loading areas shall be provided in accordance with Section 10.17, Off-Street Loading.

7.38.9. A vehicular and pedestrian access plan shall be developed for the facility in accordance with the state department of transportation and Town public safety standards.

7.38.10. An emergency evacuation plan shall be developed in accordance with the state standards.

SECTION 7.39 FIRE STATIONS/PUBLIC WORKS FACILITIES.

Fire stations and public works facilities are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.39.1. Fire Stations.

Fire stations are permitted in accordance with Section 6.6, Table of Use and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

> ***7.39.1.*** No open storage is allowed.
>
> ***7.39.2.*** Lighting shall be prohibited except for minimum lighting that may be required for security purposes.

7.39.2. Public Works Facilities.

Municipal facilities, including public works and water production, distribution and storage facilities are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

> ***7.39.2.1.*** Areas used for storage of materials shall be maintained permeable and shall be calculated as permeable lot coverage. These areas shall be clearly delineated on the site plan, and any expansion of such areas shall be considered a site modification for which approval by the Board of Commissioners is required.

7.39.2.2. Vehicle maintenance areas shall be permitted, the use of which shall be for the repair and upkeep of municipal vehicles. All maintenance conducted shall be either entirely within an enclosed or covered structure or on a paved surface which is designed to contain on-site all stormwater in accordance with the requirements of Article 11, Part I, Stormwater, Fill, and Runoff Management.

7.39.2.3. No bulk storage of fuels or oils for sale shall be allowed. For the purpose of this subsection, bulk storage shall be any amount in excess of 200 gallons. However, bulk storage for consumption in municipal vehicles shall be allowed, provided that such storage facilities are designed to equal or exceed the minimum requirements of any applicable federal, state or local agencies. There shall be no fuel or oil storage within 500 feet of the Fresh Pond.

SECTION 7.40 NON-PROFIT/COMMUNITY OUTREACH CENTER WITH AQUATIC FITNESS FACILITY.

The standards below are applicable to an outdoor aquatic fitness facility that is provided in conjunction with a non-profit/community outreach center. Non-profit/community outreach center with aquatic fitness facilities are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.40.1. The outdoor aquatic fitness facility shall only be allowed in conjunction with a non-profit/outreach center with an indoor aquatic fitness facility.

7.40.2. The facility must be on an existing single parcel containing split-zoning districts R-2 and C-2.

7.40.3. Lot coverage for the parcel shall be the combined average of the coverage allowed in each individual zoning district. Total lot coverage may be applied to the total parcel; however, placement of coverage shall not exceed thirty (30) percent in the R-2 district and eighty (80) percent in the C-2 district.

7.40.4. Hours of operation shall be 8:00 am until 9:00 pm or sunset, whichever occurs first.

7.40.5. Lighting of the parking area for the facility shall be prohibited except for minimum lighting required for security purposes.

7.40.6. A 50-foot buffer shall be provided between the outdoor aquatic fitness facility and adjacent residential uses and districts (R-1, R-2, R-3, CR, SED-80, SPD-20, and SPD-C) and landscaped as open space. Stormwater basins and subterranean sewage systems are allowed in the required buffer.

7.40.7. Child care is allowed and shall meet all the requirements of Section 7.9, Child Care Facilities.

SECTION 7.41 NURSING HOMES/MEDICAL OFFICES.

Nursing homes/medical offices are permitted in accordance with Section 6.6, Table of Uses and Activities, provided that all such uses shall be located in that area as is now designated or may be hereafter be designated for such uses by the Town pursuant to Chapter 1160 of the Session Laws of 1973 of the North Carolina General Assembly (An Act to Allow the Town of Nags Head to Designated Certain Town-Owned Property for Health Care Purposes), as amended, and subject to the following:

7.41.1. A minimum lot area of 80,000 square feet shall be required for each principal building on the site.

7.41.2. Lighting shall be the minimum amount that may be required for security purposes and shall be in accordance with Article 10, Part IV, Outdoor Lighting of this UDO.

7.41.3. Along the side and rear property lines, a 25-foot wide undisturbed area of natural vegetation shall be provided.

7.41.4. An evacuation plan shall be provided and be subject to review by the Town.

7.41.5. Medical and rehabilitation facilities may be located within a nursing home.

7.41.6. A dormitory for temporary use by staff of nursing homes may be allowed only in conjunction with nursing home facilities already permitted in the SED-80 district.

SECTION 7.42 POLICE SHOOTING RANGE.

Policy shooting range, owned and operated by the Town of Nags Head, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.42.1. Lighting shall be the minimum amount that may be required for security purposes and shall be in accordance with Article 10, Part IV, Outdoor Lighting of this UDO.

7.42.2. A police shooting range shall be located a minimum distance of five hundred (500) feet from any residential use.

7.42.3. Shooting at the range shall cease after 8:00 pm during daylight savings time and after 9:00 pm during non-daylight savings time.

SECTION 7.43 PRIVATE CLUBS (NON-PROFIT).

For the purposes of this UDO, a private club is a noncommercial club, owned and operated by a non-profit legal entity composed of and with membership restricted to residents and owners of lots or dwellings in the residential development containing the private club, and is allowed as a conditional use where specified. Separate residential developments may join for the purpose of establishing, owning and operating a private club. The facilities of the private club must be submitted for site plan review and shall comply with all pertinent requirements and provisions of this UDO, in addition to the requirements set out as follows:

7.43.1. A private club may include and operate a clubhouse, swimming pool, boat launching area, tennis court, community center, library, picnic area, and vending machine but shall exclude food service and the sales of goods and services.

7.43.2. The facilities, services, and activities shall be non-profit and provide for members and nonpaying guests only.

7.43.3. Declaration of restrictive covenants, which shall run with the land, shall be recorded in the Dare County Register of Deeds after review and approval by the Town. These restrictive covenants shall include, at a minimum, provisions:

7.43.3.1. That establish a property owners association (POA);

7.43.3.2. That include a full set of bylaws;

7.43.3.3. That require every owner within the residential development, or residential developments in combination, and their successors and assigns to make regular payments of adequate fees and assessments to the POA, as may be fixed by the POA, for the purpose of supporting financially the private club facility which the POA may acquire, operate, administer or maintain for the use, benefit and enjoyment of its members and their guests;

7.43.3.4. That establish a reserve fund for capital facilities and replacement thereof;

7.43.3.5. For increasing the mandatory fees or assessments when necessary; and

7.43.3.6. That set out the procedures for transferring the control of the POA from the developer to the homeowners.

7.43.4. The POA shall be incorporated as a state non-profit corporation.

7.43.5. The proposed residential development, or developments in combination, shall be capable of accommodating, at a minimum, 100 dwelling units as determined by currently permitted zoning density.

7.43.6. If an established residential development cannot meet the conditions in subsection 7.43.3 of this section by declaring restrictive deeds and covenants and desires to operate and maintain a private club, the following provisions shall apply:

7.43.6.1. The facilities, services and activities shall be non-profit and provide for members and nonpaying guests only.

7.43.6.2. An association of property owners shall be established that includes a full set of bylaws for the purpose of operating a private club to include, but not be limited to, the following information:

7.43.6.2.1. The bylaws shall establish a payment schedule of adequate fees and assessments to the association, as may be fixed by the association, for the purpose of supporting financially the private club facility which the association may acquire, operate, administer or maintain for the use, benefit and enjoyment for only its members and their guests.

7.43.6.2.2. The establishment of a reserve fund for capital facilities and replacement thereof.

7.43.6.2.3. Establish a procedure for increasing the mandatory fees or assessments when necessary.

7.43.6.2.4. Establishes the procedures for transferring the control of the association from the developer to the homeowners.

7.43.6.3. The residential development, or developments in combination, shall be capable of accommodating, at a minimum, 100 dwelling units as determined by currently permitted zoning density. The association of property owners forming to operate a private club facility shall demonstrate to the Town that there is at a minimum 55 percent of active members from the residential development within the association before the review of the conditional use application for the private club facility. For purpose of this section, an active member shall be individuals who have paid their association fees or membership dues to use the private club facility.

7.43.6.4. The association shall deliver a bond in the form of cash or a certificate of deposit payable to the Town to cover the costs of removing the recreational facility if the association fails to maintain the facility in a safe condition as outlined by the state building code or if the facility has been declared a nuisance as outlined in Article II, Chapter 16 of the Town Code.

7.43.6.4.1. A bond agreement providing for cash or a certificate of deposit shall be reviewed and approved by the Town Attorney. The bond agreement must contain a provision granting the Town the right to go onto the property and remove the facility if it is declared a nuisance according to this UDO, or is declared unsafe according to the state building code, without constituting a trespass.

7.43.6.4.2. The bond amount shall equal the cost of removing the recreational facility and be established before the certificate of occupancy is issued for the private club.

7.43.6.4.3. If the Town utilizes the bond for the removal of the club, any funds remaining from the bond shall be paid over to the property owners association and its successor.

SECTION 7.44 PUBLIC UTILITY FACILITY.

Public utility facilities are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided the following conditions are met:

7.44.1. No open storage is allowed.

7.44.2. All utility structures requiring a building permit shall be architecturally compatible with other structures in the vicinity.

7.44.3. The boundaries of the entire site shall be buffered utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93, Landscaping, Buffering, and Vegetation Preservation.

SECTION 7.45 RELIGIOUS COMPLEXES.

Religious complexes are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided the following conditions are met:

7.45.1. Dimensional Requirements.

TABLE 7-3: REQUIREMENTS FOR RELIGIOUS COMPLEXES				
	R-2	**R-3**	**SPD-20**	**C-2**
Building Separation	30 feet			
Setbacks	25 feet property line; 30 feet street or right-of-way			
Ratio of Floor Area to Site Area	1:6	1:4	1:6	1:4
Lot Coverage	30%; may increase to 45% with stormwater management facilities designed to retain and infiltrate the two-inch storm event			55%

7.45.2. Accessory Uses in the SPD-20 District.
A child care center or pre-school educational facility is allowed as an accessory use to a religious complex in the SPD-20 district, subject to the following conditions:

7.45.2.1. The facility adheres to the minimum requirements of and is licensed by the NC Department of Health & Human Services, Division of Child Development and Early Education.

7.45.2.2. Pickup and drop off areas shall be provided separate from the drive-aisle. The pickup and drop off areas shall be designed so that no child is required to cross the parking lot or any other traffic areas.

7.45.2.3. All outdoor recreational areas shall be buffered from adjacent residential uses and districts (R-1, R-2, R-3, CR, SED-80, SPD-20, and SPC-C) utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93, Landscaping, Buffering, and Vegetation Preservation. The buffer shall be placed on the exterior side of any required fencing.

SECTION 7.46 WELL FIELDS, PUBLIC WATER SUPPLY.

Public water supply well fields are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following regulations:

7.46.1. Land clearing and grade changes around individual well point sites shall be limited to the least amount necessary to provide access for installation and maintenance of the well and pumps. In no case shall clearing and grading exceed a 30-foot radius around the well point.

7.46.2. Water line placement shall be accomplished in a manner that reduces the need to remove vegetation and shall be placed, where feasible, along existing roads or pathways.

7.46.3. When feasible, access to well sites shall be provided along established roadways or along existing pathways which can be improved to accommodate service vehicles.

7.46.4. All utilities shall be placed underground.

7.46.5. All development shall be in accordance with subsection 8.4.3.4.2.

SECTION 7.47 WASTEWATER TREATMENT PLANTS (ACCESSORY TO PIER).

Wastewater treatment plants (accessory to pier) are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following regulations:

7.47.1. The wastewater treatment plant shall meet the minimum regulations of the appropriate regulatory agencies of the state, and the additional requirements of this section.

7.47.2. Excepting the drainfield, the wastewater treatment plant shall be located within or adjacent to the principal building which it is designed to serve. For the purposes of this section, the principal building is defined as the facility creating the greatest number of gallons of wastewater requiring treatment. The maximum distance of such treatment plant from the principal building shall be the number of feet measured from the building to the nearest property line or fifteen (15) feet, whichever is less.

7.47.3. Excepting the drainfield, no part of the wastewater treatment plant shall be located closer than thirty (30) feet to any adjoining property line. Adjoining property line is defined as the boundary line of any adjoining property, the ownership of which is not identical to the property on which such plant is located. If an adjoining lot is owned by the identical owners as the land upon which such plant is located and any portion of the adjoining lot is contained within the maximum distance required by this section, both lots shall be combined into one single lot of record, and a plat combining such lots shall be recorded in the Dare County Register of Deeds prior to the issuance of a building permit.

7.47.4. Excepting the drainfield, in no event shall any part of a wastewater treatment plant be located closer to an adjoining building than to the principal building served by the plant.

7.47.5. The exterior of the wastewater treatment plant shall be architecturally compatible with the other building or buildings in the development and shall be screened in the manner which will cause it to resemble the principal structure or structures in the project.

PART VIII. RECREATION

SECTION 7.48 COMMUNITY GARDEN.

Community gardens are permitted as a conditional use in accordance with Section 6.6, Table of Uses and Activities, provided the following requirements are met:

7.48.1. Minimum Lot Size.
Community gardens shall be located on sites with a minimum lot area of one (1) acre.

7.48.2. Setbacks.
Whether proposed as an accessory use or as a principal use, the boundaries of the community garden and all permissible accessory structures shall meet the minimum required setbacks of the district in which it is proposed. In no instance shall the community garden or any associated improvements be located less than ten (10) feet from any property line.

7.48.3. Lot Coverage.
Lot coverage shall not exceed the maximum allowable lot coverage for the district in which it is proposed.

7.48.4. Stormwater, Fill, and Runoff Management.
Development of a community garden shall comply with all requirements of Article 11, Part I, Stormwater, Fill, and Runoff Management. Additionally, the site shall be designed and maintained so that water and fertilizer will not drain onto adjacent properties.

7.48.5. Permitted Structures.
Accessory structures such as storage sheds for gardening tools and supplies, greenhouses, hoop houses, and cold frame structures to extend the growing season may be allowed in a community garden pursuant to the definitional requirements in Appendix A Definitions, of Structure, Accessory.

7.48.6. Fencing.
Fencing is not required but may be permitted if the gardener chooses to do so. Fencing shall not be greater than four (4) feet in height and kept in good condition.

7.48.7. Parking.
Ten (10) parking spaces are required for the first acre; one additional parking space shall be provided for every additional acre of community garden use.

7.48.8. Hours of Operation.
Hours of operation shall be limited to the hours between sunrise and sunset.

7.48.9. Signage.
Signage shall be limited to a single, non-illuminated, flat sign no larger than four (4) square feet.

7.48.10. Water Usage.
Water efficient irrigation techniques such as drip irrigation and timers to control watering times are encouraged. All hoses shall be equipped with a trigger nozzle. Mulching of plant areas is encouraged to retain plant moisture.

7.48.11. Composting.
Composting may be performed onsite within a composting container subject to all of the following:

> ***7.48.11.1.*** Composted materials shall be only those materials generated onsite or contributed by active members of the community garden.

7.48.11.2. Composting containers shall be located a minimum of ten (10) feet from all property lines.

7.48.11.3. The permit holder for the community garden shall have a plan to reasonably control odor from any composting areas.

7.48.12. Trash/Recycling Receptacles.
Trash and recycling receptacles shall be provided onsite for the proper disposal of refuse by the property owner. The containers shall be screened from adjacent properties by a four (4) foot high solid fence. Refuse shall be removed from the site regularly so that the receptacle area and the lot are kept free from litter.

7.48.13. Screening.
Trash storage areas, mechanical equipment, compost, and mulch piles and similar areas shall be screened so they are not visible from the street or from adjacent properties.

7.48.14. Lighting.
Low level security lighting not to exceed one average maintained footcandle may be permitted on or around permitted structures in accordance with Article 10, Part IV, Outdoor Lighting.

7.48.15. Sale of Produce and Plants.
Onsite sales of produce, plants, or any other items are prohibited.

7.48.16. Prohibited Plants.
Planting illegal or invasive plants shall be prohibited. For additional information regarding invasive plant species, applicants should refer to literature published by the North Carolina Invasive Plant Council.

SECTION 7.49 ENVIRONMENTAL AWARENESS AREA.

Environmental awareness areas are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.49.1. When an environmental awareness area abuts a residential use, a 25-foot wide undisturbed area of natural vegetation shall buffer the environmental awareness area from the residential development.

7.49.2. Lighting shall be prohibited.

SECTION 7.50 FISHING PIERS.

Fishing Piers are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.50.1. Fishing piers, which may include accessory restaurant or retail uses, are permitted in the R-2 and CR districts in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided the following conditions are met:

7.50.1.1. Parking lot lighting shall be prohibited except for minimum lighting which may be required for security purposes.

7.50.1.2. The maximum total height of the pier house structure shall be thirty-five (35) feet.

7.50.1.3. Lot coverage shall not exceed fifty (50) percent. Coverage may be increased to a maximum of sixty (60) percent if open-space paving blocks are used in place of surfaces such as concrete or asphalt. The use and installation of open-face paving blocks shall be in accordance with the requirements of Section 8.6.6.6., Special Requirements for the Use of Permeable Pavement.

7.50.1.4. Restaurants associated with a fishing pier shall not exceed 1,500 square feet of combined indoor and outdoor customer service area.

7.50.1.5. In the CR district only, if the pier house contains multiple accessory or principal uses, including but not limited to, retail sales, arcade, restaurant, wind turbines, educational and recreational programming, and indoor public assembly uses, with a parking requirement greater than one parking space per 200 square feet of gross floor area, the overall parking requirement may be reduced by fifteen (15) percent. In utilizing this provision, at no time shall the total number of parking spaces provided be less than 100.

7.50.1.5. In the CR district only, the location and installation of wastewater treatment facilities and required repair areas to serve the principal use may be located off-site provided that all off-site properties are undeveloped and are zoned for commercial use. Off-site wastewater treatment facilities shall be exempt from the requirements of Section 7.47, Wastewater Treatment Plants (Accessory to Pier). Above ground structures of the treatment facility shall be deemed principal use structures and shall comply with the dimensional height and yard requirements of the zoning district in which they are located. When off-site wastewater treatment facilities are utilized in conjunction with a fishing pier, restaurants are not permitted as a principal or accessory use to the fishing pier.

7.50.1.6. In the CR district only, up to fifty (50) percent of the required parking for the site may be located at an off-site location. Off-site parking must be located in the C-2 zoning district.

7.50.2. Fishing piers are permitted in the C-2 district in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided the following conditions are met:

7.50.2.1. The site shall not be located closer than five hundred (500) feet to any residential zoning district (R-1, R-2, R-3, CR, SPD-20, SED-80, SPD-C).

7.50.2.2. Holding lanes shall be provided for automobiles entering and leaving the site to minimize traffic congestion on public roads in addition to those requirements for parking lot entrances contained in Article 10, Part VI, Division III, Site Design.

7.50.2.3. Lighting shall be provided in accordance with Article 10, Part IV, Outdoor Lighting.

7.50.2.4. The boundaries of the entire site shall be buffered utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93, Landscaping, Buffering, and Vegetation Preservation.

SECTION 7.51 INDOOR ENTERTAINMENT.

Indoor entertainment is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.51.1. Indoor entertainment limited to amusement arcades, pinball machines, video games, video machines or other similar player operated amusement devices, billiard rooms, bowling alleys, sport-climbing walls, paintball and laser tag facilities, soft play activities for juveniles, miniature golf courses, skating rinks, supervised amusement rides including ferris wheels, spinners, carousels and the like, and go-kart tracks using electric karts, are permitted in accordance with Section 6.6, Table of Uses and Activities. Beach and charitable bingo, adult arcades, sexually oriented business activities, adult live entertainment, and slot machines or devices as prohibited by G.S. 14-306 are specifically excluded from this indoor entertainment use category.

7.51.2. Haunted House.
Haunted house, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.51.2.1. No alcohol shall be served or sold on-site.

7.51.2.2. All tours shall consist of 12 customers or less and shall be guided by a staff member.

7.51.2.3. All attractions, and displays associated with the indoor entertainment facility shall be confined to the interior of the building except an area not to exceed ten feet from the exterior of the principal structure for non-illuminated decorations.

SECTION 7.52 PRIVATE BEACH ACCESS FACILITIES.

Private beach access facilities are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following limitations and conditions:

7.52.1. Private beach access facilities, for members and their guests only, shall be limited to bathing, dressing and toilet facilities; noncommercial indoor and outdoor recreation facilities, including swimming pools; and living quarters.

7.52.2. All of the development shall be located east of NC 12 or SR 1243 and shall have direct access to both NC 12 or SR 1243 and the Atlantic Ocean.

7.52.3. No such development shall contain more than one dwelling unit.

7.52.4. All such developments shall have an elevated walkway to the beach constructed in accordance with CAMA regulations.

7.52.5. All such developments shall contain permanent toilet facilities, in addition to those required for any dwelling unit.

7.52.6. No fences, barriers or other obstructions shall be placed or constructed oceanward of the first line of stable natural vegetation, with the exception of the walkway described in subsection 7.52.4 of this section.

7.52.7. Signs shall be limited to identification and directional signs as provided for in Section 10.23.2.

7.52.8. No such development shall contain kitchen facilities other than those incidental to a dwelling, nor shall there be permitted any food service facilities, concession stands, food and/or beverage dispensers or other such facilities; provided that, water fountains and incidental picnicking facilities shall be permitted.

7.52.9. All such facilities shall provide refuse containers of a size, design, number and location as determined by the public works director.

7.52.10. In issuing a conditional use permit, the Board of Commissioners may require buffers and/or fencing for all or any part of such facilities where in their opinion such buffering and/or fencing is necessary to separate all or part of this facility from an adjoining less intensive land use.

SECTION 7.53 PRIVATE PIER/DOCKS.

Private docks are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.53.1. Boats moored at private docks shall not be occupied overnight.

7.53.2. No commercial use of any type shall be made of a private dock, including, but not limited to, crab shedding, boat chartering, boat rentals, etc.

7.53.3. The private dock is permitted by CAMA.

7.53.4. Storage sheds, boathouses, and other dock-related accessories are prohibited, with the exception of boatlifts and dock boxes.

7.53.5. The private dock shall comply with all federal, state, and local regulations, particularly those pertaining to water quality.

SECTION 7.54 PRIVATE PARKS/PLAYGROUNDS.

Private parks and playgrounds are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following limitations and conditions:

7.54.1. Private parks and playgrounds shall only be allowed as an accessory use to a residential subdivision or a multi-family development.

7.54.2. Lighting shall be prohibited except for minimum security lighting that may be required for security purposes.

SECTION 7.55 MUNICIPAL PARKS.

Municipal parks are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following limitations and conditions:

7.55.1. Municipal Parks in the R-2 Zoning District.
Municipal parks which may include, but not be limited to, tennis courts, multi-purpose recreation fields, concession areas, and picnic areas, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the other requirements of this UDO and provided the following conditions are met:

7.55.1. All multi-purpose recreation fields or tennis courts shall be located no closer than one hundred (100) feet from the property line of any adjacent residential property within the R-2 district.

7.55.2. All buildings or parking lots shall be located no closer than fifty (50) feet from the property line of any adjacent residential property within the R-2 district.

7.55.3. All multi-purpose recreation fields, tennis courts, parking lots, or buildings shall be located no closer than thirty (30) feet from the adjacent residential property line of any property within the SED-80 district.

7.55.4. A 50-foot wide buffer shall separate all multi-purpose recreation fields and tennis courts from the property line of any property within the R-2 district. This buffer shall be bermed or planted to a minimum height of five (5) feet and that will reach a height of ten (10) feet within five (5) years. There shall be a minimum of six (6) rows of plants in the buffer placed on 10-foot centers. Eighty (80) percent of all plants must be locally adaptive live evergreen species, or the equivalent of these standards that incorporate existing vegetation and topography or other landscape architecture designs that demonstrate compliance with these standards. Ornamental grass/herbaceous plants shall not be required to be included in this buffer.

7.55.5. All buildings and parking areas shall be buffered from the property line of any property within the R-2 district utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93, Landscaping, Buffering, and Vegetation Preservation.

7.55.7. Light fixtures for multi-purpose recreation fields shall be turned off no later than 9:00 pm.

7.55.2. Municipal Parks in the C-2 Zoning District.
Municipal parks which may include, but shall not be limited to, multi-use courts, multi-purpose recreation fields, fitness trails, play equipment and event plaza and pavilion, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the requirements of the district in which it is located.

7.55.3. Municipal Parks in the SED-80 Zoning District.
Municipal government passive recreational uses, specifically excluding motorized recreational activities, horse stables and riding trails, lighted ball fields, amusement parks, miniature golf courses, race and go-cart tracks, theaters of all kinds and similar uses which would tend to create a high concentration of activity and associated light, noise, dust, stormwater runoff, erosion, vegetation damage, or which would cause other similar adverse environmental effects, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the other requirements of this UDO and provided the following conditions are met:

7.55.3.1. When a passive recreational use abuts a residential use, a 25-foot wide undisturbed area of natural vegetation shall buffer the passive recreational use from the residential development.

7.55.3.2. Lighting shall be prohibited except for minimum lighting that may be required for security purposes and shall be in accordance with Article 10, Part IV, Outdoor Lighting of this UDO.

SECTION 7.56 SKATE PARK FACILITY.

Skate park facility, is permitted in accordance Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.56.1. The facility shall be provided in conjunction with a Non-profit/Community Outreach Center w/ Outdoor Aquatic Fitness Facility.

7.56.2. The facility must be on an existing single parcel containing split-zoning districts R-2 and C-2.

7.56.3. Lot coverage for the parcel shall be the combined average of the coverage allowed in each individual zoning district. Total lot coverage may be applied to the total parcel; however, placement of coverage shall not exceed thirty (30) percent in the R-2 district and 80 percent in the C-2 district.

7.56.4. Hours of operation shall be 8:00 a.m. until 9:00 p.m. or sunset, whichever occurs first.

7.56.5. Lighting of the parking area for the facility when occurring in the R-2 district shall be prohibited except for minimum lighting required for security purposes.

7.56.6. A 50-foot buffer shall be provided adjacent to residential uses and districts (R-1, R-2, R-3, CR, SED-80, SPD-20, and SPD-C) and landscaped as open space. Stormwater basins and subterranean sewage systems are allowed in the required buffer.

SECTION 7.57 AERIAL ADVENTURE PARK.

Aerial adventure park is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following regulations:

7.57 .1. Lot size shall be a minimum of one (1) acre.

7.57.2. Shall be compliant with Association for Challenge Course Technology (ACCT) or more stringent standards.

7.57.3. When using utility poles taller than a height of thirty-five (35) feet, they shall be setback a minimum of 1.1 times their height from all property lines and rights-of-way.

7.57.4. Under no circumstances shall any portion of the aerial park exceed sixty (60) feet in height from natural or original grade.

7.57.5. Where an established mature vegetative buffer of ten (10) feet in height does not exist, a privacy fence of opaque material or ten (10) feet in height shall be constructed along all property lines abutting a residential use area.

SECTION 7.58 DESIGNATED PUBLIC EVENTS SITE.

Designated public event sites are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following regulations:

7.58.1. A special events permit is required for events held at a designated public events site for events that expect more than 100 attendees. Applications, including a site and management plan for events, must be made to the Town Manager's office no less than fourteen (14) days prior to the initiation of any event or temporary use to take place on the site in order for the Town to:

7.58.1.1. Evaluate requests for Town assistance and costs to be charged as associated with the event;

7.58.1.2. Determine and schedule what types of site inspections may be needed;

7.58.1.3. Evaluate parking, site access and traffic controls;

7.58.1.4. Evaluate crowd controls and flow, and site requirements for bathroom, water and other facilities that may be required to protect the health and welfare of the participants;

7.58.1.5. Confirm that NC Alcohol Law Enforcement (ALE) and Dare County Health Department requirements have been met;

7.58.1.6. To assign and charge any fees associated with use of Town personnel;

7.58.1.7. Schedule repeating events; and

7.58.2. Events site and management plan shall include:

7.58.8.1. Contact information and cell phone for the person in charge of the event.

7.58.8.2. A brief description of the event with an estimated number of expected participants. Ticketed events should indicate the maximum number of tickets that will be sold.

7.58.8.3. A site plan map showing:

7.58.8.3.1. The location of all temporary structures, including tents, stages, concessions, bathroom facilities, or rides.

7.58.8.3.2. A traffic and parking plan indicating site ingress/egress, traffic flow direction, designated parking areas, and the number of parking spaces. Ticketed events must have one space for every three tickets sold. If off-site parking is anticipated, plan must indicate where off-site parking will be located and document approval from those property owners.

7.58.8.3.3. The amount, type, and location of temporary signage, subject to the provision of Article 10, Part III, Sign Regulations of this UDO, and the following:

7.58.8.3.3.1. Directional signage less than twelve (12) square feet may be located at strategic locations to direct pedestrians and motorists.

7.58.8.3.3.2. Temporary advertisement, sponsorship, or commercial signage shall be directed internally to the event itself and shall not be located adjacent to or addressing adjacent properties, the US 158 right-of-way or the beach or sound.

7.58.8.3.3.3. Temporary signs shall be displayed only during the actual time period of the event and shall be promptly removed at the close of such event.

7.58.8.3.4. Notes or attachments related to any additional documentation pertinent to the planned event, including but not limited to:

7.58.8.3.4.1. Approvals required from other agencies (ALE, NCDHHS).

7.58.8.3.4.2. Off-site parking arrangements.

7.58.8.3.4.3. Proof of insurance related to the event.

7.58.3. Failure to comply with inspection and code requirements can result in fines and/or suspension of the use of the site in accordance with Section 1.10, Violation of UDO Regulations, of this UDO and other applicable local and state regulations.

SECTION 7.59 GO KART TRACK.

Go Kart Tracks are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following regulations.

7.59.1. The running surface of the track shall be either concrete or asphalt and shall be maintained in a dust-free state.

7.59.2. The total length of the track, measured at the centerline, shall not exceed 2,500 feet.

7.59.3. Any area of the track accessible to spectators shall be fenced to a minimum height of forty (40) inches to keep spectators off the track surface.

7.59.4. No use shall be allowed within the interior portion of the track with the exception of drainage facilities, subsurface septic facilities, or landscaped open space.

7.59.5. The facility shall comply with the requirements of Article 11, Part I, Stormwater, Fill and Runoff Management.

7.59.6. No portion of the track shall be located within any contiguous and/or adjacent 404 wetland areas, as defined by the US Army Corps of Engineers. No portion of the track may be located within an isolated wetland unless such wetland can be filled in accordance with all applicable regulations and Town policy.

7.59.7. Bumper cars shall be allowed as an accessory use to go kart tracks with the following conditions:

7.59.7.1. The bumper car operations area shall not exceed 2,000 square feet.

7.59.7.2. The bumper car enclosure/operations area shall be architecturally compatible with the principal building or buildings.

7.59.7.3. No signage is permitted upon the bumper car enclosures/operations area.

7.59.7.4. The number of operable bumper cars available for rental shall be limited to one car per 200 square feet of bumper car enclosure area.

SECTION 7.60 GRASS SURFACE PUTTING COURSE.

Grass surface putting courses are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following regulations:

7.60.1. The site shall be at least one (1) acre in playing area for every 18 holes and no less than two (2) acres in total size.

7.60.2. For the first three (3) acres in the development site, lot coverage shall not exceed 30%. For any land area above three (3) acres, the allowable lot coverage shall be that specified in subsection 8.2.1 for the C-2 zoning district.

7.60.3. The principal irrigation of the course shall be provided by on-site wells or ponds.

7.60.4. The facility shall comply with the requirements of Article 11, Part I, Stormwater, Fill and Runoff Management.

7.60.5. No portion of the use shall be located within any contiguous and/or adjacent wetland areas as defined by the US Army Corps of Engineers.

SECTION 7.61 OUTDOOR AMUSEMENT RIDES/GAMES.

Outdoor amusement rides/games are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following regulations:

7.61.1. Outdoor amusement rides and games, including ferris wheels, may be permitted as an accessory use to the following: Watercraft Rental, Non-Powered; Watercraft Rental, Powered; Tour Boat; Parasail Rental; Go Kart Track; Grass-Surface Putting Course; Mini-Golf; and Outdoor Sport Climbing Wall.

7.61.2. The parcel upon which the amusements are located must have a minimum lot size of three (3) acres.

7.61.3. Amusement rides, including ferris wheels, shall not exceed sixty (60) feet in height above existing natural grade.

7.61.4. Amusement rides of a height taller than thirty-five (35) feet shall be limited to three and shall be set back a minimum distance of 1.1 times the amusement ride height from all property lines and rights-of-way. All amusement rides, regardless of height, shall be set back a minimum of twenty (20) feet from all property lines and rights-of-way.

7.61.5. Outdoor bumper boat pools shall be lined with an impermeable material to prevent groundwater intrusion or transference. The surface of the pool shall not exceed 4,000 square feet. The pool shall be enclosed in accordance with state building code standards.

7.61.6. Where an established mature vegetative buffer of ten (10) feet in height does not exist, a fence of ten (10) feet in height shall be constructed along all property lines abutting a residential use.

7.61.7. Proof of compliance with all state and federal regulations will be furnished to the Town upon request.

SECTION 7.62 OUTDOOR SPORT CLIMBING WALL.

Outdoor sport climbing walls are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following regulations:

7.62.1. The height of any outdoor sport climbing wall shall not exceed thirty-five (35) feet above the existing grade.

SECTION 7.63 WATERCRAFT RENTAL, NON-POWERED/POWERED.

Watercraft rental, non-powered/powered, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following regulations:

7.63.1. Non-powered and Wind Driven Boat Rental.
Non-powered and wind-driven boat rentals including: canoes, kayaks, sailboats, windsurfer boards, kite boards, paddle boards, and other nonpowered and/or wind-driven watercraft, are permitted in

accordance with Section 6.6, Table of Use and Activities, subject to other requirements of this UDO and provided that the following conditions are met: the use shall be entirely within the commercial-outdoor recreational uses overlay district.

7.63.2. Small Fishing Skiff Rental Establishments.

Small fishing skiff rental establishments, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

> ***7.63.2.1.*** The use shall be entirely within the commercial-outdoor recreational uses overlay district.
>
> ***7.63.2.2.*** Small fishing skiff shall utilize either electric or four-cycle engines only, with a maximum horsepower of twenty-five (25) horsepower.

7.63.3. Boat Rental Establishments.

Each site shall be limited to a maximum of eight (8) authorized personal watercraft rental units per site with a maximum of seven (7) authorized personal watercraft rental sites within Town. No personal watercraft shall be located waterward of the nearest principal or accessory building other than authorized personal watercraft identified for rental use and two personal watercraft that may be available for control, supervision, or rescue purposes per site.

PART IX. TELECOMMUNICATIONS

SECTION 7.64 COMMUNICATION TOWER, MAJOR.

Communication tower, major, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following regulations:

7.64.1. R-3 High-Density Residential District.

Major communication towers are permitted in the R-3 district in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided the following conditions are met:

> ***7.64.1.1.*** The maximum height of a communication tower and antenna shall be one hundred seventy-five (175) feet.
>
> ***7.64.1.2.*** The applicant shall submit an engineering report and site plan that contains at least the height of the tower and antennae, building materials to be used in the tower, number of proposed antennae and location. The report shall also include a certification from a structural engineer verifying that the tower structure will meet the requirements of Volume 1, Chapter 37 of the North Carolina State Building Code concerning wind resistance and will support the proposed number of antennae.

7.64.1.3. Written verification that the proposed tower complies with regulations administered by the Federal Communications Commission (FCC) and the Federal Aviation Administration (FAA) shall be provided, prior to the Board of Commissioners' review.

7.64.1.4. The applicant shall submit certification that an existing tower does not meet the applicant's structural specifications and/or technical design requirements.

7.64.1.5. Guy-wired towers are prohibited.

7.64.1.6. Major communication towers as permitted under this subsection may be located on upon a lot with other principal and accessory structures and uses.

7.64.1.7. Major communication towers as permitted under this section shall be limited to the R-3 high density residential district properties located south of Epstein Drive.

7.64.2. C-3 Commercial Services District.

Major communication towers, as a principal or accessory use, are permitted in the C-3 district in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided the following conditions are met:

7.64.2.1. Minimum setbacks from all property lines for freestanding towers shall be twenty (20) percent of the total height of the tower and antennae.

7.64.2.2. The maximum height of a communication tower and antennae shall be two hundred fifty (250) feet.

7.64.2.3. A security fence at least ten (10) feet in height shall be installed to encompass the base of the tower.

7.64.2.4. The applicant shall submit an engineering report and site plan that contains at least the height of the tower and antennae, building materials to be used in the tower, number of proposed antennae and location. The report shall also include a certification from a structural engineer verifying that the tower structure will meet the requirements of Volume 1, Chapter 37 of the North Carolina State Building Code concerning wind resistance and will support the proposed number of antennae.

7.64.2.5. Written verification that the proposed tower complies with regulations administered by the Federal Communications Commission (FCC) and the Federal Aviation Administration (FAA) shall be provided, prior to the Board of Commissioners' review.

7.64.2.6. The applicant shall submit certification that an existing tower does not meet the applicant's structural specifications and/or technical design requirements.

7.64.2.7. No major communication tower shall be permitted as a customary accessory structure to a sexually oriented business.

7.64.2.8. Guy-wired towers are prohibited.

SECTION 7.65 CONCEALED BUILDING MOUNTED ANTENNA.

Concealed building mounted antennas are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the installation is:

7.65.1. Flush with or below the roof line;

7.65.2. Screened behind an opaque façade; or

7.65.3. Blended into the building structure with faux windows, dormers, or other architectural features that appear as part of the existing or proposed structure so that the antenna or antenna array is not visible by ordinary observation from the ground at the perimeter of the property boundary in any direction (360 degrees).

SECTION 7.66 WIRELESS TELECOMMUNICATION FACILITIES.

Wireless telecommunication facilities are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the provisions of Article 10, Part VII, Wireless Telecommunication Facilities and other requirements of this UDO.

SECTION 7.67 TELEPHONE SWITCHING STATIONS AND ELECTRIC SUBSTATIONS.

Telephone switching stations and electric substations are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.67.1. All structures requiring a building permit shall be architecturally compatible with other structures in the vicinity.

7.67.2. The boundaries of the entire site shall be buffered utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93, Landscaping, Buffering, and Vegetation Preservation.

PART X. WAREHOUSE/LIGHT INDUSTRIAL

SECTION 7.68 CONCRETE PROCESSING FACILITIES AND SUPPORTING ACCESSORY USES.

Concrete processing facilities and supporting accessory uses are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.68.1. Areas used for the storage of materials and finished products shall be maintained permeable and shall be calculated as permeable lot coverage. Those areas shall be clearly delineated on the site plan, and any expansion of such areas shall be considered a site modification for which approval by the Board of Commissioners is required.

7.68.2. Vehicle maintenance areas shall be permitted, the use of which shall be for the repair and upkeep of vehicles associated with the principal use. All maintenance conducted shall be either entirely within an enclosed or covered structure or on a paved surface which is designed in accordance with Article 11, Part I, Stormwater, Fill, and Runoff Management.

7.68.3. No bulk storage of fuels or oils for sale shall be allowed. For the purpose of this provision, bulk storage shall be any amount in excess of two hundred (200) gallons. However, storage for consumption in vehicles associated with the principal use shall be allowed, provided that such storage facilities are designed to equal or exceed the minimum requirements of the applicable federal, state or local regulatory agency. There shall be no fuel or oil storage within five hundred (500) feet of the Fresh Pond.

7.68.4. Structures or portions thereof which are normally used and are necessary for the manufacture, processing and fabrication of construction materials may exceed thirty-five (35) feet in height, provided that, in addition to the required setback, an additional setback of two feet on the front, on the rear, and on each side of the structure shall be required for each foot by which the structure exceeds thirty-five (35) feet in height.

SECTION 7.69 JUNKYARDS, SCRAP YARDS, & SALVAGE FACILITIES.

Junkyards, scrap yards, and salvage facilities are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.69.1. No portion of a junkyard shall be within five hundred (500) feet of the Fresh Pond.

7.69.2. A junkyard requires a minimum parcel area of five (5) acres.

7.69.3. All applicable junkyards shall abide by the Junkyard Control Act, as specified in G.S. 136-141—136-155 and any subsequent amendments or revisions thereof.

7.69.4. No junkyard shall be established within two hundred (200) feet of any residential zoning district (R-1, R-2, R-3, SPD-20, SED-80 and SPD-C) or any existing residential use.

7.69.5. In order to prevent the spillover of stored materials on abutting land or public rights-of-way, preserve the aesthetics and scenic nature of the area, preserve the safety of pedestrians on adjoining walkways, eliminate fire hazards, remove the threat of breeding places for rats and vermin, prevent the possible uses of such yards as hiding places for criminal activity, and to eliminate the attraction of materials stored within to playing children, the storage area shall be fenced with a strong, secure, solid fence of suitable materials of at least six feet and no greater than eight feet in height and shall be maintained in sound condition at all times. The fence shall be placed no closer to the boundary line than the front, side and rear setback lines.

7.69.6. All junkyards shall have a minimum front yard of thirty (30) feet, minimum side yards of twenty (20) feet and a minimum rear yard of twenty-five (25) feet.

7.69.7. No salvage material or junk may be piled more than six (6) feet high. No salvaged material shall be visible from the public road or neighboring residences.

SECTION 7.70 MINI-STORAGE (SELF-STORAGE) COMPLEXES.

Mini-storage (self-storage) complexes, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.70.1. In addition to a business office, an attached security office no greater than three hundred (300) square feet in area may be included as an accessory use.

7.70.2. There shall be a minimum 25-foot separation between detached buildings.

7.70.3. No mini-storage facility shall be used for the storage of flammable, combustible or noxious liquids or materials as classified in the fire prevention code currently in use by the Town.

7.70.4. Restroom facilities shall be provided for the mini-storage complex and shall be accessible during operating hours.

7.70.5. Mini-storage (self-storage) rental units shall be used for the storage of domestic and/or commercial goods and supplies in accordance with this UDO. Mini-storage (self-storage) rentals units shall not be used for the following activities:

> ***7.70.5.1.*** On-site wholesale trade and retail trade including, but not limited to, garage or yard sales, or flea markets.
>
> ***7.70.5.2.*** The commercial servicing or repair of motor vehicles, boats, trailers, mowers, appliances, or other similar equipment.
>
> ***7.70.5.3.*** Human occupancy or congregation for purposes other than periodic visitation of storage units for depositing or retrieval of stored goods or supplies.
>
> ***7.70.5.4.*** The regularly scheduled manufacture of saleable goods.
>
> ***7.70.5.5.*** No rental storage unit shall be used or altered for use as office space.

7.70.6. One attached single-family dwelling unit for the housing of 24-hour security personnel or on-site management personnel may be permitted, provided that all applicable Town code requirements are satisfied.

7.70.7. Nothing in this section shall be interpreted to prevent the owner or operator of the premises from conducting auctions for the purpose of lawful disposal of the abandoned contents of a mini-storage (self-storage) rental unit.

SECTION 7.71 SCREEN PRINTING FACILITY.

Screen printing facility is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.71.1. The disposal of chemical or hazardous waste and any and all other chemical residues and byproducts shall be disposed of through a licensed waste disposal contractor. This contract must be maintained in perpetuity and the Town may request to review the contract to ensure compliance.

7.71.2. All septic plans shall be reviewed and approved by the Dare County Health Department prior to the issuance of a building permit. The septic system shall be tested annually at the owner's expense for chemical contamination and compliance with health department regulations by a state certified lab.

7.71.3. The storage of any and all chemicals and/or solvents associated with the screen printing production process shall be reviewed and approved for compliance with all relevant sections of the state building code, National Fire Protection Association Code, NCDHHS regulations, and the coastal area management association prior to the issuance of a building permit or change of use.

7.71.4. No on-site retail sales shall be allowed out of a screen printing production facility.

7.71.5. All chemicals, solvents or waste associated with the screen printing production process shall be contained in a leak-proof curbed area capable of holding the entire contents of all containers stored in that area.

7.71.6. All screen printing production operations and storage shall be conducted within an enclosed building.

SECTION 7.72 TRADE CENTERS.

Trade centers are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.72.1. Each individual unit may contain an office/sales area; however, this area shall not exceed twenty-five (25) percent of the gross floor area of the unit.

7.72.2. Each individual unit shall at a minimum contain a commode, shower facility and lavatory.

7.72.3. All work conducted on-site shall be entirely within the enclosed structure.

PART XI. ACCESSORY USES

SECTION 7.73 DOCKING FACILITY, ACCESSORY TO RESTAURANT.

Docking Facility, Accessory to Restaurant are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.73.1. There shall not be more than one docking facility per lot.

7.73.2. Docking facilities may not provide any of the following services: permanent docking spaces, overnight mooring, dry storage, fueling facilities, haul-out facilities, repair services, or any other water dependent commercial-outdoor recreational use.

7.73.3. Boats slips shall not be utilized to satisfy the required parking for the principal use.

7.73.4. Piers and slips shall be limited in length to 200 feet measured perpendicular to the shoreline from the normal water line. This distance is not inclusive of the platform at the end of the facility.

7.73.5. There shall be 30 inches of water depth relative to the normal water level adjacent to all boat slips and boat access areas.

7.73.6. The docking facility shall include a designated No Wake Zone that shall be extended 600 feet measured perpendicular to the shoreline from the normal water line. There shall be a No Wake Zone sign conspicuously posted on the facility.

SECTION 7.74 HELIPORT, ACCESSORY TO HOSPITAL AND MEDICAL OFFICES.

Heliports, accessory to hospital and medical offices, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.74.1. Noncommercial, public safety and governmental heliport facilities shall comply with current FAA regulations in its design, size, and use, and shall meet all applicable federal, state, and local heliport requirements.

7.74.2. A proposed heliport lighting plan designed to comply with FAA regulations but shall be ground level based, using cutoff or restrictive features to minimize overspill of light from the activity area itself.

7.74.3. Heliport design and approach and departure areas shall be maintained per Heliport Design Advisory Circular 150/5390-2, USDOT, Federal Aviation Administration, January 4, 1988, as amended.

7.74.4. The heliport shall be ground-based only. No rooftop facility shall be permitted.

7.74.5. No fixed based operations or refueling facilities shall be permitted on the heliport site.

SECTION 7.75 ON-SITE RENTAL OF BEACH CHAIRS AND UMBRELLAS.

On-site rental of beach chairs and umbrellas are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.75.1. Storage of such items, overnight and during hours of operation shall be located westward of the static line and shall not be visible from the beach.

7.75.2. Beach chairs and umbrellas to be placed upon the beach shall contain no commercial signage. Property identifiers such as initials and numbering shall be located on the interior or underside of any chair or umbrella. Any other signage shall not be visible from the beach.

7.75.3. Placement of beach chairs and umbrellas upon the beach shall not restrict or impede the flow of vehicular, pedestrian or emergency services traffic. All public access points shall be free and clear of all obstructions and rental equipment for a minimum distance of fifty (50) feet in any direction.

7.75.4. All transactions involved in the operation of this rental service, including tips, shall occur inside the principal structure, i.e.; the hotel or west of the static line.

7.75.5. Rentals shall be limited to hotel patrons.

7.75.6. Under no circumstance shall beach chairs and umbrellas be left on the beach or be east of the static line overnight.

7.75.7. At the close of business hours, the beach upon which rentals occur shall be cleaned of all loose trash and debris.

7.75.8. Beach chairs and umbrellas shall only be set up when requested by the customer, beach chairs and umbrellas shall not be pre-set.

7.75.9. Emergency services personnel have the right to move beach chairs and umbrellas as necessary to ensure a clear line of sight for safety purposes.

7.75.10. Any violation of these regulations may result in any of the following actions:

> ***7.75.10.1.*** Removal of equipment left on the beach overnight;
>
> ***7.75.10.2.*** Issuance of civil penalty pursuant to subsection 1.10.4 of this UDO; or
>
> ***7.75.10.3.*** Immediate revocation of the zoning permit.

SECTION 7.76 OUTDOOR STANDS, ACCESSORY TO SHOPPING CENTERS & GROUP DEVELOPMENT.

Outdoor stands, accessory to shopping centers and group development, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.76.1. The principal sale of items at an outdoor stand shall be limited to either fresh produce, hot dogs, coffee, ice cream or Italian ice and fudge. The sale of any other items shall be incidental and limited to no more than ten percent of the display area or ten percent of sales.

7.76.2. Only one outdoor stand shall be allowed per site. The stand shall not be required to be a permanent structure and may be located upon a trailer. When located upon a trailer, skirting shall be installed around the perimeter to screen the wheels, axles and towing hitch from view.

7.76.3. The stand area, inclusive of display counters and awnings, shall not exceed four hundred (400) square feet for produce stands and shall not exceed one hundred fifty (150) square feet for hot dog, coffee, ice cream and Italian ice and fudge stands. Refrigeration units may be utilized within the stand area. The location of the stand on the site shall comply with minimum district yard regulations for principal use structures.

7.76.4. Produce stands shall be temporary and may be operated for a period of time not to exceed 180 days annually. The dates of operation shall be limited to between May 1 and November 1 each year. Hot dog, coffee, ice cream and Italian ice and fudge stands may be operated year round but shall not be left on the property overnight and must be removed daily.

7.76.5. All stands shall comply with applicable Dare County Health Department regulations and permitting requirements.

7.76.6. When located on a site with fifty (50) or more existing parking spaces, no additional parking spaces will be required. When located on a site with less than fifty (50) parking spaces a minimum of three (3) off-street parking spaces in accordance with parking regulations of this UDO shall be provided.

7.76.7. When the regulations contained in the subsection are in conflict with the general regulations of Town Code Section 12 Article III, Peddlers and Itinerant Merchants, the provisions of this UDO shall prevail.

SECTION 7.77 PORTABLE STORAGE UNITS/TEMPORARY CONSTRUCTION TRAILERS.

Portable storage units and temporary construction trailers are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.77.1. Trucks, trailers, semi-trailers (self-propelled or detached) and prefabricated cargo shipping containers or similar containers shall not be used as a storage or other type of accessory structure in any zoning district, except as provided for under this section.

7.77.2. Following a storm event for which a state of emergency has been declared in accordance with Chapter 14 of the Town Code of Ordinances, trucks, trailers, semi-trailers (self-propelled or detached), and prefabricated cargo shipping containers may be stored temporarily on a site to store merchandise removed from the damaged structure, provided a storm related building permit has been issued to repair the structure. Trucks, trailers, semi-trailers, and prefabricated cargo shipping containers may be located in any required parking area or drive aisle. Trucks, trailers, semi-trailers, or prefabricated cargo shipping containers shall be allowed onsite for a time period not to exceed six months from date of building permit issuance and shall be removed prior to issuance of the building permit certificate of completion.

7.77.3. Temporary, self-contained storage units used in moving services, including "PODS" which are intended to be picked up and moved to various locations on demand shall be allowed on a parcel for up to thirty (30) days with a zoning permit. Such storage units must be stored within the property boundary and shall be placed so as not to interfere with traffic or as to create a traffic hazard on an adjacent street.

7.77.4. Mobile magnetic resonance imager(s) (MRI), health or other medical vehicles providing mobile health services, and book mobiles when approved by the Town Manager as customary, mobile services or as part of a crown gathering or special events permit are specifically excluded from this regulation.

7.77.5. Nothing in this section shall apply to any vehicle stored in compliance with applicable Town codes. This regulation shall not be interpreted to prohibit the timely unloading and loading of commercial trailers or boat trailers in any district.

SECTION 7.78 WALLS AND FENCES.

Walls and fences are permitted in accordance with Section 6.6, Table of Uses and Activities, provided the following conditions are met:

7.78.1. The setback requirements of these regulations shall not prohibit any necessary retaining wall or prohibit any wall or fence except as regulated in subsection 10.92.2.2.8 Vison Clearance (C) and all driveways other than for single-family and duplex use.

7.78.2. Walls and fences of wood construction must be constructed so that exposed framing of each section of fence faces the interior yard.

7.78.3. Within any residential district (R-1, R-2, R-3, CR, SED-80, SPD-20, and SPD-C), and within any other district where the existing or proposed principal permitted use of the property is single-family or two-family residential (C-1, C-2 and C-4), no wall or fence shall exceed four feet in height within a front yard or the frontward one-half portion of the side yard or six feet in height in a rear yard or the rearward one-half portion of the side yard. In the CR district, a fence located in the front yard and frontward one-half portion of the side yard may be increased to a height not exceeding six feet, provided that the fence meets the minimum required front yard and side yard setback distances established for single-family and duplex uses.

7.78.4. Within any commercial district, no wall or fence shall exceed ten feet in height.

7.78.5. Fences used in conjunction with any permitted outdoor recreational use shall not exceed ten (10) feet in height in any zoning district.

7.78.6. In instances where a residential use abuts on either side of a commercial use or district, a wall or fence may be allowed up to six (6) feet in height along the side lot line adjacent to the commercial use or district.

7.78.7. Fences used for screening HVAC (heating, ventilation, and air conditioning) equipment shall not exceed seven feet in height and shall be located no more than two (2) feet from the HVAC equipment unless otherwise specified by the manufacturer.

SECTION 7.79 WIND ENERGY FACILITY

Wind energy facilities are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.79.1. Wind Energy Facility, Rooftop

Wind energy facility, rooftop where permitted as an accessory use subject to the following:

7.79.1.1. No more than two rooftop wind energy facilities per site.

7.79.1.2. The power generated is for on-site consumption only.

7.79.1.3. The combined total rated capacity shall be ten kW or less.

7.79.1.4. The height for the wind energy facility, roof top shall not exceed the maximum height requirement of the district in which it is located.

7.79.1.5. The visual appearance of wind energy facilities shall at a minimum:

7.79.1.5.1. Be a nonobtrusive color such as white, off-white or gray.

7.79.1.5.2. Not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.

7.79.1.5.3. Not display advertising except for manufactures identification.

7.79.1.5.4. No flags, streamers, or decorative item shall be attached to the wind energy facility.

7.79.1.5.5. Rooftop wind energy facilities shall be equipped with a braking device and emergency shutoff to keep the rotor stationary while the turbine is being inspected or maintained. The braking device shall also be used for winds exceeding optimal speeds.

7.79.1.6. Installed facilities shall be reinspected every five years by a licensed engineer for structural integrity with an inspection report to be provided to the UDO Administrator outlining the findings of the reinspection.

7.79.1.7. Rooftop wind energy facilities shall comply with the provisions of Chapter 16, Article III of the Town Code of Ordinances.

7.79.2. Wind Energy Facility, Vertical Axis.

Wind energy facility, vertical axis where permitted as an accessory use subject to the following:

7.79.2.1. Vertical axis wind energy facility(ies) shall be set back a minimum distance of 1.1 times the wind turbine height from all property lines and rights-of-way. Required setbacks may be waived if an easement agreement is signed by adjacent property owners and recorded in the Dare County Register of Deeds. The setback from estuarine waters shall be a minimum of 30 feet measured from the mean high water as determined by CAMA.

7.79.2.2. The wind turbine height of a vertical axis wind energy facility shall not exceed the maximum height requirement of the district in which it is located.

7.79.2.3. Rotor foils on vertical axis wind energy facilities must maintain at least ten feet of clearance between their lowest point and the ground or any structure other than the supporting tower.

7.79.2.4. Installation and design of vertical axis wind energy facilities shall conform to the following standards:

7.79.2.4.1. Guy wire towers are prohibited.

7.79.2.4.2. The installation and design of the vertical axis wind energy facility shall conform to applicable industry standards, including those of the American National Standards Institute and all applicable local, state and national codes. Installed facilities shall be reinspected every five years by a licensed engineer for structural integrity with an inspection report to be provided to the department of planning and development.

7.79.2.4.3. All structural, electrical and mechanical components of the vertical axis wind energy facility shall conform to relevant and applicable local, state and national codes at the time of application.

7.79.2.4.4. Vertical axis wind energy facilities shall be equipped with a braking device and emergency shutoff to keep the rotor stationary while the turbine is being inspected or maintained or when winds exceed speeds for equipment's' design rating.

7.79.2.4.5. All on-site collector wiring shall be placed underground.

7.79.2.5. The visual appearance of the vertical axis wind energy facility shall:

7.79.2.5.1. Be a nonobtrusive color such as white, off-white or gray;

7.79.2.5.2. Not be artificially lighted, except to the extent required by the Federal Aviation Administration or other authority that regulates air safety;

7.79.2.5.3. Not display advertising except for manufactures identification; and

7.79.2.5.4. Not have flags, streamers or decoration attached.

7.79.2.6. Decommissioning of vertical wind axis facilities shall conform to the following standards:

7.79.2.6.1. Decommissioning shall include removal of wind turbines, buildings, cabling, electrical components, roads and any other associated facilities.

7.79.2.6.2. The vertical axis wind energy facility owner shall have six months to complete decommissioning of the facility if no electricity is generated for a continuous period of twelve (12) months.

7.79.2.7. Any physical modification to an existing and permitted vertical axis wind energy facility that materially alters the size and/or type of wind turbines or other equipment shall require a development permit modification under this section.

7.79.2.8. Vertical axis wind energy facilities shall comply with the provisions of Chapter 16, Article III of the Town Code of Ordinances.

ARTICLE 8. DISTRICT DEVELOPMENT STANDARDS

Section 8.1 Introduction 8-2
Section 8.2 Development Standards – Primary Zoning Districts 8-3
8.2.1. Dimensional Requirements 8-3
8.2.2. Graphic Illustrations – Residential Districts 8-5
8.2.3. Graphic Illustrations – Commercial Districts 8-5
Section 8.3 Special Development Standards – Primary Zoning Districts 8-6
8.3.1. C-3 Commercial Services District 8-6
8.3.2. Reserved 8-7
Section 8.4 Development Standards for Special Districts 8-7
8.4.1. Dimensional Requirements 8-7
8.4.2. SPD-20 Special Planned Development District 8-8
8.4.3. SED-80 Special Environmental District 8-9
8.4.4. SPD-C Special Planned Development – Community District 8-18
Section 8.5 Development Standards for Overlay Districts 8-18
8.5.1. O&S Ocean and Sound Waters District 8-18
8.5.2. CO Commercial Outdoor Recreational Uses Overlay District 8-19
8.5.3. HO Hotel Overlay District 8-23
8.5.4. SRO Soundside Residential Dwelling Overlay District 8-23
Section 8.6 Standards/Application of Dimensional Requirements 8-26
8.6.1. Intent – Height, Bulk, Density, Lot Coverage, Yards, and Open Space 8-26
8.6.2. Length and Width Requirements for Principal Buildings 8-26
8.6.3. Yard Requirements 8-27
8.6.4. Building Height 8-30
8.6.5. Habitable Floors 8-32
8.6.6. Lot Coverage 8-33
Section 8.7 Reduction in Development Standards for Erosion Threatened Structures 8-37
8.7.1. Setback Reduction for Structures Threatened by Erosion 8-37
8.7.2. Reduction of Parking and Lot Coverage Requirements for Structures Having Lost Street Access Due to Storm Damage 8-38

ARTICLE 8. DISTRICT DEVELOPMENT STANDARDS

SECTION 8.1 INTRODUCTION.

For each of the Town's zoning districts, the Town has established development standards including minimum lot area and width, minimum required yards (setbacks), maximum building height, and maximum lot coverage. These standards have been established to create the overall development pattern and intensity desired by the Town for certain areas consistent with the Town's goals for the built environment. Within each district, the standards for each of these items may differ depending on the type of use (i.e., commercial or residential).

The table in Section 8.2, Development Standards – Primary Zoning Districts below lists the basic development standards for each of the Town's primary zoning districts. Following the table, there are a series of footnotes which further define specific provisions within the table by directing the reader to other UDO sections. It is important to note that many uses allowed by this UDO have specific requirements that apply in addition to what is included in this table. Article 7 Supplemental Regulations identifies uses that have additional development requirements. When applying the UDO standards to a particular use, it is necessary to review the requirements of this Article as well as any requirements for the use included in Article 7. Additionally, for non-residential uses (i.e., uses other than single-family or duplex), it is also necessary to review the requirements of Article 10, Part VI, Commercial Design Standards which contains additional design considerations for the site which will affect site layout and development standards.

The Town has established several special or overlay zoning districts, as described in Article 6, Zoning Districts of this UDO, which have been created to achieve specific goals for development. These districts have been created to preserve certain environmentally sensitive or culturally unique areas of Town or to enhance the compatibility of certain uses within the Town by directing them to appropriate areas. These districts have their own development standards as well as special permitting requirements which do not apply to the Town's primary zoning districts. The special development requirements for each of these districts is included within this Article following the primary zoning districts.

The remaining portions of this Article detail the methods for calculating and applying the district development standards including any site or building features which may be wholly or partially exempted from certain requirements. Special circumstances which deviate from the general development requirements and procedures are also included.

For the development standards for the SPD-C Special Planned Development – Community District, see Article 9, SPD-C Zoning Ordinance.

1 ## SECTION 8.2 DEVELOPMENT STANDARDS – PRIMARY ZONING DISTRICTS.

2 ### *8.2.1. Dimensional Requirements.*

District	Minimum Lot Area[1]	Minimum Lot Width	Minimum Front Yard Depth	Minimum Side Yard Depth	Minimum Rear Yard Depth	Maximum Building Height[2]	Lot Coverage[3]
R-1 Low-Density Residential Single-Family Large Residential[4]	20,000 sq. ft.	75 feet	30 feet	12 feet	20% of lot depth, not to exceed 30 feet[5]	35 feet, 42 feet if utilizing 8/12 roof pitch	30% plus 300 sq. ft. or 33%, whichever is greater
R-2 Medium-Density Residential Single-Family Duplex Large Residential[4] Lots using individual well/septic tanks	20,000 sq. ft. 30,000 sq. ft. 20,000 sq. ft. per dwelling unit	70 feet	30 feet	10 feet	20% of lot depth, not to exceed 30 feet[5]	35 feet, 42 feet if utilizing 8/12 roof pitch	30% plus 300 sq. ft. or 33%, whichever is greater
R-3 High-Density Residential Single-Family Duplex Large Residential[4] Lots using individual well/septic tanks	15,000 sq. ft. 22,500 sq. ft. 20,000 sq. ft. per dwelling unit	60 feet	30 feet	8 feet	20% of lot depth, not to exceed 30 feet	35 feet, 42 feet if utilizing 8/12 roof pitch	30% plus 300 sq. ft. or 33%, whichever is greater
CR Commercial Residential [10] Commercial[6] Single-Family Duplex Large Residential[4] Lots using individual well/septic tanks	15,000 sq. ft. 15,000 sq. ft. 22,500 sq. ft. 20,000 sq. ft. per dwelling unit	50 feet	See footnote 6 30 feet 30 feet	8 feet	25 feet 20% of lot depth, not to exceed 30 feet[8]	35 feet, 42 feet if utilizing 8/12 roof pitch	40% 30% plus 300 sq. ft. or 33%, whichever is greater
C-1 Neighborhood Commercial Commercial[6] Single-Family Duplex Large Residential[4] Lots using individual well/septic tanks	15,000 sq. ft. 15,000 sq. ft. 22,500 sq. ft. 20,000 sq. ft. per dwelling unit	50 feet	See footnote 6 30 feet 30 feet	15 feet[7]	25 feet 20% of lot depth, not to exceed 30 ft.	35 feet, 42 feet if utilizing 8/12 roof pitch	55% 30% plus 300 sq. ft. or 33%, whichever is greater

District	Minimum Lot Area[1]	Minimum Lot Width	Minimum Front Yard Depth	Minimum Side Yard Depth	Minimum Rear Yard Depth	Maximum Building Height[2]	Lot Coverage[3]
C-2 General Commercial Commercial[6] Single-Family Duplex Large Residential[4] Lots using individual wells/septic tanks	 15,000 sq. ft. 15,000 sq. ft. 22,500 sq. ft. 20,000 sq. ft. per dwelling unit		 See footnote 6 30 feet 30 feet	 15 feet[7] 8 feet 8 feet	 25 feet 20% of lot depth, not to exceed 30 ft.	35 feet, 42 feet if utilizing 8/12 roof pitch	 55% 30% plus 300 sq. ft. or 33%, whichever is greater
C-3 Commercial Services[8]	25,000 sq. ft.	100 feet	30 feet	20 feet	25 feet	35 feet, 42 feet if utilizing 8/12 roof pitch	[9]
C-4 Arts and Culture Commercial[6] Single-Family Duplex Large Residential[4] Lots using individual well/septic tanks	 15,000 sq. ft. 15,000 sq. ft. 15,000 sq. ft. 22,500 sq. ft. 20,000 sq. ft.	60 feet	See footnote 6	10 feet	20% of lot depth, not to exceed 30 ft.	35 feet, 42 feet if utilizing 8/12 roof pitch	 40% 30% plus 300 sq. ft. or 33%, whichever is greater

[1]Minimum Lot Area – for nonconforming lots, refer to Section 5.2, Nonconforming Lots of Record which establishes regulations under which a structure can be built on a legally non-conforming lot that does not meet the current minimum lot area or width requirements.

[2]Maximum Building Height – refer also to subsection 8.6.4 Building Height

[3]Lot Coverage – refer also to subsection 8.6.6 Lot Coverage.

[4]Large Residential Dwelling – refer to Section 7.4 for dimensional requirements.

[5]Minimum Rear Yard Depth – for oceanfront properties, refer to subsection 8.6.3.3 Oceanfront Property.

[6]Commercial – refer to Article 10, Part VI, Commercial Design Standards to determine front yard setback and building size.

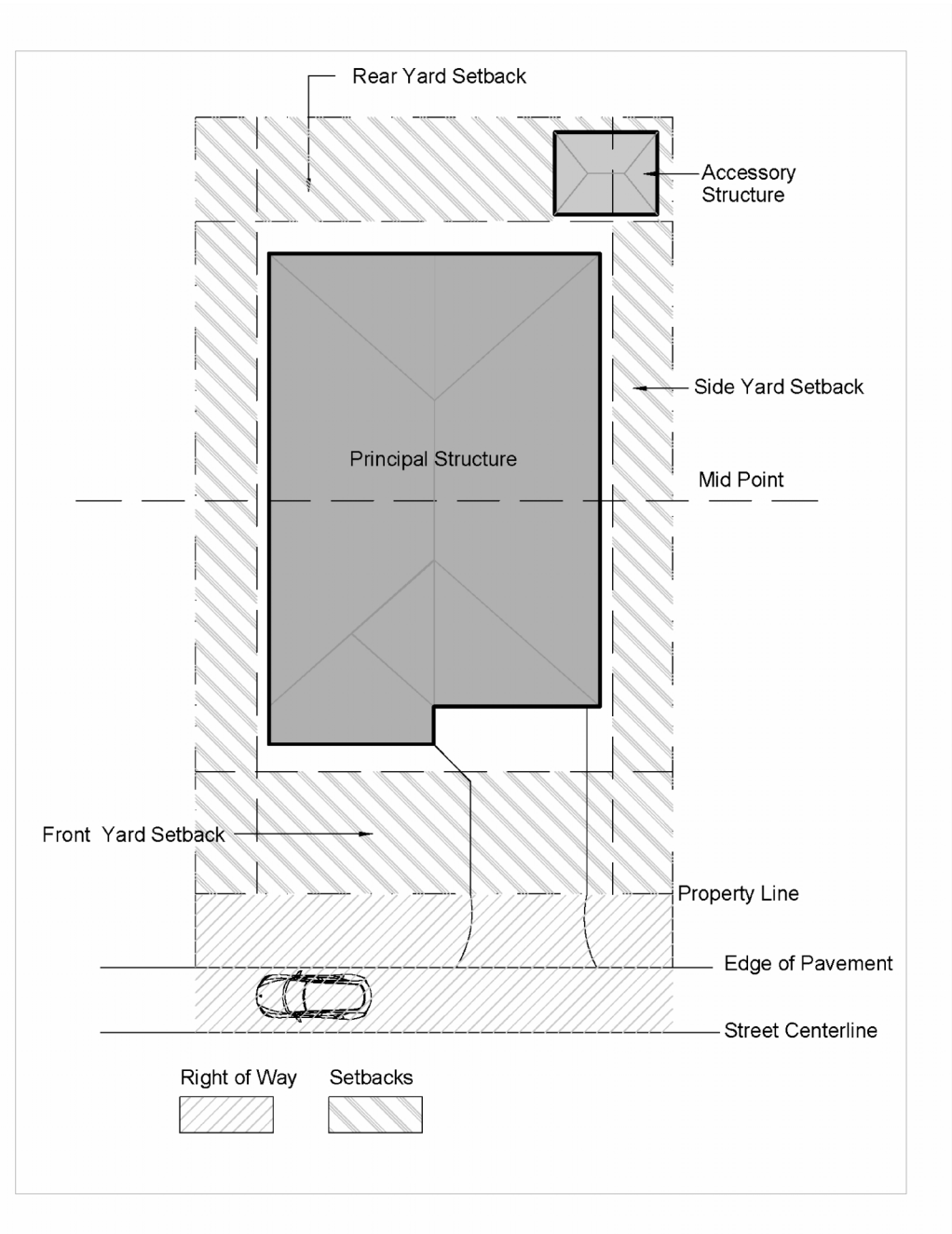
[7]Minimum Side Yard Depth – the total combined side yard shall be a minimum of 15 feet. In no instance shall either side yard be less than five feet.

[8]C-3 Commercial Services District – refer also to Section 8.3 Special Development Standards – Primary Zoning Districts.

[9]Lot Coverage, C-3 District – refer to subsection 8.6.6.4 Special Requirements for the C-3 District.

[10]Building Size Limitation in CR- refer to Section 11.44.3 Coastal High Hazard Areas (Zones VE) and Properties East of NC 12 and SR 1243

8.2.2. Graphic Illustrations – Residential Districts.



8.2.3. Graphic Illustrations – Commercial Districts.

Refer to Article 10, Part VI, Commercial Design Standards.

SECTION 8.3 SPECIAL DEVELOPMENT STANDARDS – PRIMARY ZONING DISTRICTS.

8.3.1. C-3 Commercial Services District.

8.3.1.1. No portion of a building, open storage, or processing area shall be closer than twenty-five (25) feet to a residential district boundary or use.

8.3.1.2. No off-street parking or loading space shall be located closer than twenty-five (25) feet to a residential boundary or use.

8.3.1.3. Surface drainage shall be directed wherever possible along natural or constructed and vegetated drainage courses or nonstructural land drainage systems so that vegetation can cleanse runoff waters.

8.3.1.4. No use shall be permitted in the C-3 zone which has noxious, harmful or deleterious effect on the environment or other development, as determined by the NC Department of Environmental Quality or the Town.

8.3.1.5. No outside storage of processed materials, which may be a possible source of pollutionas determined by the NC Department of Environmental Quality, shall be allowed. Processed materials would include, but not be limited to, chemically treated lumber, or petroleum-based products which when exposed to the elements could create stormwater runoff containing pollutants. Areas devoted to the outside storage of materials shall be maintained permeable and shall be calculated as permeable lot coverage. These areas shall be clearly delineated on the site plan, and any expansion of such areas shall be considered a site modification for which approval by the Board of Commissioners is required.

8.3.1.6. No outside storage of equipment is allowed, except in designated areas which may be either gravel or paved as approved by the Town Engineer and which will count toward total lot coverage of the lot.

8.3.1.7. There shall be no fueling areas within five hundred (500) feet of the Fresh Pond.

8.3.1.8. There shall be no stormwater infiltration (other than roof runoff or incidental rainfall) areas within five hundred (500) feet of the Fresh Pond.

8.3.1.9. All stormwater retention, detention, or infiltration shall be in an area dedicated to that use, designed to minimize adverse effects on the groundwater and the Fresh Pond, and approved by the Town for location, configuration, and other considerations of the development which may adversely affect the groundwater or Fresh Pond.

8.3.1.10. No building or individual unit within a building may be used for residential purposes.

8.3.1.11. No building or individual unit shall be used for the storage of flammable or combustible liquids or materials as classified in the fire prevention code in use by the Town.

8.3.1.12. One or multiple principal and/or accessory buildings may exist on lots located within the C-3 zoning district.

8.3.1.13. One or multiple uses as found in the list of permitted uses and/or conditional uses within the C-3 zoning district (see Section 6.6, Table of Uses and Activities) may be allowed within buildings located in the C-3 zoning district.

8.3.2. Reserved.

SECTION 8.4 DEVELOPMENT STANDARDS FOR SPECIAL DISTRICTS.

8.4.1. Dimensional Requirements.

District	Minimum Lot Area[1]	Minimum Lot Width	Minimum Front Yard Depth	Minimum Side Yard Depth	Minimum Rear Yard Depth	Maximum Building Height[2]	Lot Coverage[3]
SPD-20 Special Planned Development Large Residential[4]	20,000 square ft.[7]	100 feet	30 feet	12 feet	20% of lot depth, not to exceed 40 feet	35 feet, 42 feet if utilizing 8/12 roof pitch	30% plus 300 sq. ft. or 33%, whichever is greater
SED-80 Special Environmental Large Residential[4]	80,000 square ft.	200 feet[5]	30 feet	20 feet	20 feet	35 feet, 42 feet if utilizing 8/12 roof pitch[6]	15%

[1]Minimum Lot Area – for nonconforming lots, refer to Section 5.2, Nonconforming Lots of Record.
[2]Maximum Building Height – refer also to subsection 8.6.4 Building Height.
[3]Lot Coverage – refer also to subsection 8.6.6 Lot Coverage.
[4]Large Residential Dwelling – refer to Section 7.4 for dimensional requirements.
[5]Within the SED-80 district, the required lot width shall be measured at the actual building line.
[6]Within the SED-80 district, only chimneys and flagpoles are excluded from the height limitations of that district.
[7]Minimum Lot Area for SPD-20- Minimum lot sizes are only applicable to newly created lots.

8.4.2. SPD-20 Special Planned Development District.

8.4.2.1. Intent. The SPD-20 special planned development district is created to permit development that is compatible with the environmentally sensitive nature of the unique coastal landforms contained in this district. The largest portion of this district contains Jockey's Ridge State Park which has been designated by the North Carolina Coastal Resources Commission as a unique coastal geologic formation area of environmental concern (AEC) and as a National Natural Landmark by the United States Department of the Interior. Jockey's Ridge is an example of a médano or a huge hill of shifting sand that lacks vegetation. While there are several examples of this type of sand dune in the area, Jockey's Ridge is the largest and most spectacular. In addition to the dune system, the park also contains two other important ecosystems in the Town: the maritime thicket and Roanoke Sound. Additionally, the northwestern portion of the district borders on Nags Head Woods, a maritime forest. This SPD-20 district is characterized by unique topographical and vegetative features including vegetated and unvegetated dunes, migrating sand dunes, as well as a pine forest. Specifically, the intent of this section is designed to:

8.4.2.1.1. Preserve the natural features and visual attractiveness of the area. Such features include both vegetated and unvegetated dunes, and forested areas.

8.4.2.1.2. Preserve vegetation acting as soil stabilizers or which provide wind or salt mist intrusion protection value, including the dune ridge plant communities and forested areas.

8.4.2.1.3. Promote low-density residential development and residential uses in a manner that protects and preserves natural topography and vegetation.

8.4.2.1.4. Prohibit commercial and industrial uses of the land and any other use not compatible with the ecological carrying capacity of the area, and the residential and recreational uses of the area.

8.4.2.2. Site Design Standards. The following design criteria shall be satisfied in order to protect the unique natural features and vegetation in the SPD-20 district:

8.4.2.2.1. Land disturbing activity and the removal of trees greater than four (4) inches in diameter measured at one foot above the ground shall be limited to the following areas:

8.4.2.2.1.1. Within the proposed building footprint, including decks and a ten-foot perimeter around the principal building and its accessary buildings;

8.4.2.2.1.2. Within vehicular accessways;

8.4.2.2.1.3. Within the septic tank drainfield and an area around such field as determined by Dare County Health Department as to ensure proper functioning of the septic system; and

8.4.2.2.1.4. Within areas where land disturbing activities have created slopes in excess of three to one, the finished topography shall be aligned with and graded to existing neighboring dunes in such a manner as to minimize erosion.

8.4.2.2.2. The use of bulkheads shall be limited to vehicular accessways, decorative landscaping and estuarine bulkheads only.

8.4.2.2.3. A land disturbance or building permit shall be required prior to any building site preparation.

8.4.2.2.4. Prior to any tree removal or earth disturbing activity, the perimeter of all proposed structures, accessways, and drainfield areas shall be staked on the lot and inspected by the UDO Administrator.

8.4.2.2.5. The planning and development department may approve the removal of any tree which:

8.4.2.2.5.1. Poses a safety hazard to pedestrians or vehicular traffic or threatens to cause disruptions of public service;

8.4.2.2.5.2. Poses a safety hazard to a building; or

8.4.2.2.5.3. Is diseased or weakened by age, so as to pose a safety hazard.

8.4.3. SED-80 Special Environmental District.

8.4.3.1. Purpose. The Nags Head Woods is an irreplaceable maritime forest occupying the northwest corner of the Town and was the home of the first settlers. Nags Head Woods is one of a few remaining maritime forests in North Carolina and on the eastern US coast. It consists of ecologically important brackish marshlands, pine hammocks, bay forest, the ridge forest, hardwood and pine forests, interdunal ponds and dunes. Additionally, Nags Head Woods is home to more than 550 species of plants, including eight species that are considered rare in North Carolina. More than 100 species of birds, 65 species of land vertebrates, and six species of freshwater fish inhabit the various ecosystems within the ecological preserve. Each part of this natural system is important to the survival of the whole system. The least adverse environmental impacts would result from development in the bay and hardwood forests and away from the ponds and marshes. The Woods is also environmentally significant because of its natural role in the integrity of the coastal region. In 1974, Nags Head Woods was designated by the United States Congress as a National Natural Landmark.

8.4.3.2. Intent. This SED-80 district is created to permit development that is compatible with the environmentally sensitive nature of Nags Head Woods and to preserve land in a natural state where such land is considered to be a vital link in the groundwater replenishment cycle of the Outer Banks and where the destruction of natural vegetation would have a harmful effect on the stability of the soil and its resistance to erosion. More specifically, the SED-80 district is designed to:

8.4.3.2.1. Provide for the paramount public concern for these natural resources in the interest of health, safety and general welfare of the residents of and visitors to the Town.

8.4.3.2.2. Preserve the natural features and functions of the area necessary for safe and compatible development on the entire Outer Banks. Such features include, but are not limited to, the following:

8.4.3.2.2.1. The components of the groundwater storage and recharge system which are necessary for the growth and maintenance of the maritime forest vegetation. Such components include ponds, lowlands, marshes, bay forests, and wetlands.

8.4.3.2.2.2. Vegetation acting as soil stabilizers or which provide significant protection from storm or salt intrusion, including the dune ridge plant communities and scrub forest.

8.4.3.2.3. Protect the fragile ecosystems of Nags Head Woods from the effects of fire, storms, flooding and other natural and manmade disasters.

8.4.3.2.4. Prevent pollution of the estuary and the sound which might otherwise adversely affect the biological productivity of the sound.

