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BOARD OF COMMISSIONERS MEETING AGENDA

Town of Swansboro

Monday, May 10, 2021

Board Members

John Davis, Mayor | Frank Tursi, Mayor Pro Tem | Pat Turner, Commissioner
Harry PJ Pugliese, Commissioner | Larry Philpott, Commissioner | Laurent Meilleur, Commissioner

*Zoom Link: First Meeting of the month: https://us02web.zoom.us/j/82680161743
Second Meeting of the month: https://us02web.zoom.us/j/86147603054

I. Call to Order/Opening Prayer/Pledge — Mayor John Davis

II. Public Comment

Citizens have an opportunity to address the Board for no more than three minutes per speaker regarding items listed on the agenda. There is a second opportunity at the end of the agenda for the public to address the Board on items not listed on the agenda.

III. Adoption of Agenda and Consent Items — Board of Commissioners

The Town Clerk respectfully submits to the Board, the Regular Agenda and the below consent items, which are considered to be of general agreement and little or no controversy. These items may be voted on as a single group without Board discussion "or" if so desired, the Board may request to remove any item(s) from the consent agenda and placed for consideration separately.

Consent Items:

a. Applications

Certificate of Convenience/Five Bucks Coffeeteria

Certificate of Convenience/Squid Sicles

b. Resolutions

Resolutions in Opposition of House Bill 401/Senate Bill 349 and House Bill 496

IV. Presentations

a. Strategic Operating Plan and Economic Development Committee Discussion — Mark Sutherland, JOED Executive Director

JOED Executive Director Mark Sutherland will give a brief presentation on the Town's Strategic Operating Plan and lead discussion on the Economic Development Committee

V. Public Hearing

a. Residential Cluster Development Regulations — Jennifer Ansell/Planner

The Public Hearing was held open at the April 26, 2021, Regular Meeting to allow for written public comments to be for up to 24 hours.

Action Needed: 1) Close the Public Hearing; and
2) Motion to approve, deny or table Ordinance 2021-O1, and adopt one of the statements of consistency below: Per § 160A-383, zoning regulations shall be made in accordance with a comprehensive plan.

Prior to adopting or rejecting any zoning amendment, the governing board shall adopt one of the following statements which shall not be subject to judicial review:

1) A statement approving the zoning amendment and describing its consistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest;
2) A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest; or
3) A statement approving the zoning amendment and containing at least all of the following:
a. A declaration that the approval is also deemed an amendment to the comprehensive plan. The governing board shall not require any additional request or application for amendment to the comprehensive plan.
b. An explanation of the change in conditions the governing board took into account in amending the zoning ordinance to meet the development needs of the community.
c. Why the action was reasonable and in the public interest.

b. Text Amendments - Chapter 160D Amendments — Jennifer Ansell/Planner

Chapter 160D of the North Carolina General Statutes consolidates current statutes for local development regulations (now in Chapter 160A) into a single, unified chapter, and places these statutes into a more logical, coherent organization. It refines procedures, aligns terminology, and confirms authority that was presumed under old statutes.

Chapter 160D became effective as of June 19, 2020, however, local governments have until July 1, 2021, to update local ordinances and policies to comply. All city and county zoning, subdivision, and other development regulations, including unified development ordinances, will need to be updated by that date.

At their April 6, 2021, regular meeting, the Planning Board recommended approval of the proposed changes to the Town Code of Ordinances, Unified Development Ordinance, and Fee Schedule. The vote was 4 to 1.

Action Needed: 1) Open the Public Hearing;
2) The Public Hearing will be held open to allow for written public comments to be submitted to Paula Webb at pwebb@ci.swansboro.nc.us for up to 24 hours due to remote meeting format;
3) Following the 24-hour period, close the Public Hearing; and
4) Motion to approve, deny or table Ordinance 2021-O3, and adopt one of the statements of consistency below:

1) A statement approving the zoning amendment and describing its consistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest;

2) A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest; or

3) A statement approving the zoning amendment and containing at least all of the following:

a. A declaration that the approval is also deemed an amendment to the comprehensive plan. The governing board shall not require any additional request or application for amendment to the comprehensive plan.

b. An explanation of the change in conditions the governing board took into account in amending the zoning ordinance to meet the development needs of the community.

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

VI. Business Non-Consent

a. Purchase of Comprehensive Operating Software

Sonia Johnson
Finance Director
Chris Seaberg
Town Manager

The Budget Ordinance for FY 20/21 includes $60,000 for the purchase of new comprehensive software. Town staff reviewed the proposals; conducted an onsite demonstration at Emerald Isle and contacted the references that were provided by the software vendor and is recommending a hosted Incode 10 application offered by Tyler Technologies. Incode 10 is web-based and will include the core financial system including general ledger, purchasing; capital assets; project accounting; and cashiering. In addition, it will include the transparency module and a personnel management suite including an employee self-service portal and online timesheets.

The annual maintenance/support cost of the new comprehensive operating software is $38,392 per year, beginning in year one with a one-time cost of $60,800 for project management, implementation, onsite and remote training, and some Asyst data conversion.

Action Needed: Motion to authorize Town Manager to execute the contract with Tyler Technologies.

b. Future Agenda Items

Chris Seaberg
Town Manager

An opportunity is provided to review proposed agenda topics for future meetings and for the Board to introduce items of interest and subsequent direction for placement on future agendas, which will allow staff the opportunity to plan accordingly.

Action Needed: Discuss and provide guidance to staff.

VII. Items Moved from Consent

VIII. Public Comment

Citizens have an opportunity to address the Board for no more than five minutes regarding items not listed on the Agenda.

IX. Manager's Comments — Chris Seaberg

X. Board Comments — Board of Commissioners

XI. Closed Session - *None* — Board of Commissioners

XII. Adjournment — Board of Commissioners

Board of Commissioners Meeting
Agenda Item Submittal

Item To Be Considered: **Certificate of Convenience/Five Bucks Coffeeteria**

Board Meeting Date: **May 10, 2021**

Prepared By: **Ken Jackson, Police Chief**

Overview:
David Drafton, owner of Five Bucks Coffeeteria has submitted application for a Certificate of Convenience as a mobile ice cream vendor.

Per the Unified Development Ordinance Section 112.05 (b), a mobile ice cream vendor with certificate of convenience and necessity issued through the Police Chief or his or her designee following approval by the Board of Commissioner is exempt.

The applicant has completed and met all requirements set forth in Section 112.06 for mobile ice cream vending regulations and all documentation is on file with the Police Department.

Background Attachment(s):

1. UDO Chapter 112: Peddling and Soliciting
2. Certificate of Convenience Application

Recommended Action: Review; Approve or deny the Certificate of Convenience Application.

Reviewed By:

Town Manager	5/5/2021	**Finance Director**	
Town Clerk	5/5/2021	**Town Attorney**	

Date Action Approved by Board: ____________ **Action if different from Recommended:**

CHAPTER 112: PEDDLING AND SOLICITING

Section

§ 112.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. A person as defined herein who has applied for a certificate of convenience and necessity.

CALENDAR QUARTER. Each of the following time periods shall be deemed to be a calendar quarter for purposes of this chapter: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

CERTIFICATE. A certificate of convenience and necessity requested or issued (as the context requires) pursuant to this chapter.

HOLDER. The person who holds a current certificate of convenience and necessity for the use described thereon.

ITINERANT MERCHANT. A person, other than a person who owns or operates an established retail store in the town, or within its extraterritorial zoning jurisdiction area who transports an inventory of goods to a building, vacant lot or other location in the town and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. Provided, however, the definition of an ***ITINERANT MERCHANT*** shall not include a bona fide resident of the town or its extraterritorial zoning jurisdiction area who, in conjunction with any other bona fide resident(s) conducts a sale of used household furnishing, clothing, decorations or similar items in the manner commonly described as a yard sale or garage sale, upon the residential premises of one or more of bona fide residents, no more than once in any calendar quarter. Provided further, that this definition shall not be construed to prohibit the owner or operator of an established retail store from selling his or her usual inventory on a sidewalk, parking lot or other similar area immediately adjacent to his or her store no more than once in a calendar year.

MOBILE ICE CREAM VENDOR. A person or persons who sells ice cream products from a mobile van.

PEDDLER. Any person who transports goods from place to place and sells or offers for sale the goods, or who, without traveling from place to place, sells or offers for sale any goods from any vehicle or device; provided that any person who separates the acts of sale and delivery for the purpose of evading the provisions of this chapter shall be deemed a peddler.

PERSON. This term shall include the singular and the plural and shall also mean and include any person, firm corporation, association, club co-partnership or society, or any other organization.

TRANSIENT VENDOR. Any person who engages in a temporary business of selling and delivering goods and who, for this purpose, uses or occupies any building or premises; provided, that no person shall be relieved from complying with the provisions of this chapter merely by conducting a transient business in association with any permanently established merchant.

(Ord. passed 3-18-03; Am. Ord. passed 6-17-03)

§ 112.02 ITINERANT MERCHANTS PROHIBITED.

(A) No itinerant merchant shall be permitted to engage in any of the activities described in this chapter at any location within the town or its extraterritorial zoning jurisdiction area.

(B) Provided, however, that this section shall not apply to:

(1) Itinerant merchants duly authorized by the sponsoring agency of any event, exhibition, or show duly permitted pursuant to the terms of § 112.05(A) of this chapter during such event, exhibition, or show; or

(2) Any person licensed and/or approved to sell agricultural or horticultural products, handmade products, art work, or other products within a municipally-operated public market; or

(3) Push cart food vendors if same are allowed in a specific zoning district.

(Ord. passed 3-18-03; Am. Ord. 2010-010, passed 4-20-10)

§ 112.03 PEDDLERS AND ITINERANT SALESMEN PROHIBITED.

No peddler or itinerant salesman shall be permitted to engage in any of the activities described in this chapter upon any private residence and the premises thereof, unless such peddler or itinerant salesman has been requested or invited to do so by the owner or occupant of the private residence and premises, nor shall any such peddler or itinerant salesman be permitted to engage in any of the activities described in this chapter upon any public park, street, highway, alley, sidewalk, or other public way or upon any property owned or leased as lessee by the town. Violation of this chapter shall be a misdemeanor.

(Ord. passed 3-18-03)

Statutory reference:

Authority to prohibit peddling and soliciting, G.S. 160A-178

§ 112.04 NON-PROFIT AND SERVICE ORGANIZATIONS.

Recognized non-profit and service organizations are exempt from this chapter.

(Ord. passed 3-18-03)

§ 112.05 PEDDLERS AND ITINERANT SALESMEN PROHIBITED: EXCEPTIONS.

(A) That peddlers or itinerant salesmen duly authorized by the sponsoring agency of any event or exhibition show under town’s approval.

(B) Mobile ice cream vendor with certificate of convenience and necessity issued through the Police Chief or his or her designee following approval by the Board of Commissioner.

(Ord. passed 3-18-03)

Cross-reference:

Regulations for mobile ice cream vending, see §112.06

§ 112.06 MOBILE ICE CREAM VENDING REGULATIONS.

(A) No person shall operate a mobile ice cream vending business within the town’s regulatory limits unless the person has first applied for and obtained a certificate of convenience and necessity.

(B) The application for a certificate of convenience and necessity shall be in a form approved by the Police Chief and the form shall contain at least the following, provided at the applicant’s expense:

(1) The full name, physical address and mailing address of applicant.

(2) A certified true copy of a complete driving history check (Division of Motor Vehicles “Master Check”) on the applicant and each proposed driver of any mobile ice cream vending van operated by the applicant’s business.

(3) Proof of liability insurance coverage on all vehicles to be operated in the business, with coverage limits of at least $500 per person per accident.

(4) Legible photocopies of the current year’s North Carolina State Inspection certificate with no discrepancies for each mobile ice cream vending van to be operated under the certificate request of the Police Chief, the applicant shall produce the original of any such inspection certificate for inspection.

(5) That the van will have external safety equipment such as:

(a) Visible flashing lights from the front and rear of vehicle when stopped.

(b) Caution arm that is extended on the traffic side of vehicle when stopped.

(c) Signage on vehicle must be readable from at least 50 feet away “watch for children.”

(6) The route that the mobile ice cream vendor will be taking while in the town’s jurisdiction.

(7) All sales are prohibited within 100 feet of any school property line.

(8) The mobile ice cream vendor cannot sale within any business district of the town.

(9) Sales shall be conducted during daylight hours.

(10) The duration of vendor in an area shall not exceed 60 minutes. An***AREA*** means subdivision, apartment complex or other housing type complexes.

(11) All necessary permits and license shall be obtained prior to commencement of any sales.

(12) The number of mobile ice cream vending vans to be operated and the condition of such vans and all appurtenances.

(13) The Police Chief will also review all application information prior to submittal of application to the Town Manager.

(14) Prior to putting a substitute van into operation, such person shall submit an application to substitute a van and shall comply with all provisions of this chapter except the need of Board approval.

(15) Any other information required by the Police Chief or the Town Manager deemed reasonably related to the health, welfare and safety of the town's residents.

(Ord. passed 3-18-03; Am. Ord. 2012-013, passed 9-18-12)

§ 112.07 TOWN MANAGER'S ISSUE OF CERTIFICATE.

The Town Manager shall review the application for certificate as provided for convenience and necessity. After due consideration of the application, the Town Manager shall determine whether, at the Town Manager's judgment and discretion, public convenience and necessity require that the application be denied, allowed or allowed in part. The Town Manager shall supply a written certificate to the applicant documenting the Town Manager's action, if the application is allowed, allowed in part or denied.

(Ord. passed 3-18-03; Am. Ord. 2012-013, passed 9-18-12)

§ 112.08 DURATION OF THE CERTIFICATE.

A certificate shall constitute a non-exclusive franchise from the town for the operation of the number of mobile ice cream vending vans set out within the town subject to the provisions of this chapter for one year, unless a shorter period of time is specified in the certificate. Application for renewal shall be filed annually prior to the anniversary date of certificate and a hearing conducted as provided in this chapter. Application for renewal shall contain all of the information required for the original application pursuant to § 112.05.

(Ord. passed 3-18-03)

§ 112.09 CERTIFICATE OF REVOCATION.

The town shall give the holder of any certificate being considered for revocation notice and an opportunity to be heard by the Board of Commissioners. The notice shall consist of either personal service of written notice of the time, place and purpose of the hearing or the mailing by registered, certified or first class mail of such a notice to the holder to the certificate at the address stated by the holder in his or her application for the certificate. If notice is by personal service, or registered or certified mail, the hearing may not be held for at least five days after such service as indicated on the return receipt of the United States Postal Service. If notice is by first class mail, the hearing may not be held until at least 20 days after the mailing of such notice as certified to the Board of Commissioners by the town official or employee who mailed the notice. If the Board of Commissioners finds that ground for revocation of the certificate exist, then the Board shall either revoke the certificate or may, in its discretion impose a revocation but suspend the revocation upon such conditions as the Board believes will ensure compliance of the holder with all applicable laws and regulations.

(Ord. passed 3-18-03)

TOWN OF SWANSBORO

910-326-3101 fax 601 W Corbett Ave - Swansboro, NC 28584 910-326-4428 phone

Application for Certificate of Convenience

Mobile Ice Cream Vendor X Taxi Cab Services ____

NAME OF BUSINESS Five Bucks Coffeeteria, LLC. PHONE # 910-708-0278

MAILING ADDRESS 106 Park Place Dr., Swansboro, NC 28584

OWNER'S NAME David J. Drafton PHONE # 760-590-0493

OWNER'S ADDRESS 106 Park Place Dr., Swansboro, NC 28584

EMERGENCY PHONE NUMBER / CONTACT PERSON:

David J. Drafton 8 760-590-0493

____

List all vehicles/year/make/model: (Use the back of this form if needed)

YEAR 1990 MAKE Chevy MODEL C30

LICENSE PLATE # 5 BUCKS

YEAR ________ MAKE ________________ MODEL ______________

LICENSE PLATE # ______________

SPECIFIC REQUIREMENTS ARE REQUIRED FOR THE VENDOR USE. THE APPLICANT IS RESPONSIBLE FOR REQUIREMENTS SET FORTH BY THE TOWN CODE OF ORDINANCES.

APPLICANT'S SIGNATURE [signature] DATE FILED 03/11/2021

****

POLICE CHIEF REVIEW AND RECOMMENDATIONS: N/A

SIGNATURE: Ken Jordan

PUBLIC HEARING DATE: N/A

APPROVED ✓ DENIED ______________ EFFECTIVE DATE: 4-18-21

****

CERTIFICATE OF CONVENIENCE ________

EXPIRATION DATE ________

Fee Paid: 100.00 May 5, 2021 Recpt # 16251

Town of Swansboro
601 W. Corbett Avenue
Swansboro NC 28584

DAVID DRAFTON
106 PARK PLACE DR
CERT OF CONVENIENCE & SWEF
SWANSBORO NC 28584

Town of Swansboro

Receipt #: 16251 Date: 5/5/2021 From: DAVID DRAFTON Register: Counter Operator ID: counter

Miscellaneous Receipt	Convenience Fee	DAVID DRAFTON	$3.63	
			Convenience Fee Balance:	
Miscellaneous Receipt	Miscellaneous	DAVID DRAFTON	$100.00	
			Miscellaneous Balance:	
Miscellaneous Receipt	Storm Water Fee	DAVID DRAFTON	$45.00	
			Storm Water Fee Balance:	
		Total Receipts	**$148.63**	
	Credit Card - 913887086		$148.63	
		Change Due:	**$0.00**	

Friendly City by the Sea - Established 1783

Board of Commissioners Meeting
Agenda Item Submittal

Item To Be Considered: **Certificate of Convenience/Squid Sicles**

Board Meeting Date: **May 10, 2021**

Prepared By: **Ken Jackson, Police Chief**

Overview:
Nicole Samuels, owner of Squid Sicles has submitted application for a Certificate of Convenience as a mobile ice cream vendor.

Per the Unified Development Ordinance Section 112.05 (b), a mobile ice cream vendor with certificate of convenience and necessity issued through the Police Chief or his or her designee following approval by the Board of Commissioner is exempt.

The applicant has completed and met all requirements set forth in Section 112.06 for mobile ice cream vending regulations and all documentation is on file with the Police Department.

Background Attachment(s):

1. UDO Chapter 112: Peddling and Soliciting
2. Certificate of Convenience Application

Recommended Action: Review; Approve or deny the Certificate of Convenience Application.

Reviewed By:

Town Manager	5/5/2021	**Finance Director**	
Town Clerk	5/5/2021	**Town Attorney**	

Date Action Approved by Board: ____________ **Action if different from Recommended:**

CHAPTER 112: PEDDLING AND SOLICITING

Section

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CERTIFICATE. A certificate of convenience and necessity requested or issued (as the context requires) pursuant to this chapter.

HOLDER. The person who holds a current certificate of convenience and necessity for the use described thereon.

ITINERANT MERCHANT. A person, other than a person who owns or operates an established retail store in the town, or within its extraterritorial zoning jurisdiction area who transports an inventory of goods to a building, vacant lot or other location in the town and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. Provided, however, the definition of an ***ITINERANT MERCHANT*** shall not include a bona fide resident of the town or its extraterritorial zoning jurisdiction area who, in conjunction with any other bona fide resident(s) conducts a sale of used household furnishing, clothing, decorations or similar items in the manner commonly described as a yard sale or garage sale, upon the residential premises of one or more of bona fide residents, no more than once in any calendar quarter. Provided further, that this definition shall not be construed to prohibit the owner or operator of an established retail store from selling his or her usual inventory on a sidewalk, parking lot or other similar area immediately adjacent to his or her store no more than once in a calendar year.

MOBILE ICE CREAM VENDOR. A person or persons who sells ice cream products from a mobile van.

PEDDLER. Any person who transports goods from place to place and sells or offers for sale the goods, or who, without traveling from place to place, sells or offers for sale any goods from any vehicle or device; provided that any person who separates the acts of sale and delivery for the purpose of evading the provisions of this chapter shall be deemed a peddler.

PERSON. This term shall include the singular and the plural and shall also mean and include any person, firm corporation, association, club co-partnership or society, or any other organization.

TRANSIENT VENDOR. Any person who engages in a temporary business of selling and delivering goods and who, for this purpose, uses or occupies any building or premises; provided, that no person shall be relieved from complying with the provisions of this chapter merely by conducting a transient business in association with any permanently established merchant.

(Ord. passed 3-18-03; Am. Ord. passed 6-17-03)

§ 112.02 ITINERANT MERCHANTS PROHIBITED.

(A) No itinerant merchant shall be permitted to engage in any of the activities described in this chapter at any location within the town or its extraterritorial zoning jurisdiction area.

(B) Provided, however, that this section shall not apply to:

(1) Itinerant merchants duly authorized by the sponsoring agency of any event, exhibition, or show duly permitted pursuant to the terms of § 112.05(A) of this chapter during such event, exhibition, or show; or

(2) Any person licensed and/or approved to sell agricultural or horticultural products, handmade products, art work, or other products within a municipally-operated public market; or

(3) Push cart food vendors if same are allowed in a specific zoning district.

(Ord. passed 3-18-03; Am. Ord. 2010-010, passed 4-20-10)

§ 112.03 PEDDLERS AND ITINERANT SALESMEN PROHIBITED.

No peddler or itinerant salesman shall be permitted to engage in any of the activities described in this chapter upon any private residence and the premises thereof, unless such peddler or itinerant salesman has been requested or invited to do so by the owner or occupant of the private residence and premises, nor shall any such peddler or itinerant salesman be permitted to engage in any of the activities described in this chapter upon any public park, street, highway, alley, sidewalk, or other public way or upon any property owned or leased as lessee by the town. Violation of this chapter shall be a misdemeanor.

(Ord. passed 3-18-03)

Statutory reference:

Authority to prohibit peddling and soliciting, G.S. 160A-178

§ 112.04 NON-PROFIT AND SERVICE ORGANIZATIONS.

Recognized non-profit and service organizations are exempt from this chapter.

(Ord. passed 3-18-03)

§ 112.05 PEDDLERS AND ITINERANT SALESMEN PROHIBITED: EXCEPTIONS.

(A) That peddlers or itinerant salesmen duly authorized by the sponsoring agency of any event or exhibition show under town's approval.

(B) Mobile ice cream vendor with certificate of convenience and necessity issued through the Police Chief or his or her designee following approval by the Board of Commissioner.

(Ord. passed 3-18-03)

Cross-reference:

Regulations for mobile ice cream vending, see §112.06

§ 112.06 MOBILE ICE CREAM VENDING REGULATIONS.

(A) No person shall operate a mobile ice cream vending business within the town's regulatory limits unless the person has first applied for and obtained a certificate of convenience and necessity.

(B) The application for a certificate of convenience and necessity shall be in a form approved by the Police Chief and the form shall contain at least the following, provided at the applicant's expense:

(1) The full name, physical address and mailing address of applicant.

(2) A certified true copy of a complete driving history check (Division of Motor Vehicles "Master Check") on the applicant and each proposed driver of any mobile ice cream vending van operated by the applicant's business.

(3) Proof of liability insurance coverage on all vehicles to be operated in the business, with coverage limits of at least $500 per person per accident.

(4) Legible photocopies of the current year's North Carolina State Inspection certificate with no discrepancies for each mobile ice cream vending van to be operated under the certificate request of the Police Chief, the applicant shall produce the original of any such inspection certificate for inspection.

(5) That the van will have external safety equipment such as:

(a) Visible flashing lights from the front and rear of vehicle when stopped.

(b) Caution arm that is extended on the traffic side of vehicle when stopped.

(c) Signage on vehicle must be readable from at least 50 feet away "watch for children."

(6) The route that the mobile ice cream vendor will be taking while in the town's jurisdiction.

(7) All sales are prohibited within 100 feet of any school property line.

(8) The mobile ice cream vendor cannot sale within any business district of the town.

(9) Sales shall be conducted during daylight hours.

(10) The duration of vendor in an area shall not exceed 60 minutes. An***AREA*** means subdivision, apartment complex or other housing type complexes.

(11) All necessary permits and license shall be obtained prior to commencement of any sales.

(12) The number of mobile ice cream vending vans to be operated and the condition of such vans and all appurtenances.

(13) The Police Chief will also review all application information prior to submittal of application to the Town Manager.

(14) Prior to putting a substitute van into operation, such person shall submit an application to substitute a van and shall comply with all provisions of this chapter except the need of Board approval.

(15) Any other information required by the Police Chief or the Town Manager deemed reasonably related to the health, welfare and safety of the town's residents.

(Ord. passed 3-18-03; Am. Ord. 2012-013, passed 9-18-12)

§ 112.07 TOWN MANAGER'S ISSUE OF CERTIFICATE.

The Town Manager shall review the application for certificate as provided for convenience and necessity. After due consideration of the application, the Town Manager shall determine whether, at the Town Manager's judgment and discretion, public convenience and necessity require that the application be denied, allowed or allowed in part. The Town Manager shall supply a written certificate to the applicant documenting the Town Manager's action, if the application is allowed, allowed in part or denied.

(Ord. passed 3-18-03; Am. Ord. 2012-013, passed 9-18-12)

§ 112.08 DURATION OF THE CERTIFICATE.

A certificate shall constitute a non-exclusive franchise from the town for the operation of the number of mobile ice cream vending vans set out within the town subject to the provisions of this chapter for one year, unless a shorter period of time is specified in the certificate. Application for renewal shall be filed annually prior to the anniversary date of certificate and a hearing conducted as provided in this chapter. Application for renewal shall contain all of the information required for the original application pursuant to § 112.05.

(Ord. passed 3-18-03)

§ 112.09 CERTIFICATE OF REVOCATION.

The town shall give the holder of any certificate being considered for revocation notice and an opportunity to be heard by the Board of Commissioners. The notice shall consist of either personal service of written notice of the time, place and purpose of the hearing or the mailing by registered, certified or first class mail of such a notice to the holder to the certificate at the address stated by the holder in his or her application for the certificate. If notice is by personal service, or registered or certified mail, the hearing may not be held for at least five days after such service as indicated on the return receipt of the United States Postal Service. If notice is by first class mail, the hearing may not be held until at least 20 days after the mailing of such notice as certified to the Board of Commissioners by the town official or employee who mailed the notice. If the Board of Commissioners finds that ground for revocation of the certificate exist, then the Board shall either revoke the certificate or may, in its discretion impose a revocation but suspend the revocation upon such conditions as the Board believes will ensure compliance of the holder with all applicable laws and regulations.

(Ord. passed 3-18-03)

Town of Swansboro
601 W. Corbett Ave
Swansboro, NC 28584
Phone: (910)326-4428
Fax: (910)326-3101

APPLICATION AND CHECKLIST FOR CERTIFICATE OF CONVENIENCE

Mobile Ice Cream Vendor X
Taxi Cab Services____

Name of Business: Squid Sicles Phone: 615-602-4998

Mailing Address: 216 Knightheads dr.

Owner's Name: Nicole Samuels Phone: 615-602-4998

Owner's Address: SAME

Emergency Contact Person: Joshua M. Samuels 615-482-5659

List all vehicles (use back of this form if needed)

Year: 91 Make: Chevy Model: P30
License Plate #: TEV6484

Year: ____ Make ____ Model: ____
License Plate #: ____

SPECIFIC REQUIREMENTS ARE REQUIRED FOR THE VENDOR USE. THE APPLICANT IS RESPONSIBLE FOR REQUIRMENTS SET FORTH BY CHAPTERS 111 AND 112 OF THE TOWN CODE OF ORDINANCES

Applicants Signature: [signature] Date: Apr. 27/2021

POLICE CHIEF REVIEW AND RECOMMENDATIONS:
N/A

POLICE CHIEF SIGNATURE: [signature]

APPROVED: ✓ DENIED: ____ EFFECTIVE DATE: 5-4-21

CERTIFICATE OF CONVENIENCE FEE: $100.00 EXPIRATION DATE: ____

Paid May 5, 2021 Recpt # 16252

Town of Swansboro
601 W. Corbett Avenue
Swansboro NC 28584

SQUID SICLES
216 KNIGHTHEADS DR
CERT OF CONVENIENCE
SWANSBORO NC 28584

Town of Swansboro

Receipt #: 16252 Date: 5/5/2021 From: SQUID SICLES Register: Counter Operator ID: counter

Miscellaneous Receipt	Convenience Fee	SQUID SICLES	$2.50	
				Convenience Fee Balance:
Miscellaneous Receipt	Miscellaneous	SQUID SICLES	$100.00	
				Miscellaneous Balance:
		Total Receipts	**$102.50**	
	Credit Card - 913909520		$102.50	
		Change Due:	**$0.00**	

Friendly City by the Sea - Established 1783

Board of Commissioners Meeting
Agenda Item Submittal

Item To Be Considered: **Resolutions in Opposition of House Bill 401/Senate Bill 349 and House Bill 496**

Board Meeting Date: **May 10, 2021**

Prepared By: **Jennifer Ansell, Planner**

Overview:
At their May 4, 2021, regular meeting the Planning Board recommended that the Board of Commissioners formally oppose House Bill 401/Senate Bill 349 and House Bill 496.

The Increase Housing Opportunities bill, House Bill 401 and Senate Bill 349, would require local governments to allow all “Middle Housing” types: duplexes, triplexes, quadplexes, and townhomes, in areas zoned for residential use. Additionally, it would require local governments to allow the development of at least one accessory dwelling unit for each detached single-family dwelling in areas zoned for residential use, and prohibits the regulation of occupancy, parking, setbacks, and method of approval of such units.

The Property Owners' Rights/Tree Ordinances bill, House Bill 496, would require all local governments to obtain special authorization from the General Assembly prior to enacting a tree protection ordinance; and voids all existing ordinances protecting trees that were established without special authority.

Background Attachment(s):

1. House Bill 401/ Senate Bill 349
2. House Bill 496
3. Resolution 2021-R4
4. Resolution 2021-R5

Recommended Action: Motion to approve Resolutions 2021-R2 and 2021-R3 opposing House Bill 401/Senate Bill 349 and House Bill 496

Reviewed By:

Town Manager	5/5/2021	**Finance Director**	
Town Clerk	5/5/2021	**Town Attorney**	

Date Action Approved by Board: ________ **Action if different from Recommended:**

H.B. 401
Mar 24, 2021
HOUSE PRINCIPAL CLERK

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H D

HOUSE BILL DRH10179-MQ-32B

Short Title:	Increase Housing Opportunities.	(Public)
Sponsors:	Representative D. Hall.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO PROVIDE REFORMS TO LOCAL GOVERNMENT ZONING AUTHORITY TO INCREASE HOUSING OPPORTUNITIES AND TO MAKE VARIOUS CHANGES AND CLARIFICATIONS TO THE ZONING STATUTES.

The General Assembly of North Carolina enacts:

PART I. AFFORDABLE HOUSING OPTIONS

SECTION 1.1.(a) Article 7 of Chapter 160D of the General Statutes is amended by adding a new section to read:

"**§ 160D-707. Middle housing use in residential zones.**

(a) Definitions. – As used in this section, the term "middle housing" means a residential dwelling that is one of the following, as defined by the North Carolina Building Code Council:

(1) A duplex.

(2) A triplex.

(3) A quadplex.

(4) A townhouse.

(b) Middle Housing in Residential Zones. – A local government shall allow all middle housing types in areas zoned for residential use, including those that allow for the development of detached single-family dwellings.

(c) Regulation and Scope. – A local government may regulate middle housing pursuant to the provisions of this Chapter, provided that the regulations do not act to discourage development of middle housing types through unreasonable costs or delay. In permitting middle housing types, nothing in this section shall be construed to prohibit a local government from permitting single-family dwellings in areas zoned to allow for single-family dwellings. Nothing in this section affects the validity or enforceability of private covenants or other contractual agreements among property owners relating to dwelling type restrictions. Any regulation adopted pursuant to this section shall not apply to an area designated as a local historic district (i) pursuant to Part 4 of Article 9 of this Chapter or (ii) on the National Register of Historic Places. This section shall only apply to areas that are served, or through extension may be served, by one or more of the following:

(1) A local government water system.

(2) A local government sewer system.

(3) A public water system.

(4) A wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which

DRH10179-MQ-32B

a permit is issued under Part 1 of Article 21 of Chapter 143 of the General Statutes."

SECTION 1.1.(b) G.S. 160D-102 is amended by adding a new subdivision to read:

"(28a) Single-family dwelling. – The term shall include all of the types of middle housing as defined in G.S. 160D-707(a)."

SECTION 1.1.(c) This section becomes effective October 1, 2021.

SECTION 1.2. The North Carolina Building Code Council (Council) shall adopt amendments to the North Carolina Residential Code for One- and Two-Family Dwellings (Code) to define and include regulation of triplex dwelling units and quadplex dwelling units in order to facilitate regulation of those units in areas zoned for residential use, including those that allow for the development of detached single-family dwellings. Upon adoption of the amendments, the Council and local governments enforcing the Code shall regulate triplex dwelling units and quadplex dwelling units being sited pursuant to G.S. 160D-707, as enacted in this act, under the new amendments to the Code.

SECTION 1.3.(a) Part 1 of Article 9 of Chapter 160D of the General Statutes is amended by adding a new section to read:

"**§ 160D-917. Accessory dwelling units.**

(a) A local government shall allow the development of at least one accessory dwelling unit which conforms to the North Carolina Residential Code for One- and Two-Family Dwellings, including applicable provisions from State fire prevention code, for each detached single-family dwelling in areas zoned for residential use that allow for development of detached single-family dwellings. For the purposes of this section, the term "accessory dwelling unit" means an attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

(b) Development and permitting of an accessory dwelling unit shall not be subject to any of the following requirements:

(1) Owner-occupancy of any dwelling unit, including an accessory unit.

(2) Minimum parking requirements or other parking restrictions.

(3) Conditional use zoning.

(c) In permitting accessory dwelling units under this section, a local government shall not do any of the following:

(1) Prohibit the connection of the accessory dwelling unit to existing utilities serving the primary dwelling unit.

(2) Charge any fee other than a building permit that does not exceed the amount charged for any single-family dwelling unit similar in nature.

(3) Establish development setbacks that differ from the development setbacks applicable for a similarly situated lot in the same zoning classification."

SECTION 1.3.(b) This section becomes effective October 1, 2021.

SECTION 1.4.(a) G.S. 42A-3 reads as rewritten:

"**§ 42A-3. Application; exemptions.**

(a) The provisions of this Chapter shall apply to any person, partnership, corporation, limited liability company, association, or other business entity who acts as a landlord or real estate broker engaged in the rental or management of residential property for vacation rental as defined in this Chapter. The provisions of G.S. 160A-424 and G.S. 153A-364 shall apply to properties covered under this Chapter.

(b) The provisions of this Chapter shall not apply to:

(1) Lodging provided by hotels, motels, tourist camps, and other places subject to regulation under Chapter 72 of the General Statutes.

(2) Rentals to persons temporarily renting a dwelling unit when traveling away from their primary residence for business or employment purposes.

(3) Rentals to persons having no other place of primary residence.

(4) Rentals for which no more than nominal consideration is given.

(5) Accessory dwelling units permitted pursuant to G.S. 160D-917."

SECTION 1.4.(b) This section becomes effective October 1, 2021.

SECTION 1.5. Local governments shall adopt land use ordinances and regulations or amend their comprehensive plans to implement the provisions in this Part no later than October 1, 2021.

SECTION 1.6. Except as otherwise provided, this Part is effective when it becomes law.

