

# ARTICLE 7. SUPPLEMENTAL REGULATIONS

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## 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.

Notwithstanding the foregoing, any use identified in Section 6.6., Table of Uses and Activities, as being subject to supplemental regulations listed herein, may be temporarily modified pursuant to and limited by Sections 4.11.5 and 6.4.6. in a manner that would not be in compliance these supplemental standards, as applicable.

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.

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**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

### **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.

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## 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
<b>Lot Width</b>	150 feet	150 feet for whole site; minimum 18 feet lot width for individual units.	
<b>Setbacks</b>	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.	
<b>Height</b>	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).	
<b>Open Space</b>	50% of side yards to remain as open space.	50% of side yards to remain as open space.	
<b>Lot Coverage</b>	55%	30% plus 300 square feet or 33%, whichever is greater.	
<b>Density</b>	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.	

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**TABLE 7-1: REQUIREMENTS FOR MULTI-FAMILY DWELLINGS**

	C-2	Townhouse in SPD-20	C-1
<b>Buffer</b>	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.	
<b>Unit Size</b>	Minimum 800 square feet.	Minimum 1,000 square feet.	
<b>Building Separation</b>	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.		
<b>Accessory Uses</b>	<p>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.</p> <p>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.</p>	<p>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.</p> <p>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.</p>	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,



## ARTICLE 7. SUPPLEMENTAL REGULATIONS

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.

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

**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
<b>Lot Width</b>	100 feet	150 feet	
<b>Front Setback</b>	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.
<b>Rear Setback</b>	25 feet		
<b>Side Setback</b>	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.
<b>Height</b>	35 feet		60 feet
<b>Open Space</b>	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.
<b>Lot Coverage</b>	55%		65%

# ARTICLE 7. SUPPLEMENTAL REGULATIONS

**TABLE 7-2: DIMENSIONAL REQUIREMENTS FOR HOTELS**

	C-1	C-2	HO
<b>Density</b>	Maximum 20 units per site.	None	None
<b>Unit Size (Room)</b>	Minimum 300 sq. ft, Maximum 700 sq. ft.		
<b>Unit Size (Efficiency)</b>	Minimum 400 sq. ft, Maximum 700 sq. ft.		
<b>Unit Size (Suite)</b>	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.	
<b>Minimum Units Per Building</b>	2		
<b>Building Separation</b>	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.		
<b>Ocean/Sound Access</b>	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.
<b>Accessory Uses</b>	<p>Retail shops, offices, restaurants, indoor entertainment facilities, indoor public assembly for the benefit of occupants, guests and the general public, cottage court.</p> <p>Hotel allowed as accessory to other commercial.</p> <p>Dormitory for employee housing.</p> <p>Single-family dwelling for employee/owner housing.</p>		<p>Uses permitted as accessory to hotels in the C-2 district and outdoor recreation activities as allowed in the HO district.</p> <p>Hotel allowed as accessory to other commercial.</p> <p>Dormitory for employee housing.</p> <p>Single-family dwelling for employee/owner housing.</p>

**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.

**7.21.1.1.3.** 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.



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**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.

**7.21.1.2.7** 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

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

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:

**7.30.4.1.** 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,

**7.30.4.2.** At least seventy-five (75) percent of all customer seats shall be designated for full-service, full-menu dining; and,

**7.30.4.3.** 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.

### **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, Modified and Reduced 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:

**7.39.1.1.** No open storage is allowed.

**7.39.1.2.** 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 Designate 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:

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

**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.

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

**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
<b>Building Separation</b>	30 feet			
<b>Setbacks</b>	25 feet property line; 30 feet street or right-of-way			
<b>Ratio of Floor Area to Site Area</b>	1:6	1:4	1:6	1:4
<b>Lot Coverage</b>	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.

**7.50.1.6.** 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.

**7.50.1.7.** 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:

**7.55.1.1.** 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.

**7.55.1.2.** 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.

**7.55.1.3.** 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.

**7.55.1.4.** 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.

**7.55.1.5.** 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.

**7.55.1.6.** 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.

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

### 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.

**7.58.2.** Events site and management plan shall include:

**7.58.2.1.** Contact information and cell phone for the person in charge of the event.

**7.58.2.2.** 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.

**7.58.2.3.** A site plan map showing:

**7.58.2.3.1.** The location of all temporary structures, including tents, stages, concessions, bathroom facilities, or rides.

**7.58.2.3.2.** 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.

**7.58.2.3.3.** 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:

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

**7.58.2.3.3.1.** Directional signage less than twelve (12) square feet may be located at strategic locations to direct pedestrians and motorists.

**7.58.2.3.3.2.** 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.

**7.58.2.3.3.3.** 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.

**7.58.2.3.4.** Notes or attachments related to any additional documentation pertinent to the planned event, including but not limited to:

**7.58.2.3.4.1.** Approvals required from other agencies (ALE, NCDHHS).

**7.58.2.3.4.2.** Off-site parking arrangements.

**7.58.2.3.4.3.** 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.

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

**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/powering, 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).

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

### 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.

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

**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.



## ARTICLE 7. SUPPLEMENTAL REGULATIONS

**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 Vision 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:

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

**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.