8.4.3.2.5. Permit low-density residential development of those portions of the SED-80 district suitable for residential use and to encourage open space and limited passive recreational use of portions not suitable for residential use.

8.4.3.2.6. Prohibit commercial and industrial use of the land except as provided in this section.

8.4.3.2.7. Preserve the cultural heritage, features, and integrity of Nags Head Woods as a maritime forest.

8.4.3.3. Additional Requirements. In addition to the dimensional requirements listed in 8.4.1., within the SED-80 district, the following additional requirements shall be in effect.

8.4.3.3.1. No structure or parking lot shall be located closer than fifty (50) feet to any pond, stream, marsh, or other wetlands or wetland swales.

8.4.3.3.2. No structure or parking lot shall be located closer than one hundred thirty (130) feet of the eastern boundary of the ridge line forest, and no removal of vegetation shall be permitted within one hundred (100) feet of the eastern boundary of the ridge line forest.

8.4.3.3.3. Principal and accessory structures shall meet all requirements of subsection 8.4.3.4.2.

8.4.3.3.4. In the case of lots abutting estuarine waters (as defined by the Division of Marine Fisheries and used by CAMA), lot coverage shall be in accordance with the standards listed in subsection 8.4.1, except that in the area waterward of the US Army Corps of Engineers 404 fill line, lot coverage shall not exceed 15%. If the Corps of Engineers 404 fill line is not evident or located within the estuarine AEC, as defined by CAMA, lot coverage within the estuarine AEC shall not exceed 15%. Lot coverage allowances shall not be transferred from one portion of the lot to another. The area necessary for shared accessways in accordance with subsection 8.6.6.7.1 of this UDO shall be excluded from the total lot coverage allowance for an individual lot.

8.4.3.3.5. In those instances where a Roanoke Sound dune ridge is not evident, no principal structure may be placed closer than seventy (70) feet of the mean high-water line. In those instances where an estuarine frontal dune is not evident, no principal structure may be placed closer than fifty (50) feet of the mean high-water line.

8.4.3.3.6. The following shall apply for the following facilities so long as not adjacent to estuarine waters or located within an AEC as defined by CAMA: medical offices/nursing homes and municipally owned governmental facilities.

8.4.3.3.6.1. Dimensional requirements of subsection 8.4.1 shall apply, except that lot coverage shall not exceed twenty (20) percent of the total lot area.

8.4.3.3.6.2. In the case of lots abutting estuarine waters (as defined by the Division of Marine Fisheries and used by CAMA), or located within the estuarine AEC, as defined by CAMA, lot coverage shall not exceed fifteen (15) percent. Lot coverage allowances shall not be transferred from one portion of the lot to another.

8.4.3.3.6.3. The area necessary for shared accessways in accordance with subsection 8.6.6.7.1 of this UDO shall be excluded from the total lot coverage allowance for an individual lot.

8.4.3.4. Special Development Standards.

8.4.3.4.1. Site Plan Requirements. Development of a building site for any lawful use as authorized by this UDO shall require the submission of a site plan with proposed improvements for review and approval. This site plan shall be in addition to the requirement for a building permit.

8.4.3.4.1.1. The site plan shall be drawn to at least a one inch to 40 feet scale and include at least the following minimum requirements:

8.4.3.4.1.1.1. Existing topographical conditions of the lot showing at least two-foot contour intervals.

8.4.3.4.1.1.2. Components of the groundwater recharge system including streams, ponds, marshes, dunes and lowlands, bay forests and wetland swales.

8.4.3.4.1.1.3. Location and slope of any dunes with greater than forty (40) percent slope and height greater than eight (8) feet.

8.4.3.4.1.1.4. Direction of movement and location of any migrating dunes on or near the lot.

8.4.3.4.1.1.5. Proposed building sites.

8.4.3.4.1.1.6. All existing trees which are at least a 16-inch caliper at one foot above the ground within the proposed building site and within a 20-foot perimeter around the building site and within a five-foot perimeter around required accessways, parking areas, utility installation sites, cemeteries, hiking trails and accessory buildings.

8.4.3.4.1.1.7. Areas where trees are to be removed.

8.4.3.4.1.1.8. Specifications for the protection of existing trees during construction.

8.4.3.4.1.1.9. Grade changes or other land disturbing activities or construction activities adjacent to trees which could adversely affect the health of the trees, with specifications on how the grade, drainage and aeration will be maintained around the trees.

8.4.3.4.1.1.10. North arrow, scale, existing rights-of-way and easements.

8.4.3.4.1.1.11. If required, an approved soil erosion and sedimentation control plan.

8.4.3.4.1.1.12. Proposed location of septic tanks and drainfields.

8.4.3.4.1.2. The proposed building site shall be staked on the lot.

8.4.3.4.1.3. All trees which are to be removed shall be clearly marked on-site with tape, paint, ribbon or other appropriate means.

8.4.3.4.2. Site Design Standards. The following design criteria shall be satisfied, except where the Board of Commissioners finds an alternative design scheme which provides equal or better performance standards regarding the intent of this UDO and to protect the natural features of the SED-80 district protected under this section:

8.4.3.4.2.1. The filling or dredging of ponds or marshes or streams or wetland swales is prohibited unless permitted by CAMA or the Corps of Engineers.

8.4.3.4.2.2. The grading or other alteration of dunes with greater than 40 percent slope and height greater than eight feet is prohibited.

8.4.3.4.2.3. The removal of any tree with a caliper sixteen (16) inches or greater is prohibited, whether or not they fall within any building site, septic area, driveway, road or utility easement, except as provided in subsection 8.4.3.4.3.1.3 of this section.

8.4.3.4.2.4. The removal of any tree with a caliper greater than four (4) inches measured at one foot above the ground is prohibited except for those trees which are exempt under subsection 8.4.3.4.3.1.3 of this section, or those trees that are:

> ***8.4.3.4.2.4.1.*** Within the principal building site, exclusive of decks, and within a 20-foot perimeter around the principal building.
>
> ***8.4.3.4.2.4.2.*** Within a required accessway, parking lot, driveway, utility installation sites, cemeteries, hiking trails and accessory buildings and a five-foot perimeter around these areas.
>
> ***8.4.3.4.2.4.3.*** Within the septic tank drainfield and an area around such field as determined by the Dare County Health Department as to ensure proper functioning of the septic system.

8.4.3.4.2.5. Trees less than four (4) inches in caliper and weeds, vines, bushes and similar ground vegetation may be removed, provided that no land disturbing activity occurs and that the leaf litter, mulch, topsoil and similar materials are left undisturbed. However, no vegetation shall be removed from the western slope of the Roanoke Sound dunes ridge or the western slope of the estuarine dune ridge.

8.4.3.4.2.6. The sewage septic tank and other utilities shall be located to the maximum extent feasible on the edges of areas that have been cleared for access and building purposes and shall satisfy the legal requirement of county, state and federal authorities.

8.4.3.4.2.7. The draw-down of groundwater, except for on-site wells designed to serve buildings on individual lots, and the alteration of natural drainage patterns are prohibited.

8.4.3.4.2.8. No building, vegetation removal or land disturbing activity shall occur on the western slope of the Roanoke Sound dune ridge. No building shall be permitted within seventy (70) feet and no vegetation shall be removed or

land disturbing activity shall occur within an area fifty (50) feet easterly of the western ridge of the Roanoke Sound dune ridge. No building shall be permitted within seventy (70) feet and no vegetation shall be removed and no land disturbing activity shall occur within fifty (50) feet westerly of the toe of the western slope of the Roanoke Sound dune ridge.

8.4.3.4.2.9. On lots which are adjacent to the Roanoke Sound and where the elevation of the estuarine frontal dunes exceeds fifteen (15) feet above mean sea level, the topography of the dune may be altered as follows:

8.4.3.4.2.9.1. The area graded shall be of minimum size necessary for the placement of a principal structure on a building site.

8.4.3.4.2.9.2. Finished graded height of the dune shall be equal to or greater than fifteen (15) feet mean sea level.

8.4.3.4.2.9.3. Vegetation may be removed from the top and eastern slope of the dune.

8.4.3.4.2.9.4. No grade alteration, land disturbing activity, or vegetation removal will be permitted on the western slope of the dune.

8.4.3.4.2.9.5. Any sand removed shall be relocated in such a manner as not to damage existing trees greater than four (4) inches in caliper.

8.4.3.4.2.9.6. The finished topography shall be aligned with and graded with existing neighboring dunes in such a manner as to minimize erosion.

8.4.3.4.2.9.7. All principal structures shall be set back fifty (50) feet from the western toe of the estuarine frontal dunes.

8.4.3.4.2.9.8. Areas where land disturbing activity has occurred shall be stabilized with appropriate erosion control measures within thirty (30) days of the beginning of land disturbing activity.

8.4.3.4.2.9.9. All pedestrian accessways from the top of the dunes to the Sound shoreline shall be raised on pilings and shall be no more than six (6) feet wide.

8.4.3.4.2.10. All structures shall be located at least one hundred thirty (130) feet westerly of the eastern boundary of the ridge line forest vegetation. The removal of any vegetation within one hundred (100) feet westerly of the ridge line forest shall be prohibited except as provided by this UDO.

8.4.3.4.2.11. The clearing of land to provide access to the building site shall be minimized; including the clearing of the forest under story. The use of shared driveways is encouraged. Driveways shall be a maximum width of twelve (12) feet which will allow for access by one vehicle, however when serving three or more residences the driveway width may be increased up to twenty (20) feet. Driveways shall follow the natural contour lines of the land insofar as possible and shall be clay, gravel, porous asphalt or like-porous surface.

8.4.3.4.2.12. Uncovered decks may extend into the 20-foot perimeter around principal structures and to any area which does not require the removal of trees greater than four (4) inches in caliper and/or any areas which do not require grade changes or land disturbing activity. Decks shall not extend beyond the point of beginning of the western slope of either the Roanoke Sound dune ridges or the estuarine frontal dunes.

8.4.3.4.2.13. The Board of Commissioners may permit the removal of vegetation and may permit land disturbing activity through the Roanoke Sound dune ridge area or the ridge line forest area as regulated in this section to allow reasonable access to a principal building site[s]. In granting such access, the Board of Commissioners may require additional environmental protection measures to secure the basis and purpose and intent of this UDO.

8.4.3.4.3. Standards of Review and Approval Procedure; Intent and Purpose. When selecting the building site, the applicant shall adhere to the following standards and to the intent and purpose of this section:

8.4.3.4.3.1. Building Site Selection. The Board of Commissioners or planning and development staff, whichever the case may be as described in subsection 8.4.3.4.3.2 of this section, shall review and may approve the proposed improvements site plan indicating the proposed building sites before a building permit can be issued. The most suitable building sites are those areas that require the absolute minimum alterations of the natural vegetation, topography and groundwater systems. Evaluation of site suitability shall use the following additional criteria:

8.4.3.4.3.1.1. Existing unforested land areas shall be considered as the most suitable building sites, unless such a selection would threaten the health of the vegetation by stimulating dune migration or cause extensive salt mist intrusion into the Woods or would involve alterations or development prohibited elsewhere in this section.

8.4.3.4.3.1.2. Where vegetation must be removed for the building sites, the most suitable sites will be the sites which disturb the minimum number of healthy trees and vegetation. In approving the building sites,

the board shall consider the density, height and variety of the vegetation to be removed, so as to preserve those forest stands which provide the most protection from storm and salt spray and maintain the unique natural diversity of the plant species in the Woods.

8.4.3.4.3.1.3. The planning and development department may approve the removal of any tree which:

8.4.3.4.3.1.3.1. Poses a safety hazard to pedestrians or vehicular traffic or threatens to cause disruption of public service;

8.4.3.4.3.1.3.2. Poses a safety hazard to a building; or

8.4.3.4.3.1.3.3. Is diseased or weakened by age, so as to pose a safety hazard.

8.4.3.4.3.1.4. The Board of Commissioners shall review and may approve the removal of any tree greater than four (4) inches in caliper where:

8.4.3.4.3.1.4.1. The Board of Commissioners find in their opinion no reasonable alternative building site and/or supporting facilities can be located on a lot; or

8.4.3.4.3.1.4.2. The removal is necessary to construct proposed improvements as a result of: need for access around the proposed structure for construction equipment; need for access to the building site for construction equipment; essential grade changes; surface water drainage and utility installations. However, removal of trees greater than sixteen (16) inches in caliper is prohibited unless subsection 8.4.3.4.3.1.3 or subsection 8.4.3.4.3.1.4 of this section apply.

8.4.3.4.3.1.5. The topography of the site shall be evaluated for overall development suitability so that all structures shall be constructed below the canopy of existing tree cover.

8.4.3.4.3.2. Site Plan Approval Process.

8.4.3.4.3.2.1. Single-Family Residences. Site plans for single-family residences shall be reviewed by the planning and development department. The planning and development department may approve site plans when the dimensional requirements and standards of this UDO are met and when no trees sixteen (16) inches or greater are requested to be removed.

8.4.3.4.3.2.2. Other Development. The planning and development department shall review the proposed site plan and forward the site plan to the Planning Board and Board of Commissioners for review and approval. In granting approval, the Board of Commissioners shall, in addition to this article, apply Section 3.8, Conditional Use Permits of this UDO and all other applicable Town codes and ordinances.

8.4.3.4.3.2.3. Subdivisions. Subdivisions shall be as provided for in Article 10, Part V, Subdivision Regulations of this UDO.

8.4.3.5. Mitigation Requirements. In order to protect and reestablish natural vegetation during and after construction, the following mitigation actions are required.

8.4.3.5.1. The approved soil erosion and sedimentation control plan shall be in effect within thirty (30) days following completion of land disturbing activity and vegetation removal. Suitable native vegetative cover shall be established within the next growing season. Prior to the issuance of any required building permit, a soil erosion and sedimentation control plan shall be approved by the Town.

8.4.3.5.2. The developer or his agent of the property for which a site plan has been approved shall notify the planning and development department before any vegetation is removed. The notification shall indicate when the vegetation will be removed, and the Building Inspector shall conduct the necessary inspections to ensure that the vegetation removal is in accordance with the approved soil erosion and sedimentation control plan and that the approved soil erosion and sedimentation control plan is properly in effect.

8.4.3.5.3. To eliminate pest and disease damage to vegetation, any pruning or damage done to trees during construction should be properly attended to using accepted silviculture practices.

8.4.3.5.4. Any tree damaged during construction, or damage occurring as a result of such construction, shall be dressed and patched according to accepted arboriculture and silviculture practices. Tree damage shall be repaired prior to the issuance of a certificate of occupancy.

8.4.3.5.5. Prior to the issuance of a certificate of occupancy for the development site, the planning and development director or his designee shall inspect the site for the purpose of certifying compliance with the requirements of the site plan. Posting surety in lieu of actual compliance with an approved site plan may be permitted, provided that compliance with the approved site plan shall be obtained within one hundred eighty (180) days.

8.4.3.6. Enforcement. Enforcement in the SED-80 district shall be as follows:

8.4.3.6.1. Failure to comply with the requirements of the approved site plan shall be considered a violation and shall be subject to the immediate issuance of a stop work order by the Building Inspector and to the other procedures and remedies of this section, this article and this UDO which may apply.

8.4.3.6.2. Any sand, soil, dirt or earth which has been removed, relocated, graded, excavated, added to, filled or disturbed in violation of this UDO or any applicable Town ordinance, and any naturally occurring trees, shrubbery, grass or other naturally occurring vegetation which has been killed, damaged, destroyed or removed in violation of this UDO shall be restored or replaced within sixty (60) days of notice from the Building Inspector. All replacement trees shall be at least ten (10) feet in height or have a caliper of not less than two (2) inches. Each day after the 60-day period that the violator fails to perform such restoration or replacement shall constitute a new and separate violation.

8.4.3.6.3. In addition to the criminal penalties provided by this article and Section 1.10, Violation of UDO Regulations, the Town may initiate proceedings before a court of competent jurisdiction to obtain enforcement of any provision of this article by prohibitory injunction, mandamus, affirmative injunction or order of abatement, as provided by G.S. 160A-175. Enforcement may be by one, all, or a combination of such remedies.

8.4.4. SPD-C Special Planned Development – Community District.

Refer to Article 9, SPD-C Zoning Ordinance for regulations associated with the Village at Nags Head Special Planned Development – Community District.

SECTION 8.5 DEVELOPMENT STANDARDS FOR OVERLAY DISTRICTS.

8.5.1. O&S Ocean and Sound Waters District.

8.5.1.1. Purpose. The Ocean and Sound Waters District is established to provide for the proper use of the ocean and sound waters, including islands, that adjoin the Town to ensure the continued scenic, conservation, and recreational value that these waters provide to the Town, its residents, visitors and the surrounding area. In general, traditional recreational uses such as swimming, boating, sailing, fishing, hunting, and other active and passive noncommercial recreational activities along with commercial recreation activities (provided that the base of the activity is located in a zoning district that permits such activity or such base is located outside the zoning jurisdiction of the Town) are typically permitted uses in the district. Nothing contained within this section shall be deemed to prohibit or regulate commercial fishing and navigation.

8.5.1.2. Intent. The Ocean and Sound Waters District shall encompass and be applied to the area defined as the extraterritorial zoning area as referenced in Town Code Chapter 2, Article 1, Section 2-1. Zoning; boundary extension; establishment; application.

8.5.1.3. Dimensional Requirements. Detached single-family dwellings are permitted (not including mobile homes or floating homes), provided that such dwellings meet all the dimensional requirements of the R-1 low-density residential district.

8.5.2. CO Commercial Outdoor Recreational Uses Overlay District.

8.5.2.1. Purpose. The commercial-outdoor recreational uses overlay district is hereby established. The purpose of establishing this overlay district is to provide a set of comprehensive land use regulations for the operation of commercial-outdoor recreational uses while protecting the residentially zoned areas of the Town. All commercial-outdoor recreational uses proposed within this overlay district shall be subject to the procedures, standards, and guidelines specified in the following sections, in addition to other applicable rules, regulations, and permit requirements. In cases of conflicts with regulations in the underlying zoning district, the more restrictive requirement shall apply. Within this overlay district, all permitted and conditional uses in the C-2 zoning district which are on a separate lot and not in combination with any of listed commercial outdoor recreational uses shall be allowed.

8.5.2.2. Jurisdiction. The provisions of this section shall apply to all areas designated as the commercial-outdoor recreational uses overlay district and defined on the official zoning map of the Town. The provisions of this section shall also include areas within the Town's extraterritorial jurisdiction as shown on the official zoning map of the Town.

8.5.2.3. Exceptions of Applicability. All existing commercial-outdoor recreational uses which do not meet the requirements of this section shall be regulated in accordance with Article 5, Nonconformities, of this UDO.

8.5.2.4. Uses Allowed. The underlying zoning district to the Commercial-Outdoor Recreational Uses Overlay District is the C-2 General Commercial Zoning District. The outdoor recreational uses allowed in this district may be allowed as stand-alone uses or in combination with other outdoor recreational uses. Outdoor recreational uses may also be combined with certain uses allowed in the underlying C-2 zoning district. However, when any non-recreation related use is combined with a recreation use, the non-recreation use must be accessory and subordinate to an outdoor recreation use. In this instance, only the following uses shall be allowed as accessory to an outdoor recreation use and shall be contained within the principal building:

8.5.2.4.1. Concession.

8.5.2.4.2. Amusement arcade.

8.5.2.4.3. Restaurant.

8.5.2.4.4. Retail.

8.5.2.4.5. Single-family dwelling.

Lots may also be developed with any of the principal uses allowed in the C-2 zoning district. When this occurs, these lots shall not be utilized in combination with any of the recreation uses allowed within this overlay district.

8.5.2.5. General Requirements Applicable to All Commercial-Outdoor Recreational Uses. Conditional commercial-outdoor recreational uses and accessory uses are allowed provided that the following conditions are met:

8.5.2.5.1. Commercial-outdoor recreational uses shall be in accordance with applicable standards in Town Code Section 4-231, commercial-outdoor recreational uses.

8.5.2.5.2. A 12-foot wide vehicular accessway suitable for firefighting and rescue equipment as approved by the Town shall connect the commercial-outdoor recreational use to the driveway with the exception of piers and docks, unless such development is prohibited by local, state or federal regulations. Emergency accessways may also be used for the required pedestrian accessway.

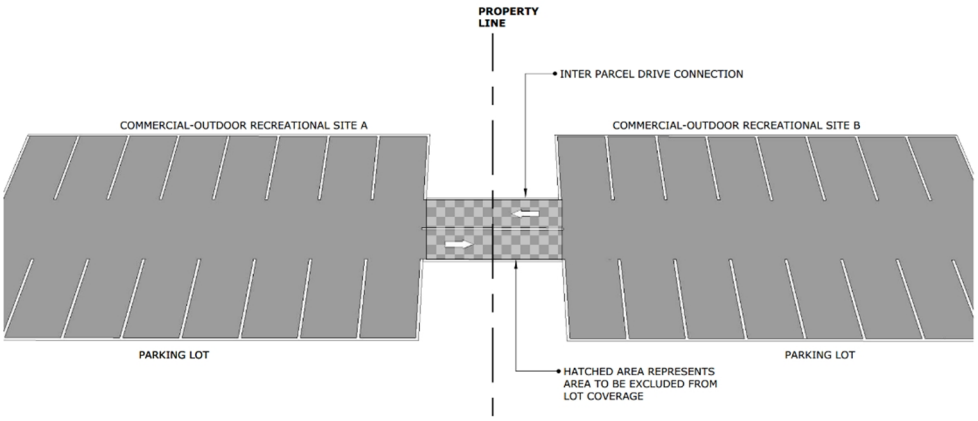
8.5.2.5.3. The commercial-outdoor recreational use shall be connected to all improved facilities including restrooms and parking areas by improved walkways. Such walkways shall be at least five (5) feet wide and constructed of concrete, asphalt, wood, or other similar material and may also be used as vehicular emergency accessways if they meet the standard listed in subsection 8.5.2.5.2 above.

8.5.2.5.4. No portion of any fueling area and/or gasoline storage area shall be further than five hundred (500) feet or closer than fifty (50) feet to a fire hydrant. The location of the fire hydrant shall be approved by the Town.

8.5.2.5.5. Except for water-dependent uses, all crowd or spectator areas shall be designed and sited such that any noise, cheering, etc., resulting from the crowd or spectators is directed toward the interior of the site. Typical spectator areas would include bleachers or open picnic areas.

8.5.2.5.6. Lighting shall be in accordance with the security lighting standards in Article 10, Part IV, Outdoor Lighting of this UDO.

8.5.2.5.7. When an existing or proposed parking lot is designed and improved to allow access to adjoining properties within the commercial-outdoor recreational uses overlay zoning district, the applicant and each adjoining property owner may reduce the parking space requirement by ten (10) percent provided that cross-easements are recorded in the Dare County Register of Deeds that allow unrestricted parking and traffic flow between the proposed and existing lots. The vehicular travel area included in the cross-easement shall be excluded from lot coverage calculations, as shown in the following diagram, unless it is within the estuarine AEC.



Parking Lot Access to Adjoining Properties.

8.5.2.5.8. All petroleum products shall be stored in accordance with NFPA 30 and the North Carolina Fire Prevention Code standards. All petroleum products subject to the above regulations shall be stored no closer than fifty (50) feet or a distance equal to one-half the lot width whichever is less from any property line, right-of-way, drainage ditch, or estuarine waters unless the above regulations require a greater setback. All sites subject to the above regulations shall be inspected at least on an annual basis by the Town, or prior to events associated with crowd gathering permits or the designated public events site.

8.5.2.5.9. Estuarine shoreline. Commercial-outdoor recreational uses may have docks, piers, and walkways as permitted by the Town, CAMA and the corps of engineers.

8.5.2.5.10. The term "use," as referred to in this section shall mean the principal activities on the site, i.e., bumper boat pool, go-cart track, sport-climbing wall.

8.5.2.5.11. Sites which contain piers, slips, or other water dependent facilities which have been approved by the Board of Commissioners for outdoor recreational uses shall not be considered a commercial marina.

8.5.2.6. Setbacks for Commercial Outdoor Recreational Uses. Setbacks from property lines and rights-of-way for all of the commercial-outdoor recreational uses permitted in this district shall be as follows:

8.5.2.6.1. Setbacks from property line/right-of-way shall be in accordance with the following:

TABLE 8-1: SETBACKS FOR COMMERCIAL OUTDOOR RECREATIONAL USES

	Water-Dependent Uses	Land-Dependent Uses	Go-Cart Rentals
USE/ACTIVITY			
Front	15	20	30
Side	5/15	15	30
Rear	0	25	25

	Water-Dependent Uses	Land-Dependent Uses	Go-Cart Rentals
PRINCIPAL BUILDING			
Front	15	15	30
Side	5/15	5/15	30
Rear	25	25	25
ACCESSORY STRUCTURE BUILDING			
Front	15	15	30
Side	5/15	5/15	30
Rear	25	25	25

8.5.2.6.2. Minimum Side Yard Depth. The total combined side yard shall be a minimum of fifteen (15) feet. In no instance shall either side yard be less than five (5) feet.

8.5.2.7. Buffering Requirements.

8.5.2.7.1. Commercial-outdoor recreational uses shall provide a 10-foot wide commercial transitional protective yard adjacent to any street right-of-way.

8.5.2.7.2. Go-cart rental establishments shall provide a 25-foot wide commercial transitional protective yard adjacent to any street right-of-way and a 10-foot wide commercial transitional protective yard along any side lot line.

8.5.2.7.3. Any other outdoor-recreational use shall provide a 10-foot wide commercial transitional protective yard along a side lot line only when adjacent to a residential use.

8.5.2.7.4. For sites adjacent to estuarine waters: No buffer is required if the lot abuts estuarine waters, provided that at least fifty (50) percent of the land area within contiguous and/or adjacent 404 wetlands as defined by the US Army Corps of Engineers or fifty (50) percent of the land area waterward of the CAMA line, whichever land area is greater, is left in its natural condition. If the above conditions do not apply, or cannot be met, the rear yard buffer shall consist of a 10-foot wide commercial transitional protective yard.

8.5.2.7.5. All buffering shall be provided in accordance with the standards contained in Article 10, Part VI, Commercial Design Standards.

8.5.2.8. Combination of Commercial-Outdoor Recreational Uses. Unless held on a designated public events site as defined in Appendix A of this UDO, the combination of two or more commercial-outdoor recreational uses on any site, including accessory uses previously listed in this section, shall be permitted subject to the following additional requirements:

8.5.2.8.1. Only one principal building shall be allowed.

8.5.2.8.2. All uses, principal structures, and accessory structures within the site shall be connected by improved walkways. Such walkways shall be constructed of concrete,

asphalt, wood, or other similar material and may also serve as vehicular emergency accessways described in this section.

8.5.2.8.3. There shall be only one (1) curb cut for each commercial-outdoor recreational site.

8.5.2.8.4. When not structurally connected, there shall be a separation of ten (10) feet between uses.

8.5.3. HO Hotel Overlay District.

Refer to Article 6, Zoning Districts for description of the Hotel Overlay District. Uses are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to Article 7, Supplemental Regulations and the other requirements of this UDO.

8.5.4. SRO Soundside Residential Dwelling Overlay District.

8.5.4.1. Purpose. This area was one of the earliest developed areas of the Town. Historically, it was in close proximity to the ferry landing point for many of the early visitors to Nags Head and was one of the first locations for summer houses before property owners began developing on the oceanfront. Many of the early cottages in this area were small, one to 1-1/2 story homes that resembled the cottages still present today in the Nags Head Historic Cottage Row. Although this area has experienced some redevelopment since its inception, many of the existing houses retain the character of the original development. This is reflected in the present architectural styles as well as the low-density, informal landscape which maintains the area's natural topography and vegetation. For the aforementioned reasons, the Town of Nags Head recognizes this area as one of unique significance, and consequently wishes to take measures to preserve its existing character.

8.5.4.2. Intent. The purpose of the Soundside Residential Dwelling Overlay District is to set forth regulations that will preserve the unique character and historical significance of the residential enclave located in the vicinity of the unimproved portion of Soundside Road and Chowan Avenue. Specifically, the intent of this section is to achieve the following objectives:

8.5.4.2.1. To maintain and promote residential development that patterns the architecture and building designs of the current and former cottages of this area.

8.5.4.2.2. To minimize land disturbance and preserve natural topography and vegetation.

8.5.4.2.3. To maintain a low-density character while still allowing reasonable use of property.

8.5.4.2.4. To establish minimum street and driveway standards to accommodate Town service vehicles and local traffic while reducing impervious surfaces.

8.5.4.3. Applicability. The provisions of this section shall apply to all areas designated as the Soundside Residential Dwelling Overlay District as defined on the official Zoning Map of the Town of Nags Head, North Carolina. This area generally includes parcels within the R-2 medium density residential zoning district abutting the unimproved portions of Soundside Road and Chowan Avenue. The Soundside Residential Dwelling Overlay District is bounded by the Old Nags Head Cove Subdivision to the south and east, the Southridge Subdivision and the Nags Head Hotel property lots to the north, and the Roanoke Sound to the west. Where the provisions of this section conflict with the provisions of R-2 medium density residential district, the provisions of this section shall apply.

8.5.4.4. Dimensional Requirements. In addition to the dimensional requirements set forth in subsection 8.2.1 for the R-2 medium density residential district, lot coverage for lots located in the Soundside Residential Dwelling Overlay District shall not exceed twenty-five (25) percent. Private access easements, a maximum of twenty (20) feet for two-way and fourteen (14) feet for one-way improved gravel surface area, shall be excluded from individual lot coverage calculations provided such access is not used for parking as required by Article 10, Part II, Off-Street Parking and Loading Requirements of this UDO.

8.5.4.5. Site Design Standards. The following design criteria shall be satisfied in order to protect the unique natural features and vegetation in the Soundside Residential Dwelling Overlay District:

8.5.4.5.1. Land disturbing activity and the removal of trees greater than four (4) inches in diameter measured at one foot above the ground shall be limited to the following areas:

8.5.4.5.1.1. Within the proposed building footprint, including decks and a ten-foot perimeter around the principal building and its accessory buildings;

8.5.4.5.1.2. Within vehicular accessways;

8.5.4.5.1.3. Within the septic tank drainfield and an area around such field as determined by Dare County Health Department as to ensure proper functioning of the septic system; and

8.5.4.5.1.4. Within areas where land disturbing activities have created slopes in excess of three to one, the finished topography shall be aligned with and graded to existing neighboring dunes in such a manner as to minimize erosion.

8.5.4.5.2. The use of bulkheads shall be limited to vehicular accessways, decorative landscaping and estuarine bulkheads only.

8.5.4.5.3. A land disturbance or building permit shall be required prior to any building site preparation.

8.5.4.5.4. Prior to any tree removal or earth disturbing activity, the perimeter of all proposed structures, accessways and drainfield areas shall be staked on the lot and inspected by the UDO Administrator.

8.5.4.5.5. Unimproved gravel driveways and gravel aprons shall be permitted.

8.5.4.5.6. All utilities shall be placed underground.

8.5.4.6. Building Design Standards. In addition to the applicable standards of Section 7.4 related to large residential dwellings, the following standards are encouraged for all single-family dwellings:

8.5.4.6.1. Residential structures that have a ground floor elevation that is less than four (4) feet above the required base flood elevation (BFE) should be piling supported. Ground floor enclosures of a piling supported residential structure should not exceed three hundred (300) square feet of enclosed storage.

8.5.4.6.2. Residential structures should not contain more than two habitable floors.

8.5.4.6.3. Residential structures are encouraged to achieve a minimum total of one hundred (100) points in accordance with the Nags Head Residential Design Guidelines. Fifty (50) points of the required minimum is recommended with the utilization of covered porches to achieve the desired architecture of the district.

8.5.4.6.4. Roof pitch should not exceed 12/12.

8.5.4.6.5. The following siding materials are encouraged for vertical wall siding:

8.5.4.6.5.1. Wood shingles: wood material should be red cedar, white cedar, juniper, or pressure treated pine.

8.5.4.6.5.2. Wood lap board.

8.5.4.6.5.3. Vertical board and batten siding.

8.5.4.6.5.4. T-111.

8.5.4.6.6. Height and the minimum side yard for large residential dwellings shall be regulated in accordance with Section 7.4, Dwelling, Large Residential.

SECTION 8.6 STANDARDS/APPLICATION OF DIMENSIONAL REQUIREMENTS.

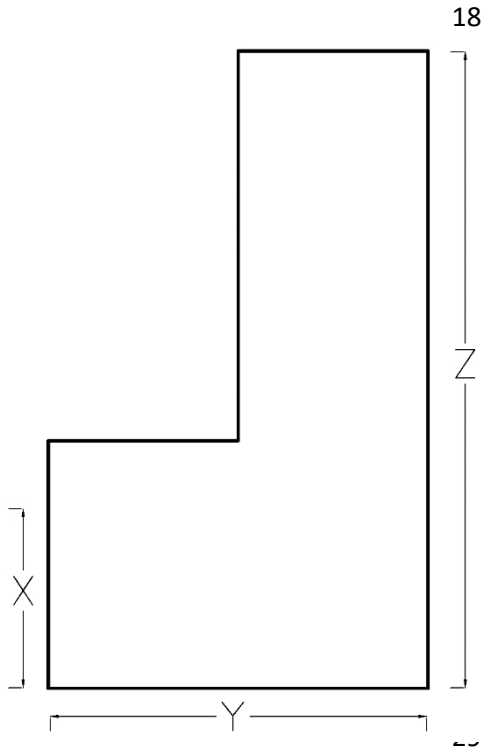
8.6.1. Intent – Height, Bulk, Density, Lot Coverage, Yards, and Open Space.

No building or other structure shall hereafter be erected or altered to exceed the height or bulk requirements of this UDO; nor to accommodate a greater number of families than allowed by this UDO; nor to occupy a greater percentage of lot area than allowed by this UDO; nor to have narrower or smaller front yards, side yards, rear yards or other open spaces than required by this UDO; nor shall any building, structure or land be used in any other manner contrary to the provisions of this UDO.

8.6.2. Length and Width Requirements for Principal Buildings.

The following provision apply both to residential and commercial buildings, except that building erected in the C-3 commercial services district shall be exempt from these minimum dimensional requirements.

8.6.2.1. The length of a principal building shall not exceed three times the width of the building. The length shall be considered the longest dimension of the structure to include porches and open decks. The width shall be considered to be the widest consistent dimension through at least forty percent (40%) of the length of the building, which may be interrupted; for example, if a building has a width of twenty-two (22) feet for 20% of its length, reduces to a width of 18' for 60% of its length, and then widens to a width of 20' for 20% of its length, the building shall be determined to have a width of 20' and shall have a length of no more than 60'.



Dimensions—Principal Buildings

(To use Y as the width, X must equal at least 40 percent of the length (Z) of the building.)

8.6.2.3. The minimum width of the enclosed habitable space of a principal building shall be eighteen (18) feet measured at the first-floor level.

8.6.2.4. A building shall be at least eighteen (18) feet wide along at least forty (40) percent of its length.

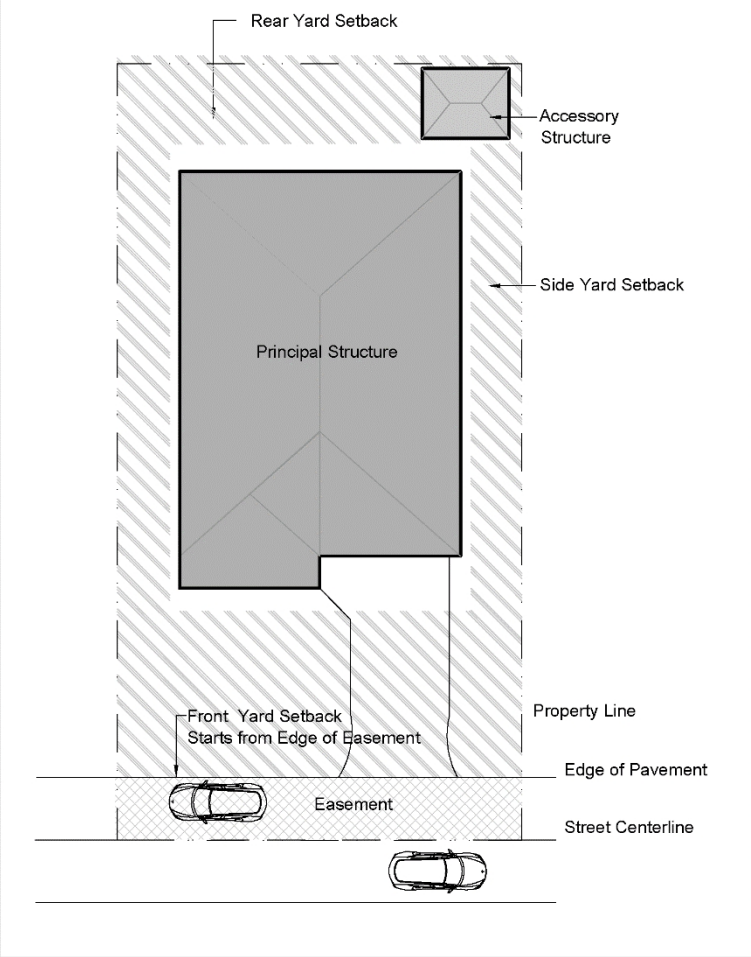
8.6.2.5. Outside dimensions shall be used in determining length and width. This is defined as the exterior façade covering on the outside of the building (see graphic above).

8.6.3. Yard Requirements.

8.6.3.1. Principal Structure/Use. Unless otherwise provided in this UDO, no principal structure or principal use shall be located within the front, side, or rear yards (setback areas).

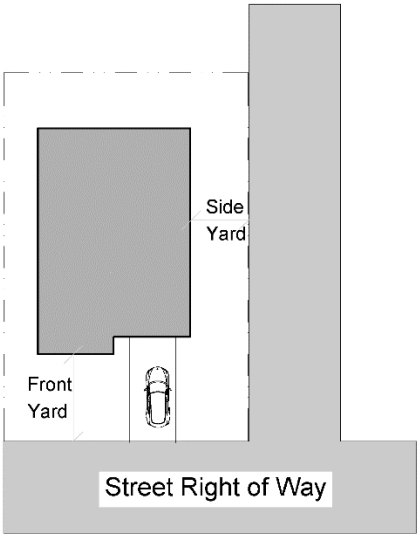
8.6.3.2. Access Easements. For lots of record which front on access easements, yard and lot depth measurements shall be made from the edge of the easement rather than from the lot line. In cases where there is no easement and the lot line is located at the centerline of the paved surface, the measurement shall be made from the edge of the street pavement.

8.6.3.3. Oceanfront Property. In the case of lots located within the Ocean Hazard AEC, the applicable rear yard setback shall be the CAMA setback measured from the static vegetation line or the first line of stable natural vegetation, whichever is furthest landward of the ocean.



8.6.3.2. Access Easements

8.6.3.4. Corner Lots. In the case of a corner lot, to ensure adequate sight clearance, the minimum width of the side yard adjacent to the right-of-way shall be no less than fifteen (15) feet, except in the case of nonconforming lots of record that are less than 10,000 square feet in lot area and sixty (60) feet or less in lot width, in which case the minimum setback shall be twelve (12) feet.



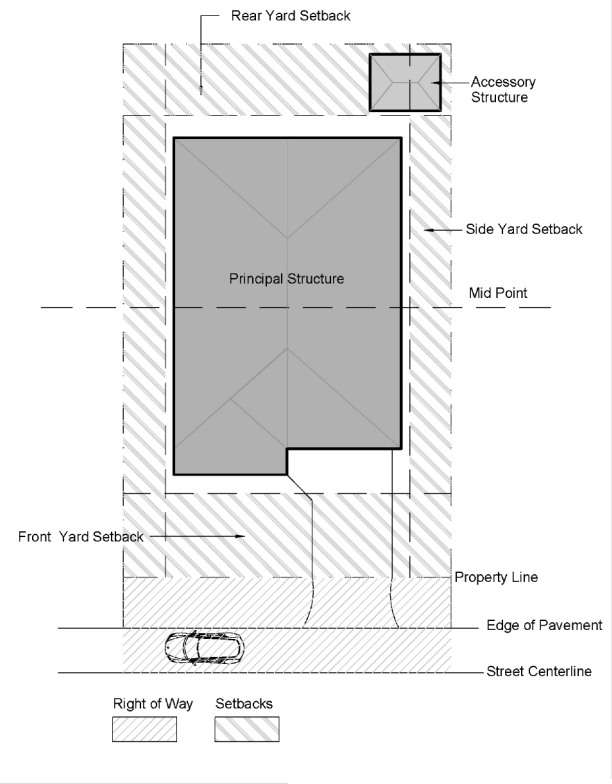
8.6.3.4 Corner Lots

8.6.3.5. Yard Requirements for Accessory Structures.

8.6.3.5.1. Accessory structures, including but not limited to, pools and pool surrounds, HVAC equipment/stands, and sheds, etc., may be located only in rear or side yards no closer than five (5) feet to any property line, except as provided for walls and fences in Section 7.78.

8.6.3.5.2. 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 UDO.

8.6.3.5.3. Accessory structures located forward of the midpoint of the principal structure shall meet the principal structure setbacks. The midpoint is defined as the halfway point of the principal structure including decks measured from front to rear on the lot.



8.6.3.5.3 Midpoint

8.6.3.5.4. Accessory structures with habitable space shall meet the setbacks of the principal structure regardless of location on the lot.

8.6.3.5.5. Municipally owned walkways, boardwalks, multi-use paths, and sidewalks are exempt from the minimum yard requirements of this UDO.

8.6.3.6. Exclusions from Yard Requirements.

8.6.3.6.1. The inner edge of the front, rear, or side yard shall be measured from the building foundation and may exclude the outermost three feet of eaves, gutters, uncovered handicapped ramps, or uncovered steps. This exclusion may also apply to cargo lifts for single-family or duplex dwellings only, and built-in railing benches constructed in accordance with Appendix B, "Town of Nags Head Residential Design Guidelines".

8.6.3.6.2. Replacement of HVAC Equipment for Single-Family Uses or Duplex Uses (under common ownership). HVAC stands and equipment may be located within five (5) feet of a side lot line. Replacement of older systems often requires an increase in the size of the unit and/or stand which may affect the compliance with the setback requirements that apply to these structures. In cases where is it necessary to increase the size of the equipment and/or stands based on code requirements or the manufacturer's specifications, HVAC units and stands may encroach to the least extent possible beyond the required side yard setback.

8.6.3.7. Reductions in Yard Setbacks.

8.6.3.7.1. Front Yard Setback.

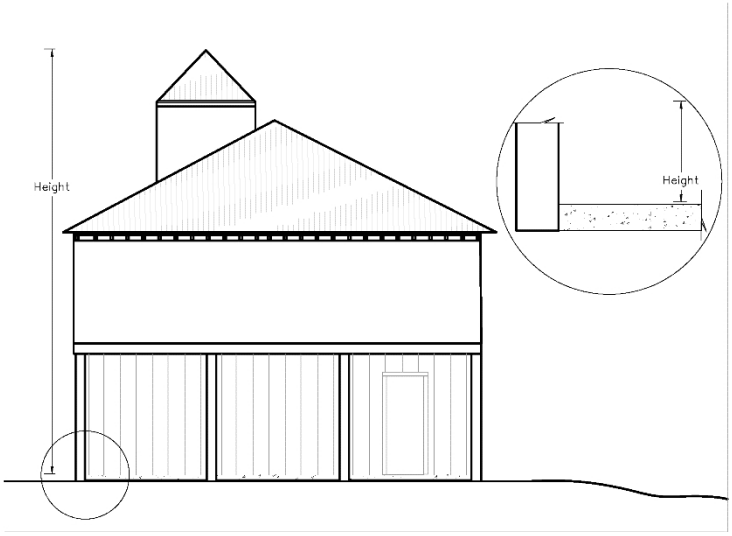
8.6.3.7.1.1. In any residential district where the average setback distance for existing buildings on all lots located wholly or partly within two hundred (200) feet of any lot, and within the same zoning district and fronting on the same side of the same street as such lot is less than the minimum setback required in such zoning district, the setback on such lot may be less than the required setback. However, the reduced setback shall be no less than the existing average setback distance for all lots within the two hundred (200) feet, and in no instance shall the setback be reduced to less than fifteen (15) feet.

8.6.3.7.1.2. When lots within the two hundred (200) feet are vacant, such vacant lots shall be considered as having the minimum required setback for the purpose of computing an average setback distance.

8.6.3.7.1.3. When lots within the two hundred (200) feet contain structures which have been relocated with a reduced setback in accordance with Section 8.7, the lot shall be considered as having the minimum required setback distance.

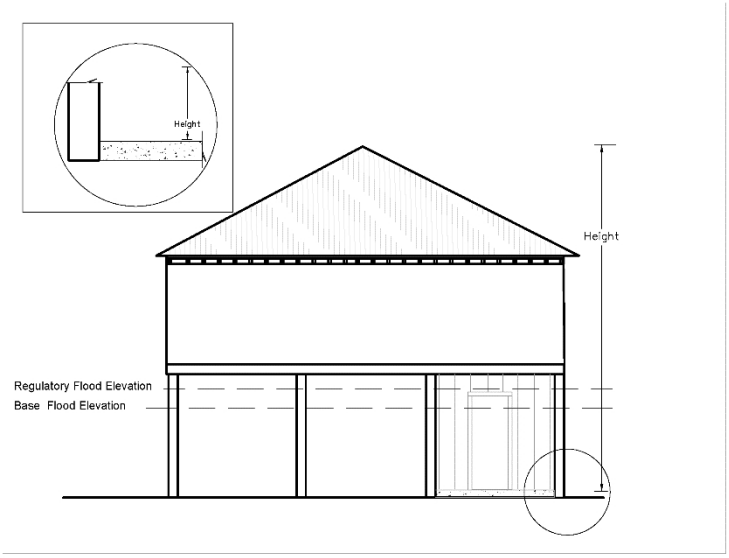
8.6.4. Building Height.

8.6.4.1. Measurement of height. Height means the vertical distance measured from the tallest part of a building to the ground at the base of the building. Typically, height is measured from the tallest portion of the roof to the top of the concrete slab. In cases where a concrete slab is not present, height is measured from the tallest part of the roof to the average finished grade using the corners at the base of the building.



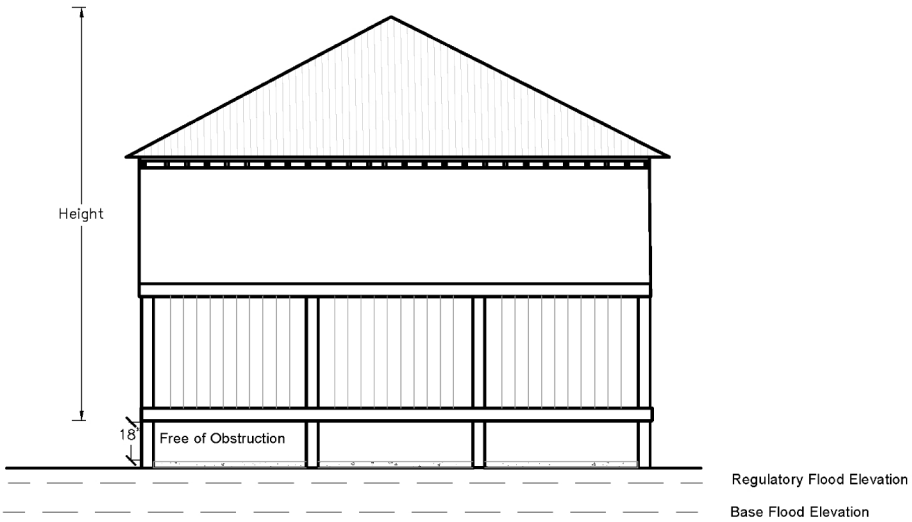
8.6.4.1. Measurement of height

8.6.4.1.1. In any AE special flood hazard area, height will be measured from the regulatory flood protection elevation or finished grade, whichever is higher. In cases where there is a ground floor enclosure below the regulatory flood protection elevation, height shall be measured from finished grade.



8.6.4.1.1. AE Flood Zone- Height

8.6.4.1.2. In coastal high hazard areas or VE zones, height shall be measured from regulatory flood protection elevation. In cases where the finished grade elevation is above the regulatory flood protection elevation, height shall be measured at approximately eighteen (18) inches above the highest, undisturbed, finished grade directly beneath the structure.



8.6.4.1.2. VE Flood Zone- Height

8.6.4.2. The maximum height of a structure may be increased to forty-two (42) feet if the structure utilizes an eight-twelfths roof pitch as specified in the Town of Nags Head Residential Design Guidelines.

8.6.4.3. The maximum height for large residential dwellings shall be regulated in accordance with Section 7.4, Dwellings, Large Residential.

8.6.4.4. No portion of a structure extending above the height limitations of the district in which it is located shall be occupied or intended for human occupancy.

8.6.4.5. If the height requirement varies due to supplemental regulations in Article 7, Supplemental Regulations, then that requirement shall apply.

8.6.4.6. Exclusions from Height Limitations.

8.6.4.6.1. The height limitations imposed by the regulations of this UDO shall not apply to the following:

8.6.4.6.1.1. Chimneys.

8.6.4.6.1.2. Church spires.

8.6.4.6.1.3. Flagpoles, when associated with a residential use only.

8.6.4.6.1.4. Mechanical appurtenances.

8.6.4.6.1.5. Monuments.

8.6.4.6.1.6. Water towers.

8.6.4.6.2. The height limitations imposed by the regulations of this UDO shall not apply to the following, subject to the conditions imposed in this section:

8.6.4.6.2.1. Cupolas, provided that the height of the interior floor under the cupola shall not exceed the height limitation of the building, minus eight (8) feet.

8.6.4.6.2.2. Dish antenna, provided that the unit shall not project higher than five feet above the portion of the roof to which it is attached.

8.6.4.6.2.3. Parapet walls, not to extend more than four (4) feet above the roof line of the building.

8.6.4.6.2.4. Concealed building mounted antenna and the structural element used to conceal it shall not extend more than fifteen (15) feet above the roof line of the building or structure and be located away from the roof edge in order to be invisible from the ground.

8.6.4.6.2.5. Amusement rides, including but not limited to ferris wheels, shall not exceed sixty (60) feet in height above existing natural grade.

8.6.4.6.2.6. Structural poles associated with "Aerial Adventure Parks" shall not exceed sixty (60) feet in height above natural or original grade.

8.6.4.6.3. Within the SED-80 district, only chimneys and flagpoles are excluded from the height limitations.

8.6.5. Habitable Floors.

8.6.5.1. For the purpose of this section, area or space above the top plate of a habitable floor which is open, unrestricted, and unobstructed such as used in an a-frame, cathedral ceiling, or opposed shed roof type construction shall not be considered as a part of such habitable floor.

8.6.5.2. The enclosed area above the top plate of a structure shall not be inhabited by any person or used for any purpose other than the storage of personal effects or property.

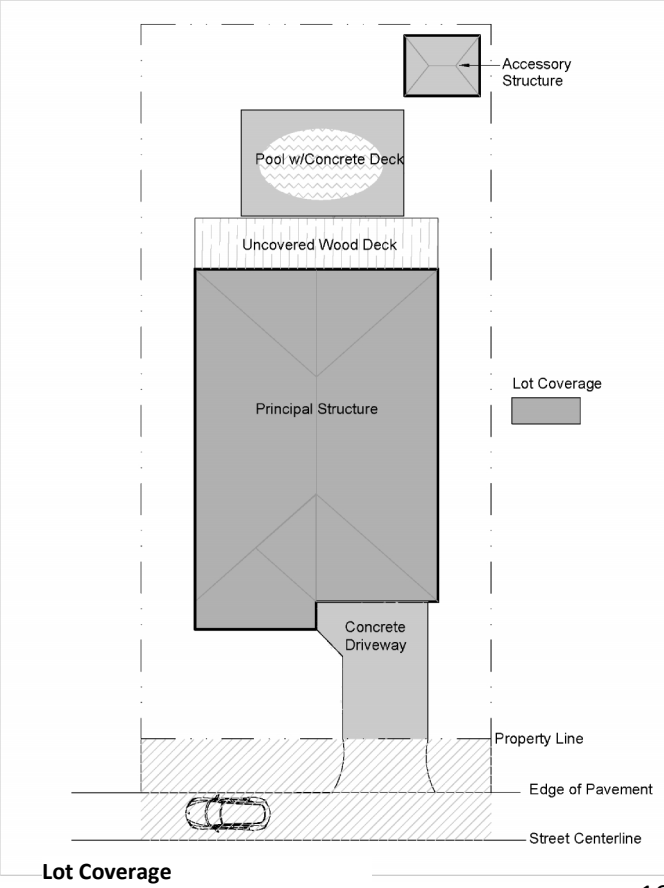
8.6.5.3. Single-family dwellings and two-family dwellings (duplexes) shall not exceed three habitable floors.

8.6.5.4. Coastal watch towers meeting the criteria described in the Town of Nags Head Residential Design Guidelines, to include the maximum square floor area of 196 square feet, shall not be counted towards the maximum number of allowable habitable floors as prescribed in this section.

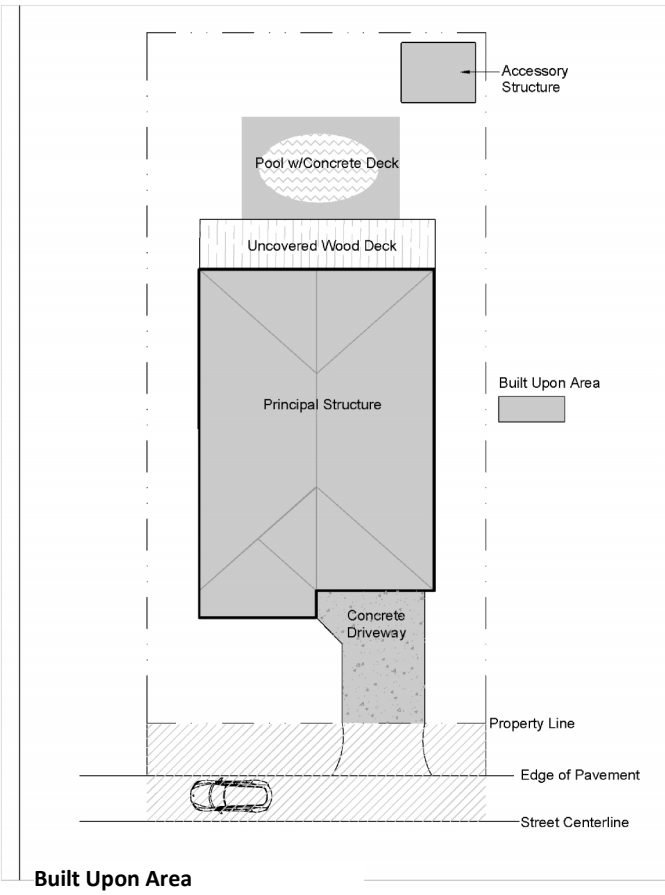
8.6.6. Lot Coverage.

8.6.6.1. Purpose and Intent. As defined in Appendix A of this UDO, lot coverage means that portion of the lot area, expressed as a percentage, which is covered or occupied by impervious surfaces or structures. Lot coverage is one of the primary mechanisms by which the Town regulates the development intensity of individual lots. Lot coverage limits are established for the purposes of preserving open space, limiting the amount of land disturbance necessary for development, and establishing development intensity limitations that are consistent with the Town's vision and goals for the built environment.

For the purposes of determining lot coverage, the following features shall be considered impervious – any principal or accessory use or structure located above the ground including decks, parking areas, vehicular use areas, roadways, access ways, and sidewalks or walkways that prevent the infiltration of rainwater. Lot coverage is utilized to determine zoning compliance and is distinct from the calculation of built-upon area. Built-upon area is used for the purposes of regulating stormwater management, and is described in Article 11, Part I, Buffering and Vegetation Preservation General Requirements of this UDO.



Lot Coverage



Built Upon Area

Although lot coverage is calculated based on the lot area as defined in Appendix A, in some cases portions of the lot area are excluded from the calculation. For example, for an oceanfront lot, lot coverage is calculated based on the lot area west of the first line of stable natural vegetation or the static line, whichever is further landward of the ocean.

This section describes special provisions applicable to lot coverage calculations for certain uses/structures or districts. In some instances, certain building features or site elements are either excluded from the lot coverage calculation or count as a reduced percentage. Additionally, lot coverage may be increased with the application of additional stormwater management measures.

8.6.6.2. Special Requirements for Residential Uses. For residential uses in the R-1, R-2, R-3, CR, and C-2 districts, the total lot coverage may be increased by three (3) percent when all runoff from the project's built-upon area is directed into an approved stormwater management system designed to accommodate the volume of runoff generated by a 3.5-inch design storm. The approved stormwater management system shall be designed in accordance with the standards included in Article 11, Part I, Stormwater, Fill, and Runoff Management.

8.6.6.3. Special Requirements for Shared Driveways. In the R-1, R-2, R-3, CR, C-2, and SPD-20 districts, two hundred (200) square feet of lot coverage may be excluded from the lot coverage calculation for individual lots that utilize a shared driveway with an adjoining lot to provide the sole means of access to the lot. In these instances, a shared access easement must be recorded for each lot that utilizes the shared driveway.

8.6.6.4. Special Requirements for the C-3 District. In the C-3 district, lot coverage shall be in accordance with the following table:

Distance from Fresh Pond	Maximum Permeable Pavement	Maximum Impermeable Surface	Minimum Open Space
0-500 feet	25%	30%	45%
Over 500 feet	25%	45%	30%

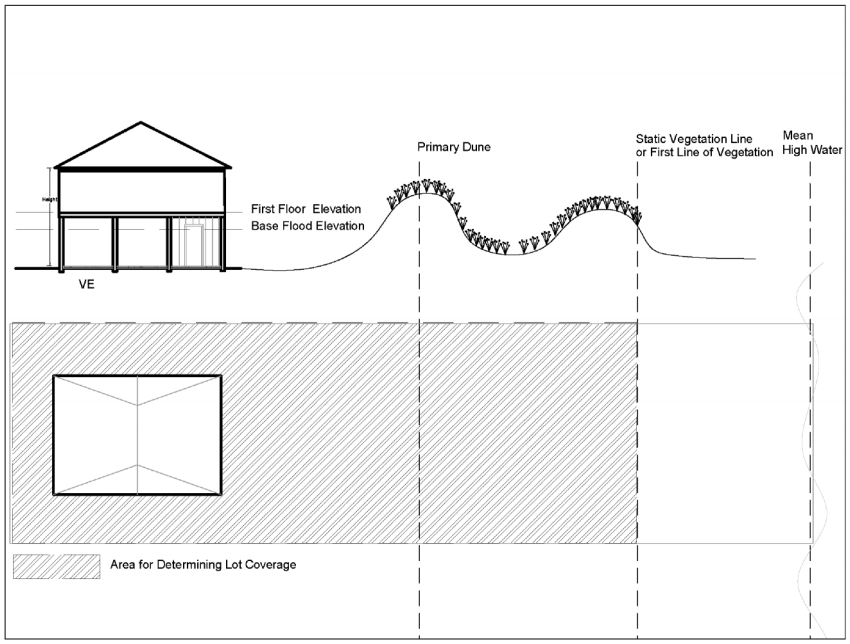
8.6.6.5. Special Requirements for Oceanfront and Estuarine Fronting Lots.

8.6.6.5.1. In the case of an oceanfront lot, only that area landward of the first line of stable natural vegetation or the static line (if present), shall be used for calculating lot coverage. In cases where both lines are present, the calculation shall be made using the line that is furthest landward of the ocean.

8.6.6.5.2. Where an oceanfront lot has little or no stable natural vegetation, the line of such vegetation shall be a line extending between the nearest such vegetation existing north and south of the lot.

8.6.6.5.3. In the case of lots abutting estuarine waters, lot coverage shall not exceed thirty (30) percent within the estuarine AEC as defined by CAMA or waterward of the US Army Corps of Engineers 404 fill line.

8.6.6.5.4. For both oceanfront and estuarine front lots, lot coverage allowances shall not be transferred from one portion of the lot to another.



8.6.6.5.1. Lot Coverage- Oceanfront

8.6.6.6. Special Requirements for the Use of Permeable Pavement. Due to the stormwater management benefits associated with the use of permeable pavement, permeable pavement shall count at a reduced lot coverage based on the standards below.

8.6.6.6.1. Materials.

8.6.6.6.1.1. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, Turfstone™, gravel as defined in Appendix A Definitions, reinforced turf products, and other proven technologies available as covered in the NC Best Management Practices Manual and as approved by the Town Engineer for appropriateness to the site and existing conditions. Porous concrete shall be designed and installed in accordance with ACI specifications, or equivalent standard, with hydrological, operation and maintenance considerations.

8.6.6.6.1.2. Edge restraints shall be provided on all concrete grid pavers, permeable interlocking concrete pavers, and similar type 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.

8.6.6.6.2. Location. No porous concrete shall be used east of SR 1243 or NC 12. Compacted gravel shall not be considered permeable pavement.

8.6.6.6.3. Calculation. For the purposes of determining lot coverage, the total square footage of permeable pavement materials is multiplied by 0.67.

8.6.6.7. Exclusion from Lot Coverage Calculation.

8.6.6.7.1. When access easements are provided in accordance with Section 10.47, Limiting Access to US 158, US 64/264, NC 12, and SR 1243, and Section 10.51, Requirements for and Contents of Preliminary Plat and Supporting Documents, a maximum of twenty (20) feet for two-way and fourteen (14) feet for one-way improved access surface areas shall be excluded from individual lot coverage calculations. This exemption shall also apply to existing legal lots of record meeting the lot frontage requirements of Section 10.47 and further provided that the requirements of Section 10.51 are met and where such access has been approved by the planning and development director and recorded on a subdivision plat in accordance with this UDO. This exception shall be applicable only for single-family and duplex uses for access only and shall not be used for the parking of vehicles and shall be noted in the covenants and deed restrictions required by Section 10.51.

8.6.6.7.2. Portions of built-in railing benches constructed in accordance with Appendix B, Town of Nags Head Residential Design Guidelines extending beyond the building footprint shall be excluded from individual lot coverage calculations.

8.6.6.7.3. When an existing or proposed commercial parking lot is designed and or modified to allow two-way vehicular traffic and pedestrian flow between adjoining commercial properties in commercial zoning districts the following exclusions of lot coverage shall apply provided the lot coverage exclusions of this section shall not apply to lot coverage within cross-easements located within an estuarine AEC:

8.6.6.7.3.1. Up to two hundred twenty (220) square feet of the lot coverage within the shared vehicular travel area included within a recorded cross-easement may be excluded from the lot coverage calculation of each lot for the purpose of constructing the shared vehicular travel access.

8.6.6.7.3.2. Up to seventy-five (75) square feet of lot coverage for handicap accessible, pedestrian sidewalk area within a shared cross-easement may be excluded from the lot coverage calculation of each lot for the purpose of constructing the shared pedestrian sidewalk.

8.6.6.7.4. Up to a maximum of two hundred (200) square feet of lot coverage if one or more bicycle racks are located on improved surfaces in compliance with the requirements of subsection 10.15.5.

8.6.6.7.5. Municipally owned walkways, boardwalks, multi-use paths and sidewalks are exempt from the lot coverage requirements of this UDO.

SECTION 8.7 REDUCTION IN DEVELOPMENT STANDARDS FOR EROSION THREATENED STRUCTURES.

8.7.1. Setback Reduction for Structures Threatened by Erosion.

8.7.1.1. Intent. The intent of this section is to facilitate the relocation on the same lot of existing single-family and duplex structures on lots abutting the Atlantic Ocean or Roanoke Sound, in cases where such structures are determined to be in imminent danger of collapse as defined by CAMA as a result of erosion by wind and water. These provisions are made available despite the fact that such relocation is a short-term solution, and the property owner is encouraged to move any endangered structure to an area that is not threatened by erosion. The provisions of this section shall not apply in the case of multiple structures located on a single site, or in cases where the footprint of the structure proposed for relocation is to be enlarged or additional living area is proposed.

8.7.1.2. Conditions for Granting Reduction. In order for a reduction in the required front yard setback for an existing residence to be granted, it must be demonstrated that:

8.7.1.2.1. The structure is in imminent danger of collapse as a result of erosion. A structure shall be considered to be in imminent danger when the top of the erosion scarp is within 20 feet of the structure.

8.7.1.2.2. The structure cannot be relocated on the same lot in a location which will meet required CAMA and zoning setbacks.

8.7.1.2.3. The structure will be relocated on the same lot such that all enclosed portions of the structure will be located more than 20 feet landward of the top of the erosion scarp.

8.7.1.2.4. The separation between any part of the structure and the front property line will be not less than 15 feet.

8.7.1.2.5. In cases where the applicant can comply with the minimum setback required by the Coastal Area Management Act for new structures, without needing the full 15 feet reduction, the Town shall grant only the minimum reduction necessary to allow compliance with the CAMA setback.

8.7.1.3. Application of This Section. The reduced setback for structures relocated in accordance with this section shall not be used in applying subsection 8.6.3.7.1 to reduce setbacks for any neighboring structure. Relocated structures shall be considered as having the minimum required setback for purposes of subsection 8.6.3.7.1.

8.7.2. Reduction of Parking and Lot Coverage Requirements for Structures Having Lost Street Access Due to Storm Damage.

8.7.2.1. Intent. The intent of this section is to facilitate the reestablishment of vehicular access and parking for single-family and duplex dwellings in cases where a Town approved street or access easement has been damaged. The provisions of this section shall establish the conditions by which a property will be eligible for permitted reductions of parking standards and/or lot coverage requirements to establish alternative access. The vehicular access provided for herein is not intended to offer or provide or accommodate a full range of municipal services.

***8.7.2.2. Conditions for Granting Reduction*.** Compliance with all the following conditions shall be required for the granting of reductions in parking space dimensional requirements, setback requirements, and surfacing requirements as set forth in subsection 10.12.3 of this UDO, and the granting of any parking related lot coverage increases above the maximum allowed pursuant to the dimensional requirements of the zoning district in which the property is located:

8.7.2.1.1. The lot(s) in need of the reduction listed above must have frontage on the Atlantic Ocean, directly abut a lot(s) with frontage on the Atlantic Ocean, abut a previously accessible Town street adjacent to the Atlantic Ocean which has been damaged as a result of erosion, or is a lot which provides access to such lots.

8.7.2.1.2. Only lot(s) with existing single-family or duplex structures shall be eligible for the reductions listed above. These reductions are not applicable to new development on any lot.

8.7.2.1.3. Before any zoning permit can be approved, all required permits including, but not limited to CAMA and a septic improvement permit must be issued.

8.7.2.3. Standards for granting reductions. The following standards shall be applied in the consideration of reduction requests:

8.7.2.3.1. In cases where the applicant can meet part or all of the requirements of the zoning ordinance, they shall be met in terms of setbacks, lot coverage and the number and dimensions of required parking spaces. All permitted reductions as may be afforded by this section shall be the minimum deemed necessary by the zoning administrator to provide access and parking to the subject property.

8.7.2.3.2. The maximum number of parking spaces shall be the minimum number required by the zoning ordinance.

8.7.2.3.3. Any alternative access way and parking surfaces shall be approved by CAMA.

8.7.2.3.4. There shall be no expansion to the existing dwelling which would result in an increase in the number of required parking spaces or lot coverage.

8.7.2.3.5. The access way shall not exceed ten (10) feet in width.

8.7.2.3.6. For lots of record which front on Town approved access easements, yard and lot depth measurements shall be made from the lot line and not from the access easement provided for in Appendix A, Definitions, Yard.

8.7.2.4. The property owner, by acceptance of the issued zoning permit and performance of the work authorized by said permit, acknowledges and accepts that the granting of the reductions allowed by this section may result in the creation or increase of nonconformities on the property.

ARTICLE 9. THE VILLAGE AT NAGS HEAD SPD-C ZONING ORDINANCE

PART I. GENERALLY 9-4
Section 9.1 Title; Enactment; Purpose 9-4
Section 9.2 Intent; Relationship to Other Ordinances 9-4
9.2.1. Intent 9-4
9.2.2. Relation of SPD-C Regulations to General Zoning, Subdivision, or Other Regulations 9-4
Section 9.3 Official Maps 9-5
Section 9.4 Procedure 9-5
9.4.1. Effect of Approval of SPD-C Zoning 9-5
9.4.2. Site Development Plans 9-5
9.4.3. Amendment of Development Plan 9-6
Section 9.5 Reserved 9-6

PART II. ESTABLISHMENT OF DISTRICTS 9-7
Section 9.6 Generally 9-7
Section 9.7 Rules Governing the Interpretation of District Boundaries 9-7
Sections 9.8-9.10 Reserved 9-7

PART III. APPLICATION OF REGULATIONS 9-8
Section 9.11 Territorial Jurisdiction 9-8
Section 9.12 Land Use Regulations 9-8
Sections 9.13-9.15 Reserved 9-8

PART IV. GENERAL STANDARDS AND REGULATIONS 9-9
Section 9.16 Development Standards and Requirements 9-9
Section 9.17 Transportation Standards 9-10
9.17.1. US 158 (Major Road) 9-10
9.17.2. Village Parkway (Collector) 9-10
9.17.3. NC 12 (Collector) 9-10
9.17.4. Loop Street (Interior Collector) 9-11
9.17.5. Minor Street 9-11
Section 9.18 Regulations Governing Signs and Outdooring Advertising Structures 9-12
9.18.1. Generally 9-12
9.18.2. Master Sign Plan; Submission Required 9-12
9.18.3. Commercial 1, Commercial 2, and Hotel District 9-12
9.18.4. Institutional District 9-13
9.18.5. Detached Single-Family Homes, Attached Single-Family Homes, Townhouses Multifamily Homes and Recreational Districts 9-13
9.18.6. Tract Identification Signs 9-13
Sections 9.19-9.20 Reserved 9-14

PART V. SCHEDULE OF DISTRICT REGULATIONS 9-15
Section 9.21 Commercial 1 District 9-15
9.21.1. Intent 9-15
9.21.2. Permitted Uses 9-15
9.21.3. Enclosed Uses 9-15
9.21.4. Exterior Storage and Sales Areas 9-15

9.21.5. Incidental Manufacturing and/or Repair or Services 9-15
9.21.6. Conditional Uses 9-15
9.21.7. General Provisions 9-15
9.21.8. Table of Development Standards 9-18
Section 9.22 Commercial 2 District 9-18
9.22.1. Intent 9-18
9.22.2. Permitted Uses 9-19
9.22.3. Conditional Uses 9-19
9.22.4. Access Points 9-19
9.22.5. Dimensional Requirements 9-19
9.22.6. Architectural 9-20
9.22.7. Signage 9-20
9.22.8. Landscaping 9-23
9.22.9. Lighting 9-23
9.22.10. Sewage Disposal 9-24
Section 9.23 Institutional District 9-24
9.23.1. Intent 9-24
9.23.2. Permitted Uses 9-24
9.23.3. Conditional Uses 9-24
9.23.4. Access Points 9-24
9.23.5. Dimensional Requirements 9-24
Section 9.24 Hotel District 9-25
9.24.1. Intent 9-25
9.24.2. Permitted Uses 9-25
9.24.3. Conditional Uses 9-25
9.24.4. Fire Code Requirements 9-25
9.24.5. Development Standards 9-25
9.24.6. Loading Zones 9-27
9.24.7. Vehicle Access 9-28
9.24.8. Architectural 9-28
9.24.9. Signage 9-28
9.24.10. Landscaping 9-31
9.24.11. Ocean Views 9-31
Section 9.25 Detached Single-Family District 9-32
9.25.1. Intent 9-32
9.25.2. Permitted Uses 9-32
9.25.3. Conditional Uses 9-32
9.25.4. General Development Standards 9-32
9.25.5. Single-Family One District Standards 9-33
9.25.6. Single-Family Two District Standards 9-33
9.25.7. Single-Family Three District Standards 9-33
Section 9.26 Attached Single-Family District 9-34
9.26.1. Intent 9-34
9.26.2. Permitted Uses 9-34
9.26.3. Conditional Uses 9-34
9.26.4. General Development Standards 9-34
9.26.5. Single-Family Four District Standards 9-35
9.26.6. Single-Family Five District Standards 9-35

Section 9.27 Multifamily District 9-35
9.27.1. Intent 9-35
9.27.2. Permitted Uses 9-36
9.27.3. Conditional Uses 9-36
9.27.4. General Development Standards 9-36
9.27.5. Multifamily One District Standards 9-36
9.27.6. Multifamily Two District Standards 9-37
Section 9.28 Townhouse I District 9-37
9.28.1. Intent 9-37
9.28.2. Permitted Uses 9-38
9.28.3. Development Standards 9-38
9.28.4. Design Options 9-39
9.28.5. Benefits from Design Options 9-40
Section 9.29 Recreation District 9-40
9.29.1. Intent 9-40
9.29.2. Permitted Uses 9-40
9.29.3. Dimensional Requirements 9-42
Sections 9.30-9.35 Reserved 9-42

PART VI. TABLES OF USES AND ACTIVITIES 9-43
Section 9.36 Table of Uses and Activities for the SPD-C District 9-43
Section 9.37 Supplemental Regulations for the SPD-C District 9-45
9.37.1. Hotels 9-45
9.37.2. Home Center 9-45
9.37.3. Child Day Care Center 9-45
9.37.4. Restaurant, Drive-In 9-46
9.37.5. Restaurant, Drive-Through 9-46
9.37.6. Outdoor Stands, Accessory to Shopping Mall/Neighborhood Shopping Center 9-46
9.37.7. Wastewater Treatment Plants 9-47
9.37.8. Heliports, Accessory to a Hospital 9-47
9.37.9. Hospitals 9-49
9.37.10. Telephone Switching Station and Electric Substation 9-50
9.37.11. Portable Storage Units/Temporary Construction Trailers 9-51
Sections 9.38-9.40 Reserved 9-51

PART I. GENERALLY

SECTION 9.1 TITLE; ENACTMENT; PURPOSE.

9.1.1. This Article shall be known as "The Village at Nags Head SPD-C Zoning Ordinance."

9.1.2. In accordance with the provisions of G.S. 160A-360 et seq., and the original zoning ordinance, , an application was made for the rezoning of approximately 410 acres of land known as the Epstein Property and defined as described therein as "The Village at Nags Head." The Planning Board and the Board of Commissioners found that the application complied with the terms of the zoning ordinance and the Board of Commissioners found this as a fact. Therefore, is created a special planned development-community district pursuant to the terms of this article which shall be designated as "The Village at Nags Head."

SECTION 9.2 INTENT; RELATIONSHIP TO OTHER ORDINANCES.

9.2.1. Intent.
The following general provisions are intended solely to regulate existing special planned development-community (SPD-C) districts and to prohibit the creation of any new SPD-C districts subsequent to August 4, 1993. Within the existing SPD-C district created prior to August 4, 1993, regulations adapted to unified planning and development are intended to accomplish the purposes of zoning and other applicable regulations to the same degree as in districts in which conventional regulations are intended to control development on a lot-by-lot basis. This procedure is intended to promote economical and efficient land use, a higher level of amenities, appropriate and harmonious variety in physical development, design, and an improved living and working environment.

9.2.2. Relation of SPD-C Regulations to General Zoning, Subdivision, or Other Regulations.
The provisions which follow shall apply generally to the regulation of the SPD-C district. Where there are conflicts between these special provisions and general zoning, subdivision or other regulations or requirements, these special regulations shall apply in the SPD-C district unless the Board of Commissioners find, in the particular case:

> ***9.2.2.1.*** Provisions in this section do not serve public purposes to a degree at least equivalent to this UDO or other regulations or requirements; or
>
> ***9.2.2.2.*** Actions, designs or solutions proposed by the applicant, although literally in accord with these special regulations or general regulations, do not satisfy public purposes to at least an equivalent degree.

Except as indicated in this subsection 9.2.2, procedures and requirements set forth in this section shall apply in the SPD-C district and to issuance of any permits required. When a particular element is not addressed in the SPD-C regulations, the regulations of this UDO shall apply.

SECTION 9.3 OFFICIAL MAPS.

9.3.1. The maps contained in the Master Plan for The Village at Nags Head, prepared by Jerry Turner and Associates, and which are labeled as "The Village at Nags Head Master Land Use Plan," "The Transportation and Utilities Plan," "The Recreation and Open Space Map," and the "Illustrative Master Plan" shall be the official maps for the SPD-C district. Such maps are on file in the Town Hall bearing the signature of the Mayor and attested by the Town Clerk and shall be the official zoning maps of such special planned development-community district known as The Village at Nags Head.

9.3.2. The plat of the outer boundaries of The Village at Nags Head are those boundaries as shown on a plat prepared by Quible & Associates, Inc., and duly recorded in the Dare County Register of Deeds at Plat Cabinet A, page 299, a copy of which is also on file at the Town Hall and labeled "Survey Plat for Nags Head Village."

SECTION 9.4 PROCEDURE.

9.4.1. Effect of Approval of SPD-C Zoning.
Within the boundaries of the SPD-C district, the provisions and development standards of this section shall apply as well as any additional requirements or regulations which may be made a part of an approved development plan for such district by the Board of Commissioners. Any deviation from or failure to comply with such a requirement shall be considered to be a violation of this UDO and shall be treated under the provisions of Section 1.10, Violation of UDO Regulations.

9.4.2. Site Development Plans.
No site plan for a proposed use within any zone or district of the SPD-community district shall be accepted for review by the Town unless and until the Board of Commissioners has reviewed proposed rules and regulations governing development in that zone or district and has officially adopted those specific rules and regulations as a part of the SPD-community district section. No building permit shall be issued in the SPD-C district unless and until the Planning Board and Board of Commissioners have approved site development plans and reports for the development as a whole or stages or portions of it which are satisfactory to them in relation to total development. No structure or use other than as indicated in approved site development plans and reports shall be permitted. Detailed site development plans for all or any part of the SPD-C district shall be submitted, reviewed and subsequently amended in accordance with the procedures established for site plan review in Article 4, Development Review Process of this UDO. Each site development plan shall:

9.4.2.1. Be in accordance with the approved development plan.

9.4.2.2. Include all the information required for the submission of subdivision plats.

9.4.2.3. Show the existing topography and proposed grading at the site at contour intervals of not more than two (2) feet, including existing vegetation, natural features, major dunes, areas liable to flooding and shore conditions.

9.4.2.4. Include a grading plan showing proposed water runoff and plans for siltation and erosion control, both during and after construction.

9.4.2.5. Show the location, height, ground coverage and use of all structures and the location and areas of open spaces, parking areas and areas dedicated to public use.

9.4.2.6. Show all easements and rights-of-way existing or proposed.

9.4.2.7. Show the location, dimension and grades of all roads, streets and driveways, parking facilities, points of access to surrounding streets and pedestrian walks and highways.

9.4.2.8. Indicate, for each residential structure, the number and type of dwelling units classified by the number of bedrooms and the total floor area to be used for commercial purposes.