PART II. VARIOUS CHANGES AND CLARIFICATIONS TO THE ZONING STATUTES FOR MORE HOUSING OPPORTUNITIES

SECTION 2.1. G.S. 160D-108 reads as rewritten:

"**§ 160D-108. Permit choice and vested rights.**

(a) Findings. – The General Assembly recognizes that local government approval of development typically follows significant investment in site evaluation, planning, development costs, consultant fees, and related expenses. The General Assembly finds that it is necessary and desirable to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the development regulation process, to secure the reasonable expectations of landowners, and to foster cooperation between the public and private sectors in land-use planning and development regulation. The provisions of this section and G.S. 160D-108.1 strike an appropriate balance between private expectations and the public interest.

(b) Permit Choice. – If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, G.S. 143-755 applies.

(b1) Substantial Compliance. – A development permit application that substantially complies with the provision of information required by ordinance or regulation shall be sufficient to accept and process a request for a local or State development permit. Minor omissions in the application shall not be a sufficient basis to make an application ineligible for vesting. A local development regulation shall not condition the acceptance or processing of a development permit application upon the application for or issuance of a State permit, nor shall a State development regulation condition the acceptance or processing of a development permit application upon a local permit, unless specifically authorized by statute.

(c) Vested Rights. – Amendments in land development regulations are not applicable or enforceable without the written consent of the owner with regard to any of the following:

(1) Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.

(2) Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.

(3) A site-specific vesting plan pursuant to G.S. 160D-108.1.

(4) A multi-phased development pursuant to subsection (f) of this section.

(5) A vested right established by the terms of a development agreement authorized by Article 10 of this Chapter.

The establishment of a vested right under any subdivision of this subsection does not preclude vesting under one or more other subdivisions of this subsection or vesting by application of common law principles. A vested right, once established as provided for in this section or by common law, precludes any action by a local government that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations, except where a change in State or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use.

(d) Duration of Vesting. – Upon issuance of a development permit, the statutory vesting granted by subsection (c) of this section for a development project is effective upon filing of the application in accordance with G.S. 143-755, for so long as the permit remains valid pursuant to law. Unless otherwise specified by this section or other statute, local development permits expire one year after issuance unless work authorized by the permit has substantially commenced. A local land development regulation may provide for a longer permit expiration period. For the purposes of this section, a permit is issued either in the ordinary course of business of the applicable governmental agency or by the applicable governmental agency as a court directive.

Except where a longer vesting period is provided by statute or land development regulation, the statutory vesting granted by this ~~section,~~ section or common law vesting, once established, expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory vesting period granted by this section or common law vesting for a nonconforming use of property expires if the use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month discontinuance period is automatically tolled during the pendency of any board of adjustment proceeding or civil action in a State or federal trial or appellate court regarding the validity of a development permit, the use of the property, or the existence of the statutory vesting period granted by this section. The 24-month discontinuance period is also tolled during the pendency of any litigation involving the development project or property that is the subject of the vesting.

(e) Multiple Permits for Development Project. – Subject to subsection (d) of this section, where multiple ~~local~~ development permits are required to complete a development project, the development permit applicant may choose the version of each of the ~~local~~ land development regulations applicable to the project upon submittal of the application for the initial development permit. ~~This~~ Except as provided in subsection (f) of this section, this provision is not applicable ~~only~~ for those subsequent development permit applications filed ~~within~~ after 18 months of the latter of (i) the date ~~following the approval of an initial~~ of cessation of work related to the uncompleted development project or (ii) the date of issuance of the immediately preceding local development permit. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

(f) Multi-Phased Development. – A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.

(g) Continuing Review. – Following issuance of a development permit, a local government may make subsequent inspections and reviews to ensure compliance with the applicable land development regulations in effect at the time of the original application.

(h) Process to Claim Vested Right. – A person claiming a statutory or common law vested right may submit information to substantiate that claim to the zoning administrator or other officer designated by a land development regulation, who shall make an initial determination as to the existence of the vested right. The decision of the zoning administrator or officer may be appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination or pursuing an appeal under G.S. 160D-405, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.

(i) Miscellaneous Provisions. – The vested rights granted by this section run with the land except for the use of land for outdoor advertising governed by G.S. 136-131.1 and

G.S. 136-131.2 in which case the rights granted by this section run with the owner of a permit issued by the North Carolina Department of Transportation. Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

(j) Definitions. – As used in this section, the following definitions apply:

(1) Development. – As defined in G.S. 143-755(e)(1).

(2) Development permit. – As defined in G.S. 143-755(e)(2).

(3) Land development regulation. – As defined in G.S. 143-755(e)(3).

(4) Multi-phased development. – A development containing 25 acres or more that is both of the following:

a. Submitted for development permit approval to occur in more than one phase.

b. Subject to a master development plan with committed elements showing the type and intensity of use of each phase."

SECTION 2.2. G.S. 160D-702 reads as rewritten:

"**§ 160D-702. Grant of power.**

(a) A local government may adopt zoning regulations. Except as provided in subsections (b) ~~and (c)~~ through (e) of this section, a zoning regulation may regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lots that may be occupied; the size of yards, courts, and other open spaces; the density of population; the location and use of buildings, structures, and land. A local government may regulate development, including floating homes, over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12. A zoning regulation shall provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11. Where appropriate, a zoning regulation may include requirements that street and utility rights-of-way be dedicated to the public, that provision be made of recreational space and facilities, and that performance guarantees be provided, all to the same extent and with the same limitations as provided for in G.S. 160D-804 and G.S. 160D-804.1.

(b) Any regulation relating to building design elements adopted under this Chapter may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings except under one or more of the following circumstances:

(1) The structures are located in an area designated as a local historic district pursuant to Part 4 of Article 9 of this Chapter.

(2) The structures are located in an area designated as a historic district on the National Register of Historic Places.

(3) The structures are individually designated as local, State, or national historic landmarks.

(4) The regulations are directly and substantially related to the requirements of applicable safety codes adopted under G.S. 143-138.

(5) Where the regulations are applied to manufactured housing in a manner consistent with G.S. 160D-908 and federal law.

(6) Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 160D-604 or G.S. 160D-605 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan.

For the purposes of this subsection, the phrase "building design elements" means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms. The phrase "building design elements" does not include any of the following: (i) the height, bulk, orientation, or location of a structure on a zoning lot, (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors, or (iii) regulations adopted pursuant to this Article governing the permitted uses of land or structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

Nothing in this subsection affects the validity or enforceability of private covenants or other contractual agreements among property owners relating to building design elements.

(c) A zoning regulation shall not set a minimum square footage of any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings.

(d) A local government shall not adopt or enforce an ordinance downzoning property, as defined in G.S. 160D-601(d), that has access to public water or public sewer, unless the local government can show a change in circumstances that substantially affects the public health, safety, or welfare.

(e) A local government shall not adopt or enforce an ordinance that establishes a ban or has the effect of establishing a ban on a use of land that is not an industrial use, a nuisance per se, or that does not otherwise pose a serious threat to the public health, safety, or welfare.

(f) Nothing in this section shall be construed to limit the authority of a local government to regulate adult establishments or other facilities as defined in Article 26A of Chapter 14 of the General Statutes."

SECTION 2.3. G.S. 160D-703 reads as rewritten:

"**§ 160D-703. Zoning districts.**

(a) Types of Zoning Districts. – A local government may divide its territorial jurisdiction into zoning districts of any number, shape, and area deemed best suited to carry out the purposes of this Article. Within those districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Zoning districts may include, but are not be limited to, the following:

(1) Conventional districts, in which a variety of uses are allowed as permitted uses or uses by right and that may also include uses permitted only with a special use permit.

(2) Conditional districts, in which site plans or individualized development conditions are imposed.

(3) Form-based districts, or development form controls, that address the physical form, mass, and density of structures, public spaces, and streetscapes.

(4) Overlay districts, in which different requirements are imposed on certain properties within one or more underlying conventional, conditional, or form-based districts.

(5) Districts allowed by charter.

(b) Conditional Districts. – Property may be placed in a conditional district only in response to a petition by all owners of the property to be included. Specific conditions may be proposed by the petitioner or the local government or its agencies, but only those conditions approved by the local government and consented to by the petitioner in writing may be incorporated into the zoning regulations. Unless consented to by the petitioner in writing, in the exercise of the authority granted by this section, a local government may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to local government ordinances, plans adopted pursuant to G.S. 160D-501, or the impacts reasonably expected to be generated by the development or use of the site. The zoning regulation may provide that defined minor modifications in conditional district standards that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification of the conditions and standards in a conditional district shall follow the same process for approval as are applicable to zoning map amendments. If multiple parcels of land are subject to a conditional zoning, the owners of individual parcels may apply for modification of the conditions so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved apply only to those properties whose owners petition for the modification.

(c) Uniformity Within Districts. – Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district but the regulations in one district may differ from those in other districts.

(d) Standards Applicable Regardless of District. – A zoning regulation or unified development ordinance may also include development standards that apply uniformly jurisdiction-wide rather than being applicable only in particular zoning districts.

(e) Limitations. – A local government shall not engage in any of the following practices:

(1) The adoption or enforcement of an ordinance that downzones property in order to evade voluntary consent of landowners or petitioners or any other requirements contained in subsection (b) of this section.

(2) Allow a particular land use only through conditional zoning.

(3) Establishing a threshold on square footage or the number of dwelling units, where to exceed the threshold would require conditional zoning."

SECTION 2.4. Article 7 of Chapter 160D of the General Statutes is amended by adding a new section to read:

"**§ 160D-703.1. Remedies for violations.**

(a) If a court finds that a local government has acted in violation of G.S. 160D-702 or G.S. 160D-703(e), the court shall award reasonable attorneys' fees and costs to the party who successfully challenged the actions of the local government.

(b) In the event that a court invalidates a regulation pursuant to this section, a permit applicant may choose which zoning designation will apply to the permit and use of the building, structure, or land indicated on the permit application from the following options:

(1) The zoning development regulation that existed most recently prior to the invalidated regulation.

(2) The least restrictive development standards contained within the zoning designation for the jurisdiction that is the most similar zoning designation to the class of property use identified in the permit application.

(c) For the purposes of this section, the term "class of property use" means one of the following major land-use groups:

(1) Commercial.

(2) Governmental.

(3) Industrial.

(4) Institutional.

(5) Residential."

SECTION 2.5. G.S. 160D-706 reads as rewritten:

"**§ 160D-706. Zoning conflicts with other development standards.**

(a) When regulations made under authority of this Article require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left ~~unoccupied, or impose other higher standards~~ unoccupied than are required in any other statute or local ordinance or regulation, the regulations made under authority of this Article govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left ~~unoccupied, or impose other higher standards~~ unoccupied than are required by the regulations made under authority of this Article, the provisions of that statute or local ordinance or regulation govern.

(b) When adopting regulations under this Article, a local government may not use a definition of building, dwelling, dwelling unit, bedroom, or sleeping unit that is inconsistent with any definition of those terms in another statute or in a rule adopted by a State agency, including the State Building Code Council.

(c) Except as provided in subsection (a) of this section, a local government shall not adopt or enforce development regulations that alter the principle that ambiguities in land development regulations are to be construed in favor of the free use of land, including any development regulations that assert that a more restrictive rule or regulation is controlling.

(d) Subject to the provisions of Article 33 of Chapter 143 of the General Statutes, a local government, through its governing board, is authorized to settle any litigation related to the enforcement of or compliance with development regulations for a development or a development permit applicant, including any quasi-judicial development permit."

SECTION 2.6. G.S. 160D-1402 reads as rewritten:

"**§ 160D-1402. Appeals in the nature of certiorari.**

(a) Applicability. – This section applies to appeals of quasi-judicial decisions of decision-making boards when that appeal is in the nature of certiorari as required by this Chapter.

(b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing a petition for writ of certiorari with the superior court. The petition shall do all of the following:

(1) State the facts that demonstrate that the petitioner has standing to seek review.

(2) Set forth allegations sufficient to give the court and parties notice of the grounds upon which the petitioner contends that an error was made.

(3) Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of an impermissible conflict as described in G.S. 160D-109, or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.

(4) Set forth the relief the petitioner seeks.

(c) Standing. – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons have standing to file a petition under this section:

(1) Any person possessing any of the following criteria:

a. An ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

b. An option or contract to purchase the property that is the subject of the decision being appealed.

c. An applicant before the decision-making board whose decision is being appealed.

(2) Any other person who will suffer special damages as the result of the decision being appealed.

(3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(4) A local government whose decision-making board has made a decision that the governing board believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of a development regulation adopted by the governing board.

(d) Respondent. – The respondent named in the petition shall be the local government whose decision-making board made the decision that is being appealed, except that if the petitioner is a local government that has filed a petition pursuant to subdivision (4) of subsection (c) of this section, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing, or was an applicant, before the decision-making board.

(e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of superior court of the county in which the matter arose. The writ shall direct the respondent local government or the respondent decision-making board, if the petitioner is a local government that has filed a petition pursuant to subdivision (4) of subsection (c) of this section, to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct the petitioner to serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a decision-making board, the petition and the writ shall be served upon the chair of that decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure applies in the event the chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

Upon the filing of a petition for writ of certiorari, a party may request a stay of the execution or enforcement of the decision of the quasi-judicial board pending superior court review. The court may grant a stay in its discretion and on conditions that properly provide for the security of the adverse party. A stay granted in favor of a city or county shall not require a bond or other security.

(f) Response to the Petition. – The respondent may, but need not, file a response to the petition, except that, if the respondent contends for the first time that any petitioner lacks standing to bring the appeal, that contention must be set forth in a response served on all petitioners at least 30 days prior to the hearing on the petition. If it is not served within that time period, the matter may be continued to allow the petitioners time to respond.

(g) Intervention. – Rule 24 of the Rules of Civil Procedure governs motions to intervene as a petitioner or respondent in an action initiated under this section with the following exceptions:

(1) Any person described in subdivision (1) of subsection (c) of this section has standing to intervene and shall be allowed to intervene as a matter of right.

(2) Any person, other than one described in subdivision (1) of subsection (c) of this section, who seeks to intervene as a petitioner must demonstrate that the

person would have had standing to challenge the decision being appealed in accordance with subdivisions (2) through (4) of subsection (c) of this section.

(3) Any person, other than one described in subdivision (1) of subsection (c) of this section, who seeks to intervene as a respondent must demonstrate that the person would have had standing to file a petition in accordance with subdivisions (2) through (4) of subsection (c) of this section if the decision-making board had made a decision that is consistent with the relief sought by the petitioner.

For intervention under subdivisions (2) and (3) of this subsection, a motion to intervene is untimely and shall not be allowed if filed after the court has rendered a final judgment on the underlying appeal.

(h) The Record. – The record shall consist of the decision and all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the local government respondent, or the respondent decision-making board, upon all petitioners within three days after it is filed with the court.

(i) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. The court shall allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the petition raises any of the following issues, in which case the rules of discovery set forth in the North Carolina Rules of Civil Procedure apply to the supplementation of the record of these issues:

(1) Whether ~~a petitioner or~~ an intervenor has standing.

(2) Whether, as a result of impermissible conflict as described in G.S. 160D-109 or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles. A failure to object at a hearing by a person with standing under subsection (c) of this section shall not constitute a waiver of a right to assert impermissible conflict involving any member of the quasi-judicial decision-making body.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

(j) Scope of Review. –

(1) When reviewing the decision under the provisions of this section, the court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the local government, including preemption, or the authority conferred upon the decision-making board by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by competent, material, and substantial evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the court is one set forth in sub-subdivisions a. through d. of subdivision (1) of this subsection, including whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate. Whether the record contains competent, material, and substantial evidence is a conclusion of law, reviewable de novo.

(3) The term "competent evidence," as used in this subsection, does not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) except for the items noted in sub-subdivisions a., b., and c. of this subdivision that are conclusively incompetent, the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall, regardless of the lack of a timely objection, not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way affects the value of other property.

b. The increase in vehicular traffic resulting from a proposed development poses a danger to the public safety. An approval by the North Carolina Department of Transportation of a traffic impact analysis for a development project shall be conclusive evidence that the traffic related to the project will not pose a danger to the public safety and will otherwise preclude using traffic as a basis for denying a development permit.

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

(j1) Action Not Rendered Moot by Loss of Property. – Subject to the limitations in the State and federal constitutions and State and federal case law, an action filed under this section is not rendered moot, if during the pendency of the action, the aggrieved person loses the applicable property interest as a result of the local government action being challenged and exhaustion of an appeal described herein is required for purposes of preserving a claim for damages under G.S. 160D-1403.1.

(k) Decision of the Court. – Following its review of the decision-making board in accordance with subsection (j) of this section, the court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall determine what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact

are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision by the decision-making board is not supported by competent, material, and substantial evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically:

a. If the court concludes that a permit was wrongfully denied because the denial was not based on competent, material, and substantial evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued, subject to any conditions expressly consented to by the permit applicant as part of the application or during the board of adjustment appeal or writ of certiorari appeal.

b. If the court concludes that a permit was wrongfully issued because the issuance was not based on competent, material, and substantial evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be revoked.

c. If the court concludes that a zoning board decision upholding a zoning enforcement action was not supported by substantial competent evidence or was otherwise based on an error of law, the court shall reverse the decision.

(*l*) Effect of Appeal ~~and Ancillary Injunctive Relief. –~~ of Administrative Decision on a Permitted Use. –

~~(1)~~ If a development approval is ~~appealed,~~ appealed on the basis of a use not being permitted by a development regulation, the applicant shall have the right to commence work while the appeal is pending. However, if ~~the development approval is reversed by a final decision of~~ any court of competent ~~jurisdiction,~~ jurisdiction determines that the use is not allowed, the applicant shall not be deemed to have gained any vested rights on the basis of actions taken prior to or during the pendency of the appeal and must proceed as if no development approval had been granted.

~~(2)~~ ~~Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal.~~

(*l*1) Effect of Appeal of Quasi-Judicial Relief. –

(1) An appeal by a party with standing under subsection (c) of this section from the granting of a special use permit by a local board or other development permit issued pursuant to quasi-judicial proceedings shall be rendered moot if development authorized by the approved permit substantially commences prior to the issuance of an injunction by a court under subsection (o) of this section or under Rule 65 of the Rules of Civil Procedure with appropriate security.

(2) If a special use permit is issued by the applicable local board after remand from a decision of a court of competent jurisdiction and no injunction is otherwise in place to prevent the issuance of a permit, any appeal related to the subject matter of the permit is rendered moot.

(m) Joinder. – A declaratory judgment brought under G.S. 160D-1401 or other civil action relating to the decision at issue may be joined with the petition for writ of certiorari and decided in the same proceeding.

(n) Stays. – An appeal under this section is stayed as provided in G.S. 160D-405.

(o) Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal. The court shall require the moving party to post an appropriate bond set by the judge or clerk issuing the stay. A local government shall not be required to post a bond under this subsection."

PART III. LOCAL GOVERNMENT REPORTING ON GROWTH HAMPERING DENIALS

SECTION 3.1. Beginning October 1, 2021, every local government engaged in development permitting review shall submit a semiannual report to the Joint Legislative Committee on Local Government and the Fiscal Research Division. The report shall contain at least all of the following:

(1) The number of development permit applications received.

(2) The number of development permit applications denied and the reason for denial.

(3) The number of down-zoning ordinances enacted.

PART IV. EFFECTIVE DATE

SECTION 4.1. Except as otherwise provided, this act is effective when it becomes law. Sections 2.1, 2.5, and 2.6 of this act clarify and restate the intent of existing law and apply to permit applications filed and appeals taken before, on, and after the effective date.

FILED SENATE
Mar 24, 2021
S.B. 349
PRINCIPAL CLERK

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

S D

SENATE BILL DRS15162-MQ-32A

Short Title:	Increase Housing Opportunities.	(Public)
Sponsors:	Senators Edwards, Newton, and Fitch (Primary Sponsors).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO PROVIDE REFORMS TO LOCAL GOVERNMENT ZONING AUTHORITY TO INCREASE HOUSING OPPORTUNITIES AND TO MAKE VARIOUS CHANGES AND CLARIFICATIONS TO THE ZONING STATUTES.

The General Assembly of North Carolina enacts:

PART I. AFFORDABLE HOUSING OPTIONS

SECTION 1.1.(a) Article 7 of Chapter 160D of the General Statutes is amended by adding a new section to read:

"**§ 160D-707. Middle housing use in residential zones.**

(a) Definitions. – As used in this section, the term "middle housing" means a residential dwelling that is one of the following, as defined by the North Carolina Building Code Council:

(1) A duplex.
(2) A triplex.
(3) A quadplex.
(4) A townhouse.

(b) Middle Housing in Residential Zones. – A local government shall allow all middle housing types in areas zoned for residential use, including those that allow for the development of detached single-family dwellings.

(c) Regulation and Scope. – A local government may regulate middle housing pursuant to the provisions of this Chapter, provided that the regulations do not act to discourage development of middle housing types through unreasonable costs or delay. In permitting middle housing types, nothing in this section shall be construed to prohibit a local government from permitting single-family dwellings in areas zoned to allow for single-family dwellings. Nothing in this section affects the validity or enforceability of private covenants or other contractual agreements among property owners relating to dwelling type restrictions. Any regulation adopted pursuant to this section shall not apply to an area designated as a local historic district (i) pursuant to Part 4 of Article 9 of this Chapter or (ii) on the National Register of Historic Places. This section shall only apply to areas that are served, or through extension may be served, by one or more of the following:

(1) A local government water system.
(2) A local government sewer system.
(3) A public water system.
(4) A wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which

a permit is issued under Part 1 of Article 21 of Chapter 143 of the General Statutes."

SECTION 1.1.(b) G.S. 160D-102 is amended by adding a new subdivision to read:

"(28a) Single-family dwelling. – The term shall include all of the types of middle housing as defined in G.S. 160D-707(a)."

SECTION 1.1.(c) This section becomes effective October 1, 2021.

SECTION 1.2. The North Carolina Building Code Council (Council) shall adopt amendments to the North Carolina Residential Code for One- and Two-Family Dwellings (Code) to define and include regulation of triplex dwelling units and quadplex dwelling units in order to facilitate regulation of those units in areas zoned for residential use, including those that allow for the development of detached single-family dwellings. Upon adoption of the amendments, the Council and local governments enforcing the Code shall regulate triplex dwelling units and quadplex dwelling units being sited pursuant to G.S. 160D-707, as enacted in this act, under the new amendments to the Code.

SECTION 1.3.(a) Part 1 of Article 9 of Chapter 160D of the General Statutes is amended by adding a new section to read:

"**§ 160D-917. Accessory dwelling units.**

(a) A local government shall allow the development of at least one accessory dwelling unit which conforms to the North Carolina Residential Code for One- and Two-Family Dwellings, including applicable provisions from State fire prevention code, for each detached single-family dwelling in areas zoned for residential use that allow for development of detached single-family dwellings. For the purposes of this section, the term "accessory dwelling unit" means an attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

(b) Development and permitting of an accessory dwelling unit shall not be subject to any of the following requirements:

(1) Owner-occupancy of any dwelling unit, including an accessory unit.
(2) Minimum parking requirements or other parking restrictions.
(3) Conditional use zoning.

(c) In permitting accessory dwelling units under this section, a local government shall not do any of the following:

(1) Prohibit the connection of the accessory dwelling unit to existing utilities serving the primary dwelling unit.
(2) Charge any fee other than a building permit that does not exceed the amount charged for any single-family dwelling unit similar in nature.
(3) Establish development setbacks that differ from the development setbacks applicable for a similarly situated lot in the same zoning classification."

SECTION 1.3.(b) This section becomes effective October 1, 2021.

SECTION 1.4.(a) G.S. 42A-3 reads as rewritten:

"**§ 42A-3. Application; exemptions.**

(a) The provisions of this Chapter shall apply to any person, partnership, corporation, limited liability company, association, or other business entity who acts as a landlord or real estate broker engaged in the rental or management of residential property for vacation rental as defined in this Chapter. The provisions of G.S. 160A-424 and G.S. 153A-364 shall apply to properties covered under this Chapter.

(b) The provisions of this Chapter shall not apply to:

(1) Lodging provided by hotels, motels, tourist camps, and other places subject to regulation under Chapter 72 of the General Statutes.
(2) Rentals to persons temporarily renting a dwelling unit when traveling away from their primary residence for business or employment purposes.
(3) Rentals to persons having no other place of primary residence.

(4) Rentals for which no more than nominal consideration is given.

(5) Accessory dwelling units permitted pursuant to G.S. 160D-917."

SECTION 1.4.(b) This section becomes effective October 1, 2021.

SECTION 1.5. Local governments shall adopt land use ordinances and regulations or amend their comprehensive plans to implement the provisions in this Part no later than October 1, 2021.

SECTION 1.6. Except as otherwise provided, this Part is effective when it becomes law.

PART II. VARIOUS CHANGES AND CLARIFICATIONS TO THE ZONING STATUTES FOR MORE HOUSING OPPORTUNITIES

SECTION 2.1. G.S. 160D-108 reads as rewritten:

"**§ 160D-108. Permit choice and vested rights.**

(a) Findings. – The General Assembly recognizes that local government approval of development typically follows significant investment in site evaluation, planning, development costs, consultant fees, and related expenses. The General Assembly finds that it is necessary and desirable to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the development regulation process, to secure the reasonable expectations of landowners, and to foster cooperation between the public and private sectors in land-use planning and development regulation. The provisions of this section and G.S. 160D-108.1 strike an appropriate balance between private expectations and the public interest.

(b) Permit Choice. – If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, G.S. 143-755 applies.

(b1) Substantial Compliance. – A development permit application that substantially complies with the provision of information required by ordinance or regulation shall be sufficient to accept and process a request for a local or State development permit. Minor omissions in the application shall not be a sufficient basis to make an application ineligible for vesting. A local development regulation shall not condition the acceptance or processing of a development permit application upon the application for or issuance of a State permit, nor shall a State development regulation condition the acceptance or processing of a development permit application upon a local permit, unless specifically authorized by statute.

(c) Vested Rights. – Amendments in land development regulations are not applicable or enforceable without the written consent of the owner with regard to any of the following:

(1) Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.

(2) Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.

(3) A site-specific vesting plan pursuant to G.S. 160D-108.1.

(4) A multi-phased development pursuant to subsection (f) of this section.

(5) A vested right established by the terms of a development agreement authorized by Article 10 of this Chapter.

The establishment of a vested right under any subdivision of this subsection does not preclude vesting under one or more other subdivisions of this subsection or vesting by application of common law principles. A vested right, once established as provided for in this section or by common law, precludes any action by a local government that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations, except where a change in State or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use.

(d) Duration of Vesting. – Upon issuance of a development permit, the statutory vesting granted by subsection (c) of this section for a development project is effective upon filing of the application in accordance with G.S. 143-755, for so long as the permit remains valid pursuant to law. Unless otherwise specified by this section or other statute, local development permits expire one year after issuance unless work authorized by the permit has substantially commenced. A local land development regulation may provide for a longer permit expiration period. For the purposes of this section, a permit is issued either in the ordinary course of business of the applicable governmental agency or by the applicable governmental agency as a court directive.

Except where a longer vesting period is provided by statute or land development regulation, the statutory vesting granted by this ~~section,~~ section or common law vesting, once established, expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory vesting period granted by this section or common law vesting for a nonconforming use of property expires if the use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month discontinuance period is automatically tolled during the pendency of any board of adjustment proceeding or civil action in a State or federal trial or appellate court regarding the validity of a development permit, the use of the property, or the existence of the statutory vesting period granted by this section. The 24-month discontinuance period is also tolled during the pendency of any litigation involving the development project or property that is the subject of the vesting.

(e) Multiple Permits for Development Project. – Subject to subsection (d) of this section, where multiple ~~local~~ development permits are required to complete a development project, the development permit applicant may choose the version of each of the ~~local~~ land development regulations applicable to the project upon submittal of the application for the initial development permit. ~~This~~ Except as provided in subsection (f) of this section, this provision is not applicable ~~only~~ for those subsequent development permit applications filed ~~within~~ after 18 months of the latter of (i) the date ~~following the approval of an initial~~ of cessation of work related to the uncompleted development project or (ii) the date of issuance of the immediately preceding local development permit. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

(f) Multi-Phased Development. – A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.

(g) Continuing Review. – Following issuance of a development permit, a local government may make subsequent inspections and reviews to ensure compliance with the applicable land development regulations in effect at the time of the original application.

(h) Process to Claim Vested Right. – A person claiming a statutory or common law vested right may submit information to substantiate that claim to the zoning administrator or other officer designated by a land development regulation, who shall make an initial determination as to the existence of the vested right. The decision of the zoning administrator or officer may be appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination or pursuing an appeal under G.S. 160D-405, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.

(i) Miscellaneous Provisions. – The vested rights granted by this section run with the land except for the use of land for outdoor advertising governed by G.S. 136-131.1 and

G.S. 136-131.2 in which case the rights granted by this section run with the owner of a permit issued by the North Carolina Department of Transportation. Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

(j) Definitions. – As used in this section, the following definitions apply:

(1) Development. – As defined in G.S. 143-755(e)(1).

(2) Development permit. – As defined in G.S. 143-755(e)(2).

(3) Land development regulation. – As defined in G.S. 143-755(e)(3).

(4) Multi-phased development. – A development containing 25 acres or more that is both of the following:

a. Submitted for development permit approval to occur in more than one phase.

b. Subject to a master development plan with committed elements showing the type and intensity of use of each phase."

SECTION 2.2. G.S. 160D-702 reads as rewritten:

"**§ 160D-702. Grant of power.**

(a) A local government may adopt zoning regulations. Except as provided in subsections (b) ~~and (c)~~ through (e) of this section, a zoning regulation may regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lots that may be occupied; the size of yards, courts, and other open spaces; the density of population; the location and use of buildings, structures, and land. A local government may regulate development, including floating homes, over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12. A zoning regulation shall provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11. Where appropriate, a zoning regulation may include requirements that street and utility rights-of-way be dedicated to the public, that provision be made of recreational space and facilities, and that performance guarantees be provided, all to the same extent and with the same limitations as provided for in G.S. 160D-804 and G.S. 160D-804.1.

(b) Any regulation relating to building design elements adopted under this Chapter may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings except under one or more of the following circumstances:

(1) The structures are located in an area designated as a local historic district pursuant to Part 4 of Article 9 of this Chapter.

(2) The structures are located in an area designated as a historic district on the National Register of Historic Places.

(3) The structures are individually designated as local, State, or national historic landmarks.

(4) The regulations are directly and substantially related to the requirements of applicable safety codes adopted under G.S. 143-138.

(5) Where the regulations are applied to manufactured housing in a manner consistent with G.S. 160D-908 and federal law.

(6) Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 160D-604 or G.S. 160D-605 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan.

For the purposes of this subsection, the phrase "building design elements" means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms. The phrase "building design elements" does not include any of the following: (i) the height, bulk, orientation, or location of a structure on a zoning lot, (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors, or (iii) regulations adopted pursuant to this Article governing the permitted uses of land or structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

Nothing in this subsection affects the validity or enforceability of private covenants or other contractual agreements among property owners relating to building design elements.

(c) A zoning regulation shall not set a minimum square footage of any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings.

(d) A local government shall not adopt or enforce an ordinance downzoning property, as defined in G.S. 160D-601(d), that has access to public water or public sewer, unless the local government can show a change in circumstances that substantially affects the public health, safety, or welfare.

(e) A local government shall not adopt or enforce an ordinance that establishes a ban or has the effect of establishing a ban on a use of land that is not an industrial use, a nuisance per se, or that does not otherwise pose a serious threat to the public health, safety, or welfare.

(f) Nothing in this section shall be construed to limit the authority of a local government to regulate adult establishments or other facilities as defined in Article 26A of Chapter 14 of the General Statutes."

SECTION 2.3. G.S. 160D-703 reads as rewritten:

"**§ 160D-703. Zoning districts.**

(a) Types of Zoning Districts. – A local government may divide its territorial jurisdiction into zoning districts of any number, shape, and area deemed best suited to carry out the purposes of this Article. Within those districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Zoning districts may include, but are not be limited to, the following:

(1) Conventional districts, in which a variety of uses are allowed as permitted uses or uses by right and that may also include uses permitted only with a special use permit.

(2) Conditional districts, in which site plans or individualized development conditions are imposed.

(3) Form-based districts, or development form controls, that address the physical form, mass, and density of structures, public spaces, and streetscapes.

(4) Overlay districts, in which different requirements are imposed on certain properties within one or more underlying conventional, conditional, or form-based districts.

(5) Districts allowed by charter.

(b) Conditional Districts. – Property may be placed in a conditional district only in response to a petition by all owners of the property to be included. Specific conditions may be proposed by the petitioner or the local government or its agencies, but only those conditions approved by the local government and consented to by the petitioner in writing may be incorporated into the zoning regulations. Unless consented to by the petitioner in writing, in the exercise of the authority granted by this section, a local government may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to local government ordinances, plans adopted pursuant to G.S. 160D-501, or the impacts reasonably expected to be generated by the development or use of the site. The zoning regulation may provide that defined minor modifications in conditional district standards that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification of the conditions and standards in a conditional district shall follow the same process for approval as are applicable to zoning map amendments. If multiple parcels of land are subject to a conditional zoning, the owners of individual parcels may apply for modification of the conditions so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved apply only to those properties whose owners petition for the modification.

(c) Uniformity Within Districts. – Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district but the regulations in one district may differ from those in other districts.

(d) Standards Applicable Regardless of District. – A zoning regulation or unified development ordinance may also include development standards that apply uniformly jurisdiction-wide rather than being applicable only in particular zoning districts.

(e) Limitations. – A local government shall not engage in any of the following practices:

(1) The adoption or enforcement of an ordinance that downzones property in order to evade voluntary consent of landowners or petitioners or any other requirements contained in subsection (b) of this section.

(2) Allow a particular land use only through conditional zoning.

(3) Establishing a threshold on square footage or the number of dwelling units, where to exceed the threshold would require conditional zoning."

SECTION 2.4. Article 7 of Chapter 160D of the General Statutes is amended by adding a new section to read:

"**§ 160D-703.1. Remedies for violations.**

(a) If a court finds that a local government has acted in violation of G.S. 160D-702 or G.S. 160D-703(e), the court shall award reasonable attorneys' fees and costs to the party who successfully challenged the actions of the local government.

(b) In the event that a court invalidates a regulation pursuant to this section, a permit applicant may choose which zoning designation will apply to the permit and use of the building, structure, or land indicated on the permit application from the following options:

(1) The zoning development regulation that existed most recently prior to the invalidated regulation.

(2) The least restrictive development standards contained within the zoning designation for the jurisdiction that is the most similar zoning designation to the class of property use identified in the permit application.

(c) For the purposes of this section, the term "class of property use" means one of the following major land-use groups:

(1) Commercial.

(2) Governmental.

(3) Industrial.

(4) Institutional.

(5) Residential."

SECTION 2.5. G.S. 160D-706 reads as rewritten:

"**§ 160D-706. Zoning conflicts with other development standards.**

(a) When regulations made under authority of this Article require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left ~~unoccupied, or impose other higher standards~~ unoccupied than are required in any other statute or local ordinance or regulation, the regulations made under authority of this Article govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left ~~unoccupied, or impose other higher standards~~ unoccupied than are required by the regulations made under authority of this Article, the provisions of that statute or local ordinance or regulation govern.

(b) When adopting regulations under this Article, a local government may not use a definition of building, dwelling, dwelling unit, bedroom, or sleeping unit that is inconsistent with any definition of those terms in another statute or in a rule adopted by a State agency, including the State Building Code Council.

(c) Except as provided in subsection (a) of this section, a local government shall not adopt or enforce development regulations that alter the principle that ambiguities in land development regulations are to be construed in favor of the free use of land, including any development regulations that assert that a more restrictive rule or regulation is controlling.