9.4.2.9. Indicate the floor area of all nonresidential buildings.

9.4.2.10. Provide a landscaping and screening plan, showing all manmade features, and the location, mature size and species of all planting materials.

9.4.2.11. Provide an exterior lighting plan.

9.4.2.12. Show the location of all parks and other community recreational facilities, indicating the location and use of all such land which will be dedicated to public use.

9.4.2.13. Include documents indicating the manner in which any land or facility intended for public or quasi-public use, but not proposed to be in public ownership, will be held, owned and maintained in perpetuity for the indicated purposes.

9.4.3. Amendment of Development Plan.

A proposal for amendment of a development plan for the SPD-C district which does not change the overall density of the district nor increase the amount of approved commercial acreage, nor change the boundaries of the area zoned SPD-C may be approved by the Board of Commissioners after submission for review and recommendation to the Planning Board. Any other amendments to a development plan for the SPD-C district shall be treated under the procedures of Section 3.5, UDO Text Amendment/Zoning Map Amendment of this UDO.

SECTION 9.5 RESERVED.

PART II. ESTABLISHMENT OF DISTRICTS

SECTION 9.6 GENERALLY.

The zoning districts into which this special planned development-community district are divided are those districts shown on the official master land use plan map for The Village at Nags Head, referred to as the "Official Zoning Map for The Village at Nags Head." Subsequent to August 4, 1993, the creation of any new SPD-C districts shall be prohibited.

SECTION 9.7 RULES GOVERNING THE INTERPRETATION OF DISTRICT BOUNDARIES.

Where uncertainty exists with respect to the boundaries of any of the zoning districts, as shown on the "Official Zoning Map for The Village at Nags Head," the following rules shall apply:

9.7.1. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

9.7.2. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline. Boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such centerlines.

9.7.3. Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by subsections 9.7.1 and 9.7.2 of this section, the Board of Adjustment shall interpret the district boundaries.

SECTION 9.8 – 9.10 RESERVED.

PART III. APPLICATION OF REGULATIONS

SECTION 9.11 TERRITORIAL JURISDICTION.

The provisions of this article shall apply to all lands, structures and uses thereon, within areas designated on The Village at Nags Head Master Plan. If a particular item is not addressed in this article, the regulations of this UDO or The Village at Nags Head Master Plan shall apply.

SECTION 9.12 LAND USE REGULATIONS.

The land use categories for The Village at Nags Head have a traditional planning hierarchy of classifications in a reverse pyramid structure as follows:

- Hotel district
- Commercial 1 district
- Beach and tennis club district
- Multi-family home district
- Attached single-family home district
- Detached single-family home district

Any proposed changes to land use district classifications assigned to properties in the Village at Nags Head SPD-C district shall follow the same procedure as prescribed under Section 3.5, UDO Text Amendment/Zoning Map Amendment of this UDO for the consideration of amendments to the zoning map.

SECTION 9.13 – 9.15 RESERVED.

PART IV. GENERAL STANDARDS AND REGULATIONS

SECTION 9.16 DEVELOPMENT STANDARDS AND REQUIREMENTS.

Within the SPD-C District, the following development standards and requirements shall apply:

9.16.1. Not less than twenty (20) percent of the total acreage of the SPD-C district shall be designated as common open space. Common open space shall not include any land covered by streets or parking areas or residential or commercial buildings but may include unimproved lands, required buffers or setbacks and common facilities such as swimming pools and tennis courts. In addition, a golf course proposed to be constructed, maintained and operated in private ownership may be included as a component of the required twenty (20) percent of "common open space," provided that the land to be devoted to golf course use shall be described in an easement to be granted to and accepted by the Town, pursuant to G.S. 160A-401—160A-407, requiring the land to remain in perpetuity as open space as defined in G.S. 160A-407. Such easement, however, shall not preclude the construction and use of a clubhouse, maintenance building, and other structures customarily associated with the operation of a golf course, but the land covered by such structures shall be excluded from the computation of open space.

9.16.2. Not less than forty (40) percent of the dwelling units within the SPD-C district shall be detached single-family dwellings.

9.16.3. Not more than thirty-five (35) percent of the dwelling units within the SPD-C district may be duplexes, townhouses and/or multifamily dwellings being no more than one hundred forty (140) feet in length, more than forty-eight (48) feet in width, or more than thirty-five (35) feet in height.

9.16.4. Not more than twenty-five (25) percent of the dwelling units within the SPD-C district may be multifamily dwellings other than those specified in subsection 9.16.3 of this section.

9.16.5. The overall dwelling unit density for any SPD-C district shall not exceed six (6) dwelling units per acre.

9.16.6. Permitted and conditional uses in the C-2 general commercial district may be approved as part of the total development plan, provided that:

> ***9.16.6.1.*** No more than twelve (12) percent of the total SPD-C district acreage is devoted to commercial use.
>
> ***9.16.6.2.*** No commercial use shall be located within five hundred (500) feet of any residential district not a part of the SPD-C district.
>
> ***9.16.6.3.*** All commercial uses shall comply with Article 10, Performance Standards.
>
> ***9.16.6.4.*** No part of the area shown on the development plan as commercial acreage shall be included in the computation of residential density for the total SPD-C district.

9.16.6.5. Primary vehicular access shall be from a public thoroughfare and shall be designed to minimize conflict with the flow of traffic, to reduce congestion and avoid potential hazards for vehicles and pedestrians.

SECTION 9.17 TRANSPORTATION STANDARDS.

9.17.1. US 158 (Major Road).

9.17.1.1. Purpose. A major thoroughfare for north/south through traffic. Entrance and exit from abutting commercial and office districts.

9.17.1.2. Width of Right-of-Way. State department of transportation standard.

9.17.1.3. Paving width. State department of transportation standard.

9.17.1.4. Parking. Not allowed.

9.17.1.5. Building Setback Lines.

9.17.1.5.1. Commercial: 45 feet.

9.17.1.5.2. Office: 45 feet.

9.17.1.5.3. Residential: 40 feet.

9.17.2. Village Parkway (Collector).

9.17.2.1. Purpose. To allow vehicular access from US 158 to local and loop streets.

9.17.2.2. Width of Right-of-Way. 60 feet minimum.

9.17.2.3. Paving Width. Minimum 24-foot paved surface, with two lanes. Each lane, 12 feet wide when abutting and 14 feet when a median occurs.

9.17.2.4. Parking. Not allowed.

9.17.2.5. Sidewalks. A minimum five feet wide and detached from street on one side of the Village Parkway. The requirement for sidewalks shall not be applicable to Seachase Drive, Links Drive, or Bay Meadow Drive west of US 158.

9.17.2.6. Planting Strip. Planting islands occur in medians.

9.17.2.7. Building Setback Lines. A minimum 30 feet from right-of-way.

9.17.3. NC 12 (Collector).

9.17.3.1. Purpose. To provide a north/south "beach" road with access to local streets. Entrance and exit from abutting commercial, residential, or hotel districts.

9.17.3.2. Width of Right-of-Way. 60 feet minimum.

9.17.3.3. Paving Width. 24 feet paved surface with two 12-foot lanes.

9.17.3.4. Sidewalks. A minimum five feet wide and detached from curb when sidewalks are deemed necessary. The requirement for sidewalks shall not be applicable to Seachase Drive, Links Drive, or Bay Meadow Drive west of US 158.

9.17.3.5. Building Setback Lines. A minimum 30 feet from the right-of-way.

9.17.4. Loop Street (Interior Collector).

9.17.4.1. Purpose. To provide vehicular traffic access off collector street and onto private drives or parking bays. Non-conducive to through traffic.

9.17.4.2. Width of Right-of-Way. 60 feet minimum.

9.17.4.3. Paving Width. 22 feet paved surface, with two lanes. Each lane shall be 11 feet wide when abutting and 12 feet wide when a median occurs.

9.17.4.4. Sidewalks. A minimum five feet wide and detached from street on one side of the loop street. The requirement for sidewalks shall not be applicable to Seachase Drive, Links Drive, or Bay Meadow Drive west of US 158.

9.17.4.5. Planting Strip. Planting islands occur in medians and shall be maintained by the Village at Nags Head Homeowners' Association.

9.17.4.6. Building Setback Lines. A minimum 20 feet from right-of-way.

9.17.5. Minor Street.

9.17.5.1. Purpose. To provide vehicular traffic access to residentially zoned properties with a projected low traffic count, on which through traffic is discouraged and which is designed to serve no more than 50 dwelling units.

9.17.5.2. Width of Right-of-Way. 40 feet minimum.

9.17.5.3. Paving Width. 20 feet paved surface with two ten feet lanes. Cul-de-sac shall have a minimum 80-foot diameter or other appropriate turnaround.

9.17.5.4. Sidewalks. Not required.

SECTION 9.18 REGULATIONS GOVERNING SIGNS AND OUTDOOR ADVERTISING STRUCTURES.

9.18.1. Generally.

Unless otherwise specified in this section, the Village at Nags Head is covered by the Town sign provisions of Article 10, Part III, regulations governing signs and outdoor advertising structures. However, recognizing that special planned development community districts are exempt from certain other requirements of this UDO such as dimensional requirements, the Board of Commissioners shall have broad authority to vary or modify the requirements of Article 10, Part III, Sign Regulations. This proposal to vary or modify this article would include those sections of this article listed above plus the additional regulations listed below which would allow the spirit of Article 10, Part III to be observed and the purposes and intent of the special planned development-community district as contained in this article to be fulfilled.

9.18.2. Master Sign Plan; Submission Required.

The Village at Nags Head shall be required to submit a master sign plan for approval by the Board of Commissioners before a building permit is issued and prior to any signs being erected. This master sign plan shall include drawings and specifications, dimensions and maps showing proposed locations and maintaining the proper site distance from street intersections as required by any Town ordinance, or the state department of transportation.

9.18.3. Commercial 1, Commercial 2, and Hotel District.

9.18.3.1. See Article 10, Part III, Sign Regulations.

9.18.3.2. Only one main freestanding sign per Commercial 1 (shopping center) and Commercial 2 (commercial/office) district as designated in the Master Plan for the Village at Nags Head shall be permitted. This main sign shall be located permanently on the ground, and shall not exceed sixteen (16) feet in height above the street grade and no more than two hundred (200) square feet in area on each side. Main signs for the hotel districts will have a maximum height of sixteen (16) feet and be no more than thirty-two (32) square feet in area on each side.

9.18.3.3. Two (2) square feet of business sign area for each lineal foot of store frontage shall be allowed. Stores which are corner stores shall be entitled to the amount of lineal footage on both store fronts.

9.18.3.4. All signs placed against the exterior wall of the building shall not extend more than twenty-four (24) inches beyond the building wall surface, and no one sign shall exceed twenty (20) percent of the exposed finished wall surface. Freestanding buildings may have no more than three signs per building.

9.18.3.5. One under-canopy sign, visible from the sidewalk, will be permitted for each store, shop, office, or auxiliary facility, and shall not exceed five (5) square feet in area nor be a hazard to pedestrian traffic.

9.18.3.6. Directional signs not exceeding three (3) square feet in area and twenty-four (24) inches in height indicating entrances and exits to the building shall be permitted. Directional sign square footage shall not be included in gross sign area.

9.18.4. Institutional District.

9.18.4.1. One freestanding sign per lot, per road frontage not to exceed forty (40) square feet each.

9.18.4.2. Wall signs shall be permitted, not to exceed ten percent of the exposed finished wall surface.

9.18.4.3. Directional signs not exceeding three (3) square feet and twenty-four (24) inches in height indicating entrances and exits to the buildings shall be permitted.

9.18.5. Detached Single-Family Homes, Attached Single-Family Homes, Townhouses, Multi-Family Homes and Recreational Districts.

9.18.5.1. See Section 10.23, Signs Permitted in Residential Districts.

9.18.5.2. No sign may be located to impair traffic visibility as determined by a sight triangle as per the division of highway, state department of transportation, Subdivision Roads, Minimum Construction Standards, May 1, 1983; however, "island signs" are permitted in the right-of-way as long as the sight triangle is not obstructed.

9.18.6. Tract Identification Signs.

9.18.6.1. Class 1, On-Premises Permanent Subdivision.

9.18.6.1.1. Two neighborhood identification signs along US 158 are permitted for major entrances to the western area.

9.18.6.1.2. The area of copy for each identification sign may not exceed 16 square feet.

9.18.6.1.3. No extremity of a sign structure used to support or decorate tract identification signs shall exceed an area of 32 square feet.

9.18.6.1.4. The height of the sign shall not exceed four feet.

9.18.6.2. Class 2, Community Subdivision.

9.18.6.2.1. One identification sign along US 158 is permitted for major entrances.

9.18.6.2.2. The area of copy for each identification sign for major entrances may not exceed 30 square feet.

9.18.6.2.3. No extremity of a sign structure used to support or decorate community identification signs shall exceed an area of 300 square feet.

9.18.6.2.4. The height of the community sign shall not exceed eight feet.

9.18.6.3. Class 3, Recreational.

9.18.6.3.1. One identification sign for each recreational activity is permitted.

9.18.6.3.2. The identification sign for the Nags Head Golf Links shall be permitted along US 158 for the main entrance at West Seachase Drive with authorization from the property owner, Village POA.

9.18.6.3.3. The copy, structure, and height are the same as Class 1.

SECTION 9.19 – 9.20 RESERVED.

PART V. SCHEDULE OF DISTRICT REGULATIONS

SECTION 9.21 COMMERCIAL 1 DISTRICT.

9.21.1. Intent.
The Commercial 1 district is established to provide for the proper grouping and development of commercial facilities to serve the entire community. The Commercial 1 district shall be at least fifteen (15) acres in area.

9.21.2. Permitted Uses.
Permitted uses in the Commercial 1 district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District.

9.21.3. Enclosed Uses.
Uses enclosed within a building, including office, institutional, recreation, retail, service, and wholesale, are permitted by right in the Commercial 1 district as provided in Section 9.36, Table of Uses and Activities in the SPD-C District. Manufacturing and/or repair shall be allowed if related to the principal uses listed in this subsection, but any such use involving manufacturing or repair shall be a maximum of 5,000 square feet in floor area.

9.21.4. Exterior Storage and Sales Areas.
Exterior storage and sales areas ancillary to the uses of subsection 9.21.3 shall be allowed if screened from exterior public rights-of-way on the rear and side property lines, and from adjacent residential areas.

9.21.5. Incidental Manufacturing and/or Repair or Services.
The uses permitted in this section for incidental manufacturing and/or repair or service are permitted only where no obnoxious odors, aromas, fumes, or loud noises, or other side effects created which would be detrimental to the health, safety, and welfare of the surrounding businesses.

9.21.6. Conditional Uses.
Conditional uses in the Commercial 1 district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District, subject to the requirements of this Commercial 1 district and additional regulations and requirements imposed by the Board of Commissioners in accordance with Section 3.8, Conditional Use Permits.

9.21.7. General Provisions.
All permitted and conditional uses within the Commercial 1 district unless otherwise specified shall comply with the provisions. In cases where these standards conflict with the standards contained in Article 10, Part VI, Commercial Design Standards, the more restrictive standard shall apply.

> ***9.21.7.1.*** A 12-foot wide paved access, which can be used as a fire lane, shall be provided along each of the four sides of buildings greater than 10,000 square feet. (Buildings less than 10,000 square feet are exempt from this requirement.) All other parking, off-street loading, and unloading areas shall be provided in accordance with Section 10.92, Street Access, Parking Lot Design, and Pavement Standards of this UDO and shall be marked so as to be distinguished from

driveways and parking areas. Required loading areas shall be designed so as not to block the fire lane.

9.21.7.2. Screened dumpsters shall be provided in accordance with Chapter 30 of the Town Code.

9.21.7.3. Accessible parking spaces as well as required loading and transition areas shall be provided in accordance with the effective version of the North Carolina Accessibility Code.

9.21.7.4. A sidewalk or boardwalk constructed to provide a grade separation from vehicular traffic of at least six (6) inches shall connect all commercial establishments within each building. Separate buildings shall be connected with pedestrian passageways that are striped when crossing traffic lanes.

9.21.7.5. A minimum walkway, pedestrian pavement in front of a retail store or group of stores greater than 10,000 square feet, shall be eight (8) feet wide. Where the building exceeds twenty (20) feet in height above the finished grade, the walkway shall be increased one (1) foot for each two (2) feet of additional building height. (Buildings less than 10,000 square feet shall be exempt from this requirement.)

9.21.7.6. No portion of any building shall be farther than two hundred fifty (250) feet or closer than fifty (50) feet to a fire hydrant.

9.21.7.7. Fire hydrants shall be protected from traffic in accordance with Section 20-1 of the Town Code and shall be marked with stripes on the pavement within the protected area.

9.21.7.8. If the structures are not considered sprinkler protected according to the applicable National Fire Protection Association standards, the fire flow of the hydrants serving or intended to serve the structures shall be tested at the developer's expense by the Town fire department or by an independent testing firm. If the test is conducted by an independent testing firm, it shall be made under the direct supervision of the Town fire chief or his designee. A fee, in accordance with the most recently adopted consolidated fee schedule, shall be paid by the developer. If the flow is found to be deficient according to the insurance service office standards applicable to the Town, the developer shall bring the fire flow up to the established requirements set out in the insurance service office standards. The fire flow test shall be made during the period of peak water demand as determined from water consumption data maintained by the Town water department.

9.21.7.9. Traffic shall be diverted upon entering the parking lot or speed bumps shall be provided to slow traffic.

9.21.7.10. A minimum of six hundred (600) feet of frontage along a street shall be required before two accessways are permitted to the same street. A minimum of nine hundred (900) feet of frontage shall be required before three accessways are permitted. No shopping center

shall have more than three accessways to one street. The accessways shall comply with the following standards:

9.21.7.10.1. Accessways shall not be less than thirty (30) feet or more than forty (40) feet in width at their intersection with the property line.

9.21.7.10.2. The principal accessways shall have an exit lane for left turns where permitted and an exit lane for right turns and one entrance lane. The lanes shall be appropriately marked as to exit and entrance.

9.21.7.10.3. At its intersection with the property line, an accessway shall not be less than one hundred (100) feet from another accessway or fifty (50) feet from a corner of the property. Notwithstanding, at least one accessway will be allowed for each shopping area.

9.21.7.11. Each shopping center with its buildings, parking lots and driveways shall be physically separated from each adjoining street by a curb or other suitable barrier to prevent unchanneled vehicular ingress or egress.

9.21.7.12. If the shopping center is to be constructed in progressive stages, no occupancy permit will be granted for any one stage until all site improvements and conditions assigned to the stage being constructed are completed.

9.21.7.13. Lighting in accordance with the Town lighting standards shall be installed in all parking and service areas.

9.21.7.14. A buffer shall be maintained along property lines abutting any neighboring lots not a part of the shopping center. The buffer shall be a fifty (50) foot wide grassed open space or a vegetative buffer of a minimum width of five (5) feet that will reach a minimum height of ten (10) Feet within five years.

9.21.7.15. Public restrooms shall be provided in a convenient and easily identifiable location at the developer's expense.

9.21.7.16. There shall be a minimum twenty (20) foot separation between detached buildings.

9.21.7.16.1. Freestanding Buildings. Separation between buildings or groups of buildings shall be a minimum of twenty (20) feet where buildings are side by side and have no natural lighting requirements in the space adjacent to the separation between buildings. Where buildings face one another, the minimum distance between the face of buildings, not inclusive of any canopy or overhangs, shall be thirty-five (35) feet, a minimum of a twenty (20) foot space must be left as access areas for fire trucks with a head clearance of at least sixteen (16) feet.

9.21.7.16.2. Connected Buildings. In order to provide fire protection for buildings which house a group of stores within one or more connected buildings, there shall be areas for fire protection so as to serve both the front and rear of such connecting buildings.

9.21.7.17. A pre-application conference shall be held between the Planning Board and the applicant.

9.21.8. Table of Development Standards.

9.21.8.1. Minimum Lot Area. That area of land described as the district boundaries for Commercial 1. (The minimum area shall be 15 acres.)

9.21.8.2. Minimum Front Yard. 75 feet from the main complex or the easternmost portion thereof from US 158.

9.21.8.3. Minimum Side Yard. There is no minimum side yard required.

9.21.8.4. Minimum Rear Yard. Five (5) feet between the rear side of a building and the adjacent parking area.

9.21.8.5. Maximum Lot Coverage. Eighty (80 percent of the district area.

9.21.8.6. Height Limitation. Thirty-five (35) feet, except that a cupola or tower which serves as the focal point of the shopping center may be constructed not to exceed forty-five (45) feet in height.

9.21.8.7. Parking Required. Parking shall be provided in accordance with Article 10, Part II, Off-Street Parking and Loading Requirements of this UDO.

9.21.8.8. Loading Space Required. One (1) loading space for each 20,000 gross square feet of the building area of Commercial 1. A loading space is defined as being an unencumbered area 12 by 60 feet in area.

9.21.8.9. Division of Ownership. Nothing within the table of development standards of this article shall preclude a division of ownership of areas within the district, provided that the structures thereon are in compliance with the requirements of this article.

SECTION 9.22 COMMERCIAL 2 DISTRICT.

9.22.1. Intent.

The Commercial 2 district is established to provide for the proper grouping and development of small, independently owned commercial facilities to serve the entire community. All Commercial 2 districts shall be at least five (5) acres in area. The Commercial 2 districts are those areas identified as the commercial/office areas on the Village at Nags Head Master Land Use Plan.

9.22.2. Permitted Uses.

Permitted uses in the Commercial 2 district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District. Lots intended for SF #1, SF #2, or SF #3 uses as specified in Section 9.25, Detached Single-Family District, shall be designated on the plat of record.

9.22.3. Conditional Uses.

Conditional uses in the Commercial 2 district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District, subject to the requirements of this Commercial 2 district and additional regulations and requirements imposed by the Board of Commissioners in accordance with Section 3.8, Conditional Use Permits.

9.22.4. Access Points.

Accessways in the Commercial 2 district off US 158 shall be only where designated on the illustrative master plan. Each lot that fronts on either Mall Drive or Epstein Drive shall be entitled to one access (curb cut) onto either of those streets except where the Town has approved a unified access plan. When a unified access plan has been approved by the Town, access shall be in strict adherence with that approved access plan. All accessways shall be at least one hundred (100) feet from an intersection with NC 12 or US 158.

9.22.5. Dimensional Requirements.

Dimensional requirements in the Commercial 2 district are as follows. In cases where these standards conflict with the standards contained in Article 10, Part VI, Commercial Design Standards, the more restrictive standard shall apply.

9.22.5.1. Maximum Density. Not Applicable.

9.22.5.2. Coverage.

9.22.5.2.1. Maximum Building. Thirty (30) percent.

9.22.5.2.2. Maximum Parking. Fifty (50) percent.

9.22.5.2.3. Minimum Landscaped Space. Twenty (20) percent. Landscaped space does not include parking, drives, or buildings, but does include walks, gazebos, fountains, plant material, other landscaping features, etc.

9.22.5.3. Building Setback Requirements.

9.22.5.3.1. A minimum of forty (40) feet from US 158 right-of-way.

9.22.5.3.2. A minimum of thirty (30) feet from NC 12 right-of-way.

9.22.5.3.3. A minimum of fifty (50) feet from residential districts.

9.22.5.3.4. A minimum of twenty-five (25) feet from side road rights-of-way.

NOTE: Ten (10) feet may be deducted from the minimum when the area is bermed and planted or solidly fenced. The height of the planting or fence shall be six (6) feet above the road's surface.

9.22.5.4. Building-to-Building Separation.

9.22.5.4.1. A minimum of ten (10) feet separation between one-story structures.

9.22.5.4.2. A minimum of twenty (20) feet separation between two-story structures.

9.22.5.4.3. A minimum of thirty (30) feet separation between three-story structures.

9.22.5.5. Building Height Limitation. A maximum of thirty-five (35) feet.

9.22.5.6. Building Size. No single retail space, either freestanding or within an attached cluster, shall exceed 10,000 square feet in floor area.

9.22.6. Architectural.

Each building cluster in the Commercial 2 district shall be architecturally compatible. A building cluster shall be a grouping of two or more businesses housed in either attached or detached structures in a definable district. Attaching will be encouraged.

9.22.7. Signage.

There shall be a limitation on signage in the Commercial 2 district which will require architectural review committee approval for uniform district conformity and a building permit from the Town. (See Article 10, Part III of this UDO for the signage approval process.)

9.22.7.1. As an alternative to the Village Commercial 2 district sign, and applicable only to the Village Commercial 2 district, one freestanding sign may be located on-site, subject to the following criteria: It is the purpose of this section to permit an applicant an opportunity to erect one permanent freestanding sign on-site as long as specific architectural, site, and building design standards developed by the Town are adhered to. These standards are designed to preserve and promote open space on commercial sites, promote more landscaped area, reduce impervious surfaces, and to promote architectural and design standards that are indicative of our Nags Head heritage. A freestanding sign may be erected, subject to the following conditions:

9.22.7.1.1. The current Village C2 district sign shall be removed before a developer can erect a freestanding sign.

9.22.7.1.2. A freestanding sign shall not exceed ten (10) feet in height above street grade.

9.22.7.1.3. The freestanding sign shall require architectural review and approval by the Town Planning Board and the Board of Commissioners.

9.22.7.1.4. Only one (1) freestanding sign shall be allowed per site.

9.22.7.1.5. A developer shall be allowed one freestanding sign based on adherence to the development points listed below. The following development point system shall be used to determine the maximum allowable freestanding sign for a site.

9.22.7.1.6. A developer must meet the minimum number of required points for each section if a freestanding sign is to be allowed:

SECTION I. BUILDING ARCHITECTURE.

The Town has a rich architectural history. A combination of certain design elements, i.e., wraparound porches, cedar shake shingles, and cupolas, have helped to define our area and are an integral part of what allows our community to stand out from the rest. By encouraging these architectural designs, we are not only promoting our heritage, we are preserving an aesthetic quality that has made our community a desirable place to live and vacation. (Construction specifications from the Residential Design Manual, Appendix B, as amended, shall be used as reference for the criteria below.)

TABLE 9-1: BUILDING ARCHITECTURE DESIGN ELEMENTS

Criteria	Development Points
1. A front porch along the entire front of the building or a wraparound porch along two sides of a building that is not used for commercial purposes. The porch roof must be a lower pitch than the roof of the building.	Three points
2. Cedar shake, natural wood exterior, or the use of hardiplank; must cover the entire exterior of a building excluding doors and windows.	Three points
3. A 6 to 12 or greater building roof pitch (NOTE: All roofs must still observe the Town height limitation of 35 feet or 42 feet with an 8:12 roof pitch).	Two points
4. The presence of functional wood shutters on all windows.	One point
5. The presence of hip or gable dormers on the building. A shed dormer.	One point Three points
6. The total area of the building's façade is made up of only 15% of glass or window area.	Two points
7. The presence of a multiplane window façades on single pane windows.	One point
8. Lifesaving station watch tower, 10 feet x 10 feet, or greater Coastal watch tower, 6 feet x 6 feet, or greater	Three points One point
9. Hip roof, or combination of hips and gables, or mansard if the building contains more than 6,000 enclosed square feet on the ground level.	Three points
10. Cedar shake shingles on entire roof (gable, hip, shed, or mansard; not parapet).	Three points
MINIMUM NUMBER OF REQUIRED POINTS	13 POINTS

SECTION II. LANDSCAPED SPACE AND INTENSITY.

The Town has made it a goal to preserve to the greatest extent possible the aesthetic and visual integrity of the Town. This includes our natural and manmade environments. One way to accomplish this goal is to work with developers to try and preserve as much

of a natural landscape as possible. By requiring more open space, providing for more protection of existing vegetation, and in providing more landscaping the Town is working to lower the intensity of commercial development and afford greater protection of our natural environment.

TABLE 9-2: LANDSCAPED SPACE AND INTENSITY DESIGN ELEMENTS	
Criteria	**Development Points**
1. Reduce the overall building coverage to 20% of the site area.	Three points
2. Reduce the overall parking lot coverage to 40% of the site area.	Three points
3. Increase the overall landscaped area of the site to 40% in accordance with the buffering requirements and vegetation preservation/planting requirements as outlined in Article 10, Part VI, Commercial Design Standards and subsection 9.22.8 of this section.	Three points
Criteria	**Development Points**
4. Preserve a minimum 15% of a site's existing natural vegetation and dune elevations. This 15% shall be based on a site's total lot area and can be utilized in conjunction with the site's required landscaped area.	Three points
5. Placement of landscaping within, or next to, on-site impervious surface area to be no less than 5% of the total proposed landscaped area that is required for the site.	Two points
MINIMUM NUMBER OF REQUIRED POINTS	FOUR POINTS

SECTION III. BUILDING AND SITE DESIGN.

As a community that can, and is, inundated by coastal storms and other natural disasters it is vital that the Town encourage sound development principles. It is also important for the Town to encourage sound building and site design criteria to ensure that existing and future commercial developments will complement each other. By encouraging development that addresses these concerns we are lowering the potential for loss of life and property during storm events.

TABLE 9-3: BUILDING AND SITE DESIGN ELEMENTS	
Criteria	**Development Points**
1. Wind load design elements that exceed the minimum state building code requirements	Three points
2. Building to be placed above base flood level: By one foot By two feet By three feet or more	 Two points Three points Four points
3. Separation from an off-site building by at least fifty (50) feet	One point
4. A stormwater management plan that provides on-site retention of the first 1-1/2 inches of rainfall.	One point
5. Installation of sidewalks across the front of the property along the nearest street right-of-way and show how future additions will connect to create a pedestrian system	One point
6. The building is on an elevated concrete or wood foundation rather than a slab on grade style foundation.	Two points
7. The installation of bollard style parking lot lights	Three points

Criteria	Development Points
8. The use of elevated light poles that do not exceed eighteen (18) feet in height and provide shielding for the lights.	Two points
9. Minimum architectural and security level lighting in accordance with Article 10, Part IV, Outdoor LIghting of this UDO. No internally illuminated signage or neon window signage.	Two points
10. Building footprint is not a square or rectangle. Footprint is a result of a dominant structure with additive structure extensions or combined structures of similar size and shape with a uniform roof design. Either style creates an "L," "T," or "H" building footprint.	Three points
MINIMUM NUMBER OF REQUIRED POINTS	FOUR POINTS

9.22.7.2. The following sign dimensions are authorized based on the number of development points incorporated into the building or site.

TABLE 9-4: SIGN DIMENSIONS	
Dimensions	**Development Points**
8 square feet	16 points
12 square feet	18 points
16 square feet	20 points
24 square feet	22 points
32 square feet	24 points

9.22.7.3. The maximum sign area allowed for a freestanding sign in the village C2 district shall be thirty-two (32) square feet.

9.22.7.4. If any of the development criteria selected by the applicant are eliminated from the site then the freestanding sign shall be reduced in area to the previous allowable sign area as prescribed in the above point system. If all the improvements are eliminated in total, then the freestanding sign shall be removed.

9.22.7.5. If a developer does not desire to utilize any of these development standards, they shall be regulated to the existing district standards as outlined in Section 9.18, Regulations Governing Signs and Outdoor Advertising Structures, and the Town sign regulations in Article 10, Part III of this UDO.

9.22.8. Landscaping.

Each Commercial 2 district shall conform to an overall landscaping plan. All landscaping plans are to be submitted to the Town as part of the site plan approval process. There shall be a minimum twenty (20) foot landscaped or natural buffer around each district boundary. Fifty (50) percent of this buffer is to be bermed or planted to a minimum height of forty-two (42) inches.

9.22.9. Lighting.

Lighting in the Commercial 2 district shall meet the requirements of this UDO.

9.22.10. Sewage Disposal.
Approval by the appropriate agency of a sewage disposal system to be used in the Commercial 2 district shall be verified before site plan approval or, if necessary, before a building permit can be granted.

SECTION 9.23 INSTITUTIONAL DISTRICT.

9.23.1. Intent.
The Institutional district is established to provide for the proper grouping and development of uses designed to serve the entire community as well as the Village at Nags Head. The institutional district shall be that area designated on the official land use plan map for the Village at Nags Head as "Proposed Municipal Complex-Wastewater Treatment Facility/Golf Course Maintenance."

9.23.2. Permitted Uses.
Permitted uses in the Institutional district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District.

9.23.3. Conditional Uses.
Conditional uses in the Institutional district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District, subject to the requirements of this Institutional district and additional regulations and requirements imposed by the Board of Commissioners in accordance with Section 3.8, Conditional Use Permits.

9.23.4. Access Points.
Accessways off US 158 in the Institutional district shall be only where designated on the illustrative master plan. Side roads shall not have an accessway within one hundred (100) feet of an intersection.

9.23.5. Dimensional Requirements.
Dimensional requirements in the Institutional district are as follows:

9.23.5.1. Maximum Density. Not applicable.

9.23.5.2. Coverage.

9.23.5.2.1. Maximum Impervious Coverage. Seventy (70) percent.

9.23.5.2.2. Minimum Landscaped Space. Thirty (30) percent. Landscaped space does not include parking, drives, or buildings, but does include walks, gazebos, fountains, plant material, other landscaping features, etc.

9.23.5.3. Building Setback Requirements.

9.23.5.3.1. A minimum of forty (40) feet from the US 158 right-of-way.

9.23.5.3.2. A minimum of twenty (20) feet from the Seachase Drive right-of-way.

9.23.5.3.3. A minimum of fifty (50) feet from residential uses.

9.23.5.2.4. Building-to-Building Separation. A minimum of twenty-five (25) feet.

9.23.5.2.5. Building Height Limitation. Thirty-five (35) feet; however, for every foot above thirty-five (35) feet, there shall be an additional setback of two (2) feet from Seachase Drive, US 158, and any residential district. The maximum building height shall be forty-five (45) feet.

9.23.5.2.6. Parking Required. Refer to Section 10.16, Required Parking by Use of this UDO.

SECTION 9.24 HOTEL DISTRICT.

9.24.1. Intent.

This Hotel district is intended to serve the visitor population by catering to the tourist needs typically associated with a family-beach community. All hotel and auxiliary structures shall meet or exceed the fire code requirements for commercial buildings in the state as per the Town standards.

9.24.2. Permitted Uses.

Permitted uses in the Hotel district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District.

9.24.3. Conditional Uses.

Conditional uses in the Institutional district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District, subject to the requirements of this Hotel district and additional regulations and requirements imposed by the Board of Commissioners in accordance with Section 3.8, Conditional Use Permits.

9.24.4. Fire Code Requirements.

All hotel and auxiliary structures will meet or exceed the fire code requirements for commercial buildings in the state as per the Town standards. The structures shall be sprinkler protected in accordance with Section 20-121 of the Town Code. A fire flow test of the water supply for the sprinkler system serving or intended to serve the structures shall be conducted at the developer's expense by the Town fire department or by an independent testing firm. If the test is conducted by an independent testing firm, it shall be made under the direct supervision of the Town fire chief or his designee. A fee, in accordance with the most recently adopted consolidated fee schedule, shall be paid by the developer. If the flow is found to be deficient according to the insurance service office standards applicable to the Town, the developer shall bring the fire flow up to the established requirements set out in the insurance service office standards. The fire flow test shall be made prior to the issuance of a building permit.

9.24.5. Development Standards.

Development standards in the Hotel district shall be as follows. In cases where these standards conflict with the standards contained in Article 10, Part VI, Commercial Design Standards, the more restrictive standard shall apply.

9.24.5.1. Coverage for Hotels.

TABLE 9-5: HOTEL COVERAGE			
Building Height	**Maximum Building**	**Maximum Parking**	**Minimum Landscaped**
1 to 28 feet	45%	35%	20%
29 to 48 feet	40%	40%	20%
49 to 60 feet	35%	45%	20%

If off-site parking is utilized to meet the parking requirements for a hotel, lot coverage for the off-site parking lot shall not exceed eighty (80) percent of the total lot area.

9.24.5.2. Coverage for Commercial and Offices Uses.

9.24.5.2.1. Maximum Building. Twenty-five (25) percent.

9.24.5.2.2. Maximum Parking. Forty-five (45) percent.

9.24.5.2.3. Minimum Landscaped Area. Thirty (30) percent. Landscaped space does not include parking, drives, or buildings, but does include walks, gazebos, fountains, plant material, other landscaping features, etc.

9.24.5.3. Building Setback Requirements.

9.24.5.3.1. For hotels one to three stores in height:

9.24.5.3.1.1. The eastern setback shall be the CAMA line or one hundred fifty (150) feet from mean high water, whichever is greater.

9.24.5.3.1.2. A minimum of forty-five (45) feet from US 158 right-of-way or NC 12 right-of-way shall be provided.

9.24.5.3.1.3. For the northern and southern boundaries, a minimum twenty-five (25) foot natural or landscaped buffer shall be provided.

9.24.5.3.2. For hotels above three stores in height:

9.24.5.3.2.1. The eastern setback shall be the CAMA line or one hundred fifty (150) feet from mean high water, whichever is greater, plus an additional fifteen (15) feet for each additional story above three. In addition to the CAMA setback, on the large parcel there is a village imposed large structure setback of two hundred twenty (220) feet, plus an additional fifteen (15) feet for each additional story above three, from the first line of stable natural vegetation or the static line, following the recommendation of the National Hurricane Center.

9.24.5.3.2.2. East of NC 12, a minimum of forty-five (45) feet from NC 12 right-of-way, plus an additional fifteen (15) feet for each additional story above three, shall be provided. West of NC 12, a minimum of thirty-five (35) feet from US

158 right-of-way or NC 12 right-of-way, plus an additional one-foot building setback for each foot over 35-feet in building height, shall be provided.

9.24.5.3.2.3. East of NC 12, for the northern and southern boundaries, a minimum 35-foot natural or landscaped buffer plus an additional fifteen (15) feet for each additional story above three shall be provided. West of NC 12, for the northern and southern boundaries a minimum 25-foot natural or landscaped buffer, plus an additional one-foot building setback for each foot over 35-feet in building height, shall be provided.

9.24.5.3.3. For commercial and office uses:

9.24.5.3.3.1. The eastern setback shall be the CAMA line or one hundred fifty (150) feet from mean high water, whichever is greater.

9.24.5.3.3.2. A minimum of forty-five (45) feet from US 158 right-of-way or NC 12 right-of-way shall be provided.

9.24.5.4. Building Separation.

9.24.5.4.1. There shall be a minimum ten (10) foot building separation between one-story buildings.

9.24.5.4.2. There shall be a minimum twenty (20) foot building separation between two-story buildings.

9.24.5.4.3. There shall be a minimum thirty (30) foot building separation between three-story buildings.

9.24.5.4.4. There shall be a minimum forty (40) foot building separation between four-story buildings.

9.24.5.4.5. There shall be a minimum fifty (50) foot building separation between five-story buildings.

9.24.5.5. Maximum Height.

9.24.5.5.1. For hotel developments: Sixty (60) feet.

9.24.5.5.2. For all other uses: Thirty-five (35) feet.

9.24.6. Loading Zones.

Off-street loading and unloading areas shall be provided in accordance with Section 10.17, Off-Street Loading.

9.24.7. Vehicle Access.

Each lot that fronts on Mall Drive shall be entitled to one access (curb cut) onto this street except where the Town has approved a unified access plan. When a unified access plan has been approved by the Town, access to Mall Drive, US 158 and NC 12 shall be in strict adherence with that approved access plan. All accessways shall be at least one hundred (100) feet from an intersection with NC 12 or US 158.

9.24.8. Architectural.

Each building cluster shall be architecturally compatible. A building cluster shall be a grouping of two or more businesses housed in either attached or detached structures in a definable district. Attaching will be encouraged.

9.24.9. Signage.

There shall be a limitation on signage which will require architectural review committee approval, for uniform district conformity, and a building permit from the Town. (See Article 10, Part III of this UDO for signage approval process.) As an alternative to the village hotel district sign, and applicable only to the village hotel district, one freestanding sign may be located on-site, subject to the following criteria:

9.24.9.1. It is the purpose of this section to permit an applicant an opportunity to erect one permanent freestanding sign on-site as long as specific architectural, site, and building design standards developed by the Town are adhered to. These standards are designed to preserve and promote open space on commercial sites, promote more landscaped area, reduce impervious surfaces, and to promote architectural and design standards that are indicative of our Nags Head heritage. A freestanding sign may be erected, subject to the following conditions:

9.24.9.1.1. A freestanding sign shall not exceed ten feet in height above street grade.

9.24.9.1.2. The freestanding sign shall require architectural review and approval by the Town Planning Board and the Board of Commissioners.

9.24.9.1.3. Only one freestanding sign shall be allowed per site.

9.24.9.1.4. If a freestanding sign is erected under the provisions of this section, no roof signs shall be allowed for the site. If a developer qualifies for a freestanding sign, any existing roof sign shall be removed prior to the installation of the freestanding sign.

9.24.9.1.5. A developer shall be allowed one freestanding sign based on adherence to the development points listed in subsection 9.24.9.1.6. The following development point system shall be used to determine the maximum allowable freestanding sign for a site.

9.24.9.1.6. A developer must meet the minimum number of required points for each section if a freestanding sign is to be allowed:

SECTION I. BUILDING ARCHITECTURE.

The Town has a rich architectural history. A combination of certain design elements, i.e., wraparound porches, cedar shake shingles, and cupolas, have helped to define our area and are an integral part of what allows our community to stand out from the rest. By encouraging these architectural designs, we are not only promoting our heritage, we are preserving an aesthetic quality that has made our community a desirable place to live and vacation. (Construction specifications from the Residential Design Guidelines, Appendix B, as amended, shall be used as reference for the criteria below.)

TABLE 9-6: BUILDING ARCHITECTURE DESIGN ELEMENTS

Criteria	Development Points
1. A front porch along the entire front of the building or a wraparound porch along two sides of a building that is not used for commercial purposes. The porch roof must be a lower pitch than the roof of the building.	Three points
2. Cedar shake, natural wood exterior, or the use of hardiplank; must cover the entire exterior of a building excluding doors and windows.	Three points
3. A 6 to 12 or greater building roof pitch (NOTE: All roofs must still observe the Town height limitation of 35 feet or 42 feet with an 8:12 roof pitch).	Two points
4. The presence of functional wood shutters on all windows.	One point
5. The presence of dormer(s) on the building. A dormer shall mean a window which is set upright in a sloping roof.	Three point
6. The total area of the building's façade is made up of only 15% of glass or window area.	Two points
7. The presence of a multiplane window façades on single pane windows.	One point
8. Lifesaving station watch tower, 10 feet x 10 feet, or greater Coastal watch tower, 6 feet x 6 feet, or greater	Three points One point
9. Hip roof or combination of hips and gables.	Three points
10. Cedar shake shingles on entire roof (gable, hip, shed; not mansard or parapet).	Three points
MINIMUM NUMBER OF REQUIRED POINTS	THIRTEEN POINTS

SECTION II. LANDSCAPED SPACE AND INTENSITY.

The Town has made it a goal to preserve to the greatest extent possible the aesthetic and visual integrity of the Town. This includes our natural and manmade environments. One way to accomplish this goal is to work with developers to try and preserve as much of a natural landscape as possible. By requiring more open space, providing for more protection of existing vegetation, and in providing more landscaping the Town is working to lower the intensity of commercial development and afford greater protection of our natural environment.

TABLE 9-7: LANDSCAPED SPACE AND INTENSITY DESIGN ELEMENTS	
Criteria	**Development Points**
1. Reduce the overall building coverage to 20% of the site area.	Three points
2. Reduce the overall parking lot coverage to 40% of the site area.	Three points
3. Increase the overall landscaped area of the site to 40% in accordance with the buffering requirements and vegetation preservation/planting requirements as outlined in Article 10, Part VI, Commercial Design Standards and subsection 9.24.10 of this section.	Three points
4. Preserve a minimum 15% of a site's existing natural vegetation and dune elevations. This 15% shall be based on a site's total lot area and can be utilized in conjunction with the site's required landscaped area.	Three points
5. Placement of landscaping within, or next to, on-site impervious surface area to be no less than 5% of the total proposed landscaped area that is required for the site.	Two points
MINIMUM NUMBER OF REQUIRED POINTS	FOUR POINTS

SECTION III. BUILDING AND SITE DESIGN.

As a community that can, and is, inundated by coastal storms and other natural disasters it is vital that the Town encourage sound development principles. It is also important for the Town to encourage sound building and site design criteria to ensure that existing and future commercial developments will complement each other. By encouraging development that addresses these concerns we are lowering the potential for loss of life and property during storm events.

TABLE 9-8: BUILDING AND SITE DESIGN ELEMENTS	
Criteria	**Development Points**
1. Wind load design elements that exceed the minimum state building code requirements	Three points
2. Building to be placed above base flood level: By one foot By two feet By three feet or more	 Two points Three points Four points
3. Separation from an off-site building by at least fifty (50) feet	One point
4. A stormwater management plan that provides on-site retention of the first 1-1/2 inches of rainfall.	One point
5. Installation of sidewalks across the front of the property along the nearest street right-of-way and show how future additions will connect to create a pedestrian system	One point
6. The building is on an elevated concrete or wood foundation rather than a slab on grade style foundation	Two points
7. The installation of bollard style parking lot lights	Three points
8. The use of elevated light poles that do not exceed eighteen (18) feet in height and provide shielding for the lights.	Two points
9. Minimum architectural and security level lighting in accordance with Article 10, Part IV, Outdoor Lighting of this UDO. No internally illuminated signage or neon window signage.	Two points

Criteria	Development Points
10. Building footprint is not a square or rectangle. Footprint is a result of a dominant structure with additive structure extensions or combined structures of similar size and shape with a uniform roof design. Either style creates an "L," "T," or "H" building footprint.	Three points
MINIMUM NUMBER OF REQUIRED POINTS	FOUR POINTS

9.24.9.2. The following sign dimensions are authorized based on the number of development points incorporated into the building or site.

TABLE 9-9: SIGN DIMENSIONS	
Dimensions	**Development Points**
8 square feet	16 points
12 square feet	18 points
16 square feet	20 points
24 square feet	22 points
32 square feet	24 points

9.24.9.3. The maximum sign area allowed for a freestanding sign in the village hotel district shall be 32 square feet.

9.24.9.4. If any of the development criteria selected by the applicant are eliminated from the site then the freestanding sign shall be reduced in area to the previous allowable sign area as prescribed in the above point system. If all the improvements are eliminated in total, then the freestanding sign shall be removed.

9.24.9.5. If a developer does not desire to utilize any of these development standards, they shall be regulated to the existing district standards as outlined in Section 9.18, Regulations Governing Signs and Outdoor Advertising Structures, and the Town sign regulations in Article 10, Part III of this UDO.

9.24.10. Landscaping.

9.24.10.1. For Hotels. All landscape plans are to be submitted to the Town as part of the site plan approval process. There shall be a minimum twenty (20) foot landscaped or natural buffer around the district.

9.24.10.2. For Commercial and Offices Uses. All commercial and office uses shall be buffered in accordance with Article 10, Part VI, Commercial Design Standards. There shall be a minimum twenty (20) foot landscaped or natural buffer area required when a commercial use within the district abuts a residential use or designation. Fifty (50) percent of this buffer is to be bermed or planted to a minimum height of forty-two (42) inches.

9.24.11. Ocean Views.

It is the developers' desire to maintain open views of the ocean/dunes whenever feasible. Therefore, criteria are hereby developed for a "visual window" or unobstructed panorama of the ocean vista

between NC 12 and the Atlantic Ocean. In theory, if there were a one hundred (100) percent "visual window," there would be no obstruction above the primary dunes. On the other hand, if there were a zero percent "visual window," there would be a six-story building constructed from the north property line to the south property line. To determine the amount of openness of the ocean-front view, the "visual window" would be a percentage of the width of the lot measured at the first line of stable natural vegetation. The standard shall be that the vertical building mass or imaginary wall for either a one-story or two-story building shall have a twenty (20) percent "visual window." For each additional story over two, the percentage of the "visual window" shall be as follows: three stories, twenty-four (24) percent; four stories, thirty-two (32) percent; five stories, forty (40) percent; and six stories, forty-eight (48) percent.

SECTION 9.25 DETACHED SINGLE-FAMILY DISTRICT.

9.25.1. Intent.

These detached single-family districts are intended to provide for a variety of single-family detached home sites on individual lots. A zero-lot line arrangement may be utilized in those single-family districts that do not specify a minimum side yard setback requirement.

9.25.2. Permitted Uses.

Permitted uses in the Detached Single-Family district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District.

9.25.3. Conditional Uses.

Conditional uses in the Detached Single-Family district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District, subject to the requirements of this district and additional regulations and requirements imposed by the Board of Commissioners in accordance with Section 3.8, Conditional Use Permits.

9.25.4. General Development Standards.

General development standards in the Detached Single-Family district are as follows:

9.25.4.1. Lot Coverage.

Maximum Building	Maximum Parking	Minimum Landscaped
50 percent	15 percent	35 percent

Landscaped space does not include parking, drives, or buildings, but does include walks, gazebos, fountains, plant material, other landscaping features, etc.

9.25.4.2. Minimum Building Separation. A minimum of ten (10) feet, with no encroachments such as chimneys, decks, etc.

9.25.4.3. Buffers. A minimum 25-foot buffer shall be placed between any residential district in the Village at Nags Head and any outside residential development.

9.25.4.4. Maximum Building Height. Thirty-five (35) feet. However, when the proposed dwelling utilizes an eight-twelfths roof pitch, the maximum height for a dwelling may be increased to forty-two (42) feet.

9.25.4.5. Parking. Shall be provided in accordance with Article 10, Part II of this UDO.

9.25.5. Single-Family One (SF#1) District Standards.

Single-family one district standards in the detached single-family district are as follows:

9.25.5.1. Maximum Density. Four (4) dwelling units per acre.

9.25.5.2. Minimum Building Setback Requirements.

Fronting On:	Front Yard	Side Yard	Rear Yard
Public right-of-way	25 feet	8 feet	20 feet

9.25.5.3. Minimum Lot Size. 8,000 square feet.

9.25.6. Single-Family Two (SF#2) District Standards.

Single-family two district standards in the detached single-family district are as follows:

9.25.6.1. Maximum Density. Eight and one-half (8.5) dwellings per acre.

9.25.6.2. Minimum Building Setback Requirements.

Fronting On:	Front Yard	Side Yard	Rear Yard
Public right-of-way	15 feet	8 feet	15 feet

9.25.6.3. Minimum Lot Size. 3,000 square feet.

9.25.7. Single-Family Three (SF#3) District Standards.

Single-family three district standards in the detached single-family district are as follows:

9.25.7.1. Maximum Density. Seven (7) dwellings per acre.

9.25.7.2. Minimum Building Setback Requirements. The rear yard may be reduced to fifteen (15) feet if adjacent to dedicated open space.

Fronting On:	Front Yard	Side Yard	Rear Yard
Public right-of-way	25 feet or 12 feet from garage	Minimum separation between buildings 10 feet	20 feet

9.25.7.3. Minimum Lot Size. 4,000 square feet.

SECTION 9.26 ATTACHED SINGLE-FAMILY DISTRICT.

9.26.1. Intent.

These attached single-family districts are intended for development of single-family and duplex dwelling units. Elements common to these districts include smaller lots with flexible common areas and association maintenance of some jointly held land being possible. Duplex homes have the legal option of marketing each unit separately.

9.26.2. Permitted Uses.

Permitted uses in the Attached Single-Family district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District.

9.26.3. Conditional Uses.

Conditional uses in the Attached Single-Family district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District, subject to the requirements of this district and additional regulations and requirements imposed by the Board of Commissioners in accordance with Section 3.8, Conditional Use Permits.

9.26.4. General Development Standards.

General development standards in the Attached Single-Family district are as follows:

9.26.4.1. Coverage.

Maximum Building	Maximum Parking	Minimum Landscaped	Minimum Common Area
60 percent	15 percent	20 percent	10 percent

9.26.4.2. Minimum Building Separation. A minimum of ten (10) feet for single-family detached homes and duplexes, with no encroachments such as chimneys, decks, etc.

9.26.4.3. Buffers. A minimum 25-foot buffer shall be placed between any residential district in the Village at Nags Head and any outside residential development.

9.26.4.4. Maximum Building Height. Thirty-five (35) feet However, when the proposed dwelling utilizes an eight-twelfths roof pitch, the maximum height for a dwelling may be increased to forty-two (42) feet.

9.26.4.5. Parking. Shall be provided in accordance with Article 10, Part II of this UDO.

9.26.4.6. Vehicle Access. For residential developments access shall be in accordance with the Village at Nags Head Master Plan; however, hospitals as a conditional use shall have one access point directly from US 158, the location of which shall be approved by the Board of Commissioners.

9.26.5. Single-Family Four (SF#4) District Standards.

Single-family four district standards in the attached single-family district are as follows:

9.26.5.1. Maximum Density. Twelve (12) dwellings per acre.

9.26.5.2. Minimum Building Front Yard and Side Yard Setback Requirements.

Fronting On:	Front Yard	Side Yard
Public right-of-way	15 feet	Minimum separation between buildings 10 feet

9.26.5.3. Minimum Rear Yard. Thirty (30) feet to existing residential outside the Village at Nags Head, plus a 25-foot natural or landscaped buffer. Only a minimum 15-foot rear yard is required when adjacent to interior open space area.

9.26.5.3. Minimum Lot Size. 2,400 square feet.

9.26.6. Single-Family Five (SF#5) District Standards.

Single-family five district standards in the attached single-family district are as follows:

9.26.6.1. Maximum Density. Three (3) dwellings per acre.

9.26.6.2. Minimum Building Front Yard and Side Yard Setback Requirements.

Fronting On:	Front Yard	Side Yard
Public right-of-way	15 feet	Minimum separation between buildings 10 feet

9.26.6.3. Minimum Rear Yard. Thirty (30) feet to existing residential outside the Village at Nags Head, plus a 25-foot natural or landscaped buffer. Only a minimum 15-foot rear yard is required when adjacent to interior open space area.

9.26.6.3. Minimum Lot Size. 2,400 square feet.

SECTION 9.27 MULTIFAMILY DISTRICT.

9.27.1. Intent.

These multifamily districts are intended to serve the multifamily development needs of this community. Multifamily districts may include: townhouses which are single-family units attached in a row or back-to-back, as well as side-to-side, and sharing common walls with a maximum of eight units to a structure, or condominiums which are stacked units, one unit on top of another with common central entrances. These may be in the form of low-rise, mid-rise or garden apartments. All dwelling units in the multifamily district shall meet or exceed the fire code requirements for multifamily dwellings in the state as specified by the Town standards.

9.27.2. Permitted Uses.

Permitted uses in the Multifamily district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District.

9.27.3. Conditional Uses.

Conditional uses in the Multifamily district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District, subject to the requirements of this district and additional regulations and requirements imposed by the Board of Commissioners in accordance with Section 3.8, Conditional Use Permits.

9.27.4. General Development Standards.

General development standards in the multifamily district are as follows:

9.27.4.1. Parking. Shall be provided in accordance with Article 10, Part II of this UDO.

9.27.4.2. Landscaping. Landscape plans are required to be submitted to the Town as part of the site plan approval process.

9.27.4.3. All multifamily structure(s) shall be sprinkler protected in accordance with Section 20-121 of the Town Code. A fire flow test of the water supply for the sprinkler system serving or intended to serve the structures shall be conducted at the developer's expense by the Town fire department or by an independent testing firm. If the test is conducted by an independent testing firm, it shall be made under the direct supervision of the Town fire chief or his designee. A fee, in accordance with the most recently adopted consolidated fee schedule, shall be paid by the developer. If the flow is found to be deficient according to the insurance service office standards applicable to the Town, the developer shall bring the fire flow up to the established requirements set out in the insurance service office standards. The fire flow test shall be made prior to the issuance of a building permit.

9.27.5. Multifamily One (MF#1) District Standards.

Multifamily one (MF #1) district standards in the multifamily district are as follows:

9.27.5.1. Maximum Density. Twelve (12) units per acre.

9.27.5.2. Coverage.

Maximum Building	Maximum Parking	Minimum Landscaped	Minimum Common Area
50 percent	20 percent	10 percent	20 percent

9.27.5.3. Minimum Building Setback Requirements.

Fronting On:	Front Yard	Side Yard	Rear Yard
Public right-of-way	20 feet	10 feet for each story with a maximum of 25 feet required	20 feet

Side yard setbacks for developments taller than two stories between South Virginia Dare Trail and the Atlantic Ocean shall follow the "visual window" concept as prescribed in subsection 9.24.11.

9.27.5.4. Building Cluster Separation. There shall be a minimum ten (10) feet building separation for each twelve (12) feet of building height or portion thereof with a maximum required separation of twenty-five (25) feet.

9.27.5.5. Maximum Height. Thirty-six (36) feet.

9.27.6. Multifamily Two (MR#2) District Standards.

Multifamily two (MF #2) district standards in the multifamily district are as follows:

9.27.5.1. Maximum Density. Eighteen (18) units per acre.

9.27.5.2. Coverage.

Maximum Building	Maximum Parking	Minimum Landscaped	Minimum Common Area
50 percent (low-rise)	N/A	20 percent	N/A

9.27.5.3. Minimum Building Front Yard and Side Yard Setback Requirements.

Fronting On:	Front Yard	Side Yard
Public right-of-way	10 feet	20 feet

Side yard setbacks for developments taller than two stories between South Virginia Dare Trail and the Atlantic Ocean shall follow the "visual window" concept as prescribed in subsection 9.24.11.

9.27.5.4. Rear Yard. Twenty (20) feet. The rear yard may be reduced to fifteen (15) feet if adjacent to dedicated open space.

9.27.5.5. Building Cluster Separation. There shall be a minimum ten (10) feet building separation for each twelve (12) feet of building height or portion thereof.

9.27.5.6. Maximum Height. Forty-five (45) feet.

SECTION 9.28 TOWNHOUSE I DISTRICT.

9.28.1. Intent.

It is the intent of the Townhouse I district to specify the standards for townhouse, multifamily, duplex and single-family dwellings that would utilize the flexibility of the planned unit development concept to promote safety, efficiency, convenience and amenities in the best use of the land.

9.28.2. Permitted Uses.

Permitted uses in the Townhouse I district shall be as provided in Section 9.36, Table of Uses and Activities in the SPD-C District.

9.28.3. Development Standards.

Development standards in the Townhouse I district are as follows:

9.28.3.1. Minimum Setbacks:

Minimum Setback From	Wood Frame Construction (When Permitted)	Masonry Construction
Virginia Dare Trail	45 feet	45 feet
Other Streets	30 feet	30 feet
Atlantic Ocean	CAMA minimum of 150 feet from MHW, whichever is greater	
Property line abutting land zoned open space, setbacks not required from open space along ocean or sound	25 feet	25 feet
Property line abutting another zoning district	25 feet	25 feet
Property line abutting land dedicated in Town for beach access.	25 feet	25 feet
Property line separating single-family or duplex structure	12 feet	12 feet

If two or more setbacks overlap, such as setbacks from US 158 and from a property line, the more stringent shall apply.

9.28.3.2. Minimum Separation Between Structures.

9.28.3.2.1. Wood Frame Construction (When Permitted): Twenty-four (24) feet.

9.28.3.2.2. Masonry Construction: Twenty-two (22) feet).

9.28.3.3. Maximum Height of Structures. Thirty-five (35) feet; may exceed the 35-foot height limit by one (1) foot for each two (2) feet added to the setbacks on each of the four sides; may not exceed fifty (50) feet in height with use of increased setbacks.

9.28.3.4. Maximum Lot Coverage, Drainage and Open Space.

9.28.3.4.1. Areas within seventy-five (75) feet of estuarine water shall not be more than thirty (30) percent covered with impermeable surface.

9.28.3.4.2. For remaining areas, runoff must be retained entirely on-site, or handled with a combination of on-site features and retention areas in abutting land zoned open space or channeled into an existing off-site drainage system. The drainage plan shall be certified as adequate to handle the development's runoff in a ten-year storm by a licensed engineer and approved by the Town.

9.28.3.5. Minimum Parking Requirements. Shall be provided in accordance with Article 10, Part II of this UDO.

9.28.3.6. Number of Accessways. One accessway per three hundred (300) feet of frontage along NC 12 is allowed.

9.28.3.7. Minimum Lot Area. A lot shall be of sufficient area to meet the dimensional requirements of this article and other applicable state and local ordinances.

9.28.3.8. Minimum Lot Width. Sixty (60) feet.

9.28.3.9. The structures shall be sprinkler protected in accordance with Section 20-121 of the Town Code. A fire flow test of the water supply for the sprinkler system serving or intended to serve the structures shall be conducted at the developer's expense by the Town fire department or by an independent testing firm. If the test is conducted by an independent testing firm, it shall be made under the direct supervision of the Town fire chief or his designee. A fee, in accordance with the most recently adopted consolidated fee schedule, shall be paid by the developer. If the flow is found to be deficient according to the insurance service office standards applicable to the Town, the developer shall bring the fire flow up to the established requirements set out in the insurance service office standards. The fire flow test shall be made prior to the issuance of a building permit.

9.28.3.10. Maximum Number of Dwelling Units per Structure.

9.28.3.10.1. For Townhouses. Eight (8) dwelling units per structure.

9.28.3.10.2. For Multifamily. Eight (8) dwelling units per structure.

9.28.4. Design Options.

Points may be acquired by incorporating one or more of the following design options in the Townhouse I district. The points may in turn be used to acquire reductions in dimensional requirements as explained in subsection 9.28.5 of this section. The design options and the points awarded with each are as follows:

9.28.4.1. Grant a perpetual easement at least six (6) feet in width to facilitate public pedestrian access to the ocean. The easements shall be clearly marked with a sign and easily identifiable. The easements shall be unencumbered by any part of the development and shall be easily traversable, incorporating walkways to cross dunes. The easements shall provide direct pedestrian access from NC 12 to the ocean beach (25 design points).

9.28.4.2. Provide a ten-foot wide vegetative buffer strip along the property line that abuts a zoning district of a different land use or intensity. The vegetation shall meet a minimum height of ten (10) feet within five years (15 design points).

9.28.4.3. Align entrances/exits from NC 12 with existing entrances/exits across the highways (15 design points).

9.28.5. Benefits from Design Options.

Design points accumulated by incorporating design options specified in subsection 9.28.4 of this section may be used to obtain benefits as listed in this subsection 9.28.5. No single benefit can be obtained more than once for the same development. For example, a five-foot reduction in a setback from a street may not be obtained twice on the same development to reduce the setback by ten (10) feet.

9.28.5.1. Reductions in setbacks itemized by each of the following subsections may be realized for ten design points:

Fronting On:	Wood Frame Construction (When Permitted)	Masonry Construction
Virginia Dare Trail	5 feet reduction (from 45 to 40)	5 feet reduction (from 45 to 40)
Other Streets	5 feet reduction (from 30 to 25)	5 feet reduction (from 30 to 25)
Property line abutting land zoned open space	15 feet reduction (from 25 to 10)	15 feet reduction (from 25 to 10)
Property line abutting another zoning district	5 feet reduction (from 25 to 20)	10 feet reduction (from 25 to 20)
Property line abutting land dedicated in Town for beach access.	10 feet reduction (from 25 to 15)	15 feet reduction (from 25 to 10)

9.28.5.2. A reduction in the following separation required between structures may be realized for ten design points: Masonry construction - four-foot reduction (from 22 to 18 feet).

9.28.5.3. The following reduction in the number of parking spaces required per dwelling unit may be realized for ten design points: The parking requirement is reduced from 2-1/2 spaces per dwelling unit to two per dwelling unit.

SECTION 9.29 RECREATION DISTRICT.

9.29.1. Intent.

It is the intent of this district to provide opportunities throughout the Village at Nags Head for active and passive recreation intended for the use, comfort and convenience of the members of the village property owners association and their guests. The Recreation district shall be that area designated on the official land use plan map for the Village at Nags Head as "recreation and open space."

9.29.2. Permitted Uses. Permitted uses within the Recreation district area as follows:

9.29.2.1. Village at Nags Head Common Open Space. Purpose – Village common open spaces include but are not limited to "village" entry areas including islands, medians and signs; buffer and natural areas; Roanoke Sound access areas; Atlantic Ocean access areas; "Village" walkways, drainage easements and structures; lakes, ponds; and other open space areas.

9.29.2.2. The Village at Nags Head Beach and Tennis Club. Purpose – The Village at Nags Head Beach and Tennis Club would consist of a private club with facilities which may include a beach, swim and/or tennis center which may have the following facilities; including a swimming pool, sunbathing areas, club house, eating and drinking establishments, pro shops, bath and toilet facilities, tennis/squash/basketball courts, volleyball area or any other appropriate recreational activity. The on-site rental of beach chairs and umbrellas as permitted in subsection 9.29.2.4 of this section and limited to the property located at 5805 S. Seachase Drive.

9.29.2.3. The Village at Nags Head Golf Club. Purpose – The Village at Nags Head Golf Club would consist of a private club with facilities which shall include a golf course and club and those auxiliary facilities that are necessary. The area devoted to golf course will have restrictive covenants on the property which will assure that this property can only be used for a golf course or open space for perpetuity.

9.29.2.4. Village at Nags Head Private Beach Access and Bathhouse. Purpose —The Village at Nags Head private beach access and bathhouse, located at 4929 S. Virginia Dare Trail shall consist of a private beach access for use by Village at Nags Head Property Owners Association members and their guests as well as the on-site rental of beach chairs and umbrellas at the private beach bathhouse located at 4929 S. Virginia Dare Trail provided that:

9.29.2.4.1. Storage of such items, overnight and during hours of operation, shall be located westward of the static line and shall not be visible from the beach.

9.29.2.4.2. Beach chairs and umbrella's to be placed upon the beach shall contain no commercial signage. Property identifiers such as initials and numbering shall be located on the interior or underside of any chair or umbrella. Any other signage shall not be visible from the beach.

9.29.2.4.3. Placement of beach chairs and umbrellas upon the beach shall not restrict or impede the flow of vehicular, pedestrian or emergency services traffic.

9.29.2.4.4. All transactions involved in the operation of this business shall be from within the principal structure, the bathhouse, a location west of the static line, online, with rental contract or at the association management company's location.

9.29.2.4.5. Signage related to the on-site rental of beach chairs and umbrellas shall not be visible from NC 12.

9.29.2.4.6. Rentals shall be limited to members of the Village at Nags Head Property Owners Association and their guests only.

9.29.2.4.7. Under no circumstance shall beach chairs and umbrellas be left on the beach or be east of the static line overnight.

9.29.2.4.8. At the close of business hours, the beach upon which rentals occur shall be cleaned of all loose trash and debris.

9.29.2.4.9. Beach chairs and umbrellas shall only be set up when requested by the customer, beach chairs and umbrellas shall not be pre-set.

9.29.2.4.10. Emergency services personnel have the right to move beach chairs and umbrellas as necessary to ensure a clear line of sight for safety purposes.

9.29.2.4.11. Any violation of these regulations may result in any of the following actions:

9.29.2.4.11.1. Removal of equipment left on the beach overnight;

9.29.2.4.11.2. Issuance of civil penalty pursuant to Section 1.10, Violation of UDO Regulations of this UDO; or

9.29.2.4.11.3. Immediate revocation of the zoning permit.

9.29.3. Dimensional Requirements.

Dimensional requirements within the Recreation district are as follows:

9.29.3.1. The Village at Nags Head Tennis Club.

9.29.3.1.1. Parking Required. Swimming pool, one space per one hundred forty (140) square feet of pool water surface area; basketball, two spaces per basket; tennis and racquetball courts, two spaces per court, eating and drinking one space for each fifty-five (55) square feet of interior public area.

9.29.3.1.2. Landscaping Required. There shall be a minimum twenty (20) landscaped or natural buffer around these areas.

9.29.3.2. The Village at Nags Head Golf Club.

9.29.3.2.1. Parking Required. Golf course, minimum of four (4) spaces per tee.

9.29.3.2.2. Landscaping Required. There shall be a minimum ten-foot landscaped or natural buffer around these facilities.

SECTION 9.30 – 9.35 RESERVED.

1 **PART VI. TABLE OF USES AND ACTIVITIES**

2 **SECTION 9.36 TABLE OF USES AND ACTIVITIES FOR THE SPD-C DISTRICT.**

Use Category/ Class	Use Type	C1	C2	I	Hotel	SF-DET	SF-ATT	MF	TH	REC	Supplemental Regulations
1 Residential	Accessory security and management offices, swimming pools, and tennis courts								P		
1 Residential	Detached single-family dwelling		P		P	P	P	P	P		
1 Residential	Duplex						P	P	P		
1 Residential	Hotel				PS						Sect. 9.37.1
1 Residential	Hotel condominium				P						
1 Residential	Large residential dwellings		P		P	P	P	P	P		
1 Residential	Motel				P						
1 Residential	Motor lodge/motor inn				P						
1 Residential	Multifamily unit							P			
1 Residential	Townhouse								P		
2 Retail	Beach recreation equipment rentals and sales		P								
2 Retail	Greenhouse and plant nursery	P									
2 Retail	Home center	PS									Sect. 9.37.2
2 Retail	Pet shop		C								
2 Retail	Production and repair facility for eyeglasses, hearing aids, and prosthetic devices	P									
2 Retail	Retail establishment, including the incidental manufacturing, repair or service of goods on the premises, retail sales, display rooms, and wholesale and distribution operations in connection with a retail establishment	P	P		P						
3 Service	Aerobics class/dance school/karate school	P	P								
3 Service	Child day care center	CS			CS						Sect. 9.37.3
3 Service	Financial institution	P									
3 Service	Indoor public assembly	P	C								
3 Service	Newspaper printing and publishing	P									
3 Service	Personal service establishment, including barbershop and beauty shop, shoe repair shop, cleaning, dyeing, laundry, pressing, dressmaking, tailoring, and garment repair shop with processing on the premises	P	P								

Use Category/ Class	Use Type	C1	C2	I	Hotel	SF-DET	SF-ATT	MF	TH	REC	Supplemental Regulations
4 Food Service	Bakery and delicatessen	P									
4 Food Service	Restaurant	P	P		P						
4 Food Service	Restaurant, drive-in	CS	CS		CS						Sect. 9.37.4
4 Food Service	Restaurant, drive-through	CS	CS								Sect. 9.37.5
5 Office	Office, including business, financial, governmental, medical, and professional	P	P		P						
5 Office	Office cluster		P								
6 Commercial Mixed Uses	Community shopping mall	P									
6 Commercial Mixed Uses	Neighborhood shopping cluster, with maximum allowable square footage of 10,000 feet		P								
6 Commercial Mixed Uses	Outdoor stands (accessory to shopping mall/neighborhood shopping cluster)	PS	PS								Sect. 9.37.6
6 Commercial Mixed Uses	Regional Shopping Mall	P									
7 Institutional	Business and vocational school	P									
7 Institutional	Municipal building, including fire station, police station, and administrative office			P							
7 Institutional	Public utility facility		C								
7 Institutional	Religious complex		C								
7 Institutional	Wastewater treatment plant			PS							Sect. 9.37.7
8 Medical	Heliports, accessory to a hospital						CS				Sect. 9.37.8
8 Medical	Hospital						CS				Sect. 9.37.9
8 Medical	Medical laboratory	P					P				
9 Recreation	Beach access and bathhouse									P	
9 Recreation	Beach and tennis club									P	
9 Recreation	Commercial and recreational uses as accessory to hotel (i.e., bath and tennis club, restaurant, parking, and gifts/ specialty shop)				P						
9 Recreation	Golf club and golf course									P	
9 Recreation	Golf course maintenance facility			P							
9 Recreation	Grass surface putting course		C								
9 Recreation	Indoor recreational facility	P									
9 Recreation	Open space									P	
9 Recreation	Private Pool – Commercial									P	
9 Recreation	Sport climbing wall		C								
9 Recreation	Theater	P									
10 Telecom	Telephone switching station/electric substation	CS	CS	CS	CS	CS	CS	CS			Sect. 9.37.10

Use Category/ Class	Use Type	C1	C2	I	Hotel	SF-DET	SF-ATT	MF	TH	REC	Supplemental Regulations
12 Accessory	Portable storage units/ temporary construction trailers	PS	PS	PS	PS	PS	PS	PS	PS	PS	Sect. 9.37.11

SECTION 9.37 SUPPLEMENTAL REGULATIONS FOR THE SPD-C DISTRICT.

9.37.1. Hotels.

Hotels shall be permitted in accordance with Section 9.36, Table of Uses and Activities for the SPD-C District, provided that hotel suites comprise no more than thirty-three (33) percent of the total units in the building.

9.37.2. Home Center.

Home centers shall be permitted in accordance with Section 9.36, Table of Uses and Activities for the SPD-C District, subject to the following requirements:

9.37.2.1. All materials and products must be enclosed and roofed on all sides.

9.37.2.2. If a building is used in connection with such center, the building may serve as a buffer on more or more sides.

9.37.2.3. The home center shall be fenced on all sides not abutting a building to a height of six (6) feet. Such construction shall be done in a manner so that there is no visible display of the materials and other matter stored within such center from the outside of such center.

9.37.2.4. A buffer zone of at least 2-1/2 feet from all property lines to all buildings, parking areas, and drives shall be maintained.

9.37.3. Child Day Care Center.

Child day care centers are allowed as a conditional use in accordance with Section 9.36, Table of Uses and Activities for the SPD-C District, subject to other requirements of this Article and provided that the following conditions are met:

9.37.3.1. The facility shall adhere to the minimum requirements of and be licensed by the NC Department of Health and Human Services, Division of Child Development and Early Education.

9.37.3.2. Pickup and drop-off areas shall be provided separate from the drive aisle. The pickup and drop-off areas shall be designed so that no child is required to cross the parking lot or any other traffic areas.

9.37.3.3. All outdoor recreational areas shall be buffered from adjacent residential uses, residential land use classifications, and residential districts outside of the Village of Nags utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Article 10, Part VI, Commercial Design Standards. The buffer shall be placed on the exterior side of any required fencing.

9.37.4. Restaurant, Drive-In.

Drive-in restaurants are allowed as a conditional use in accordance with Section 9.36, Table of Uses and Activities for the SPD-C District, provided that the boundaries of the entire site, if located within fifty (50) feet of an existing residential use or district, shall be buffered from all adjacent properties and rights-of-way utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Article 10, Part VI, Commercial Design Standards.

9.37.5. Restaurant, Drive-Through.

Drive-through restaurants are allowed as a conditional use in accordance with Section 9.36, Table of Uses and Activities for the SPD-C District, provided that the boundaries of the entire site, if located within fifty (50) feet of an existing residential use or district, shall be buffered from all adjacent properties and rights-of-way utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Article 10, Part VI, Commercial Design Standards.

9.37.6. Outdoor Stands, Accessory to Shopping Mall/Neighborhood Shopping Cluster.

Outdoor stands are permitted as an accessory use to shopping malls/neighborhood shopping clusters in accordance with Section 9.36, Table of Uses and Activities for the SPD-C District, subject to the following provisions:

9.37.6.1. The principal sale of items at an outdoor stand shall be limited to either fresh produce, hot dogs, coffee, ice cream or Italian ice and fudge. The sale of any other items shall be incidental and limited to no more than ten percent of the display area or ten percent of sales.

9.37.6.2. Only one outdoor stand shall be allowed per site. The stand shall not be required to be a permanent structure and may be located upon a trailer. When located upon a trailer, skirting shall be installed around the perimeter to screen the wheels, axles and towing hitch from view.

9.37.6.3. The stand area, inclusive of display counters and awnings, shall not exceed four hundred (400) square feet for produce stands and shall not exceed one hundred fifty (150) square feet for hot dog, coffee, ice cream and Italian ice and fudge stands. Refrigeration units may be utilized within the stand area. The location of the stand on the site shall comply with minimum district yard regulations for principal use structures.

9.37.6.4. Produce stands shall be temporary and may be operated for a period of time not to exceed 180 days annually. The dates of operation shall be limited to between May 1 and November 1 each year. Hot dog, coffee, ice cream and Italian ice and fudge stands may be operated year round but shall not be left on the property overnight and must be removed daily.

9.37.6.5. All stands shall comply with applicable Dare County Health Department regulations and permitting requirements.

9.37.6.6. When located on a site with fifty (50) or more existing parking spaces, no additional parking spaces will be required. When located on a site with less than fifty (50) parking spaces a minimum of three (3) off-street parking spaces in accordance with parking regulations of this UDO shall be provided.

9.37.6.7. When the regulations contained in the subsection are in conflict with the general regulations of Town Code Chapter 12, Article III, Peddlers and Itinerant Merchants, the provisions of this UDO shall prevail.

9.37.7. Wastewater Treatment Plants.

Wastewater treatment plants designed and constructed for the use of residences or other building projects other than municipal or public community-wide waste treatment facilities are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following provisions:

9.37.7.1. The wastewater treatment plant shall meet the minimum regulations of the appropriate regulatory agencies of the state, and the additional requirements of this section.

9.37.7.2. Excepting the drainfield, the wastewater treatment plant shall be located within or adjacent to the principal building which it is designed to serve. For the purposes of this section, the principal building is defined as the facility creating the greatest number of gallons of wastewater requiring treatment. The maximum distance of such treatment plant from the principal building shall be the number of feet measured from the building to the nearest property line or fifteen (15) feet, whichever is less.

9.37.7.3. Excepting the drainfield, no part of the wastewater treatment plant shall be located closer than thirty (30) feet to any adjoining property line. Adjoining property line is defined as the boundary line of any adjoining property, the ownership of which is not identical to the property on which such plant is located. If an adjoining lot is owned by the identical owners as the land upon which such plant is located and any portion of the adjoining lot is contained within the maximum distance required by this section, both lots shall be combined into one single lot of record, and a plat combining such lots shall be recorded in the Dare County Register of Deeds prior to the issuance of a building permit.

9.37.7.4. Excepting the drainfield, in no event shall any part of a wastewater treatment plant be located closer to an adjoining building than to the principal building served by the plant.

9.37.7.5. The exterior of the wastewater treatment plant shall be architecturally compatible with the other building or buildings in the development and shall be screened in the manner which will cause it to resemble the principal structure or structures in the project.

9.37.8. Heliports, Accessory to a Hospital.

Hospitals shall have an on-site heliport as an accessory use in accordance with Section 9.36, Table of Uses and Activities for the SPD-C District, provided that the following conditions are met:

9.37.8.1. Submission of a conditional use application with the Town planning and development department in addition to the following materials:

9.37.8.1.1. A site plan prepared in accordance with the applicable section provisions of Article 4 Development Review Process, including a map showing the locations, height and first floor elevations or foundation elevations above mean sea level of all structures,

utility and street rights-of-way, existing power lines, towers, undeveloped residential lots, and other similar uses within the approach and protection area or within five hundred (500) feet of the center of the helicopter landing pad, whichever is the greater distance. The names and addresses of all property owners within this area shall be provided by the applicant.

9.37.8.1.2. Proposed heliport lighting plan demonstrating the technology and technique for retaining light on the site and prevention of light or light glare from affecting traffic using streets and highways in the area. Lighting of the helipad or final approach and takeoff areas shall comply with FAA regulations but shall be ground level based using cutoff or restrictive features to minimize overspill of light from the activity area itself.

9.37.8.1.3. Proposed approach and departing flight paths shall be shown on the site plan.

9.37.8.1.4. The use of sound buffers, proper facility siting, separation distances or other natural or manmade barriers as identified in FAA Heliport Design Advisory Circular 150/5390 2, Aviation Noise Effects, FAA-EE-85-2; Noise Control and Compatibility Planning for Airports, FAA AC 150/5020-1; and Airport Noise Compatibility Planning 14 CFR Part 150 Revised January 18, 1985, or the most recent design advisory circular shall be made a part of the hospital approval process.

9.37.8.2. The heliport shall be ground based only. No roof top facility shall be permitted.

9.37.8.3. The heliport shall comply with the latest edition of the FAA regulations in its design, size and use.

9.37.8.4. The hospital conditional use application shall not be considered for Town approval until the Town has received either tentative or final approval from the FAA, and all other required federal, state, and local approvals.

9.37.8.5. No fixed based operations or refueling facilities shall be permitted on the hospital heliport site.

9.37.8.6. The helipad shall be situated in such a manner as to minimize the impact on adjacent residential land uses.

9.37.8.7. Heliport setbacks shall be:

9.37.8.7.1. From US 158 right-of-way: Two hundred (200) feet.

9.37.8.7.2. From any residential lot line: Three hundred (300) feet.

9.37.8.7.3. From any commercial lot line: Minimum seventy (70) feet.

9.37.9. Hospitals.

Hospitals shall be permitted in accordance with Section 9.36, Table of Uses and Activities for the SPD-C District, provided that the following conditions are met:

9.37.9.1. The minimum land area for a hospital shall be ten (10) acres.

9.37.9.2. The minimum frontage along US 158 shall be five hundred (500) feet.

9.37.9.3. The maximum number of beds shall be fifty (50).

9.37.9.4. The hospital building or any accessory building shall not be located in any special flood hazard areas inundated by the 100-year flood.

9.37.9.5. No portion of the building shall be farther than two hundred (250) feet or closer than fifty (50) feet to a fire hydrant.

9.37.9.6. Fire hydrants shall be protected from traffic in accordance with Section 20-1 of the Town Code and shall be marked with strips on the pavement within the protected area.

9.37.9.7. The hospital shall be sprinkler protected in accordance with Section 20-121 of the Town Code. A fire flow test of the water supply for the sprinkler system serving or intended to serve the structures shall be conducted at the developer's expense by the Town fire department or by an independent testing firm. If the test is conducted by an independent testing firm, it shall be made under the direct supervision of the Town fire chief or his designee. A fee, in accordance with the most recently adopted consolidated fee schedule, shall be paid by the developer. If the flow is found to be deficient according to the insurance service office standards applicable to the Town, the developer shall bring the fire flow up to the requirements set out in the insurance service office standards. The fire flow test shall be made prior to the issuance of a building permit.

9.37.9.8. A 26-foot wide paved vehicular access along all four sides of the principal structure shall be provided, suitable for aerial operations, firefighting, and rescue equipment. The edge of the paved access nearer the structure shall be no closer than fifteen (15) feet nor farther than thirty (30) feet from the sides of the structure. Fire apparatus access drive-aisles shall be marked with permanent "NO PARKING-FIRE LANE" signs. All access drive-aisles shall meet the Town turn radius standards, as determined by the Town Engineer.

9.37.9.9. A buffer consisting of a 25-foot wide Commercial Transitional Protective Yard as prescribed in Article 10, Part VI, Commercial Design Standards shall be placed between the hospital building, including any accessory uses, and any adjacent residential development, open space, or Town street. A buffering plan shall be submitted with the conditional use application.

9.37.9.10. Hospital building setbacks shall be:

9.37.9.10.1. From US 158 right-of-way: Forty (40) feet.

9.37.9.10.2. From any residential use: One hundred (100) feet.

9.37.9.10.3. From any commercial use: Fifty (50) feet.

9.37.9.11. The maximum building height shall be forty-five (45) feet.

9.37.9.12. There shall be no outdoor storage of any materials.

9.37.9.13. Hospitals may have signage in accordance with Article 10, Part III, Sign Regulations of this UDO.

9.37.9.14. Access for emergency and service vehicles shall be from US 158 only.

9.37.9.15. There shall be no disposal or incineration of any toxic wastes either on-site or in the sewage treatment plant that serves the site.

9.37.9.16. An evacuation plan/critical facilities plan shall be developed by the applicant and accepted by the Board of Commissioners prior to the issuance of the certificate of occupancy, and shall be consistent with Town, community rating system (CRS), and state and local emergency management plans.

9.37.9.17. Hospitals may have detached medical offices as an accessory use on-site, provided the following conditions are met:

9.37.9.17.1. The building setbacks shall be:

9.37.9.17.1.1. From the US 158 right-of-way: Forty (40) feet.

9.37.9.17.1.2. From any residential use: Fifty (50) feet.

9.37.9.17.1.3. From any commercial use: Fifty (50) feet.

9.37.9.17.2. The maximum building height shall be thirty-five (35) feet.

9.37.10. Telephone Switching Station and Electric Substation.

Telephone switching stations and electric substations are allowed as a conditional use in accordance with Section 9.36, Table of Uses and Activities for the SPD-C District, provided that:

9.37.10.1. The utility structure shall meet the development standards of the district in which it is located including, but not limited to, setbacks, open space requirements, height, and buffer requirements.

9.37.10.2. No open storage is allowed.

9.37.10.3. All utility structures requiring a building permit shall be architecturally designed to conform to the district in which they are located.

9.37.10.4. All utility structures shall be visually buffered from all adjacent properties and rights-of-way utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Article 10, Part VI, Commercial Design Standards.

9.37.10.5. Should the use for which the structure was allowed be discontinued, then the property upon which the structure is located shall be subject to the allowed uses and all development standards of that district.

9.37.11. Portable Storage Units/Temporary Construction Trailers.

9.37.11.1. Trucks, trailers, semi-trailers (self-propelled or detached) and prefabricated cargo shipping containers or similar containers shall not be used as a storage or other type of accessory structure in any zoning district, except as provided for under this section.

9.37.11.2. Following a storm event for which a state of emergency has been declared in accordance with Chapter 14 of the Town Code of Ordinances, trucks, trailers, semi-trailers (self-propelled or detached), and prefabricated cargo shipping containers may be stored temporarily on a site to store merchandise removed from the damaged structure, provided a storm related building permit has been issued to repair the structure. Trucks, trailers, semi-trailers, and prefabricated cargo shipping containers may be located in any required parking area or drive aisle. Trucks, trailers, semi-trailers, or prefabricated cargo shipping containers shall be allowed onsite for a time period not to exceed six months from date of building permit issuance and shall be removed prior to issuance of the building permit certificate of completion.

9.37.11.3. Temporary, self-contained storage units used in moving services, including "PODS" which are intended to be picked up and moved to various locations on demand shall be allowed on a parcel for up to thirty (30) days with a zoning permit. Such storage units must be stored within the property boundary and shall be placed so as not to interfere with traffic or as to create a traffic hazard on an adjacent street.

9.37.11.4. Mobile magnetic resonance imager(s) (MRI), health or other medical vehicles providing mobile health services, and book mobiles when approved by the Town Manager as customary, mobile services or as part of a crown gathering or special events permit are specifically excluded from this regulation.

9.37.11.5. Nothing in this section shall apply to any vehicle stored in compliance with applicable Town codes. This regulation shall not be interpreted to prohibit the timely unloading and loading of commercial trailers or boat trailers in any district.

SECTION 9.38 – 9.40 RESERVED.

ARTICLE 10. PERFORMANCE STANDARDS

PART I. BUFFERING AND VEGETATION PRESERVATION GENERAL REQUIREMENTS....10-6
Section 10.1 Application of Provisions....10-6
Section 10.2 Landscape and Buffer Plan Requirements....10-6
Section 10.3 Deferring Installation Due to Seasonal Planting Limitations....10-7
Section 10.4 During Construction....10-7
Section 10.5 Maintenance and Replacement....10-8
10.5.1. Maintenance....10-8
10.5.2. Placement of Vegetation....10-8
Sections 10.6-10.10 Reserved....10-8

PART II. OFF-STREET PARKING AND LOADING REQUIREMENTS....10-9
Section 10.11 Purpose and Intent....10-9
Section 10.12 Parking Lot Requirements for Single-Family and Two-Family (Duplex) Dwelling Units....10-9
10.12.1. Reserved for the Use Intended....10-9
10.12.2. Safety on Busy Streets....10-9
10.12.3. Surface Materials Appropriate for Use....10-10
10.12.4. Number of Parking Spaces Required....10-10
10.12.5. Additional Bedrooms....10-10
10.12.6. Dimensional Requirements....10-10
10.12.7. Drive Aisle Width and Stacking Requirements....10-11
10.12.8. Setbacks for Parking and Drive Aisles....10-11
Section 10.13 Parking Requirements for All Uses Other than Single-Family and Two-Family (Duplex) Dwelling Units....10-11
Section 10.14 Minimum Parking Requirements....10-12
Section 10.15 Alternative and Reduced Commercial Parking Requirements....10-12
10.15.1. Shared Parking Associated with a New Use or New Development on Adjacent Property....10-12
10.15.2. Shared Parking Associated with a Conditional Use Plan or Plan Amendment....10-13
10.15.3. Shared Parking When Two or More Commercial Uses Exist on One Commercial Site or Adjoining Commercial Uses on Separate Properties within a Common Development Plan; Conditional Use....10-13
10.15.4. Off-Site Parking to Meet Use Requirements; Conditional Use....10-14
10.15.5. Reduction of Required Parking for Commercial Uses with the Use of Bicycle Racks....10-14
10.15.6. Modification of Parking Requirements by Conditional Use Permit....10-15
Section 10.16 Required Parking by Use....10-16
Section 10.17 Off-Street Loading....10-26
Sections 10.18-10.20 Reserved....10-27

PART III. SIGN REGULATIONS....10-28
Section 10.21 Purpose and Intent....10-28
Section 10.22 General Regulations....10-28
10.22.1 Permit Required....10-28
10.22.2. Material and Design....10-29
10.22.3. Inspection....10-29
10.22.4. Continuing Violations....10-29

10.22.5. Illuminated Signs 10-29
10.22.6. Prohibited Signs 10-29
Section 10.23 Signs Permitted in Residential Districts 10-31
10.23.1 Temporary Signs 10-31
10.23.2. Permanent Signs 10-32
Section 10.24 Signs Permitted in Commercial Districts and the Commercial/Residential District 10-34
Section 10.25 Noncommercial Signs 10-36
Section 10.26 Exemptions 10-36
Sections 10.27-10.30 Reserved 10-36

PART IV. OUTDOOR LIGHTING 10-37
Section 10.31 Purpose and Intent 10-37
Section 10.32 Inspections 10-37
Section 10.33 Prohibited Lighting 10-37
Section 10.34 General Provisions 10-38
Section 10.35 Lighting Plan Required 10-39
Section 10.36 General Performance Standards 10-40
Section 10.37 Specific Lighting Application Standards 10-40
10.37.1. Parking Lots 10-40
10.37.2. Canopy Lighting 10-41
10.37.3. Security Lighting 10-41
10.37.4. Architectural and Interior Lighting 10-41
10.37.5. Lighting of Outdoor Recreational Facilities 10-42
10.37.6. Illuminated Signs 10-43
Section 10.38 Measurements 10-44
Sections 10.39-10.40 Reserved 10-44

PART V. SUBDIVISION REGULATIONS 10-45
Division I. In General 10-45
Section 10.41 Jurisdiction; Policy 10-45
Section 10.42 Conflict of this Part with the Zoning Requirements 10-45
Section 10.43 Adoption of Appendix of this Ordinance by Planning Board 10-45
Section 10.44 Geographical Restrictions 10-46
10.44.1 Ocean Frontage Lots 10-46
10.44.2. Unimproved Materials 10-46
10.44.3. Improved, “Pumped Up” or Filled in Marshlands or Other Lands 10-46
Section 10.45 Subdivision of Land in Conjunction with Site Plan Approval for Commercial Development 10-47
Section 10.46 Access to Public Street or Highway Required 10-47
Section 10.47 Limiting Access to US 158, US64/264, NC 12, and SR 1243 10-48
Sections 10.48-10.50 Reserved 10-48
Division II. Approval and Platting Requirements 10-48
Section 10.51 Requirements for and Contents of Preliminary Plat and Supporting Documents 10-48
10.51.1. Contents of Preliminary Plat 10-48
10.51.2. Compliance with State Law 10-50
10.51.3. Outline Where Plat Covers Only Portion of Subdivider’s Tract 10-50
10.51.4. Covenants and Deed Restrictions 10-50
Section 10.52 Requirements for and Contents of Final Plat and Supporting Documents 10-51

Section 10.53 Final Plat Accompany Documents 10-51
Sections 10.54-10.60 Reserved 10-51
Division III. Improvements 10-51
Section 10.61 General Prerequisites to Beginning Improvements; Selling Lots 10-51
Section 10.62 Required Improvements Enumerated 10-52
Section 10.63 Dedications 10-52
10.63.1. Required 10-52
10.63.2. Optional 10-52
10.63.3. Rejection and Rededication 10-53
Section 10.64 Utility Easements 10-53
10.64.1. Location 10-53
10.64.2. Width 10-53
10.64.3. Continuity and Grading 10-53
Section 10.65 Buffer Easement/Subdivision Buffers for Certain Districts 10-53
10.65.1. Subdivision Buffer Easement 10-53
Section 10.66 Streets 10-54
10.66.1. Generally 10-54
10.66.2. Street Classifications 10-54
10.66.3. Geometric Design Standards 10-54
10.66.4. Intent 10-55
10.66.5. Utility Locations 10-55
10.66.6. Drainage 10-55
10.66.7. Erosion 10-55
10.66.8. Construction Standards 10-55
10.66.9. Dead Ends 10-55
10.66.10. Street Names and Signs 10-55
10.66.11. Cutting and Patching of Town Streets 10-56
10.66.12. Flood Damage Prevention 10-56
Section 10.67 Blocks 10-56
Section 10.68 Lots 10-56
10.68.1. Frontage; Area 10-56
10.68.2. Intersection of Boundaries with Street 10-56
10.68.3. Minimum Amount of Frontage 10-57
Section 10.69 Water Lines and Water Mains; Fire Hydrants 10-57
Section 10.70 Electric, Telephone, Cable Television, and Natural Gas Lines 10-57
10.70.1. Agreement with Company 10-57
10.70.2. Location of Electric, Telephone, and Television Lines 10-58
10.70.3. Location of Gas Lines 10-58
Section 10.71 Street Lighting 10-58
10.71.1. Number; Locations 10-58
10.71.2. Specifications 10-58
10.71.3. Design 10-58
10.71.4. Location of Power Lines 10-58
Section 10.72 Stormwater Runoff, Storm Drains, and Sewer Lines and Mains 10-58
10.72.1. Stormwater Runoff 10-58
10.72.2. Approval of Installation and Use 10-58
Sections 10.73-10.80 Reserved 10-58

PART VI. COMMERCIAL DESIGN STANDARDS 10-59
Division I. Commercial Design Generally 10-59
Section 10.81 Intent 10-59
Section 10.82 Applicability 10-59
Section 10.83 Design Standards 10-60
Section 10.84 Site Plan Submittal Requirements 10-60
10.84.1. Sketch Plan Review 10-60
10.84.2. Findings 10-61
Division II. Building Design 10-61
Section 10.85 Building Scale 10-61
10.85.1. Intent 10-61
10.85.2. Standards 10-62
10.85.3. Guidelines 10-63
Section 10.86 Building Size/Dimensions 10-63
10.86.1. Intent 10-63
10.86.2. Standards 10-63
Section 10.87 Building Height 10-65
10.87.1. Intent 10-65
10.87.2. Standards 10-65
10.87.3. Guidelines 10-65
Section 10.88 Architectural Design/Elements 10-66
10.88.1 Intent 10-66
10.88.2. Roofs 10-66
10.88.3. Walls 10-67
10.88.4. Windows and Doors 10-67
10.88.5. Building Materials 10-69
10.88.6. Building Detailing 10-69
10.88.7. Gas Station and Drive-Through Complexes 10-70
10.88.8. Utilities and Mechanical Equipment 10-70
10.88.9 Trash and Recycling 10-70
Division III. Site Design 10-71
Section 10.89 Intent 10-71
Section 10.90 Building Footprint and Orientation 10-71
10.90.1 Along the Beach Road (NC 12/SR 1243) and Other Two-Lane Roadways 10-71
10.90.2. For US 158/US 64/264 10-72
Section 10.91 Parking Lot Orientation 10-73
10.91.1 Along the Beach Road (NC 12/SR 1243) and Other Two-Lane Roadways 10-73
10.91.2. For US 158/US 64/264 10-73
Section 10.92 Street Access, Parking Lot Design, and Pavement Standards 10-73
10.92.1. Intent 10-73
10.92.2. Standards 10-74
10.92.3. Corner Lots to Utilize Side Street Access 10-78
10.92.4. Inter-parcel Driveway Connections 10-78
10.92.5. Internal Drive Aisle and Parking Space Dimensional Requirements 10-78
10.92.6. Parking and Drive Aisle Setbacks 10-79
10.92.7. Dead End Drive Aisle 10-79
10.92.8. Wheel Stops 10-79
10.92.9. Curbs 10-80

10.92.10. Markings 10-80
10.92.11. Fire Lanes/Access Roads 10-80
10.92.12. Safety on Busy Streets 10-80
10.92.13. Drive-Through 10-80
10.92.14. Surface Materials Appropriate for Use 10-81
10.92.15. Pedestrian Access/Facilities 10-81
Section 10.93 Landscaping, Buffering, and Vegetation Requirements 10-82
10.93.1. Intent 10-82
10.93.2. General Requirements 10-82
10.93.3. Standards 10-83
Section 10.94 Lighting 10-90
Section 10.95 Stormwater Management Facilities 10-90
Sections 10.96-10.100 Reserved 10-90

PART VII. WIRELESS TELECOMMUNICATIONS FACILITIES 10-91
Section 10.101 Purpose and Intent 10-91
Section 10.102 Requirements for Wireless Telecommunication Sites, New Wireless Support Structures, or Substantial Modification of Wireless Support Services 10-91
10.102.1. Safety Standards 10-91
10.102.2. Use Guidelines and Dimensional Requirements 10-92
Section 10.103 Small Wireless Facilities 10-92
10.103.1. Standards 10-92
10.103.2. Other Requirements 10-93
10.103.3. Application Process for Small Wireless Facilities Located within Public Rights-of Way or On Properties Containing Uses other than Single-Family Dwellings 10-94
10.103.4. Applications for Small Wireless Facilities Located on Property Developed with Single-Family Dwellings 10-96
10.103.5. Removal, Relocation, or Modification of a Small Wireless Facility 10-96

PART I. BUFFERING AND VEGETATION PRESERVATION GENERAL REQUIREMENTS

SECTION 10.1 APPLICATION OF PROVISIONS.

Buffering, vegetation preservation, and planting requirements generally apply to all uses other than single-family and duplex uses, with the exception of large residential dwellings, which also must comply with vegetation preservation requirements. Other sections of this UDO contain the majority of buffering and vegetation preservation requirements. Article 10, Part VI, Commercial Design Standards, contains specific standards for buffering and vegetation preservation for all non-residential projects that require site plan review. Additionally, Article 7 of this UDO, Supplemental Regulations, contains buffering requirements for specific uses which may differ or be in addition to the requirements of the Commercial Design Standards. To understand specific buffering requirements, it is necessary to determine if there are any buffering related supplemental standards for the land use in question. For uses which require site plan review, the Commercial Design Standards shall be reviewed to determine all other buffering and planting requirements. Buffering requirements will differ depending on the location of the project, the land use, the adjacent land uses, and the siting of buildings, parking areas, and other improvements.

Included below are general requirements for the preparation and submission of landscape and buffer plans, the procedures for deferring vegetation installation due to seasonal planting limitations, the procedures to follow during the vegetation installation and inspection process, and the requirements for maintenance and replacement of required buffering and landscaping.

SECTION 10.2 LANDSCAPE AND BUFFER PLAN REQUIREMENTS.

10.2.1. When site plan approval is required, the site plan shall contain, in addition to the information required in Article 4, Development Review Process, the information listed in subsections 10.2.1.1 to 10.2.1.5 of this section.

> ***10.2.1.1.*** The existing and proposed plant material which will be used for buffering and vegetation preservation as required by this UDO; the location, species, spacing, number and height of new trees, shrubs, and other plant material that will be used to comply with this article; the location and dimensions of buffer yards; the size of earth berms; provisions for watering, soil stabilization, plant protection and maintenance access.

> ***10.2.1.2.*** The number, location, species, height and size in circumference, one-half foot above existing grade of existing live trees and shrubs that will be used to meet the buffering and vegetation preservation requirements.

> ***10.2.1.3.*** Areas designated for the preservation of existing vegetation.

> ***10.2.1.4.*** The location and description of any barriers to be erected to protect any vegetation from damage both during and after construction.

10.2.1.5 Installation specifications and a maintenance plan to address long-term viability of proposed landscaping.

10.2.2. Required species of plant material and appropriate planting zones are defined by the Town of Nags Head Vegetative Planting Guidelines, which can be obtained from the Town of Nags Head Planning and Development Department.

10.2.3. Landscaping plans are encouraged to include a variety of species to promote overall diversity of plant material within the Town. Applicants may propose other non-invasive plant material not included in the Town of Nags Head Vegetative Planting Guidelines if it can be demonstrated that it is equal to or exceeds the quality of the plant material in the guidelines in terms of size, hardiness and overall quality.

10.2.4. Areas designated for the preservation of existing vegetation shall be marked on the site and inspected by the UDO Administrator prior to Planning Board review to ensure that the provisions of this subsection can be met.

SECTION 10.3 DEFERRING INSTALLATION DUE TO SEASONAL PLANTING LIMITATIONS.

If the required buffering is not in place at the time of a request for a certificate of compliance and it can be determined by the UDO Administrator that, due to the unavailability of plant material or that by requiring the completion of the buffering at the time of such request, it would jeopardize the health of plant materials, or weather conditions prohibit the completion of the planting, the developer/owner shall give a cashier's check to the Town in an amount equal to the total cost of the buffering improvements plus twenty (20) percent of that amount. The amount of the cashier's check shall be determined by the Town, based on a written contract from a landscape architect or firm, conditioned to hold the Town harmless to the amount of the actual cost of the proposed buffering improvements up to the full amount of the cashier's check. If the developer/owner shall fail to complete installation of the buffering improvements in accordance with this section, the Town, by an action of the Board of Commissioners may, in its sole discretion, complete such improvements utilizing the proceeds of the cashier's check.

SECTION 10.4 DURING CONSTRUCTION.

10.4.1. All vegetation preservation areas shall be adequately protected during construction to prevent damage to plant material and root systems.

10.4.2. If at any time the developer/owner desires to make a change in the percentage of site area designated for the preservation of existing vegetation, the developer/owner shall submit a proposal to the UDO Administrator outlining what is proposed and how it differs from the approved plan. Once approval has been given by UDO Administrator, the site plan for the development shall be amended, and approved, to reflect the percentage of land diverted to the preservation of existing vegetation and the amount of required new buffering.

10.4.3. All buffer planting areas shall be stabilized immediately upon planting and shall be maintained as provided in Section 10.5, Maintenance and Replacement.

SECTION 10.5 MAINTENANCE AND REPLACEMENT.

10.5.1. Maintenance.

10.5.1.1. The owner shall be responsible for the maintenance of all buffering. All required landscaping and preserved areas shall be maintained in good condition so as to present a healthy and orderly appearance and shall be kept free from refuse and debris. This includes, but is not limited to, the replacement of plants damaged by insects, disease, vehicular traffic and vandalism. Once the required vegetation, excluding live oaks, reaches the specified height, routine maintenance may include the periodic removal of excess vegetation along the sides and top of the buffer using accepted horticultural practices. In no instances shall the required buffer be reduced in height below the specified height described in this UDO. The practice of "limbing up" shall be prohibited except to remove dead plant material and then only with specific authorization from the UDO Administrator.

10.5.1.2. The owner shall be notified in writing by the UDO Administrator of the Town of any required buffer not being maintained. Upon notification by the Town for failure to maintain the buffering in a neat and orderly condition, the owner shall correct any defects in maintenance within ten days of notification by the Town. Failure to maintain the buffering in a neat and orderly appearance, free of refuse and debris as described above within the allotted time period shall be grounds to subject the owner to a civil penalty or penalties in accordance with Section 1.10, Violation of UDO Regulations.

10.5.2. Replacement of Vegetation.

10.5.2.1. The owner shall be notified in writing by the UDO Administrator of any vegetation which is damaged and needs to be replaced. All dead plants must be replaced as expeditiously as possible, but in no case longer than one (1) year or the next planting season, whichever occurs first, as determined by the UDO Administrator. A property owner may also be allowed to voluntarily replace an existing buffer that is located adjacent to a public right-of-way with new plantings upon approval of a replanting plan by the UDO Administrator. No more than twenty-five (25) percent of existing site buffering shall be allowed to be removed and replaced within any 12-month period. Failure to replace dead or damaged vegetation as described above within the allotted time period shall be grounds to subject the owner to a civil penalty or penalties in accordance with Section 1.10, Violation of UDO Regulations.

10.5.2.2. Any dead, unhealthy, or missing plants must be replaced with vegetation which conforms with the initial planting standards of this UDO. The minimum height of plants used in the voluntary replanting of existing buffers must conform to the expected achieved plant height standards of this UDO.

10.5.2.3. If a plant is severely damaged due to either an unusual climatic weather occurrence as documented by the local agriculture extension agent or water-related emergency declared by the Board of Commissioners, the owner shall have two (2) years from the event to replant.

SECTION 10.6 – 10.10 RESERVED.

PART II. OFF-STREET PARKING AND LOADING REQUIREMENTS

SECTION 10.11 PURPOSE AND INTENT.

The purpose of this section is to proactively protect, maintain and enhance the public health, safety, environment, and general welfare by establishing requirements to provide the appropriate amount and location of off-street parking and off-street loading which will:

10.11.1. Maintain and increase the level of service of the Town's streets and ability of the Town's street system to safely move traffic;

10.11.2. Facilitate safe access to and from streets;

10.11.3. Avoid conflicts between motorized and non-motorized vehicles and pedestrians;

10.11.4. Maintain and protect the visual attractiveness and community character of the Town;

10.11.5. Promote low-impact development which emphasizes stormwater management, the use of vegetative buffering and landscapes, and the preservation of open space;

10.11.6. Maximize the re-use of existing parking areas; and

10.11.7. Promote re-use of existing commercial sites by allowing for redevelopment to use existing parking configurations in appropriate circumstances.

SECTION 10.12 PARKING LOT REQUIREMENTS FOR SINGLE-FAMILY AND TWO-FAMILY (DUPLEX) DWELLING UNITS.

Permanent off-street parking spaces shall be provided in accordance with the following requirements prior to the completion of construction of any building or structure, or at the time any principal building or structure is enlarged or increased in capacity by adding dwelling units or before conversion from one zoning use or occupancy to another:

10.12.1. Reserved for the Use Intended.
Required off-street parking spaces and loading spaces are permanent areas and shall not be used for any other above ground purpose.

10.12.2. Safety on Busy Streets.
A turnaround area having sufficient maneuvering space, not less than ten (10) feet × ten (10) feet, shall be provided between the designated parking spaces and a minimum of five (5) feet from the right-of-way, so that no vehicle will be required to back into the public right-of-way. Homes which do not front on NC 12, US 158, SR 1243, and oceanfront homes that have lost access due to erosion, shall be exempt from this requirement (see also Section 8.7, Reduction in Development Standards for Erosion Threatened Structures).

10.12.3. Surface Materials Appropriate for Use.

10.12.3.1. Required parking spaces shall be graded and paved with asphalt, concrete, gravel, or other surface material designed to support the intended vehicular loading and in accordance with manufacturer's recommended specifications or other acceptable methods for design of pavement structures. This provision shall not apply in situations where a CAMA permit cannot be obtained for these surface materials.

10.12.3.2. As an alternative to the approved parking space surfaces stated above, an applicant may improve up to twenty (20) percent of the required spaces with reinforced turf pavement. The use of reinforced turf pavements shall be designed to support the intended vehicular loading and in accordance with manufacturer's recommended specifications or other acceptable methods for design of pavement structures. Turf reinforced pavements shall be considered an innovative permeable pavement surface and may be reviewed by the Town Engineer and the fire official having jurisdiction for suitability and shall count as lot coverage in the same manner as other similar permeable pavement surfaces. Turf reinforced pavements shall be installed and maintained in accordance with manufacturers recommended specifications and NCDEQ BMP manual, latest edition. If the turf reinforced pavement is not being maintained in accordance with the provision above, the owner may be required to re-surface the parking in accordance with subsection 10.12.3.1.

10.12.4. Number of Parking Spaces Required.

Parking spaces shall be based on the following formula: N-2, with N representing the number of bedrooms authorized by the septic improvement permit issued by the Dare County Health Department or the appropriate permitting agency. The minimum number of parking spaces shall be two (2).

10.12.5. Additional Bedrooms.

Prior to issuance of a certificate of completion for the construction of any additional bedroom or bedrooms to an existing single-family or two-family dwelling, all required parking spaces shall be installed.

10.12.6. Dimensional Requirements.

All residential parking area dimensions shall, at a minimum, conform to the dimensional requirements shown in the table below:

TABLE 10-1: RESIDENTIAL PARKING AREA DIMENSIONS

Residential Dimension	Single Side Parking	Double Side Parking
Aisle width (W)	12.0	12.0
Curb-to-curb width (X)	30.0	48.0
Curb-to-aisle width (Y)	18.0	18.0
Minimum stall width (Z)	10.0	10.0
Parallel parking	10' width by 20' length	
*Figures A and B illustrate parking and drive aisle dimensional requirements, setbacks, and acceptable stacking configurations.		

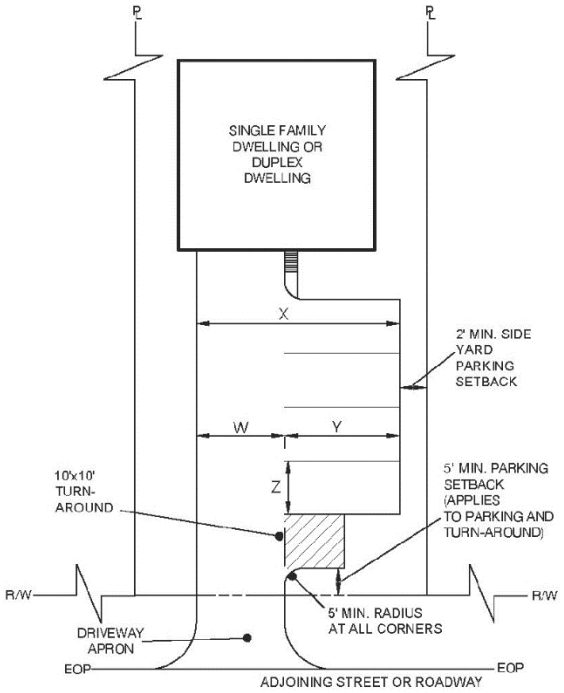


Figure A

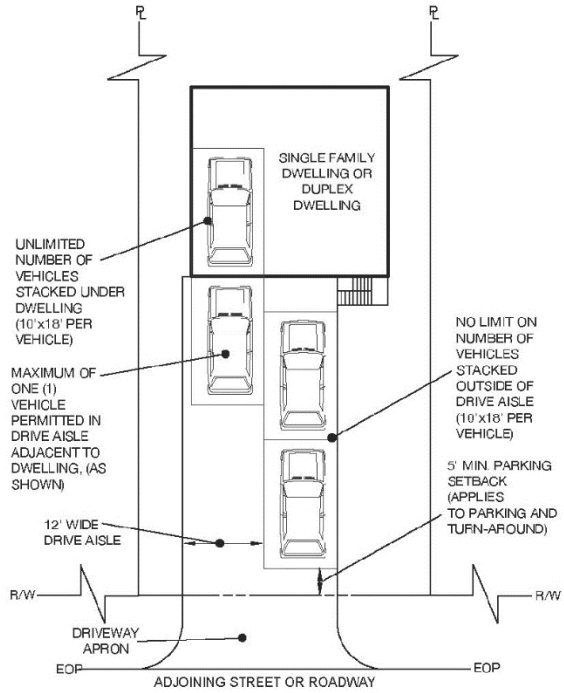


Figure B

10.12.7. Drive Aisle Width and Stacking Requirements.

Drive aisles shall be a minimum twelve (12) feet in width and shall be improved up to the front plane of the dwelling. One (1) parking space may be located at the end of the drive aisle closest to the dwelling. Other stacking of vehicles in the drive aisle is prohibited. Stacking of vehicles under the dwelling or outside of the required 12-foot driveway is unlimited. All parking areas shall be located to allow clear use of a designated turn-around area.

10.12.8. Setbacks for Parking and Drive Aisles.

10.12.8.1. All parking spaces, turn-around areas, and drive aisles shall be located no closer than two feet from any adjacent property line except where drive aisles and driveways are shared between adjacent properties.

10.12.8.2. Parking spaces, turn-around areas, and drive aisles shall be set back from the adjacent right-of-way a minimum of five (5) feet, not including the driveway and driveway apron which connects the parking areas and drive aisle to the roadway pavement.

SECTION 10.13 PARKING REQUIREMENTS FOR ALL USES OTHER THAN SINGLE-FAMILY AND TWO-FAMILY (DUPLEX) DWELLING UNITS.

10.13.1. Permanent off-street parking spaces shall be provided in accordance with the minimum parking requirements contained in this section prior to the completion of construction of any building or structure, or at the time any principal building or structure is enlarged or increased in capacity by adding dwelling units, hotel units, seats or gross floor area, or before conversion from one zoning use or occupancy to another.

10.13.2. Design standards for parking lots, including driveway design, access to Town and State roads, parking stall dimensions, fire lanes, and site design and parking lot orientation are included in the Commercial Design Standards section of this UDO (Article 10, Part VI).

SECTION 10.14 MINIMUM PARKING REQUIREMENTS.

10.14.1. The number of off-street parking spaces required by this section shall be provided on the same lot with the principal use, except as provided with parking reductions approved as part of shared parking agreements, inter-parcel connections, conditional use permits or variances granted by the Town, or in accordance with the parking reduction schedule in Section 10.15, Alternative and Reduced Commercial Parking Requirements. The required number of off-street parking spaces specified for each use shall be considered as the absolute minimum.

10.14.2. Accessory buildings used for customer service area associated with restaurants shall be included with principal buildings in the measurement for determining parking requirements.

10.14.3. Gross floor area shall be measured from the outside walls of all structures.

10.14.4. Where a fraction of a space is required by this section, the next whole number shall be provided.

10.14.5. All space requirements which are based in part or in whole upon employment shall be computed on the basis of the greatest number of persons that are on duty at any one period during the day or night during the peak season.

10.14.6. A developer shall evaluate his own needs to determine if they are greater than the minimum specified by this section.

10.14.7. Required off-street parking spaces and loading spaces are permanent areas and shall not be used for any other above ground purpose other than uses associated with a crowd gathering permit, disaster recovery or other permitted temporary uses.

SECTION 10.15 ALTERNATIVE AND REDUCED COMMERCIAL PARKING REQUIREMENTS.

10.15.1. Shared Parking Associated with a New Use or New Development on Adjacent Property. If proposed parking facilities intended to serve any proposed use are to abut and be integrated with existing and conforming parking facilities serving other uses, the parking requirement for the proposed use may be reduced in accordance with this section, provided that:

> ***10.15.1.1.*** Cross-easements are recorded in the Dare County Register of Deeds that allow unrestricted parking and traffic flow between the proposed and existing lots; and
>
> ***10.15.1.2.*** Accumulated reduction of parking spaces does not exceed 50 percent of the number of spaces in the existing parking lot; and

10.15.1.3. Only one reduction option as provided in this section shall apply to any proposed use except as prescribed in subsection 10.15.5.

10.15.2. Shared Parking Associated with a Conditional Use Plan or Plan Amendment. Proposed commercial uses in all commercial zoning districts may share, as a conditional use, a portion of existing and conforming parking spaces with other commercial uses in commercial zoning districts provided that the following conditions are met:

10.15.2.1. Application and approval for shared parking shall be in accordance with the application requirements for conditional uses under Section 3.8, Conditional Use Permits.

10.15.2.2. The uses should have staggered or different business hours and parking demands, such as an office building open between 9:00 a.m. and 5:00 p.m. and a restaurant open between 5:30 p.m. and 11:00 p.m., or a business open during the week and a church where parking demand peaks on the weekend.

10.15.2.3. No more than fifty (50) percent of required parking spaces for the proposed use may be shared with existing and conforming parking spaces of the other commercial use.

10.15.2.4. Commercial uses must be abutting and integrated with unrestricted traffic and parking flow between them or may be across a Town street or private easement or alley within the same block.

10.15.2.5. When shared parking is devoted to a use other than parking, or business hours of one or more of the uses change to preclude the shared use of the parking spaces, or one or more uses change, increasing the amount of parking spaces required, or other changes in use or parking configuration occur, the conditional use permits for both sites must be amended appropriately.

10.15.2.6. For proposed commercial uses that redevelop existing commercial sites abutting the NC 12 Beach Road corridor from East Gulfstream to Eighth Street, an alternative parking plan may be proposed that provides a ten (10) percent reduction in required parking and may be approved with or without a shared parking arrangement at the discretion of the Board of Commissioners as part of a conditional use plan.

10.15.3. Shared Parking When Two or More Commercial Uses Exist on One Commercial Site or Adjoining Commercial Uses on Separate Properties within a Common Development Plan; Conditional Use. Proposed commercial uses in commercial zoning district C-3 may share, as a conditional use, a portion of existing and conforming spaces with other commercial uses on the same or adjoining site provided that the following conditions are met:

10.15.3.1. Application and approval for shared parking shall be in accordance with the application requirements for conditional uses under Section 3.8, Conditional Use Permits.

10.15.3.2. No more than sixty (60) percent of the required spaces for the proposed use may be shared with existing and conforming parking spaces of the other commercial use.

10.15.3.3. If, in the event, the proposed use has patrons or clients that are not of legal driving age (e.g., dance class for youths that are not legal driving age) both commercial uses may be in operation at the same time as long as integrated traffic pattern is developed which allows for a safe drop-off site for patrons. Such traffic pattern must be approved by the Town Engineer.

10.15.3.4. If such shared parking is devoted to a use other than parking, or one or more of the uses change, increasing the amount of parking spaces required, or other changes in use or parking configuration occur, the conditional use permits for both sites must be amended appropriately.

10.15.4. Off-Site Parking to Meet Use Requirements; Conditional Use.

Proposed commercial uses in all commercial zoning districts may, as a conditional use, use an off-site lot in a commercial zoning district to meet the minimum parking requirements of this section, provided the following conditions are met:

10.15.4.1. Application and approval of off-site parking shall be in accordance with Section 3.8, Conditional Use Permits.

10.15.4.2. The off-site lot does not have to adjoin the principal commercial use site, but shall be located no further than three hundred (300) feet from the principal use site and shall not be located on the opposite side of US 158 or US 64/264 from the principal use site. A sidewalk or multi-use path connection must exist between off-site lot and the principal use when located along US 158.

10.15.4.3. No more than fifty (50) percent of the required parking for the use shall be permitted off-site. All required parking shall be conforming and constructed in accordance with the minimum requirements of this UDO. Lot coverage requirements for the principal use site and the off-site lot for parking shall be calculated separately.

10.15.4.4. Parking shall be the only use of the off-site lot, upon which no other principal or accessory uses shall be allowed.

10.15.4.5. An applicant for off-site parking must prove possession and control of the off-site parking property by the same person or entity having possession and control of the principal commercial use site. Such proof may be provided via copies of deeds or leases showing ownership and/or control of both the off-site parking property and the principal use property. The transfer of ownership or expiration of a lease agreement for either property may be grounds for revocation of the certificates of occupancy for the principal commercial site until additional sufficient off-site parking has been obtained and authorized.

10.15.5. Reduction of Required Parking for Commercial Uses with the Use of Bicycle Racks.

The Board of Commissioners may allow the total parking requirement for the proposed use to be reduced by up to three parking spaces at a rate of one parking space per bike rack if one or more bicycle racks are located on the site provided that:

10.15.5.1. Each bicycle rack must be highly visible and conveniently located in close proximity to the entrance of the principal structure.

10.15.5.2. Each bicycle rack must support at least five (5) bicycles.

10.15.5.3. Parking reduction shall not exceed more than one (1) parking space per ten (10) parking spaces provided.

10.15.6. Modification of Parking Requirements by Conditional Use Permit.

10.15.6.1. Upon application, the Board of Commissioners may treat any permitted or conditional use allowed in a zoning district as a conditional use and modify the parking and loading requirements of this section in accordance with the procedures and limitations established for conditional use permits set forth in Section 3.8, Conditional Use Permits.

10.15.6.2. Conditional use permits shall be subject to conditions deemed necessary by the Board of Commissioners to ensure compatibility with surrounding land uses and conditions.

10.15.6.3. In addition to the requirements of Section 3.8, Conditional Use Permits, no modification or waiver of parking or loading requirements shall be granted until the applicant has clearly demonstrated that the request:

10.15.6.3.1. Will not result in increased traffic congestion or otherwise negatively impact existing traffic flow or pedestrian and vehicular safety;

10.15.6.3.2. Will not create parking impacts for adjacent properties or within Town rights-of-way.

10.15.6.3.3. Will not be contrary to the objectives specified in the Comprehensive Plan;

10.15.6.3.4. Is necessary to permit the reasonable use of the subject property; and

10.15.6.3.5. Will not adversely impact adjacent property or the surrounding area.

10.15.6.4. In approving conditional use permit requests to modify parking and loading space requirements, the Board of Commissioners may require upgrades or alterations to the existing parking area to address issues associated with stormwater management, backing into Town streets, and to facilitate inter-parcel connectivity.

SECTION 10.16 REQUIRED PARKING BY USE.

Minimum required parking by use shall be as follows. For sites with multiple principal uses, the parking requirements for each use must be met on-site or through shared parking in accordance with Section 10.15, Alternative and Reduced Commercial Parking Requirements. Also see Section 10.17, Off-Street Loading.

TABLE 10-2: REQUIRED PARKING BY USE

Use Category/Class	Use Type	Required Parking
Residential	Cluster Housing	See parking requirements for single-family dwellings.
Residential	Cottage Courts	Parking spaces shall be based on the following formula: N-1, with N representing the number of bedrooms authorized by the septic improvement permit issued by the Dare County Health Department or the appropriate permitting agency. The minimum number of parking spaces for each unit shall be two spaces.
Residential	Dwelling, Accessory	Bedrooms within the accessory dwelling shall be included in any calculation to determine the number of required parking spaces for a single-family dwelling; one (1) additional off-street parking space shall be provided for the accessory dwelling above that which is required for the single-family dwelling.
Residential	Dwelling, Large Residential	See parking requirements for single-family dwellings.
Residential	Dwelling, Multi-Family	A minimum of 2 parking spaces for each dwelling unit plus 0.5 spaces for each additional bedroom over 2.
Residential	Dwelling, Single-Family (detached)	Parking spaces shall be based on the following formula: N-2, with N representing the number of bedrooms authorized by the septic improvement permit issued by the Dare County Health Department or the appropriate permitting agency. The minimum number of parking spaces shall be two spaces.
Residential	Dwelling, Two-Family (duplex)	See parking requirements for single-family dwellings.
Residential	Granny Pods/Temporary Health Care Structures	No additional parking required.
Residential	Home Occupation - Class 1	See parking requirements for single-family dwellings.
Residential	Home Occupation - Class 2	The parking requirement shall be determined as part of the conditional use permit.
Residential	Home Occupation - Class 3	The parking requirement shall be determined as part of the conditional use permit.
Residential	Short-term rental, partial house	One additional parking space beyond the minimum requirement for single family dwelling.
Residential	Short-term rental, whole house	No additional parking beyond the minimum requirement for single family dwelling.
Residential	Townhouse	See parking requirements for multi-family.
Residential - Group	Adult Care Home (over six residents)	One parking space per employee, plus 1 parking space for each 6 adults requiring care.
Residential - Group	Bed and Breakfast	One parking space per dwelling room plus 1 parking space for each employee.
Residential - Group	Boarding House	One parking space for each bedroom.

TABLE 10-2: REQUIRED PARKING BY USE		
Use Category/Class	**Use Type**	**Required Parking**
Residential - Group	Child Care Facility, Family Child Care Home	No additional parking required.
Residential - Group	Child Care Facility, Small Child Care Center	One parking space or queuing lane for the loading and unloading of children for each ten (10) children based on the child care center's regulated capacity with a minimum of four (4) spaces plus one parking space for each employee at maximum staff level.
Residential - Group	Dormitory	One parking space for every four occupants.
Residential - Group	Family Care Homes/Halfway Homes	One parking space per employee, plus 1 parking space for each 6 adults requiring care.
Residential - Group	Family Foster Home	See parking requirements for single-family dwellings.
Residential - Group	Hotels	One parking space for each hotel unit without kitchen facilities; 1.2 parking spaces for each unit with kitchen facilities; plus one parking space for every 100 square feet of conference or assembly area. For other accessory uses such as restaurants or retail, parking requirements shall be calculated at 75% of the standard for each permitted accessory use.
Residential - Group	Multi-Unit Assisted Housing with Services	Two parking spaces for each 5 beds intended for patient use, and 1 space for each 3 employees.
Retail	Art Gallery	One space per 300 square feet of gross floor area which is open to the public.
Retail	Art Gallery - Owner Occupied	See parking requirements for single-family dwellings.
Retail	Auction House	One parking space per 2 seats **OR** one parking space per 28 square feet of assembly area, whichever is greater.
Retail	Beach Recreation Equipment Rentals/Sales	One parking space for each 300 square feet of gross floor area, plus 2 employee parking spaces for each retail unit or establishment.
Retail	Bicycle Shop (repair, retail, rental)	See parking requirements for General Retail.
Retail	Convenience Store	See parking requirements for General Retail.
Retail	Firearms Sales and Service	See parking requirements for General Retail.
Retail	Food Truck	Three parking spaces in addition to the parking that is required for the principal use if the Food Truck will operate during the same business hours.
Retail	Food/Grocery Store	See parking requirements for General Retail.
Retail	Furniture Showroom	One parking space for each 500 square feet of gross floor area.

TABLE 10-2: REQUIRED PARKING BY USE		
Use Category/Class	**Use Type**	**Required Parking**
Retail	General Retail, including clothing, gifts, candy, toys, shoes, jewelry, notions, beach equipment, bakery, antiques, hobby goods, magazines/ comics, crafts, dry goods, gifts, musical instruments, bookstores, sporting goods (and the incidental manufacturing, repair, service of goods on the premises, or furniture store.)	One parking space for each 250 square feet of gross floor area, plus 1 parking space for each employee, but no less than 2 employee parking spaces for each retail unit or establishment.
Retail	Greenhouse/Plant Nursery	For indoor sales area, see parking standards for General Retail. In addition to indoor sales area requirements, there shall be one parking space for every 500 square feet of outdoor sales area.
Retail	Hardware Store	See parking requirements for General Retail.
Retail	Pet Shop/Dog Grooming	See parking requirements for General Retail.
Retail	Pharmacy	See parking requirements for General Retail.
Retail	Production/Repair/Sales Eyeglasses, Hearing Aids, Prosthetics	See parking requirements for General Retail.
Service	Automobile Repair	Five parking spaces for each service bay.
Service	Bail Bonds	See parking requirements for General Office.
Service	Banking Institution	One parking space for each 500 square feet of gross floor space plus 1 space for each employee.
Service	Battery Charging/Exchange Station	One parking space for each charging station.
Service	Broadcasting Studios	See parking requirements for General Office.
Service	Car Washes	One parking space shall be provided for each employee. Stacking spaces (9 feet x 18 feet each) equivalent to five times the maximum capacity of the car wash shall be provided. Maximum capacity of the car wash shall be determined by dividing the length of the enclosed vehicle lines by 30. If the car wash contains an automobile detail shop, a minimum of 2 additional parking spaces shall be provided per detail service area. Required parking for any other use shall be provided in accordance with the standard for that use.
Service	Carpet Sales and Installation	See parking requirements for General Retail.
Service	Child Care Facility, Child Care Center	One parking space per employee, plus one parking space for each six children of licensed capacity.
Service	Dry Cleaners and Laundromats (Pickup only)	One parking space for each 400 square feet of gross floor area.
Service	Fire Safety Equipment Sales and Service	See parking requirements for General Retail.

TABLE 10-2: REQUIRED PARKING BY USE		
Use Category/Class	**Use Type**	**Required Parking**
Service	Food Bank	One parking space for each 400 square feet of gross floor area, plus a minimum of 2 staff parking spaces.
Service	Fueling Station	One parking space for every four gas pumps in addition to the parking required for any convenience retail or repair services.
Service	Funeral Home	One parking space for each 4 seats in the chapel or parlor.
Service	Group Fitness-Aerobics/ Dance/Karate/Yoga	One parking space for each 200 square feet of gross floor area.
Service	Hair Salon	One parking space for each 200 square feet of gross floor area or two parking spaces per chair, whichever is greater.
Service	Indoor Fitness/Gymnasium	One parking space for each 300 square feet of gross floor area.
Service	Indoor Public Assembly	One parking space per 55 square feet of customer area. Customer area includes seating area, lounges, decks, porches and patios, but excludes stairs, stair landings, handicapped ramps, restrooms and areas not open to the general public. Paved parking shall be provided at a ratio of one space per 55 square feet of customer area. The remaining required parking may be unpaved, provided that it is compacted, contoured for proper drainage, grassed and regularly maintained.
Service	Locksmiths	See parking requirements for General Retail.
Service	Massage Therapy Center	One parking space for each 200 square feet of gross floor area.
Service	Metaphysical Wellness Services	One parking space for each 200 square feet of gross floor area.
Service	Parking Lots	N/A
Service	Real Estate Rental Management Facility	One parking space for each 200 square feet of office space plus 1 space for each employee affiliated with any real estate rental management facility with a minimum of 2 spaces.
Service	Security System Sales/ Service	See parking requirements for General Retail.
Service	Sexually Oriented Business	Parking shall be based on the use as proposed (i.e. retail, theater, bookstore, etc.)
Service	Shoe Repair	See parking requirements for General Retail.
Service	Spa	One parking space for each 200 square feet of gross floor area.
Service	Tailor	See parking requirements for General Retail.
Service	Tattoo/Body Piercing	One parking space for each 200 square feet of gross floor area or two parking spaces per chair, whichever is greater.
Service	Taxi/Limousine Service	One parking space per vehicle that provides service plus 1 parking space per office employee, not including drivers. Parking spaces shall be sized appropriately based on the size of service vehicles.
Service	Telecommunications Sales and Service	See parking requirements for General Retail.

TABLE 10-2: REQUIRED PARKING BY USE		
Use Category/Class	**Use Type**	**Required Parking**
Service	Veterinary Clinic with Animal Boarding	One parking space for every 300 square feet of gross floor area of each building or portion thereof devoted to medical use, plus 1 parking space for each employee and for each doctor
Service	Veterinary Clinic with no Animal Boarding	One parking space for every 300 square feet of gross floor area of each building or portion thereof devoted to medical use, plus 1 parking space for each employee and for each doctor.
Service	Wallpaper Sales and Installation	See parking requirements for General Retail.
Service	Water Well Drillers Office, Storage, Sales and Install	One parking space for each 200 square feet of office/retail area plus one space for each employee affiliated with any warehouse/storage use with a minimum of 2 spaces.
Food Service	Coffee Shop/Juice Bar	One parking space per 55 square feet of customer service area, plus required parking for any other permitted accessory uses, including but not limited to retail sales.
Food Service	Ice Cream Shop	One parking space per 55 square feet of customer service area, plus required parking for any other permitted accessory uses, including but not limited to retail sales.
Food Service	Microbreweries	See parking requirement for Restaurant, Sit Down.
Food Service	Restaurant - Drive In	One parking space per 55 square feet of customer service area or a minimum of 20 parking spaces, whichever is greater, plus required parking spaces for any other use including, but not limited to drive-through restaurant.
Food Service	Restaurant - Drive Through	A minimum of 10 additional parking spaces, plus required parking spaces for any other use including, but not limited to, restaurant customer service area or drive-in restaurant.
Food Service	Restaurant - Neighborhood	One parking space for every 55 square feet of indoor customer service area. In addition, a neighborhood restaurant may have on-site outdoor customer service area in an amount up to 50% of the indoor customer service area which will be exempt from restaurant parking requirement.
Food Service	Restaurant - Sit Down	One parking space for every 55 square feet of indoor customer service area.
Food Service	Restaurant - Take Out	One parking space for every 200 square feet of customer waiting and retail area plus 1 parking space for each employee, but no less than 2 employee parking spaces.
Office	Building Contractor's Office	One parking space for each 300 square feet of gross floor space plus a minimum of 2 employee parking spaces.
Office	Office w/ Outdoor Storage of Materials/Equip./Vehicles	One parking space for each 200 square feet of office/retail area plus one space for each employee affiliated with any warehouse/storage use with a minimum of 2 spaces.

TABLE 10-2: REQUIRED PARKING BY USE		
Use Category/Class	**Use Type**	**Required Parking**
Office	Professional Office, including General Business, Financial, Real Estate Sales, Insurance, Attorney, Accountant, Mortgage	One space per office or work space plus a minimum of 2 customer parking spaces.
Office	Trade Association Office	One parking space for every 25 square feet of assembly or classroom area, plus 1 parking space per office or work space.
Commercial Mixed Uses	Commercial with Accessory Residential	One parking space for the Accessory Dwelling Unit plus the parking required for the commercial use.
Commercial Mixed Uses	Group Development	Parking requirements for each principal use shall be calculated separately based upon the standards applicable to each use.
Commercial Mixed Uses	Mixed Use Development	One parking space for every 55 square feet of indoor customer service area for restaurant uses and one space for each 300 square feet of gross floor area for all office and retail occupancies.
Commercial Mixed Uses	Multiple Principal Uses	Parking requirements for each principal use shall be calculated separately based upon the standards applicable to each use.
Commercial Mixed Uses	Shopping Center	Parking requirements for each principal use shall be calculated separately based upon the standards applicable to each use.
Institutional	Adult Day Service Center	One parking space per employee, plus 1 parking space for each 6 adults requiring care.
Institutional	Cemetery	N/A
Institutional	Colleges, Universities, Community Colleges	
Institutional	Education and Research Facilities	
Institutional	School	25 parking spaces, plus 1.75 spaces for each classroom and 1 parking space for each 200 square feet of net office area.
Institutional	Municipally Operated Farmer's Market	No additional parking above what is required for the municipally owned recreation facility.
Institutional	Governmental Administrative Office	One parking space for each 200 square feet of net office areas, plus 1 space for each 2 seats in the municipal council chambers.
Institutional	Libraries	One parking space for each 300 square feet of gross floor area.
Institutional	Museum	One parking space for each 300 square feet of gross floor area.
Institutional	Non-profit/Community Outreach Center	One parking space for each 300 square feet of gross floor area.
Institutional	Non-profit/Community Outreach Center w/Aquatic Fitness Facility	One parking space for each 300 square feet of gross floor area.
Institutional	Nursing Home	Two parking spaces for each 5 beds intended for patient use, and 1 space for each 3 employees.

TABLE 10-2: REQUIRED PARKING BY USE		
Use Category/Class	**Use Type**	**Required Parking**
Institutional	Police Shooting Range	N/A
Institutional	Post Office	N/A
Institutional	Private Club (Non-Profit)	One parking space for each 150 square feet of gross floor area, plus one parking space for each two employees, plus any additional parking spaces required by the applicable provisions of this section governing recreational uses.
Institutional	Private Clubhouse for 501(c)8 Fraternal Beneficiary Societies as defined by IRS	One parking space per 55 square feet of customer service area. Customer area includes seating area, lounges, decks, porches and patios, but excludes stairs, stair landings, handicap ramps, restrooms and areas not open to the general public. Paved parking shall be provided at a ratio of one space per 55 square feet of customer area. The remaining required parking may be unpaved, provided that it is compacted, contoured for proper drainage, grassed and regularly maintained.
Institutional	Public Utility Facility	One parking space for each employee. With customer service facilities, a minimum of 5 additional spaces.
Institutional	Public Works Facility	Two parking spaces for each 3 employees, but no less than 5 spaces plus a minimum of one parking space for oversized vehicles or trucks.
Institutional	Religious Complex	One parking space for each 4 seats in the sanctuary.
Institutional	Religious Complex w/ Accessory School/Daycare	No additional parking required.
Institutional	Wastewater Treatment Plant	One parking space for each employee. With customer service facilities, a minimum of 5 additional spaces.
Institutional	Well Fields, Public Water Supply	N/A
Medical	Alcohol & Drug Outpatient Treatment	One parking space for every 300 square feet of gross floor area of each building or portion thereof devoted to medical use, plus one parking space for each employee and for each doctor.
Medical	Dialysis Center	One parking space for each dialysis machine available for treatment, plus 1 parking space for each staff member.
Medical	Hospital	Two parking spaces per bed and 1 parking space per 2 employees.
Medical	Laboratory	One parking space for every 300 square feet of gross floor area of each building or portion thereof devoted to medical use, plus 1 parking space for each employee and for each doctor.
Medical	Medical Offices	One parking space for every 300 square feet of gross floor area of each building or portion thereof devoted to medical use, plus 1 parking space for each employee and for each doctor.
Recreation	Aerial Adventure Park	One parking space per each three elements within the course, plus a minimum of four parking spaces for employees.

TABLE 10-2: REQUIRED PARKING BY USE		
Use Category/Class	**Use Type**	**Required Parking**
Recreation	Beach and Tennis Club	A minimum of 10 parking spaces, plus 1 parking space for each 150 square feet of gross floor area of club house or bath house facilities excluding dwelling unit space; 2 parking spaces for any dwelling unit; 1.5 parking spaces for each tennis court or similar facility; 1 parking space for each 100 square feet of swimming pool area; and 1 parking space for each employee.
Recreation	Bowling Alley	Four spaces per lane, plus 1 space per 150 square feet of gross floor area for accessory uses open to the public.
Recreation	Community Garden	Ten (10) parking spaces are required for the first acre; one additional parking space shall be provided for every additional acre of community garden use.
Recreation	Designated Public Events Site	Parking to determined based on the requirements for any indoor assembly areas to be located on the site. Special events for more than 100 persons shall evaluate parking based on the requirements of the crowd gathering permit.
Recreation	Environmental Awareness Area	N/A
Recreation	Fishing Pier	One parking space for each 10 feet of length for piers over 800 linear feet in length with 1 additional parking space for every 200 square feet of gross floor space under cover; or One parking space for each 20 feet of pier length for piers of 800 linear feet or less in length with one additional parking space for every 200 square feet of gross floor area space under cover; and, Fishing Pier sites shall provide two parking space for each 10 linear feet of oceanfront lot frontage in excess of 150 feet.
Recreation	Go Kart Track	One parking space for every 2 boats or car units, plus 1 space per employee, plus any other required spaces for any other use.
Recreation	Golf Club and Golf Course	Two parking spaces per hole, plus 1 for each employee, plus required parking for any other principal or accessory use.
Recreation	Grass Surface Putting Course	One parking space per hole or tee, plus 4 spaces for each 18 holes, plus 1 for each 2 employees plus required parking for any other principal or accessory use.
Recreation	Indoor Entertainment	One parking space for each 300 square feet of gross floor area and 1 additional space for each 2 employees.
Recreation	Mini-Golf	One parking space per hole or tee, plus 4 spaces for each 18 holes, plus 1 for each 2 employees plus required parking for any other principal or accessory use.
Recreation	Non-profit Private Outdoor Recreation	N/A
Recreation	Open Space	N/A
Recreation	Outdoor Amusement Rides/Games	One parking space for each 3 amusement ride seats, plus 1 space for each 2 employees.
Recreation	Outdoor Sport Climbing Wall	One parking space per 3 elements within the course, plus a minimum of 4 parking spaces for employees.

TABLE 10-2: REQUIRED PARKING BY USE		
Use Category/Class	**Use Type**	**Required Parking**
Recreation	Parasail Rental	One parking space for each 2 persons on the boat which shall be determined by the greater of the following: the number of rental space (seats); or, the rated capacity of the boat as determined by the US Coast Guard; or, when not regulated by the US Coast Guard, the rated capacity of the boat as determined by the manufacturer.
Recreation	Private Beach Access Facilities	A minimum of 10 parking spaces, plus 1 parking space for each 150 square feet of gross floor area of club house or bath house facilities excluding dwelling unit space; 2 parking spaces for any dwelling unit; 1.5 parking spaces for each tennis court or similar facility; 1 parking space for each 100 square feet of swimming pool area; and 1 parking space for each employee.
Recreation	Private Park/Playgrounds, Accessory to a Residential Subdivision or a Multi-Family Development	N/A
Recreation	Private Pool - Commercial	One parking space for each 100 square feet of pool area and one space for every two employees shall be provided.
Recreation	Public Beach/Sound Access/Bathhouse	N/A
Recreation	Municipal Park	Two parking spaces for each 1 acre of passive recreation area; 30 parking spaces per field for multi-purpose recreation facilities; 1.5 parking spaces for each tennis or sport court.
Recreation	Skate Park Facility	One parking space for each 500 square feet of the entire skate park facility area.
Recreation	Theater	One parking space for each 4 seats in the auditorium.
Recreation	Tour Boat, (49 Passengers or Less)	One parking space for each 2 persons on the boat which shall be determined by the greater of the following: the number of rental space (seats); or, the rated capacity of the boat as determined by the US Coast Guard; or, when not regulated by the US Coast Guard, the rated capacity of the boat as determined by the manufacturer.
Recreation	Watercraft Rental, Non-Powered	One parking space for every 3 rental units.
Recreation	Watercraft Rental, Powered	One parking space for every 3 rental units.
Recreation	Watercraft, Personal (Jet-Ski)	One parking space for every 3 rental units.
Telecommunications	Communication Towers, Major	N/A
Telecommunications	Communication Towers, Minor	N/A
Telecommunications	Concealed Building Mounted Antenna, Installed Flush with Roofline	N/A
Telecommunications	Concealed Building Mounted Antenna, Not Installed Flush with Roofline	N/A
Telecommunications	Small Wireless Facilities	N/A

TABLE 10-2: REQUIRED PARKING BY USE		
Use Category/Class	**Use Type**	**Required Parking**
Telecommunications	Telephone Switching Stations and Electric Substations	One parking for each employee. With customer service facilities, a minimum of five additional spaces.
Warehouse/Light Industrial	Artisan's Workshop (3,000 sq. ft. or less)	One parking space for each practitioner occupying the site, plus one space for every three students if classes are conducted on the site. For practitioners that reside on the site, no additional parking shall be required.
Warehouse/Light Industrial	Artisan's Workshop (exceeding 3,000 square feet)	One parking space for each practitioner occupying the site, plus one space for every three students if classes are conducted on the site. For practitioners that reside on the site, no additional parking shall be required.
Warehouse/Light Industrial	Asphalt/Concrete Processing	Two parking spaces for each 3 employees, but no less than 5 spaces plus a minimum of one parking space for oversized vehicles or trucks.
Warehouse/Light Industrial	Assembly or Packaging of Articles	See parking requirements for Industrial Use.
Warehouse/Light Industrial	Beverage Manufacturing, Bottling and Processing	See parking requirements for Industrial Use.
Warehouse/Light Industrial	Brick and Masonry Facilities	See parking requirements for Industrial Use.
Warehouse/Light Industrial	Canvas, Fabric and Upholstery Fabrication	See parking requirements for Industrial Use.
Warehouse/Light Industrial	Electrical Equipment Assembly	See parking requirements for Industrial Use.
Warehouse/Light Industrial	Golf Course Maintenance Facility	One parking space for each employee.
Warehouse/Light Industrial	Indoor Training Facility for Dog Agility	One parking space for each 750 gross square feet of floor area in each unit, but no less than 3 parking spaces per unit.
Warehouse/Light Industrial	Industrial Uses	Two parking spaces for each 3 employees, but no less than 5 spaces plus a minimum of one parking space for oversized vehicles or trucks.
Warehouse/Light Industrial	Junk Yards, Scrap Yards and Salvage Facilities	See parking requirements for Industrial Use.
Warehouse/Light Industrial	Mini Storage (Self- Storage) Complex	See parking requirements for Warehouse & Storage Facilities.
Warehouse/Light Industrial	Open Space Infrastructure	N/A
Warehouse/Light Industrial	Outdoor Storage in Crates, Trailers, etc.	N/A
Warehouse/Light Industrial	Outdoor Storage of Construction Equip./ Materials	N/A
Warehouse/Light Industrial	Outdoor Storage of Vehicles, Equip. and Other Goods	N/A
Warehouse/Light Industrial	Screen Printing Facility	Two parking spaces for each three employees, but no less than five spaces plus a minimum of one parking space for oversized vehicles or trucks.
Warehouse/Light Industrial	Stone Cutting, Shaping and Finishing Facilities	See parking requirements for Industrial Use.

TABLE 10-2: REQUIRED PARKING BY USE		
Use Category/Class	**Use Type**	**Required Parking**
Warehouse/Light Industrial	Trade Centers	One parking space for each 750 gross square feet of floor area in each unit, but no less than 3 parking spaces per unit.
Warehouse/Light Industrial	Warehousing & Storage Facilities	A minimum of 5 spaces plus a minimum of 1 parking space for oversize vehicles or trucks.
Accessory Uses	Bulkhead/Estuarine Bulkhead	N/A
Accessory Uses	Customary Accessory Church Facilities	N/A
Accessory Uses	Garage	N/A
Accessory Uses	Greenhouses	N/A
Accessory Uses	Heliport, Accessory to Hospital and Medical Offices	N/A
Accessory Uses	Onsite Rental of Beach Chairs & Umbrellas	N/A
Accessory Uses	Outdoor Stands - Accessory to Shopping Centers and Group Development	When located on a site with fifty (50) or more existing parking spaces, no additional parking spaces will be required. When located on a site with less than fifty (50) parking spaces a minimum of three (3) off-street parking spaces in accordance with parking regulations of this UDO shall be provided
Accessory Uses	Portable Storage Units/Temporary Construction Trailers	N/A
Accessory Uses	Private Pier/Dock	N/A
Accessory Uses	Security and Management Offices, Swimming Pools, and Tennis Courts	One parking spaces for each 150 square feet of gross floor area, and one parking space for each two employees, plus the additional parking spaces required by the applicable provisions of this section governing recreational uses.
Accessory Uses	Shed	N/A
Accessory Uses	Solar Energy	N/A
Accessory Uses	Swimming Pool	N/A
Accessory Uses	Walls and Fences	N/A
Accessory Uses	Wind Energy Facility, Rooftop	N/A
Accessory Uses	Wind Energy Facility, Small	N/A
Accessory Uses	Wind Energy Facility, Vertical Axis	N/A

SECTION 10.17 OFF-STREET LOADING.

10.17.1. One or more loading spaces shall be provided for standing, loading and unloading operations either inside or outside a building and on the same premises with every building or structure erected after the enactment of this UDO and shall be in accordance with the requirements of the following table. A loading berth shall have minimum plan dimensions of twelve (12) feet by sixty (60) feet and a 14-foot overhead clearance. A loading space need not be necessarily a full berth but shall be sufficient to allow normal loading and unloading operations of a kind and magnitude appropriate to the use. The

Town Engineer 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, parking lot or alley.

10.17.2. Loading spaces shall be located at least fifty (50) feet from any street right-of-way and shall be paved with asphalt, concrete, porous paving as approved by the Town Engineer or an open-face paving block over sand and filter-cloth base, provided that the open-face paving block is equivalent to Turfstone™ with regards to compressive strength, density, absorption and durability.

TABLE 10-3: OFF-STREET LOADING REQUIREMENTS	
Use Classification	**Space Requirements**
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.	A loading space (not necessarily a full berth) as defined in this section.
Retail operations, including restaurant and dining facilities within hotels, and office buildings with a gross floor area of 20,000 square feet or more.	One loading berth for every 20,000 square feet, or fraction thereof, of floor area.
Office building and hotels with a gross floor area of 100,000 square feet or more.	One loading berth for every 100,000 square feet of floor area.
Industrial wholesale and warehouse operations, trade centers with a gross floor area of 10,000 square feet and as follows: • 10,000-40,000 square feet • 40,000-100,000 square feet • 100,000-160,000 square feet • 160,000-240,000 square feet • 240,000-320,000 square feet • 320,000-400,000 square feet • Each 90,000 square feet above 400,000 square feet.	Minimum number of loading berths required: 1 2 3 4 5 6 1
Mini-storage	In lieu of loading berths as specified above, a continuous loading apron not less than 20 feet in width, paralleling the accesses to the storage units, shall be provided. Where the loading apron separates parallel storage buildings, the apron shall be at least 30 feet wide. Parking spaces shall be delineated on the pavement as being parallel to the buildings, always leaving an unencumbered aisle for traffic. If the loading apron does not lead to a direct exit from the property, adequate turnaround space, as determined by the Town Engineer, at the end of the apron shall be provided.

SECTION 10.18-10.20 RESERVED.

PART III. SIGN REGULATIONS

SECTION 10.21 PURPOSE AND INTENT.

10.21.1. It is the intent of this section to balance the need to protect the public safety and welfare; the need for a well-maintained and attractive community; and the need for adequate identification, communication and advertising. The regulations for signs have the following specific objectives:

10.21.1.1. To ensure that signs are designed, constructed, installed and maintained according to minimum standards to safeguard life, health, property, and public welfare;

10.21.1.2. To allow and promote positive conditions for sign communication while at the same time avoiding nuisances to nearby properties;

10.21.1.3. To reflect and support the desired character and development patterns of the various zones, overlay zones, and promote an attractive environment;

10.21.1.4. To allow for adequate and effective signs in zoning districts of the Town while preventing signs from dominating the appearance of the area;

10.21.1.5. To ensure that the constitutionally guaranteed right of free speech is protected;

10.21.1.6. To avoid the visual clutter that is potentially harmful to traffic and pedestrian safety, property values, business opportunities, and the community's appearance; and

10.21.1.7. To provide opportunities for adequate property identification which will enhance emergency response times and improve overall public safety.

10.21.2. The regulations allow for a variety of sign types and sizes for a site. The provisions do not ensure or provide for every property or business owner's desired level of visibility for the signs. The sign standards are intended to allow signs to have adequate visibility from streets and rights-of-way that abut a site, but not necessarily to streets and rights-of-way farther away.

SECTION 10.22 GENERAL REGULATIONS.

All signs shall be erected, altered, and maintained in accordance with the following provisions:

10.22.1. Permit Required.
No sign shall hereafter be erected or attached to, suspended from or supported on a building or structure, nor shall any existing sign be structurally altered, remodeled or relocated until a building permit for same has been issued by the UDO Administrator. A permit is not required for the following signs:

10.22.1.1. Signs not exceeding three (3) square feet in area.

10.22.1.2. Temporary signs, except as required for signs listed in subsection 10.23.1.4.

10.22.1.3. Noncommercial signs.

10.22.1.4. Directional signs.

10.22.1.5. An existing sign in which only the message is changed and involves no structural modification to the structure.

10.22.1.6. Permanent signs listed in subsection 10.23.2 which are six (6) square feet or less in area.

10.22.2. Material and Design.

All signs shall be constructed and designed according to generally accepted engineering practices to withstand wind pressures and load distribution as specified in Section 1205 of the state building code, as amended.

10.22.3. Inspection.

10.22.3.1. Each sign subject to the regulations of subsection 10.22.1 of this section may be subject to an annual inspection by the Building Inspector for the purpose of ensuring that the sign is maintained in a safe condition. Any fee for the annual inspection shall be in accordance with a regularly adopted fee schedule of the Town.

10.22.3.2. When a sign or a structure supporting a sign becomes structurally unsafe, the Building Inspector shall give written notice to the owner of the premises on which the sign is located that the sign shall be made safe or removed within ten (10) days of receipt of such notice.

10.22.4. Continuing Violations.

After a notice of violation, warning citation or civil citation has been issued, any re-erection or display, within a 12-month period, of the same sign or the erection or display of a substantially similar sign which is in violation of this UDO on the same premises shall be considered a continuance of the original violation.

10.22.5. Illuminated Signs.

All signs in which electrical wiring and connections are to be used shall require a permit and shall comply with the electrical code adopted by the Town and be inspected and approved by the Building Inspector. All illuminated signs shall comply with the provisions of Article 10, Part IV, Outdoor Lighting.

10.22.6. Prohibited Signs.

10.22.6.1. It shall be unlawful for any person, except a public officer or employee in the performance of his public duty, to affix, post, paint, nail, fasten, place, or locate any sign, card, banner, handbill, poster, or advertising or notice of any kind, or cause the same to be done, upon public streets, highways, public right-of-way or any publicly owned or maintained property within the Town of Nags Head, or upon any curbstone, traffic control device, street sign, hydrant, fence, guardrail, or any other structure situated within any such areas or to affix the

same to a wire or appurtenance thereof, except as may be authorized by the ordinances, laws, or regulations of the Town of Nags Head, the State of North Carolina or the United States.

10.22.6.2. No sign shall be erected or maintained which is a copy or imitation of an official highway sign and carrying the words "STOP" or "DANGER."

10.22.6.3. No sign or commercial sign shall be erected which contains, employs or utilizes lights or lighting which rotates, flashes, moves or alternates; except that time and temperature displays, as defined, are permitted but must be included in computing allowable signage. Continuous printout, running or ticker-tape type message panels or signs are prohibited.

10.22.6.4. No sign shall be erected which contains rotating sign panels.

10.22.6.5. No sign shall obstruct visibility at an intersection or driveway as regulated in Section 10.92.2.2.8, Vision Clearance (C).

10.22.6.6. No sign shall be posted on any telegraph, telephone, or electrical light pole or on any tree along any street.

10.22.6.7. No sign shall be permitted that obstructs ingress and egress to any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any room or building. Signs shall not be placed in a manner that obstructs architectural building features such as dormers, cupolas, windows, rooflines or other building elements.

10.22.6.8. No sign shall be permitted that violates any provision of any law of the state relative to outdoor advertising.

10.22.6.9 All outdoor advertising signs or structures are prohibited.

10.22.6.10. Signs supported in whole or in part by water, air or gas are prohibited.

10.22.6.11. No sign on property abutting a public trust area shall be directed toward any public trust area as defined by CAMA.

10.22.6.12. All pennants are prohibited.

10.22.6.13. Use of exposed neon, argon, krypton, or similar gas tube lighting shall be prohibited in all manners except as provided in subsection 10.24.2.5.

10.22.6.14. Tourist-oriented directional sign (TODS).

10.22.6.15. Three-dimensional sculptured objects and pictorial devices attached to and extending more than twelve (12) inches beyond any wall or roof of a building in business use are prohibited. Attached sculptured objects and pictorial devices extending twelve (12) inches or less from a building wall or building roof shall be classified as a business wall sign or roof sign and shall be subject to all regulatory requirements of this UDO pertaining to such signs.

10.22.6.16. Roof signs within the SPD-C, Village at Nags Head C-1, C-2, hotel and institutional districts are prohibited.

10.22.6.17. LED and digital signs are prohibited.

10.22.6.18. Signs mounted or attached to nonmotorized and/or motorized vehicles, watercraft, or trailers are prohibited.

10.22.6.19. No signs shall be mounted to merchandise for sale, or typical of merchandise sold, and/or such merchandise shall be prohibited from being attached to signs or their structural components.

10.22.6.20. Placement of new signs not expressly allowed by this Part are prohibited.

SECTION 10.23 SIGNS PERMITTED IN RESIDENTIAL DISTRICTS.

Signs permitted in R-1, R-2, R-3, SPD-20, SED-80, and SPD-C districts are as follows:

10.23.1. Temporary Signs.
Temporary signs, provided that they are reasonably maintained, and provided that they shall be removed when the activity or event associated with the property has ceased according to the criteria listed below. These signs shall not be illuminated.

10.23.1.1. Temporary, nonilluminated signs not to exceed six square feet in area and not greater than thirty-six (36) inches in height may be installed on lots where an active, unexpired building permit has been issued by the Town of Nags Head, limited to one such sign per permit; such signs shall be removed within 30 days after the issuance of the certificate of compliance. Alternatively, instead of installing one sign per permit, the property owner may elect to install one non-illuminated sign not exceeding thirty-two (32) square-feet in area and thirty-size (36) inches in height, which shall be removed within 30 days after the issuance of the certificate of compliance.

10.23.1.2. One (1) freestanding, non-illuminated temporary sign shall be allowed up to six (6) square feet in area and thirty-six (36) inches in height measured from the ground to the top of the sign on a site or property that is actively listed for sale. Where more than one dwelling unit exists on a site or property that is actively listed for sale or for lease, the following signs may be erected:

10.23.1.2.1. One (1) freestanding sign shall be permitted in accordance with the provisions of subsection 10.23.1.1 of this section; or

10.23.1.2.2. One (1) freestanding sign equal to 1.25 square foot of sign area per unit, which shall include the street address of the property. However, in no case shall the sign exceed thirty-six (36) square feet; or

10.23.1.2.3. One (1) sign not exceeding ten (10) inches by ten (10) inches each shall be permitted to be affixed to the exterior of each detached dwelling unit, individual townhouse unit or individual duplex unit.

10.23.1.3. At any time when a real estate agent is present on a property that is actively listed for sale, the following additional signs may be allowed:

10.23.1.3.1. One (1) additional freestanding sign up to six (6) square feet in area and thirty-six (36) inches in height measured from the ground to the top of the sign;

10.23.1.3.2. A single banner placed on the building (excluding the roof) not exceeding thirty-six (36) square feet in area; or

10.23.1.3.3. A flag sign not exceeding twenty-four (24) square feet in area.

10.23.1.4. Signs and banners associated with a special events permit or other use on a designated public events site, are permitted within the designated event site but must be directed internally to the event and not toward the exterior of property or along the beach, sound or roadway. Such signs shall not be located adjacent to the US 158 right-of-way or abutting property lines.

10.23.2. Permanent Signs.

10.23.2.1. All properties shall be permitted to contain one (1) sign not to exceed six (6) square feet in area to be placed on the wall of the principal structure. Where the principal structure is greater than one hundred (100) feet from the public right-of-way fronting the site, an additional sign may be placed in the front yard, meeting the following criteria:

10.23.2.1.1. The sign shall not exceed three (3) square feet in area. The frame surrounding the sign face shall not be included as part of the sign area provided that the framing materials are no greater than four-inch by four-inch in thickness.

10.23.2.1.2. The sign shall not exceed thirty-six (36) inches in height measured from the ground to the top of the sign.

10.23.2.1.3. The sign shall not create an obstruction to visibility for vehicles entering and exiting driveways.

10.23.2.1.4. Amortization: Front yard signs made nonconforming by this subsection shall comply with these regulations by January 1, 2019.