(d) Subject to the provisions of Article 33 of Chapter 143 of the General Statutes, a local government, through its governing board, is authorized to settle any litigation related to the enforcement of or compliance with development regulations for a development or a development permit applicant, including any quasi-judicial development permit."

SECTION 2.6. G.S. 160D-1402 reads as rewritten:

"**§ 160D-1402. Appeals in the nature of certiorari.**

(a) Applicability. – This section applies to appeals of quasi-judicial decisions of decision-making boards when that appeal is in the nature of certiorari as required by this Chapter.

(b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing a petition for writ of certiorari with the superior court. The petition shall do all of the following:

(1) State the facts that demonstrate that the petitioner has standing to seek review.

(2) Set forth allegations sufficient to give the court and parties notice of the grounds upon which the petitioner contends that an error was made.

(3) Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of an impermissible conflict as described in G.S. 160D-109, or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.

(4) Set forth the relief the petitioner seeks.

(c) Standing. – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons have standing to file a petition under this section:

(1) Any person possessing any of the following criteria:

a. An ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

b. An option or contract to purchase the property that is the subject of the decision being appealed.

c. An applicant before the decision-making board whose decision is being appealed.

(2) Any other person who will suffer special damages as the result of the decision being appealed.

(3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(4) A local government whose decision-making board has made a decision that the governing board believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of a development regulation adopted by the governing board.

(d) Respondent. – The respondent named in the petition shall be the local government whose decision-making board made the decision that is being appealed, except that if the petitioner is a local government that has filed a petition pursuant to subdivision (4) of subsection (c) of this section, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing, or was an applicant, before the decision-making board.

(e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of superior court of the county in which the matter arose. The writ shall direct the respondent local government or the respondent decision-making board, if the petitioner is a local government that has filed a petition pursuant to subdivision (4) of subsection (c) of this section, to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct the petitioner to serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a decision-making board, the petition and the writ shall be served upon the chair of that decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure applies in the event the chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

Upon the filing of a petition for writ of certiorari, a party may request a stay of the execution or enforcement of the decision of the quasi-judicial board pending superior court review. The court may grant a stay in its discretion and on conditions that properly provide for the security of the adverse party. A stay granted in favor of a city or county shall not require a bond or other security.

(f) Response to the Petition. – The respondent may, but need not, file a response to the petition, except that, if the respondent contends for the first time that any petitioner lacks standing to bring the appeal, that contention must be set forth in a response served on all petitioners at least 30 days prior to the hearing on the petition. If it is not served within that time period, the matter may be continued to allow the petitioners time to respond.

(g) Intervention. – Rule 24 of the Rules of Civil Procedure governs motions to intervene as a petitioner or respondent in an action initiated under this section with the following exceptions:

(1) Any person described in subdivision (1) of subsection (c) of this section has standing to intervene and shall be allowed to intervene as a matter of right.

(2) Any person, other than one described in subdivision (1) of subsection (c) of this section, who seeks to intervene as a petitioner must demonstrate that the

person would have had standing to challenge the decision being appealed in accordance with subdivisions (2) through (4) of subsection (c) of this section.

(3) Any person, other than one described in subdivision (1) of subsection (c) of this section, who seeks to intervene as a respondent must demonstrate that the person would have had standing to file a petition in accordance with subdivisions (2) through (4) of subsection (c) of this section if the decision-making board had made a decision that is consistent with the relief sought by the petitioner.

For intervention under subdivisions (2) and (3) of this subsection, a motion to intervene is untimely and shall not be allowed if filed after the court has rendered a final judgment on the underlying appeal.

(h) The Record. – The record shall consist of the decision and all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the local government respondent, or the respondent decision-making board, upon all petitioners within three days after it is filed with the court.

(i) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. The court shall allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the petition raises any of the following issues, in which case the rules of discovery set forth in the North Carolina Rules of Civil Procedure apply to the supplementation of the record of these issues:

(1) Whether ~~a petitioner or~~ an intervenor has standing.

(2) Whether, as a result of impermissible conflict as described in G.S. 160D-109 or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles. A failure to object at a hearing by a person with standing under subsection (c) of this section shall not constitute a waiver of a right to assert impermissible conflict involving any member of the quasi-judicial decision-making body.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

(j) Scope of Review. –

(1) When reviewing the decision under the provisions of this section, the court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the local government, including preemption, or the authority conferred upon the decision-making board by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by competent, material, and substantial evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the court is one set forth in sub-subdivisions a. through d. of subdivision (1) of this subsection, including whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate. Whether the record contains competent, material, and substantial evidence is a conclusion of law, reviewable de novo.

(3) The term "competent evidence," as used in this subsection, does not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) except for the items noted in sub-subdivisions a., b., and c. of this subdivision that are conclusively incompetent, the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall, regardless of the lack of a timely objection, not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way affects the value of other property.

b. The increase in vehicular traffic resulting from a proposed development poses a danger to the public safety. An approval by the North Carolina Department of Transportation of a traffic impact analysis for a development project shall be conclusive evidence that the traffic related to the project will not pose a danger to the public safety and will otherwise preclude using traffic as a basis for denying a development permit.

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

(j1) Action Not Rendered Moot by Loss of Property. – Subject to the limitations in the State and federal constitutions and State and federal case law, an action filed under this section is not rendered moot, if during the pendency of the action, the aggrieved person loses the applicable property interest as a result of the local government action being challenged and exhaustion of an appeal described herein is required for purposes of preserving a claim for damages under G.S. 160D-1403.1.

(k) Decision of the Court. – Following its review of the decision-making board in accordance with subsection (j) of this section, the court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall determine what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact

are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision by the decision-making board is not supported by competent, material, and substantial evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically:

a. If the court concludes that a permit was wrongfully denied because the denial was not based on competent, material, and substantial evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued, subject to any conditions expressly consented to by the permit applicant as part of the application or during the board of adjustment appeal or writ of certiorari appeal.

b. If the court concludes that a permit was wrongfully issued because the issuance was not based on competent, material, and substantial evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be revoked.

c. If the court concludes that a zoning board decision upholding a zoning enforcement action was not supported by substantial competent evidence or was otherwise based on an error of law, the court shall reverse the decision.

(*l*) Effect of Appeal ~~and Ancillary Injunctive Relief. –~~ of Administrative Decision on a Permitted Use. –

~~(1)~~ If a development approval is ~~appealed,~~ appealed on the basis of a use not being permitted by a development regulation, the applicant shall have the right to commence work while the appeal is pending. However, if ~~the development approval is reversed by a final decision of~~ any court of competent ~~jurisdiction,~~ jurisdiction determines that the use is not allowed, the applicant shall not be deemed to have gained any vested rights on the basis of actions taken prior to or during the pendency of the appeal and must proceed as if no development approval had been granted.

~~(2) Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal.~~

(*l*1) Effect of Appeal of Quasi-Judicial Relief. –

(1) An appeal by a party with standing under subsection (c) of this section from the granting of a special use permit by a local board or other development permit issued pursuant to quasi-judicial proceedings shall be rendered moot if development authorized by the approved permit substantially commences prior to the issuance of an injunction by a court under subsection (o) of this section or under Rule 65 of the Rules of Civil Procedure with appropriate security.

(2) If a special use permit is issued by the applicable local board after remand from a decision of a court of competent jurisdiction and no injunction is otherwise in place to prevent the issuance of a permit, any appeal related to the subject matter of the permit is rendered moot.

(m) Joinder. – A declaratory judgment brought under G.S. 160D-1401 or other civil action relating to the decision at issue may be joined with the petition for writ of certiorari and decided in the same proceeding.

(n) Stays. – An appeal under this section is stayed as provided in G.S. 160D-405.

(o) Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal. The court shall require the moving party to post an appropriate bond set by the judge or clerk issuing the stay. A local government shall not be required to post a bond under this subsection."

PART III. LOCAL GOVERNMENT REPORTING ON GROWTH HAMPERING DENIALS

SECTION 3.1. Beginning October 1, 2021, every local government engaged in development permitting review shall submit a semiannual report to the Joint Legislative Committee on Local Government and the Fiscal Research Division. The report shall contain at least all of the following:

(1) The number of development permit applications received.
(2) The number of development permit applications denied and the reason for denial.
(3) The number of down-zoning ordinances enacted.

PART IV. EFFECTIVE DATE

SECTION 4.1. Except as otherwise provided, this act is effective when it becomes law. Sections 2.1, 2.5, and 2.6 of this act clarify and restate the intent of existing law and apply to permit applications filed and appeals taken before, on, and after the effective date.

H.B. 496
Apr 5, 2021
HOUSE PRINCIPAL CLERK

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H **D**

HOUSE BILL DRH10236-LM-110

Short Title:	Property Owners' Rights/Tree Ordinances.	(Public)
Sponsors:	Representative Boles.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT COUNTIES AND CITIES SHALL NOT ADOPT ORDINANCES REGULATING THE REMOVAL OF TREES FROM PRIVATE PROPERTY WITHOUT THE EXPRESS AUTHORIZATION OF THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read as follows:

"**§ 153A-145.9. Limitations on regulating trees.**

No county may adopt ordinances regulating the removal of trees from private property within the county's jurisdiction without the express authorization of the General Assembly. Neither the general police powers authorized in this Article nor any other powers authorized in this Chapter or in any other general or local law, except a general or local law expressly authorizing a county to adopt ordinances regulating the removal of trees from private property, shall be used by a county's governing body as the basis for adopting ordinances regulating the removal of trees from private property."

SECTION 2. Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read as follows:

"**§ 160A-205.4. Limitations on regulating trees.**

No city may adopt ordinances regulating the removal of trees from private property within the city's corporate limits or extraterritorial jurisdiction without the express authorization of the General Assembly. Neither the general police powers authorized in this Article nor any other powers authorized in this Chapter or in any other general or local law, except a general or local law expressly authorizing a city to adopt ordinances regulating the removal of trees from private property, shall be used by a city's governing body as the basis for adopting ordinances regulating the removal of trees from private property."

SECTION 3. Any local acts authorizing ordinances regulating the removal of trees from private property and any ordinances that were adopted under that authority before the date this act becomes law shall remain in effect after this act becomes law.

SECTION 4. Any ordinances regulating the removal of trees from private property that were adopted before the date this act becomes law without the express authorization of the General Assembly are hereby repealed.

SECTION 5. This act is effective when it becomes law.

DRH10236-LM-110

TOWN OF SWANSBORO
RESOLUTION 2021-R4
OPPOSING HOUSE BILL 401/SENATE BILL 349

WHEREAS the North Carolina General Assembly has proposed the Increase Housing Opportunities bill, otherwise addressed as House Bill 401/DRH10179-MQ-32B and Senate Bill 349/DRS15162-MQ-32A; and

WHEREAS the proposed bills **r**equire local governments to allow all "Middle Housing" types, duplexes, triplexes, quadplexes, and townhomes, in areas zoned for residential use, including those that allow for the development of detached single-family dwellings; and

WHEREAS the proposed bills require local governments to allow the development of at least one accessory dwelling unit for each detached single-family dwelling in areas zoned for residential use and prohibits the regulation of occupancy, parking, setbacks, and method of approval of such units; and

NOW THEREFORE IT BE RESOLVED that the Town of Swansboro Board of Commissioners find that:

1. House Bill 401/Senate Bill 349 would establish higher residential densities within the Town that are in direct conflict with the Town's CAMA 2019 Land Use Plan Update; and
2. The Town currently prohibits accessory dwelling units and limits development to one principal use per lot; and
3. House Bill 401/Senate Bill 349 would allow for both attached and detached Accessory Dwelling Units by right in all single-family zoning districts; and
4. The ability for the Town to regulate density is essential in order to protect public health, safety and welfare, as well as preserving the unique character of the Town of Swansboro; and
5. House Bill 401/Senate Bill 349 would take away the Town's ability to preserve its single-family zoning districts by allowing a variety of housing types to include duplexes, triplexes, quadplexes and townhomes; and
6. House Bill 401/Senate Bill 349 would take away the Town's ability to make land use decisions on what is best for the development of the Town of Swansboro; and

are therefore opposed to the adoption of House Bill 401/Senate Bill 349.

Adopted this 10th day of May 2021.

Town of Swansboro Board of Commissioners

____
John Davis, Mayor

ATTEST:

____
Paula W. Webb, Assistant Town Manager/Town Clerk

TOWN OF SWANSBORO
RESOLUTION 2021-R5
OPPOSING HOUSE BILL 496

WHEREAS the North Carolina General Assembly has proposed the Property Owners' Rights/Tree Ordinances bill, otherwise addressed as House Bill 496/DRH10236-LM-110; and

WHEREAS the proposed bill **r**equires all local governments to obtain special authorization from the General Assembly prior to enacting a tree protection ordinance; and voids all existing ordinances protecting trees that were established without special authority.

NOW THEREFORE IT BE RESOLVED that the Town of Swansboro Board of Commissioners find that:

1. House Bill 496 is in direct conflict with 160D-921 regarding the ability of local jurisdictions to delay approvals following clear cutting;
2. House Bill 496 is in direct conflict with State laws regarding tree preservation within riparian buffers;
3. House Bill 496 is inconsistent with the State's laws regarding tree removal and preservation around outdoor advertising;
4. House Bill 496 creates a conflict with any prior development agreement, conditional rezoning, planned development, or special use permit approval that included tree preservation as a condition of approval;
5. The House Bill 496 language is too general and could create confusion regarding limits on landowners removing required landscaping material that is required as part of a prior development approval;
6. House Bill 496 interferes with local governments who use incentives like supplemental credit towards landscaping requirements for retained/preserved existing vegetation;
7. Requiring each local government to come before the General Assembly for ordinance authority further removes consistency and has the potential to create an even more confusing patchwork of local ordinances about trees across the State; and
8. The State already has language in place to protect tree removal activities undertaken on bona fide farms, present use value land, airports, outdoor advertising, and lands subject to a forestry management plan; and

are therefore opposed to the adoption of House Bill 496.

Adopted this 10th day of May 2021.

Town of Swansboro Board of Commissioners

____
John Davis, Mayor

ATTEST:

____
Paula W. Webb, Assistant Town Manager/Town Clerk

Economic Development Strategic Plan
Town of Swansboro – May 2018

Strategic Goals

I. Develop as a connected community in order to maximize local economic and social interaction

II. Improve and protect the town's natural environment in order to attract new residents and maximize the town's economic development potential.

III. Foster and improve the town's sense of place in order to attract residents, visitors, and business investment.

IV. Actively recruit new businesses; support the expansion of existing businesses; and expand the physical accommodation of growth.

Board of Commissioners Meeting
Agenda Item Submittal

Item To Be Considered: **Residential Cluster Development Regulations**

Board Meeting Date: **May 10, 2021**

Prepared By: **Jennifer Ansell, Planner**

Overview: At the March 2, 2020 regular meeting, the Planning Board discussed their immediate goals with regard to implementation of the Land Use Plan. The first priority established was to re-work the Residential Cluster Development Regulations to strengthen the requirements for the protection of vulnerable areas such as designated wetlands and the floodway.

The proposed amendments require identification of any 401 or 404 wetlands on preliminary plats, prohibits any required open space from being made up of 401 or 404 wetlands, and requires such 401 or 404 wetlands be deeded to the Town.

Action Needed: The Public Hearing was held open at the April 26, 2021 Regular Meeting to allow for written public comments to be submitted to Paula Webb at pwebb@ci.swansboro.nc.us for up to 24 hours;

1) Close the Public Hearing; and
2) Motion to approve, deny or table Ordinance 2021-O1, and adopt one of the statements of consistency below:

Per § 160A-383, zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt one of the following statements which shall not be subject to judicial review:

1) A statement approving the zoning amendment and describing its consistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest;
2) A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest; or
3) A statement approving the zoning amendment and containing at least all of the following:
    a. A declaration that the approval is also deemed an amendment to the comprehensive plan. The governing board shall not require any additional request or application for amendment to the comprehensive plan.

Reviewed By:

Town Manager		**Finance Director**	
Town Clerk	4/20/2021	**Town Attorney**	

Date Action Approved by Board: ____________ **Action if different from Recommended:**

b. An explanation of the change in conditions the governing board took into account in amending the zoning ordinance to meet the development needs of the community.
c. Why the action was reasonable and in the public interest.

Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes:

- to provide adequate light and air;
- to prevent the overcrowding of land;
- to avoid undue concentration of population;
- to lessen congestion in the streets;
- to secure safety from fire, panic, and dangers; and
- to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land.

Attachments
Ordinance 2021-O1
Planning Board Statement of Consistency
2019 CAMA Land Use Plan Update Applicable Sections

ORDINANCE 2021-O1
AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE RESIDENTIAL CLUSTER DEVELOPMENT REGULATIONS

RESIDENTIAL CLUSTER DEVELOPMENT REGULATIONS

§ 152.225 PURPOSE AND INTENT; DEFINITION.

(A) The purpose of residential cluster development is to provide an alternative development option that will:

1) Promote more efficient use of land resources than is otherwise possible under conventional zoning and subdivision regulations;
2) Reduce the per unit site development costs of dwellings by concentrating residential units on a portion of the site without increasing the overall net density above that which would normally be allowed pursuant to §§ 152.195 through 152.196, Table of Area, Yard , and Height Requirements;
3) Preserve the natural character of the site;
4) Preserve farmland and scenic views;
5) Provide for desirable and usable open space, tree cover, and the preservation of environmentally sensitive areas; and
6) Provide variety in residential buildings and properties and provide design flexibility that can relate the location of units to unique site conditions.

(B) For the purposes of this section, a ***RESIDENTIAL CLUSTER DEVELOPMENT*** is defined as:

1) A development design wherein conventional zoning standards are relaxed to permit modifications in lot area , lot width , lot frontage , lot coverage , required yards , and public street access, and to save infrastructure development cost, environmental damage, energy use and land resources by concentrating dwellings in specific areas of the site without increasing the net density above that which would normally be allowed pursuant to §§ 152.195 through 152.196, Table of Area, Yard , and Height Requirements;
2) Such development shall contain detached single-family dwellings only; and
3) Such development shall provide a program for the provision, operation and maintenance of such areas, facilities and improvements as shall be required for the perpetual common use by the occupants of the development.

§ 152.226 AREA; PERMITTED DISTRICTS, EXEMPTION; STREET ACCESS; OPEN SPACE(S); DENSITY; DIMENSIONAL STANDARDS.

(A) Residential cluster developments shall contain not less than five net acres. For purposes of this section “net acres” shall be the total area of all lots and common area(s) exclusive of public street rights-of-way or private street easements. Addition to any existing residential cluster development may be allowed provided such addition meets or exceeds all other applicable requirements.

(B) Subject to division (A) of this section, a residential cluster development may as an option be allowed within any residential zoning district. Such development shall be exempt from the conventional zoning standards relative to lot area, lot width, lot frontage, lot coverage , required yards and public street access normally applicable to such districts, provided such development complies with the minimum standards set forth under this section.

(C) Dwelling units within a residential cluster development may be constructed on lots fronting private streets.

(D) A residential cluster development shall provide open space (s) subject to all the following requirements:

1) Such open space shall be greater or equal in area to the total amount of area by which each lot was reduced below the minimum lot size requirement of the prevailing zoning district, or as provided under division (D)(2) of this section, whichever is greater;
2) Residential cluster developments shall reserve not less than 15% of the gross acreage as common open space;
3) Such area shall not be used as a building site. For purposes of this section, picnic areas or shelters, ball fields, walking or jogging trails, boat ramps and docks or other similar recreational facilities may be allowed;
4) Such area shall not be devoted to any public street right-of-way or private street easement, private driveway or parking area ;
5) Such area shall be left in its natural or undisturbed state if wooded at the time of development, except for the cutting of trails for walking or jogging or, if not wooded at the time of development, is improved for the uses listed under division (D)(3) of this section, or is properly vegetated and landscaped with the objectives of creating a wooded area or other area that is consistent with the objective set forth in division (D)(6) of this section;
6) Such area shall be capable of being used and enjoyed for purposes of informal and unstructured recreation and relaxation or for horticulture if not devoted to other allowable uses in this division;
7) Such area shall be legally and practically accessible to the residents of the development, or to the public if so dedicated;
8) A minimum of one-half of the required open space shall be contained in one continuous undivided part;
9) ~~Not more than 25%~~ None of the required open space shall lie within an area identified as either 401 or 404 wetlands or ~~of the required open space shall lie~~ within any floodway zone;
10) Not more than 25% of the required open space may be devoted to allowable improvements as set forth in division (D)(3) of this section;
11) Such area shall be perpetually owned and maintained for the purposes of this article by a homeowners association or, at the option of the town, dedicated or deeded to the public.
12) The location and arrangement of any open space (s) shall be subject to Planning Board approval during the Preliminary Plat review;
13) The owner shall, pursuant to the subdivision regulations, cause a final subdivision plat to be recorded in the Onslow County Register of Deeds which clearly describes the open space (s) and conditions thereof, prior to the issuance of any building permit(s).
14) These requirements are in addition to those found under Section 152.367, Parks and Recreation Space Requirements, of the Subdivision Ordinance.

(E) Areas identified on the Preliminary Plat as 401 wetlands, 404 wetlands, floodway, or if located within 30 feet of the normal water level along a coastal shoreline shall be reserved and dedicated to the Town. This designation shall be recorded on the face of the Preliminary and Final Plats and a deed recorded conveying the area to the Town for preservation. No structure, impervious surface or other development shall occur in this area other than that which is permitted by the State or other regulatory agency.

§ 152.227 MAXIMUM DENSITY REQUIREMENTS.

(A) Residential density shall not exceed that which would normally be permitted under single-family standards within the prevailing zoning district on a net area basis.

(B) Public street rights-of-way and private street easements shall not be included or count towards the total net area for purposes of calculating allowable density.

(C) Area dedicated or deeded to the town pursuant to the sections above shall count towards net area for purposes of density calculation.

This amendment is effective upon adoption of this Ordinance.

Adopted this 10th day of May 2021.

Town of Swansboro Board of Commissioners

____

John Davis, Mayor

ATTEST:

____

Paula W. Webb, Assistant Manager/Town Clerk

PLANNING BOARD STATEMENT OF CONSISTENCY
Land Use Plan Implementation-Residential Cluster Development Regulations

During its March 15, 2020 special meeting, the Town of Swansboro Planning Board reviewed proposed amendments to the Unified Development Ordinance regarding the Residential Cluster Development Regulations.

The proposed changes are **consistent** with the current Comprehensive Plan, specifically the following sections of the 2019 CAMA Land Use Plan Update:

- Section 4, Goals and Objectives:
    3) Prioritize the Natural Environment that is key to Swansboro's quality of life; and
    6) Build community resilience in a changing environment.
- Section 5, Future Land Use Designations, Conservation priority Area (CPA)
- Section 6, Implementation:
    1) Public Access
    2) Natural Hazard Areas
    3) Water Quality

and have been recommended for **approval** by the Planning Board.

This statement reflects the recommendation of the Town of Swansboro Planning Board this the 15th day of March 2021.

4-0
Vote

Planning Board Chairperson

4 Goals & Objectives

Vision

The town's vision comes from the recently adopted (June 2018) Economic Development Strategic Plan, and states:

> *Swansboro, the quaint and friendly city by the sea, is recognized by visitors and residents as a gem of North Carolina's coast. All who know and appreciate Swansboro celebrate the town's relaxed waterfront lifestyle, abundance of thriving, family-friendly, locally-owned businesses, recreational opportunities, and a broad range of historic, arts, dining, and shopping opportunities. The town remains committed to preserving its heritage, environment, and small-town appeal.*

Goals & Objectives

The goals and objectives were developed through extensive public outreach and input, and will be used to guide re-zonings and investment decisions. They will also be used to guide land use policy decisions in the town. Primary themes from all public outreach are summarized below.

1 Preserve and enhance Swansboro's charming coastal character

- Extend historic development aesthetic/ elements of downtown
- Establish architectural & aesthetic standards to preserve historic character
- Foster and improve the town's sense of place through balanced growth that can attract residents, visitors and business investment

2 Foster growth that sustains and enriches the community

- Encourage context sensitive residential development
- Ensure infrastructure and public services keep pace with growth
- Extend the coastal village design concept to key locations
- Manage multifamily development in locations that create a walkable, mixed use village and promote social interaction

3 Prioritize the natural environment that is key to Swansboro's quality of life

- Utilize conservation measures to protect wetlands, floodplains, environmentally sensitive areas and to enhance water quality
- Utilize conservation-oriented measures
- Encourage water-based recreation and tourism
- Maximize and clarify access to the waterfront
- Make a "place" for people that takes advantage of the unique location and natural assets
- Improve and protect the town's natural environment in order to attract new residents and maximize the town's economic development potential

4 Transform NC 24 into a welcoming thoroughfare to Swansboro and its historic downtown

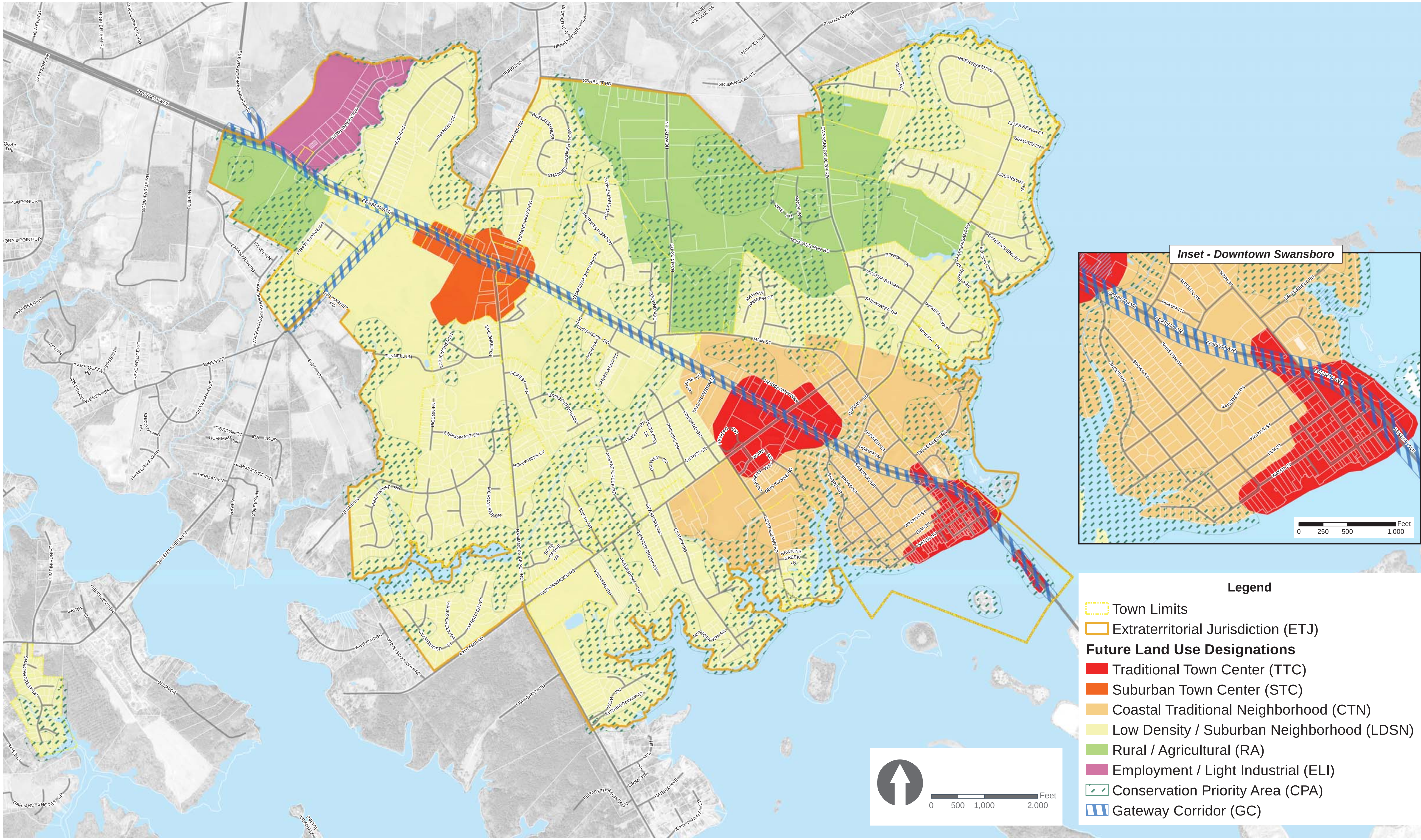
- Encourage mixed use development at nodes/key intersections; discourage additional strip development
- Promote placemaking and an attractive, cohesive development style along NC 24
- The gateway corridor should be designed as a tree-lined boulevard, with trees and other landscaping along the median and both sides of the road

5 Develop as a connected community

- Connect downtown to the north side on NC 24 and to the west
- Connect major destinations including parks, commercial centers, schools with safe sidewalks and off-road paths

6 Build community resilience in a changing environment

- Direct growth and public infrastructure investment to locations that are least likely to be affected by inundation, and where necessary manage the abandonment of imperiled infrastructure
- Accurately communicate risk and regulate high risk areas through enhanced development regulations
- Pursue projects that will increase resiliency to storms, flooding, and sea level rise



SWANSBORO CAMA LAND USE PLAN UPDATE

- Future Land Use Map -

Adopted: January 22, 2019

STEWART

Date printed: 5/9/2019

5

Conservation Priority Area (CPA)

Conservation Priority Areas (CPA) represent opportunities to allow lower density development clustered away from and respectful of environmentally sensitive areas, important natural views, and priority conservation preservation areas as identified by the community. Agricultural preservation was also identified as a community priority, but where Rural Agricultural (RA) areas overlap the CPA, the development character and density restrictions of the RA area shall prevail, and not be further restricted by the CPA.

Character

Generally speaking, flood-prone areas (including 100-yr and 500-yr floodplains), all wetlands (coastal and upland), streams (perennial or “blue line” and intermittent), riparian areas and mature forests are priority preservation areas. This is especially true of areas that have an impact on water quality and accomodation of storm surge.

Development within this overlay should respect the natural environment that creates the quality of life that defines Swansboro. Clustering development away from sensitive environmental features or assets (views, habitat, etc.) is required. Deviations from typical lot standards may be necessary to accommodate clustering.

Coastal wetland

Agricultural field

Access and circulation

Streets will respect the underlying FLU designation, but may be designed with additional criteria that respect and enhance the natural environment. In particular, additional or enhanced flood mitigation, low impact design, or stormwater treatment measures may be necessary.

Setbacks

Setbacks should provide enhanced protection of environmental assets and provide additional buffering for structures or infrastructure that will be placed near CPAs. As such, setbacks will likely be determined by the underlying FLU(s) or zoning, but with additional setbacks from environmental features (stream, wetland, floodplain, open water body) that are within the CPA.

Massing and building heights

Modifications to the massing standards of the underlying FLU may be necessary to protect environmental resources and additional attention may be necessary to accommodate views of CPAs, which in some cases are considered a community asset.

Example of Conservation Priority Area (CPA) with coastal wetlands.

Blocks

- Blocks are allowed as appropriate for the underlying FLU category, but larger blocks should be allowed if necessary to avoid environmentally sensitive areas.
- Stub-out connections should be located logically to facilitate future connections to adjacent areas, if environmentally feasible.

Parking

Parking areas should be designed to minimize stormwater generation or other negative externalities (i.e. - light pollution, runoff, etc.) that might impact CPAs.

Appropriate Density / Intensity

Low intensity development is allowed within this FLU designation at 50% of the gross density otherwise specified by the underlying FLU category. This means that less development will occur in or near the CPAs. All development that does occur must be clustered in the least environmentally sensitive part of the property and net density in that clustered, developed area may exceed the gross density for the total property, particularly if it is uplands.

Example of Conservation or Cluster subdivision. (Source: Chatham County Comprehensive Plan)

Representative Areas

Currently, there are no representative areas in town that effectively demonstrate environmentally respectful cluster development.

Other Concerns

It is important to note maps within this plan depicting the CPA are for reference only, as these areas will naturally shift and realign, requiring field verification to determine exact location.

Lowering the intensity and density of development within this area in the town's jurisdiction may result in the demand for that development being displaced elsewhere, including to the area just outside the ETJ. If Onslow County has less restrictive regulations on development, it is likely this will result in additional higher intensity growth just outside of town, which could quickly consume farmland and land in environmentally-sensitive areas. This effect will likely be accelerated by availability of water and sewer services by the ONWASA. Consequenlty, the Town should coordinate with the County to implement a mutually-beneficial solution to this potential problem.

RECOMMENDATIONS & STRATEGIES

Community plans are meant to be living documents. Priorities and directions are set in the plan, but implementation of the plan's recommendations and strategies will be carried out by Town leadership and staff. Swansboro embarked on the Land Use Plan update at the same time as other planning efforts, offering the opportunity for plans to be significantly aligned to each other, and enhancing the likelihood of successful implementation. The following recommendations and strategies are intended to provide additional guidance for implementing the goals and objectives of this plan.

PUBLIC ACCESS

PROVIDE, ENHANCE, AND ENFORCE PUBLIC WATER ACCESS.

Waterfront access points should be clearly designated and designed as public spaces, without encroachment from neighboring property owners attempting to exert private influence over the area. Enhanced facilities (kayak and canoe launches, public benches or tables, trash cans, docks, etc.) also increase the appeal and use of these areas. When providing public access to waterfront areas, natural shoreline and habitat should be preserved as much as possible to protect water quality.

PROTECT VIEWS OF THE WATER AND OF NATURAL AREAS AND WETLANDS.

Preserve signature views and create new visual and/or physical connections to the water when accommodating new growth. Partner with land owners in existing development to increase connections to the shoreline.

Increase ADA accessibility and implement ADA Transition Plan.

The Americans with Disability Act (ADA) accessibility retrofits can be difficult to implement in older sections of town where space is limited. However, providing access, particularly to businesses and areas the general public is invited to visit, is important and should be the norm when evaluating upfits or redevelopment plans. The creation, adoption, and implementation of an ADA Transition Plan should also be a top priority.

Land use compatibility

Incorporate development standards that implement the character descriptions proposed in the future land use category descriptions.

The development character of certain parts of town are prized and must be measured and codified in the zoning code in order to see those changes occur in new development. A revision of the development standards and zoning regulations should be undertaken to see the character of the future land use designations carried forward into new development. For instance, parking minimums and maximums should be reviewed and revised to better implement the recommendations and goals of this plan.

Review development standards of the downtown and the historic neighborhoods surrounding downtown, and extend those standards to areas in the Traditional Town Center (TTC) and Coastal Traditional Neighborhood (CTN).

The people of Swansboro treasure the feel and character of the historic downtown and surrounding residential areas. This character should be quantified and codified so that future development and redevelopment can achieve a similar feel (setbacks, lot widths, parking location, materials, etc.), while also incorporating enhanced standards and performance (stormwater, pedestrian facilities, ADA access, etc.)

Continue to implement adopted town plans.

For plans to remain relevant and actionable, they must be acted upon, reviewed, and revised regularly, which may be as simple as a regular status update from staff on accomplishments and status of projects within each plan. Aging plans should be reviewed and revised to remain relevant, and a progress update schedule developed for each relevant plan with associated responsible town department.

Continue implementation of the adopted town plans, including but not limited to:

- Economic Development Strategy (2018)
- Parks & Recreation Master Plan (2019)
- Watershed Restoration Plan (2017)

Create zoning standards and strategies to address development in and near Rural Agricultural (RA).

Farming is a largely industrial activity that can create significant nuisances for adjacent residential properties. However residential development will seek to locate on dry, flat areas, most of which have previously been or adjacent to farmland. Enhance zoning standards for rural development to buffer and compliment farmland in the RA.

Create zoning standards to enhance the function and appearance of the Gateway Corridor (GC), particularly the NC 24 corridor.

The public open house workshop identified several areas where public support exists for strengthening regulations along the NC 24 corridor. Implement the recommendations of the Gateway Corridor Plan, including but not limited to enhancement of the Gateway Corridor character area through development guidelines and ordinance standards that:

- » Preserve or create deep and enhanced, landscaping buffers between roadway and development site.
- » Encourage residential building setbacks and massing that blend in with the natural environment.
- » Significantly restrict individual access drives and require cross-access between adjacent parcels and sites unless absolutely unachievable.
- » Discourage frontage streets, or if allowed modify setbacks accordingly.
- » Create pedestrian-supportive infrastructure (sidewalks, crosswalks, signals, etc.) along the gateways.
- » Create parking location requirements, with strong preference for parking in the rear of buildings, and enhanced screening requirements that provide consistency and contribute to the appearance of the corridor.

Infrastructure Carrying Capacity

Direct development to places that can support it while also reinforcing the community character and social fabric.

The best way to connect people to destinations is to place them in proximity to each other. Locate higher density residential development within walking distance of goods and services to strengthen businesses, reduce vehicular traffic, and encourage active transportation. Consider existing built form and community characteristics when reviewing new development.

Allow dense, context-sensitive development in areas that have adequate public service, proximity to goods and services, and resiliency to foreseeable environmental threats. Mixed use development, both horizontal and vertical, should be encouraged where appropriate.

Consider incentives for infill growth such as by-right approval processes, while also requiring development to connect to utilities and pay for needed system upgrades.

Prioritize utility system upgrades.

Continue to work with ONWASA to prioritize water and sewer expansion and distribution to targeted areas in accordance with the Future Land Use Plan. Prioritize utility system upgrades for mixed use areas. Incorporate concepts and design that respect the current and future vulnerability of these facilities to a changing climate, storms, and sea level rise.

Evaluate the cost of providing services to new development and use that information when evaluating proposed developments or extending utility services.

By using a measurable metric, such as cost per linear foot of street frontage, a community can quantify existing public services costs, and estimate the impact that future development will have if the town is required to take over infrastructure and provide services. A benchmark figure will assist decision makers in evaluating the long-term impact of service extension and growth. Ultimately, the cost of services and infrastructure provided by the town must be recouped, and a balanced approach can be best informed with knowledge of those costs.

Identify funding sources and partnership opportunities.

Investigate potential funding sources for the water system and utilize inter-local agreements with either the County or ONWASA for annexation and utility service provision, as appropriate.

Natural hazard areas

Continue to provide information to residents and the development community on the risks and best available data relating to environmental resources and conditions.

Continue education efforts related to flooding, storm surge, sea level rise, stormwater, and governmental programs and processes related to each. This may include becoming involved in the Community Rating System (CRS) and potentially other programs related to flood protection and flood insurance.

Prioritize capital improvement projects in areas that will increase overall resiliency to storms and flooding.

» Identify priority areas and actions to make the town more resilient to storms and flood events using VCAPS process and knowledge of recent storms.

» Evaluate public and private infrastructure for risk, especially critical infrastructure (operations center, police/fire/EMS stations, water and wastewater treatment plants, hospitals, assisted living facilities, etc.), and use this evaluation to guide future locations and expansions.

» Consider locating highly critical infrastructure well outside of the 500-year floodplain, while less critical infrastructure may be in more flood prone areas with disruptions anticipated but minimal. The nature of each infrastructure component will determine how risk-adverse the public is to a lapse in service.

» Map and identify stormwater infrastructure that needs upsizing or replacement, and incorporate into capital improvement planning.

Use current, best available sea level rise projections and environmental vulnerability knowledge when making public infrastructure investment decisions.

Public investments communicate to the public that an area is “safe”. They are also frequently lasting decisions that obligate funds for construction, operation, or maintenance for many years. A town that appropriately sites new infrastructure will be more likely to be prosperous and safe.

» Consider retracting services or strategically abandoning infrastructure in areas that are likely to be risky or dangerous.

» Major public facilities (hospitals and resident-occupied health facilities, operations centers, water/wastewater facilities, etc.) should be located in areas that will not flood during intense storm events (500-year or 1,000-year), and access to these facilities should also be hardened against storm impacts.

» New roads should only be allowed if built to withstand a significant storm event without flooding, and even then should be located entirely outside of floodplains.

» Utilize the information from the VCAPS process regarding projected future floodplains (see Appendix).

Strengthen development standards to enhance resiliency to storms, flooding, and an uncertain climate future.

» Require new construction be built to withstand lower probability / higher impact storms (500-year, 1,000-year, etc.) to reduce damage liability, economic losses, and speed recovery when these events occur. This will be especially important as future floodplain limits will expand as noted on new FIRMS which are based on SLOSH storm surge modeling. Incentives to reduce insurance costs could also make this strategy more achievable.

- Perform analyses to identify areas that will likely become the new 100-year floodplain as sea levels continue to rise and consider restricting development or enhancing development regulations in these areas. Look for future guidance from FEMA on this particular subject.
- Encourage or incentivize low impact development techniques by updating stormwater ordinances and improving outreach efforts. Updates should include but not be limited to:
  - Encourage reduction of impervious surface cover and increased use of permeable surfaces
  - Allow naturalized detention areas, rain gardens, and bioswales to satisfy open space requirements
  - Consider zoning overlays in areas of specific stormwater management concern that require certain types of stormwater or flooding management techniques
  - Treatment and storage of stormwater on-site, where appropriate
  - Implementation of Low Impact Development (LID) or green infrastructure stormwater and water quality measures, where appropriate; this may involve multi-property solutions
  - Implementation of projects that enhance or restore shoreline or wetlands, or otherwise improve water quality and the natural environment
- Consider requiring a higher freeboard requirement (2- or 3-foot) for new development and/or in places that are particularly susceptible to flooding or storm surge with or without wave action.
- Develop unique solutions to mitigate future flooding in the historic waterfront district in order to preserve the town's heritage and history.

Review and revise the Watershed Restoration Plan to ensure that it anticipates and addresses existing and future issues.

- Identify opportunities for retention and green stormwater infrastructure that can serve infill and redevelopment
- Consider regional stormwater detention solutions for future employment sites or other large development sites; consider partnership with developers (or regional solutions)

Scrutinize development in environmentally-sensitive and flood-susceptible areas Conservation Priority Areas (CPAs).

Consider requiring the mapping and quantification of the CPAs when reviewing new development applications in these areas. Note that these areas are comprehensively mapped herein, and local criteria should be created to assist developers in making on-the-ground inventories, similar to the mapping of stream buffer corridors. This information should then be used during preliminary and final development application decisions. It may also be beneficial to encourage or even incentivize the clustering of development outside of the CPAs.

Water quality

Create zoning standards and strategies to address development in Conservation Priority Areas (CPAs).

Restrict the development of natural areas, especially in floodplains, to preserve water quality. Clustering and other density transfer strategies will help protect priority environmental areas, as well as keep new development further from harm's way, as in the case of king tides, and storm-related flooding.

Continue to implement the Town's watershed restoration plan.

The town has recently obtained funding to install retrofit stormwater solutions to improve water quality. Any historic downtown has challenges when dealing with stormwater, since regulations did not exist when the town developed. Continuing to implement stormwater solutions is important to water quality, especially since much of the development of the town predates current stormwater control regulations. The Town may also choose to increase regulation of stormwater or raise stormwater fees to pay for other mitigative measures.

Combine waterfront access with habitat restoration and storm resiliency.

» Enhance water quality and storm resiliency while also providing increased access to public trust waters.

» Pursue funding from multiple sources to achieve complimentary outcomes.

» Consider additional setbacks from salt marshes, per the recommendations from the VCAPS process.

» Consider implementing the Living Shorelines recommendations from the VCAPS process.

Invest in water quality projects that enhance both quality of life and natural environment.

One of Swansboro's primary assets is the waterfront and coastal character of the town. Water quality and the natural environment is a major reason that people continue to settle in the town. Protection of water quality is crucial to the town's long-term vitality. Zoning and development standards are the primary avenue to locally influence water quality, and protective standards should be incorporated into the ordinance, including but not limited to:

» Reduction of site impervious surfaces

» Treatment and storage of stormwater on-site, where appropriate

» Implementation of Low Impact Development (LID) or green infrastructure stormwater and water quality measures

» Implementation of projects that enhance or restore shoreline or wetlands, or otherwise improve water quality and the natural environment

» Disconnected and/or enhanced Stormwater Control Measures (SCMs), possibly requiring measures in excess of state standards

Other community priorities

Prioritize new pedestrian infrastructure.

Identify potential pedestrian connections (sidewalks and multi-use trails) between high residential density areas and popular destinations and include those projects in the Capital Improvement Plan.

Destinations identified at the public open house workshop include:

» Areas north and south of NC 24

» The historic downtown

» Parks and recreation facilities

» Waterfront access areas

- » Hammocks Beach State Park
- » The intersections of NC 24 with Hammocks Beach Road and Old Hammock Road
- » Queens Creek Road
- » Main Street Extension

Facilitate cross-departmental, inter-agency, and inter-jurisdictional coordination.

Encourage collaboration to provide county services that support recommendations in this plan. Work with outside agencies (local, regional, state, federal) to implement land use decisions that reinforce and support the values of the town. Of particular importance are communication and coordination with the County and ONWASA on land use and service provision decisions and standards that occur just outside the town's ETJ, as these will have the greatest impact on the town.

Connect new and existing development to the broader community.

Institute requirements that connect development to nearby amenities, open spaces, residential and commercial areas, and road networks by implementing the following strategies:

- » Limit maximum cul-de-sac length, and then only allow if a future connection is not achievable. Developing secondary connections between destinations is crucial to creating community and reducing congestion on major roadways.
- » Establish maximum block lengths, and require achievable stub-outs. Where stub-outs would require a culvert or bridge, require the developer to pay fee-in-lieu for their portion of the future facility. Consider also adopting Appendix D of the NC Fire Code, which discusses access points, cul-de-sac length, and maximum number of units for safe provision of EMS/fire safety services.
- » Update pedestrian and bicycle plans to address acquisitions and requirements for easements for these facilities. Require new construction to connect to existing or planned facilities.
- » Strengthen connectivity policies to require interconnectivity and reduce traffic on main roads.

Enhance appearance and maintain small-town, coastal character.

The appearance and quality of appearance of structures, especially those with larger footprints (~40,000 sqft), should be balanced or mitigated by higher-quality materials and stormwater control measures, including but not limited to:

- » Use of high quality materials and prohibition or reduction in the use of low quality materials.
- » Breaking up the roofline or overall massing through architectural embellishments and fenestrations.
- » Balancing greater impervious surface areas with:
    - » Carefully considered setbacks that reduce visual impact - for instance, stepped setbacks.
    - » Additional stormwater control measures, particularly Low Impact Development (LID) design.
    - » Additional or enhanced landscape buffering, lighting, or pedestrian infrastructure and spaces.

Implement the actions identified in the VCAPS study (see appendix).

The community-identified actions and solutions identified in the VCAPS study are incorporated in this report as an appendix and include priority actions. Planning and implementation of this sort is a major step toward creating a more climate resilient future for Swansboro.

VCAPS Summary

Final Report

Town of Swansboro
Preliminary Asset Mapping & VCAPS Report
December 17, 2018

Asset Mapping Summary

Key representatives from the Town of Swansboro and Onslow County met with a group of facilitators on July 10th to begin mapping the town's critical assets and areas known for frequent flooding. Present at this meeting were:

Participants

- Scott Chase, Manager, Town of Swansboro
- Paula Webb, Town Clerk, Town of Swansboro
- Andrea Correll, Planner, Town of Swansboro
- John Freshwater, Engineer
- Angelia Hagopian, Onslow County GIS
- Brent Hatlestad, Town of Swansboro, Commissioner
- Brent Lanier, Surveyor
- David Mohr, Engineer, ONWASA
- Patricia Pike, Onslow County GIS
- Frank Tursi, Mayor Pro Tem, Town of Swansboro

Facilitators

- Mike Christenbury, N.C. Division of Coastal Management
- Lora Eddy, The Nature Conservancy
- Tancred Miller, N.C. Division of Coastal Management
- B. Stevens, N.C. Coastal Federation Intern
- Madeline Tripp, N.C. Coastal Federation Intern
- Jessica Whitehead, N.C. Sea Grant

The purpose of this project was to identify and map important social and physical assets in Swansboro that may be vulnerable to current and future impacts from coastal hazards, including sea-level rise and storm surge. The planning process will help Swansboro identify hotspots where the town can prioritize resilience-building projects. Through the process, participants will also identify local government and community-specific needs in building resilience.

Local knowledge mapping helps the town identify the locations of physical and non-physical assets that are important to both the government and the community. Through this process, local government staff and officials explored their physical and social vulnerabilities. Participants used maps provided by Onslow County, pre-populated with many of the town's critical assets, and added knowledge of areas with known flooding problems or other vulnerabilities. The maps now identify specific areas, such as streets, intersections, and buildings, that the town can target for resilience work. The final map and guide for Swansboro can be used for resilience planning purposes, and to support future grant applications to fund projects in areas in need of adaptation or mitigation projects.

Although not included in this project, additional social vulnerability indicator data exists, such as census data on reported income and data on property tax value. Such indicators can be used to identify areas where financial resources for recovery post-disaster may be limited. Other social vulnerability indicators such as concentrated areas of 65+ residents, and concentrated areas of non-English speakers, were not identified in Swansboro.

After the mapping meeting, Onslow County staff transferred the data that was collected onto a digital map through ArcGIS, and has provided a copy of this map to Swansboro.

The Nature Conservancy (TNC) will also host Swansboro's map data on their coastalresilience.org web portal, so that local government staff and the public can overlay sea level rise and coastal flooding models to the maps. TNC's Coastal Resilience mapper currently has both federal (NOAA) and state data for a variety of future scenarios; all federal data are readily available for download through the NOAA Digital Coast's Coastal Flood Mapper. State data was acquired from NC Emergency Management through a public records request. For data or information on this project contact NC Emergency Management. Potential datasets include:

1. Coastal Flood Hazard Composite - Provides a quick visual assessment of areas most prone to flood hazard events.
2. Shallow Coastal Flooding - Areas subject to shallow coastal flooding.
3. FEMA Flood Zones - Areas at risk from flooding.
4. Storm Surge - Areas at risk from storm surge.
5. Sea Level Rise - Areas likely to be inundated by sea level rise.
6. Sea Level Rise and Coastal Flooding

In Swansboro, current available flood data overlays include sea level rise and sea level rise with projected future flood conditions for storm surge from North Carolina's Division of Emergency Management's 2014 Sea Level Rise Impact Study. Scenarios that can be explored include the increase of relative sea level by 20, 40 and 100 cm over existing conditions as well as modeled coastal flooding with 20, 40 and 100 cm of sea level rise for a 10-year flood event, a 100-year flood event, and past flooding from Hurricane Fran (1996).

In the future, town staff can hold public workshops to better understand community priorities in the face of flooding, sea level rise, wetlands loss, storm surge, or other hazards.

Vulnerability, Consequences, and Adaptation Planning Scenarios (VCAPS) Summary

The facilitation team adapted the Vulnerability, Consequences, and Adaptation Planning Scenarios (VCAPS) process to help the Town of Swansboro use mapped assets and data to consider actions that could reduce the Town's overall vulnerability to multiple hazards of concern. The scope of this process was limited to actions that could be taken in the context of a land use plan and the related educational, informational, and planning actions necessary to set policy that reduces vulnerability and builds resilience. A group of stakeholders with professional knowledge related specifically to land use planning processes met on August 23, 2018:

Participants

Scott Chase, Manager, Town of Swansboro
Andrea Correll, Planner, Town of Swansboro
Paula Webb, Town Clerk, Town of Swansboro
John Davis, Mayor, Town of Swansboro
Phil Keagy, Commissioner, Town of Swansboro
Brent Hatlestad, Commissioner, Town of Swansboro
Roy Herrick, Commissioner, Town of Swansboro

Pat Turner, Commissioner, Town of Swansboro
Frank Tursi, Mayor Pro Tem, Town of Swansboro
Brent Lanier, Surveyor
Jerry Seddon, Planning Commissioner, Town of Swansboro
Ralph Kohlmann, Planning Commissioner, Town of Swansboro
Larry Philpot, Planning Commissioner, Town of Swansboro
Walter Hancock, Planning Commissioner, Town of Swansboro
John Freshwater, Engineer
David Mohr, Engineer, ONWASA
Dave Newsom, Engineer

Facilitators

Jessica Whitehead, N.C. Sea Grant
Jane Harrison, N.C. Sea Grant
Tancred Miller, N.C. Division of Coastal Management
Mike Christenbury, N.C. Division of Coastal Management
Lora Eddy, The Nature Conservancy
Sarah Watson, S.C. Sea Grant
Gloria Putnam, NC Sea Grant
Sarah Spiegler, NC Sea Grant

Results from initial scoping interviews were combined into input from two breakout groups to generate a synthesis diagram that tracks how hazards and stressors of concern relate to outcomes and consequences in the context of land use. Participants used this conversation to generate ideas about potential actions, as well as to note any contextual factors that may enhance or limit the effectiveness or desirability of any actions. Actions are also further separated into actions for both the public sector (Town, County, state, and federal government, including the academic sector) and private sector (residents, businesses, NGOs, and other organizations).

It is important to note at this phase these actions are conceptual, and all require further discussion, study, and vetting with the Town of Swansboro and the public before becoming policy. Given that these actions were suggested by a small local group, they need to be reviewed by this group to ensure they were captured accurately by the facilitation team. Additionally, because the group was limited in its participation due to the facilitation team's size, additional public input will be invaluable in capturing additional potential ideas as well as in prioritizing those actions that were suggested. The former point is key in the wake of Hurricane Florence – while impacts of sea level rise and extreme rainfall were discussed, it is likely that there are additional key lessons to be learned by infrastructure performance under those extreme storm surge, wind, and rainfall conditions.

The Town considered actions resulting from the impacts of multiple hazards: tropical storms and nor'easters, including heavy rainfall and the prevailing wind direction during the event, sea level rise, and king tides. Participants also noted additional stressors of boat traffic (primarily affecting erosion) as well as development (commercial and residential development inside the Town and outside its ETJ). Overall, through interviews and the meeting participants from the Town identified 60 public sector actions and 12 private sector actions that could be considered in either the land use plan or related activities to improve Swansboro's resilience to these hazards and stressors. Two of those public sector actions were actions enabled by other actions, and three of the private sector actions were direct results from other public sector actions. The VCAPS diagram provides a conceptual map of how these actions relate to specific outcomes and consequences from these hazards. Additionally, tables are included of all these actions and of actions specific to each category. Generally, actions fell into five categories:

1. Educational efforts, including needs to inform or educate both the public and other levels of government
2. Informational needs, encompassing key critical scientific, legal, policy, and engineering issues requiring further study, including areas where best practices are still evolving (e.g., how to develop stormwater design standards that can accommodate a range of sea level rise and extreme precipitation scenarios)
3. Planning needs, including obtaining funding for planning and project design and implementation
4. Policy needs, including new requirements, at the Town level and at other levels of County, state, and federal government impacting the abilities of the Town
5. Implementation actions, or decisions that must be made and put into effect to alter resilience

Some of the actions may be easily implemented in the land use plan. However, the Town should review these actions and consider which of these may be sequential – for example, digital maps of the stormwater system are needed to consider new stormwater plans and policies for retrofitted system upgrades as well as to develop incentives for stormwater controls. Additionally, the Town should prioritize some of these actions using locally agreed upon criteria. Past towns who have used the VCAPS process, like the Town of Nags Head, found this prioritization step valuable. Prioritizing will help the Town consider not only how to consider these sequential actions, but also help develop a strategy that allows Swansboro to pursue projects that are relatively simple to implement, like educating about living shorelines, as well as actions that may be more difficult to accomplish yet ultimately carry great benefit, such as how to incentivize buffers. Two ways past VCAPS communities have approached prioritizing actions have been through an additional review committee (as done in the Town of Nags Head, which established a Climate Change and Sea Level Rise Committee), or through public workshops with additional input (as done in Beaufort County, South Carolina).

On November 19, 2018 the Town of Swansboro hosted a public meeting to gather public input on the actions identified through the VCAPS Workshop. The meeting was advertised through the town's communication channels, media and direct mailing.

It was an open workshop format with 3 stations:

1. Informational station – The public could review posters with data and information from the National Climate Assessment and Southeast Regional Climate Center on potential climate change impacts including increased precipitation, heavy downpours and sea level rise.
2. Map station – The public was invited to add information to the Asset Map created as part of this planning process. Paper maps were provided for review and participants were encouraged to ground-truth the town's physical vulnerabilities.
3. Voting station – The public was asked to help prioritize the VCAPS Adaption Actions identified by the team as within the scope of what the Town of Swansboro could do in the land use plan update. Actions were broken into 5 categories education, studies/information, planning, policy, and implementation. Participants were asked to vote on their top 3 – 5 needs in each category. The complete results of the voting exercise are included in the report appendix, but the top 3 priorities for each category are included below:

Education: During the initial VCAPS the Town identified four potential educational needs that the Town of Swansboro could fill to help make local land use more resilient to challenges related to climate change and sea level rise. The top 3 public priorities were:

- Town works with state to allow streamlined low impact development permits to reduce pressures from increased stormwater volume

- Town develops an education plan for contractors on low impact development options to reduce pressures from increased stormwater volume
- Town develops education plan for residents on environmental hazards to reduce challenges to existing homes that are at risk of flood.

Informational needs: During the initial VCAPS the Town identified six potential needs for more information or studies that the Town of Swansboro needs to fill to help make local land use more resilient to challenges related to climate change and sea level rise. The top 3 public priorities were:

- Find (and expand upon) ways to preserve natural areas and green space to reduce pressures from increased stormwater volume
- Map older sections of existing stormwater system to reduce stress on infrastructure from increased stormwater volume
- Identify ways to use design standards that incorporate future conditions to improve development

Planning needs: During the initial VCAPS the Town identified five potential needs for more planning activities that the Town of Swansboro needs to fill to help make local land use more resilient to challenges related to climate change and sea level rise. The top 3 public priorities were:

- Town applies for, receives, and uses 319 funds to improve infrastructure to reduce stress on infrastructure from increased stormwater volume
- Town asks DOT to increase pipe size under DOT-owned roads to reduce stress on stormwater infrastructure for pipes that are too small to convey the larger stormwater volume
- Planning board considers how to control stormwater in activities to improve development

Policy needs: During the initial VCAPS the Town identified 24 potential needs for policies and approaches that the Town of Swansboro needs to fill to help make local land use more resilient to challenges related to climate change and sea level rise. Because there were so many additional needs identified as policies, public attendees were allowed up to 5 top votes. Due to a tie, the top 6 public priorities are listed here:

- Incentivize density on appropriate parcels to avoid developing ecologically sensitive lands to improve development
- Require, not just encourage, getting stormwater back to ground (will require engineering to review ways of doing this) to reduce pressures from increased stormwater volume
- Expand buffers on salt marsh to 50 feet to slow wetland loss
- Encourage low impact development to increase onsite holding in site design, especially the first flush of stormwater, early in process to reduce pressures from increased stormwater volume
- Require subdivisions in town to tie in to sewer and water to improve the resilience of residential development
- Pass a 2-3 foot freeboard ordinance to reduce the number of structures which flood

Policy needs: During the initial VCAPS the Town identified 13 potential needs for activities to implement on the ground that the Town of Swansboro needs to fill to help make local land use more resilient to challenges related to climate change and sea level rise. Due to a tie the top 4 public priorities were:

- Convert roads to one way (roads need less impervious surface and restore water via larger buffers) to reduce deterioration on roads
- Town preserves coastal wetlands to slow wetland loss

- Add greenway systems for habitat conservation to slow wetland loss (public notes this would require significant funding)

Town applies for funds to clear ditches, then clears ditches to improve stormwater flow. The Town's goal was to use the information collected through this integrated planning process to incorporate resilient actions into their Land Use Plan (LUP) update. By engaging the community of Swansboro in the process, town staff has started the dialogue about building community resilience in the face of increased precipitation and heavy downpours, sea level rise, and increased frequency and severity of storms.

Appendix: Charts of Full Public Voting Priority Results

During the meeting on November 19, participants voted to prioritize adaptation actions under the education, information needs, planning activities, policies needed, and implementation initiatives. Each participant was allowed to vote for their top 3 choices under each category, with the exception of policies needed (because of the large number of potential policies, participants could vote for their top 5 priorities). The full list of votes is included below. In each case, the challenge which each action is intended to address is also included. The listed challenges, along with each action, corresponds to those located within the VCAPS diagram. The top vote getting actions in each category are in bold type. Participants were also allowed to add their own actions to the charts; these added text are indicated in blue italic type.

Educational needs

CHALLENGE	EDUCATION NEED FOR TOWN TO FILL	PRIORITY
Increased stormwater volume	**Education plan for contractors on low impact development options**	**24**
	Town works with state to allow streamlined low impact development permits	**25**
Existing homes at risk of flood	**Education plan for residents on environmental hazards**	**11**
Development	Education plan for homeowners on higher density and stormwater control options	9

Information Needs

CHALLENGE	INFORMATION NEED FOR TOWN TO INVESTIGATE	PRIORITY
Sea level rise	Identify hot spots for development/roads in land use plan for 6 ft worst case scenario	7
Increased stormwater volume	**Find ways to preserve natural areas and green space expand upon*, they exist***	**21**
Increased stormwater volume stresses infrastructure	**Map older sections of existing stormwater system**	**10**
Development	Develop uphill solutions to stormwater volume to reduce downstream pressure with sea level rise	7
	Identify existing areas to retrofit for sea level rise	6
	Identify ways to use design standards that incorporate future conditions -->	**8**
Participant-added suggestions	*Protect all sea life*	5
	Control growth: commercial and residential	3

Planning Activities

CHALLENGE	NEW TOWN PLANNING INITIATIVES NEEDED	PRIORITY
Sea level rise	Planning board considers sea level rise scenarios based on policy	0
Stormwater pipes too small	**Town asks DOT to increase pipe size under DOT-owned roads**	**21**
Stormwater volume stresses infrastructure	**Town applies for, receives, and uses 319 funds to improve infrastructure**	**22**
Development	**Planning board considers how to control stormwater in activities**	**13**
Structures flood	Town pursues mitigation funds for elevation	8

Implementation

CHALLENGE	NEW TOWN ACTIONS TO IMPLEMENT	PRIORITY
Heavy rainfall	Fire department re-uses roof water for truck washing *(More rain barrels?)*	4
Wetlands lost	Add greenway systems for habitat preservation *(significant funding required)*	9
	Town preserves coastal wetlands	10
Roads deteriorate	Convert roads to one way (roads need less impervious surface and restore water via larger buffers)	16
	Use Powell Bill, stormwater funds to cycle fixes to manage traffic and minimize damage	0
Ditches fill up	Apply for funds to clear ditches then clear ditches	9
Increased stormwater volume stresses infrastructure	When making stormwater system repairs elevate outfalls to be above higher tides and surges	3
Increased stormwater volume	Add catch basins, ponds w/ stormwater fees	4
	Town does demonstration LID projects	0
	Improve easements	1
	Town moves to local control *(requires engineering review)*	6
Structures flood	Assist with elevating homes	3
	Use tax (visitor occupancy) for flood control/infrastructure repair	0
Stormwater runoff (Participant-added suggestion)	*Work with ONWASA to provide monetary incentives to residential/commercial (via $ credit on bill) to create onsite rainwater gardens*	*5*

Policies Needed

CHALLENGE	NEW TOWN POLICY INITIATIVES NEEDED	PRIORITY
Sea level rise	Require disclosure at land sale (flood, sea level rise, hurricanes, machine gun)	6
Wetlands lost	**Expand buffers on saltmarsh to 50 ft**	**9**
	Implement CAMA wetland conservation zone	6
	Incentivize wetland buffers with front yard depth requirement adjustment	3
Erosion	Incentivize living shorelines	4
Increased stormwater volume	**Encourage low impact development to increase onsite holding in site design, especially first flush of stormwater, etc. early in process**	**7**
	Incentivize developers for low impact development	4
	Require developers to build parks	3
	Require, not just encourage, getting stormwater back to ground ***(will require engineering to review)***	**9**
Increased stormwater volume stresses infrastructure	Raise stormwater fee	0
Development	Pass stronger guidelines on design to make it more acceptable	1
	Incentivize density on appropriate parcels to avoid developing ecologically sensitive lands	**11**
	Use proposed floodplain in land use plan	4
	Enact stormwater control ordinances to include volume	
Development in adjacent areas	Town partners with County *(+ ONWASA)* on incentives in adjacent areas to encourage annexing in	3
Commercial development	Ask developers to reduce commercial parking spaces to reduce impervious	1
Residential development	Ask developers to reduce residential parking spaces to reduce impervious surface	1
	Encourage cluster development to avoid wetlands and not have to pay developer	2
	Require subdivisions in town to tie in to sewer/water	**7**
Homes built in flood zones	Make the Floodplain Administration board more powerful	
	Require special use permits to build in flood zones	5
Structures flood	Enact redevelopment ordinances to improve elevation after storms	2
	Increase sales tax and use funds for flood repairs	0
	Pass 2-3 ft freeboard ordinance	**7**

Existing Critical Asset/Facility Protections

Summary

Swansboro has identified its critical assets/facilities in both its Land Use Plan (LUP) and Hazard Mitigation Plan (which includes a map) and has prioritized the functions of each of these facilities in the case of an emergency/natural disaster. The biggest threat to the town, as identified by the Hazard Mitigation Plan, are hurricanes and the associated wind/flood damage. Several mitigation strategies were adopted in this plan, such as considering entry into FEMA's Community Rating System, or maintaining ditches and installing more lift stations.

In the LUP, there is zoning to discourage development in natural hazard areas or areas with low land suitability, and requirements for mitigation in developments in these areas (p.27, p.63). When determining land suitability, storm surge areas and flood zones are given considerable weight, and coastal wetlands are considered to have very low suitability. The LUP also has policies that support informing residents about sea level rise, flood mitigation strategies, and the dangers of development in natural hazard areas in collaboration with state or federal efforts (P.65, P.70).

In the Unified Development Ordinance (UDO), there is a Flood Damage Protection Ordinance, which addresses new development/redevelopment in the Special Flood Hazard Zone and establishes a stringent permitting process for these developments. There's also a Storm Water Management Ordinance, but this mostly addresses problems with polluted storm water runoff rather than flooding. However, it does suggest encouraging low impact development, decreasing impervious surfaces, and implementing storm water controls such as constructed wetlands, which would help mitigate flooding. In addition to this, there is a flexible development land use category which requires the use of Low Impact Development in site designs.

CAMA Land Use Plan:

- Identifies flood zones and potential hurricane scenarios (using SLOSH model, Section 5B1(c))
- In the Land Suitability Analysis Criteria, Storm Surge and Flood Zones each have 2 points of weight (the highest weight is 3 points); plots inside these zones have low suitability.
- Swansboro allows development in natural hazard areas (land susceptible to sea level rise, erosion, flooding, and/or wetland/conservation areas) if it complies with all local, state, and federal regulations, and implements mitigation strategies (P.18, P.27, P.28, P.63, P.66, P.68, P.71, P.73, I.43, I.44, I.45)
- Swansboro supports the installation of bulkheads to protect against erosion and sea level rise (P.67)
- Swansboro supports efforts to inform residents about sea level rise, flood mitigation strategies, and the dangers of development in natural hazard areas (P.65, P.70)

Unified Development Ordinance

- Flood Damage Protection Ordinance (Article 22, effective Aug. 2005, now §152.400-.462)
  - Objective: minimize potential for flood damage to new developments and to prevent developments from redirecting floodwaters to other properties
  - Identifies Special Flood Hazard Areas, based on FEMA maps (FIRM and FHBM)
  - Requires a **Floodplain Development Permit** before any construction within Special Flood Hazard Areas
    - Floodplain Administrator is in charge of reviewing permit applications
  - Establishes protocol for appeals and variances; decisions made by the Flood Management Appeals Board (4 members appointed by Board of Commissioners: general contractor, a surveyor, an architect, and/or an engineer)
- Flexible Lot Development
  - Allows for variety in development, so that uses take advantage of unique characteristics of location and environmental resources
  - **Requires LID** strategies to be incorporated in plan

Hazard Mitigation Plan:

- Identifies potential hazards, vulnerabilities, and mitigation strategies/goals for the town of Swansboro, maps critical facilities
- Natural hazards: hurricanes and associated wind and flood damage
- Swansboro considers critical facilities to be "those structures from which essential services and functions for the continuation of public safety actions and disaster recovery are performed or provided."
  - Divides facilities into Level 1 (Must not lose operational capacity) and Level 2 (Must be operational within 24 hours following event)
    - Level 1: Swansboro Public Safety Headquarters/ EOC, EMS/ Police/ Fire Communications Tower, Water Tower (ONWASA, Wastewater Plant (ONWASA), Wastewater pump lift stations (ONWASA)
    - Level 2: Swansboro Town Hall, Major roads and bridges, Major government buildings, Emergency shelters (schools)
- Mitigation strategies:
  - Strategies include maintaining an evacuation route, flood/hazard education programs for residents, considering entry into FEMA CRS, maintaining ditches and installing more lift stations, and developing a Comprehensive Emergency Management Plan.
  - References policies in place in the CAMA Land Use Plan, the Unified Development Ordinance, Code of Ordinances, and NC State Building Codes

Note: Text in blue was added on 01/14/2019.

Recommendations:

- Evaluate efficacy/efficiency of existing stormwater systems and identify current and potential weaknesses (could complete a comprehensive assessment if resources are available)
- Create a Stormwater Management Plan, including strategies for increasing stormwater BMPs (like permeable streets/gutters/sidewalks, rain gardens, etc), as well as a plans to update/improve existing stormwater infrastructure to increase the town's stormwater capacity.
- Create an ordinance to allow construction of Living Shorelines where appropriate instead of bulkheads (which are encouraged in LUP)
- Participate in the Community Rating System
- Incorporate sea level rise scenarios (medium and high) into planning efforts
- Participate in the Red Cross Ready Rating Program, and encourage business owners to complete an emergency plan
    - Could also create emergency plans for historic buildings
- Consider participation in the National Weather Service's StormReady program
- Adopt an ordinance (or add to the existing Landscape Ordinance) to encourage the preservation of natural vegetation, especially trees
- Increase freeboard requirement within town limits (could have variance for historic district)
- Create incentive program (taxes, priority in permitting process) for using Low Impact Development methods/strategies when constructing new developments or for retrofitting existing properties with LID
- Consider flood mitigation strategies for flood prone areas of historic district (elevation, dry or wet flood-proofing, increasing stormwater drainage capacity, etc.)

Resources:

- Swansboro Hazard Mitigation Plan (Annex 5 to Onslow County Hazard Mitigation Plan)
- CAMA Land Use Plan
- Unified Development Ordinance
- Town Zoning Map
- Looking to the Future: Alternatives for Reducing Flood-related Damage in Historic Communities, Milton, PA
- Keeping 74 Bridge Street Above Water: Lessons from the City of Newport and the Point Neighborhood on Protecting Historic Structures and Neighborhoods from the Impacts of Climate Change

LUP Policies/Implementing Actions Referenced:

P.18 Swansboro does not support light industrial development within fragile areas and areas with low land suitability (see Section 5.B.1.g., pages 35 to 40).

P.27 The Town of Swansboro supports larger lots, decreased impervious surface areas, and cluster development in conservation classified areas and areas with low land suitability (see future land use map, Map 16) through enforcement of the Town's UDO.