10.23.2.2. One (1) bulletin board not to exceed sixteen (16) square feet shall be permitted for any church, school or other noncommercial institution, which sign or board may be indirectly lighted and shall be set back at least fifteen (15) feet from the front property line.

10.23.2.3. One (1) non-illuminated sign not over one (1) square foot in area and attached flat against the building shall be allowed at a residential property with an approved home occupation.

10.23.2.4. Noncommercial Identification Signs. The following signs are permitted, provided that such sign is located on the site it identifies and is reasonably maintained:

10.23.2.4.1. One (1) wall-mounted noncommercial identification sign per unit not to exceed six (6) square feet in sign area shall be permitted for single-family and two-family sites.

10.23.2.4.2. One (1) freestanding noncommercial identification sign per unit not to exceed three (3) square feet in sign area shall be permitted for single-family and two-family sites.

10.23.2.4.3. Two signs, which may be illuminated, may be placed at the primary entrance to a subdivision not to exceed thirty-two (32) square feet each in sign area.

10.23.2.4.4. One sign, which may be illuminated, may be permitted at the site of a multi-family residential property not to exceed thirty-two (32) square feet in sign area.

10.23.2.4.5. Two signs, which may be illuminated, may be permitted at the major entrance to a public park not to exceed forty-eight (48) square feet each in sign area.

10.23.2.4.6. One (1) freestanding sign, which may be illuminated, shall be permitted at the major entrance to a governmental or publicly owned site or designated public events site not to exceed sixty-four (64) square feet in sign area. Such sign shall not exceed ten (10) feet in height. Where the property has frontage on both US 158 and NC 12 public rights-of-way, one (1) freestanding sign not exceeding sixty-four (64) square feet in area shall be permitted to be located adjacent to each public right-of-way. Where the property is on a corner lot with frontage on more than one public right-of-way, a maximum of two (2) freestanding signs shall be permitted. One (1) freestanding sign not exceeding sixty-four (64) square feet in area shall be permitted adjacent to the public right-of-way boundary of the designated front yard of the property. One (1) freestanding sign not exceeding twenty-four (24) square feet shall be permitted adjacent to a public right-of-way boundary of a designated side yard of the property. The freestanding sign permitted in the side yard shall be located no closer than seventy (70) feet to the designated front yard public right-of-way boundary and installed so that the sign face is perpendicular to the side yard public right-of-way boundary.

10.23.2.4.7. One sign, which may be illuminated, may be placed against the wall of a governmental building (local, state or federal) not to exceed twelve (12) square feet in sign area.

10.23.2.5. One (1) freestanding sign, which may be illuminated, may be placed on the site of a medical office building not to exceed twenty-four (24) square feet in sign area and ten (10) feet in total height.

10.23.2.6. Hospitals may have two (2) square feet of sign area for each lineal foot of building frontage on US 158 which may be used as wall signs, signs adjacent to internal drive aisle not exceed twenty (20) inches in height, window signs, and one (1) freestanding sign, provided that the freestanding sign shall not exceed sixty-four (64) square feet in area nor more than twenty (20) feet in height above street grade, and may be illuminated.

SECTION 10.24 SIGNS PERMITTED IN COMMERCIAL DISTRICTS AND THE COMMERCIAL/ RESIDENTIAL DISTRICT.

Signs permitted in the C-1, C-2, C-3, C-4, and CR districts are as follows:

10.24.1. All signs permitted in Section 10.23, Signs Permitted in Residential Districts.

10.24.2. For each premises in business use, or for each commercial site for which the Town has approved a site plan and has issued a building permit, three (3) square feet of business sign area for each lineal foot of frontage on a public right-of-way shall be permitted not to exceed a total of six hundred (600) square feet. Such sign area may be in a single sign or in a combination of signs subject to the following limitations:

10.24.2.1. Wall signs placed against the exterior front and side walls of a building shall be permitted, provided that they shall not extend more than twelve (12) inches beyond the building wall surface and shall not exceed twenty (20) percent of the exposed finished wall surface area including openings on the wall where it is placed. Wall signs shall not be permitted on the rear wall of a building except for: (1) buildings located on property with frontage on both US 158 and either NC 12 or Wrightsville Avenue; and (2) for buildings containing multiple business uses where public entry to an individual business is limited solely to the rear of the building; (3) rear wall signs not visible from the street right-of-way and adjoining properties; and (4) rear wall signs, upon structures located adjacent to US 158, where not visible from any residential use or residentially zoned property.

10.24.2.2. One (1) banner not to exceed thirty-six (36) square feet in sign area shall be permitted to be placed on the principal building (exclusive of the roof and rear wall) in business use. When a banner is used in combination with wall signs, the total banner and wall signage shall not exceed twenty (20) percent of the exposed finished wall surface area including openings.

10.24.2.3. For lots along five-lane roadway corridors, only one (1) freestanding sign shall be permitted to be located permanently on the property and shall not exceed sixty-four (64) square feet in area and shall not exceed twenty (20) feet in height above street grade.

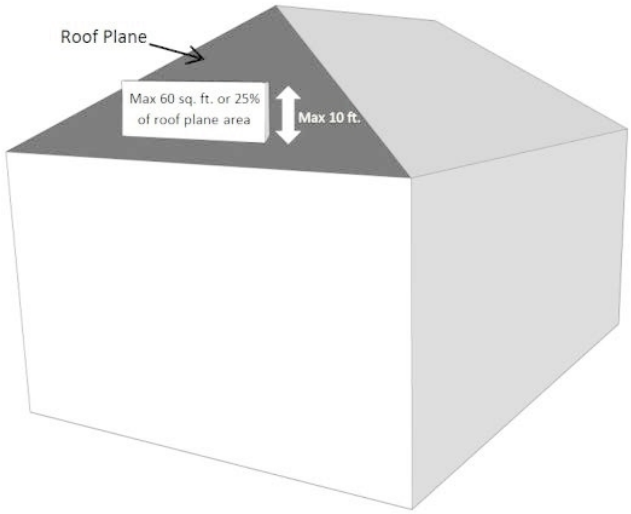
For lots along two-lane roadway corridors, only one (1) freestanding sign shall be permitted to be located permanently on the property and shall not exceed thirty-two (32) square feet in area and shall not exceed twelve (12) feet in height above street grade.

Where the property has frontage on both US 158 and NC 12 public rights-of-way, one (1) freestanding sign shall be allowed to be located adjacent to each public right-of-way, in accordance with the standards listed above.

Where the property is a corner lot with frontage on more than one public right-of-way, a maximum of two (2) freestanding signs shall be permitted in accordance with the standards listed above. The freestanding sign permitted in the side yard shall be located no closer than seventy (70) feet to the designated front yard public right-of-way boundary and installed so that the sign face is perpendicular to the side yard public right-of-way boundary.

10.24.2.4. Roof signs shall not exceed twenty-five (25) percent of the individual roof plane area to which they are attached. In no instance shall an individual roof sign exceed sixty (60) square feet in area. There shall be no more than two (2) roof signs per building.

Roof signs shall not be taller than ten (10) feet from the lowest point of attachment to the roof. In no instance shall roof signs exceed the maximum height limit for the zoning district in which the sign is permitted.



Roof signs with external lighting shall be lit from the top down to avoid the glare and sky illumination characteristics of spot lighting or up lighting.

10.24.2.5. Window signs shall be permitted to be placed only inside a commercial building and shall not exceed twenty (25) percent of the glass area of the pane upon which the sign is displayed. Window signs of exposed neon, argon, krypton or similar gas tube lighting shall be permittable, provided that such signs shall not exceed twenty-five (25) percent of glass pane

area, and shall not exceed singly, or in combination 0.15-square-foot per lineal foot of store frontage, not to exceed twenty (20) square feet of sign area for any one store.

10.24.2.6. One (1) temporary sandwich sign shall be permitted to be located on the ground but shall not exceed ten (10) square feet in area on each side and shall not exceed four (4) feet in height.

10.24.2.7. One (1) flag sign shall be permitted in accordance with the specifications listed in the definition for flag sign as described in Appendix A Definitions.

10.24.2.8. Outdoor stands shall be allowed one (1) temporary sign attached to the stand. Such sign shall not exceed fifteen (15) square feet in area or extend above the roof of the stand. This sign area shall be exempt from the calculation of total commercial site sign area limitations imposed by this subsection.

10.24.3. In any vacant site in a commercial district, the following is allowed without a permit. One (1) temporary sign, not exceeding six (6) square feet in area, shall be permitted; provided that such sign shall not be less than fifteen (15) feet from any street right-of-way or lot line, shall not be illuminated and shall be reasonably maintained. For lots which exceed one hundred (100) feet in frontage, one (1) additional square foot of sign area shall be allowed for every ten (10) feet of frontage above one hundred (100) feet. No sign shall exceed thirty-two (32) square feet in area or fifteen (15) feet in height.

SECTION 10.25 NONCOMMERCIAL SIGNS.

Noncommercial signs are permitted anywhere that advertising or commercial signs are permitted, subject to the same regulations applicable to such signs.

SECTION 10.26 EXEMPTIONS.

10.26.1. Municipal portable message signs used for the display of public safety information and government regulatory information, and directional signage to public recreational destinations shall be exempt from the requirements of this section.

10.26.2. Municipal public art located with the public right-of-way shall be exempt from the requirements of this section.

10.26.3. The Town Manager shall review and approve all messages and all directional signage exempted by this section.

SECTION 10.27-10.30 RESERVED.

PART IV. OUTDOOR LIGHTING

SECTION 10.31 PURPOSE AND INTENT.

10.31.1. Outdoor lighting standards are hereby established to provide safe lighting levels at proper intensities so as to adequately serve their intended uses and not unreasonably interfere with the use and enjoyment of neighboring properties. These standards are not intended to regulate single-family and duplex security lighting, provided that such lighting does not create a nuisance to neighboring properties. Regulations are intended to preserve the visual integrity of the nighttime environment by reducing glare, discouraging unnecessary illumination, and prohibiting the use of structure highlighting without decreasing safety, utility, and security. To satisfy this intent, and for the purposes of this section, interior lighting shall be subject to the regulations of this section, provided that interior lighting contributes to the excessive illumination of an outdoor area, or is a source of glare that is visible from the property line or any off-site location. All outdoor lighting shall be erected, altered and maintained in accordance with the provisions of this section. Streetlights erected in accordance with Section 10.71, Street Lighting are exempt from this section.

10.31.2. The purpose of this section is to regulate artificial illuminating devices utilized for general illumination or advertisement. The regulations of this section are designed to provide a uniform distribution of light that minimizes light trespass and controls glare on and off the property. The following general and specific standards encourage lighting that favorably contributes to visual performance, safety, and aesthetics from properly shielded light sources for the following lighting applications: security, parking lots, recreational facilities, buildings and structures, landscaping, open canopies, and signs.

SECTION 10.32 INSPECTIONS.

All outdoor light fixtures are subject to inspection at any time by the UDO Administrator to ensure that the light fixtures are in compliance with this section. When a light fixture fails to comply, the UDO Administrator shall give written notice to the owner and tenant of the site on which the light fixtures are located stating that the light fixtures shall be brought into compliance or removed at the owner's expense. The remedies set out in Section 1.10, Violation of UDO Regulations of this UDO shall also apply to this section.

SECTION 10.33 PROHIBITED LIGHTING.

Prohibited lighting shall be as follows:

10.33.1. Light fixtures that imitate an official highway or traffic control light or sign.

10.33.2. Light fixtures in the direct line of vision with any traffic control light or sign.

10.33.3. Light fixtures that have a flashing or intermittent pattern of illumination, except as provided elsewhere in this UDO.

10.33.4. Privately-owned light fixtures located in the public right-of-way.

10.33.5. Light fixtures that are a source of glare by their design, orientation or intensity.

10.33.6. Searchlights except when used by federal, state, or local authority.

10.33.7. Light fixtures that violate any law of the state relative to outdoor lighting.

10.33.8. General purpose area and sports floodlights except to illuminate building facades and outdoor recreational uses as provided in subsections 10.37.4.2 and 10.37.5.1.

10.33.9. Illumination of the public beach and estuarine waters from uses that are not water dependent.

10.33.10. Uplighting of windsocks, fountains or flags, except for the United States flag, state flag, official flag of the Town or permitted flag sign.

10.33.11. Structure highlighting.

10.33.12. Unshielded open vertical light fixtures.

10.33.13. Outdoor miniature lights on strings except from mid-November until mid-January, provided that such lighting does not create glare or is a nuisance to adjacent properties.

SECTION 10.34 GENERAL PROVISIONS.

10.34.1. Light fixtures shall be located on the site and designed, shielded, or oriented in such a manner as to minimize light spill across property lines and prevent glare at any location on or off the property.

10.34.2. Except for fixtures which are permitted by this Article to be used for vertical illumination or for multi-purpose recreation fields, all light fixtures shall be cut-off fixtures as defined in Appendix A – Definitions.

10.34.3. All wiring to light fixtures not located on a building shall be placed underground.

10.34.4. Principal buildings shall provide security lighting.

10.34.5. Light fixtures and supporting structures shall be designed and constructed to comply with state building code requirements.

10.34.6. No light fixture, including signs, shall exceed thirty-five (35) feet in height, except as specified in subsections 10.34.7 or 10.37.5.6. Where existing nonconforming light fixtures exist, including signs, such light fixtures and sign may be replaced provided there is no increase in the degree of nonconformity.

10.34.7. All permitted structures that exceed one hundred (150) feet in height shall be lit in compliance with the FAA regulations as identified in FAA Obstruction Marking and Lighting Advisory Circular AC 70/7460-1K as amended August 8, 2000, or the most recent FAA Advisory Circular on Obstruction Marking and Lighting, and approved by the Board of Commissioners.

SECTION 10.35 LIGHTING PLAN REQUIRED.

10.35.1. All proposed development for which site plan approval is required by the Board of Commissioners, shall require a lighting plan produced by the lighting manufacturer, registered architect, or engineer and shall be submitted as part of the site plan review process. To enable the Town to determine that applicable provisions of this section will be satisfied, the lighting plan shall include the following:

10.35.1.1. A site plan, drawn to a scale of one (1) inch equaling no more than twenty (20) feet, showing proposed features to be illuminated including, but not limited to: building, landscaping, signs, parking and loading areas, and location of all proposed exterior light fixtures;

10.35.1.2. Specifications and descriptions for all proposed light fixtures including photometric data;

10.35.1.3. Proposed mounting height of all exterior light fixtures;

10.35.1.4. Analyses and illuminance level plans in the form of an ISO footcandle or point-by-point grid diagram drawn to a scale referenced above. The submitted grid plan shall plot lighting levels at ten-foot intervals or less. The ISO footcandle diagram shall plot footcandles in increments of one-half footcandle or less. Either plan shall clearly account for lighting levels produced by all exterior light sources. The outdoor lighting plan shall account for cumulative lighting levels of combined indoor and outdoor light sources if any wall of the proposed building meets either subsection 10.35.1.6.1 or 10.35.1.6.2.

10.35.1.5. Drawings of all proposed building elevations showing the location and type of light fixtures, the portions of the walls to be illuminated, the illuminance levels at the wall surface, and the aiming points for any floodlight fixture.

10.35.1.6. In addition to the above provisions of this Subsection 10.35.1, an indoor lighting plan that details the location, specifications, and descriptions of proposed interior light fixtures and proposed average footcandles of interior customer areas shall be required for approval when submitted building elevations demonstrate:

10.35.1.6.1. An interior, heated wall surface area is comprised of fifty (50) percent glass or greater; or

10.35.1.6.2. The location of any glass area or architectural feature creates a potential for off-site glare.

10.35.2. Any proposed modification or alteration to a previously approved building elevation, site plan, or lighting plan may be approved administratively by the UDO Administrator, provided that the proposed change is considered minor.

SECTION 10.36 GENERAL PERFORMANCE STANDARDS.

All site lighting shall utilize full cutoff fixtures unless specifically excluded by other sections of this ordinance.

10.36.1. For sites with cutoff fixtures, the maximum maintained horizontal footcandle level at any point on a common property line of improved residential property shall not exceed 1.5 footcandles.

10.36.2. For existing sites with noncutoff fixtures, the maximum maintained footcandle level at any point on a common property line of improved residential property shall not exceed 0.4 footcandle.

SECTION 10.37 SPECIFIC LIGHTING APPLICATION STANDARDS.

10.37.1. Parking Lots.
Illumination standards for parking lots are based on anticipated vehicular and pedestrian activity. The standards are designed to provide the minimum lighting necessary to ensure adequate vision and safety in parking areas while at the same time minimizing glare.

10.37.1.1. High levels of activity include, but are not limited to, the following uses: fueling station, convenience store, outdoor recreational uses, attended car wash, financial institution, grocery store, theater, drive-in restaurant, drive-through restaurant.

10.37.1.2. Medium levels of activity include, but are not limited to, the following uses: retail, indoor recreational use, retail shopping center, hotel, medical offices, pharmacy, child day care center, government administrative office, indoor assembly, hospital, and restaurant.

10.37.1.3. Low levels of activity include, but are not limited to, the following uses: professional office, religious complex, townhouse and multifamily dwellings, school, wholesale, warehouse, mini-storage (self-storage) complex, furniture store, private club.

10.37.1.4. Parking lot lighting shall meet one of the following standards:

10.37.1.4.1. For cutoff fixtures, the following standards shall apply:

TABLE 10-4: PARKING LOT LIGHTING – CUTOFF FIXTURES

Level of Activity	Maximum Maintained Footcandles	Minimum Maintained Footcandles
High	10.0 fc	0.7 fc
Medium	7.0 fc	0.5 fc
Low	3.0 fc	0.2 fc

10.37.1.4.2. For existing sites with noncutoff fixtures, the following standards shall apply:

TABLE 10-5: PARKING LOT LIGHTING – NONCUTOFF FIXTURES		
Level of Activity	**Maximum Maintained Footcandles**	**Minimum Maintained Footcandles**
Medium	3.5 fc	0.5 fc
Low	1.5 fc	0.2 fc

10.37.1.4.3. Other uses.

TABLE 10-6: PARKING LOT LIGHTING – OTHER USES		
Cutoff Fixtures Required	**Maximum Maintained Footcandles**	**Minimum Maintained Footcandles**
Sexually Oriented Businesses	10.0 fc	1.5 fc

10.37.2. Canopy Lighting.

Open canopies located over fueling station gas pumps, drive-through banking facilities, and drive-in restaurants shall comply with the following standards:

10.37.2.1. Only the area directly below canopies may be illuminated such that illumination levels shall not exceed fifteen (15) maximum maintained footcandles and shall not be less than two (2) minimum maintained footcandles.

10.37.2.2. Light fixtures shall be mounted only under the canopy and shall be either recessed, or cutoff fixtures.

10.37.2.3. Light fixtures shall not be located elsewhere on the canopy and the sides of the canopy shall not be internally or externally illuminated.

10.37.2.4. Parking spaces not located directly beneath the canopy shall be illuminated in accordance with the requirements for parking areas.

10.37.3. Security Lighting.

Security lighting may be utilized for the protection of people and property by illuminating areas of building ingress, walkways, and open storage areas. Security lighting may include vertical illumination, provided that illumination above the doorway, entry or window elevation is minimal. Security lighting shall not exceed one (1) average maintained footcandle.

10.37.4. Architectural and Interior Lighting.

10.37.4.1. Light fixtures mounted on the walls and soffits shall be recessed, fully shielded or directed to the wall surface.

10.37.4.2. Floodlights may be utilized to up-light opaque wall surfaces from the ground, provided that the light fixture is located a horizontal distance no greater than fifteen (15) feet from the wall, shall not be mounted greater than thirty (30) inches in height, and illumination levels measured at the vertical plane shall not be exceeded.

10.37.4.3. Floodlights located on a canopy roof surface may be utilized to uplight attached, opaque parapet wall surface and canopy roof lying between the light and the parapet wall surface, provided the roof mounted floodlights are located a horizontal distance no greater than fifteen (15) feet from the parapet wall, shall not be greater than fifteen (15) inches above the canopy roof surface, and illumination levels at the vertical plane shall not be exceeded.

10.37.4.4. The maximum vertical illumination level of an entrance facade or parapet wall shall not exceed five (5) average maintained footcandles. The maximum illumination level shall not exceed one (1) average maintained footcandle for other wall surfaces.

10.37.4.5. Supported, roofed walkways and porches may be illuminated up to twelve (12) average maintained footcandles.

10.37.4.6. When a single interior, heated wall surface area of a building is fifty (50) percent glass or greater, or interior light fixtures are visible from the property line or off-site location, the following requirements shall apply:

10.37.4.6.1. Interior light fixtures shall be fully shielded or shielded to any cutoff angle required to prevent line of sight contact with the light source, lens or opening.

10.37.4.6.2. Average interior illumination level shall be the minimum average IESNA recommended level of illumination for that particular use.

10.37.5. Lighting of Outdoor Recreational Facilities.

10.37.5.1. General purpose area and sports lighting floodlight fixtures may be utilized, provided that all such light fixtures shall be directed or shielded such that the light measured at the property line does not exceed the following:

10.37.5.1.1. Horizontal illumination shall not exceed 0.1 initial footcandles for residential properties.

10.37.5.1.2. Vertical illumination shall not exceed 0.6 initial footcandles for residential properties.

10.37.5.1.3. Candela value shall not exceed 9,000 at between 82 degrees and 86 degrees above nadir.

10.37.5.2. Areas intended solely for pedestrian circulation, such as walkways connecting accessory buildings and viewing stands, shall be provided with security level illumination.

10.37.5.3. Light fixtures for the recreational use shall be turned off no later than 11:30 p.m. at private facilities unless otherwise specified. Light fixtures for multipurpose recreation fields shall be turned off no later than 9:00 p.m. at municipally owned recreation facilities. Only security level lighting shall be utilized to facilitate cleanup and nighttime maintenance.

10.37.5.4. A single flashing navigational light may be used in conjunction with an approved boat rental establishment subject to the following provisions:

10.37.5.4.1. The boat rental establishment shall provide documentation to the UDO Administrator that the light fixture and its location have been approved by the Commander, Fifth Coast Guard District, Portsmouth, Virginia.

10.37.5.4.2. The light shall be used only when the business is open and between the hours of sunrise to one-half hour after sunset.

10.37.5.4.3. The light source shall not be visible from adjacent properties and rights-of-way.

10.37.5.4.4. Navigational lights shall not be used in conjunction with any permitted sign.

10.37.5.5. The following illumination levels shall not be exceeded:

TABLE 10-7: OUTDOOR RECREATIONAL FACILITIES – ILLUMINATION LEVELS

Recreational Use	Average Maintained Footcandles
Bumper boats	5
Go-car track	10
Miniature golf	10
Outdoor sport climbing wall	10
Tennis/handball	15
Municipally owned recreation facilities	Minimum IES recommendation

10.37.5.6. Light fixtures for illumination of the recreational use at municipally owned recreation facilities shall not exceed seventy (70) feet in height.

10.37.5.7. Outdoor amusement rides below thirty-five (35) feet in height shall be exempt from the lighting ordinance. These exemptions shall apply between the hours of 9:00 a.m. and 11:30 p.m. and between the dates of May 15 and September 15.

10.37.5.8. Three (3) rides over 35' in height per site shall be exempt from the lighting ordinance. The exemptions of paragraphs 10.37.5.7 and 10.37.5.8 shall apply between the hours of 9:00 am and 11:30 pm and between the dates of May 15 and September 15.

10.37.6. Illuminated Signs.

10.37.6.1. Internally illuminated wall or freestanding signs that utilize fluorescent tubes as a light source shall be designed and constructed such that tubes are spaced at least twelve (12) inches on center, and mounted at least 3.5 inches from the translucent sign surface.

10.37.6.2. Spotlights or floodlights may be utilized to externally illuminate wall and freestanding signs, provided that the light fixtures are designed, located, aimed, and shielded so that light is directed only onto the sign area. Light fixtures shall not be aimed toward adjacent streets, or properties. Floodlights designed to illuminate signs from the ground shall not be mounted at a

height greater than thirty (30) inches, or located a horizontal distance greater than three-quarters the height of the sign or fifteen (15) feet, whichever is less. The average level of illumination shall not exceed ten (10) average maintained footcandles.

SECTION 10.38 MEASUREMENTS.

10.38.1. Lighting levels shall be measured in footcandles with a direct-reading, portable light meter. The meter shall have a color and cosine-corrected sensor with multiple scales and shall read within an accuracy of plus or minus seven (7) percent. It shall have been tested, calibrated, and certified by an independent commercial photometric laboratory or the manufacturer within one (1) year of the date of its use.

10.38.2. Unless otherwise specified, the meter sensor shall be mounted not more than six (6) inches above ground level in a horizontal position to measure horizontal illumination. Vertical illumination shall be measured at a height of five (5) feet with the meter sensor mounted not more than six (6) inches from the wall surface and the meter sensor in the vertical position. Readings shall be taken only after the cell has been exposed long enough to provide a constant reading.

10.38.3. Measurements of newly installed high intensity discharge light fixtures shall account for the light loss factor figured into the calculation of a point-by-point printout. A light loss factor of 0.75 is normal for metal halide and 0.80 is normal for high-pressure sodium when adjusting for lamp lumen depreciation and luminaire dirt depreciation as the system ages. As an example, a calculation with a light loss factor of 0.7 would suggest a meter reading of one initial footcandle for a printout calculation of 0.7 maintained footcandles.

SECTION 10.39-10.40 RESERVED.

PART V. SUBDIVISION REGULATIONS

DIVISION I. IN GENERAL

SECTION 10.41 JURISDICTION; POLICY.

10.41.1. The Town is authorized and empowered to approve plats showing lots, blocks, or sites of land, with or without streets or highways, to approve the redevelopment of certain entirely or partially undeveloped plats already filed in the office of the Dare County Register of Deeds and to approve or conditionally approve preliminary and final plats of lands within the Town and within one (1) mile in all directions of the corporate limits of the Town, which lands are not located in any other municipality, but in the event of land lying outside the Town and lying within a distance of one (1) mile of any other municipality, such jurisdiction granted by this section shall terminate at a boundary line equidistant from the corporate limits of such adjacent municipality.

10.41.2. It is declared to be the policy of the Board of Commissioners and the Planning Board of the Town to consider land subdivision plats as part of a plan for the orderly, efficient and economical development of the Town. This means, among other things, that land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health, or peril from fire, flood erosion or other menace; that proper provisions shall be made for drainage, water supply, sewerage and other needed improvements; that all proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties; that the proposed streets shall compose a convenient system conforming to the official map, if such exists and shall be properly related to the proposals shown on the master plan, if such exists and shall be of such width, grade and location as to accommodate the prospective traffic, to facilitate fire protection and to provide access of firefighting equipment to buildings, and to conform with existing or planned streets and with other public facilities; that a dedication of streets and rights-of-way or easements for pedestrian and utility purposes shall be made; that proper provisions shall be made for the distribution of population and traffic which shall avoid congestion and overcrowding and which shall create conditions essential to public health, safety and general welfare; and that proper provisions shall be made for open spaces for parks, playgrounds and public beaches.

SECTION 10.42 CONFLICT OF THIS PART WITH THE ZONING REQUIREMENTS.

Where the regulations contained in this section are in conflict with the provisions of the zoning regulations contained in this UDO, the zoning regulations shall prevail.

SECTION 10.43 ADOPTION OF APPENDIX TO THIS ORDINANCE BY PLANNING BOARD.

The Planning Board may, from time to time, publish for the benefit of subdividers and the public, an appendix to the regulations established by this Part, which appendix in no way may alter, modify, change or amend the policy, standards or requirements of such regulations. The appendix authorized by this Part shall only be used to explain or amplify the provisions of such regulations, provide additional

guidance, promulgate approved forms, list applicable statutes and ordinances affecting or referred to by such regulations and explain procedures required by such regulations.

SECTION 10.44 GEOGRAPHICAL RESTRICTIONS.

10.44.1. Ocean Frontage Lots.

10.44.1.1. There shall be no subdivisions of lots, parcels, or tracts of land having ocean frontage on which the barrier dunes are of insufficient height and width to prevent flooding. Conditional approval of the preliminary sketch, in the case of a minor subdivision, or the preliminary plat, in the case of a major subdivision, may be granted upon condition that the barrier dunes be constructed to comply with subsection 10.44.1.2 of this section prior to commencing the construction of any other improvements.

10.44.1.2. In order to meet the requirements of this section, the minimum elevation of the established dune line shall be eighteen (18) feet above mean low water, and the minimum width of the barrier dune at eighteen (18) feet above mean low water must be fifteen (15) feet. The minimum slope or grade of the dune at all places shall be 2½ feet horizontal to one foot of vertical rise (2.5:1).

10.44.1.3. Any new subdivision or any subdivision as a result of the combination or recombination of existing legal lots of record, lying between the Atlantic Ocean and NC 12 or between the Atlantic Ocean and SR 1243 shall employ side lot lines which extend from the right-of-way of NC 12 or between the Atlantic Ocean and SR 1243, whichever is applicable, to the mean high water mark of the Atlantic Ocean. Within any subdivision, the width of any lot at any point landward of the oceanfront building setback line shall not be less than the required lot width. Nothing in this subsection shall prohibit the combination or recombination of existing legal lots of record which do not abut both the Atlantic Ocean and NC 12 or SR 1243, provided that the resultant lot area and width are not reduced.

10.44.2. Unimproved Marshlands.

There shall be no subdivision of unimproved marshlands.

10.44.3. Improved, "Pumped Up" or Filled in Marshlands or Other Lands.

10.44.3.1. There shall be no subdivision of improved, "pumped up" or filled in marshlands or other lands until such shall have been approved in accordance with the laws and statutes of the United States and the state and until such improved, "pumped up" or filled in marshlands or other lands have been certified by a qualified engineer, registered by the state, as being capable of supporting the planned streets, utilities, improvements and structures for which the subdivision is planned and as being properly constructed and diked to prevent erosion and flooding under normal circumstances and tidal conditions.

10.44.3.2. Such certification, by a registered engineer, of the plans of the improvement as being adequate to meet the requirements of this section is sufficient for final approval or conditional

approval of the preliminary sketch, in the case of a minor subdivision, or the preliminary plat, in the case of a major subdivision, by the Planning Board; however, in no circumstances may final approval of the final plat be made until such improvements are completed and certified in accordance with this section by an engineer registered by the state.

SECTION 10.45 SUBDIVISION OF LAND IN CONJUNCTION WITH SITE PLAN APPROVAL FOR COMMERCIAL DEVELOPMENT.

10.45.1. For any commercial development for which site plan approval is required in accordance with Article 4, Development Review Process, and as a part of the commercial development plan, any tract or parcel of land is so divided that one or more portions are designated as sites for commercial development and application is being made to the Town for site plan approval, such application shall be also processed in accordance with the terms of this section in addition to the terms of the zoning regulations with the following special provisions:

10.45.1.1. If the application for site plan approval is by the owner of the land or any person having standing to make application for site plan approval, and the commercial development being established is to be owned by the applicant, the provision of Section 10.62, Required Improvements Enumerated shall not be applicable.

10.45.1.2. The procedure for submission of site plans, site plan requirements and the procedure of approval of site plans as set in Article 4, Development Review Process shall be followed in lieu of the procedural requirements of this section.

10.45.1.3. Where zoning technical requirements for the content of site plans are inconsistent with this section, the technical requirements of the zoning ordinance shall apply in lieu of those set out in this section.

10.45.1.4. All improvements and standards for lots as set out in this section shall be applicable to such site plan and all divisions of a tract or parcel of land into sites and lots shall be shown.

10.45.2. No division of land into two or more sites or lots or the designation of a portion of a larger tract of land into a site or lot for commercial development shall be permitted if the portion of the tract or parcel remaining shall fail to meet the standards of this UDO relating to one or more lots.

SECTION 10.46 ACCESS TO PUBLIC STREET OR HIGHWAY REQUIRED.

There shall be no subdivision of any tract of land which does not have access to a public street or highway which is improved to the standards of the Town or the NCDOT, whichever is applicable, which access is of a right-of-way width and is improved in accordance with Section 10.66, Streets.

SECTION 10.47 LIMITING ACCESS TO US 158, US 64/264, NC 12, AND SR 1243.

Access to US 158, US 64/264, NC 12 or SR 1243 from any lot in a new residential subdivision of land or any recombination of existing residential lots is prohibited unless and except a variance or waiver is granted pursuant to this UDO. Access to any of the above major streets shall be provided by another existing, improved public street accepted for maintenance by the Town or a local access street, collector street or environmental street in the subdivision or an access easement shown on a subdivision plat approved by the Board of Commissioners; provided, however, that maintenance and replacement of accessways is approved by the Town Attorney and is in accordance with Section 10.51.4.

SECTION 10.48-10.50 RESERVED

DIVISION II. APPROVAL AND PLATTING REQUIREMENTS

The process for review and approval of subdivisions regulated by this Article can be found in Article 4, Development Review Process, Part IV, Subdivision Procedures.

SECTION 10.51 REQUIREMENTS FOR AND CONTENTS OF PRELIMINARY PLAT AND SUPPORTING DOCUMENTS.

10.51.1. Contents of Preliminary Plat.

The preliminary plat shall be prepared in accordance with the following standards and requirements:

10.51.1.1. A scale of not more than one hundred (100) feet to the inch, and preferably not less than fifty (50) feet to the inch.

10.51.1.2. The proposed subdivision name, name of the Town, Township, and County in which located, and the zoning district, including exact boundary lines of the district if in more than one district.

10.51.1.3. All parcels of land proposed to be dedicated to public use and the conditions of such dedication.

10.51.1.4. Topographic data in spot elevations or contour lines drawn at sufficiently close intervals to show drainage flow patterns and existing and finished elevations. Elevations of existing streets that abut the subdivision and any streets proposed as part of the subdivision shall be shown.

10.51.1.5. The location, width and names of any streets, alleys or public ways shown on the official map or the master plan, if such exist, within the area to be subdivided, and the width, location, grades and names of all streets or public ways proposed by the developer.

10.51.1.6. The storm drainage plan, if proposed by the subdivider, including the location and size of proposed lines, pipes, culverts and bridges.

10.51.1.7. The location and width of all easements of right-of-way, both existing and proposed, for pedestrians and for the construction and maintenance of cable television lines, utilities, including water lines, mains and fire hydrants, sewer lines and mains, and including all connections to existing lines, surface and subsurface electric and telephone lines and conduits and pedestrian walkways.

10.51.1.8. The minimum building setback line for every proposed lot, and also lot dimensions and lot numbering or lettering.

10.51.1.9. The location and dimensions of all proposed improvements, including those existing improvements which are to be incorporated into the subdivision.

10.51.1.10. An accurately positioned north arrow coordinated with any bearings shown on the map. Indication shall be made as to whether the north index is true, magnetic or grid.

10.51.1.11. The azimuth or courses and distances as surveyed of every line shall be shown, including offset lines where actually used in the field. Distances shall be in feet and decimals thereof; other units of measure may be placed in parentheses if desired.

10.51.1.12. All map lines shall be by horizontal (level) measurements. All information shown on the map shall be correctly plotted to the scale shown. Enlargement of portions of a map are acceptable in the interest of clarity, where shown as inserts on the same sheet.

10.51.1.13. For any curved line, the following data must be given:

> ***10.51.1.13.1.*** Actual survey data from the point of curvature of the curve to the point of tangent shall be shown as standard curve data; or
>
> ***10.51.1.13.2.*** As a traverse of chords around the curve.

10.51.1.14. All streets and lots shall be carefully plotted with dimension lines indicating widths and all other pertinent information necessary to reestablish all lines in the field.

10.51.1.15. As to control corners, the location and pertinent information required by state law shall be plotted on the map. All other corners which are marked by monument or natural object shall be so identified on all maps, and all corners of adjacent owners in the boundary lines of the subject tract which are marked by monument or natural object must be shown, with a distance from one or more of the subject tract's corners.

10.51.1.16. The names of adjacent landowners and lot, block and subdivision designations shall be shown.

10.51.1.17. All visible and apparent rights-of-way, watercourses, utilities, roadways and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown, and locating, offset or traverse lines shall be plotted in broken lines with

traverse lines shall be plotted in broken lines with azimuths or courses and distances shown on the map.

10.51.1.18. Where the map is the result of a survey, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to a monument of some United States or state agency survey system, such as the United States Coast and Geodetic Survey System, where such monument is within 2,000 feet of such corner. Where the North Carolina Grid System coordinates of such monument have been published by the state department of conservation and development, the coordinates of the referenced corner shall be computed and shown in X and Y ordinates on the map. Where such a monument is not available, the tie shall be made to some pertinent and permanent recognizable landmark or identifiable point.

10.51.1.19. The location of any natural or manmade features which may affect the suitability of the land for subdivisions. Such features shall include, but not be limited to, drainageways, flood hazard areas, wetlands, and drainage ditches. When applicable, the boundaries of flood hazard areas, wetlands, and other features shall be shown on the plat along with a notation indicating the date of determination and that the boundaries are subject to change.

10.51.2. Compliance with State Law.

The subdivider shall also comply with all the provisions of state law as may be amended, including the requirement for certification by a surveyor.

10.51.2.1. Any AEC (area of environmental concern) shall be shown on the preliminary and final plat.

10.51.2.2. The following certification shall be placed on subdivision plats showing AEC's: "Some lots in this subdivision are located in areas of environmental concern at the date of approval. Individual permits may be required before any development may take place within those areas."

10.51.3. Outline Where Plat Covers Only Portion of Subdividers Tract.

If the application and preliminary plat covers only part of the subdividers entire holding, a map of the entire tract, drawn at a scale of not less than 400 feet to the inch, showing an outline of the platted area with its proposed streets and an indication of the probable future street system in the remaining portion of the tract, shall be submitted in a single copy with the preliminary plat. The preliminary plat shall be considered in the light of the entire holdings of the subdivider.

10.51.4. Covenants and Deed Restrictions.

The subdivider shall submit with the preliminary plat a list of proposed covenants, deed restrictions and a hold harmless agreement, in duplicate, which are intended to cover all or part of the tract. There also shall be submitted an application in duplicate in a format approved by the Planning Board. For any proposed subdivision amenities including, but not limited to, tennis courts, swimming pools, streets, and vehicular and pedestrian accessways for the benefit of the property owners, the developer shall establish a property owners association having the responsibility and authority for the upkeep, maintenance, repair, and reconstruction of such amenities and the authority to assess and collect dues and fees from the property owners within the subdivision for this purpose.

SECTION 10.52 REQUIREMENTS FOR AND CONTENTS OF FINAL PLAT AND SUPPORTING DOCUMENTS.

10.52.1. The final plat shall contain all information required in Section 10.51, Requirements for and Contents of Preliminary Plats and Supporting Documents, including a certificate of final approval of the water facilities as constructed and excepting those streets and easements of right-of-way for utilities and the public which existed prior to subdividing and which are removed from the subdivision as finally constructed.

10.52.2. The subdivision plat, or engineering plat, shall show the exact location of all utilities and the boundaries of the easements of right-of-way for all utilities including, but not limited to, water lines, mains and valves, sewer lines, mains and valves, surface and subsurface electric and telephone and cable television lines and conduit, street lighting and related electric wiring and conduit, storm drains and mains, natural gas lines and fire hydrants. The exact location of these utilities may be shown at the expense of not showing other information as required on the final plat, since clarity is necessary, except that street and lot boundaries must be shown.

SECTION 10.53 FINAL PLAT ACCOMPANYING DOCUMENTS.

The final plat must be accompanied by the following documents executed in duplicate:

10.53.1. A certificate of dedication of all improvements which are to be dedicated to the Town;

10.53.2. A list of all deed restrictions and covenants which are to be incorporated in the deeds of conveyance of the subdivided property;

10.53.3. An application form in such format as may be approved by the Planning Board, and which may be the same form as submitted with the preliminary plat.

SECTION 10.54-10.60 RESERVED

DIVISION III. IMPROVEMENTS

SECTION 10.61 GENERAL PREREQUISITES TO BEGINNING IMPROVEMENTS; SELLING LOTS.

10.61.1. No improvements may be commenced, nor construction of such begun, nor construction of any buildings or structures started within a subdivision until final approval is granted by the UDO Administrator to the preliminary sketch, in the case of a minor subdivision, or to the preliminary plat, in the case of a major subdivision, except as provided in Section 4.24, Review Procedure for Major Subdivisions.

10.61.2. Final approval of the final plat may not be granted by the UDO Administrator until the subdivider complies with subsection 4.24.6.

10.61.3. No lot in a subdivision may be offered for sale or sold until final approval of the final plat is granted by the UDO Administrator, those improvements required to be dedicated to the Town have been accepted by the Board of Commissioners, the Town Clerk and UDO Administrator has certified the final approval on such plat and such plat has been filed for record in the office of the Dare County Register of Deeds, in accordance with the regulations of this article and state law.

SECTION 10.62 REQUIRED IMPROVEMENTS ENUMERATED.

The following listed improvements are required to be constructed or provided by the subdivider; all other improvements are optional:

10.62.1. Street rights-of-way and paved streets;

10.62.2. Water lines, mains, fire hydrants and services;

10.62.3. Electric and telephone lines and conduit;

10.62.4. Streetlights and supports and related electric wires and conduit; provided, however, that within the SED-80 district, street lighting shall neither be required nor permitted;

10.62.5. Easements of right-of-way for utilities, where such are not within the street right-of-way;

10.62.6. Sewer lines and mains, but only after such time as the Town commences construction of a municipal sewage treatment facility or when connection to a privately-owned treatment plant is the basis for approval of the subdivision.

SECTION 10.63 DEDICATIONS.

10.63.1. Required.
The following listed improvements and the respective easements of right-of-way must be offered for dedication to the Town or its utility authorities, as appropriate:

> ***10.63.1.1.*** Streets and street rights-of-way;
>
> ***10.63.1.2.*** Water lines, mains, fire hydrants and services;
>
> ***10.63.1.3.*** Easements of right-of-way for construction, operation and maintenance of utilities and cable television lines;
>
> ***10.63.1.4.*** Streetlights and supports and related electric wiring and conduit;
>
> ***10.63.1.5.*** Sewer lines and mains when construction of such is required by the regulations of this article.

10.63.2. Optional.
All other improvements which do not become the property of utility companies may be dedicated to the Town at the option of the subdivider and pending acceptance by the Board of Commissioners.

Recreational facilities and parking lots may, at the option of the subdivider, be reserved to the general public or to the purchasers of lots within the subdivision.

10.63.3. Rejection and Rededication.

All improvements dedicated to the Town which are rejected by the Board of Commissioners shall revert to the subdivider; except, that the improvements which are rejected for failure to meet construction and design specifications or are substandard must be reoffered for dedication when they are brought up to construction and design specifications and approved standards of the Town. The reoffer of dedication shall be made within six (6) months of initial rejection. Failure to reoffer for dedication, or failure to meet construction and design specifications of Town standards at the time of reoffer of dedication, shall result in a breach of the regulations of this article and may result in bond forfeiture and incur all applicable penalties for the violation of the regulations of this article.

SECTION 10.64 UTILITY EASEMENTS.

10.64.1. Location.

All easements of right-of-way for the construction and maintenance of utilities and cable television lines shall be located in the street rights-of-way between the paved roadway and the street line; except, that where topography or subdivision design considerations make such location impractical, a perpetual unobstructed easement shall be provided with access to a street right-of-way; provided, however, that within the SED-80 district all easements for utilities and cable television lines shall be located within street rights-of-way.

10.64.2. Width.

All easements which are not within a street right-of-way shall have the following widths as appropriate:

10.64.2.1. If designed to include only one utility, the width shall be not less than ten (10) feet;

10.64.2.2. If designed to include more than one utility, the width shall not be less than twenty (20) feet.

10.64.3. Continuity and Grading.

All easements shall be continuous from block to block and shall be cleared and graded; provided, however, that in the SED-80 district easements shall only be cleared and graded to the minimum extent necessary for the actual installation of utilities. In addition, within the SED-80 district all utility easements to serve individual lots and parcels shall, to the extent practicable, be located in the driveway area.

SECTION 10.65 BUFFER EASEMENT/SUBDIVISION BUFFERS FOR CERTAIN DISTRICTS

10.65.1 Subdivision Buffer Easement.

All subdivisions in the R-3 high density residential zoning district, containing lots fronting on US 158 shall provide a 25-foot wide buffer yard easement to be recorded on the plat.

10.65.1.1 The first fifteen (15) feet of lot depth adjacent to the right-of-way shall be left undisturbed and in its natural state. This subsection shall not preclude the construction of any required driveway, underground placement of utilities, nor the placement of a sign.

10.65.1.2. A vegetative buffer shall be provided immediately adjacent to the undisturbed area. The buffer shall be a minimum width of ten (10) feet with two (2) rows of planting material placed on ten (10) foot centers that are a minimum height of five (5) feet when installed that are expected to achieve a height of eight (8) feet within three (3) years. The use of sand or earth berms is encouraged, in which case the berm slope shall not exceed three to one (3:1). The minimum acceptable methods for buffering all other boundaries of the site shall include:

10.65.1.2.1. A vegetative buffer of a minimum width of ten (10) feet with two (2) rows of planting material placed on 10-foot centers that are a minimum height of five (5) feet when installed;

10.65.1.2.2. Sand or earth berms that will not exceed a slope of three to one (3:1) to a height of five (5) feet, stabilized with grasses and shrubs appropriate to the site; or

10.65.1.2.3. A combination of the above designed to be a minimum height of five (5) feet when installed. The selected materials for buffering must be approved by the UDO Administrator prior to the issuance of a building permit.

SECTION 10.66 STREETS.

10.66.1. Generally.

The residential street standards set forth in this division are established by the Town. The purpose of this division is to provide additional detail for residential streets and promulgate residential street standards which will serve the long-term interests of the Town. All streets constructed as required for subdivisions must be one or a combination of the following three types of streets and be constructed in accordance with the design standards of this section.

10.66.2. Street Classifications.

10.66.2.1. Collector streets intended to provide the primary access to subdivisions and serve as the main feeder to a major street from a local street.

10.66.2.2. Local access streets are intended to provide access to abutting properties and on which through traffic is discouraged.

10.66.2.3. Environmental streets are intended to provide direct access to residentially zoned properties in environmentally sensitive areas on which through traffic is discouraged and serve no more than fifty (50) dwelling units.

10.66.3. Geometric Design Standards.

Geometric design standards for local access, collector, and environmental streets shall conform to the criteria listed in chapter 36 of this Code; provided, however, that within the SED-80 district all streets

shall conform to the environmental street design standards. In addition, streets entering and within the SED-80 district shall be designed and aligned, insofar as practicable, to minimize the impacts of cuts in ridge line forests and salt mist intrusion and to minimize cuts and fills in the dune system. Street rights-of-way within the SED-80 district shall only be cleared and graded to the minimum extent necessary for the actual installation of required street improvements.

10.66.4. Intent.

Within the SED-80 district, it is the intent of this section that the paved section of cul-de-sac provide a 40-foot edge of pavement radius but not be required to extend the full width of the right-of-way. The pavement section should encompass only that area necessary to provide for reasonable traffic circulation, as determined by the Public Works Director.

10.66.5. Utility Locations.

Utility locations shall be in accordance with Town Code Section 36-4(b), utility locations.

10.66.6. Drainage.

Stormwater management shall be in accordance with Article 11, Part I of this UDO.

10.66.7. Erosion.

Erosion control shall be in accordance with Town Code Section 36-4 and Article 11, Environmental Regulations, Part II, Soil Erosion and Sedimentation Control.

10.66.8. Construction Standards.

All subdivision streets shall be constructed in accordance with the standards of Chapter 36 of the Town Code as the same may be amended from time to time.

10.66.9. Dead Ends.

10.66.9.1. The creation of dead end or loop residential streets is permitted; however, as a minimum requirement, any dead end street must be in conformance with the table in Town Code Section 36-4.

10.66.9.2. Dead ends shall not be used to avoid connection with an existing street or to avoid the extension of a through street. These regulations shall not be construed to permit the laying out of a street which ends in a dead end, and which is offset from any other dead end street in an adjoining subdivision by a distance of less than three hundred (300) feet, measured centerline to centerline extended.

10.66.9.3. Wherever possible, street patterns within a new subdivision shall be laid out so as to join existing streets of adjacent subdivisions which terminate in a dead end.

10.66.10. Street Names and Signs.

All streets must be named so as not to duplicate the names of any existing streets in the Town. Such names shall be approved by the UDO Administrator and incorporated on the preliminary and final plats. Street name signs must be erected on at least two (2) opposite corners of each intersection in the subdivision and be of such a type design and quality as meets the approval of the Planning Board.

10.66.11. Cutting and Patching of Town Streets.
Cutting of Town streets for the purpose of installing a telephone, cable television, power cable or water service line is not permitted. For the purpose of installing a water main, sewer main or drainage culvert, a Town street may be cut, provided that the following requirements are met:

10.66.11.1. The existing asphalt must be cut in a clean, straight line with a device designed for cutting asphalt.

10.66.11.2. The new subbase material must be thoroughly compacted with a mechanical compactor and be free from concrete, rocks or other debris.

10.66.11.3. The new base must be a minimum of six inches ABC after mechanical compaction. A tack coat must be applied prior to paving.

10.66.11.4. The asphalt patch must be a minimum of two (2) inches type I-2, and tack must be applied along the edges of the old asphalt. The patch must extend a minimum of one (1) foot beyond the edge of the cut on both sides of such cut.

10.66.12. Flood Damage Prevention.
All subdivision proposals shall be consistent with the requirements of Article 11, Part III, Flood Damage Prevention.

SECTION 10.67 BLOCKS.

10.67.1. Subdivisions within the SED-80 district shall be exempt from the requirements of this section.

10.67.2. Blocks shall not be less than five hundred (500) feet nor more than twelve hundred (1,200) feet in length and no less than two hundred fifty (250) feet nor more than twelve hundred (1,200) feet wide, as measured along the street right-of-way. In blocks exceeding eight hundred (800) feet in length, the subdivider shall provide for a pedestrian right-of-way through the approximate center of the block and across the width of the block. This right-of-way shall have a minimum width of ten (10) feet and must be cleared and graded. At the option of the subdivider, this pedestrian right-of-way may include a utility easement which meets the standards of this UDO for such utility easements. As an exception to the width requirements of this section, any block which fronts on one or more sides on a body of water may have a minimum width of one hundred twenty-five (125) feet.

SECTION 10.68 LOTS.

10.68.1. Frontage; Area.
All lots in a subdivision must front a street, and no lot shall be laid out which shall have an area less than that required by Article 8, District Development Standards of this UDO.

10.68.2. Intersection of Boundaries with Street.
All lot boundaries which intersect a street right-of-way must be substantially at right angles, within twenty (20) degrees, to straight streets, or radial, within fifteen (15) degrees, to curved streets.

10.68.3. Minimum Amount of Frontage.
All lots shall be designed so that they shall front on a public street for a distance of not less than fifty (50) feet which shall be measured along the right-of-way of such street; provided, further, that in the case of lots fronting on a cul-de-sac or street curve, the frontage may be reduced to not less than thirty (30) feet upon approval of the Planning Board.

SECTION 10.69 WATER LINES AND WATER MAINS; FIRE HYDRANTS.

10.69.1. A subdivider shall install along the streets, easements of public right-of-way or other ways in such subdivision a water main, to be connected with the Town's nearest water main, of sufficient size so as to provide each individual lot in such subdivision with access to such main for connection therewith without crossing any other lot in such subdivision; provided, however, that where any part of the land being subdivided lies more than five hundred (500) feet from an existing fire hydrant or from where fire hydrants are to be installed in the subdivision, the water main must be at least a six-inch water main to each fire hydrant; provided, further, that if the subdivision lies between any area of land which is not served by a six-inch water line and an area served by an existing six-inch water line, the water line required in this section must be at least a six-inch water line.

10.69.2. The connection of such water mains with the water system of the Town and the installation and size thereof shall be in accordance with the Town water distribution facilities requirements and be under the supervision of and approved by the water superintendent of the Town, who must be notified and shall inspect such connection before it is covered. If the water superintendent and the Planning Board shall determine that a water line of greater diameter than eight (8) inches is necessary, the cost of the larger line over and above that of an eight-inch line shall be paid in accordance with Town Code Section 44-108.

10.69.3. Fire hydrants, of a type and specification meeting the currently adopted water line standards of the Town, must be installed, one at each street intersection and at maximum intervals of five hundred (500) feet. The installation shall be inspected and approved by the water superintendent before it is covered.

10.69.4. A minimum one-inch service including crossovers and meter boxes shall be provided by the developer to all lots in a residential subdivision. Larger services shall be required in multiple housing projects. The type and installation of all water distribution facilities shall meet the requirements of the currently adopted water line standards of the Town.

SECTION 10.70 ELECTRIC, TELEPHONE, CABLE TELEVISION, AND NATURAL GAS LINES.

10.70.1. Agreement with Company.
Electric power, telephone, cable television, and natural gas lines are to be installed by agreement between the subdivider and the appropriate utility company, and such installation must conform to the standards provided by the respective utility company. The execution of such agreement by the subdivider and the utility company, even though such lines are not physically installed at the time of

submission of the final plat for approval, may be deemed to meet the construction requirements of these regulations, by the Planning Board, for the purpose of final approval.

10.70.2. Location of Electric, Telephone, and Television Lines.

The installation of electric power, cable television, and telephone lines shall be beneath the surface of the ground.

10.70.3. Location of Gas Lines.

The location of natural gas lines underground is mandatory if such location is provided for in the subdivision plans.

SECTION 10.71 STREET LIGHTING.

10.71.1. Number; Locations.

The subdivider shall install street lighting having a suggested separation of three hundred (300) feet and maximum separation of five hundred (500) feet, including at least one light at each intersection or street bend of sixty (60) degrees or more. Installation shall be on the street right-of-way; provided, however, that within the SED-80 district, street lighting shall neither be required nor permitted.

10.71.2. Specifications.

Streetlights must have the following minimum specifications: 3,300-lumen mercury vapor lights mounted on noncorrosive poles, which poles are designed to accommodate underground wiring and of strength and corrosive resistance equivalent to pre-stressed concrete.

10.71.3. Design.

The design of the streetlight units may be selected by the subdivider with the requirement that the design shall be standard throughout the subdivision and be of compatible design with the street lighting of existing adjoining subdivisions, as determined by the Planning Board.

10.71.4. Location of Power Lines.

The location of electric power lines for streetlights shall be underground. The cost of the installation of underground wiring shall be borne by the subdivider.

SECTION 10.72 STORMWATER RUNOFF, STORM DRAINS, AND SEWER LINES AND MAINS.

10.72.1. Stormwater Runoff.

Stormwater runoff from lots shall be managed in accordance with Article 11 of this UDO pertaining to Stormwater Management (Part I) and Soil Erosion and Sedimentation Control (Part II).

10.72.2. Approval of Installation and Use.

The installation and size of storm drains, sewer lines and mains, if provided for in the subdivision plans or if required by these regulations, shall be under the supervision of and shall be approved by the water service supervisor and public works director of the Town.

SECTION 10.73-10.80 RESERVED

PART VI. COMMERCIAL DESIGN STANDARDS

DIVISION I. COMMERCIAL DESIGN GENERALLY

SECTION 10.81 INTENT.

The Town of Nags Head features a broad array of architectural styles, some of which are derived from traditional Nags Head cottage design. These standards are intended to build on a sense of continuity and community identity, not to dictate specific building styles. These standards are not intended to limit creativity but to serve as a useful tool for design professionals to engage in contextual, site-specific design. Acceptable building styles shall continue the Town's human-scaled environment through visually compatible architectural forms, massing, details, relationship to nearby buildings and neighborhoods, and the use of materials consistent with these standards. Site design will strive to create a sense of place while maintaining compatibility with adjacent land uses, encouraging walkability, promoting safe and efficient movement of pedestrians and vehicles, preserving and/or enhancing natural areas, and minimizing nuisances associated with noise, high levels of activity, and stormwater runoff.

SECTION 10.82 APPLICABILITY.

These design standards shall apply to all building construction or remodeling projects requiring a conditional use permit or site plan review according to requirements found in this UDO. These standards shall not apply to the following uses:

- Fishing piers
- Public utility facilities
- Single-family dwellings and duplexes
- Projects located in the C-3, Commercial Services Zoning District.

Except for the uses listed above, all existing principal structures located in the Commercial Residential (CR) District, Neighborhood Commercial (C-1) District, General Commercial (C-2) District, Arts and Culture (C-4) District, and The Village at Nags Head SPD-C Commercial 1, Commercial 2, and Hotel zoning districts which do not meet the requirements of this section shall be regulated in accordance with Article 5, Nonconformities of this UDO. Where a project subject to site plan or conditional use review is associated with an existing building, such as an addition or partial remodeling, these design standards shall apply only to the new construction or the part of the building being remodeled. These standards shall also apply to any accessory building greater than five hundred (500) square feet located on a site with a principal building that is regulated by this section.

SECTION 10.83 DESIGN STANDARDS.

All buildings and structures subject to these standards shall comply with the requirements of this Article.

The standards below shall be considered mandatory and required, as applicable, within each project. In some cases, additional guidelines are provided to clarify the intent of the standards and provide further guidance for project design and review. The guidelines should be incorporated into the design to achieve the desired intent of the standards and overall goals of the design standards.

For the building design compliance only. Projects are to be reviewed according to the building design standards outlined in Division II below.

Alternatively, projects adding a total habitable building area of ten thousand (10,000) square feet or less may elect to comply with the building design requirements by achieving 150 points based on the criteria outlined in the Town of Nags Head Residential Design Guidelines (Appendix B). Projects that elect to comply in this manner shall incorporate the following minimum standards into the design:

- Buildings shall use a pitched roof with a pitch of four in 12 or greater. There shall be no vertical parapet walls.
- Windows shall reflect a residential style. This typically includes the appearance of a double-hung or multi-paned window.
- On the front and each side of the building, windows shall comprise not less than ten (10) percent and not more than forty (40) percent of each building vertical wall area.
- Individual windows shall be no greater than thirty (30) square feet in area.
- Buildings shall comply with the maximum building size and scale requirements outlined in Division II below.
- A porch meeting the definition of ground floor will be awarded points as a first-floor porch.
- In no instance shall metal siding be used.

SECTION 10.84 SITE PLAN SUBMITTAL REQUIREMENTS.

10.84.1. Sketch Plan Review.

Applicants are encouraged to schedule a sketch plan review meeting with planning and development staff and the Planning Board prior to formal review. Sketch plan review is mandatory for new constructions projects where total habitable building area is five thousand (5,000) square feet or greater. This shall also apply to projects where the addition of habitable area is five thousand (5,000) square feet or greater. The purpose of the sketch plan is to review projects at a conceptual level for consistency with the requirements of these commercial design standards and the UDO in general. This review should be done at the early stages of project development in order to allow for meaningful input and substantive changes to the design, if necessary. Documentation is not required to be as complete as the formal review. However, it should include rough site plan sketches with the building and parking layout, building renderings, and a narrative describing the proposed project and how it is consistent with Town development requirements. The site plan sketch shall depict adequate space allocations for the requisite wastewater and stormwater improvements as well as vegetation/buffering requirements and

site access. Applicants are encouraged to provide more than one project alternative or variations of the proposed project for review.

For formal review, the applicant shall submit the components of a complete site plan application in accordance with the provisions of Article 4, Development Review Process, including a full set of building elevations. Building elevations shall detail all exterior siding materials and architectural features. The site plan shall detail all landscape features including preserved areas, new vegetation, berms, pedestrian features, and other site amenities. The application shall also include a brief description of the elements that have been incorporated into the design to achieve the desired intent of the guidelines established herein. For projects that have undergone sketch plan review, the narrative shall describe the results of the sketch plan review process and how the design may have been modified to reflect this input. The Planning Board shall review the above described application and forward their recommendation on the same to the Board of Commissioners within forty-five (45) days of the date of application submittal.

10.84.2. Findings.

Prior to final action on a site plan or conditional use permit application, the Planning Board shall consider findings of fact that address the standards in this section and find that these standards have been met by the applicant as well as any findings of fact required for approval of conditional use or vested right site plans in accordance with Article 3, Legislative/Quasi-Judicial Procedures.

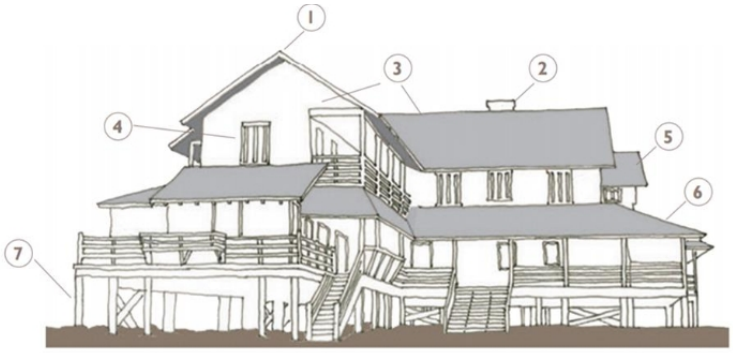
DIVISION II. BUILDING DESIGN

SECTION 10.85 BUILDING SCALE.

10.85.1. Intent.

Buildings should strive to take on a more residential and "human" scale. "Human scale" is the proportional relationship of buildings and spaces to people. A building is considered to have good human scale if there is an expression of human activity or use that indicates the building's size. The scale of a building is based on overall size, its mass in relation to the space around it, and its entrances, windows, walls, and roofline.

The building architecture historically intrinsic to Nags Head reflected a human scale. These buildings were simple, utilizing natural materials, wide porches and modest detailing. Interior and exterior spaces were used in equal measure and porches were the center of daily life. These early design principles set the tone for the concepts included in these design standards. The successful application of these human scale features will result in buildings and sites that relate well to the pedestrian environment, encourage community activity, and complement their surroundings.

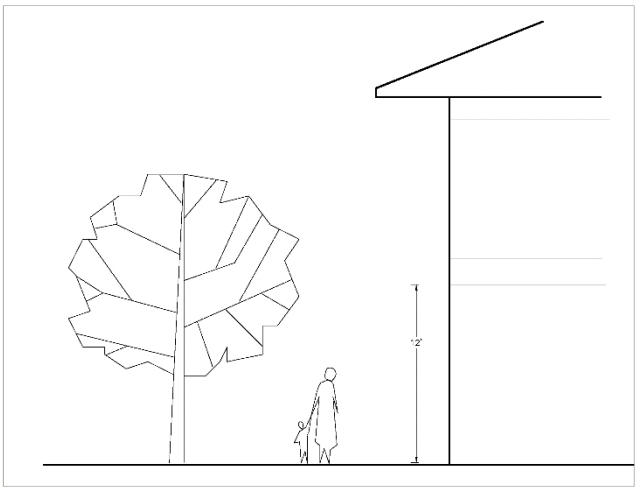


1. Pitched roofs with shallow eaves; 2. Brick chimneys; 3. Textured material palette typically consisting of unpainted wood shingles; 4. Casement and sash windows with batten storm shutters; 5. Dormers; 6. Wrap around porches with lean-out benches; 7. Timber pilings elevating buildings that range from two to three stories.

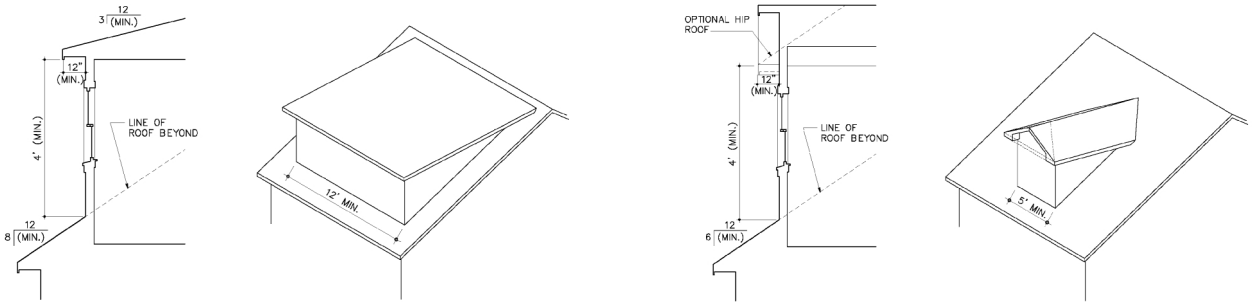
10.85.2. Standards.

When the scale of a building is inconsistent with its site and the scale of surrounding buildings, it shall be mitigated by design strategies that lessen its visual impact so as to be compatible with its site and with characteristics of neighboring buildings and sites. At a minimum, all projects shall incorporate the following design strategies:

10.85.2.1. To encourage a human scale, all buildings shall have an exterior or perimeter building sidewall that is no higher than twelve (12) feet from the floor to the top plate for each building story. Typically, buildings will not exceed three (3) stories. Exceptions include instances where the height requirements for a particular use allow the building to exceed three (3) stories or where building features are specifically exempt from the height requirements of the ordinance.



10.85.2.2. For buildings greater than one (1) story, the highest story of the building shall be incorporated into the roofline with the use of dormers or other roof articulations.



10.85.2.3. Larger buildings (greater than 5,000 square feet) or buildings with multiple uses and/or tenants shall be designed with a complex massing that includes rooflines with varying heights, incorporation roof variations, projections/recesses, or smaller additions to a main building.

10.85.2.4. Buildings shall provide facade elements which create a comfortable zone at the first floor of the building for people. Examples include but are not limited to covered porches, arcades, siding material changes, and one- or two-story entrances with pitched roofs.

10.85.3. Guidelines.

For larger buildings or projects, designs should consider the following strategies to break down the overall scale and mass of buildings.

10.85.3.1. Use of irregular building footprints is encouraged to 'create spaces' for human interaction, to reduce the mass of a large rectangular structure, and to cause a roof variation.

10.85.3.2. Use of multiple, smaller scale buildings which may incorporate connecting breezeways and/or walkways.

10.85.3.3. Variations in building footprint and/or form such as square, 'doughnut', 'U' or 'L' shaped buildings, bump-outs, higher floors 'stepped back', or varied rooflines.

SECTION 10.86 BUILDING SIZE/DIMENSIONS.

10.86.1. Intent.

Building sizes are determined based on desired building characteristics for Character Areas as defined by the Town of Nags Head Comprehensive Plan. These character areas delineate appropriate building sizes and scales by roadway corridor based on existing and historic development patterns. NC 12 and SR 1243 comprise the beach road sections of Town which have a distinct scale and massing defined primarily by residential uses and small-scale commercial buildings. It is the Town's intent to continue this development pattern along the two-lane roadways within the Town. US 158/64 have traditionally been more auto-oriented with larger-scale, local and regional services. Given the Town's desire for buildings to maintain a residential scale, it is the Town's intent to regulate the overall size of buildings. In both corridors, the Town encourages walkability and a human scale appearance that relates well to pedestrians and encourages social activity.

10.86.2. Standards.

10.86.2.1. Individual buildings along two-lane roadway sections shall not have a habitable area that exceeds five thousand (5,000) square feet, except for instances where the applicant has conducted a sketch plan review in accordance with the procedures prescribed in Article 4, Development Review Process. In these instances, the applicant shall pay particular attention to the design standards and guidelines relative to scale for larger buildings to mitigate the overall visual impact and maintain continuity with existing development. In no instance shall a building fronting a two-lane roadway section exceed ten thousand (10,000) square feet.

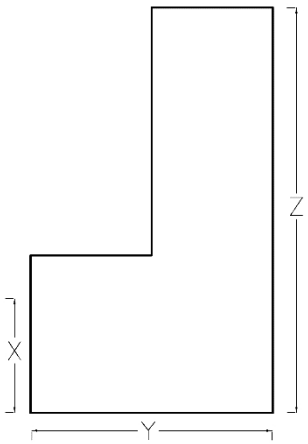
10.86.2.2. Individual buildings along five-lane roadway corridors shall not have a habitable area that exceeds twenty thousand (20,000) square feet, except in the case of multi-story hotel

buildings within the Town's Hotel Overlay District or institutional uses including schools and hospitals.

10.86.2.3. For any buildings, regardless of the roadway type, with a habitable area of greater than five thousand (5,000) square feet, the applicant shall be required to conduct a sketch plan review of the project in accordance with the procedures prescribed in Article 4, Development Review Process of the UDO.

10.86.2.4. To prevent the appearance of large, disproportionate, and/or "strip" style buildings, the following standards shall apply:

10.86.2.4.1. The length of a principal building shall not exceed three times the width of the building. The length shall be considered the longest dimension of the structure to include porches and open decks. The width shall be considered to be the widest consistent dimension through at least forty percent (40%) of the length of the building, which may be interrupted; for example, if a building has a width of twenty-two (22) feet for 20% of its length, reduces to a width of 18' for 60% of its length, and then widens to a width of 20' for 20% of its length, the building shall be determined to have a width of 20' and shall have a length of no more than 60'.



Dimensions – Principal Buildings
(To use Y as the width, X must extend at least 40% along the length (Z) of the building.)

10.86.2.4.2. Properties with multiple buildings shall have each building separated by at least twenty (20) feet and shall not have the appearance of being one structure. For example, multiple buildings may appear to be one structure where there is a continuous roofline over the main structure that carries between two buildings.

10.86.2.4.3. Buildings shall be connected using exterior pedestrian walkways. Covered walkways are allowed; however, the roof covering the walkway shall be generally limited to the walkway itself.

10.86.2.4.4. The minimum width of the enclosed habitable space of a principal building shall be eighteen (18) feet measured at the first-floor level. A building shall be at least eighteen (18) feet wide along at least forty (40) percent of its length. Outside

dimensions shall be used in determining length and width. This is defined as the exterior façade covering on the outside of the building (see graphic above).

10.86.2.4.5. Buildings erected in the C-3 commercial services district shall be exempt from these minimum dimensional requirements since the uses permitted in this C-3 district are recognized by the Town as being generally incompatible with residential and commercial uses. Such uses are regulated with appropriate buffering and separation requirements.

SECTION 10.87 BUILDING HEIGHT.

10.87.1. Intent.

A sudden dramatic change in building height can be incongruous with an existing streetscape. While each zoning district maintains an overall height limit, the height of a building shall be visually compatible with the heights of buildings on neighboring sites where practicable and positively contribute to the overall building design.

10.87.2. Standards.

10.87.2.1. The overall height of buildings will be determined based on the dimensional requirements for each district as found in Article 8, District Development Standards or by any supplemental standards that apply to the use as found in Article 7, Supplemental Regulations.

10.87.2.2. For buildings greater than two stories, the applicant shall incorporate architectural features into the design that mitigate the visual impact of the proposed building.

10.87.2.3. Portions of hotel buildings greater than two stories shall follow the setback requirements for hotels as prescribed in the supplemental standards found in Article 7, Supplemental Regulations.

10.87.3. Guidelines.

Design strategies to mitigate the appearance of tall buildings:

10.87.3.1. Utilize a pitched roof for the upper story that incorporates habitable space with the use of dormers and other roof articulations.

10.87.3.2. Utilize a porch roof or siding material changes between the first and second story to break up the façade.

10.87.3.3. Design higher floors to be 'stepped back' or provide horizontally or vertically varied rooflines along the length of the building.

SECTION 10.88 ARCHITECTURAL DESIGN/ELEMENTS.

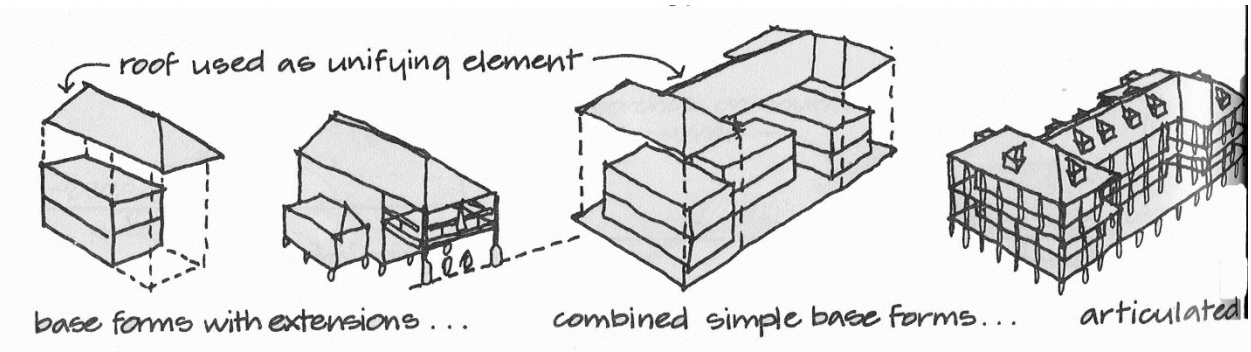
10.88.1. Intent.

It is the Town's goal to encourage design creativity that respects historic development patterns and is characteristic of the Nags Head community. Design elements and features that define the Nags Head cottage style architecture can be used to enhance the appearance of structures and to promote their compatibility with the local natural and built environment. Appendix B, the Town of Nags Head Residential Design Manual, provides illustrative examples of Nags Head design elements. The manual also provides specifications for Nags Head design elements which represent minimum standards that should be adhered to when incorporating these elements into an overall design. The following design considerations shall be applied to individual building components.

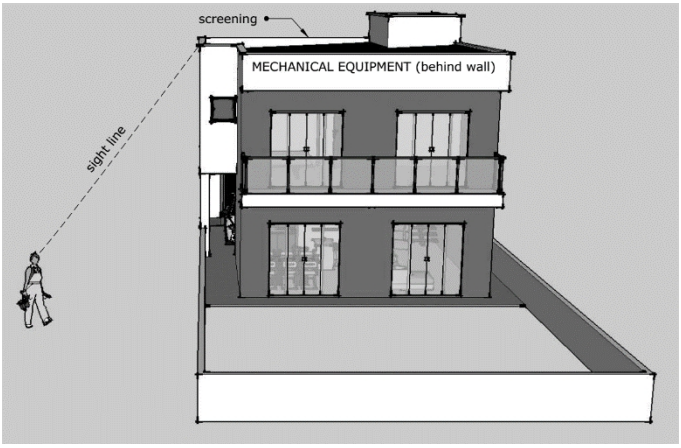
10.88.2. Roofs.

10.88.2.1. Standards.

10.88.2.1.1. For larger buildings (10,000 square feet or greater), the shape and proportion of the roof shall be articulated so as to lend visual interest and reduce the apparent size of new buildings.



10.88.2.1.2. The roof design shall screen the visual clutter of typical rooftop installations such as any mechanical equipment, exhaust vents, transformer boxes, dish antennas, etc.



10.88.2.2. Guidelines.

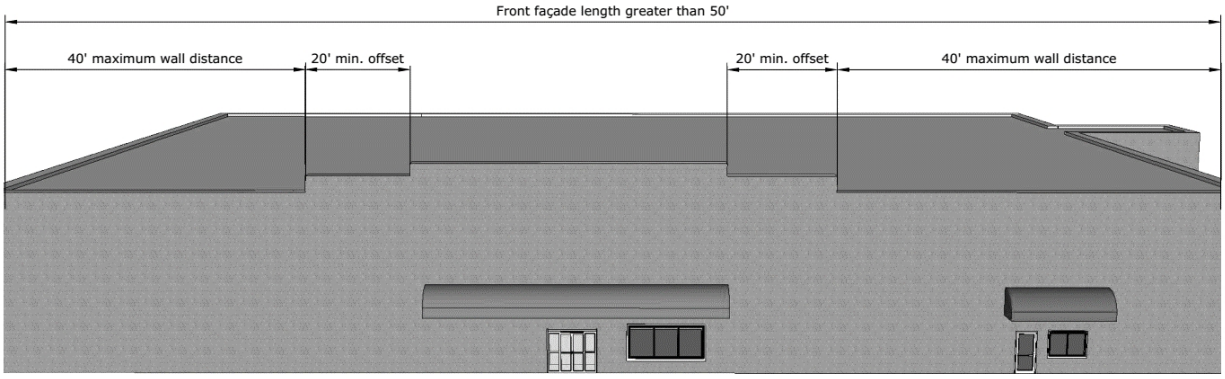
10.88.2.2.1. Habitable space within the roof system with dormers to provide light and access is encouraged to reduce the apparent size of the structure.

10.88.2.2.2. Preference shall be given to roofs with a pitch of 4/12 or greater.

10.88.3. Walls.

10.88.3.1. Standards.

10.88.3.1.1. Wall elevations and roofs greater than fifty (50) horizontal feet in length shall have no more than forty (40) horizontal feet without a roof variation.



10.88.3.1.2. Walls that face a public street or that are adjacent to the wall of an existing principal building on an adjacent lot shall not be a blank wall and shall be designed with windows, doors, porches, or other building elements that provide scale and openness to the façade.

10.88.3.2. Guidelines. Roof variations may consist of dormers, coastal watch towers, bump-outs, or entrance features in the "coastal" or "Old Nags Head" style as described in the Nags Head Residential Design Guidelines (see Appendix B).

10.88.4. Windows and Doors.

10.88.4.1. Standards.

10.88.4.1.1. Windows and doors shall be visually compatible with the architectural style of the building and with local architectural styles.

10.88.4.1.2. Windows shall reflect a residential style. This typically includes the appearance of a double-hung or multi-paned window.

10.88.4.1.3. On the front and each side of the building, windows shall comprise not less than ten (10) percent and not more than forty (40) percent of each building vertical wall area.

10.88.4.1.4. Individual windows shall be no greater than thirty (30) square feet in area.

10.88.4.1.5. Doors shall be no wider than six (6) feet and not taller than eight (8) feet without having at least a 12-inch separation between windows and doors.

10.88.4.1.6. The primary entrance shall face the street or shall face the side of the building that has a pedestrian connection to the street, unless the applicant can demonstrate that the circumstances of a given application merit an alternative orientation.

10.88.4.1.7. The entrance shall be identified through the use of architectural details that may include porches or roofs for shelter, recessing, decorative lighting, trim or railings, in addition to pedestrian walkways connecting to parking areas and public sidewalks.

10.88.4.2. Guidelines.

10.88.4.2.1. Multi-paned or double hung windows are a common element of the local architecture and shall be encouraged.

10.88.4.2.2. Use of metal and glass storefront and curtain wall systems is discouraged and should be minimized.

10.88.4.2.3. Regular pattern: windows are an integral part of a building and shall be richly incorporated on front façades, and to a lesser extent, on side façades. The windows along the front façade, and to a lesser extent, on the side façade, along with the door and other decorative elements shall align horizontally and vertically in order to establish a coherent, orderly pattern and rhythm. Some departure from a perfect grid is desirable in order to create variety in rhythm.

10.88.4.2.4. Vertical form: primary windows and windowpanes shall be vertical in form, with horizontal to-vertical proportions generally measuring 3:5.

10.88.4.2.5. Window style: the primary window style shall be double hung (whether operable or not). A limited number of fixed windows (i.e., those which have one window sash/frame and do not open) may be used where deemed appropriate to the overall design.