P.28 Swansboro supports continuing preservation/protection of its flood hazard areas.

I.26 Swansboro will evaluate the need to revise its UDO to improve the requirements for reducing the areas covered during development by impervious surfaces. This will reduce storm water runoff.

P.63 Swansboro will allow development within areas susceptible to sea level rise, shoreline erosion, and/or wetland loss which takes into consideration such conditions in project design development.

P.66 Swansboro will support development which will minimize flooding and resulting damage to life and property during normal and significant rainfall events.

P.67 Swansboro supports the installation of properly engineered and permitted bulkheads to protect against erosion and sea level rise.

P.68 Swansboro supports the US Army Corps of Engineers' regulations, the applicable guidelines of the Coastal Area Management Act, and the use of local land use ordinances to regulate development of freshwater swamps, marshes, and 404 wetlands.

P.69 Swansboro supports relocation of structures endangered by erosion, if the relocated structure will be in compliance with all applicable policies and regulations.

P.71 Swansboro supports hazard mitigation planning. The Land Use Plan and the Hazard Mitigation Plan should be consistent with one another.

P.72 The Town supports the Onslow County Emergency Management Plan for evacuation procedures/policy for natural disasters or man-made disasters.

P.73 Swansboro will allow development in conservation and natural hazard areas which is consistent with local zoning and meets applicable state and federal regulations.

I.43 Swansboro will cooperate with the US Army Corps of Engineers in the regulation and enforcement of the 404 wetlands permit process. Schedule: Continuing Activity.

I.44 Swansboro will coordinate all development within the special flood hazard area with the Town's Planning and Inspections Department, North Carolina Division of Coastal Management, FEMA, and the US Corps of Engineers. Schedule: Continuing Activity.

I.45 Swansboro will continue to enforce its existing zoning and flood damage prevention regulations found in the UDO. Schedule: Continuing Activity.

Existing Protections of Isolated Wetlands

Key Points:

- Swansboro supports the policies and permitting processes under CAMA and Section 404 of the Clean Water Act.
- Due to changes in interpretation/legislation in the past few years, gaps have been created in the protection of coastal NC's small, isolated wetlands by federal and state programs.
- Swansboro does not have policies or ordinances specifically targeting and protecting isolated, non-coastal wetlands not protected under federal or state law.

Findings:

In the existing Land Use Plan (LUP), Swansboro complies with all state and federal laws regarding wetlands and environmentally sensitive areas, including section 404 of the Clean Water Act and all CAMA regulations. However, in 2008, a statement by the EPA asserted that wetlands not adjacent to traditional navigable waters are not under 404 jurisdiction. In 2015, changes were made to 15A NCAC 2H .1300 to regulate only 2 types of the 16 formerly identified isolated wetlands in NC, and to allow discharges that impact one acre or less of isolated wetlands in the coastal region without a permit (15A NCAC 02H .1305(3). Combined, these changes create a gap in protection for small, non-adjacent/isolated wetlands and make it increasingly important that local municipalities adopt more stringent protections.

Currently, the town does not have many policies that go beyond protections under section 404 of the CWA. Most policies in regards to wetlands are statements of support for federal/state regulations. For example, policy 37 states that the town "supports coordinated efforts to preserve and protect the ecological and flood hazard benefits of freshwater wetlands, *as protected under Section 404 of the Clean Water act*." Swansboro also has a CAMA-required Environmental Composite Map that incorporates areas of environmental concern into their land suitability analysis. In addition to this, there are a few policies could have indirect benefits to isolated wetlands. Policy 93 mentions a commitment to Low Impact Development (LID), which the UDO is required in Flexible Lot Developments. In implementing action 21 and policy 65, the town supports the education of the public about "environmentally sensitive areas" and the dangers of location development in natural hazard areas, which could be used to support an education campaign about isolated wetlands.

Recommendations

- **Educate residents** about the benefits (ecological, economic, public health/safety) of protecting wetlands. Incorporate wetland education efforts into Implementing Action 21 of the LUP.
- **Define wetlands** in the LUP and Unified Development Ordinance to include not only 404-regulated wetlands, but also isolated, freshwater wetlands.
- **Update policies** 25 (define environmentally sensitive areas to include isolated wetlands), 37, and 89 in the Land Use Ordinance to include wetlands not protected under CWA(404), according to the previously mentioned definition.
    - Also include a discussion of town protections/definitions in the Wetlands Section of Existing/Emerging Conditions: Fragile Areas.
    - In policy 63, amend to include more specific requirements for development susceptible to wetlands loss (instead of "consideration" in project development).
- **Change zoning** to either include isolated wetlands as a new, separate zone (overlay map of isolated wetlands), or incorporate isolated wetlands into the existing conservation zone.
    - Could commission maps of Swansboro wetlands, or use existing maps (FWS, NCRS, NOAA)
    - Allow appeals process for landowners to challenge delineations they feel are inaccurate
    - If not included in conservation zone, which is included in policy 27 of the LUP (about using increased lot sizes, decreased impervious surfaces, and cluster development), could include in large lot residential zoning to encourage building on uplands and not disturbing wetlands on lot.
- **Create a wetlands protection ordinance** specific to the needs of Swansboro:
    - Include: definition of a wetland, fact finding, intent/goals, definition of regulated activities, standards for issuance of permits (general: e.g. no net loss of wetlands, and specific: e.g. mitigation ratios), and conditions which may be attached to permits
    - Model ordinance from the Association of State Wetland Managers
    - Wisconsin Model Ordinance
    - Study on Local Ordinance Effectiveness in NYS
- **Create a Wetland Review Board** to help review permit applications under ordinance
- **Institute subdivision regulations** requiring wetlands protection, encourage use of wetlands as open space/stormwater management
- **Institute incentives** to encourage wetlands protection, such as:
    - Reduce local real estate taxes for preserved wetlands
    - Density bonuses or development right schemes
    - Work with local land trusts to provide wetland owners who donate wetlands or conservation easements with tax benefits

<u>Current Policies/ Implementing Actions Referenced in this Summary</u>

I.21 Swansboro will endeavor to educate the public about environmentally sensitive areas and what actions they can take to help do their part in preservation. Education may be accomplished through public service announcements or through the development of printed materials that are distributed through mailings and/or posted on the Town's website. Schedule: Continuing Activity.

P.25 The Town of Swansboro supports the preservation and maintenance of its environmentally sensitive areas while promoting and capitalizing on its natural resources

P.27 The Town of Swansboro supports larger lots, decreased impervious surface areas, and cluster development in conservation classified areas and areas with low land suitability (see future land use map, Map 16) through enforcement of the Town's UDO.

P.37 Swansboro supports coordinated efforts to preserve and protect the ecological and flood hazard benefits of freshwater wetlands, as protected under Section 404 of the Clean Water Act of 1972.

P.63 Swansboro will allow development within areas susceptible to sea level rise, shoreline erosion, and/or wetland loss which takes into consideration such conditions in project design development.

P.65 Swansboro supports educating the public concerning the problems/impacts of developing/locating in natural hazard areas.

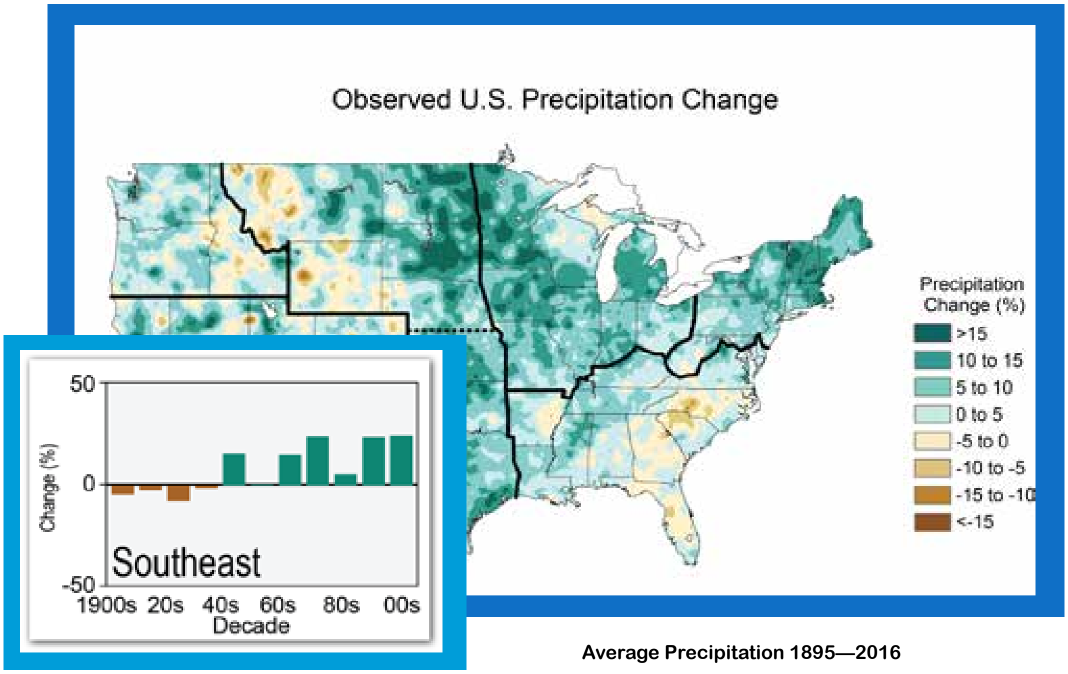
P.89 Swansboro opposes the installation of package treatment plants and septic tanks or discharge of waste in any areas classified as coastal wetlands, freshwater wetlands (404), or natural heritage areas. This policy does not apply to constructed wetlands.

P.93 Swansboro supports low impact development (LID). NOTE: LID is an ecologically friendly approach to site development and stormwater management that aims to minimize development impacts to land, water, and air. The approach emphasizes the integration of site design and planning techniques that conserve natural systems and hydrologic functions on a site. Low impact development is not a land use control, but a management and design strategy that is integrated into the proposed land use. It has also been shown to decrease costs to developers and to increase the desirability and value of the property.

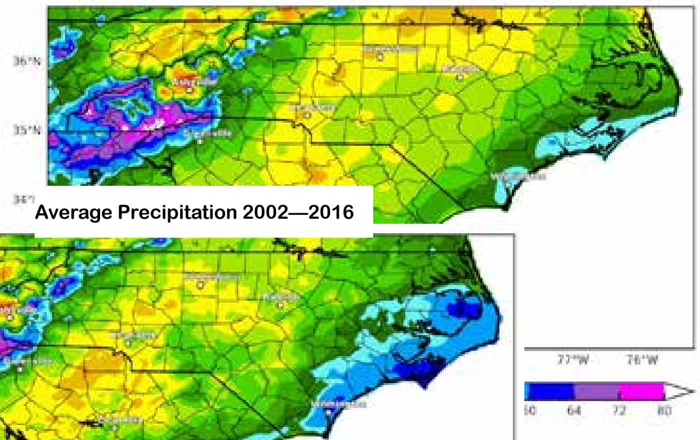
TOWN MANAGEMENT CONCERN
STORMWATER

AVERAGE U.S. PRECIPITATION HAS INCREASED SINCE 1900; THE SOUTHEAST COAST IS EXPERIENCING INCREASES.

% Change in Precipitation amounts for 1991—2012 compared to 1901—1960
SOURCE: National Climate Assessment



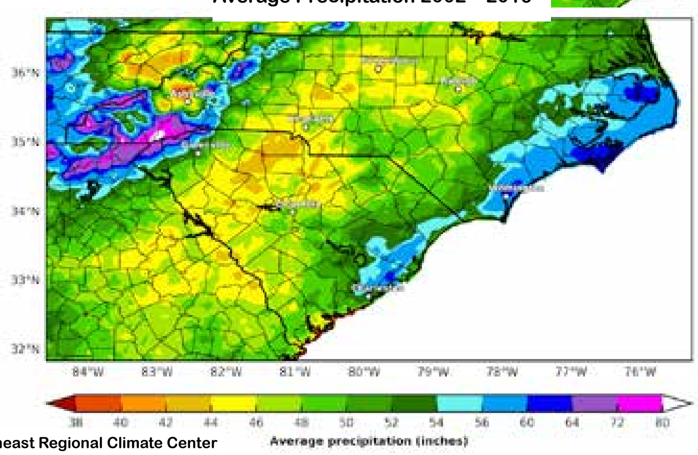
Average Precipitation 1895—2016



HEAVY DOWNPOURS

Our heaviest rainfall events have become heavier and more frequent. And the amount of rain falling during these events has been significantly above average.

Average Precipitation 2002—2016

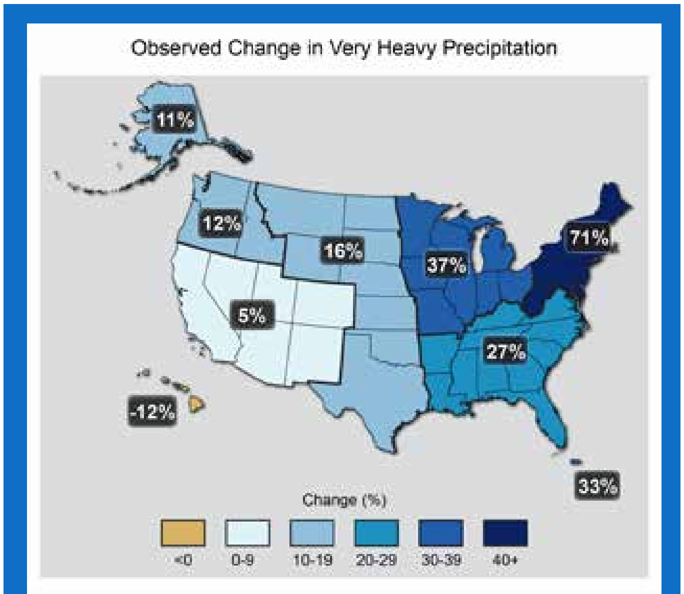


SOURCE: Southeast Regional Climate Center

TOWN MANAGEMENT CONCERN
STORMWATER

HEAVY DOWNPOURS ARE INCREASING NATIONALLY, ESPECIALLY OVER THE LAST THREE TO FIVE DECADES. INCREASES IN EXTREME PRECIPITATION ARE PROJECTED FOR ALL U.S. REGIONS.

Observed Change in Very Heavy Precipitation amounts for 1958—2012
SOURCE: National Climate Assessment

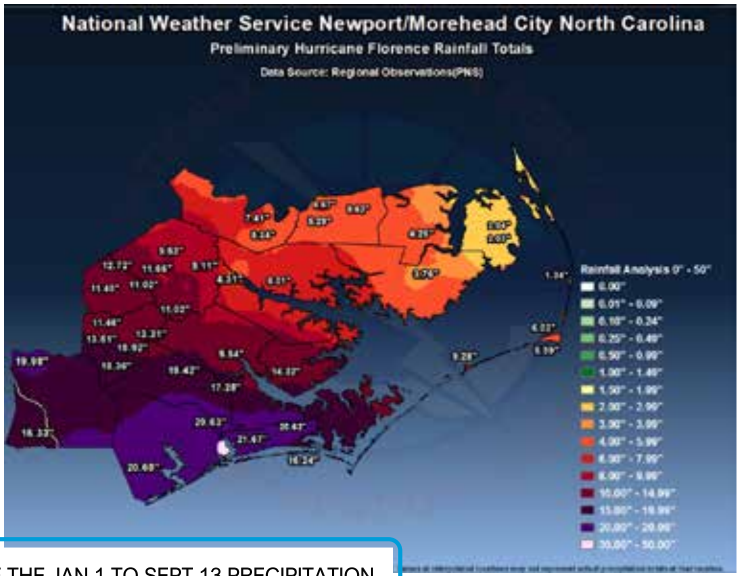


WARMER AIR = MORE PRECIPITATION

Since 1895 U.S. average temperature has increased by 1.3° F to 1.9°F. Warmer air can contain more water vapor than cooler air. Global analyses show that the amount of water vapor in the atmosphere has in fact increased over both land and oceans.

HURRICANE INTENSITY AND RAINFALL INCREASING

The intensity, frequency, and duration of North Atlantic hurricanes, as well as the frequency of the strongest (Category 4 and 5) hurricanes, have all increased since the early 1980s.

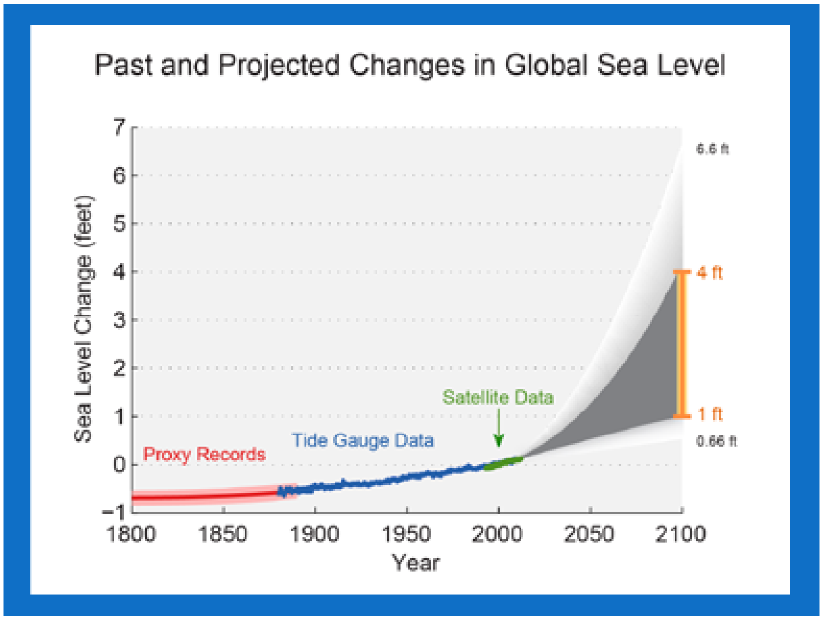


PRIOR TO HURRICANE FLORENCE THE JAN 1 TO SEPT 13 PRECIPITATION TOTAL WAS 46 INCHES; ABOVE AVERAGE AT THAT POINT IN TIME

TOWN MANAGEMENT CONCERN
SEA LEVEL RISE

GLOBAL SEA LEVEL HAS RISEN BY ABOUT 8 INCHES SINCE 1880. IT IS PROJECTED TO RISE ANOTHER 1 TO 4 FEET BY 2100.

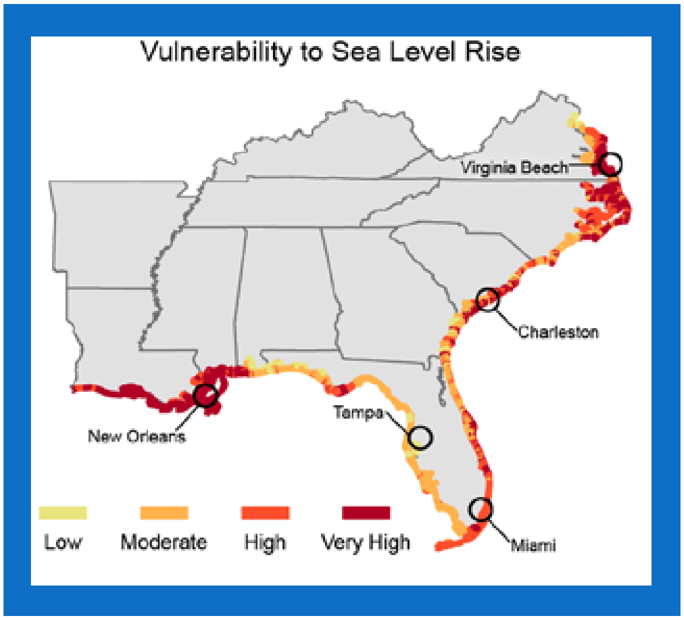
SOURCE: National Climate Assessment



WARMING OCEAN

The oceans are absorbing over 90% of the increased atmospheric heat associated with emissions from human activity. Like mercury in a thermometer, water expands as it warms up (this is referred to as “thermal expansion”) causing sea levels to rise.

Sea level rise poses widespread and continuing threats to both natural and built environments and to our waterfront and historic area.

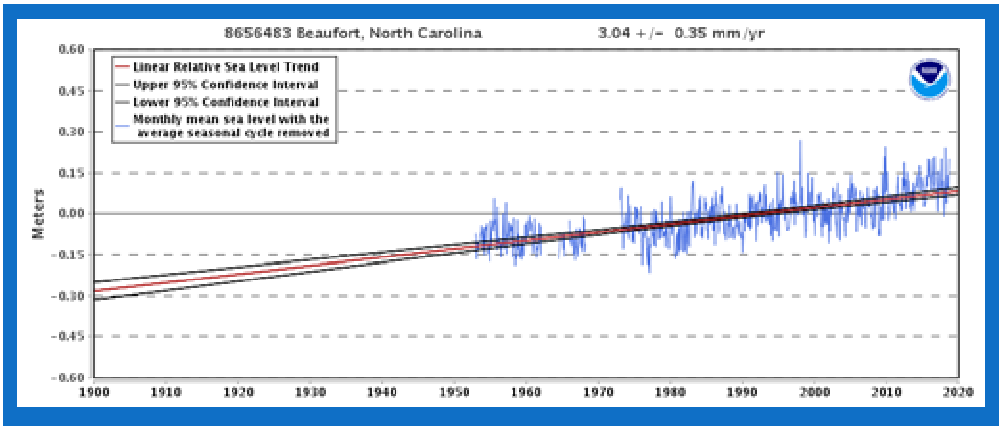


SOURCE: National Climate Assessment

TOWN MANAGEMENT CONCERN
SEA LEVEL RISE

SEA LEVEL IS RISING ALONG THE NORTH CAROLINA COAST. IT IS PROJECTED TO RISE ANOTHER 1 TO 4 FEET BY 2100.

NOAA Tide Gauges Sea Level Rise
SOURCE: National Climate Assessment

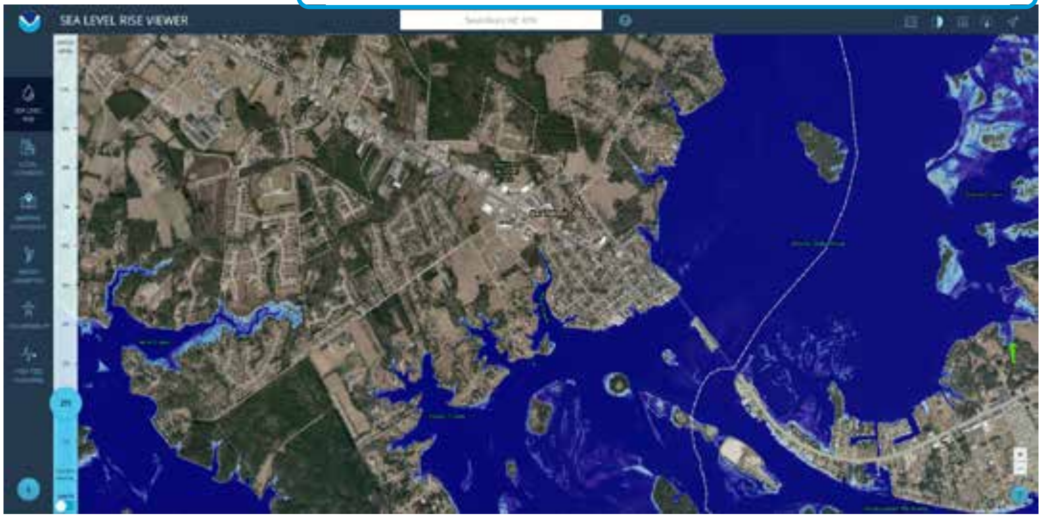


RISING SEAS = INCREASED EROSION & GREATER STORM SURGE

Many of our coastal marshes will be inundated and the protection they provide to wave action will be lost allowing greater energy along our shorelines and increasing erosion.

Rising seas will increase flooding risk from storm surge.

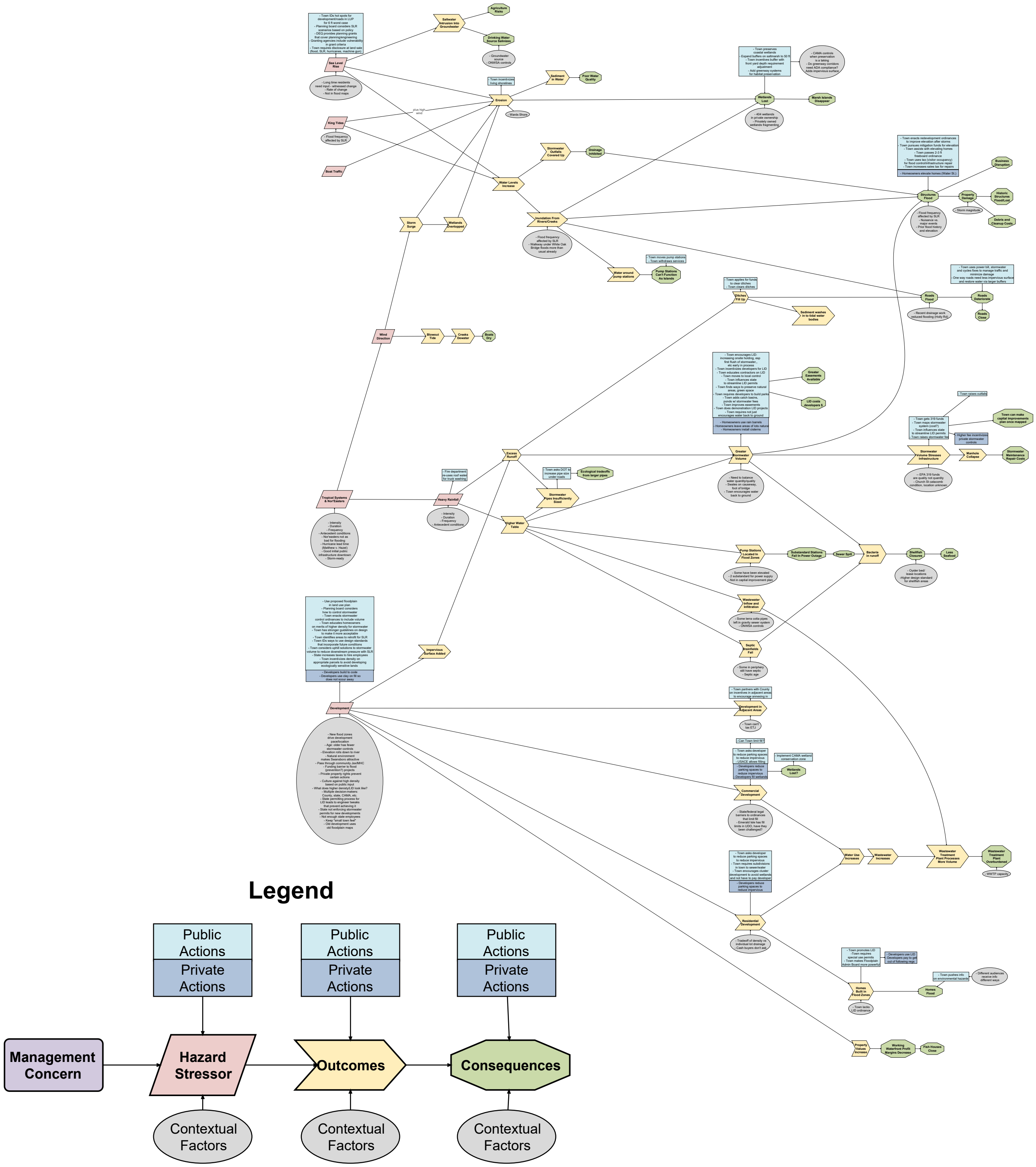
IN 30 YEARS THIS REGION MAY SEE <1 FT TO 2 FT OF SEA LEVEL RISE



SOURCE: NOAA Sea Level Rise Viewer

Swansboro VCAPS Diagram

The VCAPS Diagram produced by North Carolina Sea Grant, shown below (but not included at full scale in this Appendix due to format sizing), shall be adopted by reference. The VCAPS Asset Map shall also be adopted by reference. See low-resolution version of the Asset Map below.



Board of Commissioners Meeting
Agenda Item Submittal

Item to Be Considered: **Chapter 160D Amendments**

Board Meeting Date: **May 10, 2021**

Prepared By: **Jennifer Ansell, Planner**

Overview: Chapter 160D of the North Carolina General Statutes consolidates current statues for local development regulations (now in Chapter 160A) into a single, unified chapter, and places these statutes into a more logical, coherent organization. It refines procedures, aligns terminology, and confirms authority that was presumed under old statutes.

Chapter 160D became effective as of June 19, 2020, however local governments have until July 1, 2021 to update local ordinances and polices to comply. All city and county zoning, subdivision, and other development regulations, including unified development ordinances, will need to be updated by that date.

Planning Board Recommendation: At their April 6, 2021 regular meeting, the Planning Board recommended approval of the proposed changes to the Town Code of Ordinances, Unified Development Ordinance and Fee Schedule. The vote was 4 to 1.

Action Needed:

1) Open the Public Hearing;
2) The Public Hearing will be held open to allow for written public comments to be submitted to Paula Webb at pwebb@ci.swansboro.nc.us for up to 24 hours;
3) Following the 24-hour period, close the Public Hearing; and
4) Motion to approve, deny or table Ordinance 2021-O3, and adopt one of the statements of consistency below:

Per § 160A-383, zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt one of the following statements which shall not be subject to judicial review:

1) A statement approving the zoning amendment and describing its consistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest;
2) A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest; or

Reviewed By:

Town Manager	________________	**Finance Director**	________________
Town Clerk	________________	**Town Attorney**	________________

Date Action Approved by Board: ________________ **Action if different from Recommended:**

3) A statement approving the zoning amendment and containing at least all of the following:
    a. A declaration that the approval is also deemed an amendment to the comprehensive plan. The governing board shall not require any additional request or application for amendment to the comprehensive plan.
    b. An explanation of the change in conditions the governing board took into account in amending the zoning ordinance to meet the development needs of the community.
    c. Why the action was reasonable and in the public interest.

Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes:
- to provide adequate light and air;
- to prevent the overcrowding of land;
- to avoid undue concentration of population;
- to lessen congestion in the streets;
- to secure safety from fire, panic, and dangers; and
- to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land.

Background Attachments
Proposed Ordinance 2021-O3
Planning Board Statement of Consistency
UNC SOG 160D Checklist

ORDINANCE 2021-O3
AN ORDINANCE AMENDING THE TOWN CODE OF ORDINANCES, UNIFIED DEVELOPMENT ORDINANCE AND SCHEDULE OF FEES TO INCORPORATE THE NORTH CAROLINA GENERAL STATUTES CHAPTER 160D AMENDMENTS AND ALIGN THE ORDINANCES WITH STATE LAW

WHEREAS North Carolina General Statute 160A-383 requires that zoning regulations shall be made in accordance with a Comprehensive Plan; and

WHEREAS NCGS 160A-383 also states that when adopting or rejecting any zoning amendment, the governing board shall approve a statement describing whether its action is consistent with an adopted Comprehensive Plan and any other officially adopted plan that is applicable, and briefly explain why the board considers the action taken to be reasonable and in the public interest; and

WHEREAS the Board of Commissioners finds that the proposed text amendment is consistent with the current Comprehensive Plan, and considers the action taken to be reasonable and in the public interest because it will align the existing ordinances with state law.

NOW BE IT ORDAINED by the Board of Commissioners of the Town of Swansboro that:

The Town of Swansboro Town Code of Ordinances, Unified Development Ordinance and Schedule of Fees are amended as follows:

TOWN OF SWANSBORO, NORTH CAROLINA
CODE OF ORDINANCES

TITLE I: GENERAL PROVISIONS
CHAPTER 11: EXTRATERRITORIAL JURISDICTION BOUNDARIES

§ 11.02 ADDITIONAL BOUNDARIES.
(A) The area described as follows is hereby added to the town's Extraterritorial Jurisdiction area pursuant to the provisions of G.S. §~~160A-360~~ 160D-202, and the ordinance establishing Extraterritorial Jurisdiction Boundaries for the town.

§ 11.03 AUTHORITY IN THE EXTRATERRITORIAL AREA.
The town may not exercise any power in its extraterritorial jurisdiction that it is not exercising within its corporate limits. The town may exercise in its extraterritorial area all powers that it is exercising within its corporate limits, however, if a city fails to extend a particular type of development regulation to the extraterritorial area, the county may elect to exercise that particular type of regulation in the extraterritorial area

§ 11.04 COUNTY APPROVAL OF CITY JURISDICTION.
The town may not extend its extraterritorial powers into any area for which the county has adopted and is enforcing county zoning and subdivision regulations. However, the town may do so where the county is not exercising both of these powers, or when the town and the county have agreed

upon the area within which each will exercise the powers. The Town may not extend its extraterritorial powers beyond one mile from its corporate limits without the approval of the board of county commissioners with jurisdiction over the area.

§ 11.05 PROPOSED JURISDICTION CHANGE.

If the town proposes to exercise extraterritorial jurisdiction, it shall notify the owners of all parcels of land proposed for addition to the area of extraterritorial jurisdiction, as shown on the county tax records. The notice shall be sent by first-class mail to the last addresses listed for affected property owners in the county tax records. The notice shall inform the landowner of the effect of the extension of extraterritorial jurisdiction, of the landowner's right to participate in a legislative hearing prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as provided in G.S. 160D-601, and of the right of all residents of the area to apply to the board of county commissioners to serve as a representative on the planning board and the board of adjustment, as provided in G.S. 160D-307.

The notice shall be mailed at least 30 days prior to the date of the hearing. The person or persons mailing the notices shall certify to the city council that the notices were sent by first-class mail, and the certificate shall be deemed conclusive in the absence of fraud.

The town shall adopt an ordinance specifying the areas to be included based upon existing or projected urban development and areas of critical concern, as evidenced by officially adopted plans for its development. The boundaries specified in the ordinance shall at all times be drawn on a map, set forth in a written description, or shown by a combination of these techniques. This delineation shall be maintained in the manner provided in G.S. 160D-202 for the delineation of the corporate limits and shall be recorded in the office of the register of deeds of each county in which any portion of the area lies.

§ 11.06 SPLIT JURISDICTION.

If a parcel of land lies within the planning and development regulation jurisdiction of the town and another local government, the town and local government may, by mutual agreement and with the written consent of the landowner, assign exclusive planning and development regulation jurisdiction for the entire parcel to either government. Such a mutual agreement shall only be applicable to development regulations and shall not affect taxation or other nonregulatory matters.

The mutual agreement shall be evidenced by a resolution formally adopted by each governing board and recorded with the register of deeds in the county where the property is located within 14 days of the adoption of the last required resolution.

§ 11.07 PENDING JURISDICTION.

After consideration of a change in jurisdiction has been formally proposed, the town may receive and process proposals to adopt development regulations and any application for development approvals that would be required. No final decisions shall be made on any development approval prior to the actual transfer of jurisdiction. Acceptance of jurisdiction, adoption of development regulations, and decisions on development approvals may be made concurrently and may have a common effective date.

§ 11.08 LOCAL ACTS.
Nothing in this section shall repeal, modify, or amend any local act that defines the boundaries of the town's extraterritorial jurisdiction by metes and bounds or courses and distances.

§ 11.09 EFFECT ON VESTED RIGHTS.
Whenever the town acquires jurisdiction over a territory that theretofore has been subject to the jurisdiction of another local government, any person who has acquired vested rights in the surrendering jurisdiction may exercise those rights as if no change of jurisdiction had occurred.

The town may take any action regarding such a development approval, certificate, or other evidence of compliance that could have been taken by the local government surrendering jurisdiction pursuant to its development regulations. Any building, structure, or other land use in a territory over which the town has acquired jurisdiction is subject to the development regulations of the Town of Swansboro.

TITLE XV: LAND USAGE

CHAPTER 150: BUILDING REGULATIONS

INSPECTION DEPARTMENT

§ 150.30 DUTY OF INSPECTION DEPARTMENT.
The Inspection Department shall be charged with enforcing the provisions of G.S. §§ 160D-1104~~A-426 through 160A-434,~~ relating to the ~~condemnation, repair and demolition of unsafe buildings upon the direction of the Board.~~ construction of buildings and other structures, the installation of plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems, the maintenance of buildings and other structures in a safe, sanitary, and healthful condition, and other matters that may be specified by the Board of Commissioners.

§ 150.32 CONFLICTS OF INTEREST.
No officer or employee of the Inspection Department shall be financially interested or employed by a business that is financially interested in the furnishing of labor, material or appliances for the construction, alteration or maintenance of any building ~~or any part thereof, or in the making of plans or specifications therefor, unless he/she is the owner of the building~~ within the Town's planning and development regulation jurisdiction or any part or system thereof , or in the making of plans or specifications therefor, unless he is the owner of the building. No officer or employee of the Inspection Department shall engage in any work which is inconsistent with his/her duties or with the interests of the town.

§ 150.33. FAILURE TO PERFORM DUTIES.
If any member of an inspection department shall willfully fail to perform the duties required by law, or willfully shall improperly issue a building permit, or shall give a certificate of compliance without first making the inspections required by law, or willfully shall improperly give a certificate of compliance, the member shall be guilty of a Class 1 misdemeanor.

PERMITS

§ 150.47. REVOCATION OF BUILDING PERMITS.

The inspector may revoke and require the return of any building permit by notifying the permit holder in writing stating the reason for the revocation. Building permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable State or local laws; or for false statements or misrepresentations made in securing the permit. Any building permit mistakenly issued in violation of an applicable State or local law may also be revoked.

CHAPTER 152: UNIFIED DEVELOPMENT ORDINANCE

GENERAL PROVISIONS

§ 152.004 JURISDICTION.

(A) This chapter shall be effective throughout the town's planning jurisdiction. The town's planning jurisdiction comprises the area within the town as shown on the "Official Zoning Map" for the Town of Swansboro. Such planning jurisdiction may be modified from time to time in accordance with G.S.§~~160A-360~~ 160D-201 through 204.

(B) In addition to other locations required by law, a copy of the official zoning map showing the boundaries of the town's planning jurisdiction shall be available for public inspection in the Town of Swansboro Town Clerk's Office.

(C) ~~With the exception of intensive livestock operations,~~ T~~t~~he provisions of this chapter shall in no way regulate or prohibit any bona fide farm and its related accessory uses within the Town of Swansboro's Extraterritorial Jurisdiction (ETJ). ~~Residences for non-farm use or occupancy and other non-farm uses shall be subject to the provisions of this chapter.~~

(D) No land owned by the State of North Carolina may be included within an overlay district or ~~a special use or~~ conditional zoning district without approval by the Council of State or its delegate as required by G.S.§~~160A-392~~ 160D-913.

§ 152.016 DEFINITIONS OF BASIC TERMS.

ACCESSORY STRUCTURE. A use or structure on the same lot with, but of a nature customarily incidental and subordinate to the principal use or structure and which contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal building or use being served. No temporary storage unit (as defined in § 152.016) shall be considered an accessory use or structure . However, structures which have been manufactured to resemble permanent structures, such as storage sheds, garden sheds, and similar structures shall be considered accessory uses or structures, even though they may be capable of being lifted or disassembled and removed from the property. There are no regulations on the number and/or location of accessory buildings located on property ~~which has a tax farm identification number~~ used for bona fide farm purposes.

ADMINISTRATIVE DECISION. Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards. These are sometimes referred to as ministerial decisions or administrative determinations.

ADMINISTRATIVE HEARING. A proceeding to gather facts needed to make an administrative decision.

BONA FIDE FARM. ~~Any tract of land larger than ten acres and otherwise eligible for tax deferral as authorized in G.S. §105-277.1 *et seq.* shall be considered a ***BONA FIDE FARM***. Any tract of land on which agricultural activities are clearly of an incidental nature may also be considered as a ***BONA FIDE FARM*** upon determination by the Administrator upon consideration of agricultural productivity and improvements, and any other necessary or available information. ***BONA FIDE FARMS*** do not include intensive livestock operations.~~
Includes the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in NC G.S. 106-581.1 and 160D-903.

For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

1) A farm sales tax exemption certificate issued by the Department of Revenue;

2) A copy of the property tax listing showing that the property is eligible for participation in the present-use value program pursuant to G.S. 105-277.3;

3) A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return; or

4) A forest management plan.

CLOSE FAMILIAL RELATIONSHIP. A spouse, parent, child, brother, sister, grandparent, or grandchild. This term also includes step, half, and in-law relationships.

COMMUNITY. A group of people who live in the same area (such as a neighborhood). For the purposes of meeting the requirement of the community meetings before public hearing for a conditional zoning ~~district~~, the area shall be defined as a one-mile radius from the center of the applicant's proposed request.

COMPREHENSIVE PLAN. The comprehensive plan, CAMA land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, and any other plans regarding land use and development that have been officially adopted by the Board of Commissioners.

~~*CONDITIONAL ZONING DISTRICT (CD).* A zoning district that permits a particular use or uses established in accordance with specified standards and conditions tailored to each individual project. CONDITIONAL ZONING DISTRICTS are established in accordance with the requirements of § 152.180 Note 1.~~
CONDITIONAL ZONING DISTRICT (CZ). A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

DECISION-MAKING BOARD. A governing board, planning board, board of adjustment, historic district commission, or other board assigned to make quasi-judicial decisions.

DETERMINATION. A written, final, and binding order, requirement, or determination regarding an administrative decision.

DEVELOPER. ~~Any person, firm, trust, partnership, association, or corporation engaged in development, or proposed development, of housing, commercial, or industrial projects~~ A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

DEVELOPMENT. ~~Any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.~~
Unless the context clearly indicates otherwise, the term means any of the following:

a) The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure;
b) The excavation, grading, filling, clearing, or alteration of land;
c) The subdivision of land as defined in G.S. 160D-802; or
d) The initiation or substantial change in the use of land or the intensity of use of land.

DEVELOPMENT AGREEMENT. An agreement entered into between the ~~governing body (Town~~ Board of Commissioners~~)~~ and a developer to better structure and manage development approvals for large scale, multiple-phase developments to ensure their integration into local capital facilities programs. A ***DEVELOPMENT AGREEMENT*** is subject to the approval of a Conditional Zoning ~~District~~ (CZ~~D~~).

DEVELOPMENT APPROVAL. An administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals including plat approvals, permits issued, development agreements entered into, and building permits issued. Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals attach to and run with the land.

DEVELOPMENT REGULATION. A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code, or any other regulation, local act or charter that regulates land use or development.

DWELLING. ~~Any building, or portion thereof, which is designed for living and/or sleeping purposes. This shall not include a motel, residential lodging facilities, or other building designed as a transient residence.~~ Any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used. The term does not include any transient residence or recreational vehicle if used solely for a seasonal vacation purpose.

EVIDENTIARY HEARING. A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation.

FALL ZONE. The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

FAMILY CARE HOME. ~~A facility designed to care for a maximum of six handicapped persons , plus support and supervisory personnel, as defined in G.S. §168-21.~~
A home with support and supervisory personnel that provides room and board, personal care, and habilitation services in a family environment for not more than six resident persons with disabilities. As provided in 160D-907, a person with disabilities is a person with a temporary or permanent physical, emotional, or mental disability, including, but not limited to, mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances, and orthopedic impairments, but does not include mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)b.

GOVERNING BOARD. The Town of Swansboro Board of Commissioners.

LANDOWNER. ~~Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representatives of such owner.~~ The holder of the title in fee simple. Absent evidence to the contrary, the county tax records shall be utilized to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.

LEGISLATIVE DECISION. The adoption, amendment, or repeal of a regulation or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement.

LEGISLATIVE HEARING. A hearing to solicit public comment on a proposed legislative decision.

LOCAL ACT. As defined in G.S. 160A-1(5), an act of the General Assembly applying to one or more specific cities by name, or to all cities within one or more specifically named counties. "Local act" is interchangeable with the terms "special act," "public-local act," and "private act".

MANUFACTURED HOME. ~~A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning, and electrical systems contained herein. *MANUFACTURED HOME* includes any structure that meets all of the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§5401 *et seq*.~~
As defined by G.S. 143-145(7), a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §5401 *et seq*.
For manufactured homes built before June 15, 1976, "manufactured home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semi-permanent foundation having a measurement of over 32 feet in length and over eight feet in width. "Manufactured home" also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semi-permanent foundation having a measurement of over 32 feet in length and over eight feet in width.

~~***MANUFACTURED HOME (MOBILE HOME) CLASS A.*** A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies each of the following additional criteria:~~

~~(1) The home has a length not exceeding four times its width;~~

~~(2) The pitch of the home's roof has a minimum vertical rise of one foot for each five feet of horizontal run, and the roof is finished with a type of shingle that is commonly used in standard residential construction;~~

~~(3) The exterior siding consists of wood, hardboard, or aluminum (vinyl covered or painted, but in no case exceeding the reflectivity of gloss white paint) comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction;~~

~~(4) A continuous, permanent masonry foundation, unpierced except for required ventilation and access, is installed under the home; and~~

~~(5) The tongue, axles, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy.~~

~~***MANUFACTURED HOME (MOBILE HOME) CLASS B.*** A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction but that does not satisfy the criteria necessary to qualify the house as a Class A manufactured home .~~

~~***MANUFACTURED HOME (MOBILE HOME) CLASS C.*** Any manufactured home that does not meet the definitional criteria of a Class A or Class B manufactured home . C***LASS C MANUFACTURED HOMES*** are not permitted within the Town of Swansboro's planning jurisdiction.~~

MULTIPHASE DEVELOPMENT. A development containing 25 acres or more that is submitted for site plan approval for construction to occur in more than one phase and is subject to a master development plan with committed elements showing the type and intensity of use of each phase.

PLANNING AND DEVELOPMENT REGULATION JURISDICTION. The geographic area within which the Town may undertake planning and apply its development regulations.

PLANNING BOARD. A body appointed by the ~~Swansboro~~ Board of Commissioners and the Onslow County Board of Commissioners to perform duties as specified in G.S. 160D-301~~G.S. §160A-361.~~ The Onslow County Board of Commissioners shall only appoint extraterritorial jurisdiction members.

QUASI-JUDICIAL DECISION. A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.

SITE PLAN. A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision. A site plan may also be approved as part of a conditional zoning decision.

SITE-SPECIFIC VESTING PLAN. A plan describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a site plan, a preliminary or general development plan, a special use permit, a conditional zoning, or any other development approval as may be used by the Town. Unless otherwise expressly provided, the plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways.

SMALL WIRELESS FACILITY. A wireless facility where each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than 6 cubic feet. Other wireless equipment associated with the facility shall have a cumulative volume of no more than 28 cubic feet.

SPECIAL USE PERMIT. A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits or special exceptions.

SUBDIVISION. ~~All divisions of a tract or parcel of land into two or more lots, building sites , or other divisions when any one or more of those divisions is created for the purpose of sale or buildingdevelopment (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition:~~
The division of land for the purpose of sale or development as specified in G.S. 160D-802:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the ~~municipality~~ Town as shown in its subdivision regulations;

(2) The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors; ~~and~~

(4) The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal or exceed the standards of the ~~municipality~~ Town, as shown on its subdivision regulations~~.~~; and

(5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

WIRELESS TELECOMMUNICATION ~~TOWER~~FACILITIES. A ~~tower~~ wireless support facility including, but not limited to, radio and television transmission towers or similar utilities, microwave towers, and mobile telephone or radio towers, and their associated equipment to include radio transceivers, antennas, wires, coaxial or fiber-optic cable, and regular and backup power supplies. This term shall not include radio transmission facilities for use by ham radio operators or two-way local radio facilities for business or governmental purposes that are under 100 feet in height and that, at a height of 50 feet above the base, have a maximum horizontal measurement of eighteen inches nor shall it include any tower erected by a public authority for public safety or emergency service communication purposes.

~~TELECOMMUNICATION TOWER,~~ CO~~-~~LLOCATION. ~~The location of multiple antennas on a single telecommunication tower.~~ The installation of wireless antennas or small wireless facilities on, under, or within existing wireless towers, utility poles, water towers, buildings, and other structures. The term does not include the installation of new utility poles or wireless support structures.

TEMPORARY FAMILY HEALTH CARE STRUCTURE. A transportable residential structure providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person that is primarily assembled at a location other than its site of installation, is limited to one occupant who shall be the mentally or physically impaired person, has no more than 300 gross square feet, and complies with all applicable provisions of the State Building Code and G.S. 143-139.1(b).

VESTED RIGHT. The right to undertake and complete the development and use of property under the terms and conditions of an approv~~ed site-specific development plan or an approved phased development plan.~~al secured as specified in G.S. 160D-108 or under common law.

ZONING MAP AMENDMENT OR REZONING. An amendment to a zoning regulation to change the zoning district that is applied to a specified property or properties. The term does not include the initial adoption of a zoning map by a local government or the repeal of a zoning map and readoption of a new zoning map for the entire planning and development regulation jurisdiction, nor updating the zoning map to incorporate amendments to the names of zoning districts made by zoning text amendments where there are no changes in the boundaries of the zoning district or land uses permitted in the district. It does include the initial application of zoning when land is added to the territorial jurisdiction of a local government that has previously adopted zoning regulations, as well as the application of overlay zoning districts or conditional zoning districts.

ADMINISTRATIVE MECHANISMS

§ 152.030 BOARD OF ADJUSTMENT.

~~(C) *Filing for interpretation appeals and variances* .Appeals from the enforcement and interpretation of this chapter and appeals for variances may be taken to the Board of Adjustment by any person aggrieved or by any office, department, board, or bureau of the town affected. Based on the Town of Swansboro Schedule of Fees, a fee for the cost of advertising shall be paid to the town for each application to cover the necessary administrative costs and advertising. Notice of an appeal to the Board of Adjustment shall be filed with the Administrator.~~

~~An appeal stays all proceedings in furtherance of the action, unless the Administrator certifies to the Board that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by a court of record.~~

(D) *Power and duties.* The Board of Adjustment shall have the following powers and duties and shall hear and decide all matters upon which it is required to pass under any statute or development regulation.

(1) To hear and decide appeals where it is alleged by the appellant that there is error in any decision made by the Administrator or other administrative officials in the carrying out or enforcing of any provision of the ordinance, and to hear and decide requests for variances when it is alleged that carrying out the strict letter of the ordinance would result in practical difficulties or unnecessary hardships. An appeal may be taken by any person aggrieved or by an official, department, board, or bureau of the town. ~~A concurring vote of four-fifths of the Board shall be necessary to grant a variance . A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. Vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.~~

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

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

(5) ~~(a)~~ The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent material and substantial evidence in the record. Each quasi-judicial decision shall be reduced in writing and reflect the Board's determination of contested facts and their application of applicable standards. ~~A quasi-judicial decision is effective upon filing the written decision with the clerk to the Board. The decision of the board shall be delivered to the applicant, property owner, or any person who has submitted a written request for a copy prior to the date the decision becomes effective.~~

~~(b)~~ Every quasi-judicial decision of the Board shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. §160~~A-393~~D-1402.

§ 152.031 LAND USE ADMINISTRATOR.

Except as otherwise specifically provided, primary responsibility for administering and enforcing this ~~chapter~~ ordinance may be assigned by the Town Manager to one or more individuals. The person or persons to whom these functions are assigned shall be referred to ~~in this chapter~~ as the "land use administrator" or "administrator".

Duties assigned to staff may include, but are not limited to, drafting and implementing plans and development regulations; determining whether applications for development approvals are complete; receiving and processing applications for development approvals; providing notices of applications and hearings; making decisions and determinations regarding development regulation implementation; determining whether applications for development approvals meet applicable standards as established by law and local ordinance; conducting inspections; issuing or denying certificates of compliance or occupancy; enforcing development regulations, including issuing notices of violation, orders to correct violations, and recommending bringing judicial actions against actual or threatened violations; keeping adequate records; and any other actions that may be required in order adequately to enforce the laws and development regulations.

No staff member shall make a final administrative decision if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

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

§ 152.032 THE BOARD OF COMMISSIONERS.
~~(A)~~ The Board of Commissioners shall have the following powers and duties to be carried out in accordance with these regulations which include, but are not limited to, the following:

(5) ~~(a)~~ To adopt temporary moratoria on any ~~town~~ development approval required by law except for the purpose of developing and adopting new or amended plans or development regulations governing residential uses. ~~The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the Board of Commissioners shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. §160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. §160A-417 is outstanding, to any project for which a conditional zoning district application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. §160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivisionplats that have been accepted for review by the town prior to the call for public hearing to adopt the moratorium. Any preliminary subdivisionplat accepted for review by the town~~

~~prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.~~

~~(b) Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:~~

~~1. A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the town and why those alternative courses of action were not deemed adequate;~~

~~2. A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium;~~

~~3. An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium; and~~

~~4. A clear statement of the actions, and the schedule for those actions, proposed to be taken by the Town during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium;~~

~~(c) No moratorium may be subsequently renewed or extended for any additional period unless the town shall have taken all reasonable and feasible steps proposed to be taken by the town in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in divisions (A)(5)(b)1. through 4. of this section, including what new facts or conditions warrant the extension; and~~

~~(d) Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the Town shall have the burden of showing compliance with the procedural requirements of this subsection.~~

~~(B)~~ (6) The Board of Commissioners shall hear and decide on conditional zoning district requests.

~~(C)~~ (7) Unless otherwise specifically provided in this chapter, in acting upon conditional zoning district requests or in considering amendments to this chapter or the zoning map, the Board of Commissioners shall follow the regular voting and other requirements as set forth in other provisions of the town code.

~~(D)~~ (8) The Board of Commissioners shall hear all variances related to subdivisions.

~~(E)~~ (9) A Board of Commissioners member ~~shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct substantial and readily identifiable financial impact on the member.~~ shall not vote on any legislative decision regarding a development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Additionally, a member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

When the Board of Commissioners exercises quasi-judicial functions, no member shall participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

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

(10) When adopting or rejecting any zoning text or map amendment, the Board of Commissioners shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The plan consistency statement is not subject to judicial review.

The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Board of Commissioners that at the time of action on the amendment the Board was aware of and considered the Planning Board's recommendations and any relevant portions of an adopted comprehensive plan.

If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently.

If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board of Commissioners statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

(11) When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Board of Commissioners. This statement of reasonableness may consider, among other factors:

a) the size, physical conditions, and other attributes of the area proposed to be rezoned;
b) the benefits and detriments to the landowners, the neighbors, and the surrounding community;
c) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;
d) why the action taken is in the public interest; and
e) any changed conditions warranting the amendment.

If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board of Commissioners statement on reasonableness may address the overall rezoning.

The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

§ 152.033 THE PLANNING BOARD.

(A) The Board of Commissioners do hereby create a Planning Board under the authority of G.S.§160~~A-361~~D-301.

(6) Powers and duties of the Planning Board shall consist of:

a) ~~Make studies of the area within its jurisdiction and surrounding areas;~~ To prepare, review, maintain, monitor, and periodically update and recommend to the Board of Commissioners a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.

b) ~~Determine objectives to be sought in the development of the study area;~~ To facilitate and coordinate citizen engagement and participation in the planning process.

~~c) Prepare and adopt plans for achieving these objectives;~~

~~d)~~c) Develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

~~e)~~d) Advise the Board of Commissioners concerning the ~~use and amendment of means for carrying out~~ implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604;

~~f)~~e) Exercise any functions in the administrat~~ive~~ion and enforcement of various means for carrying out plans that the Board of Commissioners may direct;

f)~~h)~~ ~~Review and comment on proposed zoning text and/or map amendments, and on permit requests.~~ To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board; and

g) Perform any other related duties that the Board of Commissioners may direct.~~; and~~

(B) *Rules of conduct.* Members of the Board may be removed for cause, including violation of any rule stated below.

(2) No Board member shall ~~take part in the hearing, consideration, or determination, of any application in which he/she is reasonably likely to have a direct, substantial, and readily identifiable financial impact with regard to the outcome.~~ vote on any advisory or legislative decision regarding a development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

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

(C) *Planning Board review and comment*.

(1) Initial Zoning. The Planning Board shall prepare or shall review and comment upon a proposed zoning regulation, including the full text of such regulation and maps showing proposed district boundaries. The Planning Board may hold public meetings and legislative hearings in the course of preparing the regulation. Upon completion, the Planning Board shall make a written recommendation regarding adoption of the regulation to the Board of Commissioners.

The Board of Commissioners shall not hold its required hearing or take action until it has received a recommendation regarding the regulation from the Planning Board. Following its required hearing, the Board of Commissioners may refer the regulation back to the Planning Board for any further recommendations that the board may wish to make prior to final action by the governing board in adopting, modifying and adopting, or rejecting the regulation.

(2) Zoning Amendments. Subsequent to initial adoption of a zoning regulation, all proposed amendments to the zoning regulation or zoning map shall be submitted to the Planning Board for review and comment. If no written report is received from the Planning Board within 30 days of referral, the Board of Commissioners may act on the amendment without the Planning Board report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.

(3) Plan Consistency. When conducting a review of proposed zoning text or map amendments, the Planning Board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.

If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Planning Board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

(4) Review of Other Ordinances and Actions. Any development regulation other than a zoning regulation that is proposed to be adopted and any subsequent amendments to the regulation thereafter may be referred to the Planning Board for review and comment.

APPEALS, VARIANCES, INTERPRETATIONS

§ 152.045 APPEALS

(B) Appeals from the enforcement and interpretation of this chapter~~, special use permits, and request for variances~~ may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the administrator and the Board of Adjustment a written notice of appeal specifying the grounds therefor. A notice of appeal shall be filed with the Town Clerk or

Town Deputy Clerk. The notice of appeal must state the grounds for the appeal and the date and time of filing.

§ 152.046 VARIANCES.

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

(A) ~~Application of the strict letter of the ordinance~~ zoning regulation ~~would result in unnecessary hardships. In determining whether unnecessary hardships would result from carrying out the strict letter of the ordinance, the Board of Adjustment shall consider the following, and shall record in writing its findings and conclusions:~~

(1) ~~Whether the hardship results from the application of the ordinance;~~
Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

(2) Whether the hardship ~~is suffered by~~ results from conditions that are peculiar to the applicant's property~~. The hardship results from conditions that are peculiar to the property~~, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

(3) Whether the hardship is the result of the applicant's own action(s). The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and

(4) The requested variance is consistent with the spirit, purpose and intent of the ~~ordinance~~ regulation, such that public safety is secured, and substantial justice is achieved.

(B) Any variance extending a nonconforming use shall be deemed not to be in harmony with the general purpose and intent of the ordinance and shall be deemed to violate its spirit.~~; and provided further,~~

(C)N~~n~~o change in permitted uses may be authorized by variance.

~~(B)~~ (D) If any of those issues are not resolved as indicated herein, then the Board of Adjustment shall deny the requested variance .

~~(C)~~ (E) ~~Conditions imposed upon variances.~~ In granting a variance, the Board of Adjustment may determine and prescribe reasonable conditions and safeguards upon which the variance is granted in order to ensure that the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and to ensure that the variance will assure the public safety and welfare and will provide substantial justice.

~~(D)~~ (F) Violation of any condition upon which a variance is granted shall be deemed a violation of this chapter.

§ 152.050 BOARD ACTION ON APPEALS AND VARIANCES.

(A) With respect to appeals , a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the vote necessary for adoption ~~(see § 152.030(D))~~, then a motion to uphold the decision appealed from shall be in order. ~~This motion is adopted as the board's decision if supported by a majority of the board's membership (excluding vacant seats).~~

(B) Before granting a variance , the Board of Adjustment must take a separate vote and vote ~~affirmatively (by a four-fifths majority see § 152.030(D))~~ on each of the ~~seven~~ required findings stated in § 152.046. Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in § 152.046 shall include a statement of the specific reasons or findings of fact supporting such motion.

(C) A motion to deny a variance may be made on the basis that any one or more of the criteria set forth in § 152.046 are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. ~~This motion is adopted as the board's decision if supported by four-fifths or more of the board's membership (excluding vacant seats).~~

~~(Ord. 2005-O3, passed 3-15-2005) (Am. Ord. passed 1-21-2014)~~

HEARING PROCEDURES ~~FOR APPEALS AND APPLICATIONS~~

§ 152.065 QUASI-JUDICIAL DECISIONS ~~HEARING REQUIRED~~ ~~ON APPEALS AND APPLICATIONS.~~

A) ~~Before making a decision on an appeal or an application for a variance or special use permit, or a petition from the zoning/planning staff to revoke a special use permit, the Board of Adjustment or the Board of Commissioners , as the case may be, shall hold a hearing on the appeal or application.~~ Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.

B) ~~Subject to division (C) of this section,~~ T~~t~~he hearing shall be open to the public and all persons interested in the outcome of the ~~appeal or~~ application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

C) ~~The Board of Adjustment or Board of Commissioners~~ Boards may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.

~~D) The hearing board may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six weeks or more elapses between hearing dates.~~ The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

§ 152.066 NOTICE OF HEARING.

(A) Notice shall ~~be given to the appellant or applicant and any other person who makes a written request for such notice by mailing to such persons a written notice not later than ten days but not more than 25 days prior to the date of the hearing~~ be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice;

(B) ~~Notice shall be given to neighboring property owners by mailing a written notice not later than ten days but not more than 25 days prior to the date of the hearing to those persons who have listed for taxation real property and who are abutting (this includes property owners who abut the property across a street) the lot that is the subject of the application or appeal~~ The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing;

(C) ~~A sign shall be posted on the property subject to the application or appeal . Such sign shall be posted not less than ten days but not more than 25 days prior to the date of the hearing~~ Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way; and

~~(D) Notice shall be given to other potentially interested persons by publishing a notice one time in a newspaper having general circulation in the area not less than five nor more than 15 days prior to the hearing; and~~

(D~~E~~) The notice required by this section shall state the date, time, and place of the hearing, reasonably identify the ~~lot~~ property that is the subject of the application ~~or appeal~~, and indicate the action requested or proposed.

§ 152.067 EVIDENCE.

(B) ~~All persons who intend to present evidence to the permit-issuing board, rather than arguments only, shall be sworn.~~ The applicant, the local government, and any person who would have standing to appeal the decision shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

(C) ~~All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (crucial findings) shall be based upon reliable evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.~~ The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

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

§ 152.068 MODIFICATION OF APPLICATION AT HEARING.

(A) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the ~~B~~board ~~of Commissioners or Board of Adjustment~~, the applicant may agree to modify his application, including the plans and specifications submitted.

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

152.069 VOTING

The concurring vote of four-fifths of the board shall be necessary to grant a variance.

A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.

For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

~~**§ 152.069 RECORD.**~~

~~(A) A tape recording shall be made of all hearings required by § 152.065~~6~~, and such recordings shall be kept for at least 30 days or until the minutes of the meeting have been approved. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.~~

~~(B) Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the town for at least five years.~~

§ 152.070 WRITTEN DECISION.

~~(A) Any decision made by the Board of Adjustment or Board of Commissioners regarding an appeal or variance or issuance or revocation of a special use or conditional zoning district shall be reduced to writing and served upon the applicant or appellant and all other persons who make a written request for a copy.~~

~~(B) In addition to a statement of the board's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the board's findings and conclusion, as well as supporting reasons or facts, whenever this chapter requires the same as a prerequisite to taking action.~~

(A) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.

(B) Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board.

(C) A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. Special Use permits will be recorded in the office of the Onslow County Register of Deeds.

(D) The Administrator shall certify that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

152.071 JUDICIAL REVIEW

Every quasi-judicial decision shall be subject to review by the Superior Court by proceedings in the nature of certiorari pursuant to NC GS 160D-1402. Appeals shall be filed within the time specified in NC GS 160D-1405(d).

152.072 LEGISLATIVE HEARINGS

Before adopting, amending, or repealing any ordinance or development regulation, the Board of Commissioners shall hold a legislative hearing.

Notice of the hearing shall be provided as follows:

A) Published Notice. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

B) Mailed Notice. When the boundaries of zoning districts are determined, established, and enforced, and from time to time amended, supplemented or changed, the owner of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment by first-class mail at the last addresses listed for such owners on the county tax abstracts.

   For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor.

   This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing.

C) Posted Notice. When a zoning map amendment is proposed, the Town shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but sufficient notices shall be posted to provide reasonable notice to interested persons.

D) Notice to Military Bases. If the adoption or modification would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the Town shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the hearing. If the military provides comments or analysis regarding the compatibility of the proposed development regulation or amendment with military operations at the base, the governing board shall take the comments and analysis into consideration before making a final determination on the ordinance.

E) ETJ Expansion. If the zoning map amendment is being proposed in conjunction with an expansion of the extraterritorial planning and development regulation jurisdiction under G.S. 160D-202, a single hearing on the zoning map amendment and the boundary amendment may be held. In this instance, the initial notice of the zoning map amendment hearing may be combined with the boundary hearing notice and the combined hearing notice mailed at least 30 days prior to the hearing.

F) Optional Notice for Large-Scale Zoning Map Amendments. The first-class mail notice required by this section shall not be required if the zoning map amendment proposes to change the zoning designation of more than 50 properties owned by at least 50 different property owners.

In this instance, the Town can elect to make the mailed notice or, as an alternative, elect to publish notice of the hearing provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified via first-class mail.

G) Actual Notice. Except for a Town-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the landowner or authorized agent, the applicant shall certify that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of the hearing. Actual notice shall be provided in any manner permitted under NC GS 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with NC GS 1A-1, Rule 4(j1). The person or persons required to provide notice shall certify to the Town that actual notice has been provided, and such certificate shall be deemed conclusive in the absence of fraud.

H) A development regulation adopted pursuant to section shall be adopted by ordinance.

§ 152.073 MORATORIA

A) Authority. As provided by NC GS 160D-107, the Board of Commissioners may adopt temporary moratoria on any development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions.

B) Hearing Required. Except in cases of imminent and substantial threat to the public health or safety, before adopting a development regulation imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a legislative hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160D-601.

C) Exempt Projects. Absent an imminent threat to public health or safety, a development moratorium adopted shall not apply to any project for which a valid building permit issued is outstanding, to any project for which a special use permit application has been accepted as complete, to development set forth in a site-specific or phased vesting plan approved pursuant to G.S. 160D-108, to development for which substantial expenditures have already been made in good-faith reliance on a prior valid development approval, or to preliminary or final subdivision plats that have been accepted for review by the Town prior to the call for a hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the Town prior to the call for a hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium. Notwithstanding the foregoing, if a complete application for a development approval has been submitted prior to the effective date of a moratorium, G.S. 160D-108(b) shall be applicable when permit processing resumes.

D) Required Statements. Any development regulation establishing a development moratorium must include, at the time of adoption, each of the following:

1) A statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the Town and why those alternative courses of action were not deemed adequate;
2) A statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium;

3) A date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium; and
4) A statement of the actions, and the schedule for those actions, proposed to be taken by the Town during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

E) Limit on Renewal or Extension. No moratorium may be subsequently renewed or extended for any additional period unless the Town has taken all reasonable and feasible steps proposed to be taken in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of subsection (D), including what new facts or conditions warrant the extension.

F) Expedited Judicial Review. Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the General Court of Justice for an order enjoining the enforcement of the moratorium. Actions brought pursuant to this section shall be scheduled for expedited hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In such actions, the Town shall have the burden of showing compliance with the procedural requirements of this section.

§ 152.074 NOTICE OF AN ADMINISTRATIVE DECISION

The Administrator shall give written notice to the owner of the property that is the subject of an administrative determination or interpretation and to the party who requested it, if different from the owner.

The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination or interpretation if different from the owner's.

It shall be conclusively presumed that all persons with standing to appeal have constructive notice from the date a sign providing notice that a determination has been made is prominently posted on the property that is the subject of the determination or interpretation, provided the sign remains on the property for at least 10 days. The sign shall contain the words "Zoning Decision" or "Subdivision Decision", or similar language, and shall identify the means to contact the Town for more information.

§ 152.075 CITIZEN COMMENTS

If any resident or property owner submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment to the Town Clerk at least two business days prior to the proposed vote on such change, the Town Clerk shall deliver such written statement to the Board of Commissioners.

If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160D-705 or any other statute, the Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.

~~PERMITS~~ DEVELOPMENT APPROVALS

~~PART I: ZONING, SPECIAL USE PERMITS, CONDITIONAL ZONING DISTRICTS, AND LAND IMPROVEMENT PERMITS~~

§ 152.105 ~~PERMITS~~ APPROVALS REQUIRED.

(A) ~~Unless specifically excepted form this requirement, the use made of property may not be substantially changed; substantial clearing, grading, or excavation may not be commenced; and buildings or other substantial structures may not be constructed, erected, moved, or substantially altered except in accordance with and pursuant to one of the following permits:~~

~~(1) A zoning permit issued by the Administrator ;~~

~~(2) A special use permit issued by the Board of Commissioners ; or~~

~~(3) A conditional zoning district permit issued by the Board of Commissioners .~~

No person shall commence or proceed with development without first securing any required development approval required by the State Building Code, or other State or local law from the Town of Swansboro. A development approval shall be in writing and may contain a provision that the development shall comply with all applicable State and local laws. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner.

(B) ~~Zoning permits , special use permits, conditional zoning districts permits, and sign permits~~ Development approvals are issued under this chapter only when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this chapter if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, and except as otherwise provided in §§ 152.130 through 152.135, all development shall occur strictly in accordance with such approved plans and applications.

(C) Physical improvements to land to be subdivided may not be commenced except in accordance with a land improvement permit issued by the Board of Commissioners or after final plat approval by the Town Manager or his/her designee ~~for minor subdivisions or the Board of Commissioners for major subdivisions (see §§ 152.325 through 152.385)~~.

(D) A ~~zoning permit , special use permit, conditional zoning district permit, land improvement permit, or sign permit~~ development approval shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements ~~lawfully imposed by the permit-issuing authority~~. ~~All such permits issued with respect to tracts of land in excess of one acre (except sign permits and zoning permits for single- family and two- family residential uses) shall be recorded in the Onslow County Register of Deeds after execution by the record owner as provided in § 152.337(I).~~

~~§ 152.112 EXPIRATION OF PERMITS.~~

~~(A) Zoning, special use , land improvement , and sign permits shall expire automatically if, within six months after the issuance of such permits, the use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use.~~

~~(B) If, after some physical alternation to land or structures begins to take place, such work is discontinued for a period of one year, then the permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of § 152.113.~~

§ 152.11~~3~~2 EFFECT OF PERMITS ON SUCCESSORS AND ASSIGNS.

(B) Whenever a ~~zoning,~~ special use ~~,~~ ~~or conditional zoning district~~ permit is issued to authorize development (other than single-family or two-family residences) ~~on a tract of land in excess of one acre,~~ nothing authorized by the permit may be done until the ~~record~~ owner of the property signs a written acknowledgment that the permit has been issued so that the permit may be recorded in the Onslow County Register of Deeds and indexed under the ~~record~~ owner's name as grantor.

ENFORCEMENT AND REVIEW

§ 152.132 PROCEDURES UPON DISCOVERY OF VIOLATIONS.

(A) ~~If the administrator finds that any provision of this chapter is being violated, he or she shall send a written to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Administrator 's discretion.~~ When staff determines work or activity has been undertaken in violation of an adopted development regulation or other local development approval, a written notice of violation will be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may also be posted on the property.