10.88.4.2.6. Window molding: windows in wood frame buildings shall have a wide (generally four inches) molding/trim on all sides. Windows in brick buildings shall have a distinct lintel above and sill below, though treatment of the side jams is encouraged also.

10.88.4.2.7. Window to wall proportions: the proportion of window area to wall area on façades shall be carefully considered. Too little window area creates an unwelcoming presence, while the use of too much glass can be jarring in the context of traditional Nags Head style.

10.88.4.2.8. Muntins/mullions: windows (other than storefront windows and small, appropriately designed fixed windows) shall be divided into multiple panes of glass. This approach helps the window "hold" the surface of the façade, rather than appearing like a hole in the wall (the effect produced by a large single sheet of glass).

10.88.5. Building Materials.

The relationship of materials and textures of the exterior of a building shall be compatible with that of buildings that are traditionally used in Nags Head. Examples of exceptional design may incorporate a combination of the materials listed below to provide overall visual interest.

10.88.5.1. Standards.

10.88.5.1.1. For facades of buildings visible from a public way, building siding materials shall be wood or simulated shingle siding, clapboard, board and batten, or other materials commonly used in local architecture.

10.88.5.1.2. Use of cinder block, brick, stucco, and T-111 is acceptable for smaller buildings generally no more than one story high and not greater than 2,500 square feet. For larger buildings, these materials should be primarily considered as an accent to the overall design or in areas not visible from the public right-of-way. In no instance shall metal siding be used.

10.88.6. Building Detailing.

10.88.6.1. Standards. Traditional Nags Head buildings utilize detailing to provide visual interest and character to a design. This is achieved through the detailing elements below. Applications shall incorporate one more of the following detailing elements in the building design:

- exposed rafters
- gable brackets
- workable shutters
- column trim

10.88.6.2. Guidelines.

10.88.6.2.1. These features should be considered carefully within the context of the overall building size and design to retain a proportional scale and appearance.

10.88.6.2.2. Architectural elements and appurtenances should not appear out of character relative to the remainder of the building.

10.88.7. Gas Station and Drive-Through Canopies.

10.88.7.1. Standards. Gas Station and Drive-Through Canopies shall utilize a pitched roof with earth tone metal roofing or shingles reflecting natural materials.

10.88.8. Utilities and Mechanical Equipment.

10.88.8.1. Standards.

10.88.8.1.1. Mechanical equipment at ground level shall be placed away from public streets and buildings on adjacent sites.

10.88.8.1.2. All mechanical equipment shall be screened from public view.

10.88.8.1.3. Mechanical equipment and antennas located on rooftops shall be camouflaged as a normal architectural feature of the building, or hidden by a decorative cornice or parapet wall, as seen from the ground.

10.88.8.1.4. All utility equipment (includes meters, boxes, valves and similar equipment but does not include overhead power lines, light poles and similar equipment) shall be designed, located or screened to be as inconspicuous as possible and shall not be located on the street-side of a principal structure.

10.88.8.1.5. All utility lines serving new development and significant redevelopment shall be placed underground whenever practicable.

10.88.9. Trash and Recycling.

10.88.9.1. Standards.

10.88.9.1.1. All trash and recycling receptacles and storage areas shall be located and substantially screened from public view.

10.88.9.1.2. All non-vegetative screening used to block public view of trash and recycling receptacles and storage areas shall be made of materials compatible in color and type to the principal structure(s) on the property.

DIVISION III. SITE DESIGN

SECTION 10.89 INTENT.

Site designs shall consider the unique natural features of the site and complement the positive features of surrounding property. Site design will strive to create a sense of place while maintaining compatibility with adjacent land uses, encouraging walkability, fostering social interaction and community vitality, promoting safe and efficient movement of pedestrians and vehicles, preserving and/or enhancing natural areas, and minimizing nuisances associated with noise, high levels of activity, and stormwater runoff.

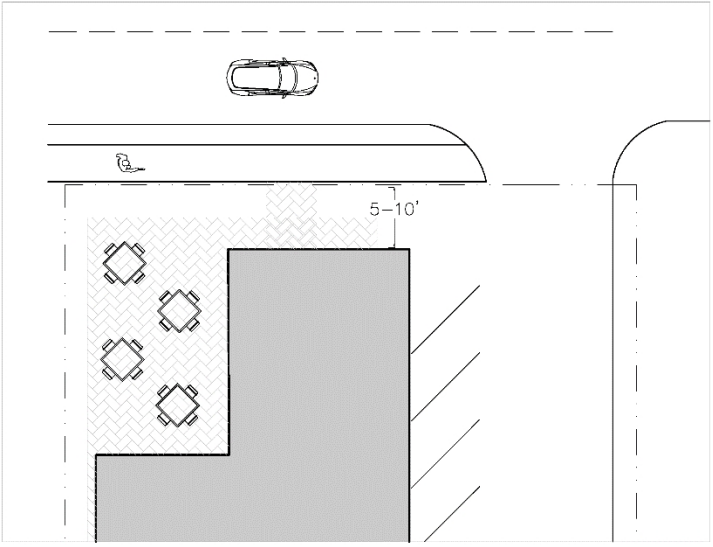
SECTION 10.90 BUILDING FOOTPRINT AND ORIENTATION.

10.90.1. Along the Beach Road (NC 12/SR 1243) and Other Two-Lane Roadways.

10.90.1.1. Standards.

10.90.1.1.1. Buildings shall be oriented so that the front of the building and primary entrance faces the street, except in instances where the side of the building contains the primary entrance which has a pedestrian connection to the street. Buildings shall be oriented adjacent to the front property line unless the applicant can demonstrate that the circumstances of a given application merit an alternative orientation. For corner lots, NC 12/SR 1243 shall be considered the front of the building.

10.90.1.1.2. Generally, the building shall be aligned with the front of the property (to within 5' and 15' of the front lot line) for at least thirty (30) percent of the property frontage.



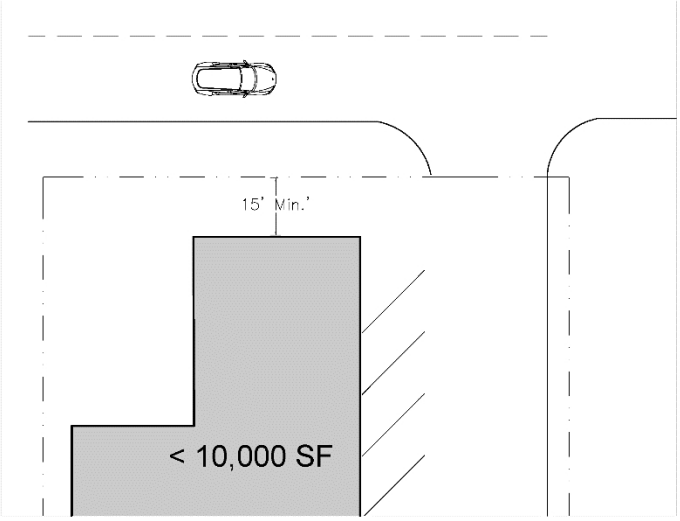
10.90.1.2. Guidelines. Desirable examples of building orientation include a human-scaled building wall located adjacent to a street frontage, and site elements such as clearly defined front entrances, landscaping, lighting, and off-street parking located to the side or rear of buildings. Compatibility shall be determined based on the pattern of buildings and spaces along the street frontage, placement of the building on the lot, and the building footprint in relation to lot size and to nearby buildings.

10.90.2. For US 158/US 64/264.

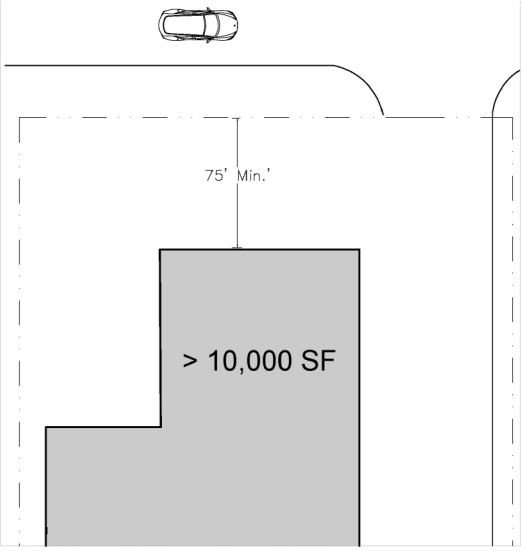
10.90.2.1. Standards.

10.90.2.1.1. Buildings shall be setback a minimum distance from the roadway.

10.90.2.1.2. Buildings less than ten thousand (10,000) square feet shall be setback a minimum of 15' from the front property line.



10.90.2.1.3. Buildings greater than 10,000 square feet shall be setback a minimum of 75' from the front property line.



10.90.3. Side and rear yard setbacks will be determined based on the dimensional requirements for each district as found in Article 8, District Development Standards or by any supplemental standards that apply to the use as found in Article 7, Supplemental Regulations.

10.90.4. Where these standards conflict with the supplemental standards for a specific use, the supplemental standards shall apply.

SECTION 10.91 PARKING LOT ORIENTATION.

10.91.1. Along the Beach Road (NC 12/SR 1243) and Other Two-Lane Roadways.

10.91.1.1. Off-street parking must be located to the side or rear of the building. For corner lots, NC 12/SR 1243 shall be considered the front of the building.

10.91.1.2. No parking shall be located in the area between the front wall of the principal building and the front property line unless the applicant can demonstrate that the circumstances of a given application merit an alternative orientation.

10.91.1.3. No new vehicular access drives or service areas shall be located between the front property line and the front wall of the building, unless the Planning Board determines that no reasonable alternative exists for safe traffic flow into and out of the site and within the site.

10.91.1.4. The area between the front wall of a new, expanded, or reconstructed building and the front property line shall be designed and maintained as a non-vehicular area and shall be either landscaped or improved with pedestrian or customer amenities.

10.91.1.5. It is the intent of this ordinance to create a direct relationship between the habitable portion of buildings and the pedestrian environment. Buildings elevated a full story above the street will feel disconnected from the street environment. To this end, the first habitable floor of buildings directly adjacent to the street frontage shall be elevated no higher than three (3) feet above adjacent grade, or the minimum regulatory flood protection elevation, whichever is higher.

10.91.2. For US 158/US 64/264.

10.91.2.1. Sites shall be designed to screen large parking areas, either by locating parking to the rear of buildings or through the use of landscaping/buffering as required in the landscaping and buffering section of these design standards.

SECTION 10.92 STREET ACCESS, PARKING LOT DESIGN, AND PAVEMENT STANDARDS.

10.92.1. Intent.

The intent of these standards is to promote safe, convenient and sufficient access to all properties by vehicles, pedestrians and bicyclists. The following standards shall apply to all uses, unless otherwise noted.

10.92.2. Standards.

10.92.2.1. Street Access and Internal Circulation.

10.92.2.1.1. The street access and internal circulation plan of parking lots shall be reviewed by the Town Engineer for consistency with generally accepted engineering practices and standards.

10.92.2.1.2. Failure to comply with such standards may result in a request for site plan modifications or denial of a permitting request.

10.92.2.2. Driveway Control Dimensions.

10.92.2.2.1. Width of Driveways (W).

10.92.2.2.1.1. The width of driveways shall be measured at the property line and shall be within the specified minimum and maximum limits.

10.92.2.2.1.2. A driveway with two-way operations shall have a minimum twenty-two (22) foot and a maximum of thirty-six (36) foot width.

10.92.2.2.1.3. A driveway with one-way operation shall have a minimum twelve (12) foot and a maximum twenty-four (24) foot width.

10.92.2.2.1.4. The need for wider driveways will be considered on a case-by-case basis only after justification of actual necessity but should not exceed forty (40) feet.

10.92.2.2.2. Commercial Driveway Design. Shall consider, but not be limited to, the following:

10.92.2.2.2.1. Design vehicle type,

10.92.2.2.2.2. Approaching speed,

10.92.2.2.2.3. Driveway transition,

10.92.2.2.2.4. Channelization,

10.92.2.2.2.5. Safety,

10.92.2.2.2.6. Mobility,

10.92.2.2.2.7. Site physical features,

10.92.2.2.2.8. Intended traffic volume, and;

10.92.2.2.2.9. Intensity among the many variables related to the driveway layout.

The Town Engineer shall review driveway layout and designs for consistency with generally accepted engineering practices and standards. High intensity or traffic volume generators shall require the submission of Traffic Impact Study to review the potential impacts of proposed or revised developments.

10.92.2.2.3. Driveway Angle (Y).

10.92.2.2.3.1. The recommended driveway angle, Y, for a full access driveway is 90 degrees.

10.92.2.2.3.2. The angle of the two-way operation driveway with respect to the pavement edge shall not be less than seventy-five (75) degrees or greater than ninety (90) degrees.

10.92.2.2.3.3. For one-way or right-in/right-out driveways, driveway angles between forty-five (45) and ninety (90) degrees may be allowed on a case-by-case basis.

10.92.2.2.4. Edge Clearance (E).

10.92.2.2.4.1. All portions of a commercial driveway including the returns shall be between two frontage boundary lines of the current or future right-of-way line.

10.92.2.2.5. Driveway Return (R).

10.92.2.2.5.1. The radius of the street-type driveway connection, R, shall be within a twenty (20) feet minimum and forty (40) feet maximum. However, the maximum radii dimension may be exceeded as an exception if larger radii are needed to accommodate larger vehicles expected to frequent a proposed development such as commercial service entrances.

10.92.2.2.5.2. Compound curves for driveway radii shall be prohibited.

10.92.2.2.6. Distance Between Driveways (D).

10.92.2.2.6.1. Where more than one driveway is permitted along a single property frontage, the distance, D, measured along the right-of-way line between the tangent projections of the inside edges of adjacent driveways shall be at least 100 feet.

10.92.2.2.7. Special Curb Cut Requirements.

10.92.2.2.7.1. A lot fronting US 158, NC 12/US 64/264, or SR 1243 must have six hundred (600) feet of frontage along the street before two curb cuts are allowed on the same street.

10.92.2.2.7.2. Nine hundred (900) feet of frontage is needed along either of these streets before three curb cuts are allowed on the street.

10.92.2.2.7.3. In no case shall there be more than three curb cuts on any one of the above streets.

10.92.2.2.7.4. Curb cuts in excess of one, on streets other than those mentioned above, are allowed if the Board of Commissioners determines that more than one curb cut is necessary or desirable to facilitate traffic flow.

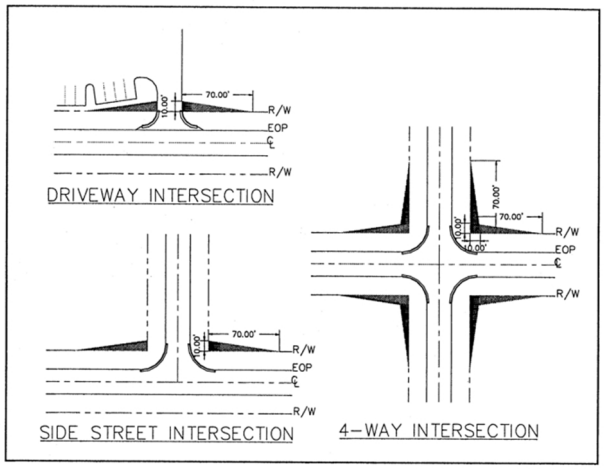
10.92.2.2.8. Vision Clearance (C).

10.92.2.2.8.1. The minimum corner clearance, C, of the proposed driveway shall be at least fifty (50) feet from the point of tangency of the radius curvature of any intersecting streets. The recommended corner clearance distance shall be up to one hundred (100) feet in instances where the property frontage allows for this.

10.92.2.2.8.2. For full movement driveway connections at signalized intersections, the corner clearance may be required to extend beyond one hundred (100) feet when the property's road frontage allows. This is to avoid interference with the traffic signal operations and resulting traffic queues.

10.92.2.2.8.3. The radius of the driveway should not encroach on the minimum corner clearance.

10.92.2.2.8.4. No planting, structure, sign, fence, or other obstruction more than three (3) feet in height shall be placed or maintained within a ten (10) foot x 70-foot triangular area (see graphic below).



10.92.2.2.9. Driveway Profile (P).

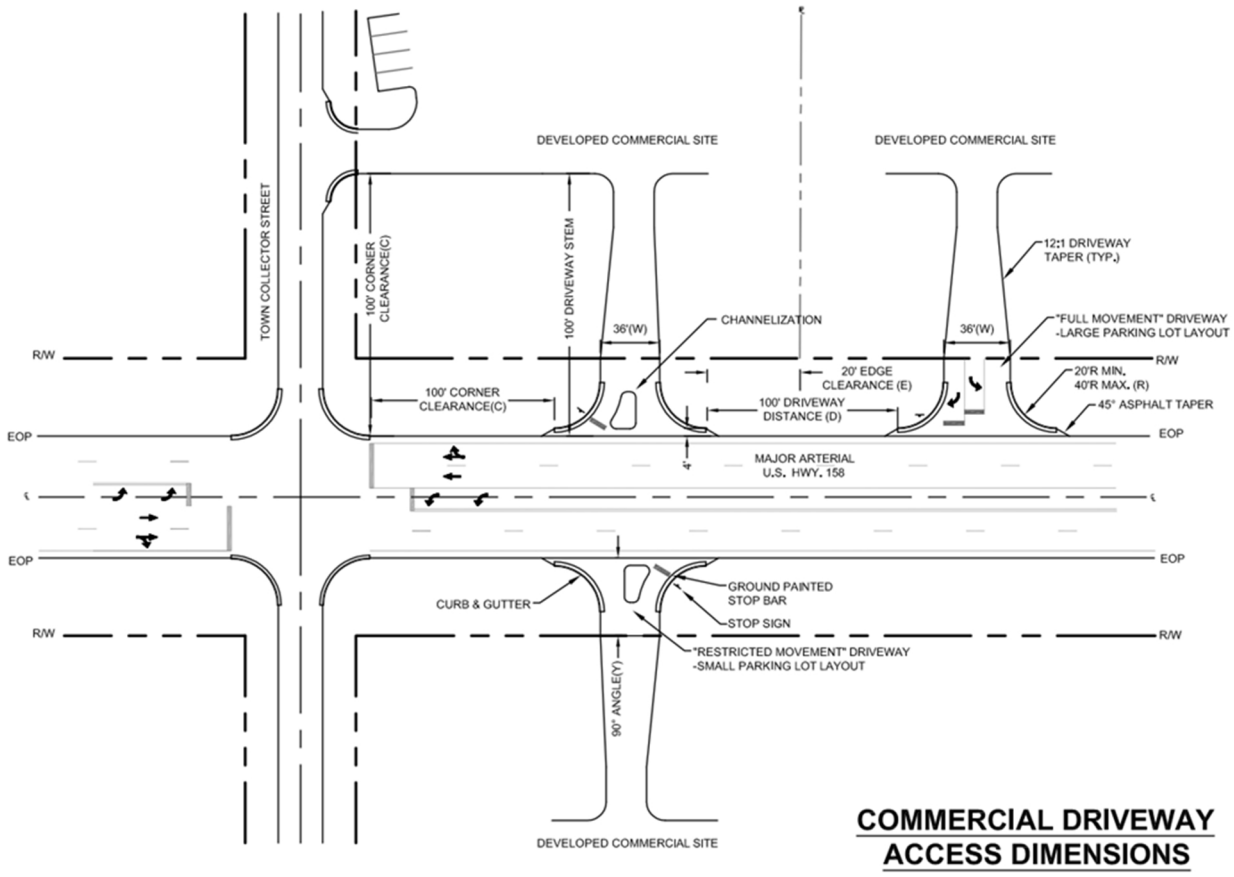
10.92.2.2.9.1. The grade of commercial driveways within the right-of-way shall not exceed ten (10) percent.

10.92.2.2.10. Channelization.

10.92.2.2.10.1. Various types of channelization may be required to be incorporated into the driveway design.

10.92.2.2.10.2. The Town Engineer shall determine if the necessity of restrictive medians in accordance with generally accepted engineering practices and standards.

10.92.2.2.10.3. At a minimum, an above ground stop sign, and ground painted stop bar shall be placed in advance of the point of egress onto the adjoining street.



10.92.3. Corner Lots to Utilize Side Street Access.

Due to the limited amount of land available within the zoned areas of the Town for major thoroughfare rights-of-way and the traffic hazard involved in frequent entrances and exits from a major thoroughfare, it is the intent of this UDO to keep driveways and street intersections along major thoroughfares US 158, NC 12, SR 1243, and US 64/264 to the minimum possible. In any district established by this UDO where a lot abutting any of these major thoroughfares abuts any other dedicated public right-of-way, the side street public right-of-way shall be used for access rather than direct access from a major thoroughfare.

10.92.4. Inter-parcel Driveway Connections.

10.92.4.1. All abutting commercial parking lots are encouraged to provide inter-parcel driveway connections with adjoining commercial parcels, particularly along the US 158 frontage.

10.92.4.2. Provision of an inter-parcel connection (for connection with existing or future connections on adjoining properties) will receive a four (4) parking space reduction in required parking and a two hundred (200) square foot reduction on lot coverage.

10.92.4.3. Inter-parcel connection shall be a minimum twenty-two (22) feet in width for two-way traffic.

10.92.4.4. When inter-parcel access is provided, an inter-parcel access easement shall be recorded with the Dare County Register of Deeds.

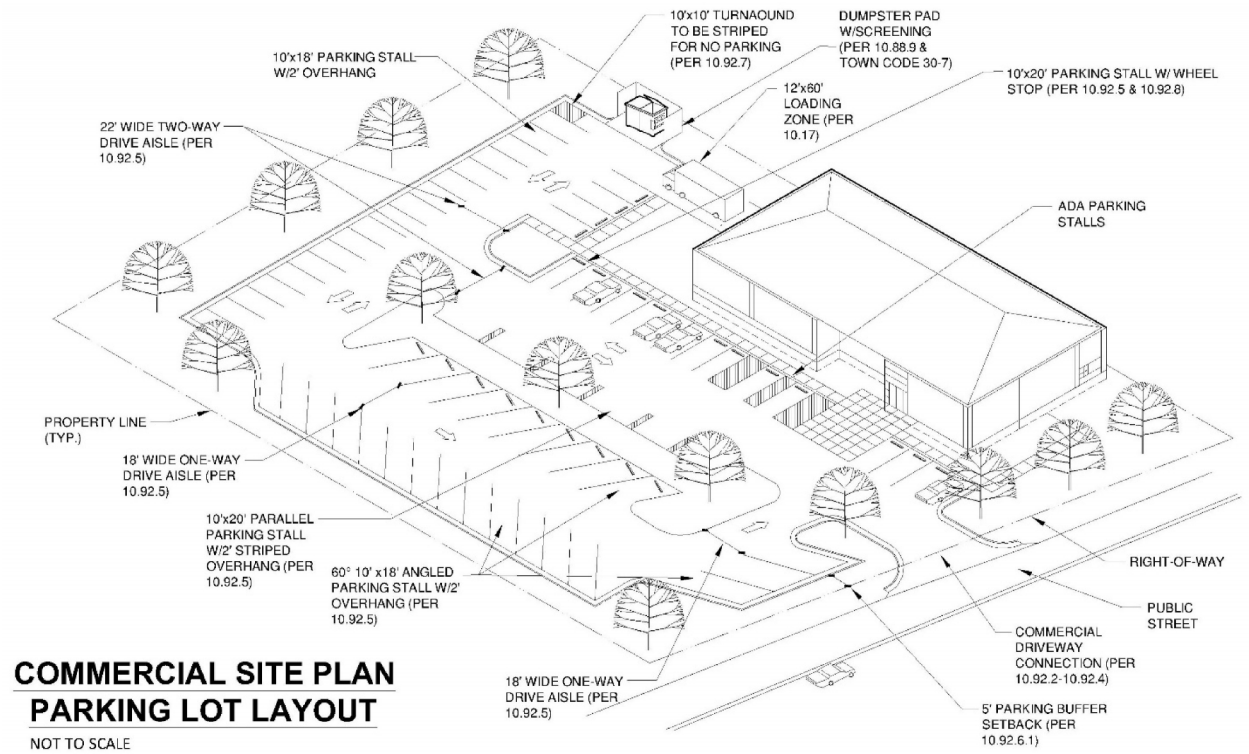
10.92.5. Internal Drive Aisle and Parking Space Dimensional Requirements.

All commercial parking areas shall conform to the following:

TABLE 10-8: COMMERCIAL PARKING AREA REQUIREMENTS

Parking Stall Angle	Parking Stall Width (Ft.)	Parking Stall Length (Ft.)*	Drive Aisle Width (Ft.)	
			One-Way	Two-Way
Parallel (0°)	10	20[1]	12	22
Angled (45°)	10	20[2]	13	
Angled (60°)	10	20[2]	18	
Perpendicular (90°)	10	20[2]	22	22

[1] Abutting parallel parking stall lengths shall be divided by a 2' wide by 10' long striped "No Parking" overhang
[2] Parking stalls abutting open space can utilize 2' overhang to calculate overall stall length
* Parking stall length shall be the minimum distance measured along the parking stall



10.92.6. Parking and Drive Aisle Setbacks.

10.92.6.1. Unless otherwise specified, a required setback of not less than five (5) feet shall separate parking and loading areas from all front, side, and rear property lines.

10.92.6.2. Where off-street parking is provided between the building and the street right-of-way line, a parking lot buffer of at least ten (10) feet in width shall be provided between the parking lot and the street right-of-way line in accordance with the standards included for parking lot buffers contained Article 10, Part I, Buffering and Vegetation Preservation General Requirements.

10.92.7. Dead End Drive Aisle.

One deadend turnaround shall be provided for parking lots where dead ends exceed either one hundred (100) feet in length or twelve (12) parking spaces in accordance with the commercial parking lot layout diagram.

10.92.8. Wheel Stops.

10.92.8.1. All parking spaces which abut open space or buffer space shall have a fixed curb or wheel stop of six (6) inches in height.

10.92.8.2. Allowances shall be made for two (2) feet of overhang within the parking space so that no part of any car can be located within the required setback.

10.92.9. Curbs.

At drive aisle intersections with adjoining open space, curbs shall be installed along the entire drive aisle perimeter radius (from tangent to tangent) to protect adjoining open space from wheel travel.

10.92.10. Markings.

Each parking space shall be marked and maintained so as to be distinguishable.

10.92.11. Fire Lanes/Access Roads.

10.92.11.1. The Fire Official shall have the authority to designate fire lanes as deemed necessary for Fire Department access.

10.92.11.2. The requirements for installation of a fire lane shall be subject to the fire code.

10.92.11.3. During the site plan review process, the Fire Chief or Fire Marshal may require a drive aisle of up to twenty-six (26) feet in width in specified locations if it is determined that this is necessary to accommodate fire access roads or fire service operations.

10.92.11.4. Fire Lanes shall be marked with permanent signage stating "NO PARKING FIRE LANE"- with minimum dimensions of twelve (12) inches wide by eighteen (18) inches high with red letters on a white reflective background.

10.92.12. Safety on Busy Streets.

Sufficient maneuvering space shall be provided so that no vehicle will be required to back into the public right-of-way of NC 12, US 158, and SR 1243.

10.92.13. Drive-Through.

10.92.13.1. Drive-throughs shall not be permitted on properties fronting two-lane roadways within the Town.

10.92.13.2. Drive-through lanes shall only be placed in areas that will not interfere with the safe movement of pedestrians and vehicles in parking and driveway areas.

10.92.13.3. Drive-throughs shall be designed with appropriate queuing lanes to prevent traffic from backing up into Town streets and thoroughfares. Drive-through queuing lanes shall be designed to hold a minimum of ten vehicles and separated from the main drive-aisle serving parking and loading areas.

10.92.13.4. Drive-through windows and queuing lanes shall be oriented away from residential uses or zoning districts.

10.92.13.5. For properties fronting both US 158 and NC 12, drive-throughs shall be oriented so that access is from US 158 or from a side street in cases where the property is a corner lot.

10.92.14. Surface Materials Appropriate for Use.

10.92.14.1. Parking lot entrances shall be graded and paved only with asphalt or concrete extending a minimum of fifty (50) feet from the right-of-way as measured along the centerline of the parking lot entrance.

10.92.14.2. Interior drive aisles established beyond the required asphalt or concrete parking lot entrance shall be graded and paved with asphalt, concrete, porous concrete, porous asphalt or concrete pavers in accordance with accepted engineering practices.

10.92.14.3. Required parking spaces shall be graded and paved with asphalt, concrete, gravel or alternative permeable pavement materials in accordance with the Town's recommended standard details manual.

10.92.14.4. The Town encourages use of pervious materials and new technologies that provide for safe and efficient driveway and parking areas and that appropriately address stormwater runoff issues. A minimum of twenty (20) percent of the surface area of the parking area and drive aisles shall be constructed using permeable surface materials, unless it can be demonstrated that a topographic or hydrologic constraint exists that would limit its use and effectiveness.

10.92.14.5. For religious complexes and public facilities which host special events, up to thirty (30) percent of the required parking area may utilize reinforced turf products. Turf parking areas may not count toward parking requirements for other commercial uses as part of a shared parking agreement. The outer perimeter of a turf parking area shall be clearly delineated by above ground markers with defined points of ingress/egress and shall not require individual parking stall wheel stops.

10.92.14.6. For all other uses, up to twenty (20) percent of the required parking area may utilize reinforced turf products and must use curb stops to clearly delineate the parking space.

10.92.14.7. For the purposes of determining lot coverage, the total square footage of permeable pavement materials, including reinforced turf products, is multiplied by 0.67.

10.92.15. Pedestrian Access/Facilities.

10.92.15.1. Buildings with uses requiring public access shall provide the primary pedestrian access from the street front or from a pedestrian way designed to facilitate access in shopping centers, mixed use sites, or group developments.

10.92.15.2. The approaches to loading and unloading areas in commercial districts shall be designed to minimize conflict with onsite vehicular, pedestrian and bicycle traffic and with adjacent residential uses.

SECTION 10.93 LANDSCAPING, BUFFERING, AND VEGETATION PRESERVATION.

10.93.1. Intent.

The purpose of a landscape buffer is to help provide transition between different types of land uses, to break up or soften the appearance of paved surfaces, and to provide the shade and greenery necessary to create a livable environment. Buffers shall be required as prescribed in the supplemental standards for specific uses and/or as described in the standards below.

10.93.2. General Requirements.

10.93.2.1. The table below specifies the number of plants, by type, for each required row of plants for every one hundred (100) feet of buffer yard length. For example, if the buffer yard requires two rows of plants, the numbers in the table below shall be doubled for every 100 feet of buffer yard length. Due to varying conditions in different areas of Town for wind and salt exposure, the table differentiates the required type of plant material by planting zone to improve survivability and maintenance of plant material.

TABLE 10-9: NUMBER AND TYPE OF REQUIRED PLANTS FOR EACH 100 FEET OF BUFFER YARD LENGTH

Planting Zone	Trees	Shrubs	Ornamental Grasses/Herbaceous Plants
Beach		20	30
Highway or Soundside	3	15	30
*The total number of plants required by this table shall be doubled for every additional five feet of required buffer width.			

10.93.2.2. Required species of plant material and appropriate planting zones are defined by the Town of Nags Head Vegetative Planting Guidelines, which can be obtained from the Town of Nags Head Planning and Development Department.

10.93.2.3. Ornamental grasses that will grow to a mature height of at least three (3) feet may be substituted for required shrubs in the beach planting zone.

10.93.2.4. Except as otherwise specified herein, at a minimum, fifty (50) percent of the number of plants shall be locally adapted, evergreen species.

10.93.2.5. Landscaping plans are encouraged to include a variety of species to promote overall diversity of plant materials within the Town. Applicants may propose other non-invasive plant material not included in the Town of Nags Head Vegetative Planting Guidelines if it can be demonstrated that it is equal to or exceeds the plant material in the guidelines in terms of size, hardiness and overall quality.

10.93.2.6. Landscaping plans must include installation specifications and a maintenance plan to address long-term viability of proposed landscaping.

10.93.2.7. Properties that provide for drip irrigation of landscape materials or a landscape plan that consists entirely of native planting materials as specified in the Town of Nags Head Vegetative Planting Guidelines may reduce the overall number of required plantings by ten (10) percent.

10.93.3. Standards.

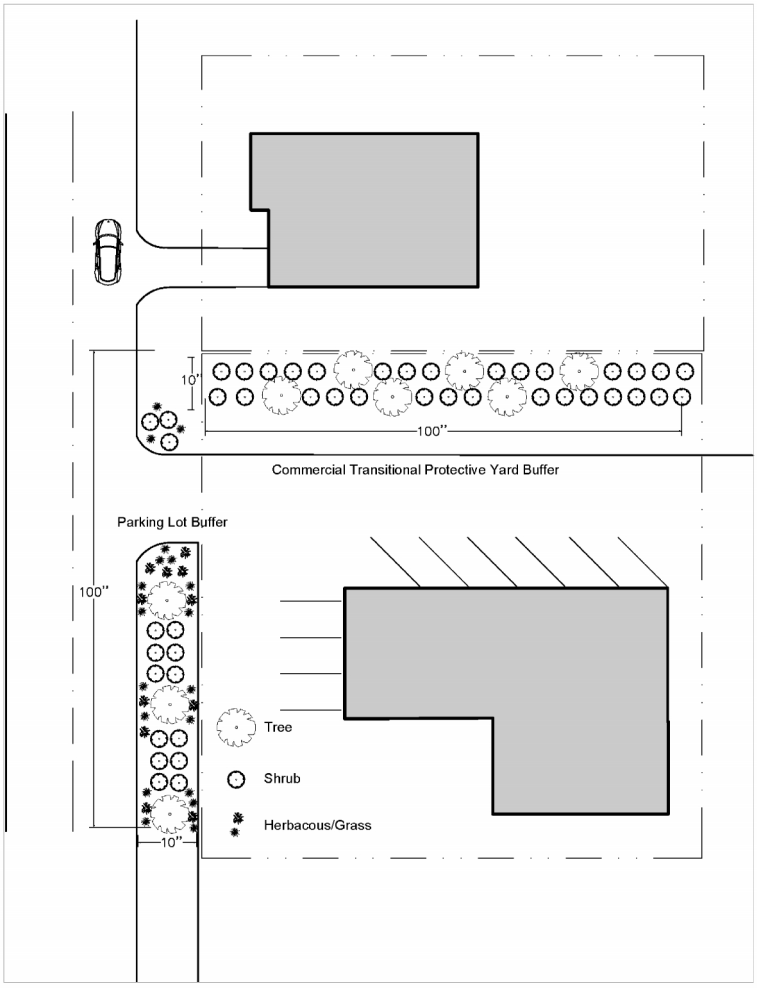
10.93.3.1. Parking Lot Buffers.

10.93.3.1.1. For all sites where off-street parking is provided between the building and the street right-of-way line, a buffer strip of at least ten (10) feet in width shall be provided between the parking lot and the street right-of-way line.

10.93.3.1.2. The parking lot buffer shall consist of one row of plant material in accordance with the Table included in the general requirements section above.

10.93.3.1.3. Trees shall be a minimum height of five (5) feet when installed and shall maintained at the expected maturity height for each tree species.

10.93.3.1.4. Shrubs shall be a minimum height of one and a half (1½) feet when installed. Fifty (50) percent of the required shrubs are expected to reach a height of five (5) feet within three (3) years. The remainder of the plant material may be low growing plants such as dwarf yaupon holly, shore juniper, indian hawthorne and false indigo, which need not exceed three feet in height at maturity.



10.93.3.1.5. Ornamental grasses that will grow to a mature height of at least three (3) feet may be substituted for required shrubs in the beach planting zone.

10.93.3.1.6. For lots adjacent to US 158 and US 64/264 with existing dune elevations or berms of more than five (5) feet in height from street grade, low growing shrubs or groundcover such as dwarf yaupon holly, shore juniper, indian hawthorne and false indigo, which need not exceed three feet in height at maturity, may be utilized to meet buffering requirements in addition to the dune or berm elevation.

10.93.3.1.7. For parking lot buffers, clustering and/or random spacing of plants and trees is encouraged to produce a natural appearance in the landscape.

10.93.3.2. Commercial Transitional Protective Yards. This section requires commercial transitional protective yards to be provided and maintained when non-residential land uses (i.e., other than single-family or duplex) are adjacent to a residential use or residential zoning district. This yard is necessary to protect residential or otherwise incompatible uses from the traffic, noise, glare, trash, activity, vibration, odor, visual disorder, and other harmful or noxious effects likely to be emitted by or associated with a more intensive use in a commercial zoning district. Commercial transitional protective yard regulations are also required to prevent adverse community appearance, to protect the character of the Town, to conserve building and land values, and to provide adequate light and air.

10.93.3.2.1. Where a use other than a single-family or duplex use abuts a residential use or residential zoning district, a buffer strip of at least 10 feet in width along the entire length of the lot shall be provided. The buffer yard shall consist of two rows of plant material in accordance with the Table included in the general requirements section above. This requirement shall also apply in the following circumstances:

10.93.3.2.1.1. When a high impact use listed below abuts a residential use which is located within a commercial zoning district.

10.93.3.2.1.2. Where a use other than a single-family or duplex use abuts a residential district along a street right-of-way line on any street other than its primary street frontage.

10.93.3.2.2. Where a high impact use listed below abuts a residential zoning district, a buffer strip of at least twenty-five (25) feet in width along the entire length of the lot shall be provided. The buffer yard shall consist of three rows of plant material in accordance with the Table included in the general requirements section above.

10.93.3.2.3. For commercial transitional protective yards, all plant material shall be a minimum height of five (5) feet when installed and shall be maintained at the expected maturity height for each plant species.

10.93.3.2.4. Ornamental grass/herbaceous plants shall not be required for commercial transitional protective yards.

10.93.3.2.5. Septic fields, either active or repair, septic tanks, and vehicular accessways and parking areas are not permitted in any required commercial transitional protective yard, and it is further provided that customary accessory buildings may be located in any rear or side yard no closer than the required buffer yard width plus five (5) feet to any property line.

10.93.3.3. High Impact Uses. High impact uses are particular uses of land, which considered as a whole because of their peculiar or operational and physical characteristics are expected to have an adverse effect on adjoining or adjacent properties. High impact uses include, but are not limited to:

10.93.3.3.1. Asphalt/concrete processing facilities.

10.93.3.3.2. Auto repair facilities.

10.93.3.3.3. Banking institutions.

10.93.3.3.4. Car washes.

10.93.3.3.5. Drive-in, take-out and drive-through restaurants.

10.93.3.3.6. Schools.

10.93.3.3.7. Fueling station.

10.93.3.3.8. Group developments.

10.93.3.3.9. Hospitals and heliports.

10.93.3.3.10. Hotels.

10.93.3.3.11. Junkyards, scrap yard, and salvage facilities.

10.93.3.3.12. Microbreweries.

10.93.3.3.13. Mini-storage facilities (self-storage).

10.93.3.3.14. Mixed-use development.

10.93.3.3.15. Public works facility.

10.93.3.3.16. Non-profit/outreach center with aquatic fitness facility.

10.93.3.3.17. Nursing homes.

10.93.3.3.18. Commercial outdoor recreation uses, including but not limited to, amusements, go-cart tracks, mini-golf courses, commercial swimming pools, tennis courts, outdoor sport climbing walls, fishing piers, and watercraft rental establishments.

10.93.3.3.19. Private clubs.

10.93.3.3.20. Real estate rental management facility.

10.93.3.3.21. Retail stores greater than 10,000 square feet gross floor area.

10.93.3.3.22. Sexually oriented businesses.

10.93.3.3.23. Shopping centers.

10.93.3.3.24. Trade centers or multi-use building.

10.93.3.3.25. Veterinary clinics with animal boarding.

10.93.3.3.26. Any accessory use serving the above, including parking; the permanent or temporary storage of vehicles associated with the use; the loading, unloading, or storage of merchandise or material; service areas or docks; or the storage or collection of refuse.

10.93.3.4. Subdivision Buffers. All subdivisions in the R-3 high density residential zoning district, containing lots fronting on US 158 shall provide the following:

10.93.3.4.1. The first fifteen (15) feet of lot depth adjacent to the right-of-way shall be left undisturbed and in its natural state. This subsection shall not preclude the construction of any required driveway, underground placement of utilities, nor the placement of a sign.

10.93.3.4.2. A vegetative buffer shall be provided immediately adjacent to the undisturbed area. The buffer shall be a minimum width of ten (10) feet with two (2) rows of planting material that are a minimum height of five (5) feet when installed that are expected to achieve a height of eight (8) feet within three (3) years. The use of sand or earth berms is encouraged, in which case the berm slope shall not exceed three to one (3:1). The minimum acceptable methods for buffering all other boundaries of the site shall include:

10.93.3.4.2.1. A vegetative buffer of a minimum width of ten (10) feet with two (2) rows of planting material placed on centers that are a minimum height of five (5) feet when installed;

10.93.3.4.2.2. Sand or earth berms that will not exceed a slope of three to one (3:1) to a height of five (5) feet, stabilized with grasses and shrubs appropriate to the site; or

10.93.3.4.2.3. A combination of the above designed to be a minimum height of five (5) feet when installed. The selected materials for buffering must be approved by the UDO Administrator prior to the issuance of a building permit.

10.93.3.5. Buildings Adjacent to Street Frontage. Building walls adjacent to a street frontage shall include foundation landscaping directly adjacent to the building to screen any crawl space, stem wall, lattice work, or open parking areas.

10.93.3.6. Conflict with Other Regulations.

10.93.3.6.1. Nothing in this section shall reduce the minimum requirements of any other buffer yard requirement in this UDO.

10.93.3.6.2. Whenever two or more buffer yards are simultaneously applicable, the more stringent regulation shall control.

10.93.3.7. Interior Parking Lot Landscaping.

10.93.3.7.1. All parking lots containing ten parking spaces, or more shall provide interior parking lot landscape islands as outlined in this section.

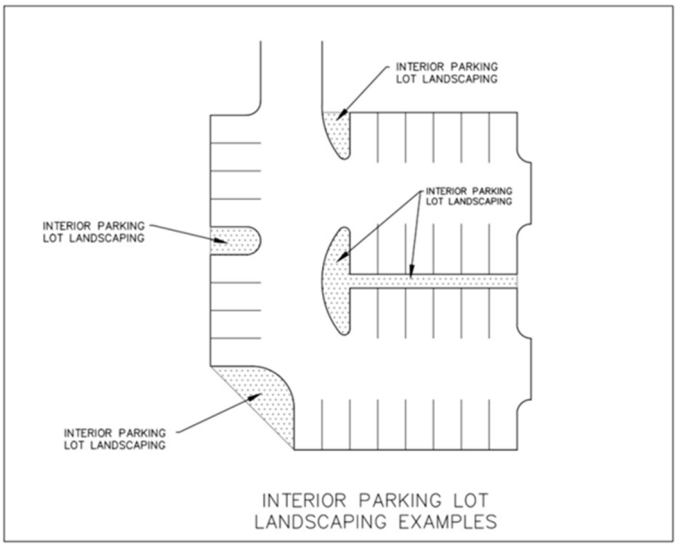
10.93.3.7.2. Interior parking lot landscaping shall be provided at a minimum rate equal to ten percent of the total area of parking spaces. (For example, ten parking spaces at ten feet × 20 feet = 2,000 square feet will require 200 square feet of interior parking lot landscaping).

10.93.3.7.3. To qualify as "interior" parking lot landscaping, landscape islands shall be situated either in-between parking spaces, between parking spaces and travel aisles, or between parking rows.

10.93.3.7.4. Interior parking lot landscape islands may be utilized for stormwater management with designs that direct and capture stormwater runoff from parking area surfaces.

10.93.3.7.5. Proposed plantings within required interior parking lot landscape islands must comply with stormwater and vehicular overhang requirements. Planting materials must not obstruct sight distance and shall provide a permanent non-erosive vegetative groundcover.

10.93.3.7.6. Interior parking lot landscape islands shall count towards vegetation preservation and planting requirements found in this section and may also be utilized as part of required stormwater management measures.



10.93.3.8. Vegetation Preservation/Planting Requirements.

10.93.3.8.1. Intent. It is the intent of this section to require, to the extent possible, the preservation of existing vegetation during the development process. Except when necessary to provide access to a site or to ensure the safety and security of people and property, any existing healthy trees that are six inches or greater in caliper, located within a public right-of-way or undeveloped required yard shall be retained unless approved for removal during site plan review. In addition, every reasonable effort shall be made to protect and retain existing trees and shrubs not actually lying in planned roadways, drainage ways, building foundation sites and construction activity areas. This section includes minimum requirements for preservation of existing vegetation. Where this is not possible, planting of new vegetation may be utilized to meet the requirement utilizing a sliding scale.

10.93.3.8.2. Vegetation Preservation Requirement.

10.93.3.8.2.1. Projects for new development shall preserve a minimum of ten (10) percent of the lot's total area with existing natural vegetation and/or dune elevations.

10.93.3.8.2.2. Areas designated for the preservation of existing vegetation shall contain examples of significant native or locally adaptive vegetation, which may include, but shall not be limited to, combinations of trees, shrubs, forbs and grasses that are listed in the Town of Nags Head Vegetative Planting Guidelines.

10.93.3.8.2.3. Areas designated for preservation of grasses and dune plants must contain significant dune elevations.

10.93.3.8.2.4. Areas designated for the preservation of existing vegetation shall be left undisturbed and in their natural state; however, weeds, vines and similar ground vegetation may be removed, provided that no land-disturbing activity occurs and that the leaf litter, mulch, top soil and similar material are left undisturbed.

10.93.3.8.2.5. The area of existing vegetation to be preserved may be calculated using recent aerial photography and may include the canopy that is present within the property boundaries.

10.93.3.8.3. Vegetation Planting in Lieu of Preservation.

10.93.3.8.3.1. If existing vegetation cannot be preserved to meet the above requirement, new vegetation may be planted in accordance with the schedule below to meet the requirement. If no vegetation is preserved, the planting of a minimum of fifteen (15) percent of the lot's total area shall be required. At a minimum, fifty (50) percent of the required planted material shall consist of

locally adapted tree species that are a minimum height of three (3) feet and one (1) inch in diameter measured at one-half foot above grade when planted. The remainder of the required plantings may be live shrubs measuring at least one and one-half feet in height when planted. A minimum of one-half of this vegetation must be located in the front or side yards of the proposed development.

TABLE 10-10: VEGETATION PRESERVATION STANDARD

Percent of Site Preserved	Percent of New Plantings	Total Vegetation Coverage
10%	0%	10%
8%	3%	11%
6%	6%	12%
4%	9%	13%
0%	15%	15%

10.93.3.8.3.2. When new plantings are used to meet the requirements of this section, trees shall count as one hundred (100) square feet of required planting area and shrubs shall count as fifty (50) square feet of planting area.

10.93.3.8.3.3. Preserved natural vegetation may be counted towards both buffering and vegetation preservation requirements if the vegetation is located within a required buffer yard area and also satisfies the size requirements of the buffer. New plantings used to meet a landscape buffer requirement may count for up to half of the required buffer yard area. In no case shall the required amount of buffering be reduced by more than fifty (50) percent.

10.93.3.8.3.4. The above landscaping requirements may be altered due to unique and unusual physical conditions or characteristics of the property, including the reduction of landscaping requirements for oceanfront properties and other lots containing significant vegetated dune features that will be preserved in equal proportion to what would normally be required by this section.

10.93.3.8.3.5. For purposes of administration, these landscaping requirements shall adhere to the procedures established for buffering in Article 10, Part I, Buffering and Vegetation Preservation General Requirements.

10.93.3.8.3.6. The property owner shall be responsible for maintaining the landscaped areas required by this section, including the replacement of dead and missing vegetation in accordance with section Article 10, Part I, Buffering and Vegetation Preservation General Requirements.

10.93.3.9. Vegetation within the NCDOT Right-of-Way. Prior to any removal of vegetation, with a caliper greater than four (4) inches measured at one foot above the ground, from the NCDOT right-of-way, the applicant must obtain approval from the NCDOT and the Town. Any

unauthorized removal of vegetation without prior Town approval will subject the owner to civil penalties in accordance with Section 1.10, Violation of UDO Regulations.

SECTION 10.94 LIGHTING.

In order to reduce glare, light pollution and preserve the dark night sky while providing safety and security to public spaces, the following standards shall apply:

10.94.1. Light fixtures shall be located on the site and designed, shielded, or oriented in such a manner as to minimize light spill across property lines and prevent glare at any location on or off the property.

10.94.2. All exterior lighting shall use cut-off type fixtures to minimize the component of light above horizontal (glare).

10.94.3. All lighting shall conform to the requirements of Article 10, Part IV, Outdoor Lighting.

SECTION 10.95 STORMWATER MANAGEMENT FACILITIES.

Projects shall incorporate stormwater control facilities to capture and retain stormwater runoff in accordance with the following criteria:

10.95.1. All runoff from the project's built-upon area must be directed into an approved stormwater management system designed to accommodate the volume of runoff generated by a 4.3-inch design storm.

10.95.2. The stormwater management system shall be designed in accordance with the standards, methodology, and procedures prescribed in Article 11, Part I, Stormwater, Fill, and Runoff Management, the Town's Stormwater Best Management Practices Manual, and the applicable requirements of the North Carolina Stormwater Best Management Practices Manual (NCDEQ BMP Manual).

10.95.3. Project designs shall utilize low-impact development principles and best management practices as the primary method for the treatment of stormwater, unless it is sufficiently demonstrated to be impractical by the applicant.

10.95.4. Stormwater plans shall be prepared by a state licensed professional engineer.

10.95.5. Prior to the issuance of a certificate of completion for the project, a state licensed professional engineer shall certify that the proposed improvements have been constructed in accordance with the project design.

10.95.6. All stormwater detention and/or retention ponds and basins shall be designed as an integral part of the development site and shall be aesthetically pleasing (for example, neatly landscaped, well-maintained, vegetated slopes, decorative fencing if fencing is used).

SECTION 10.96 TO 10.100 RESERVED.

PART VII. WIRELESS TELECOMMUNICATIONS FACILITIES

SECTION 10.101 PURPOSE AND INTENT.

The purpose of this section is to establish general guidelines for the siting of wireless telecommunications facilities. The goals of this section are to:

10.101.1. Encourage the location of wireless telecommunications facilities in non-residential/non-historical areas and minimize the total number of towers throughout the community;

10.101.2. Enhance the ability of the providers of telecommunications services to provide those services to the community quickly, effectively, and efficiently;

10.101.3. Encourage the location of telecommunications facilities and antennas, to the extent possible, in areas where the adverse impact on the community is minimal;

10.101.4. Encourage the location of telecommunications facilities and antennas in configurations that minimize the adverse visual impacts of the facilities and antennas;

10.101.5. Ensure that the placement, construction and modification of wireless communications facilities complies with all applicable state and federal laws in such a manner as not to unreasonably discriminate between providers of functionally equivalent personal wireless services or to have the effect of prohibiting personal wireless services.

SECTION 10.102 REQUIREMENTS FOR WIRELESS TELECOMMUNICATIONS SITES, NEW WIRELESS SUPPORT STRUCTURES, OR SUBSTANTIAL MODIFICATION OF WIRELESS SUPPORT SERVICES.

All wireless communications sites, new wireless support structures, or substantial modification of wireless support structures located within the Town must comply with the following requirements:

10.102.1. Safety Standards.
All proposed telecommunications towers, new wireless support structures or substantial modification of wireless support structures and wireless facilities shall comply with all applicable federal, state and local laws including specifically the following:

10.102.1.1. Federal Communications Commission standards, rules and regulations;

10.102.1.2. Federal Aviation Administration standards, rules and regulations;

10.102.1.3. NCGS 160-400.50 et. seq.;

10.102.1.4. The North Carolina Building Code;

10.102.1.5. Accepted industry standards for wind loading, base stabilization and other critical engineering characteristics as defined by American National Standards Institute (ANSI), Telecommunications Industry Association (TIA) and Electronic Industry Alliance (EIA) 222-G or its successors.

10.102.2. Use Guidelines and Dimensional Requirements.

10.102.2.1. Permissible Uses. Wireless telecommunications facilities shall only be permitted as follows:

10.102.2.1.1. In accordance with Section 6.6, Table of Uses and Activities;

10.102.2.1.2. As a collocation of wireless facilities upon an existing permitted wireless telecommunications site; or

10.102.2.1.3. In accordance with the standards in this section pertaining to small wireless facilities.

10.102.2.2. Collocation.

10.102.2.2.1. Collocation of new antennas, wireless facilities and other equipment on an existing wireless support structure or structure within the applicant's search ring shall be required whenever reasonably feasible. Collocation is not reasonably feasible if an applicant can show it is technically or commercially impractical for the applicant to collocate or if the owners of all of the telecommunication towers within the applicant's search ring where collocation would be technically practical are unwilling to enter into a contract for such use at a fair market value.

10.102.2.2.2. Minor telecommunication towers including the structure and fenced compound shall be designed to accommodate the wireless facilities of at least one provider plus space for emergency communication antennas used by the Town's police and fire service provider.

10.102.2.2.3. Major telecommunication towers including the structure and fenced compound shall be designed to accommodate collocation of the wireless facilities of at least three providers plus space for emergency communication antennas used by the Town's police and fire service provider.

10.102.2.2.4. There is no requirement for small wireless facilities to collocate antennas for other wireless service providers or to provide in kind services for emergency communication antennas used by the Town's police and fire services.

SECTION 10.103 SMALL WIRELESS FACILITIES.

10.103.1. Standards.

Small wireless facilities and utility poles installed to support small wireless facilities shall comply with the following requirements:

10.103.1.1. Small wireless facilities shall be a permitted use in all rights-of-way and on properties containing uses other than single-family dwellings. Small wireless facilities shall be a conditional use on properties developed as single-family dwellings.

10.103.1.2. Height of New Small Wireless Facilities. New small wireless facilities in the ROW may not extend (i) more than ten feet (10') above an existing utility pole in place as of the effective date of this UDO; or (ii) for small wireless facilities on a new utility pole, above the height permitted for a new utility pole under this UDO. A new small wireless facility on private property may not exceed the applicable height limit for the district in which it is located.

10.103.1.3. Height of New or Modified Utility Poles Installed to Support Small Wireless Facilities. Each new or modified utility pole installed in the ROW shall not exceed the greater of (i) ten feet (10') above an existing utility pole; or (ii) fifty feet (50') above ground level. In the Single-Family Residential (R-1, R-2, R-3, SPD-20, SPD-C) zoning districts, where the existing utilities are installed underground, a utility pole or wireless support structure cannot exceed forty feet (40') above ground level, unless the applicant obtains a variance approving the taller utility pole or wireless support structure.

10.103.1.4. Maximum Size. Poles, utility poles, and/or ground mounted equipment supporting and/or necessary for the operation of a small wireless facility must conform to the size and height limitations for a small wireless facility, poles or utility poles as contained in this section.

10.103.1.5. Spacing and Setbacks. To minimize the adverse visual impacts associated with the proliferation of above-ground small wireless facilities, no utility pole located in the right-of-way supporting a small wireless facility shall be located within six hundred (600) feet of any other utility pole located in the right-of-way supporting a small wireless facility or utility pole supporting a small wireless facility that is NOT within a right-of-way. On private property, poles supporting small wireless facilities shall meet the applicable yard requirements for the district in which it is located.

10.103.1.6. Color. Small wireless facilities shall be the color for the antenna and related equipment that is consistent with or most blends into the wireless support structure on which they are installed, unless a different color is needed for public safety or service reliability reasons.

10.103.1.7. Grounding. The small wireless facility, including any ground-mounted equipment, shall be grounded in accordance with the requirements of the most current edition of the National Electrical Code adopted by the Town regarding grounding of wireless facilities.

10.103.1.8. Access. Wireless providers and their employees, agents, and contractors shall have the right of access to utility poles, wireless support structures and small wireless facilities in the right-of-way at all times for purposes consistent with this section.

10.103.2. Other Requirements.

10.103.2.1. Small wireless facilities shall be located such that they do not interfere with a public health or safety facility, such as, but not limited to, a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility. New utility poles and small wireless facilities shall not be installed directly over any water,

sewer, or reuse main or service line or within an area that would impair the installation of planned sidewalk improvements.

10.103.2.2. Small wireless facilities and utility poles or wireless support structures on which they are collocated shall not be lighted or marked by artificial means, except when small wireless facilities are collocated on a light pole or where illumination is specifically required by the Federal Aviation Administration or other federal, state, or local regulations.

10.103.2.3. Wireless providers shall repair all damage to a Town rights-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, city utility poles, or utility poles and to return the rights-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the Town within a reasonable time after written notice, the Town may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The Town may maintain an action to recover the costs of the repairs.

10.103.2.4. Consent Required for Use of Private Property. No person may place, maintain, modify, operate, or replace a privately owned utility pole or wireless support structure or collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.

10.103.2.5. Approval Under this Section Relates Only to Small Wireless Facility. The approval of the installation, placement, maintenance, or operation of a small wireless facility does not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the rights-of-way.

10.103.3. Application Process for Small Wireless Facilities Located Within Public Rights-of-Way or On Properties Containing Uses Other than Single-Family Dwellings.

10.103.3.1. An applicant seeking to locate small wireless facilities at multiple locations in the Town shall be allowed, at the applicant's discretion, to file a consolidated application for no more than 25 separate facilities and receive a permit for the collocation of all the small wireless facilities meeting the requirements of this section. The Town may remove small wireless facility collocations from a consolidated application and treat separately small wireless facility collocations (i) for which incomplete information has been provided or (ii) that are denied. The Town may issue a separate permit for each collocation that is approved.

10.103.3.2. An application must include an attestation that the small wireless facilities shall be collocated on a utility pole, Town utility pole, or wireless support structure and that the small wireless facilities will be activated for use by a wireless services provider to provide service no later than one year from the permit issuance date, unless the Town and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

10.103.3.3. A permit application shall be deemed complete unless the Town provides notice otherwise in writing to the applicant within thirty (30) days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

10.103.3.4. The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the Town fails to approve or deny the application within forty-five (45) days from the time the application is deemed complete or a mutually agreed upon time frame between the Town and the applicant.

10.103.3.5. An application may only be denied on the basis that the proposed activity is inconsistent with any of the following:

10.103.3.5.1. Interferes with the safe operation of traffic control equipment;

10.103.3.5.2. Interferes with sight lines or clear zones for vehicles or pedestrians;

10.103.3.5.3. Interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

10.103.3.5.4. Fails to comply with reasonable and nondiscriminatory spacing requirements that apply to other communications service providers and electric utilities in the right-of-way and that concern the location of ground-mounted equipment and new utility poles. Such spacing requirements shall not prevent a small wireless facility from serving any location; and

10.103.3.5.5. Fails to comply with the requirements and design standards outlined in this UDO and other applicable codes, including screening of ground-mounted equipment.

10.103.3.6. If an application is denied, the Town must (i) document the basis for a denial, including the specific code provisions on which the denial was based and (ii) send the documentation to the applicant on or before the day the Town denies an application. The applicant may cure the deficiencies identified by the Town and resubmit the application within thirty (30) days of the denial without paying an additional application fee. The Town shall approve or deny the revised application within thirty (30) days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

10.103.3.7. The permit may specify that collocation of the small wireless facility shall commence within six months of approval and shall be activated for use no later than one year from the permit issuance date, unless the Town and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

10.103.3.8. A wireless provider may apply to the Town to place, replace, or modify utility poles in public rights-of-way to support the collocation of small wireless facilities. Such application shall be accepted and processed in accordance with the provisions of subsection 10.103.3 and other local codes governing the placement of utility poles in the public rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or Town utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including those relating to screening or landscaping, or public safety and reasonable spacing requirements. The application may be submitted in conjunction with the associated small wireless facility application.

10.103.3.9. The Town may charge an application fee that shall not exceed the lesser of (i) the actual, direct, and reasonable costs to process and review applications for collocated small wireless facilities; (ii) the amount charged by the Town for permitting of any similar activity; or (iii) $100.00 per facility for the first five small wireless facilities addressed in an application, plus $50.00 for each additional small wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the Town has the burden of proving that the fee meets the requirements of this subsection.

10.103.4. Applications for Small Wireless Facilities Located on Property Developed with Single-Family Dwellings.

10.103.4.1. Applicants shall submit all relevant information as required in subsection 10.103.3 above.

10.103.4.2. The application shall be reviewed in accordance with the requirements for conditional uses as prescribed in Section 3.8, Conditional Use Permits of this UDO.

10.103.5. Removal, Relocation, or Modification of a Small Wireless Facility.

10.103.5.1. Notice. Within ninety (90) days following written notice from the Town, the wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities or utility pole for which it has a permit hereunder whenever the Town has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Town improvement in or upon, or the operations of the Town in or upon, the public right-of-way.

10.103.5.2. Emergency Removal or Relocation of Facilities. The Town retains the right to cut or move any small wireless facilities or utility poles located within the public right-of-way, as the Town may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Town shall notify the wireless provider and provide it an opportunity to move its small wireless facilities or utility poles prior to cutting or removing them and shall notify the wireless provider after cutting or removing a small wireless facility or utility pole.

10.103.5.3. Removal of Abandoned Facilities. A wireless services provider shall remove an abandoned wireless facility within one hundred eighty (180) days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the Town may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For the purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is one hundred eighty (180) days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the Town reasonable evidence that it is diligently working to place such wireless facility back in service.

ARTICLE 11. ENVIRONMENTAL REGULATIONS

PART I. STORMWATER, FILL, AND RUNOFF MANAGEMENT 11-5
Section 11.1 Purpose and Intent 11-5
Section 11.2 Applicability of Article 11, Part I Provisions and Exceptions 11-6
Section 11.3 Administration 11-7
11.3.1. Designation of Stormwater Administrator 11-7
11.3.2. Duties and Responsibilities of the Stormwater Administrator 11-7
Section 11.4 General Standards for Commercial, Mixed Use and All Non-Single Family or Non-Duplex Residential Development, including Multi-Family Development 11-8
Section 11.5 General Standards for Residential or Duplex Development on Individual Lots 11-10
11.5.1. Stormwater Management Plan Applicability 11-10
11.5.2. Stormwater Management Standards 11-11
11.5.3. Standard for Depth or Elevation of Fill 11-14
11.5.4. Plan Submittal, Review and Approval for Residential or Duplex Development 11-15
Section 11.6 General Standards for Subdivisions 11-17
11.6.1. Commercial Subdivisions 11-17
11.6.2. Residential Subdivisions 11-17
11.6.3. Future Phase Development 11-17
11.6.4. ROW/Common Areas 11-17
11.6.5. Operation and Maintenance Agreement 11-17
Section 11.7 Stormwater Management Plan Submittal and Approval Requirements 11-17
11.7.1. Preparer's Certification 11-17
11.7.2. Supporting Documentation 11-17
11.7.3. Submittal Requirements 11-18
11.7.4. Operations and Maintenance Agreement 11-19
11.7.5. Easements/Covenants 11-19
11.7.6. Certification 11-19
11.7.7. Construction Record or As-Built Plans 11.19
Section 11.8 Operations and Maintenance Requirements 11-20
11.8.1. For All Projects Other than Residential or Duplex Development on Individual Lots 11-20
11.8.2. Approval Required 11-20
11.8.3. Maintenance 11-20
Section 11.9 Reference Documents 11-20
Section 11.10 Discharge of Stormwater, Pool Water, Hot Tub Water, and De-Watering Effluent 11-21
Section 11.11 Public/Private Conflicts 11-22
Section 11.12 Drainage within Town Rights-of-Way 11-22
Section 11.13 Penalties for Violation of Article 11, Part I 11-23
Section 11.14 Variances, Waivers, and Appeals 11-23
Section 11.15 Conflict with Other Laws 11-23
Section 11.16 Validity 11-23
Sections 11.17-11.20 Reserved 11-23

PART II. SOIL EROSION AND SEDIMENTATION CONTROL 11-24
Section 11.21 Purpose and Intent 11-24
11.21.1. Title 11-24
11.21.2. Purpose 11-24

Section 11.22 Scope of Article 11, Part II and Exclusions 11-24
11.22.1. Geographical Scope of Regulated Land-Disturbing Activity 11-24
11.22.2. Exclusions from Regulated Land-Disturbing Activity 11-24
11.22.3. Plan Approval Requirement for Land-Disturbing Activity 11-25
11.22.4. Protection of Property 11-25
11.22.5. More Restrictive Rules Shall Apply 11-25
11.22.6. Plan Approval Exceptions 11-25
Section 11.23 Mandatory Standards for Land-Disturbing Activity 11-25
11.23.1. Buffer Zone 11-25
11.23.2. Graded Slopes and Fills 11-26
11.23.3. Fill Material 11-26
11.23.4. Ground Cover 11-26
11.23.5. Prior Plan Approval 11-26
11.23.6. Approved Plan 11-27
Section 11.24 Erosion and Sedimentation Control Plans 11-27
11.24.1. Plan Submission 11-27
11.24.2. Financial Responsibility and Ownership 11-27
11.24.3. Environmental Policy Act Document 11-27
11.24.4. Content 11-27
11.24.5. Timeline for Decisions on Plans 11-28
11.24.6. Approval 11-28
11.24.7. Disapproval for Content 11-28
11.24.8. Other Disapprovals 11-28
11.24.9. Notice of Activity Initiation 11-29
11.24.10. Preconstruction Conference 11-29
11.24.11. Display of Plan Approval 11-29
11.24.12. Required Revisions 11-29
11.24.13. Amendment to a Plan 11-29
11.24.14. Failure to File a Plan 11-29
11.24.15. Inspections 11-30
Section 11.25 Basic Control Objectives 11-30
11.25.1. Identify Critical Areas 11-30
11.25.2. Limit Time of Exposure 11-30
11.25.3. Limit Exposed Areas 11-30
11.25.4. Control Surface Water 11-30
11.25.5. Control Sedimentation 11-30
11.25.6. Manage Stormwater Runoff 11-30
Section 11.26 Design and Performance Standards 11-31
11.26.1. Design 11-31
11.26.2. HQW Zones 11-31
11.26.3. Settling Efficiency 11-31
11.26.4. Grade 11-31
11.26.5. Ground Cover 11-32
Section 11.27 Stormwater Outlet Protection 11-32
11.27.1. Intent 11-32
11.27.2. Performance Standard 11-32
11.27.3. Acceptable Management Measures 11-33
11.27.4. Exceptions 11-33
Section 11.28 Borrow and Waste Areas 11-33

Section 11.29 Access and Haul Roads 11-33
Section 11.30 Operations in Lakes or Natural Watercourses 11-34
Section 11.31 Responsibility for Maintenance 11-34
Section 11.32 Additional Measures 11-34
Section 11.33 Existing Uncovered Areas 11-34
Section 11.34 Fees 11-35
Section 11.35 Plan Appeals 11-35
Section 11.36 Inspections and Investigations 11-35
11.36.1. Inspection 11-35
11.36.2. Willful Resistance, Delay, or Obstruction 11-35
11.36.3. Notice of Violation 11-36
11.36.4. Investigation 11-36
11.36.5. Statements and Reports 11-36
Section 11.37 Stormwater Outlet Protection 11-36
11.37.1. Civil Penalties 11-36
11.37.2. Criminal Penalties 11-37
Section 11.38 Injunctive Relief 11-37
11.38.1. Violation of Local Program 11-37
11.38.2. Abatement of Violation 11-38
Section 11.39 Restoration of Areas Affected by Failure to Comply 11-38
Section 11.40 Reserved 11-38

PART III. FLOOD DAMAGE PREVENTION 11-39
Section 11.41 Purpose and Intent 11-39
11.41.1. Statutory Authorization 11-39
11.41.2. Findings of Fact 11-39
11.41.3. Statement of Purpose 11-39
11.41.4. Objectives 11-40
Section 11.42 General Provisions 11-40
11.42.1. Lands to Which this Article 11, Part III Applies 11-40
11.42.2. Basis for Establishing the Special Flood Hazard Areas 11-40
11.42.3. Establishment of Floodplain Development Permit 11-40
11.42.4. Compliance 11-40
11.42.5. Abrogation and Greater Restrictions 11-40
11.42.6. Interpretation 11-41
11.42.7. Warning and Disclaimer of Liability 11-41
11.42.8. Penalties for Violations 11-41
Section 11.43 Administration 11-41
11.43.1. Designation of Floodplain Administrator 11-41
11.43.2. Duties and Responsibilities of the Floodplain Administrator 11-41
11.43.3. Floodplain Development Application Requirements 11-43
11.43.4. Floodplain Development Permit Requirements 11-45
11.43.5. Floodplain Development Certification Requirements 11-46
11.43.6. Corrective Procedures 11-48
11.43.7. Variance Procedures 11-49
Section 11.44 Provisions for Flood Hazard Reduction 11-52
11.44.1. General Standards 11-52
11.44.2. Specific Standards 11-53

11.44.3. Coastal High Hazard Areas (Zones VE) and Properties East of NC 12 & SR 1243 11-56
Section 11.45 Remedies 11-58
Section 11.46 Legal Status Provisions 11-58
11.46.1. Effect on Rights and Liabilities Under the Existing FDPO.....11-58
11.46.2. Effect Upon Outstanding Floodplain Development Permits 11-58
Sections 11.47-11.50 Reserved 11-58

PART I. STORMWATER, FILL, AND RUNOFF MANAGEMENT

SECTION 11.1 PURPOSE AND INTENT.

The purpose of this Part is to proactively protect, maintain and enhance the public health, safety, environment and general welfare by establishing requirements and procedures to control the adverse effects of fill, land disturbance and increased post-development stormwater runoff for the purposes of both water quantity management for flood prevention and water quality protection with the goals to:

11.1.1. Control and minimize impacts associated with stormwater runoff from all development and redevelopment.

11.1.2. Mitigate current stormwater problems and prevent future problems associated with stormwater runoff.

11.1.3. Preserve water quality through proactive management practices.

11.1.4. Facilitate public understanding of stormwater management.

11.1.5. Encourage the use of pilings and open foundations and minimize the use of fill, consistent with FEMA's coastal construction recommendations.

11.1.6. Improve stormwater management through use of low impact development techniques.

11.1.7. Establish requirements for on-going management and maintenance of stormwater management practices.

11.1.8. Establish application and enforcement procedures that address land disturbance, sedimentation and erosion control, the use of fill, and stormwater management practices consistent with associated Town ordinances and state and federal laws and regulations, to include:

> ***11.1.8.1.*** Soil erosion and sedimentation control provisions (Article 11, Part II);
>
> ***11.1.8.2.*** Excavations (Chapter 18 of the Town Code of Ordinances);
>
> ***11.1.8.3.*** Flood damage prevention provisions (Article 11, Part III);
>
> ***11.1.8.4.*** NCDEQ stormwater management (NCAC T15: 02H .1000);
>
> ***11.1.8.5.*** NCDEQ soil erosion and sedimentation control (G.S. 113A-50 - 113A-71);
>
> ***11.1.8.6.*** NCDEQ and Dare County Health Department subsurface, ground-absorption wastewater effluent disposal (NCAC T15A: 18A. 1900).

11.1.9. Establish public awareness of potential surface and subsurface water drainage problems recognizing that development potential of some land may be limited.

11.1.10. Regulate development and redevelopment which may create additional stormwater related burdens to the Town or adjacent properties.

11.1.11. Cause every development and redevelopment employing stormwater management practices to develop a maintenance plan, and place responsibility for maintenance with the property owners.

SECTION 11.2 APPLICABILITY OF ARTICLE 11, PART I PROVISIONS AND EXCEPTIONS.

11.2.1. The provisions of this Part are applicable to all development and/or redevelopment within the jurisdiction of the Town, except for land disturbance associated with investigation services, (i.e., lot or boundary survey), the evaluation of a property for septic suitability, or repair of existing septic systems.

11.2.2. No development activity, including clearing, grading of a lot, the deposition of fill or the stockpiling of material for future use, shall occur except in compliance with the provisions, conditions, and limitations of a land disturbance permit as issued by a UDO Administrator. Other permits and plans may also be required, such as a floodplain permit, a sedimentation and erosion control permit, responsibility form, or sedimentation and erosion control plan, zoning, and building permits, in accordance with federal, state or local laws.

11.2.3. The applicable permit shall govern the design, installation, and construction of stormwater management and control practices on the site. Compliance after project construction is governed by the maintenance provisions of this ordinance and may require submission of a maintenance report upon request of the Town.

11.2.4. The Town shall establish a fee schedule and stormwater review policy which may be amended and updated at the Board of Commissioners' direction.

11.2.5. Applications must be complete and submitted to the Planning Department along with the appropriate fee established pursuant to this section. If the Stormwater Administrator or his or her designee finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. Before a land disturbance permit application is deemed complete, the Town or the applicant may request a consultation on a concept for the post-construction stormwater management system to be utilized in the proposed development project.

11.2.6. Upon completion of a project, and before a certificate of compliance may be granted, the applicant shall certify that best management practices have been constructed in accordance with the approved stormwater management plans. For all projects other than single-family and duplex uses, best management practices shall be documented on the construction record filed with the Town for certificates of compliance.

11.2.7. Installation of all stormwater management practices installed under the requirements of this ordinance shall be made prior to certificate of compliance unless financially guaranteed. The Town may enter into an agreement with the permit holder whereby the permit holder shall agree to complete all required improvements as specified on the approved land disturbance permit or stormwater plan,

within a reasonable timeframe as determined by the Town. To secure this agreement, the permit holder shall provide a guarantee not exceeding 1.25 times (or 125 percent of) the projected cost of the improvements in the form of a performance bond with cost estimates to be reviewed and approved by the UDO Administrator. The surety performance bond shall be obtained from a surety bonding company authorized to do business in North Carolina and shall be payable to the Town of Nags Head. The duration of the bond shall be until such time as the improvements are approved by the Town, or three years.

11.2.8. An approved land disturbance permit expires if work does not commence within six months of the date of issuance, or if work is discontinued for a period of more than one year, or the expiration or completion of a building permit. A new land disturbance permit shall be obtained to replace the expired permit before work can commence or re-commence unless the UDO Administrator grants a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

SECTION 11.3 ADMINISTRATION.

11.3.1. Designation of Stormwater Administrator.
The UDO Administrator or his/her designee(s) is hereby appointed to administer and implement the provisions of this Part.

11.3.2. Duties and Responsibilities of the Stormwater Administrator.
Duties of the Stormwater Administrator shall include, but not be limited to:

> ***11.3.2.1.*** Managing land disturbance permit applications and review of associated plans in accordance with the standards of this Part;
>
> ***11.3.2.2.*** Issuance of land disturbance permits through the supervision of zoning administration and building inspections, so that land disturbance permits are integrated within site plan approval and any conditions placed upon a floodplain or development permit;
>
> ***11.3.2.3.*** Coordinating the application of this Part with the Town's engineer and zoning administration, building inspections, floodplain management, and sedimentation and erosion control program functions;
>
> ***11.3.2.4.*** Ensuring the enforcement of this Part, including plan review, issuance of notices of violations, and monitoring of operations and maintenance requirements on an on-going basis;
>
> ***11.3.2.5.*** Maintaining up to date resource materials including the current edition of the North Carolina Best Management Practices Manual, the Town of Nags Head Best Management Manual, and the Town of Nags Head Recommended Standard Details Manual;
>
> ***11.3.2.6.*** Promoting public education and reference materials on stormwater management, flood prevention and water quality protection.

SECTION 11.4 GENERAL STANDARDS FOR COMMERCIAL, MIXED USE, AND ALL NON-SINGLE FAMILY OR NON-DUPLEX RESIDENTIAL DEVELOPMENT, INCLUDING MULTI-FAMILY DEVELOPMENT.

11.4.1. Redevelopment of property with existing commercial use, mixed land uses or residential uses other than single-family or duplex residential uses does not require submission of a stormwater plan under the following circumstances:

11.4.1.1. The redevelopment is consistent with the zoning regulations of this UDO relating to redevelopment and nonconformities;

11.4.1.2. The redevelopment does not result in a net gain in built upon area;

11.4.1.3. The redevelopment does not include the importation of any fill material; or

11.4.1.4. The redevelopment includes a stormwater retrofit associated with flood mitigation property improvements which limits the importation of earthen fill material to no greater than 12 inches in depth.

11.4.2. All redevelopment of property with commercial uses, mixed land uses or residential uses other than single-family or duplex residential uses resulting in a net gain in built upon area requires submission of a stormwater plan showing that the stormwater runoff generated by the increase will be directed into an approved stormwater management system designed to accommodate 4.3 inches of rainfall and that any best management practices constructed for the additional runoff comply with the same commercial standards established in subsection 11.4.3, below.

11.4.3. All other development or redevelopment of property with commercial uses, mixed land uses or residential uses other than single-family or duplex residential uses requires submission of a stormwater plan showing that the development will meet or exceed the following standards:

11.4.3.1. All runoff from the project's built-upon area must be directed into an approved stormwater management system designed to accommodate the volume of runoff generated by a 4.3-inch design storm.

11.4.3.2. Infiltration systems shall provide a minimum of one foot of vertical clearance from the seasonal high water table and must be located in soils classified as sandy texture soils with a minimum infiltration rate of 0.52 inches per hour. Infiltration systems shall maintain a maximum retention time of five days for the 4.3-inch design storm.

11.4.3.3. Wet retention systems shall maintain a minimum retention time of 48 hours and a maximum retention time of five days for the 4.3-inch design storm.

11.4.3.4. Overflows and discharges from best management practices shall discharge to an established drainage outfall or drainage way which is maintained by a government entity or the subdivision homeowner's association or as approved by the Town or other appropriate federal, state or local entity.

11.4.3.5. All required state and federal permits shall be acquired prior to the establishment of a discharge into a drainage way. In no instance shall the system discharge to adjoining private property without the written consent of the adjoining property owner, establishment of appropriate easements, and filing of maintenance agreements with the Town.

11.4.3.6. Fill shall not be permitted to exceed base flood elevation except in cases where it is placed directly beneath a slab that is designed to meet the regulatory flood protection elevation as defined in Appendix A Definitions. In these instances, fill may exceed the base flood elevation by up to 12 inches to support a turn-down or thickened edge slab or beneath a slab that is supported by a ring-wall style foundation. Fill placed above the base flood elevation shall not extend beyond the outside edge of the slab. In areas in which there is no base flood, fill shall not exceed the amount required for wastewater permits required by the Dare County Health Department, or two (2) feet above pre-development surface elevation, whichever is higher.

In no case shall fill be placed or a lot be graded such that off-site drainage patterns are altered to direct stormwater runoff onto another property unless part of an approved plan with appropriate agreements or easements.

11.4.3.7. Copies of operations and maintenance agreements must be filed with the Town prior to the issuance of the certificate of compliance.

11.4.3.8. During construction, to prevent adverse effects onto adjoining properties or rights-of-way, temporary and/or permanent runoff control measures shall be installed after placement of fill. This can be achieved via implementation of:

> ***11.4.3.8.1.*** Installation of earthen diversion berms along the periphery of the property, or
>
> ***11.4.3.8.2.*** Installation of permanent stormwater control measures which shall be maintained and kept operational for the duration of construction, or
>
> ***11.4.3.8.3.*** Other approved methods of erosion and stormwater control measures.