(B) The ~~final~~ written notice of violation ~~(the initial written notice may be the final notice)~~ shall state what action the Administrator intends to take if the violation is not corrected and shall advise that the administrator's decision or order may be appealed to the Board of Adjustment pursuant to NC GS §160D-405~~in accordance with § 152.030(C)~~.

(C) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this chapter or pose a danger to the public health, safety, or welfare, the administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in § 152.133.

(D) Whenever any work or activity is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved by personal delivery, electronic delivery, or first-class mail. A stop work order may be appealed pursuant to NC GS 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

VESTED RIGHTS, ~~AND~~ PERMIT CHOICE AND DEVELOPMENT AGREEMENTS

§ 152.150 PURPOSE.

~~The purpose of this subchapter is to provide for the establishment of a zoning vested right , as created by G.S. §160A-385.1, upon the approval of a site specific development plan .~~

~~(A) The purpose of this subchapter of the town 's development regulations is to emulate the North Carolina General Statutes regarding vested rights for developers and municipalities under G.S.§§160A-385 and 385.1, and to emulate the North Carolina General Statues regarding development agreements under G.S. §§160A-400.20 *et seq*.~~

~~(B)~~ It is necessary and desirable for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the ~~land-use planning~~ development regulation process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in ~~the area of~~ land-use planning and development regulation. ~~The town 's approval of land-use development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees and related expenses.~~

~~(C) The ability of a landowner to obtain a vested right after town approval of a site specific development plan or a phased development plan will preserve the prerogatives and authority of the Town Board with respect to land-use matters. There are ample opportunities for public participation and the public interest will be served.~~

~~(D)~~ These provisions ~~found below will~~ strike an appropriate balance between private expectations and the public interest~~, while scrupulously protecting the public health, safety and welfare~~.

~~§ 152.151 DEFINITIONS SPECIFIC TO THIS SUBCHAPTER.~~

~~For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~*LANDOWNER*. Any owner of a legal or equitable interest in real property , including heirs, devisees, successors, assigns, and personal representative of such owners . The *LANDOWNER* may allow a person holding a valid option to purchase to act as his or her agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan under this section, in the manner allowed by the ordinance.~~

~~*MULTI-PHASED DEVELOPMENT*. A development containing 100 acres or more that (I) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of ties master development plan approval.~~

~~*PHASED DEVELOPMENT PLAN*. A plan which has been submitted to the town by a landowner for phased development which shows the type and intensity of use for a specific parcel or parcels with a lesser degree of certainty than the plan by the town to be a specific development plan.~~

~~*PROPERTY*. All real property subject to zoning regulations and restrictions and zone boundaries of the town.~~

~~*SITE SPECIFIC DEVELOPMENT PLAN*. A plan which has been submitted to the town by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel~~

~~or parcels of property . Such plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivisionplat, a preliminary or general development plan, a conditional or special use permit, a conditional or special use district plan, or any other land-use approval designation as nay be utilized by the town. Unless otherwise expressly provided by the town, such a plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings and other structures; dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways, what constitutes a site specific development plan under this section that would trigger vested right shall be finally determined by the town pursuant to an ordinance, and the document that triggers such vesting shall be so identified at the time of its approval. However, at a minimum, the ordinance to be adopted by the town shall designate a vesting point earlier than the issuance of a building permit. A variance shall not constitute a site specific development plan, and an approval of a site development plan with the condition that variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property may constitute a site specific development plan.~~

~~*TOWN*. Shall have the same meaning as set forth in G.S. §160A-1(2).~~

~~*VESTED RIGHT*. The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.~~

§ 152.15~~2~~1 ESTABLISHMENT OF VESTED RIGHTS.

A person claiming a statutory or common law vested right may submit information to substantiate that claim to the zoning administrator or other officer designated by a development regulation, who shall make an initial determination as to the existence of the vested right.

The decision of the zoning administrator or officer may be appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-405(c).

~~(A) A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or phased development plan , following notice and public hearings by the Town of Swansboro. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right , although failure to abide by such terms and conditions will result in forfeiture of vested rights . The town may require a landowner to waive his or her vested rights as a condition of developmental approval. A site specific development plan or a phased development plan shall be deemed approved upon the effective date of the Town Board's action.~~

~~(B) Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (I) building permits have been~~

~~issued pursuant to G.S. §160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. §160A-418 or the terms of the town 's unified development ordinance, and unrevoked pursuant to G.S. §160A-422 or the terms of the town 's unified development ordinance, or (ii) a vested right has been established as set forth above in this section.~~

~~(C) The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirement but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land-use regulation by the town , including but not limited to, building , fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property which is subject to a site specific development plan or a phased development plan upon the expiration or termination of the vesting rights period provided for in this section.~~

~~(D) Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change or impair the authority of the town to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses.~~

§ 152.15~~3~~2 PERMIT CHOICE

If an application made in accordance with local regulation is submitted for a required development approval and a development regulation changes between the time the application was submitted and a decision is made, the applicant may choose which version of the development regulation will apply to the application.

Amendments shall not be applicable or enforceable with regard to development that has been permitted or approved so long as one of the types of approvals remains valid and unexpired.

If the applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit. This applies to all development approvals issued by the State and by the Town.

§ 152.153 DURATION AND T~~ERMINATION~~YPES OF STATUTORY VESTED RIGHTS.

Vested rights established under this section are not mutually exclusive. The establishment of a vested right under this section does not preclude the establishment of one or more other vested rights or vesting by common law principles. Vested rights established by local government approvals are as follows:

A) Building permits. Pursuant to G.S. 160D-1111, a building permit expires six months after issuance unless work under the permit has commenced. Building permits also expire if work is discontinued for a period of 12 months after work has commenced.

B) Other local development approvals. Pursuant to G.S. 160D-403(c), unless otherwise specified by statute or local ordinance, all other local development approvals expire one year after issuance unless work has substantially commenced. Expiration of a local development approval shall not affect the duration of a vested right established under this section or vested rights established under common law.

C) Site-specific vesting plans. A vested right for a site-specific vesting plan shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the Town. The Town may provide that rights regarding a site-specific vesting plan shall be vested for a period exceeding two years, but not exceeding five years, if warranted by the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions, or other considerations. This determination shall be in the discretion of the Town and shall be made following the process specified for the particular form of a site-specific vesting plan involved.

D) Multiphase developments. A multiphase development shall be vested for the entire development with the zoning regulations, subdivision regulations, and unified development ordinances in place at the time a site plan approval is granted for the initial phase of the multiphase development. This right shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multiphase development.

E) Indefinite development agreements. A vested right of reasonable duration may be specified in any approved development agreement.

~~(A) A right which has been vested as provided for in this article shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modification to a site specific development plan unless expressly provided by the town .~~

~~(B) Notwithstanding the provisions of division (A) of this section, the town may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development , the level of investment, the need for the development , economic cycles, and market conditions. These determinations shall be in the sound discretion of the town .~~

~~(C) Notwithstanding the provisions of divisions (A) and (B) of this section, the town may provide by ordinance that approval by the town of a phased development plan shall vest the zoning classification or classification so approved for a period not to exceed five years. The document that triggers such vesting shall be so identified at the time of its approval. The town may require the landowner to submit a site specific plan for approval by the town with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classification or classifications. Nothing in this section shall be construed to require the town to adopt an ordinance providing for vesting of rights upon approval of a phased development plan .~~

~~(D) Amendments in zoning ordinances, subdivision ordinances, and unified development ordinances shall not be applicable without the written consent of the owner with regard to a multi-phased development . Notwithstanding the provisions of divisions(A), (B), and (C) of this section, a multi-phased development shall be vested for the entire development with the zoning ordinance, subdivision ordinances, and unified development ordinances then in place at the time a site plan approval is granted for the initial phase of the multi-phased development . A right which has been~~

~~vested as provided for in this subsection shall remain vested for period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development .~~

~~(E) Following approval or conditional approval of a site specific development plan or a phased development plan , nothing in this section shall exempt such a plan form subsequent reviews and approval by the Town to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the town from revoking the original approval for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.~~

152.154 SUBSEQUENT CHANGES PROHIBITED; EXCEPTIONS.

A) Continuing Review. Following the approval or conditional approval of a statutory vested right, the Town may make subsequent reviews and require subsequent approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval. The Town may revoke the original approval for failure to comply with applicable terms and conditions or the applicable development regulations.

B) Exceptions. The provisions of this section are subject to the following:
   1) A vested right, once established, precludes any zoning action by the Town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved vested right, except when any of the following conditions are present:
      a) The written consent of the affected landowner.
      b) Findings made, after notice and an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the approved vested right.
      c) The extent to which the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consulting fees incurred after approval by the Town, together with interest as is provided in G.S. 160D-106. Compensation shall not include any diminution in the value of the property that is caused by such action.
      d) Findings made, after notice and an evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the Town of the vested right.
      e) The enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the approved vested right, in which case the Town may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, after notice and an evidentiary hearing.

2) The establishment of a vested right under this section shall not preclude the application of overlay zoning or other development regulation that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to development regulation by a local government, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property that is subject to a vested right established under this section upon the expiration or termination of the vested rights period provided for in this section.
3) Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change, or impair the authority of the Town to adopt and enforce development regulation provisions governing nonconforming situations or uses.

~~A vested right , once established as provided in this section, precludes any zoning action by a town which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development plan or an approved phased development plan , except:~~
~~(A) With the written consent of the affected landowner ;~~
~~(B) Upon findings by the Board of Commissioners , by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property , if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan ;~~
~~(C) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner , including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the town , together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which caused by such action;~~
~~(D) Upon findings by the Board of Commissioners , by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan ; or~~
~~(E) Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan , in which case the approval authority may modify the affected provisions, upon a finding that the change has a fundamental effect on the plan, by ordinance after notice and a hearing.~~

§ 152.155 MISCELLANEOUS VESTED RIGHTS PROVISIONS.

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

(B) Nothing in this section shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

§ 152.156 DEVELOPMENT AGREEMENTS.

(A) The Town may enter into development agreements with developers, subject to the procedures and requirements of G.S. §160~~A-400.20 *et seq*~~D-1001-1012. In entering into such agreements, the town may not exercise any authority or make any commitment not authorized by local ordinances or State law and may not impose any tax or fee not authorized by otherwise applicable laws.
(C) Development authorized by a development agreement shall comply with all applicable laws, including all ordinances, resolutions, regulations, permits, policies, and laws affecting the development of property, including laws governing permitted uses of the property, density, intensity, design, and improvements.
(D) A vested right of reasonable duration may be specified in an approved development agreement.

ZONING DISTRICTS AND ZONING MAP

§ 152.170 ESTABLISHMENT OF ZONING DISTRICTS, AND THE PURPOSE THEREOF.

(V) CZ- *Conditional Zoning Districts.* Conditional zoning districts may be created as parallel districts for each of the general zoning districts in this section. Each conditional zoning district shall be designated on the zoning map and other official documents by combining the designation of its parallel zoning district with the suffix, "(CZ)", for example B-2(CZ). Applications for conditional rezoning shall follow the process as outlined in Note 1 of Section § 152.180, Notes to the Table of Permitted/Special Uses.

§ 152.171 ZONING MAP IS A PART OF THIS CHAPTER.

Zoning district boundaries shall be drawn on a map that is adopted or incorporated within a duly adopted development regulation. Zoning district maps that are so adopted shall be maintained for public inspection in the office of the Town Clerk or such other office as specified in the development regulation. The maps may be in paper or a digital format approved by the Town.

~~(A) The planning area is hereby divided into districts whose locations and boundaries are shown on the official zoning map for the Town of Swansboro, which is hereby adopted by reference and declared to be a part of this chapter.~~
~~(B)~~ The map shall be identified by the signature of the Mayor, attested by the Town Clerk, and bearing the official seal of the Town of Swansboro under the following words: "This is to certify that this is the official zoning map referred to in ~~Article 1,~~ Section ~~9~~ 152.171 of the Unified Development Ordinance for the Town of Swansboro, North Carolina". The date of adoption and subsequent amendments shall also be shown.

Copies of the zoning district map may be reproduced by any method of reproduction that gives legible and permanent copies, when certified by the Town Clerk in accordance with G.S. 160A-79, shall be admissible in evidence and shall have the same force and effect as would the original map.

§ 152.179 TABLE OF PERMITTED/SPECIAL USES.

~~(F) All new nonresidential and mixed-use development and expansions or alterations of any such existing building where the expansion or alteration exceeds 50% of the building value as assessed for real property taxes considered permitted by right and referred to as a commercial use shall be reviewed under §§ 152.210 through 152.211, Special Uses .~~

~~Table of Permitted/Special Uses /Conditional Zoning Districts (See Note 1, § 152.180)~~

PERMITTED/ SPECIAL USES	ICS[a]	CON	RA	R6	R6 SF	R8 SF	R10 SF	R15 SF	R20 SF	R40 SF	PUD[b]	MHP	MHS	MHS-15SF	MHS -O[c]	O/I	G/E	B1[d]	B2[e]	B3[f]	B2H DO[g]	MI[h]
Bona fide farms		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Family care home (see §152.180, note 39)	623990			P	P	P	P	P	P	P		P	P	P	P	P		P				
Temporary family health care structures (see §152.180, note 40)			P	P	P	P	P	P	P	P			P	P	P	S		S	S			
Wireless ~~T~~telecommunication ~~towers~~ facilities (see §152.180, note 41)	234920		S													S	S	S			~~S~~	S

§ 152.180 NOTES TO THE TABLE OF PERMITTED/SPECIAL USES~~/CONDITIONAL ZONING DISTRICTS (CD)~~.

(A) Note 1. Conditional Zoning Districts ~~(CDs)~~.

(1) Conditional zoning districts are zoning districts in which the development and use of the property is subject to ~~predetermined ordinance standards and the rules, regulations, and~~ site-specific conditions imposed as part of the legislative decision creating the zoning district ~~and applying it to the particular property~~.

(2) A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted land use plan, adopted area plans and other long range plans. The review process established in this division provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions which ensure compatibility of the use with the use and enjoyment of neighboring properties. A conditional zoning district is generally not intended for securing early zoning for a proposal, except when that proposal is consistent with an approved district or area plan or the proposal can demonstrate that public infrastructure needed to serve the development will be made available within a reasonable time period. A separate master plan approval process as described in this division may be utilized only when a proposal is a component of a development project that is the subject of a development agreement between Town of Swansboro and a developer pursuant to G.S. §160~~A-400.20 *et seq.* ("Development Agreement ")~~D1001-1012.

~~(a) *Zoning districts that may be considered for rezoning to a Conditional Zoning District :*~~
~~1. Planned Unit Development PUD (CD) Office and Institutional O&I (CD);~~
~~2. Highway Business District B1 (CD), excluding "the Causeway" General Business District B2 (CD);~~
~~3. Traditional Business District B3 (CD); and~~
~~4. Light Industrial MI (CD).~~

(~~b~~a) Flexible lot development, requir~~ing~~es rezoning to Conditional Zoning Districts (C~~D~~Z).

7. Flexible lot development approved through a Conditional Zoning District shall be subject to all applicable overlay district regulations, ~~all applicable use regulations,~~ all applicable environmental regulations, and all applicable general regulations, unless otherwise waived or modified by the town in the terms of the approved master plan. In case of any conflict between a specific regulation set forth in this chapter and the UDO and town code of ordinances, the regulation in this section shall apply unless otherwise expressly allowed.

(c) *Plans and other information to accompany petition.*

1. Property may be rezoned to a conditional zoning district only in response to ~~and consistent with~~ a petition submitted by ~~the~~ all owners of ~~all of~~ the property to be included in the district. Specific conditions may be proposed by the petitioner or the Town or its agencies, but only those conditions mutually approved by the Town and the petitioner may be incorporated into the zoning regulations. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to the Town ordinances, plans adopted pursuant to G.S. 160D-501, or the impacts reasonably expected to be generated by the development or use of the site.

A petition for conditional zoning must include a site plan, drawn to scale, and supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property. The following information must be provided:

(e) *Approval of Conditional Zoning District.*

1. Conditional zoning district decisions are a legislative process subject to ~~judicial review using~~ the same procedures and standard of review applicable to general use district zoning decisions. In considering any petition for a conditional zoning district, the Board of Commissioners shall act in accordance with §~~§ 152.065 through 152.070~~152.032 and 152.072. Conditional zoning district decisions shall be made in consideration of identified relevant adopted land use plans for the area, including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, bicycle and pedestrian plans and other policy documents.

2. The Town Board of Commissioners may not vote to rezone property to a conditional zoning district during the time period beginning on the date of a municipal general election and concluding on the date immediately following the date on which the Town Board of Commissioners holds its organizational meeting following a municipal general election unless no person spoke against the rezoning at the public hearing and no ~~valid protest petition under G.S. §160A-386 was filed~~ comments were submitted under § 152.075. If ~~a valid protest petition under G.S. §160A-386 has been~~ comments were filed, ~~against~~ a zoning petition which would otherwise have been scheduled for a public hearing during the period beginning on the first day of October prior to a municipal general election, but prior to the new Town Board of Commissioners taking office~~, then the public hearing on such petition and any decision on such petition~~ shall ~~both~~ be postponed until after the new Town Board of Commissioners takes office.

(g) Effect of approval.

3. Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the zoning maps by the appropriate district designation. The zoning shall be identified by the same designation as the underlying general district followed by the letters "C~~D~~Z", ~~(~~for example "B-2(CZ)~~D)"~~").

6. The Town Manager shall have the delegated authority to approve ~~an administrative~~ minor amendments to an approved ~~site~~ plan that do not involve a change in the uses permitted or the density of the overall development. The Town Manager shall have no authority to amend the conditions of approval of a petition. The standard for approving or denying such a requested change shall be that the change does not significantly alter the ~~site~~ plan and that the change does

not have a significant impact on abutting properties. ~~An administrative amendment shall not be subject to a protest petition.~~ Any decision must be in writing stating the grounds for approval or denial.

(MM) *Note 39. Family care homes.* As provided by NC GS 160D-907, family care homes shall be deemed a residential use of property for zoning purposes and shall be a permissible use in all residential districts. No family care home, its owner, or operator shall be required to obtain, because of the use, a special use permit or variance from any such zoning regulation. Family care homes shall not be located within a one-half mile radius of any existing family care home.

Family care homes shall be deemed a residential use of property for the purposes of determining charges or assessments imposed by local governments or businesses for water, sewer, power, telephone service, cable television, garbage and trash collection, repairs or improvements to roads, streets, and sidewalks, and other services, utilities, and improvements.

(NN) Note 40. Temporary family health care structures. Temporary family health care structures are permitted as an accessory use in all single-family residential zoning districts on lots zoned for single-family detached dwellings subject to the following:

(1) The temporary family health care structure is placed on the property of the residence and is used to provide care for the mentally or physically impaired person as certified in writing by a physician licensed to practice in North Carolina;

(2) Only one temporary family health care structure shall be allowed per lot or parcel of land;

(3) Such temporary family health care structure shall be limited to no more than 300 gross square feet and comply with all setback requirements that apply to the primary structure;

(4) Any person proposing to install a temporary family health care structure shall first obtain a permit from the Town;

(5) An annual inspection to validate compliance and renewal of the doctor's certification are required;

(6) Any temporary family health care structure installed under this section may be required to connect to water, sewer, and electric utilities serving the property and shall comply with all applicable State law, Town codes and ordinances, ONWASA rules or other requirements, as if the temporary family health care structure were permanent real property;

(7) No signage advertising or otherwise promoting the existence of the temporary health care structure shall be permitted either on the exterior of the structure or elsewhere on the property;

(8) Any temporary family health care structure installed pursuant to this section shall be removed within 60 days in which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance provided for in this section;

(9) If the temporary family health care structure is needed for another mentally or physically impaired person, the temporary family health care structure may continue to be used or may be reinstated on the property within 60 days of its removal, as applicable;

(10) The local government may revoke the permit granted if the permit holder violates any provision of this section; and

(11) Temporary family health care structures shall be treated as tangible personal property for purposes of taxation.

(OO) Note 41. Wireless telecommunication facilities. The installation of wireless antennas and equipment or small wireless facilities as a collocation shall be a use by right in all zoning districts as provided in NC GS 160D-934 through 938. Small wireless facilities to be collocated on a utility pole or wireless support structure must be activated for use by a wireless services provider no later than one year from the permit issuance date. The installation of new wireless support facilities must meet the standards as set forth in §152.211.

SPECIAL USES

§ 152.210 PROCEDURE FOR SPECIAL USE PERMITS.

(I) Minor modifications to special use permits that do not involve a change in the uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification or revocation of a special use permit shall follow the same process for the original approval ~~Where plans are required to be submitted and approved as part of the application for a special use permit, modifications of the original plans may be authorized~~ by the Town Board of Commissioners.

§ 152.211 SPECIFIC CRITERIA FOR CERTAIN SPECIAL USES.

(W) *Use - mobile signs ~~/portable signs~~.*

(1) *Special use district:* B1 and MI.

(2) *Requirements:*

(a) No part of a sign shall extend beyond the plane of the property line upon which the sign is located or into any easement.

(b) Display area shall not exceed six square feet.

(c) ~~Portable sign height shall not exceed three feet measured vertically from ground level to top of sign.~~ Mobile sign height measured vertically from ground level to top of sign including trailer or towable device to which sign is attached shall not exceed five feet.

(d) Combination of allowed tenant signage square footage shall not be exceeded.

(e) Signs shall be displayed only during times when the business being advertised is open for business.

(f) The application for approval of a special use shall include:

1. Sign location;

2. Sign size;

3. Sign illumination;

4. Diagram of the sign;
5. Proposed method of anchoring/securing.

(JJ) *Use – wireless telecommunication facilities.*

(1) *Special use districts:* RA, O/I, G/E, B1 and MI.

(2) *Requirements:*

a) The facility must be setback from adjacent property lines and any residential dwelling(s) at least a distance equal to the fall zone as certified by a structural engineer. Accessory structures shall be setback at least 50 feet from any property line. These measurements shall be taken from the base of the tower or the foundation of the structure, as applicable.
b) Access roads must be improved and meet the applicable standards of the Fire Code for emergency access. Access to any gated or locked enclosures must be provided to the Fire Chief.
c) Lighting on the facility must meet the minimum standards of the Federal Aviation Administration (FAA). Lighting shall be muffled so that no audible sound can be heard beyond the distance of the required setback. Other lighting on the property, including lighting on accessory structures or on the surrounding enclosure, should be shielded so as not to trespass onto adjacent properties. The application must a contain certification that the lighting on site has been designed to meet these requirements.
d) Communication equipment or antennas shall meet the emission output levels as specified by applicable federal standard or by the American National Standard Institute (ANSI). The application must contain a certification that these requirements have been met.
e) A Type C buffer yard per Section 152.528 shall be installed around any perimeter enclosure.
f) If a proposed facility is to be constructed within five miles or less from the perimeter boundary of a military base, or within any mapped flight path overlay, the Town shall provide written notice of the proposal by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing on the application.
g) Applications must include the required materials per Appendix IV.

SIGNS

§ 152.268 SIGNS REQUIRING NEITHER PERMIT NOR FEE.

(C) Fence wraps displaying signage when affixed to perimeter fencing at a construction site are exempt until a certificate of occupancy is issued for the final portion of any construction at that site, or, 24 months from the time the fence wrap was installed, whichever is shorter.
(1) If construction is not completed at the end of 24 months from the time the fence wrap was installed, the Town will require a sign permit, but shall continue to allow the fence wrap to be affixed to the perimeter fencing.

(2) No fence wrap affixed pursuant to this section may display any advertising other than advertising sponsored by a person directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required.

§ 152.270 SIGNS REQUIRING A PERMIT AND FEE.

(B) *Billboard signs(Off-Premise/Outdoor Advertising).*

(5) Billboards made nonconforming by the provisions of this section shall be brought into conformity ~~within ten years after the adoption of this section~~.

(a) The Town shall give written notice of its intent to require removal of a billboard sign by sending a letter by certified mail to the last known address of the owner of the sign and the owner of the property on which the sign is located.

(b) The payment of monetary compensation for the removal of any nonconforming, lawfully erected, billboard sign is required as provided in NC GS 160D-912 (d-f).

(c) In lieu of monetary compensation, the Town may enter into an agreement to allow the relocation or reconstruction of the sign as provided in NC GS 160D-912 (g-k).

SUBDIVISION REGULATIONS

§ 152.336 EXCLUSIONS AND EXCEPTIONS.

(E) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

§ 152.337 PROCEDURES FOR PLAT APPROVAL.

(G) *Preliminary plat review and approval procedures.*

(4) *Board of Commissioners review and action.*

(e) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision regulation or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision regulation and recorded with the register of deeds.

(K) *Penalties for transferring lots in unapproved subdivisions.*

(1) Any person who, being the owner or agent of the owner of any land located within the planning and development regulation jurisdiction of the Town, thereafter subdivides his land in violation of the regulation or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such regulation and recorded in the office of the Onslow County Register of Deeds, shall be guilty of a Class 1 misdemeanor.

(2) The Town may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision regulation.
(3) Building permits required pursuant to G.S. 160D-1110 may be denied for lots that have been illegally subdivided.

§ 152.367 PARKS AND RECREATION SPACE REQUIREMENTS.

(L) *Amount of payment in lieu of dedication.*

(1) When a cash payment is required in lieu of dedication , such payment shall be paid by the subdivider to the Town of Swansboro, shall be placed by the Town of Swansboro in a parks and recreation capital reserve fund, and may be used only for the acquisition or development of ~~parks and/or recreation spaces and/or open space sites that will reasonably serve the subdivision being developed~~ recreation, park, or open space sites~~.~~ ~~Such cash payment may be used by the town for the acquisition or development of parks and/or recreation spaces and/or open space sites which may be used~~ to serve ~~both~~ the subdivision being developed ~~and~~ or ~~any other areas within the community~~ subdivisions or development within the immediate area.

HISTORIC DISTRICT

§ 152.477 SWANSBORO HISTORIC PRESERVATION COMMISSION.

(B) *Qualifications*. All members of the Swansboro Historic Preservation Commission shall reside within the planning and zoning jurisdiction of the Town of Swansboro. It is desirable that a majority of members reside within the Historic District. Pursuant to NC G.S. 160D-303, ~~A~~a majority of members shall have demonstrated special interest, experience or education in history, architecture, archeology, or related fields.

(C) *Duties of the Swansboro Historic Preservation Commission.* The duties of the Swansboro Historic Preservation Commission shall include the following pursuant to NC G.S. 160D-942:

(3) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks~~;~~ to hold, manage, preserve, restore, and improve ~~the same~~ such properties~~;~~, and to exchange or dispose of the property by private or public sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;

(5) Recommend to the Board of Commissioners that designation of any area as a~~n~~ historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause;

(6) Conduct an educational program ~~with respect to~~ regarding historic properties and districts within the town's planning jurisdiction;

(9) Prepare and recommend the official adoption of a preservation element as part of the ~~municipality~~Town's comprehensive plan;

(D) *Meetings.*

(4) Conduct of meetings.

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

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

§ 152.478 CERTIFICATE OF APPROPRIATENESS.

(A) *When required.* No person shall be permitted to construct, alter, move or demolish any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor above-ground utility structure, nor any type of outdoor advertising sign, ~~(G.S. §160A-400.9)~~ in the Historic District without first applying for and obtaining a certificate of appropriateness for such construction, alteration, moving or demolition. The Historic Preservation Commission shall have the authority to issue a certificate of appropriateness subject to reasonable conditions necessary to carry out the purposes of this ordinance. Any building permit or other such permit not issued in conformity with this selection shall be invalid.

(C) *Required procedures.*

(1) *Application submitted to the Administrator or his or her authorized agent.* An application for a certificate of appropriateness shall be obtained from the town, completed by the applicant, and filed with the town. The SHPC application completed in form and content, and the application is filed within the time frame according to town policy for application submittal, then the application shall be considered by the SHPC at its next regular meeting. Otherwise, consideration shall be deferred to the next regular meeting thereafter. An applicant may file with his/her application any additional information relevant to the application.

The Commission shall follow quasi-judicial procedures in acting on applications for certificates of appropriateness as specified in Section 152.065 through 152.071.

(2) *Contents of application.*

(d) An application fee as established by the Town of Swansboro shall be paid by the applicant upon filing of a major work application with the Administrator. An approved certificate of appropriateness may be re-submitted for minor revisions without payment of an additional application fee. Significant changes will require ~~an amendment~~ approval by the Commission in the same manner as the original application and appropriate fee.

(3) *Notification of Swansboro Historic Preservation Commission.* Upon receipt of an application, the Administrator shall notify the Swansboro Historic Preservation Commission at least five working days before its regularly scheduled meeting.

(4) *Review of application by SHPC.* As part of its review procedure, the SHPC may view the premises and seek the advice of the Department of Cultural Resources or such other expert advice as it may deem necessary under the circumstances.

~~(5) *Public hearing.* The SHPC may advertise and hold a public hearing in any case in which it considers such action necessary or appropriate.~~

§ 152.480 APPEALS OF DECISIONS.

~~An aggrieved party may appeal the decision of the Swansboro Historic Preservation Commission to the Board of Adjustment of the Town of Swansboro. Appeal shall be taken within the time prescribed by the Historic Preservation Commission by General Rule, and shall be in the nature of certiorari. Appeal from the decision of the Board of Adjustment shall be to the General Court of Justice, Superior Court Division for Onslow County, North Carolina.~~

(1) Appeals of any administrative decision may be made to the Historic Preservation Commission.

(2) All decisions of the Historic Preservation Commission in granting or denying a Certificate of Appropriateness may be appealed to the Board of Adjustment in the nature of certiorari within times prescribed for appeals of administrative decisions in NC G.S. 160D-405(c). To the extent applicable, the provisions of NC G.S. 160D-1402 shall apply to appeals in the nature of certiorari to the Board of Adjustment.

(3) Appeals from the Board of Adjustment may be made pursuant to NC G.S. 160D-1402. Petitions for judicial review shall be taken within the times prescribed for appeal of quasi-judicial decisions in NC G.S. 160D-1404. Appeals in any such case shall be heard by the Onslow County Superior Court.

§ 152.483 CERTAIN CHANGES NOT PROHIBITED.

Nothing in this subchapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the Swansboro H~~h~~istoric D~~d~~istrict which does not involve a change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, moving or demolition of any such feature which the ~~Administrator~~ building inspector or similar official shall certify in writing to the SHPC is required by the public safety because of an unsafe or dangerous condition.

Nothing in this subchapter shall be construed to prevent a property owner from making any use of his or her property that is not prohibited by other law, or in the event of an emergency, the immediate restoration of any existing above-ground utility structure without approval by the Historic Preservation Commission.

§ 152.484 DEMOLITION.

An application for a certificate of appropriateness authorizing the relocation, demolition, or destruction of a designated landmark or a building, structure, or site within the district may not be denied. However, the effective date of such a certificate may be delayed for a period ~~not to exceed~~ of up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the Commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the Swansboro Historic Preservation Commission may negotiate with the owner and with other parties in an effort to find means of preserving the building. If the Swansboro Historic Preservation Commission finds that the building has no particular significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition or removal.

An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied, except in cases where the Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

If the Historic Preservation Commission or Planning Board has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the Board of Commissioners, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the Commission or Planning Board for a period of up to 180 days or until the Board of Commissioners takes final action on the designation, whichever occurs first.

Appendix III
HISTORIC DISTRICT DESIGN ~~GUIDELINES~~ STANDARDS

SECTION 1 COMMISSION PROCEDURES.
1.1 Obtaining A Certificate of Appropriateness (COA)
A Certificate of Appropriateness (COA) is a permit that a property owner receives indicating that a proposed exterior change has been reviewed and approved by the historic preservation commission for consistency with established historic district ~~guidelines~~ standards.

1.4 Treatment of "Minor Works" Projects
These projects must be consistent with the SHPC's ~~guidelines~~ standards and approved by the Minor Works Committee. "Minor works" activities do require the submission of a completed Minor Works COA application form.

Note: The Minor Works Committee shall forward a "minor works" item to the SHPC for full review if the activity does not fall directly into one of the above categories or is inconsistent with the commission's established ~~guidelines~~ standards.

1.5 Pre-Application Review of Projects
This pre-review, usually held with a preappointed subcommittee of the commission during the regularly scheduled work session, may help expedite the review process because it familiarizes the applicant in the early stages of project development with the applicable ~~guidelines~~ standards that will be used to evaluate the project proposal. It also gives commissioners an opportunity to discuss the project concept informally and identify issues that may be of concern. Informal meetings to become familiar with the SHPC's design ~~guidelines~~ standards may be arranged by contacting the Administrator.

SECTION 3: ROOFS.
3.1 Roofs – ~~Guidelines~~ Standards

SECTION 4 EXTERIOR WALL COVERING, TRIM, AND ORNAMENTATION.
4.1 Exterior Wall Covering, Trim, and Ornamentation - ~~Guidelines~~ Standards

SECTION 5: WINDOWS AND DOORS.
5.1 Windows and Doors - ~~Guidelines~~ Standards

SECTION 6 PORCHES AND ENTRANCES.
6.1 Porches and Entrances - ~~Guidelines~~ Standards

SECTION 7 BRICKWORK AND MASONRY.
7.1 Brickwork and Masonry - ~~Guidelines~~ Standards

SECTION 8 FOUNDATIONS.
8.1 Foundations - ~~Guidelines~~ Standards

6) Existing unpainted historic foundations should not be painted. Previously painted foundations should be repainted an appropriate color, such as white or whitewash, dark green, or brick red. Avoid removing paint from a previously painted foundation. (See Brickwork and Masonry ~~guidelines~~ standards).

SECTION 9 CONTRIBUTING COMMERCIAL BUILDINGS.
9.1 Contributing Commercial Buildings - ~~Guidelines~~ Standards

SECTION 11 NEW CONSTRUCTION.
11.1 New Construction - ~~Guidelines~~ Standards

SECTION 12 ADDITIONS TO CONTRIBUTING BUILDINGS.
12.1 Additions to Contributing Buildings - ~~Guidelines~~ Standards

5) Materials used for the roof, siding, trim, windows, and foundations should be similar to or compatible with the materials used in the construction of the existing building. Vinyl and other synthetic siding materials are not appropriate on additions to historic buildings unless the affected building is already covered with synthetic siding. Wood windows are most appropriate for additions within the historic district; however, synthetic window materials are acceptable but not encouraged for additions provided the proposed windows meet the requirements set forth in the Windows and Doors ~~guidelines~~ standards.

SECTION 13 DECKS IN THE HISTORIC DISTRICT.
13.1 Decks on Contributing Buildings - ~~Guidelines~~ Standards

SECTION 14 FENCES AND WALLS.
14.1 Fences and Walls - ~~Guidelines~~ Standards

SECTION 15 ENERGY CONSERVATION AND UTILITIES.
15.1 Energy Conservation and Utilities - ~~Guidelines~~ Standards

3) Consult with Windows and Doors ~~guidelines~~ standards for information on installing storm doors and windows.

SECTION 16 EXTERIOR LIGHTING.

16.1 Exterior Lighting - ~~Guidelines~~ Standards

SECTION 17 OFF-STREET PARKING.

17.1 Off-Street Parking - ~~Guidelines~~ Standards

5) Integrate pedestrian scale lighting into parking areas to avoid excessive and illumination to adjoining properties. See Exterior Lighting ~~guidelines~~ standards, § 152.016, for further details on lighting standards.

SECTION 18 SIGNAGE.

18.1 Signage - ~~Guidelines~~ Standards

3) Locate wall signs on commercial buildings with storefronts in the signboard frieze located above the display windows. In this location, the sign serves as a boundary between the lower and upper facade. See Historic Commercial Buildings ~~guidelines~~ standards for information on storefront design.

11) Use contributing historic house plaques that conform to the established design used in the historic district. Consult with the SHPC regarding ~~guidelines~~ standards for the placement of these plaques.

SECTION 19 ARCHAEOLOGY.

19.1 Archaeology - ~~Guidelines~~ Standards

SECTION 21 RELOCATION OF BUILDINGS.

The SHPC will use its new construction ~~guidelines~~ standards when reviewing requests to move structures to lots within the historic district.

21.1 Relocation of Buildings - ~~Guidelines~~ Standards

9) Position the building on the new site so it relates to adjacent buildings and the overall streetscape. Refer to New Construction ~~guidelines~~ standards for further information on placement.

SECTION 22 DEMOLITION OF BUILDINGS.

~~***22.1 Delay of Demolition***~~

~~The North Carolina General Statutes give historic preservation commissions the authority to delay the demolition of a building, structure, or site in a locally designated historic district for a period not to exceed 365 days (one year) from the date of approval. This delay may also be imposed in situations where a commission has voted to recommend designation of a property as a landmark or historic district, but no final action on designation has been sanctioned by the local governing body. In either case, the purpose of the delay is to give the commission an opportunity to work with the property owner and other interested parties to identify alternatives to demolition.~~

~~The Swansboro Historic Preservation Commission may waive all or part of the delay period if it finds that the structure has little historic or architectural value. The delay period may also be~~

~~reduced under circumstances in which the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from the property due to the delay.~~

~~*22.2 Denial of Demolition*~~

~~The SHPC may permanently deny authorization for demolition of a contributing building, structure, or site in the locally designated Swansboro historic district if it is determined by the North Carolina State Historic Preservation Officer (NC SHOO) that the property has statewide significance as defined by the criteria of the National Register of Historic Places. Denial of demolition of buildings with statewide significance may be waived if:~~

~~1) The SHPC finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from the property by reason of the denial; or~~

~~2) The town has adopted a demolition ordinance for the property under the Swansboro Minimum Housing Code.~~

22.~~3~~1 Demolition of Buildings - ~~Guidelines~~ Standards

SECTION 23 ACCESSIBILITY AND LIFE SAFETY.
23.1 Accessibility and Life Safety - ~~Guidelines~~ Standards

Town of Swansboro Schedule of Fees
PLANNING AND DEVELOPMENT FEES

Temporary Family Health Care Structure	$100.00
Temporary Family Health Care Structure Annual Renewal Fee	$50.00
Small Wireless Facilities (per location, up to 5)	$100.00
Small Wireless Facilities (each location after 5)	$150.00

The above amendments shall be effective upon adoption.

Adopted this 10th day of May 2021.

Town of Swansboro Board of Commissioners

____
John Davis, Mayor

ATTEST:

____
Paula W. Webb, Assistant Manager/Town Clerk

PLANNING BOARD STATEMENT OF CONSISTENCY

Chapter 160D Amendments

During its April 6, 2021 regular meeting, the Town of Swansboro Planning Board reviewed proposed amendments to the Town Code of Ordinances and Unified Development Ordinance related to Chapter 160 D of the NC General Statutes.

The proposed changes are **consistent** with the current Comprehensive Plan because they will demonstrate compliance with the North Carolina General Statutes and have been recommended for **approval** by the Planning Board.

This statement reflects the recommendation of the Town of Swansboro Planning Board this the 6th day of April 2021.

4 to 1

Vote

Scott Chadwick, Planning Board Chairperson

UNC SCHOOL OF GOVERNMENT

G.S. Chapter 160D Checklist of Changes to Local Ordinances, Policies, and Practices

August 2020 Update

This checklist outlines provisions in the new Chapter 160D of the North Carolina General Statutes (hereinafter G.S.) as well as related statutory changes that will be incorporated into Chapter 160D. The changes to the statutes affect the language of local ordinances, the options for local decision processes, and the administrative practices related to development regulations.

This checklist is one piece of a larger set of resources and training materials, including an explanatory book, *Chapter 160D: A New Land Use Law for North Carolina*. Each item on this checklist is described more thoroughly in those additional resources. Section headers in this checklist note the corresponding chapter and section of the Chapter 160D book [in brackets]. Check nc160D.sog.unc.edu for additional resources and training.

The checklist has specific notations, which are accompanied by specific icons, as follows:

☐ Denotes legislative changes for which local governments ***must*** take action (statutory citations are in parentheses) (Many changes may already be reflected in the local ordinance. If so, no additional change is necessary for the ordinance.)
○ Denotes permissive legislative changes for which local governments ***may*** take action
△ Denotes notable legislative changes that do not require local action but of which local governments must ***be aware***

Session Law 2020-25 (S.B. 720) amended Chapter 160D to incorporate other legislative changes from 2019 and make technical corrections. Those changes are noted in this updated checklist with new language underlined and cut language shown with ~~strikethrough~~. Notably, S.L. 2020-25 altered the effective date of Chapter 160D. All powers and actions authorized under Chapter 160D are available as of June 19, 2020 (local ordinances may be updated and made effective immediately), but local governments have until July 1, 2021, to update local ordinances and policies to comply with the requirements of Chapter 160D. For that reason, the asterisks from the original checklist are removed. For the time before a local government amends its ordinances to comply with Chapter 160D, the rules and requirements of Chapter 160A (for municipalities) or Chapter 153A (for counties) will effectively remain controlling for that local government.

~~*For items noted with an asterisk, local governments do not have authority for the change until January 1, 2021, unless legislation authorizes earlier effectiveness. Noted changes may be incorporated into ordinances and policies, but they must not be effective until 2021. All other changes may be adopted and effective immediately.~~

I. Terminology and Citations [Chapter 1, Section III]

☐ **Must** update any references to provisions in G.S. Chapter 160A or 153A to indicate relevant provisions in Chapter 160D. (*See* appendixes B and C in the Chapter 160D book.)

☐ **Must** align ordinance terminology with Chapter 160D terminology for *conditional zoning* and *special use permits*; must delete use of the terms *conditional use permit*, *special exception*, *conditional use district zoning*, and *special use district zoning.* (*See* G.S. 160D-102.)

☐ **Must** ensure that ordinance definitions for the following terms are not inconsistent with definitions provided in state law and regulation: *building*, *dwelling*, *dwelling unit*, *bedroom*, and *sleeping unit*. (<u>G.S. 160D-706;</u> S.L. 2019-111, § 1.17.)

○ **May** align ordinance terminology with Chapter 160D terminology, including for the following terms: *administrative decision*, *administrative hearing*, *determination*, *developer*, *development*, *development approval*, *development regulation*, *dwelling*, *evidentiary hearing*, *legislative decision*, *legislative hearing*, *planning and development regulation jurisdiction*, and *quasi-judicial decision*. (G.S. 160D-102.)

II. Geographic Jurisdiction [Chapter 2, Section I]

☐ For extension of extraterritorial jurisdiction (ETJ), a municipality **must** provide mailed notice thirty days prior to ETJ hearing; municipality **may** hold one hearing (with single mailed notice) regarding ETJ and initial zoning amendment. (G.S. 160D-202(d).)

○ Municipality **may** hold hearings in anticipation of change in jurisdiction. (G.S. 160D-204.)

○ For a parcel in two jurisdictions, the owner and the jurisdictions **may** agree for development regulations from one jurisdiction to apply to the entire parcel. (G.S. 160D-203.)

○ In ETJ, the county **may** elect to exercise development regulations that the municipality is not exercising. (G.S. 160D-202(b).)

○ <u>For counties, the county **may** apply zoning and subdivision regulations to all or part of the county's planning and development regulation jurisdiction. Cities with zoning must apply zoning jurisdiction-wide. (G.S. 160D-201; S.L. 2020-25.)</u>

III. Boards [Chapter 2, Section II]

A. In General

☐ **Must** adopt broadened conflict-of-interest standards for governing and advisory boards. (G.S. 160D-109.)

☐ **Must** keep minutes of proceedings of each board. (G.S. 160D-308.)

☐ **Must** have each board member take an oath of office before starting his or her duties. (G.S. 160D-309.)

☐ **Must** update ETJ population estimate, at least with each decennial census (also calculation for proportional representation is simplified and process for appointment is clarified). (G.S. 160D-307.)

☐ **Must** provide proportional representation for ETJ on preservation commission if any districts or landmarks are designated in the ETJ. (G.S. 160D-307.)

○ **May** have detailed rules of procedure for each board; **may** be adopted by governing board; if not, then **may** be adopted by individual board; if adopted, **must** maintain board rules of procedure (by clerk or other officer as set by ordinance) and **must** post board rules of procedure to website, if the jurisdiction has a website. (G.S. 160D-308.)

○ **May** establish reasonable procedures to solicit, review, and make appointments; governing board typically makes appointments but may delegate that appointment-making authority. (G.S. 160D-310.)

○ **May** establish additional advisory boards related to development regulations. (G.S. 160D-306.)

B. Planning Board

○ **May** assign to planning board the coordination of citizen engagement for planning. (G.S. 160D-301.)

○ **May** assign planning board to serve as preliminary forum for review and comment on quasi-judicial decisions, provided that no part of the preliminary forum or recommendation may be used as a basis for the deciding board. (G.S. 160D-301.)

C. Board of Adjustment

○ **May** assign board of adjustment to hear and decide matters under any development regulation, not just zoning. (G.S. 160D-302.)

○ **May** assign duties of housing appeals board to board of adjustment. (G.S. 160D-305.)

IV. Land Use Administration [Chapter 2, Section III]

A. In General

☐ **Must** incorporate new staff conflict-of-interest standards into ordinance or policy. (G.S. 160D-109.)

☐ **Must** maintain in paper or digital format current and prior zoning maps for public inspection. (G.S. 160D-105.)

☐ **Must** maintain in paper or digital format any state or federal agency maps incorporated by reference into the zoning map. (G.S. 160D-105.)

○ **May** enact ordinances, procedures, and fee schedules relating to administration and enforcement of development regulations. (G.S. 160D-402(b).)

○ **May** charge reasonable fees for support, administration, and implementation of development regulation; **must** use any such fees for that purpose, not for other purposes. (G.S. 160D-402(d).)

B. Enforcement

☐ **Must** issue notices of violation (NOVs) in conformance with statutory procedures (must deliver to permittee and landowner if different; may deliver to occupant or person undertaking the activity; delivery by hand, email, or first-class mail; may be posted onsite; administrator to certify NOV for the file.) (G.S. 160D-404(a).)

☐ If inspecting, **must** enter the premises during reasonable hours and upon presenting credentials; **must** have consent of premises owner or an administrative search warrant to inspect areas not open to the public. (G.S. 160D-403(e).)

☐ For revocation of development approval, **must** follow the same process as was used for the approval. (G.S. 160D-403(f).)

○ **May** perform inspections for other development approvals to ensure compliance with state law, local law, and the terms of the approval; **must** perform (or contract for) inspections for building permits. (G.S. 160D-1113; -403(e).)

○ **May** perform inspections for general code compliance and enforcement (inspections unrelated to a development approval). (G.S. 160D-402(b).)

○ **May** require a certificate of compliance or occupancy to confirm that permitted work complies with applicable laws and terms of the permit; still **must** require certificate of occupancy for work requiring a building permit. (G.S. 160D-403(g).)

○ **May** issue stop-work orders for illegal or dangerous work or activity, whether related to a permit or not. (G.S. 160D-404(b).)

○ **May** continue to use general enforcement methods, including civil penalties, fines, court ordered actions, and criminal prosecution. (G.S. 160D-404(c).)

△ **Be aware** that a local government must bring a court action in advance of the applicable five- and seven-year statutes of limitation. (G.S. 1-51 and -49; established prior to Chapter 160D.)

△ <u>**Be aware** that a local government must comply with existing rules for uses that were previously nonconforming situations. If a use loses its nonconforming status, by amortization or change of use or otherwise, the local government must bring an enforcement action within ten years of the loss of nonconforming status. (160D-1405(c1); established prior to Chapter 160D.)</u>

V. Substance of Zoning Ordinance [Chapter 3, Section I]

☐ **Must** maintain current and prior zoning maps for public inspection (local government clerk or other office may be the responsible office); **may** adopt and maintain in paper or digital format. (G.S. 160D-105.)

☐ **Must** eliminate conditional use district zoning; existing conditional use district zoning converts to conditional district ~~on January 1, 2021~~ upon adoption of updated local ordinances or July 1, 2021. (G.S. 160D-703; S.L. 2020-25; S.L. 2019-111, § 2.9(b).)

☐ **Must** not set a minimum square footage for structures subject to the One- and Two-Family Residential Building Code. (G.S. 160D-703; S.L. 2019-174.)

○ **May** incorporate maps officially adopted by state or federal agencies (such as flood-insurance rate maps (FIRMs)) into the zoning map; **may** incorporate *the most recent officially adopted version* of such maps so that there is no need for ordinance amendment for subsequent map updates; **must** maintain current effective map for public inspection; **may** maintain in paper or digital format. (G.S. 160D-105.)

○ **May** require certain dedications and performance guarantees for zoning approvals to the same extent as for subdivision approvals. (G.S. 160D-702.)

○ **May** use form-based codes. (G.S. 160D-703(a)(3).)

○ **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define "minor modification" by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

○ **May** apply zoning standards jurisdiction-wide, not just on a zoning district by zoning district basis. (G.S. 160D-703(d).)

○ **May** regulate development over navigable waters, including floating homes. (G.S. 160D-702(a).)

VI. Substance of Other Development Ordinances [Chapter 3, Section II]

☐ **Must** conform subdivision performance guarantee requirements with statutory standards. (G.S. 160D-804.1; S.L. 2020-25; S.L. 2019-79 (S.B. 313)~~, to be incorporated into G.S. Chapter 160D.~~)

☐ **Must** conform subdivision procedures for expedited review of certain minor subdivisions. (G.S. 160D-802, established prior to G.S. Chapter 160D.)

☐ **Must** not require a developer, as a condition to subdivision approval, to bury a power line existing above ground and outside of property to be subdivided. (G.S. 160D-804; S.L. 2019-174.)

☐ **Must** exempt farm use on bona fide farm in ETJ from city zoning to the same extent it would be exempt from county zoning; Chapter 160D clarifies that other municipal development regulations may still apply. (G.S. 160D-903(c).)

☐ **Must** not exclude manufactured homes based on the age of the home. (G.S. 160D-910.)

☐ **Must** follow standardized process for housing code enforcement to determine owner's abandonment of intent to repair and need for demolition. (G.S. 160D-1203(6).)

○ **May** adopt moratoria for development regulations (subject to limitation on residential uses); moratoria do not affect rights established by permit choice rule. (G.S. 160D-107.)

○ Municipalities **may** petition court to appoint a receiver for vacant structures. (160D-1130.)

A. Historic Preservation

☐ **Must** follow standard quasi-judicial procedures for preservation certificates of appropriateness. (G.S. 160D-947(c).)

☐ **Must** frame preservation district provisions as "standards" rather than "guidelines." (G.S. 160D-947(c).)

○ **May** choose for appeals of preservation commission decisions to go to board of adjustment. Default rule is that preservation appeals go directly to superior court rather than to board of adjustment. (G.S. 160D-947(e).)

B. Development Agreements

☐ **Must** process a development agreement as a legislative decision. (G.S. 160D-105.)

☐ **Must** have a local government as a party to a development agreement (a water and sewer authority may enter an agreement as a party, but not independently). (G.S. 160D-1001(b).)

○ **May** consider a development agreement concurrently with a rezoning, subdivision, or site plan; **may** consider a development agreement in conjunction with a conditional zoning that incorporates the development agreement. (G.S. 160D-1001(d).)

○ **May** address fewer topics in development agreement content (list of mandated topics is shortened). (G.S. 160D-1006.)

○ **May** mutually agree with a developer for the developer to provide public improvements beyond what could have been required, provided such conditions are included in the development agreement. (G.S. 160D-1006(d).)

○ **May** include penalties for breach of a development agreement in the agreement or in the ordinance setting the procedures for development agreements; either party may bring legal action seeking an injunction to enforce a development agreement. (G.S. 160D-1008.)

VII. Comprehensive Plan [Chapter 4, Section I]

☐ **Must** adopt a comprehensive plan <u>or land-use plan</u> by July 1, 2022, to maintain zoning (no need to re-adopt a reasonably recent plan). (G.S. 160D-501(a).)

☐ **Must** adopt a plan or a plan update following the procedures used for a legislative decision. (G.S. 160D-501(c).)

☐ **Must** reasonably maintain a plan. (G.S. 160D-501(a).)

○ **May** coordinate a comprehensive plan with other required plans, such as Coastal Area Management Act (CAMA) plans. (G.S. 160D-501(a).)

○ **May** coordinate with other local governments, state agencies, or regional agencies on planning processes. (G.S. 160D-503(a).)

VIII. Legislative Decisions [Chapter 4, Section II]

A. Notice

☐ **Must** follow applicable procedures for legislative decisions under any development regulation authorized under Chapter 160D, not just zoning; **must** adopt any development regulation by ordinance, not by resolution. (G.S. 160D-601.)

☐ For zoning map amendments, **must** provide notice not only to immediate neighbors but also to properties separated from the subject property by street, railroad, or other transportation corridor. (G.S. 160D-602.)

☐ For zoning map amendments, **must** provide posted notice during the time period running from twenty-five days prior to the hearing until ten days prior to the hearing. (G.S. 160D-602(c).)

○ For extension of ETJ, **may** use single mailed notice for ETJ and zoning-map amendment pursuant to statutory procedures. (G.S. 160D-202.)

○ For zoning map amendments, **may** require applicant to notify neighbors and hold a community meeting and **may** require report on the neighborhood communication as part of the application materials. (G.S. 160D-602(e).)

B. Planning Board Comment

☐ **Must** refer zoning amendments to the planning board for review and comment; **must** not have governing board handle planning board duty to review and comment on zoning amendments. (G.S. 160D-604(c), (e).)

☐ **Must** have planning board consider any plan adopted according to G.S. 160D-501 when making a comment on plan consistency. (G.S. 160D-604(d).)

○ **May** refer development regulation amendments (other than zoning) to the planning board for review and comment. (G.S. 160D-604(c).)

C. Plan Consistency

☐ When adopting an amendment to the zoning ordinance, **must** adopt a brief statement describing whether the action is consistent or inconsistent with approved plans. (G.S. 160D-605(a).) (*This eliminates the 2017 requirement that statements take one of three particular forms.*)

- ○ **May** adopt plan consistency statement when acting upon the zoning amendment or as a separate motion. (G.S. 160D-605(a).)
- ○ **May** meet the requirement for plan consistency even without formal adoption of a written statement if the minutes of the governing board meeting reflect that the board was fully aware of and considered the plan. (G.S. 160D-605(a).)
- ○ **May** concurrently consider a comprehensive plan amendment and a zoning amendment; must not require a separate application or fee for plan amendment. (G.S. 160D-605(a).)

☐ **Must** note on the applicable future land use map when a zoning map amendment is approved that is not consistent with the map; the future land use map is deemed amended when an inconsistent rezoning is approved. (G.S. 160D-605(a).) (*This clarifies that a rezoning inconsistent with a plan does not amend the text of the plan, but it does amend the future land use map*.)

☐ For a future land use map that is deemed amended, if it is a CAMA plan, then such amendment is not effective until it goes through the CAMA plan-amendment process. (G.S. 160D-501.)

☐ **Must** adopt a statement of reasonableness for zoning *map* amendments; for such statements, **may** consider factors noted in the statutes; **may** adopt a statement of reasonableness for zoning *text* amendments. (G.S. 160D-605(b).)

- ○ **May** consider and approve a statement of reasonableness and a plan consistency statement as a single, combined statement. (G.S. 160D-605(c).)

D. Voting

○ **Must** permit adoption of a legislative decision for development regulation on first reading by simple majority; no need for two-thirds majority on first reading, as was required for cities under prior law. (G.S. 160A-75; S.L. 2019-111, § 2.5(n).)

E. Certain Legislative Decisions

☐ **Must** prohibit third-party down-zonings; **may** process down-zonings initiated by the local government or landowner (G.S. 160D-601; S.L. 2019-111, Pt. I.)

☐ **Must** obtain applicant's/landowner's written consent to conditions related to a conditional zoning approval to ensure enforceability. (G.S. 160D-703(b); S.L. 2019-111, Pt. I.)

○ **May** use purely legislative conditional zoning and/or quasi-judicial special use permitting; **must** not use combined legislative and quasi-judicial process, such as conditional use district zoning. (G.S. 160D-102.)

○ With applicant's written consent, **may** agree to conditional zoning conditions that go beyond the basic zoning authority to address additional fees, design requirements, and other development considerations. (G.S. 160D-703(b); S.L. 2019-111, Pt. I.)

○ **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define "minor modification: by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

IX. Quasi-Judicial Decisions [Chapter 4, Section III]

A. Procedures

☐ **Must** follow statutory procedures for all quasi-judicial development decisions, including variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. (G.S. 160D-102(28).)

☐ **Must** hold an evidentiary hearing to gather competent, material, and substantial evidence to establish the facts of the case; the evidentiary hearing **must** have testimony under oath; **must** establish written findings of fact and conclusions of law. (G.S. 160D-406.)

☐ Board chair **must** rule at the evidentiary hearing on objections to inclusion or exclusion of administrative material; such ruling **may** be appealed to the full board. (G.S. 160D-406(d).)

☐ **Must** allow parties with standing to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments; **may** allow non-parties to present competent, material, and substantial evidence that is not repetitive. (G.S. 160D-406(d).)

○ **May** continue an evidentiary hearing without additional notice if the time, date, and place of the continued hearing is announced at a duly noticed hearing that has been convened; if quorum is not present at a meeting, the evidentiary hearing is automatically continued to the next regular meeting of the board with no notice. (G.S. 160D-406(b).)

○ **May** distribute meeting packet to board members in advance of the evidentiary hearing; if this is done, then **must** distribute the same materials to the applicant and landowner at the same time; **must** present such administrative materials at the hearing and make them part of the hearing record. (G.S. 160D-406(c).)

○ **May** have the planning board serve as a preliminary forum for review in quasi-judicial decisions; if this is done, the planning board must not conduct a formal evidentiary hearing, but must conduct an informal preliminary discussion of the application; the forum and recommendation must not be used as the basis for the decision by the board—the decision must still be based on evidence presented at the evidentiary hearing. (G.S. 160D-301.)

○ **May** require recordation of special use permits with the register of deeds. (G.S. 160D-705(c).)

△ **Be aware** that the definition of *close family relationship* as used for conflicts of interest includes spouse, parent, child, brother, sister, grandparent, or grandchild (including step, half, and in-law relationships). (G.S. 160D-109(f).)

△ **Be aware** that even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts. (S.L. 2019-111, § 1.9.)

B. Certain Quasi-Judicial Decisions

☐ **Must** not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. (G.S. 160D-705(c); S.L. 2019-111, Pt. I.)

☐ **Must** obtain applicant's/landowner's written consent to conditions related to a special use permit to ensure enforceability. (G.S. 160D-1402(k); G.S. 160D-1403.2; S.L. 2019-111, Pt. I.)

☐ **Must** set a thirty-day period to file an appeal of any administrative determination under a development regulation; **must** presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)

○ **May** adjust variance standards to provide for reasonable accommodation under the federal Fair Housing Act. (G.S. 160D-705(c).)

○ **May** use purely legislative conditional zoning and/or quasi-judicial special use permitting; **must** not use combined legislative and quasi-judicial process, such as conditional use district zoning. (G.S. 160D-102.)

○ **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define "minor modification" by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

X. Administrative Decisions [Chapter 4, Section IV]

A. Development Approvals

☐ **Must** provide development approvals in writing; **may** provide in print or electronic form; if electronic form is used, then it **must** be protected from further editing. (G.S. 160D-403(a).)

☐ **Must** provide that applications for development approvals must be made by a person with a property interest in the property or a contract to purchase the property. (G.S. 160D-403(a).)

☐ **Must** provide that development approvals run with the land. (G.S. 160D-104.)

☐ For revocation of development approval, **must** follow the same process as was used for the approval. (G.S. 160D-403(f).)

○ **May** require community notice or informational meetings as part of the decision-making process for administrative development approvals (quasi-judicial and legislative decisions already had notice and hearing requirements). (G.S. 160D-403(h).)

○ **May** set expiration of development approvals if work is not substantially commenced; default rule is twelve months, unless altered by state or local rule. (G.S. 160D-403(c).) Building permits expire after six months, as under prior law (no change to building permits). (G.S. 160D-1111.)

○ **May** extend expiration for development approvals for which construction is commenced and then is discontinued; default rule is that such approvals are valid for 24 months after discontinuation. (G.S. 160D-108(d.) Building permits for which work has been discontinued expire after twelve months, as under prior law (no change to building permits). (G.S. 160D-1111.) ~~**May** set expiration of development approvals if work is discontinued; default rule is twelve months, unless altered by state or local rule. (G.S. 160D-403(c).) **Be aware** that legislation will clarify the provisions on duration of development approvals. (G.S. 160D-403(c); S.L. 2019-111, § 1.3.)~~

○ **May** authorize administrative staff to approve minor modifications of development approvals and conditional-zoning approvals; if this is done, then **must** define "minor modifications" by ordinance and **must** not include modification of permitted use or density of development; major modifications **must** go through full applicable approval process. (G.S. 160D-403(d); -703(b); -705(c).)

B. Determinations

☐ **Must** provide written notice of determination by personal delivery, electronic mail, or first-class mail to the property owner and party seeking determination, if different from the owner. (G.S. 160D-403(b).)

○ **May** designate an official to make determinations for a particular development regulation. (G.S. 160D-403(b).)

○ **May** require owner to post notice of determination on the site for ten days; if such is not required, then owner has option to post on the site to establish constructive notice. (G.S. 160D-403(b).)

C. Appeals of Administrative Decisions

☐ **Must** allow administrative decisions of any development regulations (not just zoning) to be appealed to the board of adjustment, unless provided otherwise by statute or ordinance. (Appeals relating to erosion and sedimentation control, stormwater control, or building code and housing code violations are not made to the board of adjustment unless specified by local ordinance.) (G.S. 160D-405.)

☐ **Must** set a thirty-day period to file an appeal of any administrative determination under a development regulation; must presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)

☐ **Must** require the official who made the decision (or his or her successor if the official is no longer employed) to appear as a witness in the appeal. (G.S. 160D-406.)

☐ **Must** pause enforcement actions, including fines, during the appeal. (G.S. 160D-405.)

○ **May** assign the duty of hearing appeals to another board (other than the board of adjustment); if this is done, such board must follow quasi-judicial procedures. (G.S. 160D-405.)

○ **May** designate that appeals be filed with the local government clerk *or* another official. (G.S. 160D-405.)

XI. Vested Rights and Permit Choice [Chapter 5, Section I]

A. Vested Rights

☐ **Must** recognize that building permits are valid for six months, as under prior law. (G.S. 160D-1111 ~~G.S. 160D-108(d)(1).~~)

☐ **Must** recognize the default rule that development approvals/permits are valid for twelve months, unless altered by statute or extended by local rule ~~adjusted by statute or local rule~~. (G.S. 160D-108(d)~~(2)~~.)

☐ **Must** identify site-specific vesting plans (formerly site-specific development plans) with vesting for two to five years, as under prior law, except for specified exceptions. (G.S. 160D-108.1 ~~G.S. 160D-108(d)(3); -108(f)~~.)

☐ **Must** recognize multi-phase developments—long-term projects of at least 25 acres—with vesting up to seven years, except for specified exceptions (160D-108(c)~~(d)(4)~~; -108(f).) (The previously authorized phased-development plan is obsolete and should be deleted from ordinance.)

○ **May** provide for administrative determination of vested rights and for appeal to the board of adjustment. (G.S. 160D-108(h)~~(c)~~, -405.)

△ **Be aware** that a person claiming vested rights may bring an original civil action in court, skipping administrative determination and board of adjustment consideration. (G.S. 160D-108(h); 160D-405(c).)

△ **Be aware** that vested rights run with the land, except for state-permitted outdoor advertising permits that run with the owner of the permit. (G.S. 160D-108(i)~~(g)~~; S.L. 2019-111, Pt. I.)

B. Permit Choice

☐ **Must** not make an applicant wait for final action on the proposed change before proceeding if the applicant elected determination under prior rules. (G.S. 143-755; G.S. 160D-108(b).)

△ **Be aware** that if a local development regulation changes after an application is submitted, the applicant may choose the version of the rule that applies; but **may** require the applicant to comply with new rules if the applicant delays the application for six months. (G.S. 143-755; G.S. 160D-108(b); S.L. 2019-111, Pt. I.)

△ **Be aware** that an application for one development permit triggers permit choice for permits under any development regulation; such permit choice is valid for eighteen months after approval of the initial application. (G.S. 143-755; G.S. 160D-108(b); S.L. 2019-111, Pt. I.)

XII. Judicial Review [Chapter 5., Section II]

A. Declaratory Judgments

△ **Be aware** that an individual may bring a declaratory judgment action to challenge legislative zoning decisions, vested rights claims, and challenges to land use authority related to administrative decisions, subject to specified procedures. (G.S. 160D-1401; G.S. 160D-1403.1)

△ **Be aware** that other civil actions may be authorized—G.S. Chapter 160D does not limit availability of other actions. (G.S. 160D-1404.)

B. Appeals of Quasi-Judicial Decisions

☐ **Must** update ordinance to address appeals of certificates of appropriateness for historic landmarks and historic districts; default rule is that such appeals go straight to court; local government may opt for such appeals to go to the board of adjustment, as under prior statutes. (G.S. 160D-947.)

☐ **Must** provide that appeals of certificates of appropriateness must be filed within thirty days after the decision is effective or written notice is provided, the same as for appeals of other quasi-judicial decisions. (G.S. 160D-947; -1405.)

△ **Be aware** that on appeal a party may request a stay of the approval or enforcement action. (G.S. 160D-1402(e).)

△ **Be aware** that a local government may seek a stay in favor of itself (to prevent development under an approval). (G.S. 160D-1402(e).)

△ **Be aware** that if, in the absence of a stay, an applicant proceeds with development, the person does so at his or her own risk. (G.S. 160D-1402(*l*).)

△ **Be aware** that on appeal, the superior court now must allow for supplementing the record on questions of standing, conflicts of interest, constitutional violations, or actions in excess of statutory authority. (G.S. 160D-1402; S.L. 2019-111, § 1.9.)

△ **Be aware** that even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts. (G.S. 160D-1402; S.L. 2019-111, § 1.9.)

△ **Be aware** of specific judicial instructions for decisions of appeals of quasi-judicial decisions. (G.S. 160D-1402(k); S.L. 2019-111, § 1.9.)

C. Subdivision Decisions

○ **May** establish a rule that administrative subdivision decisions are appealed to the board of adjustment. (G.S. 160D-1405.)

△ **Be aware** that appeals of administrative subdivision decisions may be appealed directly to superior court. (G.S. 160D-1403.)

△ **Be aware** that quasi-judicial subdivision decisions are appealed to superior court in the nature of certiorari. (G.S. 160D-1402.)

D. Attorneys' Fees

△ **Be aware** that a court *shall* award attorneys' fees if the court finds that a city or county violated a statute or case law setting forth unambiguous limits on its authority. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)

△ **Be aware** that a court *shall* award attorneys' fees if the court finds that a local government took action inconsistent with, or in violation of, the permit choice ~~and vested rights~~ statutes. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)

△ **Be aware** that a court *may* award attorneys' fees in other matters of local government litigation. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)

E. Additional Judicial Rules

△ **Be aware** that a court may join a civil action challenging an ordinance with an appeal in the nature of certiorari. (G.S. 160D-1402(m).)

- △ **Be aware** that a local government **must** not assert the defense of estoppel to enforce conditions to which an applicant did not consent in writing. (G.S. 160D-1403.2; S.L. 2020-25; S.L. 2019-111, Pt. I.)

- △ **Be aware** that an action is not rendered moot if the party loses the relevant property interest as a result of the local government action being appealed, subject to applicable case law limits. (G.S. 160D-1402(j1); S.L 2019-111, Pt. I.)

Board of Commissioners Meeting
Agenda Item Submittal

Item To Be Considered: **Purchase of Comprehensive Operating Software**

Board Meeting Date: **May 10, 2021**

Prepared By: **Sonia Johnson, Finance Director/Chris Seaberg, Town Manager**

Overview:

The Budget Ordinance for FY 20/21 includes $60,000 for the purchase of new comprehensive software. Town staff participated in software demonstrations with five different software providers and it was determined that Tyler Technologies would best meet the needs of the Town by improving its business processes both internally and externally to our residents. Town staff reviewed the proposals; conducted an onsite demonstration at Emerald Isle and contacted the references that were provided by the software vendor.

The Town staff is recommending a hosted Incode 10 application offered by Tyler Technologies. Incode 10 is web-based and will include the core financial system including general ledger, purchasing; capital assets; project accounting; and cashiering. In addition, it will include the transparency module and a personnel management suite including employee self-service portal and online timesheets.

Based on the backlog, the Town would be looking at 12-15 months before going live across the board on all modules Tyler has quoted. The services are billed as incurred and some of it will fall in FY 22/23. Once the new applications are fully utilized, we expect that the Town staff will realize significant efficiencies in streamlined processing and online self-service.

The annual maintenance/support cost of the new comprehensive operating software is $38,392 per year, beginning in year one with a one-time cost of $60,800 for project management, implementation, onsite and remote training, and some Asyst data conversion.

Action Needed: Motion to authorize Town Manager to execute the contract with Tyler Technologies.

Reviewed By:

Town Manager	5/5/2021	**Finance Director**	5/5/21
Town Clerk	5/5/2021	**Town Attorney**	

Date Action Approved by Board: ____________ **Action if different from Recommended:**

Board of Commissioners Meeting
Agenda Item Submittal

Item To Be Considered: **Future Agenda Topics**
Board Meeting Date: **May 10, 2021**
Prepared By: **Paula Webb – Assistant Manager/Town Clerk**

The purpose of this memo is to provide the Board with matters that staff anticipates/proposes for upcoming meetings. It should be noted that these items are tentatively scheduled for the specified monthly agenda but are subject to change due to preparation of materials, public notice requirements, etc.

In providing this memo each month, we hope it will also provide opportunity for the Board to introduce items of interest and subsequent direction for placement on future agendas, which will allow staff the opportunity to plan accordingly.

Special Meeting – May 13, 2021 – Budget Workshop

Proposed for May 24, 2021
- FY 21/22 Budget Message/Budget – Schedule Public Hearing

Future Agenda Items
- Public Hearing – Text Amendments/Sign Amortization *deferred by BOC 12/14/20*
- Public Hearing – Text Amendments/Temporary Signs *deferred by BOC 12/14/20*
- Public Hearing – Text Amendments/Food Truck Vendors *deferred by BOC 12/14/20*
- Further LUP Review/Amendments
- Stormwater Discussion and Annual Report (*Report placed on Town Website September 2020*)
- Comprehensive Transportation Plan Revisions
- Gateway Plan Discussion/Town Limits Beautification
- Text Amendments – Occupancy Tax
- Text Amendments – R/A Zoning Uses – *referred back to Planning Board*
- Text Amendments – Remove Cell Towers as use in B2HDO and other zones if permissible
- Downtown Traffic Movement Decision – *February 22, 2021 and future*
- Sub-committee designations for Strategic Plan Implementation (*Eco Dev Committee est. Oct 2020*)
- SHS Recognitions – *wait for in-person meetings to return per Mayor*