11.4.3.9. On-site permanent runoff control measures shall be installed, in conjunction with other on-site stormwater management practices, to intercept rainfall runoff from driveways that are sloped or graded towards the street or right-of-way. On-site permanent runoff control practices include, but are not limited to, slotted drains, driveway speed bumps or other approved methods of diverting, collecting and managing on-site runoff.

11.4.4. Allowance for partial, temporary retention of stormwater within parking lots on all commercial sites. Up to 20 percent of a site's parking area may retain runoff up to 48 hours after a 4.3-inch rainfall event, so long as:

11.4.4.1. Accessible parking spaces, as required by the American Disabilities Act (ADA), shall not be affected.

11.4.4.2. Drive aisles, fire lanes, loading zones, ingress and egress facilities, traffic ways, pedestrian ways and other site access features shall not be affected.

11.4.4.3. No impacts of stormwater shall be allowed to entities other than parking spaces and stormwater BMPs.

11.4.5. Allowance for stormwater control and conveyance facilities built by others on Town rights-of-way or on adjacent or Town-owned properties upon approval of the Board of Commissioners. If as part of development or redevelopment there is an opportunity to improve, mitigate or correct a drainage problem caused by stormwater runoff from the site under review, the Board of Commissioners may approve stormwater management improvements outside of the subject property boundary if:

11.4.5.1. An encroachment agreement and/or easement is put in place to allow for construction and use of the stormwater management improvements; and

11.4.5.2. A maintenance agreement is filed with the Town establishing maintenance responsibilities and enforcement methods.

SECTION 11.5 GENERAL STANDARDS FOR RESIDENTIAL OR DUPLEX DEVELOPMENT ON INDIVIDUAL LOTS.

11.5.1. Stormwater Management Plan Applicability.

Stormwater management requirements shall apply to the following types of development:

11.5.1.1. New detached single-family and duplex residential properties;

11.5.1.2. Existing single-family and duplex residential properties where more than 500 square feet of new built-upon area is being added. In such cases, the stormwater management requirements shall apply only to the new built-upon area;

11.5.1.3. Removal and replacement of driveways. In instances where an existing driveway and parking area not meeting the standards of this section is being removed and replaced, the new driveway and/or parking area shall be designed so as to limit the discharge of stormwater into the right-of-way or onto adjacent properties.

11.5.2. Stormwater Management Standards.

11.5.2.1. All runoff from the project's built-upon area shall be directed into an approved stormwater management system designed with a storage volume of 15 cubic feet for every 100 square feet of built-upon area.

11.5.2.2. Stormwater control management (SCM) measures may include a variety of techniques used in combination to achieve the storage volume requirement. These include:

11.5.2.2.1. Rainwater harvesting to include cisterns and/or rain barrels

11.5.2.2.2. Subsurface drainage systems to include dry wells, french drains and infiltration galleries/panels

11.5.2.2.3. Permeable pavements

11.5.2.2.4 Tree/open space preservation credits

11.5.2.2.5. Bioretention or rain gardens

11.5.2.2.6. Landscaped swales

11.5.2.2.7. Infiltration basins

11.5.2.2.8 Other methods as approved by the stormwater administrator

11.5.2.3. Guidance for applying and calculating the techniques listed above can be found in the Town of Nags Head Recommended Standard Details Manual.

11.5.2.4. On-site permanent runoff control measures shall be installed, in conjunction with other on-site stormwater management practices, to intercept rainfall runoff from driveways that are sloped or graded towards the street or right-of-way. On-site permanent runoff control practices include, but are not limited to, permeable pavement ribbons, slotted drains, driveway speed bumps or other approved methods of diverting, collecting and managing on-site runoff. Measures to control runoff from driveways may be combined with other stormwater management techniques to meet the stormwater volume requirement.

11.5.2.5. In no instance shall open drainage systems be located beneath a building.

11.5.2.6. Storage capacity (interstitial storage) within existing soils and/or fill material shall not be counted towards the volume requirement for the stormwater management design.

11.5.2.7. Reduction of built-upon area. Certain stormwater management practices are encouraged and shall reduce the site's built-upon area in accordance with the following standards:

11.5.2.7.1. Paved surfaces which are designed to be permeable in accordance with the Town of Nags Head Recommended Standard Details Manual or as otherwise approved by the stormwater administrator shall not count as built-upon area.

11.5.2.7.2. The water surface area of pools, wood slatted decks, and non-compacted, clean gravel and stone areas shall not count as built-upon area.

11.5.2.7.3. Preservation and/or planting of vegetation shall reduce built-upon area in accordance with the following schedule:

11.5.2.7.3.1. Existing trees receive a 100 square foot reduction in built-upon area (min. 6” caliper).

11.5.2.7.3.2. New trees receive a 50 square foot reduction in built-upon area (min. 2” caliper, min. 6’ tall).

11.5.2.7.3.3. Trees must comply with list of approved species included in the Town’s Vegetative Planting Guidelines.

11.5.2.7.4. Projects that reduce the overall limits of disturbance and designate areas of preserved open space shall receive a reduction in built-upon area.

11.5.2.7.4.1. Open space areas and the credit for the reduction of built-upon area shall be calculated at a 2:1 ratio. For example, for every two square feet of preserved open space, built-upon area shall be reduced by one square foot.

11.5.2.7.4.2. There shall be a minimum of 1,000 square feet of preserved open space to qualify for this credit. Individual pockets or areas of preserved open space shall be a minimum of 250 square feet in area.

11.5.2.7.4.3. Preserved open space shall not be applied in areas of the lot that are typically excluded from development including wetland areas, ponds, or areas that are excluded from development by other agencies.

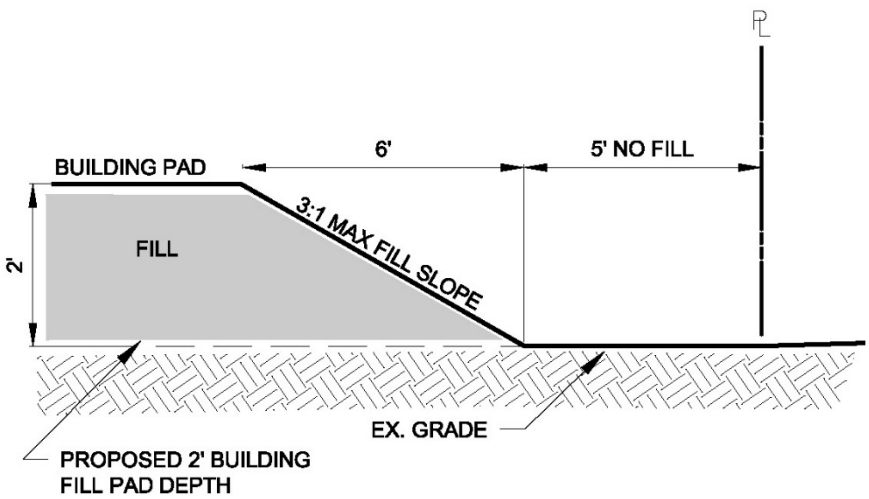
11.5.2.7.4.4. Preserved open space shall contain significant examples of locally adaptive and/or native trees and/or shrubs and shall be located in areas that create natural vegetative filtering or retention between built-upon areas and adjacent properties or rights-of-way.

11.5.2.7.5. Total tree credit and/or open space preservation credits in combination shall not reduce total built-upon area by more than 30 percent.

11.5.2.7.6. Projects that incorporate three or more of the stormwater control measures listed in subsection 11.5.2.2 above shall receive a 15 percent built-upon area reduction. This reduction shall be applied in addition to the built-upon area reductions already

provided by this section. To receive this credit, each measure shall individually account for a minimum of 15 percent of the project's overall storage volume.

11.5.2.8. Fill shall not be placed within five feet of a property line, except for the grading of driveway entrances, such that runoff from a fill slope is not "pitched" onto adjoining properties. A maximum of a 3:1 horizontal to vertical fill slope shall be maintained. Setback area may be used to accommodate an approved stormwater control measure. See diagram below.



Setback Requirement Where Fill is Used

11.5.2.9. The five-foot setback requirement may be varied or waived as part of a multi-lot development of contiguous properties, or between adjacent properties if and only if a dedicated easement is established to accommodate a shared drainage swale or other SCM between adjacent properties as approved by the UDO Administrator.

11.5.2.10. The construction and use of bulkheads, walls, and other structural controls to retain the placement of fill on property shall only be permitted:

11.5.2.10.1. In the immediate area of the on-site sewage disposal system as approved by the Dare County Health Department for the installation of such system, or

11.5.2.10.2. In those areas of the property where the naturally occurring slope exceeds 3:1 or greater in steepness, or

11.5.2.10.3. In those areas of where a retaining wall is necessary to achieve a five-foot setback of fill from an adjacent property boundary. Retaining walls used on fill slopes shall not be tiered, shall not retain more than two feet of fill, and shall not exceed two feet in maximum height from final grade.

11.5.2.11. The allowable depth or elevations for fill are in subsection 11.5.3 of this section.

11.5.3. Standard for Depth or Elevation of Fill.

Any residential or duplex development or redevelopment which utilizes fill shall be limited to the following standards according to the zone as designated on the most recent flood insurance rate maps or FIRM.

11.5.3.1. Within the Oceanfront V Zone.

11.5.3.1.1. Addition of landscape fill is permitted up to two feet above the pre-development surface grade or up to base flood elevation, whichever is lower;

11.5.3.1.2. Fill footprint may not exceed ten (10) percent of the lot area (see Article 8, District Development Standards), excluding the footprint of the active drainfield and septic system as approved by the Dare County Health Department in accordance with the septic permit. Lot area is defined as that portion of the lot landward of the first line of stable vegetation as defined by CAMA;

11.5.3.1.3. No bulkheads are allowed;

11.5.3.1.4. All grading and fill activities must comply with guidance provided in FEMA Technical Bulletin #5.

11.5.3.2. Within the Estuarine V Zone.

11.5.3.2.1. Addition of fill is permitted but shall not exceed the base flood elevation.

11.5.3.2.2. Fill footprint may not exceed 50 percent of the total developable lot area (Article 8, District Development Standards) as defined by CAMA, excluding:

11.5.3.2.2.1. The footprint of the active drainfield and septic system as approved by the Dare County Health Department in accordance with the septic permit; and

11.5.3.2.2.2. Backfill used as part of a CAMA approved estuarine bulkhead and placed within 25 feet of the bulkhead structure.

11.5.3.3. All Other Flood Zones (including AE and X).

11.5.3.3.1. Fill shall not be permitted to exceed base flood elevation except in cases where it is placed directly beneath a slab that is designed to meet the regulatory flood protection elevation as defined in Appendix A Definitions In these instances, fill may exceed the base flood elevation by up to 12 inches to support a turn-down or thickened edge slab or beneath a slab that is supported by a ring-wall style foundation. Fill placed above the base flood elevation shall not extend beyond the outside edge of the slab. In areas in which there is no base flood, fill shall not exceed the amount required for wastewater permits required by the Dare County Health Department, or two feet above pre-development surface elevation, whichever is higher.

11.5.4. Plan Submittal, Review and Approval for Residential or Duplex Development on Individual Lots. It is the responsibility of an applicant to provide sufficient information in the plan so that the Town or its agents may reasonably evaluate the environmental characteristics of the affected areas, the potential and predicted impacts of the proposed activity on area surface waters, and the effectiveness and acceptability of those measures proposed by the applicant for reducing adverse impacts. The applicant shall provide, as necessary, maps, tables, photographs, narrative descriptions and explanations to demonstrate compliance with the Town's stormwater management standards.

11.5.4.1. The stormwater management plan shall be submitted as part of the application for a building permit or land disturbance permit.

11.5.4.2. The stormwater management plan need not be prepared by a registered design professional. However, the Town will consider plans and additional alternatives to meet the stormwater requirements if prepared by a registered design professional. An on-site meeting with the stormwater administrator or his/her designee is strongly encouraged prior to plan preparation.

11.5.4.3. The stormwater management design information may be depicted on a site survey that is also utilized for zoning, CAMA, or other Town approvals. At a minimum the plan shall include:

11.5.4.3.1. Existing Conditions. The conditions of the site shall be described in general, including the following:

11.5.4.3.1.1. The direction of flow of stormwater runoff under existing conditions.

11.5.4.3.1.2. The location of areas on the site where stormwater collects or infiltrates into the ground.

11.5.4.3.1.3. A survey of the site, including topography. The survey shall be prepared by a licensed surveyor and shall include the minimum required elevation information as referenced in the Town of Nags Head Recommended Standard Details Manual. The survey must also show the location of drainage ditches within the area surveyed, and the location of wetlands, and ponds.

11.5.4.3.1.4. Approximate elevation of seasonal high-water table. "Seasonal high wetness condition" as indicated by the Dare County Health Department site evaluation is acceptable for determining vertical separation compliance of SCMs on single family and duplex residential projects. Also, include any fill requirements provided with the Dare County Health Department septic approval.

11.5.4.3.2. Proposed Alterations. Proposed alterations of the site shall be described, including:

11.5.4.3.2.1. Change(s) in topography. The proposed final elevations shall be shown in a manner that can be distinguished from the existing elevations. If there are abrupt changes in elevations, these should be clearly identified in the plans. These should be plotted on a scale that is easy to read and in a form that conveys the nature of changes that are proposed.

11.5.4.3.2.2. Identification and quantification of the area(s) that will be covered with built-upon area and a description of the surfacing material(s).

11.5.4.3.2.3. The proposed area to be preserved and/or planted with vegetation as well as any designated open space. This shall include the location of any trees and/or open space that will be utilized to reduce the built-upon area calculations.

11.5.4.3.2.4. Identification and quantification any other site improvements such as pools, wood slatted decks, and permeable pavement.

11.5.4.3.2.5. The size and location of any buildings or other structures, including bulkheads or retaining walls.

11.5.4.3.2.6. Stormwater Runoff Features. All SCMs intended to receive stormwater runoff from the proposed built-upon areas on the site shall be described and their location identified on the survey.

11.5.4.3.2.7. Erosion and Sediment Control Measures. A description of the measures that will be put in place for the control of erosion and sedimentation shall be provided.

11.5.4.3.2.8. Other Information. The applicant shall provide other information which the Town or its designated agent deems necessary for an evaluation of the development proposal for compliance with this chapter.

11.5.4.4. Elevation data shall be provided on the as-built survey to determine compliance with the maximum fill height requirements of this chapter.

11.5.4.5. Upon completion of stormwater management improvements, the stormwater administrator or his/her designee shall verify compliance via field inspection. Once a project is completed, stormwater management features shall be maintained in accordance with the approved plan and subsequent certificate of compliance.

SECTION 11.6 GENERAL STANDARDS FOR SUBDIVISIONS.

11.6.1. Commercial Subdivisions.

All runoff from the subdivision's built-upon area, including proposed streets, must be directed into an approved stormwater management system designed to accommodate the runoff generated by a 4.3-inch design storm. Overflow shall not be conveyed off-site to private property or public rights-of-way for disposal except upon the establishment of appropriate easements and maintenance agreements among all impacted parties and upon Town approval.

11.6.2. Residential Subdivisions.

All runoff from the subdivision's built-upon area, including proposed streets, must be directed into an approved stormwater management system designed to accommodate the runoff generated by a 1.5-inch design storm. Overflow shall not be conveyed off-site to private property or public rights-of-way for disposal except upon the establishment of appropriate easements and maintenance agreements among all impacted parties and upon Town approval.

11.6.3. Future Phase Development.

Management of stormwater from part or all of the future development on commercial or residential sites may be deferred in a phased plan until a given phase is subject to site plan review. The subdivision plat shall clearly identify the specific areas of future phase development and the extent to which management of stormwater is deferred.

11.6.4. ROW/Common Areas.

Use of fill within proposed rights-of-way or other common areas shall not exceed base flood elevation for the zone in which the fill is proposed.

11.6.5. Operation and Maintenance Agreement.

All stormwater plans must include an operation and maintenance agreement that provides for on-going maintenance of the proposed stormwater management system and which assigns responsibility to an owners association as part of any covenants or deeds that run with the individual parcels.

SECTION 11.7 STORMWATER MANAGEMENT PLAN SUBMITTAL AND APPROVAL REQUIREMENTS.

11.7.1. Preparer's Certification.

Commercial, mixed-use or multi-lot development such as a subdivision, stormwater management plans and supporting technical documents shall be prepared by a qualified and registered design professional knowledgeable within the field of work for the performance of the design, construction, and operation and maintenance of what is being proposed.

11.7.2. Supporting Documentation.

Supporting plans and documentation including assumptions, methodology, calculations and conclusions shall be submitted to the Town as part of the application.

11.7.2.1. For all subdivisions and commercial applications, a stormwater management plan with all supporting documentation meeting all Town requirements and standards shall be submitted with the plat or site plan application for approval by the Town Engineer.

11.7.2.2. For conditional uses, a preliminary stormwater management plan shall be submitted with the conditional use permit application. A stormwater management plan with all supporting documentation meeting all Town requirements and standards shall be submitted with, or in advance of, the application for a building permit.

11.7.3. Submittal Requirements.

The stormwater management plan shall include engineered drawings, non-engineered drawings, maps, assumptions, calculations and narrative statements, including:

11.7.3.1. Existing Conditions. Sheets or maps indicating existing features, including buildings, ground surface elevations, landforms, parking areas, roadways, structures, subsurface utilities, surface utilities, surface waters, watercourses, vegetation, and other significant elements. Elevations shall be provided in sufficient detail to determine the efficacy of proposed stormwater improvements and compliance with all stormwater and fill requirements. At a minimum, pre-disturbance spot elevations shall be provided beneath proposed improvements and along property lines adjacent to any fill slopes.

11.7.3.2. Project boundaries clearly depicted and labeled, including any staging areas.

11.7.3.3. Locations and elevations of the adjoining street pavement, shoulder, ditches, and drainage systems, as well as upstream and downstream driveway culverts.

11.7.3.4. Approximate elevation of seasonal high-water table. "Seasonal high wetness condition" as indicated by the Dare County Health Department site evaluation is acceptable for determining vertical separation compliance of BMPs on single family and duplex residential projects. Also include any fill requirements provided with the Dare County Health Department septic approval.

11.7.3.5. Distance Measurements. Lateral and vertical separation distances from AECs, state surface waters, subsurface water conditions, above ground and underground utilities, or other separation distances as required by existing federal, state or local laws clearly depicted.

11.7.3.6. Proposed Conditions. Sheets or maps indicating location of proposed features including areas where fill will be placed including the toe of fill slopes, buildings, ground surface elevations, landforms, parking areas, roadways, structures, subsurface utilities, landscaping, and other significant elements.

11.7.3.7. Drawings shall describe the proposed elements and their association with existing elements with spot elevations depicted in areas of proposed fill and finished floor elevations for all proposed buildings/structures described. Notational information shall be provided which

includes existing surface elevation at each site element, proposed maximum fill depths for each site element, and maximum fill depth within the project site.

11.7.3.8. Location and description of stormwater BMPs proposed to capture runoff from all surfaces within a given drainage area.

11.7.3.9. Location of erosion control measures relative to fill slopes and disturbed areas. This shall include any temporary measures that will be necessary to retain stormwater or other construction related water discharges on the property during construction prior to the installation of final stormwater improvements.

11.7.4. Operations and Maintenance Agreement.

An operations and maintenance agreement shall be submitted to and be approved by the Town. The operations and maintenance agreement shall address sediment removal, mowing and re-vegetation, immediate repair of eroded areas, debris removal, and unclogging of any structures. The operations and maintenance agreement may provide for access by the Town and its agents to all stormwater management measures at the site for the purposes of inspection, maintenance, reporting, and repair operations. The operations and maintenance plan shall run with the property and compliance shall be the responsibility of the property owner.

11.7.5. Easements/Covenants.

Copies of all recorded easements or covenants that run with the property and are necessary for continued function of the best management practices utilized for plan approval.

11.7.6. Certification.

Upon completion of construction, stormwater management facilities shall be certified by the stormwater plan preparer or a qualified and authorized professional as having been constructed in substantial conformity with the Town-approved plans and specifications. The acceptability of a certification by any other person than the person who prepared the original design shall be at the sole discretion of the Town. A copy of this documentation shall be submitted to the Town prior to the issuance of a certificate of compliance.

11.7.7. Construction Record or As-Built Plans.

The construction record survey or plan shall include any on-site stormwater management measures and shall be prepared once final construction has been completed. These plans shall be prepared by a licensed surveyor and shall include all of the elements shown as proposed on the approved construction plans and depict sufficient topographic information to demonstrate compliance with the approved plans. These shall be submitted to the Town prior to the issuance of a certificate of compliance.

SECTION 11.8 OPERATIONS AND MAINTENANCE REQUIREMENTS.

11.8.1. For All Projects Other than Residential or Duplex Development on Individual Lots.

11.8.1.1. An operations and maintenance agreement based on the operations and maintenance plan shall be executed by the owner or amongst the owners and approved by the Town prior to issuance of a certificate of compliance.

11.8.1.2. The operations and maintenance agreement:

11.8.1.2.1. Shall require the owner or owners to maintain, repair, and if necessary, reconstruct the stormwater management features, and

11.8.1.2.2. Shall state the terms, conditions, and schedule of maintenance for the stormwater management features, and

11.8.1.2.3. May grant to the Town a right of entry into the property to inspect, monitor, maintain, repair, or reconstruct the stormwater management features. However, in no case shall the right of entry confer an obligation on the Town to assume responsibility for the stormwater management features.

11.8.1.3. Operations and maintenance agreement recordation requirements. Prior to issuance of a certificate of compliance for any project served by stormwater management features required by this ordinance, the operations and maintenance agreement shall be recorded as a deed restriction or protective covenant with the Dare County Register of Deeds Office binding all subsequent property owners to compliance with the agreement.

11.8.2. Approval Required.
The Town-approved stormwater management system shall not be altered without approval of the Town Engineer.

11.8.3. Maintenance.
Failure to maintain on-site stormwater management facilities shall be grounds for a notice of violation, civil penalties and possible revocation of occupancy permits in accordance with Section 1.10, Violation of UDO Regulations.

SECTION 11.9 REFERENCE DOCUMENTS.

11.9.1. The Town has prepared a Town of Nags Head Recommended Standard Details Manual which includes guidance on specific stormwater control measures and other requirements of this ordinance. The Town will make copies of the most current Town Recommended Standard Details Manual and the most current NCDEQ BMP manual available to applicants.

11.9.2. Applicants for permits under this Part shall refer to the most current editions of the NCDEQ BMP manual and the Town's manual if citing them for the design, construction and maintenance management practices on the site associated with the application. Stormwater treatment practices that

are designed, constructed, and maintained in accordance with the NCDEQ BMP manual and the Town manual will be presumed to meet the minimum water quality and quantity performance standards of this Part.

11.9.3. Applicants for permits under this Part may propose utilization of a stormwater management practice or practices which are not designed, constructed or maintained in accordance with the NCDEQ BMP manual and the Town Recommended Standard Details Manual. In such cases, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance and the practices must be approved by the UDO Administrator.

11.9.4. Upon review and evaluation of an application for a permit under this Part, the Stormwater Administrator may recommend management practices regarding a particular site. If upon review and inspection the UDO Administrator determines that the environmental conditions of a particular site will not support the management practices proposed by an applicant, the UDO Administrator may require reasonable changes to the application, professional certification of a particular design and/or evaluation of the proposal by the Town Engineer. The UDO Administrator may require any reasonable changes to an application proposed by the Town Engineer.

SECTION 11.10 DISCHARGE OF STORMWATER, POOL WATER, HOT TUB WATER, AND DE-WATERING EFFLUENT.

11.10.1. It shall be prohibited to discharge or direct water onto adjoining properties without appropriate easements or agreements from any source under the control of the owner ~~or occupant~~ of the premise, to include retained stormwater runoff, swimming pools, hot tubs, heating and air conditioning systems, or groundwater from de-watering activities.

11.10.2. Temporary discharge of retained stormwater or water from other sources into the Town right-of-way is allowable only with the permission of the Town Manager, Public Works Director or Town Engineer.

11.10.3. Temporary discharge of retained stormwater or water from other sources into the NCDOT right-of-way is allowable only with permission of NCDOT and a properly executed NCDOT encroachment agreement.

11.10.4. Upon a determination that this section is being violated, the Stormwater Administrator may immediately issue a notice of violation and civil citation without need for a warning citation under Section 1.10, Violation of UDO Regulations or Town Code 1-6. Upon receipt of the notice of violation, the violator shall immediately cease and desist the activity which is in violation of this section. In the event that a violation imminently affects public safety, health or welfare, the Town may take action to abate the violation in a manner which appropriately balances the need for public safety with the need for due process of law.

SECTION 11.11 PUBLIC/PRIVATE CONFLICTS.

Where it has been determined that stormwater runoff from Town rights-of-way or Town-owned facilities contributes to a stormwater runoff problem on private property, a landowner may file a written request to the Board of Commissioners to consider landowner's concerns or to propose a solution. The Town Board may consider requests and determine whether or not to take any action.

SECTION 11.12 DRAINAGE WITHIN TOWN RIGHTS-OF WAY.

11.12.1. An un-obstructed flow path for drainage infrastructure along Town rights-of-way shall be maintained. Town rights-of-way are necessary for legal/uncontested access by local government to drainage courses and infrastructure so that they may be constructed, maintained and improved to enhance public health and safety. Improperly installed fencing, landscaping, or the creation of other impediments or changes within the right-of-way may interfere with drainage along the roadway.

11.12.2. Construction or installation of permanent or temporary structures, landscaping, grading alterations, or other encroachments within, under, above, or upon any public right-of-way, are prohibited without the express permission from the Town.

11.12.3. Homeowners shall be responsible for maintenance of Town approved right-of-way encroachments, including culvert and driveway maintenance, routine grounds maintenance such as grass mowing, and trash or debris removal that may impede the flow of water within drainage conveyances.

11.12.4. Upon approval by the Board of Commissioners, the Town may allow and may accept for maintenance, stormwater control and conveyance facilities built by others on Town rights-of-way or on Town-owned properties.

> ***11.12.4.1.*** The design of such facilities shall be approved by the Town at the sole discretion of the Town, and the construction of such facilities shall be in strict conformity with the approved design.
>
> ***11.12.4.2.*** Approval can only be granted after an identification and evaluation analysis of significant cumulative impacts on the entire drainage system, up to the ultimate point of disposal, utilizing such supporting information, documents, evaluations, studies and other resources as the Town may deem necessary.
>
> ***11.12.4.3.*** The Town may establish and impose review fees to cover the cost of design review and construction inspection, and facility fees to cover the cost of capital impacts resulting from the proposed facilities.
>
> ***11.12.4.4.*** The operation and maintenance of facilities accepted by the Town for maintenance on Town rights-of-way or Town-owned property shall be at the expense of the Town.

SECTION 11.13 PENALTIES FOR VIOLATION OF ARTICLE 11, PART I.

Violation of this Article 11, Part I shall subject the offender to remedies prescribed in Section 1.10, Violation of UDO Regulations or Chapter 1-6 of the Town Code.

SECTION 11.14 VARIANCES, WAIVERS, AND APPEALS.

Variances, Waivers, and appeals to Part I, Stormwater, Fill, and Runoff Management shall be granted in accordance with Article 3, Legislative/Quasi-Judicial Procedures.

SECTION 11.15 CONFLICT WITH OTHER LAWS.

Where this Part imposes greater restrictions or higher standards than required in any federal or state statute or other local ordinance or regulation, the provisions of this Part shall govern. When the provisions of any other statute or local ordinance impose greater restrictions or higher standards than are required by the provisions of this Part, the provisions of that statute or ordinance shall govern.

SECTION 11.16 VALIDITY.

If any section, subsection, sentence, clause or phrase of this Part is for any reason held to be invalid, that decision shall not affect the validity of the remaining portions of this Part. The Board of Commissioners declares that it would have passed the ordinance and each section, clause and phrase of it even if any one or more sections, sentences, clauses or phrases may be declared invalid.

SECTION 11.17 – 11.20 RESERVED.

PART II. SOIL EROSION AND SEDIMENTATION CONTROL

SECTION 11.21 PURPOSE AND INTENT.

11.21.1. Title.

This Article 11, Part II may be cited as the "Town of Nags Head Soil Erosion and Sedimentation Control Ordinance."

11.21.2. Purpose.

This Article 11, Part II is adopted for the purposes of:

11.21.2.1. Regulating 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;

11.21.2.2. Establishing procedures through which these purposes can be fulfilled; and

11.21.2.3. Provide soil erosion and sedimentation control regulations which are consistent with other stormwater management regulations of the Town.

SECTION 11.22 SCOPE OF ARTICLE 11, PART II AND EXCLUSIONS.

11.22.1. Geographical Scope of Regulated Land-Disturbing Activity.

This Part shall apply to land-disturbing activity within the territorial jurisdiction of the Town of Nags Head and to the extraterritorial jurisdiction of the Town of Nags Head as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument of law.

11.22.2. Exclusions from Regulated Land-Disturbing Activity.

Notwithstanding the general applicability of this Part to all land-disturbing activities, this Part shall not apply to the following types of land-disturbing activity:

11.22.2.1. Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man including, but not limited to:

11.22.2.1.1. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.

11.22.2.1.2. Dairy animals and dairy products.

11.22.2.1.3. Poultry and poultry products.

11.22.2.1.4. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats.

11.22.2.1.5. Bees and apiary products.

11.22.2.1.6. Fur producing animals.

11.22.2.2. Activities 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 forest land 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 Part shall apply to such activity and any related land-disturbing activity on the tract.

11.22.2.3. Activities for which a permit is required under the Mining Act of 1971, G.S. Chapter 74, Article 7.

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

11.22.2.5. An activity which is essential to protect human life during an emergency.

11.22.3. Plan Approval Requirement for Land-Disturbing Activity.
No person shall undertake any land-disturbing activity subject to this Part without first obtaining a land disturbance permit and any other plan approvals required from the Town, state or federal government.

11.22.4. Protection of Property.
Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity, and any land disturbance abutting a property boundary or drainage swale within a public right-of-way shall require the installation of sediment fencing secured and staked along the length of the disturbed area.

11.22.5. More Restrictive Rules Shall Apply.
Whenever conflicts exist between federal, state or local laws, ordinances or rules, the more restrictive provision shall apply.

11.22.6. Plan Approval Exceptions.
A land disturbance permit is required prior to any land-disturbing activity. Other Town requirements related to Flood Damage Prevention (Article 11, Part III) or Stormwater, Fill and Runoff Management (Article 11, Part I), may also be required. A sedimentation plan shall only be required if the disturbance exceeds 5,000 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

SECTION 11.23 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY.

No land-disturbing activity subject to the control of this Part shall be undertaken except in accordance with the following mandatory standards:

11.23.1. Buffer Zone.
No land-disturbing activity during periods of construction or improvement to land 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 twenty-five (25) percent of the buffer zone nearest the land-disturbing activity.

11.23.1.1. Projects On, Over or Under Water. 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.

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

11.23.2. Graded Slopes and Fills.

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 shall, within 21 calendar days, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion.

11.23.3. Fill Material.

Unless a permit from the NCDEQ 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 exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill of the state.

11.23.4. Ground Cover.

Whenever land-disturbing activity is undertaken where more than 5,000 square feet is uncovered, 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 such tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in subsection 11.26.5, provisions for a ground cover sufficient to restrain erosion must be accomplished within fifteen (15) working days or ninety (90) calendar days, following completion of construction or development whichever period is shorter.

11.23.5. Prior Plan Approval.

No person shall initiate any land-disturbing activity that will disturb more than 5,000 square feet on a tract unless, thirty (30) or more days prior to initiating the activity, a soil erosion and sedimentation control plan is filed with and approved by the Town. An erosion and sedimentation control plan may be filed less than thirty (30) days prior to initialization of a land-disturbing activity if the plan is submitted under an approved express permit program. The land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The Town shall forward to the NCDEQ Division of Water Resources a copy of each plan for a land-disturbing activity that involves the utilization of ditches for the purpose of dewatering or lowering the water table of the tract.

11.23.6. Approved Plan.
The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

SECTION 11.24 EROSION AND SEDIMENTATION CONTROL PLANS.

11.24.1. Plan Submission.
An erosion control plan shall be prepared for all land-disturbing activity subject to this Part whenever the proposed activity will disturb an area of more than 5,000 square feet. Three (3) copies of the plan shall be filed with the Town at least thirty (30) days prior to the commencement of the proposed activity.

11.24.2. Financial Responsibility and Ownership.
Plans may 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:

11.24.2.1. The person financially responsible;

11.24.2.2. The owner of the land; and

11.24.2.3. Any registered agents.

If the person financially responsible is not a resident of the state, a state agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this Part or rules or orders adopted or issued pursuant to this Part. If the applicant is not the owner of the land to be disturbed, the draft 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.

11.24.3. Environmental Policy Act Document.
Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-01 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 Part, shall not begin until a complete environmental document is available for review.

11.24.4. Content.
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 Part. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the Town on request.

11.24.5. Timeline for Decisions on Plans.

The Town will review each complete plan submitted to them and within thirty (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, approve with modifications, or disapprove a complete erosion and sedimentation control plan, or revised erosion control plan, within thirty (30) days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval. The Town must approve, approve with modifications, or disapprove a revised plan within fifteen (15) days of receipt, or it is deemed to be approved. When deemed necessary, a preconstruction conference may be required. No person with an approved plan may initiate the land-disturbing activity without notifying the Town of the date that the activity shall begin. 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 Part, the Town may require any revision that is necessary to comply with this Part. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within fifteen (15) days of receipt shall be deemed approval of the plan. An erosion control plan approved under this Part expires three (3) years after the date of written approval, or upon expiration of a required environmental document, whichever occurs first.

11.24.6. Approval.

The Town shall only approve a plan upon determining that it complies with all applicable state and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The Town shall condition approval of plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The Town may establish an expiration date, not to exceed three (3) years, for plans approved under this Part.

11.24.7. Disapproval for Content.

The Town shall 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.

11.24.8. Other Disapprovals.

The Town may disapprove an erosion control plan or draft plan if implementation of the plan would result in a violation of rules adopted by the environmental management commission to protect riparian buffers along surface waters. An erosion control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:

11.24.8.1. 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;

11.24.8.2. 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;

11.24.8.3. 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

11.24.8.4. 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 may be considered for only the two (2) 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 (10) days. The Town shall advise the applicant and the director in writing as to the specific reasons that the plan was denied.

11.24.9. Notice of Activity Initiation.
No person may initiate an approved land-disturbing activity before notifying the Town of the date that land-disturbing activity will begin.

11.24.10. Preconstruction Conference.
When deemed necessary by the approving authority a preconstruction conference may be required.

11.24.11. Display of Plan Approval.
A plan approval issued under this section 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.

11.24.12. 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 offsite 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 Part, the Town may require any revision of the plan that is necessary to comply with this Part.

11.24.13. Amendment to a Plan.
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 such amendment is approved by the Town the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

11.24.14. Failure to File a Plan.
Any person engaged in land-disturbing activity who fails to file a plan in accordance with this Part, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this Part.

11.24.15. Inspections.

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.

SECTION 11.25 BASIC CONTROL OBJECTIVES.

An erosion and sedimentation control plan may be disapproved if the plan fails to address the following control objectives:

11.25.1. Identify Critical Areas.

On-site areas which are subject to severe erosion and offsite areas which are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive special attention.

11.25.2. Limit Time of Exposure.

All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

11.25.3. 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.

11.25.4. Control Surface Water.

Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

11.25.5. Control Sedimentation.

All land-disturbing activity is to be planned and conducted so as to prevent offsite sedimentation damage.

11.25.6. 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 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.

SECTION 11.26 DESIGN AND PERFORMANCE STANDARDS.

11.26.1. Design.

Except as provided in subsection 11.26.2.2 of this section, erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from anticipated winds and 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 calculation procedures.

11.26.2. HQW Zones.

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

11.26.2.1. Limit on Uncovered Area. Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of twenty (20) acres. Only the portion of the land-disturbing activity within an 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.

11.26.2.2. Maximum Peak Rate of Runoff Protection. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed and constructed to provide protection from anticipated winds and from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the USDA Natural Resources 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.

11.26.3. Settling Efficiency.

Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least seventy (70) percent for the forty (40) micron (0.04 mm) size soil particle transported into the basin by the runoff of that 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the USDA Natural Resources 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.

11.26.4. 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.

11.26.5. Ground Cover.

Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within fifteen (15) working days or forty-five (45) calendar days following completion of construction or development, whichever period is shorter.

SECTION 11.27 STORMWATER OUTLET PROTECTION.

11.27.1. 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.

11.27.2. Performance Standard.

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

> ***11.27.2.1.*** The velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
>
> ***11.27.2.2.*** The velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If conditions 11.27.2.1 or 11.27.2.2 of this subsection 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 ten (10) percent.

The following is a table for maximum permissible velocity for stormwater discharges in feet per second (FPS) and meters per second (MPS):

TABLE 11.1: MAXIMUM PERMISSIBLE VELOCITY TABLE

MATERIAL	MAXIMUM PERMISSIBLE VELOCITIES	
	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
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 channels, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

11.27.3. Acceptable Management Measures.

Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Town recognizes 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:

11.27.3.1. Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious.

11.27.3.2. Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections.

11.27.3.3. Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures.

11.27.3.4. Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion resistant lining.

11.27.3.5. 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.

11.27.4. Exceptions.

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

SECTION 11.28 BORROW AND WASTE AREAS.

When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, sites from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, G.S. 74-46 et seq., and waste areas for surplus materials other than landfills regulated by the department's division of waste management 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.

SECTION 11.29 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.

SECTION 11.30 OPERATIONS IN LAKES OR NATURAL WATERCOURSES.

Land-disturbing activity in connection with construction in, on, over or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.

SECTION 11.31 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 Part, the Act, or any order adopted pursuant to this Part or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary temporary and permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

SECTION 11.32 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.

SECTION 11.33 EXISTING UNCOVERED AREAS.

11.33.1. All uncovered sites existing on the effective date of this Part which resulted from land-disturbing activity, which exceed 5,000 square feet, are subject to continued accelerated erosion and which are causing offsite damage from sedimentation shall be provided with a ground cover or other protective measures, structures or devices sufficient to restrain accelerated erosion and control offsite sedimentation.

11.33.2. The Town shall serve upon the landowner or other person in possession or control of the land, a written notice of violation to comply with the Act, this Part, a rule or order adopted or issued pursuant to the Act or by the Town. The notice shall be sent by either registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. 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 for compliance.

11.33.3. The Town reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.

11.33.4. This section shall not require ground cover on cleared land forming the future basin of a planned reservoir.

SECTION 11.34 FEES.

Fees for the review and approval of plans as required by this Part shall be in the amount specified in the Town consolidated fee schedule, as amended. Fees shall be payable to the Town and shall be due and payable at the time of plan application submittal.

SECTION 11.35 PLAN APPEALS.

11.35.1. Except as provided in subsection 11.35.2 of this section the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

> ***11.35.1.1.*** The disapproval or modification of any proposed erosion control plan by the Town shall entitle the person submitting the plan to a public hearing if such person submits a written demand for a hearing within fifteen (15) days after receipt of a written notice of disapproval or modifications.
>
> ***11.35.1.2.*** Hearings held pursuant to this section shall be conducted by the Board of Commissioners within forty-five (45) days after the receipt of a request for a hearing.
>
> ***11.35.1.3.*** With forty-five (45) days after the hearing, the Board of Commissioners of the Town will render its final decision on the erosion control plan upon which a hearing was requested.
>
> ***11.35.1.4.*** If the Town upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the person submitting the plan shall then be entitled to appeal the Town's decision to the commission as provided in G.S. 113A-61(c) and title 15A NCAC 4B.0018(d).

11.35.2. In the event that a plan is disapproved pursuant to subsection 11.24.8, the applicant may appeal the Town's disapproval of the plan directly to the commission.

SECTION 11.36 INSPECTIONS AND INVESTIGATIONS.

11.36.1. Inspection.
Agents, officials or other qualified persons authorized by the Town will periodically inspect the sites of land-disturbing activity to ensure compliance with the Act, this Part, or rules or orders adopted or issued pursuant to this Part, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each plan.

11.36.2. 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.

11.36.3. Notice of Violation.

If the Town determines that a person engaged in land-disturbing activity has failed to comply with the Act, this Part, or rules, or orders adopted or issued pursuant to this Part, a notice of violation shall be served upon that person by either registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice shall specify a date, by which the person must comply with the Act, this Part, or rules, or orders adopted or issued pursuant to this Part and inform the person of the actions that need to be taken to comply with the Act, this Part, or rules or orders adopted or issued pursuant to this Part. 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 Part.

11.36.4. Investigation.

The Town shall have the power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this Part 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.

11.36.5. Statements and Reports.

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.

SECTION 11.37 STORMWATER OUTLET PROTECTION.

11.37.1. Civil Penalties.

11.37.1.1. Civil Penalty for a Violation. Any person who violates any of the provisions of this Part, or rule or order adopted or issued pursuant to this Part, or who 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 subject to a civil penalty. The maximum civil penalty amount that the Town may assess per violation is $5,000.00. A civil penalty may be assessed from the date of the violation. Each day of continuing violation shall constitute a separate violation.

11.37.1.2. Civil Penalty Assessment Factors. The Board of Commissioners shall determine the amount of the civil penalty based upon the following factors:

11.37.1.2.1. The degree and extent of harm caused by the violation;

11.37.1.2.2. The cost of rectifying the damage;

11.37.1.2.3. The amount of money the violator saved by noncompliance;

11.37.1.2.4. Whether the violation was committed willfully; and

11.37.1.2.5. The prior record of the violator in complying or failing to comply with this Part.

11.37.1.3. Notice of Civil Penalty Assessment. Notice of assessment shall be by either registered or certified mail, return receipt requested, or other means reasonably calculated to give notice and shall direct the violator to either pay the assessment or contest the assessment, within 30 days after receipt of the notice of assessment, by written demand for a hearing.

11.37.1.4. Hearing. Hearings held pursuant to this section shall be conducted by the Board of Commissioners within forty-five (45) days after the receipt of a request for a hearing.

11.37.1.5. Final Decision. Within forty-five (45) days after the hearing, the Board of Commissioners of the Town will render its final decision on the alleged violation of the erosion control plan upon which a hearing was requested.

11.37.1.6. Appeal of Final Decision. Appeal from the final decision of the Board of Commissioners shall be to the superior court of the county where the violation occurred. Such appeals must be made within thirty (30) days of the final decision.

11.37.1.7. Collection. If the payment is not received within thirty (30) days after demand for payment is made, the Town may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

11.37.1.8. Credit of Civil Penalties. Civil penalties collected pursuant to this Part shall be credited to civil penalty and forfeiture fund.

11.37.2. Criminal Penalties.

Any person who knowingly or willfully violates any provision of this Part, or rule or order adopted or issued pursuant to this Part, 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 $5,000.00, as provided in G.S. 113A-64.

SECTION 11.38 INJUNCTIVE RELIEF.

11.38.1. Violation of Local Program.

Whenever the Board of Commissioners has reasonable cause to believe that any person is violating or threatening to violate this Part, or any rule or order adopted or issued by the Town, 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 Part, 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 the county.

11.38.2. Abatement of Violation.

Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this Part.

SECTION 11.39 RESTORATION OF AREAS AFFECTED BY FAILURE TO COMPLY.

The Town may 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 Part.

SECTION 11.40 RESERVED.

PART III. FLOOD DAMAGE PREVENTION

SECTION 11.41 PURPOSE AND INTENT.

11.41.1. Statutory Authorization.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143, Parts 3, 5 and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes (NCGS), delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the Board of Commissioners does ordain as follows in this Article 11, Part III.

11.41.2. Findings of Fact.

11.41.2.1. The flood prone areas of the Town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

11.41.2.2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

11.41.3. Statement of Purpose.

It is the purpose of this Article 11, Part III to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

11.41.3.1. Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

11.41.3.2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

11.41.3.3. Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;

11.41.3.4. Control filling, grading, dredging and other development which may increase erosion or flood damage; and

11.41.3.5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters, or which may increase flood hazards to other lands.

11.41.4. Objectives.
The objectives of this article are to:

11.41.4.1. Protect human life, safety and health;

11.41.4.2. Minimize expenditure of public money for costly flood control projects;

11.41.4.3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

11.41.4.4. Minimize prolonged business losses and interruptions;

11.41.4.5. Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone, cable and sewer lines, streets and bridges, located in flood prone areas;

11.41.4.6. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas; and

11.41.4.7. To ensure that potential homebuyers are notified that property is in a special flood hazard area.

SECTION 11.42 GENERAL PROVISIONS.

11.42.1. Lands to Which this Article 11, Part III Applies.
This Article 11, Part III shall apply to all special flood hazard areas within the jurisdiction of the Town.

11.42.2. Basis for Establishing the Special Flood Hazard Areas.
The special flood hazard areas are those identified under the cooperating technical state agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Dare County dated September 20, 2006, which are adopted by reference and declared to be a part of this Article 11, Part III.

11.42.3. Establishment of Floodplain Development Permit.
A floodplain development permit shall be required in conformance with the provisions of this Part prior to the commencement of any development activities within special flood hazard areas determined in accordance with subsection 11.42.2.

11.42.4. Compliance.
No structure or land shall hereafter be located, extended, converted, altered or developed in any way without full compliance with the terms of this Part and other applicable regulations.

11.42.5. Abrogation and Greater Restrictions.
This Part is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Part and another provision conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

11.42.6. Interpretation.
In the interpretation and application of this Part, all provisions shall be considered as minimum requirements; liberally construed in favor of the Board of Commissioners; and deemed neither to limit nor repeal any other powers granted under state statutes.

11.42.7. Warning and Disclaimer of Liability.
The degree of flood protection required by this Part is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; actual flood heights may be increased by manmade or natural causes. This Part does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This Part shall not create liability on the part of the Town or by an officer or employee thereof for any flood damages that result from reliance on this Part or any administrative decision lawfully made thereunder.

11.42.8. Penalties for Violations.
Violation of the provisions of this Part or failure to comply with of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $500.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as it necessary to prevent or remedy any violation. Other lawful actions may include, but shall not be limited to, those provisions in Section 1.10, Violation of UDO Regulations.

SECTION 11.43 ADMINISTRATION.

11.43.1. Designation of Floodplain Administrator.
The Chief Building Inspector or his designee is hereby appointed to administer and implement the provisions of this Part.

11.43.2. Duties and Responsibilities of the Floodplain Administrator.
Duties of the floodplain administrator shall include, but not be limited to:

> ***11.43.2.1.*** Review ~~of~~ all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that all requirements of this Part have been satisfied.
>
> ***11.43.2.2.*** Advising permittee that additional federal or state permits (wetlands, endangered species, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.) may be required, and if specific federal or state permits are known, requiring that copies of such permits be provided and maintained on file with the floodplain development permit.
>
> ***11.43.2.3.*** Notifying adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance

Program prior to any alterations or relocation of a watercourse and submitting evidence of such notification to FEMA.

11.43.2.4. Ensuring that maintenance is provided within the altered or relocated portion of such watercourse so that the flood-carrying capacity is not diminished.

11.43.2.5. Obtaining the actual elevation (in relation to mean sea level) of the reference level (including the basement) and all attendant utilities of all new or substantially improved structures in accordance with subsection 11.43.5.1 of this section.

11.43.2.6. Obtaining the actual elevation (in relation to mean sea level) to which all new or substantially improved structures and utilities have been floodproofed in accordance with subsection 11.43.5.1 of this section.

11.43.2.7. Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with subsection 11.43.5.1 of this section.

11.43.2.8. When floodproofing is utilized for a particular structure, the floodplain administrator shall obtain certifications from a state registered professional engineer or architect in accordance with subsection 11.43.5.2 of this section and subsection 11.44.2.2.

11.43.2.9. Where interpretation is needed as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the floodplain administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Part.

11.43.2.10. When the lowest ground elevation of a parcel or structure in a special flood hazard area is above the base flood elevation, advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. Maintain a copy of the letter of map amendment (LOMA) issued by FEMA in the floodplain development permit file.

11.43.2.11. Making on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of this article and terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the Town at any reasonable hour for the purposes of inspection or other enforcement action.

11.43.2.12. Issue stop work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Part, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reasons(s) for the stoppage, and the conditions(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

11.43.2.13. Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of any applicable state or local law may be revoked.

11.43.2.14. Permanently maintain all records pertaining to the administration of this Part and making these records available for public inspection.

11.43.2.15. Providing the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program with two copies of the maps delineating new corporate limits within six months from date of annexation or change in corporate boundaries.

11.43.2.16. Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the Town. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

11.43.2.17. Follow through with corrective procedures of subsection 11.43.6.

11.43.2.18. Review, provide input, and make recommendations for variance requests.

11.43.2.19. Maintain a current map repository to include, but not limited to, the FIS report, FIRM and other official flood maps and studies adopted in accordance with subsection 11.42.2 of this Part, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.

11.43.2.20. Coordinate revisions to FIS reports and FIRMS, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).

11.43.3. Floodplain Development Application Requirements.

Application for a floodplain development permit shall be made to the floodplain administrator on forms furnished by him prior to any development activities located within special flood hazard areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:

11.43.3.1. Plot plans in duplicate drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

11.43.3.1.1. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems,

grading/pavement areas, location of fill materials, storage areas, drainage facilities, and other development;

11.43.3.1.2. The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in subsection 11.42.2 or a statement that the entire lot is within the special flood hazard area;

11.43.3.1.3. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in subsection 11.42.2;

11.43.3.1.4. The base flood elevation (BFE) where provided as set forth in subsection 11.42.2;

11.43.3.1.5. The old and new location of any watercourse that will be altered or relocated as a result of proposed development;

11.43.3.1.6. The boundary and designation date of the CBRS area or OPA, if applicable; and

11.43.3.1.7. Certification of the plot plan by a registered land surveyor or professional engineer.

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

11.43.3.2.1. The elevation in relation to mean sea level of the proposed reference level (including the basement) of all new and substantially improved structures; and

11.43.3.2.2. Elevation in relation to mean sea level to which any non-residential structure in zone AE will be floodproofed; and

11.43.3.2.3. Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed;

11.43.3.3. If floodproofing, a floodproofing certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.

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

11.43.3.4.1. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation, open foundation on columns/posts/piers/piles/shear walls).

11.43.3.4.2. Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with subsection 11.44.2.4 when solid foundation perimeter walls are used in zones AE.

11.43.3.4.3. The following, in coastal high hazard areas, in accordance with subsection 11.44.2.4.4 and subsection 11.44.3:

11.43.3.4.3.1. V-Zone certification with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs.

11.43.3.4.3.2. Plans for open wood lattice or insect screening, if applicable.

11.43.3.4.3.3. Plans for non-structural fill, if applicable. If non-structural fill is proposed, it must demonstrate through coastal engineering analysis that the proposed fill would not result in any increase in the base flood elevation or otherwise cause adverse impacts by wave ramping and deflection onto the subject structure or adjacent properties.

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

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

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

11.43.3.8. Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure subsections 11.44.2.3 and 11.44.2.5 of this Part are met.

11.43.3.9. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects on properties located both upstream and downstream; and a map (if not shown on the plot plan) showing the location of the proposed watercourse alteration and relocation.

11.43.4. Floodplain Development Permit Requirements.

The Floodplain Development Permit shall include, but not be limited to:

11.43.4.1. A description of the development to be permitted under the floodplain development permit.

11.43.4.2. The special flood hazard area determination for the proposed development per available data specified in subsection 11.42.2.

11.43.4.3. The regulatory flood protection elevation required for the reference level and all attendant utilities.

11.43.4.4. The regulatory flood protection elevation required for the protection of all public utilities.

11.43.4.5. All certification submittal requirements with timelines.

11.43.4.6. The flood openings requirements, if in zones AE.

11.43.4.7. Limitations of use of the enclosures below the lowest floor, not to exceed 300 square feet in area, (i.e. parking, building access and limited storage only).

11.43.4.8. A statement, if in zone VE, that there shall be no alteration of sand dunes which would increase potential flood damage.

11.43.4.9. A statement, if in zone VE, that there shall be no fill used for structural support.

11.43.5. Floodplain Development Certification Requirements.

11.43.5.1. Elevation Certificates.

11.43.5.1.1. An elevation certificate (FEMA Form 81-31) may be required prior to the actual start of any new construction if determined necessary by the floodplain administrator. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of elevation of the reference level, in relation to mean sea level. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

11.43.5.1.2. An elevation certificate (FEMA 81-31) is required after the reference level is established. Within 21 calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the 21 calendar-day-period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make the required corrections shall be cause to issue a stop-work order for the project.

11.43.5.1.3. A final as-built elevation certificate (FEMA 81-31) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some

instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance to a certificate of compliance/occupancy.

11.43.5.2. Floodproofing Certificate. If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA Form 81-65), with supporting data and an operational plan, is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data and plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

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

11.43.5.4. Certification Exemptions. The following structures, if located within zone AE, are exempt from the elevation/floodproofing certification requirements specified in subsections 11.43.5.1.1 and 11.43.5.1.2 above:

11.43.5.4.1. Recreational vehicles meeting requirements of subsection 11.44.2.3;

11.43.5.4.2. Temporary structures meeting requirements of subsection 11.44.2.5; and,

11.43.5.4.3. Accessory structures less than 150 square feet meeting requirements of subsection 11.44.2.6.

11.43.5.5. A V-Zone certification with accompanying design plans and specifications is required prior to issuance of a floodplain development permit within coastal high hazard areas. It shall be the duty of the permit applicant to submit to the floodplain administrator said certification to ensure the design standards of this Part are met. A registered professional engineer or architect shall develop or review the structural design, plans and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Part. This certification is not a substitute for an elevation certificate.

11.43.6. Corrective Procedures.

11.43.6.1. Violations to be corrected. When the floodplain administrator finds violations of applicable state and local laws, it shall be his duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law on the property he owns.

11.43.6.2. Actions in event of failure to take corrective action. If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give him written notice, by certified mail, to his last known address or by personal service that:

11.43.6.2.1. The building or property is in violation of the flood damage prevention ordinance;

11.43.6.2.2. A hearing will be held before the floodplain administrator at a designated place and time, not later than ten working days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

11.43.6.2.3. Following the hearing, the floodplain administrator may issue such order to alter, vacate or demolish the building; or to remove fill as appears appropriate.

11.43.6.3. Order to take corrective action. If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of this Part, he shall make an order in writing to the owner, requiring the owner to remedy the violation within such period not less than 60 days, nor more than 180 calendar days, as the floodplain administrator may prescribe; provided, however, that where the floodplain administrator finds that there is imminent danger to life or other property, he may issue an order that corrective action be taken in such lesser period as may be feasible.

11.43.6.4. Appeal. Any owner who has received an order to take corrective action may appeal the order to the board of adjustment by giving notice of appeal in writing to the floodplain administrator and the Town Clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

11.43.6.5. Failure to comply with order. If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the board of adjustment following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

11.43.7. Variance Procedures.

Variance procedures shall be in accordance with Section 3.10, Variances of this UDO and the following additional provisions:

11.43.7.1. The Board of Adjustment, as established by the Town, shall hear and decide requests for variances from the requirements of this Part.

11.43.7.2. Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to superior court, as provided in NCGS Chapter 7A.

11.43.7.3. Variances may be issued for:

11.43.7.3.1. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

11.43.7.3.2. Functionally dependent facilities if determined to meet the definition as stated in Appendix A, provided provisions of subsections 11.43.7.10.2 and 11.43.7.10.3 have been satisfied, and such facilities are protected by methods that minimize flood damages.

11.43.7.3.3. Any other type of development provided it meets the requirements stated in this section.

11.43.7.4. In passing judgment upon such applications, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Part and the:

11.43.7.4.1. Danger that materials may be swept onto other lands to the injury of others;

11.43.7.4.2. Danger to life and property due to flooding or erosion damage;

11.43.7.4.3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

11.43.7.4.4. Importance of the services provided by the proposed facility to the community;

11.43.7.4.5. Necessity to the facility of a waterfront location as defined under Appendix A as a functionally dependent facility, where applicable;

11.43.7.4.6. Availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

11.43.7.4.7. Compatibility of the proposed use with existing and anticipated development;

11.43.7.4.8. Relationship of the proposed use to the Town's Comprehensive Plan and floodplain management program for that area;

11.43.7.4.9. Safety of access to the property in times of flood for ordinary and emergency vehicles;

11.43.7.4.10. Expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

11.43.7.4.11. Costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

11.43.7.5. A written report addressing each of the above factors shall be submitted with the application for a variance.

11.43.7.6. Upon consideration of the factors listed in subsection 11.43.7.4 of this Part and the purposes of this Part, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Part.

11.43.7.7. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to built and that such construction below the base flood elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to $25.00 per $100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their insurance.

11.43.7.8. The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

11.43.7.9. Conditions for variances.

11.43.7.9.1. Variances may not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or ordinances.

11.43.7.9.2. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

11.43.7.9.3. Variances shall only be issued upon:

11.43.7.9.3.1. A showing of good and sufficient cause;

11.43.7.9.3.2. A determination that failure to grant the variance would result in exceptional hardship; and

11.43.7.9.3.3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances

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

11.43.7.9.5. The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

11.43.7.10. A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met:

11.43.7.10.1. The use serves a critical need in the community.

11.43.7.10.2. No feasible locations exist for the use outside the SFHA.

11.43.7.10.3. The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.

11.43.7.10.4. The use complies with all other applicable federal, state and local laws.

11.43.7.10.5. The Town has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

SECTION 11.44 PROVISIONS FOR FLOOD HAZARD REDUCTION.

11.44.1. General Standards.

In all special flood hazard areas, the following provisions are required:

11.44.1.1. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure.

11.44.1.2. All new construction or substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

11.44.1.3. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.

11.44.1.4. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility, cable boxes, appliances (washers, dryers, refrigerators, freezers, freezers, etc.), hot water heaters, and electric outlets/switches.

11.44.1.5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

11.44.1.6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

11.44.1.7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

11.44.1.8. Any alteration, repair, reconstruction or improvements to a structure which is in compliance with the provisions of this article shall meet the requirements of "new construction" as contained in this Part.

11.44.1.9. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted except by variance as specified in subsection 11.43.7.10. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in an SFHA only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to subsection 11.43.5 of this Part.

11.44.1.10. All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

11.44.1.11. All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

11.44.1.12. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

11.44.1.13. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. 1334.

11.44.2. Specific Standards.

In all special flood hazard areas where base flood elevation data has been provided as set forth in subsection 11.42.2, the following provisions, in addition to subsection 11.44.1 of this section are required:

11.44.2.1. Residential Construction. New construction or substantial improvement of any residential structure shall have the reference level, including the basement, elevated no lower than the regulatory flood protection elevation, as defined in Appendix A.

11.44.2.2. Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Appendix A. Structures located in AE zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in subsection 11.43.5, along with the operational and maintenance plans.

11.44.2.3. Recreational Vehicles. Recreational vehicles placed on sites shall either:

11.44.2.3.1. Be on-site for fewer than 180 days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities, and has no permanently attached additions); or

11.44.2.3.2. Meet all the requirements for new construction, including anchoring and elevation requirements of subsection 11.42.3 and subsections 11.44.1 of this section.

11.44.2.4. Elevated Buildings. Fully enclosed areas of new construction and substantially improved structures, which are below the regulatory flood protection elevation:

11.44.2.4.1. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

11.44.2.4.2. Shall be constructed entirely of flood-resistant materials, up to the regulatory flood protection elevation;

11.44.2.4.3. Shall, in zones AE, not exceed 300 "square feet in area" below the reference level with the exception of crawl space construction, and shall also include flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

11.44.2.4.3.1. A minimum of two flood openings on different sides of each enclosed area subject to flooding;

11.44.2.4.3.2. The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;

11.44.2.4.3.3. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;

11.44.2.4.3.4. The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;

11.44.2.4.3.5. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

11.44.2.4.3.6. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

11.44.2.4.4. Shall allow, in coastal high hazard areas (zones VE), open wood latticework or insect screening, provided it is not part of the structural support of the building and is designed so as to breakaway, under abnormally high tides or wave action, without causing damage to the structural integrity of the building.

11.44.2.5. Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit, for a temporary structure, all applicants must submit to the local floodplain administrator a plan for the removal of such structures in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval:

11.44.2.5.1. A specified time period for which the temporary use will be permitted. The time specified should not exceed three months, renewable up to one year;

11.44.2.5.2. The name, address and phone number of the individual responsible for the removal of the temporary structure;

11.44.2.5.3. The time frame prior to the event at which a structure will be removed (i.e.: minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

11.44.2.5.4. A copy of the contract or other suitable instrument with a trucking company to ensure the availability of removal equipment when needed; and

11.44.2.5.5. Designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.

11.44.2.6. Accessory Structure. When accessory structures (sheds, detached garages, etc.) are to be placed in the floodplain, the following criteria shall be met:

11.44.2.6.1. Any portion of an accessory structure that has the floor located below the regulatory flood protection elevation shall not be used for human habitation, (including working, sleeping, living, cooking or restroom areas).

11.44.2.6.2. Any portion of an accessory structure that has the floor located below the regulatory flood protection elevation shall not be temperature controlled.

11.44.2.6.3. Any portion of an accessory structure located below the regulatory flood protection elevation shall not exceed 300 "square feet in area."

11.44.2.6.4. Accessory structures shall be designed to have low flood damage potential.

11.44.2.6.5. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

11.44.2.6.6. Accessory structures shall be firmly anchored in accordance with subsection 11.44.1.1 of this section.

11.44.2.6.7. All service facilities such as electrical and heating equipment shall be elevated in accordance with subsection 11.44.1.4 of this section.

11.44.2.6.8. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with subsection 11.44.2.4.3 of this section.

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with subsection 11.43.5.

11.44.2.7. Additions/Improvements.

11.44.2.7.1. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

11.44.2.7.1.1. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure.

11.44.2.7.1.2. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

11.44.2.7.2. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

11.44.2.7.3. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

11.44.2.7.3.1. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.

11.44.2.7.3.2. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

11.44.2.7.4. Where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

11.44.3. Coastal High Hazard Areas (Zones VE) and Properties East of NC 12 and SR 1243.
Coastal high hazard areas are special flood hazard areas established in subsection 11.42.2 and designated as zones VE. Properties located to the east of NC 12 and SR 1243 are located in an active oceanfront environment that is vulnerable to storm surge, erosion, sea level rise, and other hazards.

These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, in addition to meeting all requirements of Part III Flood Damage Prevention, the following provisions shall apply:

11.44.3.1 All new construction and substantial improvements shall:

11.44.3.1.1. Be located landward of the reach of mean high tide;

11.44.3.1.2. Be located landward of the first line of stable natural vegetation; and

11.44.3.1.3. Comply with all applicable CAMA setback requirements.

11.44.3.2. All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in coastal high hazard areas to satisfy the regulatory flood protection elevation requirements.

11.44.3.3. All new construction and substantial improvements, including properties with elevations above the regulatory flood protection elevation, shall have the space below the lowest horizontal structural member free of obstruction so as not to impede the flow of floodwaters, with the following exceptions: Open wood latticework or insect screening may be permitted below the regulatory flood protection elevation for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with subsection 11.44.2.4.4. Design plans shall be submitted in accordance with subsection 11.43.3..

11.44.3.4. All new construction and substantial improvements shall be securely anchored to an open "pile or column foundation" to allow floodwaters and waves to pass beneath the structure. "All pilings and columns and the structures attached thereto shall be anchored to resist flotation, collapse and lateral movement due to the effect of wind and water loads acting simultaneously on all building components."

11.44.3.4.1. Water loading values used shall be those associated with the base flood.

11.44.3.4.2. Wind loading values used shall be those required by the current edition of the North Carolina State Building Code.

11.44.3.5. All new construction, initiated after the adoption of this UDO, located east of NC 12 and SR 1243 shall limit the total enclosed habitable living space of individual structures to 5,000 square feet. Enclosed habitable living space for large residential dwellings shall also include any enclosed habitable space that may be present in any accessory structure or accessory dwelling that is located on the same lot as the principal structure.

11.44.3.6. A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in subsection 11.43.2, subsections 11.44.3.1 and 11.44.3.2, subsection 11.44.3.4 and subsection

11.44.3.6 of this Part on the current version of the North Carolina "National Flood Insurance Program V-Zone Certification" form.

11.44.3.7. Fill shall not be used for structural support. Limited non-compacted and non-stabilized fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided it is demonstrated through coastal engineering analysis that the proposed fill would not result in any increase in the base flood elevation and not cause any adverse impacts by wave ramping and deflection to the subject structure or adjacent properties.

11.44.3.8. There shall be no alteration of sand dunes which would increase potential flood damage.

11.44.3.9. Recreational vehicles may be permitted in coastal high hazard areas provided that they meet the recreational vehicle criteria of subsection 11.44.2.3 of this section and the temporary structure provisions of subsection 11.44.2.5 of this section.

SECTION 11.45 REMEDIES.

Any violation of this Article 11, Part III shall be subject to the remedies as stated in Section 1.10, Violation of UDO Regulations of this UDO.

SECTION 11.46 LEGAL STATUS PROVISIONS.

11.46.1. Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Ordinance.
This Article 11, Part III in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted February 3, 1975 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this Article 11, Part III shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the Town of Nags Head enacted on February 3, 1975, as amended, which are not reenacted herein are repealed.

11.46.2. Effect Upon Outstanding Floodplain Development Permits.
Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this Article 11, Part III; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this Article 11, Part III.

SECTION 11.47 – 11.50 RESERVED.

APPENDIX A. DEFINITIONS

Section A.1 Purpose A-2
Section A.2 Interpretation A-2
Section A.3 Acronyms A-3
Section A.4 Definitions A-4

APPENDIX A. DEFINITIONS

SECTION A.1 PURPOSE.

For the purposes of this UDO, certain words, concepts, and ideas are defined herein. Except as defined herein, all other words used in this Ordinance shall have their customary dictionary definition.

SECTION A.2 INTERPRETATION.

A.2.1. As used in this UDO, words importing the masculine gender include the feminine and neuter.

A.2.2. Terms used in the singular include the plural and the plural includes the singular number.

A.2.3. Terms used in the past or present tense include the future as well as the past and present.

A.2.4. The term “person” shall include a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual.

A.2.5. The words “may” and “should” are permissive; an officially adopted course or method of action intended to be followed.

A.2.6. The words “shall” and “will” are always mandatory and not merely directive; expresses determination to implement/take action.

A.2.7. The word “used for” shall include the meaning “designed for.”

A.2.8. The term “used” or “occupied” as applied to any land or building shall be construed to include the terms “intended, arranged, or designed to be used or occupied.”

A.2.9. The term “lot” includes the terms “plot,” “parcel,” “site,” and “tract.”

A.2.10. The term “building” includes the term “structure.”

A.2.11. The word “includes” shall not limit the term to specified examples but is intended to extend its meaning to all other instances or circumstances of like kind or character.

A.2.12. The terms "the Town" or "this Town" shall mean the Town of Nags Head, in the County of Dare, in the State of North Carolina, except as otherwise provided.

A.2.13. The term "County" shall mean the County of Dare, in the State of North Carolina, except as otherwise provided.

A.2.14. The terms "state" or "this state" shall be construed to mean the State of North Carolina, except as otherwise provided.

A.2.15. The word “UDO Administrator” shall mean the UDO Administrator or his/her designee.

A.2.16. The words “Planning Board” shall mean the “Town of Nags Head Planning Board.”

A.2.17. The terms "Board of Commissioners" and "commissioners" shall mean the Mayor and Commissioners, or governing body, of the Town of Nags Head, North Carolina.

A.2.18. The words “Board of Adjustment” shall mean the “Town of Nags Head Board of Adjustment.”

A.2.19. The words “map,” and “zoning map” shall mean the “Official Zoning Map for the Town of Nags Head, North Carolina.”

A.2.20. The terms “GS” and “NCGS” refers to the latest edition of the General Statutes of North Carolina, as amended.

A.2.21. The term “US 158” shall mean United States Highway 158 or US Highway 158, also referred to as South Croatan Highway.

A.2.22. The term “NC 12” shall mean North Carolina Highway 12, also referred to as South Virginia Dare Trail.

A.2.23. The term “SR 1243” shall mean North Carolina State Road 1243, also referred to as South Old Oregon Inlet Road.

SECTION A.3 ACRONYMS

AEC Area of Environmental Concern.

ALE Alcohol Law Enforcement.

BOA Board of Adjustment.

BOC Board of Commissioners.

BMP Best Management Practice.

CAMA Coastal Area Management Act.

CBRS Coastal Barrier Resources System.

CRS Community Rating System.

CLOMR Conditional Letter of Map Revision.

FCC Federal Communications Commission or a designated representative.

FEMA Federal Emergency Management Agency.

FIS Flood Insurance Study.

FIRM Flood Insurance Rate Map.

FLSNV First Line of Stable Natural Vegetation.

IESNA Illumination Engineering Society of North America.

LiMWA Limit of Moderate Wave Action.

LOMA Letter of Map Amendment.

LOMC Letter of Map Change.

LOMR Letter of Map Revision.

LOMR-F Letter of Map Revision Based on Fill.

NCDEQ North Carolina Department of Environmental Quality.

NCDHHS North Carolina Department of Health and Human Services.

NCDOT North Carolina Department of Transportation.

NCGS North Carolina General Statutes.

OPA Otherwise Protected Area.

ROW Right-of-Way.

SCM Stormwater Control Measure.

UDO Unified Development Ordinance.

USDA United States Department of Agriculture.

SECTION A.4 DEFINITIONS.

A

Abandoned vehicle means, as authorized and defined in NCGS 160A-303, a motor vehicle which is left:

(1) Upon a public street or highway in violation of a law or ordinance prohibiting parking;

(2) On a public street or highway for longer than seven days;

(3) On property owned or operated by the Town for longer than 24 hours; or

(4) On private property without the consent of the owner, occupant or lessee thereof, for longer than two hours.

Abandonment means the relinquishment of property, or cessation of the use of property, by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property.

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

Accelerated erosion means any increase over the rate of natural erosion as a result of land-disturbing activity (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Act means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Addition (to an existing building) means an extension or increase in the floor area or height of a building or structure.

Adequate erosion control measure, structure or device means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Administrative approval means approval that the UDO Administrator or designee is authorized to grant after Administrative Review.

Administrative review means non-discretionary evaluation of an application by the UDO Administrator or designee. This process is not subject to a public hearing.

Adult arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

Adult bookstore means as defined in NCGS 14-202.10(1) which is incorporated in this definition by reference.

Adult cabaret means a nightclub, bar, restaurant, or similar commercial establishment that for at least ten percent of its business hours in any 24-hour period features:

(1) Persons who appear in a state of nudity or semi-nudity;

(2) Live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities;

(3) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or

(4) Persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

Adult day service center means a facility that provides day care on a regular basis for more than two hours per day for more than five adults, who are in need of supervision due to a physical or mental disability, and which does not provide overnight accommodations. Specifically, this definition excludes halfway houses and rehabilitation clinics.

Adult escort means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person for the purpose of participating in, engaging in, providing, or facilitating specified sexual activities.

Adult escort agency means a person or business that furnishes, offers to furnish, or advertises to furnish adult escorts as one of its business purposes for a fee, tip, or other consideration.

Adult establishment as defined in NCGS 14-202.10(2) which is incorporated in this definition by reference.

Adult live entertainment as defined in NCGS 14-202.10(3) which is incorporated in this definition by reference. (

Adult live entertainment business as defined in NCGS 14-202.10(4) which is incorporated in this definition by reference.

Adult media center means, but is not limited to, an adult bookstore, and an adult video store and means any place:

(1) Which receives more than 50 percent of its gross income during any calendar month from the sale, rental, or both of books, periodicals, magazines, videotapes, CD-ROM, computer software, movies, and other products offered in photographic, print, electronic, magnetic, or digital or other imaging media which are distinguished or characterized by their emphasis on matter depicting, describing, or presenting specified anatomical areas as defined in NCGS 14-202.10(10), or specified sexual activities as defined in NCGS 14-202.10(11), or sexually oriented devices, as defined in NCGS 14-202.10(9), or any combination thereof; or

(2) Having more than 25 percent of its merchandise inventory consisting of books, periodicals, magazines, videotapes, CD-ROM, computer software, movies, and other products offered in photographic, print, electronic, magnetic, or digital or other imaging media which are distinguished or characterized by their emphasis on matter depicting, describing, or presenting specified anatomical areas as defined in NCGS 14-202.10(10), or specified sexual activities as defined in NCGS 14-202.10(11), or sexually oriented devices, as defined in NCGS 14-202.10(9), or any combination thereof.

A commercial establishment may have other business purposes on the same building site that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as adult media center. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult media center so long as one of its business purposes is the offering for sale or rental for consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas.

Adult mini-motion picture theater as defined in NCGS 14-202.10(6), which is incorporated in this definition by reference.

Adult motel means a hotel, motel or similar commercial establishment that:

(1) Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way that advertises the availability of this adult type of photographic reproductions; or

(2) Offers a sleeping room for rent for a period of time that is less than 12 hours; or

(3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 12 hours.

Adult motion picture theater as defined in NCGS 14-202.10(5), which is incorporated in this definition by reference.

Adult theater means a theater, concert hall, auditorium, or similar commercial establishment that for at least ten percent of its business hours in any day, features persons who appear in a state of nudity or live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities.

Adult video store means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion picture, videotapes or videocassettes, video reproductions, CD-ROMs, slides, or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or any combination thereof.

Aerial adventure park means a place, typically a series of interconnected towers, platforms, and/or poles, consisting of a variety outdoor recreation elements including but not limited to rope climbing exercises, obstacle courses, and zip-lines.

Affiliate means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Alcohol and drug outpatient treatment facility Outpatient facility which provides care for persons with drug and/or alcohol dependency problems and which may include outpatient follow-up care to the facility's patients.

Alteration of a watercourse means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or

any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Amusement arcade means a building or any part of a building in which five or more pinball machines, video games or machines or other similar player operated amusement devices are maintained. The term adult arcade is specifically excluded from this definition.

Antenna means any communication equipment that transmits and/or receives electromagnetic radio signals used in the provision of all types of wireless communication services.

Antenna array means a single or group of antenna elements and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving electromagnetic radio signals used in the provision of all types of wireless communication services.

Appeal means a request for a review of the UDO Administrator's interpretation and/or decision of any provision of this Unified Development Ordinance.

Applicable codes means the North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction or property or injury to persons.

Application, wireless facilities means a request that is submitted by an applicant to the Town for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, Town utility pole, or wireless support structure.

Area of shallow flooding means a designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of Special Flood Hazard see Special Flood Hazard Area (SFHA).

Area of future-conditions flood hazard means the land area that would be inundated by the 1-percent-annual-chance (100- year) flood based on future-conditions hydrology.

Art gallery means a room or structure in which original works of art or limited editions of original art are bought, sold, loaned, appraised, or exhibited to the general public.

Art gallery, owner occupied means a structure for the collection, display and/or distribution of objects of art and generally open to the public and operated by the art gallery owner residing at the structure and does not employ any person outside the immediate family.

Artisan's workshop means an establishment for the preparation, display, and sale of individually crafted artwork, jewelry, furniture, sculpture, pottery, leathercraft, hand-woven articles, and related items.

Assisted living residence means any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. There are three types of assisted living residences: adult care homes, adult care homes that serve only elderly persons, and multi-unit assisted housing with services. As used in this definition, "elderly person" means: (i) any person who has attained the age of 55 years or older and requires assistance with activities of daily living, housing, and services; or (ii) any adult who has a primary diagnosis of Alzheimer's disease or other form of dementia who requires assistance with activities of daily living, housing, and services provided by a licensed Alzheimer's and dementia care unit.

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

(2) ***Multi-unit assisted housing with services*** means an assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or other compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care.

Auction house means a building and/or land used for the temporary storage and sale on premise of new and/or used goods by means of request or invitation for bids.

Automated Ice Vending means an ice production machine or facility that may operate without full-time service personnel, designed to store and/or manufacture ice for the purpose of ice dispensing. These units are activated by the insertion of money, credit cards, check cards, token, or similar means. Ice is bagged automatically or dispensed in bulk to the consumer.

Automobile dealership means a retail business primarily housed in a structure and characterized by a mixture of related uses upon a commercial site; however, the principal use of the site shall be the marketing of new or used automobiles, whether by sale, rent, lease or other commercial or financial means. Secondary supporting uses may also exist upon the same site, such as maintenance, repair and service areas, parts storage areas and financial service areas.

Average foot-candles means the average of a number of points of foot-candle calculations or foot-candle measurements in a given area.

B

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means a determination of the water surface elevations of the base flood as published in the flood insurance study and in accordance with the Town's flood damage prevention ordinance (Article 11, Part III). When the BFE has not been provided in a "special flood hazard area," it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the "freeboard," establishes the "regulatory flood protection elevation."

Base station means a station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

Basement means any area of the building which has its floor subgrade (below ground level) on all sides (for the purposes of Article 11, Part III, Flood Damage Prevention).

Battery charging station means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed federal, state, and/or local requirements.

Battery exchange station means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds federal, state, and/or local requirements.

Beach recreation equipment rentals and sales means a business involved in the rental and sale of non-motorized beach equipment such as kayaks, bicycles, surfboards, boogie boards, canopies, chairs and umbrellas for off premise use.

Bed and breakfast means a single-family dwelling that consists of the rental of more than two bedrooms on a daily or weekly basis. The rooms shall not be equipped to allow the preparation of meals, although meals may be provided to overnight guests in a common area by the proprietor of the establishment. The bed and breakfast operation shall be owner occupied and conducted by persons who are full time residents of the single-family dwelling.

Bedroom means a room designated as a sleeping or bedroom on the plans by the Dare County Health Department.

Being conducted means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Best management practices or BMPs, also known as Stormwater Control Measures (SCM) or stormwater management practices, are techniques implemented as a way of treating or limiting pollutants and other damaging effects of stormwater runoff in order to meet legislative and North Carolina Administrative Code requirements. This term means a permanent stormwater device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or infiltration; or to mimic the natural hydrologic cycle by promoting infiltration, evapotranspiration, post-filtration discharge, reuse of stormwater, or a combination thereof. Common stormwater control measures include but are not limited to infiltration systems, permeable pavements, stormwater wetlands, wet ponds, bioretention cells and vegetative treatment swales.

Birth center means an accredited facility designed and intended for uncomplicated childbirth procedures with patients staying less than 24 hours.

Block means that portion of any street lying between its intersection with other streets.

Boarding house means a single-family dwelling containing at least two rooms, which are intended to be rented or otherwise occupied by individuals outside of the permitted family members occupying the dwelling unit, where communal facilities (such as a kitchen) are available in such dwelling unit for use by the tenants.

Boat rental establishment means a business involved in the rental of boats, jet skis, windsurfers, and other personal watercraft for use in the sound waters only. The term includes both powered and non-powered watercraft. The term shall not include amusement rides for use in manmade ponds or pools.

Borrow fill means fill material which is required for onsite construction and which is obtained from other locations. (For the purposes of Article 11, Environmental Regulations, Part II, Soil Erosion and Sedimentation Control)

Buffer yard means a yard which contains materials used to provide sight and sound screening from adjoining properties and rights-of-way. The required height and width of the buffer yard and materials used in its construction vary according to use.

Buffer yard, mature or mature buffer means an established vegetated area already in existence at the time of development or redevelopment which contains trees, shrubs, or combination thereof creating a densely vegetated landscape, which has the effect of providing an opaque visual barrier along a property's boundaries and within the property's yard setback.

Buffer zone means the strip of land adjacent to a lake or natural watercourse (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Building means any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry or other purposes.

Building, accessory means a subordinate building consisting of walls and a roof, the use of which is clearly incidental to that of a principal building on the same lot.

Building materials means any material such as lumber, brick, block, stone, plaster, concrete, asphalt, roofing shingles, gutters and other substances accumulated as the result of repairs or additions to existing buildings or structures, construction of new buildings or structures or the demolition of existing buildings or structures.

Building permit means the permit required for new construction, additions, remodeling, rehabilitation, or other improvements to an existing structure pursuant to Article 4, Development Review Process of this UDO and NCGS 160-417.

Building, principal means a building in which is considered the primary or predominant use of the lot on which it is located.

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

Building site means the area necessary within a lot of disturbed land and vegetation required for placement of principal structures (exclusive of decks) and accessory structures, its accessways and utilities, including areas disturbed for parking lots, power lines, driveways, septic tank drainfields, cemeteries and hiking trails.

Built-upon area (BUA) means that portion of a development project that is covered by impervious materials or partially impervious surfaces and used to calculate stormwater runoff potential, including buildings; pavement and compacted gravel areas such as roads or parking lots, and paths and recreation facilities such as athletic courts and concrete pool decks. Built-upon area does not include the surface area of pools, wooden slatted decks, or un-compacted, washed gravel, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material. Built-upon area is distinct from "lot coverage" as defined herein.

Business or construction trailer means any trailer which, as its primary use, is used as a permanent, semi-permanent or temporary office or other place of business, or type of business, and from which a business may be operated.

Business trash means any waste accumulation of dust, paper, sawdust, cardboard, excelsior, rags or other accumulations other than garbage or household trash which are usually attendant to the operation of stores, offices and similar businesses.

C

Capital costs means costs spent for developing public or community service facilities; such costs are limited to capital outlay items listed in the "Uniform Local Government Accounting Systems" procedural manual prepared by the state local government commission. Capital costs include payment of principal and interest on any debt or other financial obligation incurred by the Town with respect to a public facility.

Capital improvements plan means the plan adopted by the Town, projecting the capital needs and expenditures by the Town.

Car wash means the use of a site for washing and cleaning of vehicles and other light duty equipment.

Cemetery means land used or intended to be used for the burial of the human dead and dedicated for cemetery purposes, and specifically excluding crematories, mausoleums and mortuaries.

Channel means a portion of the electromagnetic frequency spectrum that is capable of carrying one standard video signal, in either analog or digital form. Consistent with future changes in technology and/or applicable law, the parties may mutually agree to a different definition in an individual franchise agreement.

Chemical storage facility means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products (for the purposes of Article 11, Part III, Flood Damage Prevention).

Child care facility includes child care centers, family child care homes, and any other child care arrangement not excluded by NCGS 110-86 (2) that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.

(1) ***Child care center*** means any place where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.

(2) ***Family child care home*** means a child care arrangement located in a residence where, at any one time, more than two (2) children, but less than nine (9) children, receive child care.

Cluster housing means a development in which more than one dwelling unit is placed on a lot. For the purposes of this UDO, cluster housing shall only pertain to dwelling units that are threatened by shoreline erosion and are being relocated onto a lot containing another dwelling unit.

Coastal Area Management Act (CAMA) means North Carolina's Coastal Area Management Act. This act, along with the Dredge and Fill Law and the Federal Coastal Zone Management Act, is managed through NC Department of Environmental Quality's (NCDEQ's) Division of Coastal Management (DCM).

Coastal A Zone (CAZ) means an area within a special flood hazard area, landward of a V zone or landward of an open coast without mapped V zones; in a Coastal A Zone, the principal source of flooding must be astronomical tides, storm surges, seiches, or tsunamis, not riverine flooding. During the base

flood conditions, the potential for wave heights shall be greater than or equal to 1.5 feet. Coastal A Zones are not normally designated on FIRMs (see Limit of Moderate Wave Action (LiMWA).

Coastal Barrier Resources System (CBRS) consists of undeveloped portions of coastal and adjoining areas established by the Coastal Barrier Resources Act (CoBRA) of 1982, the Coastal Barrier Improvement Act (CBIA) of 1990 and subsequent revisions, and includes areas owned by federal or state governments or private conservation organizations identified as otherwise protected areas (OPA).

Coastal counties means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Coastal high hazard area means a Special Flood Hazard Area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM, or other adopted flood map as determined in Article 11, Part III, Flood Damage Prevention, as Zone VE.

Coffee shop means an establishment primarily engaged in the serving of coffee beverages and other non-alcoholic beverages and food items and classified and regulated by the Dare County Health Department as a coffee shop with a customer service area not exceeding 385 square feet. Permitted accessory uses include but are not limited to retail sales of packaged coffee and retail merchandise. There shall be no drive-in or drive-through beverage service.

Collection means the act of removing solid waste to the transfer stations or the facility.

Co-location or co-located means the installation of new antenna arrays on previously approved structures, including towers, buildings, utility poles, and water tanks.

Collector street means a street which serves or is designed to serve as a trafficway for a neighborhood or as a feeder to a major street from local access streets.

Commercial crop production means the production of crops or produce for sale, to wholesale or retail establishments.

Commercial marina means any publicly or privately owned dock, basin or wet storage facility constructed to accommodate mooring for more than four boats or providing, but not limited to, any of the following services for a fee: Permanent or temporary transient docking spaces, dry storage, fueling facilities, haul-out facilities and repair service. Site plans which have been approved by the board of commissioners for outdoor recreational uses are not considered a commercial marina.

Commercial transitional protective yard means a buffered protective yard on a commercial (C-1, C-2, C-3, and C-4) lot. A commercial transitional protective yard is a required open space other than a court unoccupied and unobstructed by any structure or portion of a structure; provided, however, that fences, poles, posts may be permitted in any commercial transitional protective yard, subject to height limitations and requirements limiting obstruction of visibility or any other requirement of this UDO

Commercial with accessory residential means a principal commercial use with accessory single-family residences either attached or detached. This use could include single-family residential, duplex, or multiple detached single-family residential dwelling units configured in a cottage court arrangement.

Communication facility means the set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.

Communication tower, major means any tower over 70 feet in height, measured from ground level to the highest point intended for transmitting or receiving radio, television or telephone or wireless communications.

Communication tower, minor means any tower 70 feet or less in height, measured from ground level to the highest point intended for transmitting or receiving radio, television or telephone or wireless communications.

Communications service means cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53); or wireless services.

Communications service provider means a cable operator as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

Community garden means a use in which land is managed by a group of individuals to grow food or ornamental crops such as flowers, for donation or for use by those cultivating the land. Community Gardens may be divided into separate plots for cultivation by one or more individuals or may be farmed collectively by members of the group and may include common areas maintained and used by group members.

Competent evidence refers to the NC General Statutes requirement that the rules of evidence as applied in the trial division of the General Court of Justice ordinarily be followed but adds the important exception that "when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available." The Board just limits itself to the type of evidence that ought to be admissible before local administrative agencies generally. The term "competent" is essentially a synonym for "admissible before a local board."

Completion of construction or development means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Computation of time means the time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day is Saturday, Sunday or a legal holiday, that shall be excluded.

Concealed building mounted antenna (flush) means a building mounted antenna or antenna array which is concealed by, but not limited to, being located beneath the roof line, being screened behind an opaque facade, or blended into the building structure with faux windows, dormers or other architectural features that appear as part of the existing or proposed structure so that the antenna or antenna array is not visible by ordinary observation from the ground at the perimeter of the property boundary in any direction (360 degrees).

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

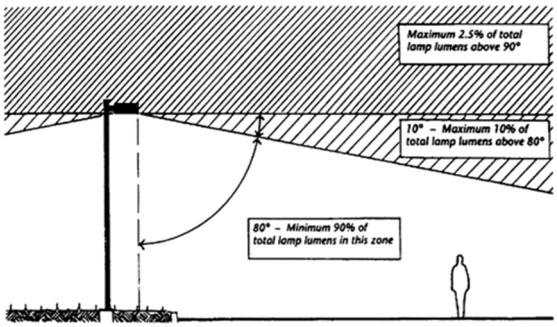
Cottage court means a residential type development with three or more detached single-family dwellings, on-site management office, and/or another complementary business use on one lot.

Crawl space construction means the enclosed under-floor space between the bottom of the floor joists and the earth under any building (for the purposes of Article 11, Part III, Flood Damage Prevention).

Crowd gathering activities in indoor public assemblies means all events or activities within places of indoor public assembly designed for multiple activities and intended to attract large numbers of people. Such events and activities may include conferences, conventions, private parties, catered meals, and general retail in the form of craft fairs, food fairs and indoor flea markets.

Customer service area means the area within a restaurant or restaurant drive-in, open to the general public and designated for the purchase and/or consumption of food, drink, or other similar items. Customer service area shall include indoor and/or outdoor seating areas, indoor and/or outdoor lounge and bar areas, decks, porches, and patios but shall not include stairs, stair landings, handicapped ramps, restrooms, kitchen and food preparation areas, private offices, loading areas, hallways, exit access and exit discharge areas, and any other areas not open to the general public. Customer service area shall not include outdoor seating areas, or outdoor decks, porches or patios where such areas are not designated for the purchase of food, drink, or similar items and instead are used primarily as waiting areas for customers who are waiting to be seated in indoor customer service areas. Additionally, customer service area shall not include any outdoor areas used by the customers of restaurants located in shopping centers.

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



Cut-off fixture as defined by IESNA.

D

Dare County Health Department means the Dare County Department of Health and Human Services.

Dedication means a gift to the general public or a municipality, by the owner, of the right to use land for stated purposes. Since a transfer of property is involved, a dedication must be made by written instrument.

Department means the NC Department of Environmental Quality (NCDEQ) (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Design flood see Regulatory Flood Protection Elevation.

Design storm or design depth means a rainfall event, expressed in depth, measured in inches, for the purposes of Article 11, Part I, Stormwater, Fill & Runoff Management and independent of storm duration, utilized for the calculation of storage volume required for BMPs. Design storm depth varies by fill depth, flood zone, and use as specified in Article 11, Part I.

Designated public events site means a parcel or contiguous group of parcels of acreage greater than five, owned by the public and designated by the board of commissioners for the purpose of creating a variety of opportunities for recreation, leisure, social or cultural experiences and special events in accordance with the regulations of this Code. Public event sites may include temporary and fixed structures, as approved by the building inspector, and can host multiple uses with an events site and management plan and permit approved by the Town Manager.

Developer means that person who is improving a parcel of land within the Town and who may or may not be the owner of the property.

Development means any land disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, not including existing residential or commercial development already in place.

Development activity means any activity defined as Development which will necessitate a Floodplain Development Permit. This term includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

Dialysis center means a building or structure or portion thereof in which persons with impaired kidney function have toxins removed from their blood on a periodic basis through the use of dialysis machines. Application of the term shall be limited to facilities staffed routinely by nurses and/or technicians and not by a doctor.

Digital Flood Insurance Rate Map (DFIRM) means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Director means the director of the Division of Energy, Mineral, and Land Resources of the NC Department of Environmental Quality (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Discharge point means that point at which runoff leaves a tract of land (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Dish antenna means any accessory structure capable of receiving radio or television signals from a transmitter or a transmitter relay which is located in planetary orbit or land based.

Disposal means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters (for the purposes of Article 11, Part III, Flood Damage Prevention).

District means the Dare Soil and Water Conservation District created pursuant to NCGS Ch. 139.

Dock, private means an estuarine pier or dock which may be permitted as an accessory use to the principal use, and shall be for the exclusive use of the landowner and shall not provide any services of a commercial marina.

Docking facility means any publicly or privately-owned dock, basin or wet storage facility constructed to accommodate mooring for four or less boats as an accessory to a principal commercial use.

Dormitory means a commercial facility used for monthly rental housing of unrelated residents in a communal non-transient living arrangement. The facility shall consist of separate sleeping, bathing, and common living areas.

Drainage area means the entire tributary area contributing surface runoff to a point of interest.

Drainfield shall also mean nitrification field or wastewater disposal area.

Drive aisle means the area of driveway necessary for vehicles to access parking stalls and for emergency vehicle access to structures.

Driveway means an improved accessway for vehicular traffic with the purpose of providing access to parking or maneuvering space from a public street or highway into an abutting property.

Driveway apron means that portion of a driveway which connects to the adjacent street or highway, usually within the right-of-way for that street.

Dry hydrant means an arrangement of pipe permanently connected to a water source other than a piped, pressurized water supply system that provides a ready means of water supply for fire-fighting purposes and that utilizes the drafting (suction) capability of the fire department pump.

Dry well means a structure or series of structures located to collect and discharge stormwater through a subterranean chamber which allows collected water to dissipate and infiltrate into the ground.

Dwelling, accessory means a secondary dwelling unit established in conjunction with, and clearly subordinate to, a principal dwelling unit, whether part of the same structure as the principal dwelling unit or as a detached structure on the same lot.

Dwelling, duplex means any dwelling place designed for, or occupied by, two families, each of which has direct access to the outside.

Dwelling, large residential means a single-family dwelling or two-family dwelling (duplex) that has 3,500 or more square feet of enclosed habitable living space.

Dwelling, multifamily means a building or portion thereof used or designed as a residence for three or more families living independently of each other and with each independent unit containing its own kitchen. Multifamily dwelling shall include a townhouse and any similar building, irrespective of the form of legal title.

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

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

E

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

Easement, access means an easement created for the purpose of providing vehicular or pedestrian access to property.

Earth station - see Dish Antenna.

Educational facility, pre-school means a facility for the organized instruction of children not yet attending primary or secondary school.

Electric vehicle means any vehicle that operates, either partially or exclusively, on electrical energy from the grid, or an off-board source, that is stored on-board for energy purposes. Electric vehicle includes: (1) a battery powered electric vehicle; and (2) a plug-in hybrid electric vehicle.

Electric vehicle charging station means a public or private parking space located together with a battery charging station which permits the transfer of electric energy (by conductive or inductive means) to a battery or other storage device in an electric vehicle. An electric vehicle charging station is permitted as an accessory use to any principal use.

Electric vehicle parking space means any marked parking space that identifies the use to be exclusively for an electric vehicle.

Electroluminescent means direct conversion of electric energy to light by a solid phosphor, or other materials, subjected to an electrical current.

Elevated building means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns (for the purpose of Article 11, Part III, Flood Damage Prevention).

Elevation means:

(1) A vertical distance above or below mean sea level;

(2) A fully dimensioned drawing to the front, rear, or side of a structure showing features and their relationship to grade, sea-level, or other reference point.

Eligible facilities request means a request for modification of an existing wireless tower or a base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

Encroachment means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain (for the purpose of Article 11, Part III, Flood Damage Prevention).

Encroachment means the location of a structure within a required yard that is not permissible under the requirements of this UDO. Article 8, District Development Standards, contains the minimum yard requirements for the Town's primary and special zoning districts.

Energy dissipater means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Engineer means a professional engineer registered in the state to act as duly authorized representative of the developer or the Town.

Environmental awareness area is an area designated and maintained for the purpose of conservation and environmental education. This may include non-profit wildlife, ecological preserves, watershed construction areas, interpretive signage, trails, research stations and appurtenant office, restroom and mechanical facilities (and is distinct from the definition of "area of environmental concern" or "AEC," which is a CAMA designation).

Erosion means the wearing away of land surface by the action of wind, water, gravity or any combination thereof (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Erosion escarpment means the normal vertical drop in the beach profile caused from high tide and/or storm tide erosion.

Erosion, natural means the wearing away of the earth's surface by water, wind or other natural agents under natural environmental conditions undisturbed by man (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Estuarine frontal dunes means the dunes which are the first mounds of sand located landward of the estuarine waters of the Roanoke Sound and having a minimum elevation equal to or greater than the mean flood level plus six feet (nine feet plus six feet). For the purpose of this article, estuarine frontal dunes occur in the area southerly of the northwest boundary of Parcel 13, Tax Map 185, as shown on Tax Maps 185 and 186. The estuarine frontal dunes extend southward and terminate at the southwest boundary of the SED-80 district.

Equipment compound means an area surrounding or near the base of wireless support structure within which a wireless facility is located.

Existing building and existing structure means any building and/or structure for which the "start of construction" commenced before the date the Town's first floodplain management ordinance was adopted.

Existing manufactured home park or manufactured home subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) was completed before January 16, 1978 (for the purposes of Article 11, Part III, Flood Damage Prevention).

Ex parte is a Latin legal term meaning "from (by or for) [the/a] party." An ex parte decision is one decided by a judge without requiring all of the parties to the controversy to be present.

__F__

Fall zone means the area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

Family means any group of people operating as a single housekeeping unit occupying a dwelling unit.

Family care home means a home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident persons with disabilities. "Person with disabilities" means a person with a temporary or permanent physical, emotional, or mental disability, including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in NCGS Section 122C-3(11)b.

Family foster home means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or

more children who are unrelated to the adult members of the household by blood, marriage, guardianship, or adoption.

Farm stand means a temporary open-air stand or place for the seasonal selling of agricultural produce. A produce stand is portable and capable of being dismantled or removed from the sales site.

Farmers Market, ***Municipally-Operated*** means a municipally operated, seasonal market that is open to the public and held on Town property where individuals offer for sale locally produced and/or acquired items such as seasonal fresh produce, fruits, flowers, dairy, meats, prepared foods, seafood, beverages, farm products, arts and crafts, and wares, which are dispensed from booths located on-site. Other secondary activities could include, but are not limited to, art shows, live music, educational and learning activities, kids programming, and other municipally organized events and activities.

Fence means any artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land.

Fill is the depositing of soil, rock or other earthen materials by artificial means, but not including poured slab, asphalt, porous pavement, Turfstone™, or other manmade materials or surfaces designed in association with construction.

Fill depth is the difference between the post-development surface elevation and the pre-development surface elevation.

Fine craft and folk art production means a variety of crafts and arts rooted in community and cultural traditions that generally expresses and encompasses a range of utilitarian and decorative media including cloth, wood, paper, clay, metal and more. The term does not include Artisan's Workshop as defined herein.

Flag pole means a pole with a pulley and a cord on which a flag or flag sign is raised and flown.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters; or

(b) The unusual and rapid accumulation of runoff or surface waters from any source.

Flood Boundary or Floodway Map (FBFM) means an official map of a community, issued by the FEMA, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by the FEMA, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

Flood insurance means the insurance coverage provided under the National Flood Insurance Program.

Flood Insurance Rate Map (FIRM) means an official map of a community issued by the Federal Emergency Management Agency on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

Flood Insurance Study (FIS) means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The flood insurance study report includes Flood Insurance Rate Maps (FIRM's) and Flood Boundary and Floodway Maps (FBFMs), if published.

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

Flood-prone area. See Floodplain.

Floodplain means any land susceptible to being inundated by water from any source.

Floodplain administrator is the individual appointed to administer and enforce the floodplain management regulations.

Floodplain development permit means any type of permit that is required in conformance with the provisions of this UDO, prior to the commencement of any development activity.

Floodplain management means the operation of an overall program of corrective and preventative measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain management regulations means Article 11, Part III of this UDO and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations, in any combinations thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

Flood-resistant material means any building product [material, component or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water

excessively after submergence are not flood resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

Floodway means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Floodway encroachment analysis means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

Flood zone means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

Flyboard means a type of jetpack which supplies propulsion to drive the flyboard through water, the rider typically stands on a board connected by a long hose to a watercraft.

Food bank means a building or portion of a building from which foodstuffs are distributed to indigent individuals or families.

Food truck means a licensed vehicle or trailer equipped with facilities for cooking and selling food which satisfies local and state regulations for health and sanitation standards.

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

Forest canopy means (collectively) 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. In the Nags Head Woods, the forest canopy may be kept to near constant height by the pruning effect of salt mist nearer the ocean or it may become irregular in height where salt impact is less.

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

Free of obstruction means a space below the lowest floor of an elevated structure, located in a coastal high hazard area or VE-zone, that must be open and designed to be free and clear to allow floodwaters to flow freely beneath the structure. The space below the lowest floor that is unobstructed shall be a minimum vertical distance of 18 inches measured from the bottom of the lowest horizontal structural member of the lowest floor to the highest finished grade directly beneath the structure. Breakaway walls cannot be utilized to meet the free of obstruction requirement.

Freeboard means the height added to the BFE to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effects of urbanization on the watershed. The base flood elevation plus the freeboard establishes the "regulatory flood protection elevation."

Frontal dune means, 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. Manmade 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.

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

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales or service facilities (for the purposes of Article 11, Part III, Flood Damage Prevention).

Furniture showroom means a retail establishment that utilizes large, open floor areas to display furniture or mattresses.

Furniture store means an establishment that sells goods and/or movable objects, intended to support various human activities such as seating, eating, and sleeping, for furnishing or improving housing units that make a room or other area ready for occupancy.

G

General contractor's office means a building or portion of a building occupied as an office by a "general contractor" as defined in NCGS 87-1.

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

(1) Disability glare affects visual performance and reduces the ability to see or identify objects. It is often accompanied by discomfort.

(2) Discomfort glare produces discomfort but does not necessarily interfere with visual performance or visibility.

Grade means the average elevation of the land around a building as measured at the four corners of the structure or at four points around the building distributed evenly, or as the natural elevation of land within a property measured in feet above sea level.

Grading means any cut or fill, or combination thereof, or re-compaction of soil, rock or other earthen materials.

Granny pods/temporary health care structure means a transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation; (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet; and (iv) complies with applicable provisions of the State Building Code and NCGS 143-139.1. (NEW)

Grantee means a person who is granted a franchise or that person's lawful successors, transferees or assigns.

Grantor means the Town of Nags Head.

Gravel means a clean or washed, loose aggregation of well-rounded spherical stones, commonly referred to as pea gravel or river rock, that are up to three inches in diameter where 50 percent is larger than ¼-inch with less than five percent fines. Gravel is not crushed stone or rock.

Gross floor area means that area in square feet measured from the outside walls of a structure.

Ground cover means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

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

Group demonstration means any assembly or concert of action between or among any two or more persons for the purpose of protesting or demonstrating for or against any matter, or of making known any position or promotion of such persons or matter, or of or on behalf of any organization, group, corporation or class of persons, or for the purpose of attracting attention to such assembly.

Group development means a group of buildings on a single site which are occupied and used for professional offices, retail, personal services, indoor recreation facilities, and/or restaurant uses.

H

Habitable floors means any floor usable for living purposes, which includes working, sleeping, eating, cooking, or recreation or a combination thereof, except for a floor used only for storage purposes.

Habitable building area means a finished space in an enclosed portion of the building used for any purpose other than storage.

Haunted house means an indoor entertainment facility utilizing sets, props, and displays for a family-oriented environment.

Hazardous waste management facility means, as defined in NCGS 130, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste (for the purposes of Article 11, Part III, Flood Damage Prevention).

Height means the vertical distance measured from the tallest part of a building to the ground at the base of the building. Typically, height is measured from the tallest portion of the roof to the top of the concrete slab. In cases where a concrete slab is not present, height is measured from the tallest part of the roof to the average finished grade using the corners at the base of the building.

- In any AE special flood hazard area, height will be measured from the regulatory flood protection elevation or finished grade, whichever is higher. In cases where there is a ground floor enclosure below the regulatory flood protection elevation, height shall be measured from finished grade.
- In coastal high hazard areas or VE zones, height shall be measured from regulatory flood protection elevation. In cases where the finished grade elevation is above the regulatory flood protection elevation, height shall be measured at approximately eighteen (18) inches above the highest, undisturbed, finished grade directly beneath the structure.

Height, wind energy facility means the distance measured from grade at the center of the tower to the highest point of the turbine rotor or tip of the turbine blade when it reaches its highest elevation.

Heliport means an area providing for the takeoff and landing of helicopters and fuel facilities (whether fixed or mobile) or appurtenant areas for parking, maintenance, and repair of helicopters.

High hazard flood area means the area subject to high velocity waters (including, but not limited to, hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, US Department of Housing and Urban Development. In the absence of these rate maps, other available base flood elevation data prepared by a federal, state or other source may be used, provided that such data source is approved by the Town.

High quality water (HQW) zones means for the coastal counties areas within 575 feet of high quality waters and for the remainder of the state are areas within one mile and drain to HQW's (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

High quality waters means those classified as such in 15A NCAC 2B.0101(e)(5) - General Procedures, which is incorporated in this section by reference to include further amendments pursuant to NCGS 150B-14(c) (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Highest adjacent grade (HAG) means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

Historic structure means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing by the US Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or

(3) Individually listed on a local inventory of historic landmarks in communities with a "certified local government (CLG) program"; or

(4) Certified as contributing to the historical significance of a historic district designated by a community with a "certified local government program."

Certified local government (CLG) programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the state historical preservation officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

Home center means a retail outlet carrying products for home improvements, 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 need for self-pickup individuals, do-it-yourself customers, and not amounting to a lumber yard or building material storage yard from which deliveries are made to commercial customers.

Home occupation, class 1 means a professional services occupation commonly carried on within the dwelling by a member(s) of the household who occupy the dwelling. A home occupation shall be secondary to the use of the dwelling for living purposes.

Home occupation, class 2 means a professional service occupation that is limited to services without any on-site/wholesale sales of commodities owned and/or operated by member(s) of the household who occupy the dwelling. These services may include real estate sales, law practice, accounting services, handmade goods, including baked goods (as long as they are sold off-site), and other similar professional occupations. A home occupation shall be secondary to the use of the dwelling for living purposes.

Home occupation, class 3 means an occupation carried on within the dwelling owned and/or operated by member(s) of the household who occupy the dwelling that may involve the creation, display, or sale of artistic wares, crafts, pieces of art, sculptures, or other creations, and handmade goods (including baked goods). A home occupation shall be secondary to the use of the dwelling for living purposes.

Hospital means an institution providing physical services primarily for human inpatient medical or surgical care for the sick or injured. A hospital may include related facilities such as laboratories, outpatient services, training facilities, central service facilities, mental health and staff offices. A hospital shall include an on-site heliport.

Hotel means a structure containing hotel units, hotel suites, and or efficiency units with 24-hour, on-site management and intended for transient guests on a rental basis.

Hotel efficiency unit means a lodging unit having living and cooking facilities and also meeting the following requirements:

(1) Efficiency units shall be limited to one bedroom.

(2) The kitchen area shall comprise no more than ten percent of the entire unit.

Hotel suite means lodging unit having living and cooking facilities within a hotel and also meeting the following requirements:

(1) Units shall be limited to two bedrooms.

(2) The kitchen area shall comprise no more than ten percent of the entire unit.

Hotel unit means a lodging unit which does not contain independent cooking facilities and is designed and intended for transient guests on a rental basis. This definition shall include rental units customarily found in motels, hotels, inns and motor lodges.

Housekeeping unit means any household whose members are an interactive group of persons jointly occupying a dwelling unit, including joint access to and use of all common areas including living, kitchen, and eating areas within the dwelling unit, and sharing household activities and responsibilities such as meals, chores, expenses and maintenance, and whose makeup is determined by the members of the unit rather than by the landlord, property manager, or other third party.

I

Impacts of stormwater means impacts associated with inadequate storage, conveyance, or ponding of stormwater runoff, including erosion, intermittent flooding, or chronic flooding.

Impervious surface means any surface which, because of its material composition or compacted nature, impedes or prevents natural infiltration of stormwater into the soil.

Improvements are all changes or additions made on or to the land, excluding buildings and structures and including, but not limited to:

(1) Street and roads and related curbing;

(2) Sidewalks;

(3) Storm drains and mains;

(4) Water lines, water mains and fire hydrants;

(5) Sewer lines and sewer mains;

(6) Any sewerage treatment facility of any kind except one-family or two-family residence septic tanks;

(7) Surface and subsurface electric and telephone and cable television lines and conduits;

(8) Recreational facilities, except recreational facilities intended for use by an individual for his own private purposes which include, but are not limited to:

(a) Playgrounds;

(b) Parks;

(c) Marinas;

(d) Beaches and swimming pools;

(e) Golf courses;

(9) Street lighting and related electric wires;

(10) Natural gas lines;

(11) Parking lots.

Incipient inlet means an ocean-to-sound inlet which has been formed, or an inlet in the first stages of formation, or an inlet which has opened and is now closed, as a result of a severe storm event.

Incipient inlet high hazard area means that land area on both sides of an inlet, an incipient inlet, or former inlet which has closed.

Indoor entertainment means performances, entertainment, or presentations consisting of or using electric or electronic amplified sound by live entertainers, or by prerecorded media, presented before audiences or customers. Sexually oriented business activities and adult live entertainment are specifically excluded from this indoor entertainment definition.

Indoor entertainment facilities means facilities as a part of, or included in the design or plan of, a building or structure to accommodate indoor entertainment as a principal or accessory use. Indoor entertainment facilities must be constructed to meet noise buffering requirements of the zoning district where located.

Indoor fitness center means a building which is occupied and used exclusively for physical health fitness programs and to provide facilities for group and individual exercise including aerobics, weightlifting, martial arts, stretching and meditation.

Indoor place of amusement and entertainment means any place of amusement and entertainment which operates indoors within a building which is completely walled on all sides and has a complete roof; except, a tent or temporary structure or building.

Indoor public assembly facility means a facility designated for multiple activities. The allowed activities may include conferences, conventions, concerts, private parties, catered meals, and general retail in the form of craft fairs, food fairs and indoor flea markets.

Indoor recreation activities means family indoor recreation uses either as a principal or accessory use.

Inn - see Hotel.

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

J

Jetpack means a device, usually worn on the back, which is propelled by jets of escaping gases or liquids to allow a single user to propel themselves in the air.

Junk means old or scrap metals, rope, rags, batteries, paper, trash, rubber or debris. Junked, dismantled or wrecked motor vehicles or parts thereof and iron, steel and other old or scrap ferrous or nonferrous material are also junk. The term junk shall also include 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.

Junked motor vehicle means, as authorized and defined in NCGS 160A-303.2, a vehicle that does not display a current license plate upon that vehicle and that:

(1) Is partially dismantled or wrecked;

(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or

(3) Is more than five years old and appears to be worth less than $100.00.

Junkyard means an open storage area such as an automobile wrecking yard, building material salvage yard, scrap metal processing yard or any lot, land or structure or part thereof where an area of 600

square feet or larger is used for storing, keeping, buying, processing or selling junk. In addition, any open storage area on which three vehicles without proper, current license plates are located shall be considered a junkyard.

K

None

L

Lake or natural watercourse means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway or 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. (For the purposes of Article 11, Environmental Regulations, Part II, Soil Erosion and Sedimentation Control)

Lamp means a bulb, tube, or light emitting diode (LED) that is a light source.

Land development regulations means any ordinance enacted pursuant to Part 3E of Article 19 of Chapter 160A of the North Carolina General Statutes (NCGS).

Land disturbing activity means any use of the land by any person in residential, industrial, educational, institutional or commercial development, 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, excluding disturbance allowable for site investigations (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Landowner means any owner of a legal or equitable interest in real property, including heirs, devisees, successors, assigns, and personal representatives of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site-specific development plan in the manner allowed by Article 3, Legislative/Quasi-Judicial Procedures of this UDO.

Letter of Map Change (LOMC) means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

(1) ***Letter of Map Amendment (LOMA)*** means an official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

(2) ***Letter of Map Revision (LOMR)*** means a revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

(3) ***Letter of Map Revision Based on Fill (LOMR-F)*** means a determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

(4) ***Conditional Letter of Map Revision (CLOMR)*** means a formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light duty truck means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

(1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or

(2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or

(3) Available with special features enabling off-street or off-highway operation and use.

Limit of Moderate Wave Action (LiMWA) means the boundary line given by FEMA on coastal map studies marking the extents of Coastal A Zones (CAZ).

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

Loading and unloading area means any space or area used by any moving vehicle for the purpose of receiving, shipping and transporting goods, wares, commodities and persons.

Local damage assessment team means a damage assessment team, required by the state division of emergency management, whose function is to assess losses to property immediately after a storm. The assessment is used to determine if the area can qualify for federal or state disaster assistance.

Local government means 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 (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Lot means a portion of a subdivision or any other parcel of land which is subject to this UDO, intended as a unit for transfer of ownership, for development or for both. The term "lot" includes the terms "plot," "parcel" or "tract."

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

Lot balancing is the act of grading a site utilizing existing on-site material for purposes such as providing a level building pad or vehicular areas. Lot balancing does not include the importation of fill.

Lot, corner means a lot abutting upon two streets at their intersection, provided that the interior angle at the intersection of two such streets is less than 135 degrees.

Lot coverage means that portion of the lot area, expressed as a percentage, that is covered or occupied by impervious surfaces or structures. For the purposes of determining lot coverage, the following features shall be considered impervious – any principal or accessory use or structure located above the ground including decks, parking areas, vehicular use areas, roadways, access ways, and sidewalks or walkways that prevent the infiltration of rainwater. Lot coverage is utilized to determine zoning compliance and is distinct from the amount of built upon area used in stormwater management calculations.

Lot depth means the average distance from the front lot line to the rear lot line measured in a general direction with the side lot lines of a lot.

Lot lines means the lines bounding a lot:

(1) ***Lot line, front*** means the line separating a lot from the right-of-way of the street which is designated by the owner as the front street, except that where there is an access easement, that easement line shall be the front lot line, rather than the street itself.

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

(3) ***Lot line, side*** means a side lot line is any lot boundary line not a front lot line or rear lot line.

Lot of record means a lot which is part of a subdivision or a lot or parcel described by metes and bounds which has been legally created and recorded in the office of the Dare County Register of Deeds.

Lot width means the width of a lot at the required building setback line measured at right angles to its depth. However, within the SED-80 district, the required lot width shall be measured at the actual building line.

Low impact development is a stormwater management design framework aimed at minimizing the negative impacts of stormwater runoff by mimicking pre-development hydrology.

Low impact development solutions to reduce stormwater runoff, or the Town BMP manual means the local reference guide designed to provide information for low impact development practices and which can be utilized to assist with compliance for residential projects using two feet or less of fill under Article 11, Part I, Stormwater, Fill & Runoff Management. All references herein to the Town BMP manual or "Low Impact Development Solutions to Reduce Stormwater Runoff," are to the latest edition or revision.

Lowest adjacent grade (LAG) means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

Lowest floor means the lowest floor of the lowest enclosed area (including the basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Article 11, Part III, Flood Damage Prevention.

Lowest horizontal structural member means the lowest beam, joist, or other horizontal member that supports the building.

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

Luminescent means any surface that is illuminated through the use of phosphorescent or luminescent paint or material.

M

Maids' quarters means an attached or detached individual dwelling unit identified as being an historic structure and listed individually in the National Register of Historic Places, a listing by the US Department of the Interior, or has preliminary been determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register.

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

Major damaged structure means a structure that can be made habitable with extensive repairs. Damage may include foundation, roof structure, and major structural components. The indicator for this category is if the cost to repair is greater than ten percent and less than 50 percent of the replacement cost at the time of damage.

Manufactured home (includes double-wide and triple-wide homes) means a preassembled dwelling unit built on a chassis, with body width exceeding eight feet and body length exceeding 32 feet, designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities. The term includes units that do and do not meet HUD model standards for manufactured homes. A travel trailer is not to be considered as a manufactured home.

Market value means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent appraisal prepared by a certified professional appraiser; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

Marshlands means those lands, bordering on bodies of water, which are periodically subject to overflow by such bodies of water, and which lands are usually soft and wet and covered with or support the growth of "marsh grass," even though at times they may be solid, dry and firm.

Massage and bodywork therapy means systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include:

(1) Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement.

(2) Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.

(3) The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.

Massage and bodywork therapist means a person licensed by the NC Massage and Bodywork Therapy Board and conducting massage and bodywork therapy.

Massage and bodywork therapy establishment means any duly licensed site or premises in which massage and bodywork therapy is practiced. This term does not include any of the following:

(1) On-site massage performed at the location of the customer.

(2) Stand-alone devices, such as chairs, that are operated by the customer.

(3) Establishments located within the confines of a hospital, nursing home, or other similar establishment or facility licensed or otherwise regulated by the NC Department of Health and Human Services.

(4) Massage and bodywork therapy provided by a sole practitioner.

(5) A student clinic operated by a Board-approved school or a massage and bodywork therapy program offered by community colleges in North Carolina that are accredited by the Southern Association of Colleges and Schools or massage and bodywork therapy programs offered by a degree or diploma granting college or university accredited by any accrediting agency that is recognized by the United States Department of Education and licensed by the North Carolina Community College System or The University of North Carolina Board of Governors or exempt from such licensure pursuant to NCGS 116-15(c).

(6) Chiropractic physician offices that provide massage and bodywork therapy only by massage and bodywork therapists currently licensed in North Carolina.

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

Mean high water (MHW) means 1.18 feet above the National Geodetic Vertical Datum, 1988.

Medical clinic means a building or structure or portion thereof where medical services are provided by three or more doctors or practitioners for outpatients only.

Medical office means a building or structure or portion thereof where persons receive outpatient medical examinations, treatments, and procedures from licensed practitioners. This definition shall include doctor's and dentist's offices, and the offices of any other licensed and/or certified health care providers.

Mentally or physically impaired person means a person who is a resident of this State and who requires assistance with two or more activities of daily living (bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating) as certified in writing by a physician licensed to practice in this State.

Metaphysical wellness services means hypnosis, past life regression, energy healing practices, phrenology, astrology, and intuitive readings such as psychic, palm, tarot and oracle cards for which there is no professional licensing recognized by the State of North Carolina.

Micro wireless facility means a small wireless facility that is no larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, no longer than eleven (11) inches.

Microbrewery means a facility for the production and packaging of malt beverages of low alcoholic content for distribution, retail, or wholesale, on or off premise.

Migrating dune means an area of unstabilized sand subject to movement under the influence of winds. Migrating dunes occur in the Nags Head Woods along the eastern boundary of the dune ridge maritime forest and along the oceanfront.

Mini-storage means a building or group of buildings in a controlled access and fenced compound that contains varying sizes of individual compartmentalized and controlled access stalls or lockers for the storage of customers' belongings.

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

Minor damaged structure means a structure that can be made habitable in a short period of time with minimal repairs. Damage may include doors, windows, floors, furnaces, water heaters, and other minor structural damage. An indicator for this category is if the cost to repair is ten percent or less of the replacement cost at the time of damage.

Mixed-use development means a single building containing more than one type of land use or single development of more than one building, and use, under common ownership, where the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of shared vehicular and pedestrian access and parking areas. Mixed use is defined by a combination of professional offices, personal services, indoor recreation facilities, retail, and/or restaurant uses in combination with residential development.

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

Monopole means a slender self-supporting communications tower consisting of a single pole.

Motel - see Hotel.

Motor lodge - see Hotel.

Motor vehicle or vehicle means all machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

Multiple principal uses means multiple, unrelated, primary or predominate uses located within one building.

N

Nags Head (Town of) Soil Erosion and Sedimentation Control Ordinance means Article 11, Part II of this UDO. Article 11, Part II shall also include the Act and all rules and orders adopted pursuant to the Act or this UDO (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Navigational light means a light used to guide or direct ships, boats or other types of watercraft and which may have a flashing or intermittent pattern of illumination.

Net buildable land means that portion of any lot that does not include estuarine marsh, fresh water marsh, ponds, wetland swales or streams (as determined or defined by CAMA or the US Army Corps of Engineers).

New construction means any new development, construction, or installation that results in real property improvement or that requires any building permit, certification, or other action permitting real property improvement. The term includes the installation of factory-built or modular housing. The term does not include fences, poles, pipelines, transmission lines, advertising signs, or similar structures and improvements that do not generate the need for additional or expanded community facilities upon completion of the additions or improvements. The term excludes the renovation and repair of existing structures and accessory uses and their structures, unless such renovations and repairs and accessory uses shall cause an increase in the off-street parking requirements or a change in occupancy as occupancy is defined by the state building code. The term also excludes additions, unless such addition causes an increase in the off-street parking requirements or a change in occupancy as occupancy is defined by the state building code.

New construction means structures for which the "start of construction" commenced on or after February 3, 1975, and includes any subsequent improvements to such structures (for the purposes of Article 11, Part III, Flood Damage Prevention).

Nonconforming lot means a legally created lot which does not have required frontage on a Town-approved street or fails to meet minimum dimensional requirements for the district in which it is located.

Nonconforming sign means a legally erected sign which is not in compliance with the regulations imposed by this UDO.

Nonconforming site means an existing site which was legally developed that no longer conforms to one or more of the regulations applicable to the district in which the site is located. A site may be nonconforming due to excessive lot coverage, inadequate or nonconforming parking facilities, nonconforming outdoor lighting, inadequate buffering or other regulations, excluding signs, which are not in compliance with the provisions of this UDO. A nonconforming site may be in conjunction with nonconforming structures or nonconforming uses.

Nonconforming structure means a legally created structure that fails to meet the minimum dimensional requirements for the district in which it is located.

Nonconforming use means the use of a structure or land which does not conform with the regulations of the district in which such structure or land is situated but was previously lawful.

Non-conversion agreement means a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk's or recorder's stamps and/or notations that the filing has been completed.

Non-encroachment area (NEA) means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

Non-profit/community outreach center means a building that is owned and operated by a non-profit entity that is exempt under section 501(c)(3) or section 501(c)(7) of the Internal Revenue Code and is occupied and used exclusively as a community center providing social and/or recreational programs but which does not provide:

(1) Overnight accommodations; or

(2) Any business offices, and

Specifically, this definition excludes halfway houses and rehabilitation clinics.

Non-profit/outreach center with aquatic fitness facility means a building that is occupied and used exclusively as an aquatic fitness center providing social and/or recreational programs, wellness center, health fitness programs, child and youth services, and/or public divine worship activities, but which does not provide overnight accommodations; and is owned and operated by a non-profit entity that is

exempt under section 501(c)(3) or 501(c)(7) of the Internal Revenue Code. This definition specifically excludes halfway houses.

Non-profit wildlife and ecological preserve means a natural wildlife and ecological protected area with facilities intended to support the preservation of the natural environment and provide educational programming to the public.

North Carolina DEQ Stormwater Design Manual is the stormwater design manual approved by North Carolina. All references herein to the NC Stormwater Design manual are to the latest published edition or revision.

Nude model studio means any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. There is excepted from this definition any studio which is part of a school for artists who are regularly enrolled in a course of instruction in the arts, and in which the use of nude models involves less than ten percent of the course hours.

Nudity or a state of nudity means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

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

Nuisance vehicle means a vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, and including a vehicle found to be:

(1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests;

(2) A point of uncontrolled growth of weeds or other noxious vegetation;

(3) A point of collection of pools or ponds of water;

(4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;

(5) One which has areas of confinement, such as trunks, hoods, etc., which cannot be operated from inside the area of confinement;

(6) One so situated or located that there is a danger of it falling or turning over;

(7) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind;

(8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or

(9) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the police department or Town Manager.

O

Oath shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."

Ocean beach means the area of land consisting of unconsolidated soil material that extends from the mean low water line landward to a point where either the growth of vegetation occurs; or a distinct change in slope or elevation alters the configuration of the land form, whichever is farther landward.

Ocean erodible area means the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this UDO, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available from the UDO Administrator.

Ocean hazard area means the area consisting of the ocean erodible area and the high hazard flood area.

Oceanfront setback means a line which is measured in a landward direction from the vegetation line for the purposes of establishing the minimum required setback distance for oceanfront development as prescribed by the Coastal Area Management Act. The oceanfront setback is determined using the total floor area of a structure and the erosion rate of the property in question, as determined by the North Carolina Division of Coastal Management.

Octave means the interval of frequency between two sounds whose frequency ratio is two.

Official time standard shall mean standard time or daylight-saving time as may be in current use in the Town, whenever certain hours are named in this UDO.

Officials, departments, boards, commissions, etc., as referenced in this UDO by title only, shall be deemed to refer to officials, departments, etc. of the Town of Nags Head, North Carolina.

Open space means an unoccupied natural, grassed or landscaped space open to the sky.

Open storage means unroofed storage area.

Open vertical fixture means a lighting fixture that is an unshielded, high intensity discharge fixture with an open bottom refractor.

Operations and maintenance agreement means the owner's document that is filed with the Town at the time of the certificate of compliance which provides SCM maintenance instructions and inspection schedule.

Otherwise Protected Area (OPA) see Coastal Barrier Resources System (CBRS).

Outdoor aquatics facility means a facility where water sports are performed outdoors in a swimming pool and/or wading pool. The term does not include private swimming pools.

Outdoor place of amusement and entertainment means any place of amusement and entertainment which operates out of doors or outside a building or structure which is completely walled on all sides or not having a complete roof. Any shed or building within the terms of this UDO not completely walled in on all sides, and any tent or temporary structure or building, shall be deemed to be an outdoor place of amusement and entertainment.

Outdoor performances and events such as fairs, festivals, musical concerts, sporting events, contests, promotional events or other types of performances or events on public or private lands that:

(1) Represent a use or uses of land, buildings, and structures not intended to be of a permanent duration;

(2) Are intended to or likely to attract substantial crowds, participants and/or spectators;

(3) Are advertised and/or open to the general public; and

(4) Are unlike the customary or usual activities generally associated with the principal use of the property where the performance or event is to be located.

Outdoor stand means an approved area where the sale of produce, hot dogs, coffee, ice cream or Italian ice, and fudge occurs from a cart or structure.

Oversized vehicle means any motor vehicle, boat or trailer, which exceeds either ten feet in width or 20 feet in length, exclusive of fixtures or accessories

Owner as applied to any property, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such property.

P

Parade means any parade, march, ceremony, show, exhibition or procession of any kind in or upon the public streets, sidewalks, alleys, parks or other public grounds or places in the Town.

Parent means an affiliate that directly, or indirectly through one or more intermediaries, controls another person (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control). (

Park means any public land available for recreational, education, cultural or aesthetic use.

Parking, off-street means a designated vehicular storage space located outside of any dedicated public right-of-way and contained within a property boundary.

Parking, on-street means a vehicular storage space as permitted by the Town within a public right-of-way.

Parking space or stall means a designated vehicular storage space within a public or private parking area.

Participating customers means all single-family, two-family and multi-family residential customers presently being served by the Town public services department and solid waste division.

Pedicab means a non-motorized for-hire vehicle, propelled by human power, for which public patronage is solicited and for which the charges are based upon the number of miles operated or zone covered.

Pennants means small usually multicolored, plastic or fabric flags held together by a string or cord, and generally used to attract attention to a business or site.

Permeable pavement means paving materials that absorb water or allow water to infiltrate through the paving material. Permeable pavement materials include pervious concrete, porous asphalt, permeable interlocking concrete pavers, concrete grid pavers, Turfstone TM, gravel meeting the definition of this section, and other proven technologies available as covered in the NC Best Management Practices Manual and as approved by the Town Engineer for appropriateness to the site and existing conditions. Compacted gravel shall not be considered permeable pavement.

Person means any individual, association, partnership, or corporation and includes any officer, employee, department, agency or instrumentality of the United States, the state or any political subdivision thereof.

Person conducting land-disturbing activity means any person who may be held responsible for a violation unless expressly provided otherwise by this UDO, the Act or any order adopted pursuant to this UDO or the Act. (For the purposes of Article 11, Environmental Regulations, Part II, Soil Erosion and Sedimentation Control)

Person responsible for land disturbance violation means:

(1) The developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; 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 benefited from it, or failed to comply with any duty imposed by any provision of this UDO, the Act, or any order adopted pursuant to this chapter or the Act (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Personal property includes every species of property except real property.

Phase of grading means one of two types of grading, rough or fine (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Picket line means one or more persons formed together for the purpose of making known any position or promotion of such persons, or of or on behalf of any organization, group, corporation or class of persons.

Pier means a wharf, deck, quay, or other structure allowing access to water for private recreational and/or commercial boating, swimming, diving, fishing and transportation. The term pier includes docks.

Pier, commercial fishing means a privately, jointly, or publicly owned structure used for recreational or commercial activity where a user fee is required or the use of the pier involves goods which are introduced into commerce.

Pier, private means a privately-owned structure used specifically for recreational and/or fishing-related activities that is for the exclusive use of the owner.

Place of amusement and entertainment means any site, location, lot, building or structure of any description whatsoever, whether indoors or outdoors, at which entertainment or amusement is provided to or for the general public or private membership, whether free or for charge or donation. The term shall include, but not be limited to, the following:

(1) Pool and billiard halls;

(2) Dance halls;

(3) Carnivals;

(4) Circuses;

(5) Itinerant shows or exhibitions of any kind;

(6) Coffee houses;

(7) Cocktail lounges;

(8) Nightclubs;

(9) Beer halls;

(10) Amusement parks and pavilions;

(11) Bowling alleys;

(12) Golf courses, miniature and carpet golf courses;

(13) Adult entertainment houses and membership clubs.

Plan means an erosion and sedimentation control plan (for the purposes of Article 11, Environmental Regulations, Part II, Soil Erosion and Sedimentation Control).

Plat, final means a drawing, in final form, showing a proposed subdivision, containing all information or detail required by law and by this UDO and which complies with NCGS 39-32.1, 39-32.2 and 47-30, to be presented to the Planning Board for approval, and which, if approved, may be duly filed or recorded by the applicant in the office of the Dare County Register of Deeds.

Plat, preliminary means a drawing clearly marked "preliminary plat" showing the features of a proposed subdivision as specified in Article 10, Part V, Subdivision Regulations, submitted to the Planning Board for the purpose of consideration prior to submission of the plat in final form, and in sufficient detail to clearly illustrate the layout of the proposed subdivision.

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

Post-development surface elevation means the finished or final land surface grades recorded at the completion of construction activities.

Pre-development surface elevation means the land surface grades existing prior to any land disturbing or grading activities.

Post-FIRM means construction or other development for which the start of construction occurred on or after the effective date of the initial Flood Insurance Rate Map.

Pre-FIRM means construction or other development for which the start of construction occurred before the effective date of the initial Flood Insurance Rate Map.

Preliminary sketch means a sketch of a proposed subdivision, showing the information specified in Section 4.22, Initial Conference; Preliminary Sketch, which is to enable the subdivider to reach a general understanding as to the form of the layout and objectives of this UDO.

Primary dune means the first mound of sand located landward of the ocean beach having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceed in any

given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression landward of that same mound of sand (commonly referred to as the "dune trough").

Primary frontal dune (PFD) means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and over-topping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope (for the purposes of Article 11, Part III, Flood Damage Prevention).

Principally above ground means that at least 51 percent of the actual cash value of the structure is above ground (for the purposes of Article 11, Part III, Flood Damage Prevention).

Private club (non-profit) means a noncommercial club, owned and operated by a non-profit legal entity composed of and with membership restricted to residents and owners of lots or dwellings in the residential development containing the private club.

Property means all real property subject to UDO regulations and restrictions and zoning boundaries by the Town.

Public safety and/or nuisance means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal or basin (for the purposes of Article 11, Part III, Flood Damage Prevention).

Public trust beach area means the area adjacent to the Atlantic Ocean that is subject to public trust rights. This area is in constant flux due to the action of wind, waves, tides, and storms and includes the wet sand area of the beach that is subject to regular flooding by tides, i.e., state owned property seaward of the mean high water mark, and the dry sand area of the beach that is subject to occasional flooding by tides, including wind tides other than those resulting from a hurricane or tropical storm. Natural indicators of the landward extent of the public trust beach area include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line.

Public water supply well field means a well or series of wells operated by a governmental entity to provide water for its citizens.

Q

Quasi-judicial decision means those decisions that require the finding of facts and the application of standards that involve judgment and discretion. Examples include conditional use permits and variances.

R

Real estate rental management facility means a building containing those uses, including but not limited to, administrative offices and warehouse/storage areas for the convenience, maintenance, housekeeping and service of rental homes and properties.

Real property includes lands, tenements and hereditaments.

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

Recreational vehicle means a vehicle which is built on a single chassis; 400 square feet or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light-duty truck; designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use; and is fully licensed and ready for highway use.

Redevelopment means any development activity that physically alters an existing developed site.

Reference level is:

(1) The top of the lowest floor for structures within special flood hazard areas designated as Zone A, AE, AH, AO, A99, or

(2) The reference level is the bottom of the lowest horizontal structural member of the lowest floor for structures within special flood hazard areas designated as Zone VE.

Reflective means any light that is reflected light back towards its source in intensity many times greater than would be reflected by a white painted surface. Reflectorized materials may include, but are not limited to reflective sheeting, glass beads and glass or plastic reflectors and shall also include reflective elements that sparkle in the sunlight or that contain luminous paint that glows in the dark.

Regulatory flood protection elevation means the "base flood elevation" plus the "freeboard". In "special flood hazard areas" where base flood elevations (BFE) have been determined, this elevation shall be the BFE plus one foot of freeboard. In “special flood hazard areas” where no BFE has been established, this elevation shall be at least two feet above the highest adjacent grade.

Reinforced turf means a turf or grassed surface which is reinforced through an underlying grid, honeycomb or other reinforcement structure which holds up under light automobile traffic and parking use while providing a porous, vegetated medium that allows stormwater to infiltrate.

Religious complex means a church (a building primarily used for public divine worship) or a church and any related structures including a parsonage, fellowship halls, educational buildings, youth centers, recreational facilities (which include playgrounds), day care centers, parochial schools or similar structures or areas located on a single site.

Remedy a violation means to bring the structure or other development into compliance with state and local floodplain management regulations or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this article, or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development (for the purposes of Article 11, Part III, Flood Damage Prevention).

Reservation means a reservation of land which does not involve any transfer of property rights. It simply involves a retention of property rights by the subdivider.

Residential group development means the use of a site for occupancy by groups of people not defined as a family, on a weekly or longer basis. Typical uses include fraternity or sorority houses, dormitories, residence halls, boarding/lodging houses, convents, and monasteries.

Restaurant means an establishment engaged in the service of food and/or beverages to patrons seated inside a building. A restaurant site may contain more than one principal restaurant building, or one principal restaurant building in combination with another principal drive-in restaurant, drive-through restaurant, or takeout restaurant building.

Restaurant, drive-in means an establishment whose principal business is the serving of prepared food, desserts and/or beverages to a customer, either within a motor vehicle parked upon the premises or at other facilities on the premises outside the restaurant building.

Restaurant, drive-through means an establishment where drive lane facilities are provided for the serving of prepared food, frozen desserts or beverages directly to a customer in a motor vehicle by a means which eliminates the need for the customer to exit the motor vehicle.

Restaurant, neighborhood means a restaurant situated and designed to serve a small client base fronting on NC 12 comprised of less than 1,000 square feet of indoor customer service area.

Restaurant, sit-down means an establishment that sells food and beverages in a ready-to-consume state primarily to persons who are seated within the building or outside on the premises.

Restaurant, takeout means an establishment engaged in the preparation of food and/or beverages which are delivered or picked up and consumed by patrons off premises.

Retail, general means establishments that provide goods directly to the consumer where such goods are available for immediate purchase and removal from the premises by the purchaser.

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

Right-of-way means each of the following which have been, or are hereafter, dedicated to the public and maintained by any public authority or by others and located within the Town, including without limitation, the surface and space within, above and below any real property in which the Town has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to, any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, swale, river, tunnel, viaduct, bridge, park, or any other place, area, easements, rights-of-way and similar public property and areas, or real property owned by or under the control of the Town.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Roanoke Sound dune ridge means the western ridges of the westernmost north-to-south oriented dune. This dune ridge forms a natural barrier between the high ground of the dune ridge and the lower terrain to the west. For the purpose of this section, the Roanoke Sound dune ridge is located in the area northward of the northwest boundary of Parcel 13, Tax Map 186, as shown on Tax Map 185 and 186, and generally west of the Nags Head Woods Road, and extends northward to the Town's northern limits.

Roof line means the top plate or roof panel of a building or structure.

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Sand dunes means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

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

Salvage yard means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to, vehicles, appliances and related machinery (for the purposes of Article 11, Part III, Flood Damage Prevention).

School means any state-accredited public or non-profit educational institution including primary and secondary schools, both public and private.

Search ring means the area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

Sediment means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity or ice from its site of origin (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Sedimentation means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Semi-nude means a state of dress in which clothing covers no more than the human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

Sexual encounter center means a business or commercial enterprise that, as one of its business purposes, offers for any form of consideration:

(1) Physical contact by customers in the form of wrestling or tumbling between persons of the opposite sex; or

(2) Activities between male and female persons, or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

Sexually oriented business means a business which offers its customers or patrons any device, activity or demonstration depicting specified sexual activities, or which is intended to appeal to sexual interests, titillation or arousal of the customer or patron. A sexually oriented business shall include an adult establishment as defined in NCGS 14-202.10(2) and, in addition, without limitation: adult arcade, adult bookstore, adult video store, adult cabaret, adult media center, adult live entertainment business, adult motel, adult motion picture theater, adult mini-motion picture theater, adult theater, adult movie studio for the purpose making pornographic films, adult escort agency, nude model studio, and sexual encounter center.

Sexually oriented business activities means those activities usually provided for, promoted, or offered by a sexually oriented business, whether or not, as the principal business purpose or as a sideline or accessory business purpose, and whether or not in connection with or on the same premises with a business which is not a sexually oriented business.

Sexually oriented devices as defined in NCGS 14-202.10(9) which is incorporated in this definition by reference.

Shared driveway means a driveway shared by two (2) adjacent property owners that is privately-owned and maintained.

Shear wall means walls used for structural support but not structurally joined or enclosed at the end (except by breakaway walls). Shear walls are parallel or nearly parallel to the flow of the water.

Shooting Range, Police means an area designed for the safe discharge and use of firearms for the purpose of law enforcement training.

Shopping Center means a single, commercial structure which includes or is designed to include two or more establishments with a combined floor area of at least 10,000 square feet planned for a single or contiguous lot.

Short-term rental means the rental of residential property for vacation, leisure, recreation, or other purposes for fewer than thirty (30) days by a person who has a permanent residence to which he/she intends to return.

Short-term rental, partial house means a resident occupied single-family dwelling that consists of the rental of up to two guest rooms for vacation, leisure, recreation, or other purposes for fewer than thirty (30) days. The partial house short-term rental should be subordinate and incidental to the principal residential use of the dwelling.

Short-term rental, whole house means the rental of an entire single-family dwelling to a group operating as one housekeeping unit for vacation, leisure, recreation, or other purposes for fewer than thirty (30) days.

Shrubs means woody plants with several permanent stems instead of a single trunk.

Sidewalks shall include any portion of a street, between the curb line and the adjacent property line intended for the use of pedestrians.

Sign means any surface, fabric or device bearing lettered, pictorial or sculptured matter designed to convey information visually and exposed to public view, or any structures, including billboard or poster panel, designed to carry visual information. Municipal public works of art are not considered signage.

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

Sign, bulletin board means a sign used to announce meetings or programs to be held on the premises of a church, school, auditorium, library, museum, community recreation center or similar noncommercial places of public assembly.

Sign, commercial means a sign which directs attention to a business, profession or industry located upon the premises where the sign is displayed, to type of products sold, manufactured or assembled, and/or to service or entertainment offered on said premises; but not a sign pertaining to the preceding if such activity is only minor and incidental to the principal use of the premises. Prior to the issuance of a certificate of completion a commercial sign may be erected on a premises provided a site plan has been approved by the Town and the required building permit(s) has been issued.

Sign, commercial flag means a sign made of fabric or other flexible material and displayed as a flag on a flag pole having a commercial message. Flag signs shall not exceed 24 square feet in area and 14 feet in height and shall be allowed only on freestanding flag poles.

Sign, digital means any sign featuring electronic display or moving images created by incandescent, LCD, plasma, LED or projected images for any purposes other than traffic control devices. This definition is intended to include any sign containing incandescent lights or exposed light bulbs used as a message or reader board, or to project images. This definition does not include LED technology used only for the purpose of illuminating a structural sign face.

Sign, noncommercial means a sign that contains no commercial advertising or statements, logos, designs or trademarks designed or intended to promote or produce financial gain other than donations for charitable organizations such as groups which are tax exempt pursuant to the Internal Revenue Code.

Sign, flag (non-advertising, non-informational) means a piece of fabric or other flexible material attached to a freestanding flagpole.

Sign, outdoor advertising (and structure) means a sign and structure which directs attention to a business, commodity, service or entertainment conducted, sold, or offered:

(1) Only elsewhere than upon the premises where the sign is displayed; or

(2) As a minor or incidental activity upon the premises where the sign is displayed.

Sign, permanent means a sign attached or affixed to a building, window, or structure, or to the ground in a manner that enables the sign to resist environmental loads, such as wind, and that precludes ready removal or movement of the sign and whose intended use appears to be indefinite.

Sign, temporary means a type of non-permanent sign located on private property that is generally displayed for a limited period of time in conjunction with a specific activity or event occurring at the property.

Siltation means sediment resulting from accelerated erosion, which is settleable or removable by properly designed, constructed and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited or is in suspension in water (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Site means the area or parcel of land on which a business or residence is located and operated. A site may be 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 element means improvements to the existing land form for the purposes of development to include buildings, pavement, decks, landscaping, pools or other accessory structures.

Site plan means a plan provided that reflects existing and proposed conditions on a site that is intended for construction. This may include but is not limited to topography, structures or additions, grading, drainage, erosion control measures, trees to be saved or planted to comply with the applicable standards of this UDO as well as other requirements of the Town Code of Ordinances.

(1) ***Site plan, major*** means all site plans not meeting the requirements for a minor site plan.

(2) ***Site plan, minor*** includes the following: increases in lot coverage or building floor area not greater than 1,000 square feet, changes to stormwater management measures, landscape buffering, vegetation preservation area, signage, or site lighting for existing development.

Site specific development plan means a plan which has been submitted to the Town by a landowner describing with certainty the type and intensity of use for a specific parcel or parcels of property. Such site specific development plan shall be presented to the Town as specified and subject to all provisions of Section 3.8, application for building permits for conditional uses.

Skate park facility means a facility for the use of skateboards, roller skates, and inline roller skates.

Small fishing skiff means a rental skiff, used for fishing, 16 feet or less in length, powered by either electric or four-cycle engine of 25 horsepower or less.

Small wireless facility means a wireless facility that meets both of the following qualifications:

(1) Each antenna is located inside an enclosure of no more than six (6) cubic volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six (6) cubic feet.

(2) All other wireless equipment associated with the facility has a cumulative volume of no more than twenty-eight (28) cubic feet. For purposes of this subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, communications demarcation boxes, ground based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, and other support services.

Soft play means indoor juvenile entertainment that features physical interaction with inflated, textile play structures, such as bouncing chambers and ball-crawling pits, and other similar play apparatus.

Soil erosion and sedimentation control plan means a plan designed by the Soil Conservation Service or a comparable organization that will ensure the stabilization and subsequent revegetation of all areas that have been disturbed to the extent that bare land has become exposed.

Solar energy facility means a solar collector or other device or structural design feature of a structure that relies upon sunshine as an energy source and is capable of collecting, distributing, and storing (if appropriate to the technology) the sun's radiant energy for a beneficial use.

Solid waste disposal facility means, as defined in NCGS 130A-290(a)(35), any facility involved in the disposal of solid waste (for the purposes of Article 11, Part III, Flood Damage Prevention).

Solid waste disposal site means, as defined in NCGS 130A-290(a)(36), any place to which solid wastes are disposed of by incineration, sanitary landfill, or any other method (for the purposes of Article 11, Part III, Flood Damage Prevention).

Special flood hazard area (SFHA) means the land in the floodplain subject to a one percent or greater chance of being flooded in any given year, as determined in Article 11, Part III, Flood Damage Prevention.

Specified anatomical areas as defined in NCGS 14-202.10(10) which is incorporated in this definition by reference.

Specified sexual activities means as defined in NCGS 14-202.10(11) which is incorporated in this definition by reference.

Sport-climbing wall means an artificial attempt to recreate the characteristics of a rock-climbing face. They are usually incorporated into existing internal or external walls but can be a freestanding structure. The purpose of climbing walls is to allow basic climbing instruction and sport climbing. They allow climbers to experience the same faceholds, cracks, overhangs and other features one might expect to find at a natural climbing area.

Standing means the following persons who shall have standing to file a petition or appeal under this UDO:

(1) Any person meeting any of the following criteria:

(a) Has an ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

(b) Has an option or contract to purchase the property that is the subject of the decision being appealed.

(c) Was an applicant before the decision-making board whose decision is being appealed.

(2) Any other person who will suffer special damages as the result of the decision being appealed.

(3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(4) A Town whose decision-making board has made a decision that the Board of Commissioners believes improperly grants a variance or is otherwise inconsistent with the proper interpretation of an ordinance adopted by the Board of Commissioners.

Start of construction includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement or other improvement was within 180 days, unless a lesser period of time is required, of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building (for the purposes of Article 11, Part III, Flood Damage Prevention).

Static Line means the vegetation line that existed within one year prior to the onset of project construction for a large-scale beach fill project. Once established, this shall be the reference line for measuring oceanfront setbacks in all locations where it is landward of the first line of stable natural vegetation. This line is established in coordination with the Division of Coastal Management and is depicted on published maps for the community that has conducted the large-scale beach fill project.

Storm event means any natural weather event causing damage and destruction of property. A storm event may include, but not be limited to, hurricanes, tropical storms, northeasters, erosion, flood, tornadoes, severe thunderstorms, fire, waterspouts, and ice or snow storms.

Storm drainage facilities means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Stormwater Control Measure or SCM, also known as Best Management Practices or BMP means a permanent structural device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration; or to mimic the natural hydrologic cycle by promoting filtration, evapo-transpiration, post-filtration discharge, reuse of stormwater, or a combination thereof.

Stormwater management system refers to a drainage network or series of best management practices working together as part of a comprehensive approach to handling stormwater.

Stormwater retrofit means implementation of stormwater management for an existing site, which previously had no stormwater management measures in place, measures inadequate to meet the

stormwater management requirements of this UDO, or measures in adequate to meet other stormwater management goals or requirements.

Stormwater runoff means the flow of surface water resulting from precipitation and distinct from runoff created by human activity such as pumping or draining. (For the purposes of Article 11, Environmental Regulations, Part II, Soil Erosion and Sedimentation Control)

Street includes any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge, and the approaches thereto within the Town and shall mean the entire width of the right-of-way between abutting property lines.

Street, collector means a street which serves or is designed to serve as a traffic-way for a neighborhood or as a feeder to a major street from local access streets. Collector streets collect traffic from 100 to 400 dwelling units.

Street, environmental means a local street intended to serve primarily as a direct access to residentially zoned properties in environmentally sensitive areas with a projected low traffic count, on which through traffic is discouraged and which is designed to serve no more than 50 dwelling units. An environmental street shall be a cul-de-sac, a loop street less than 2,000 feet in length or a street that does not connect with more than one major street, unless otherwise required by Town Code Chapter 36, Streets, Sidewalks, & Other Public Places. An environmental street is only allowed within 100 feet of estuarine waters, within a maritime forest, a residential subdivision street located wholly or partially within the CAMA Fresh Pond area of environmental concern (AEC). A street location within an environmentally sensitive area may be selected only if no other feasible location exists within the proposed development.

Street, local access means a street intended to serve primarily as a direct access to abutting properties, and on which through traffic is discouraged. A local access street is a cul-de-sac, a loop street less than 2,500 feet in length, or a street less than one mile in length which does not connect major streets. A local access street does not collect traffic from more than 100 dwelling units.

Street, marginal access means a local access street which parallels and is immediately adjacent to a major street or highway and which provides access to the properties abutting it and separates the abutting properties from the major street or highway right-of-way.

Street, major means a street which serves or is designed to serve heavy flows of traffic and which is used primarily as a route for traffic between communities or other heavy traffic-generating areas. Specifically, the term includes any state-maintained highway.

Street, sub collector means existing streets for which the right-of-way is less than 60 feet.

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

Structure means a walled and roofed building, a manufactured home, or a gas or liquid, or liquefied gas storage tank that is principally above ground (for the purposes of Article 11, Part III, Flood Damage Prevention).

Structure, accessory (appurtenant structure) means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common accessory structures.

Structure, midpoint is defined as the halfway point of the principal structure measured from front to rear on the property, including decks.

Structure highlighting means:

(1) Exposed or channel neon, argon, krypton or similar gas tube lighting, not utilized as a part of permitted signage, that directs attention to a building, or structure;

(2) Any unshielded light source, or light source that illuminates a translucent or opaque two- or three-dimensional surface, or object, that is not part of a permitted sign, that directs attention to a building or structure.

Subdivider means any person who shall lay out any subdivision or part thereof, as defined in this section, either for himself or others.

Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations of this UDO:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in this UDO.

(2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.

(3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality as shown in this UDO.

(5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

Subdivision, major means any subdivision not classified as a minor subdivision including, but not limited to, subdivisions of five or more lots, or any size subdivision requiring any new street or extension of municipal facilities.

Subdivision, minor means any subdivision containing not more than four lots fronting on an existing street, not involving any new street or road or the extension of municipal facilities, not adversely affecting the development of the remainder of the parcel or adjoining property and not in conflict with any provision or portion of the master plan, official map, or this UDO.

Subsidiary means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Substantial damage means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of substantial improvement.

Substantial improvement means any combination of repairs, reconstruction, rehabilitation, addition or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project of improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Substantial modification (wireless facility) means the mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

(1) Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet.

(2) Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless

support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than twenty (20) feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

(3) Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

Surveyor means a person licensed as a land surveyor by the state.

Swimming pool means a structure, whether above or below grade level, designed to hold water more than 30 inches deep to be used for recreational purposes.

T

Technical bulletin and technical fact sheet mean a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations. it should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.

Temperature controlled means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

Temporary emergency, construction, or repair residence means a subordinate residence that is: located on the same lot as a single-family dwelling made uninhabitable by fire, flood, or other natural disaster and occupied by the persons displaced by such disaster, or (ii) located on the same lot as a residence that is under construction or undergoing substantial repairs or reconstruction and occupied by the persons intending to live in such permanent residence when the work is completed.

Temporary structure or building means any structure or building intended for temporary use, or which is not permanently anchored or attached to a permanent foundation.

Ten-year storm means the 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, from the watershed of interest under average antecedent wetness conditions (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Tenant means one who resides on or has the temporary use or occupancy of real property owned by another person. In the case of residential property, the term "tenant" shall be considered to mean any individual actually residing at the residential location, whether such person is listed on a lease or not.

Top plate means the point at which the structural wall framing, and the structural roof framing join together at the top of the uppermost habitable floor. When a building is designed with top plates at more than one horizontal level, the uppermost plate is the one referred to and regulated by this UDO.

Tour boat means a vessel used to transport passengers for passive nature or recreational enjoyment from a shore-based site to a destination or attraction and returning to the same shore-based site without embarking or disembarking passengers enroute. A tour boat does not include charter boat, guide boat, or water taxi boat.

Town means the Town of Nags Head, North Carolina as it is now, or may in the future be, constituted.

Town Administrator means a person designated by the Town Manager to represent the Town in all business with the grantee.

Town right-of-way means a right-of-way owned, leased, or operated by the Town, including any public street or alley that is not part of the State highway system.

Town utility pole means a pole owned by a Town located in a Town right-of-way that provides lighting, traffic control, or similar function.

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

Tract means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Trade association means an unincorporated or incorporated association of members of a particular profession or trade formed for the advancement of the trade or the betterment of its members in the trade.

Trade association office means a building or portion of a building wherein an unincorporated or incorporated association of members of a particular profession perform noncommercial, predominantly administrative and/or clerical activities, educational, and/or training activities and meetings necessary for the advancement of the trade or the betterment of its members in the trade.

Trade center means a structure containing two or more individual units, primarily devoted to service and wholesale operations and the storage of materials for off-site work.

Trailer includes any of the following:

(1) ***Travel trailer*** means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, and, when factory

equipped for the roads, it shall have a body width not exceeding eight feet and a body length not exceeding 32 feet.

(2) ***Pickup coach*** means a structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.

(3) ***Motor home*** means a portable, temporary dwelling to be used for travel, recreation, and vacation, constructed as an integral part of a self-propelled vehicle.

(4) ***Camping trailer*** means a folding structure of canvas or other material mounted on wheels and designed for travel, recreation and vacation use.

Trailer park means a parcel or tract of land under single ownership which has been planned and improved for open-air camping or the temporary placement of trailers as a service to the traveling public.

Transient occupancy means occupancy by the same individual or owner for a combined period of no greater than 30 days in any single calendar year.

Tree means a woody perennial plant with one main stem or trunk which develops many branches, usually at some height above the ground.

Tree removal means removal of a tree or portion of a tree or any act which causes a tree to die within a period of two years including, but not limited to, damage inflicted upon the root system by machinery, storage of materials and soil compaction; changing the natural grade above the root system or around the trunk; damage inflicted on the tree permitting infection or pest infestation; excessive pruning; or paving with concrete, asphalt or other impervious material within such proximity as to be harmful to the tree.

Twenty-five year storm means the stormwater runoff resulting from a rainfall 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, from the watershed of interest under average antecedent wetness conditions (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

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Uncovered means the removal of ground cover from, on or above the soil surface (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Undertaken means 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 (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Use means:

(1) Any purpose for which a building or other structure or a tract of land may be designed, arranged, maintained or occupied; or

(2) Any activity, occupation, business or operation carried on in a building or other structure or on a tract of land.

Use, accessory means a building, structure or use which meets all of the following criteria:

(1) It is clearly incidental to and customarily found in connection with a principal building or use;

(2) It is subordinate to and serves a principal building or a principal use;

(3) It is subordinate in area, extent or purpose to the principal building or principal use served;

(4) It contributes to the comfort, convenience or needs of occupants, or business in the principal building or the principal use served;

(5) It is located on the same lot as the principal building or use served; and

(6) Is not a sexually oriented business or a sexually oriented business activity.

Use, conditional means a use that would not be appropriate generally or without restriction throughout a particular zoning district but which, if controlled as to number, area, location or relation to the neighborhood, would preserve the intent of this chapter to promote the public health, safety, morals and general welfare. Specific provisions are made for conditional uses which may be permitted in certain zones and the procedures for application are set out in Section 3.8, Conditional Use Permits of this UDO.

Utility pole means a structure that is designed for and used to carry lines, cables, wires, lighting facilities, or small wireless facilities for telephone, cable television, electricity, lighting, or wireless services.

V

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

Vegetation line means the first line of stable natural vegetation or the static line, as defined by CAMA, which shall be used as the reference point for measuring oceanfront setbacks. In cases where the static line is landward of the first line of stable natural vegetation, the static line shall be used for the measurement. In areas where there is no stable natural vegetation present and a static line has not been established, 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.

Velocity means 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 (for the purposes of Article11, Part II, Soil Erosion and Sedimentation Control).

Vessel means a vessel as defined in NCGS 76A-2.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required Article 11, Part III is presumed to be in violation until such time as that documentation is provided (for the purposes of Article 11, Part III, Flood Damage Prevention).

__W__

Water surface elevation (WSE) means the height, in relation to NAVD 1988, of floods of various magnitudes and frequencies in coastal or riverine floodplains (for the purposes of Article 11, Part III, Flood Damage Prevention).

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which water flows at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur (for the purposes of Article 11, Part III, Flood Damage Prevention).

Watercraft, non-powered means an apparatus including, but not limited to, sailboat, canoe, kayak, windsurfer, stand-up paddle board, pedal boat, which does not have a motor or engine designed to propel such craft or apparatus.

Watercraft, personal means a small vessel that uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

Watercraft, powered means an apparatus including, but not limited to, fishing skiff, fishing boat, guide boat, designed for use on water, including trailers therefor, and motors or engines designed to propel such craft or apparatus.

Waste means surplus materials resulting from onsite construction and disposed of at other locations (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

Wetlands means areas that are inundated or saturated by an accumulation of surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

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

Wind energy means kinetic energy present in wind motion that can be converted to mechanical energy for driving pumps, mills, and electric power generators.

Wind energy facility, rooftop means no more than two commercially manufactured roof-mounted systems per site, attached to either principal or accessory structures, designed to supplement other electricity sources as an accessory use to existing principal buildings or facilities, wherein the power generated is used primarily for on-site consumption having a total rated capacity of ten kW or less. The structural, mechanical, and electrical installation of such facilities shall conform to all applicable local, state and federal code and permitting requirements.

Wind energy facility, small means a single system designed to supplement other electricity sources as an accessory use to existing principal buildings or facilities, wherein the power generated is used primarily for on-site consumption. A small wind energy conversion system consists of a single wind turbine, a tower, and associated control or conversion electronics, which has a total rated capacity of 20 kW or less.

Wind energy facility, vertical axis means a system where the main rotor shaft is set vertically, and the main components are located at the base of the turbine. They are designed to supplement other electricity sources as an accessory use to existing principal buildings or facilities, wherein power generated is used primarily for on-site consumption. A vertical axis wind energy facility consists of a single wind turbine, a tower, and associated control or conversion electronics.

Wireless facility means equipment at a fixed location that enables wireless communications between use equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include any of the following:

(1) The structure of improvements on, under, within, or adjacent to which the equipment is collocated.

(2) Wireline backhaul facilities.

(3) Coaxial or fiber optic cable that is between wireless structures or utility poles or Town utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider means any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless

facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.

Wireless provider means a wireless infrastructure provider or a wireless services provider.

Wireless services means any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

Wireless services provider means a person who provides wireless services.

Wireless services structure means a new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a Town utility pole is not a wireless support structure.

Working days (soil erosion and sedimentation control) means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken (for the purposes of Article 11, Part II, Soil Erosion and Sedimentation Control).

___X___

None

___Y___

Yard means a required open space, unoccupied and unobstructed by any structure or portion of a structure from 12 inches above the general ground level of the graded lot upward, provided 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 UDO. Further, customary accessory buildings or structures, including pools and pool surrounds, may be located in any rear or side yard no closer than five feet to any property line and subject to other limitations of this UDO. For lots of record which front on access easements, yard and lot depth measurements shall be made from the edge of the easement rather than from the lot line.

(1) ***Yard, front*** means a yard extending between side lot lines across the front of a lot adjoining the public street. Depth of required front yard shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding. Front and rear yard lines shall be essentially parallel.

(2) ***Yard, rear*** means 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.

(3) ***Yard, side*** means 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.

Z

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

Zoning districts means those districts depicted on the official zoning map and described in Article 6 Zoning Districts of this UDO.

Zoning permit means a permit issued by the UDO Administrator that authorizes the recipient to make use of property in accordance with the requirements of this UDO.