

**TOWN OF SWANSBORO  
PLANNING BOARD  
REGULAR MEETING AGENDA**

**April 6, 2021**

**Tuesday, 5:30 PM**

**\*Regular Meeting Zoom Link:** <https://us02web.zoom.us/j/86082103395>

**1. Call to Order**

**2. Minutes**

- A. November 16, 2020 Special Meeting
- B. March 2, 2021 Regular Meeting
- C. March 15, 2021 Special Meeting

**3. Business**

**A. The Blazin' Bird Special Use Permit**

Chase Hanford has submitted an application for special use to utilize the property at 632 W. Corbett Ave, the former Seaside Coney Island, as a restaurant.

*Action Needed: Review and provide comments/recommendation to the governing board based on the criteria under Section §152.210 (B) (1-5) of the UDO with regard to the facts presented in the application. Comments should address plan consistency and any other items deemed necessary.*

**B. Chapter 160D Amendments**

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.

*Action Needed: Recommend approval, approval with modifications, denial, or table the proposed changes to the Town Code of Ordinances and Unified Development Ordinance related to the NC GS Chapter 160D Amendments.*

**4. Chairman/Board Thoughts/Staff Comments**

**5. Public Comments**

**6. Adjournment**

**TOWN OF SWANSBORO  
PLANNING BOARD  
SPECIAL MEETING MINUTES  
NOVEMBER 16, 2020**

**Call to Order**

The meeting was called to order at 5:30 pm. Board members in attendance were Michael Favata, David Mohr, Christina Ramsey, Scott Chadwick, Jeff Conaway, Brad Buckley, and Ed McHale.

It was noted that member Brad Buckley attended via ZOOM, an electronic platform put into place to allow virtual meetings due to the COVID-19 pandemic that had recently taken a huge toll on the United States and other parts of the World requiring social distancing and limited public appearances.

**Minutes**

On a motion by Mrs. Ramsey, seconded by Mr. Buckley the September 9, 2020 Special Meeting minutes and September 21, 2020 Joint Meeting with BOC minutes were approved unanimously.

**Old Business**

*Text Amendment - Food Truck Vendors*

Elizabeth Shepard, owner of the Urban Street Eats food truck, had submitted an application for text amendment which would allow food truck vendors. At the August 10, 2020 Board of Commissioners meeting additional direction was provided. This agenda item was tabled at the October 6, 2020 meeting.

Mr. Chadwick reviewed that the board was to review the proposed amendment and how it related to the Town's established plans and that any approval on recommendation must address consistency. He shared that he found the amendment to be inconsistent specifically with regards to the following parts of Swansboro CAMA Land Use Plan:

Goals and Objectives Chapter

From Page 35

#2 - Foster growth that sustains and enriches the community

*"Extend the coastal building design concept to key locations"*

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

*"Encourage mixed use development at nodes/key intersections; discourage additional strip development"*

Land Use Plan Chapter - Gateway Corridor Section

From Page 53

Access and circulation

*"Reduced left-turn movements should be required and retrofitted. Additional right-of-way dedication or reservation will likely be required for new development or redevelopment, to accommodate anticipated or likely future widenings."*

Parking

*"Generally, jurisdictions seek to minimize the visibility of parking areas along character enhancement corridors"*

In response to inquiries from the board, Planner Jennifer Ansell clarified the following details:

- “Locally-owned” term is language in the Strategic Plan and it is not defined in that document. It was shared that the interpretation was that the intent was not to mean that the owner literally resides in Swansboro as many of our brick-and-mortar business owners do not reside in town limits or the ETJ. Note that it also includes the statement “and a broad range of...dining...opportunities”.
- Staff's interpretation to locate them off of Highway 24 was to establish a setback from Highway 24 and they must be at least 50 feet from Highway 24
- The current UDO allows Food Trucks to set up for Non-Profit organizations & Town sponsored events
- Taxes are collected by the County and dispersed from them to the municipalities

After discussion, Mr. Buckley made a motion to allow Food trucks with a limited service and Mr. Mohr seconded. It was pointed out that the Board was to make a recommendation to approve or deny the ordinance as presented or to make edits. A roll call for the motion was made and the motion failed, 2:5.

On a motion by Mr. Chadwick, seconded by Mr. Conaway, the ordinance amendment was found inconsistent with Town plans and the Board recommended denial of the proposed amendment. The motion was approved unanimously.

### *Sign Amortization and Freestanding Sign Allowances*

The Board of Commissioners discussed the freestanding sign amortization process again at their July 27th regular meeting and directed Staff to present an amendment to the Planning Board for consideration to remove the amortization requirement under Section 152.274 of the Unified Development Ordinance (UDO) and to clarify under what conditions nonconforming signs would have to be replaced. This agenda item was tabled at the October 6, 2020 meeting.

Mrs. Ansell reviewed the following amendments that were for consideration.

## **TITLE XV: LAND USAGE**

### **CHAPTER 152: UNIFIED DEVELOPMENT ORDINANCE**

#### **GENERAL PROVISIONS**

##### **§ 152.016 DEFINITIONS OF BASIC TERMS.**

**SIGN, FREESTANDING.** A sign that is attached to, erected on, or supported by ~~some a~~ structure ~~(such as a pole, mast, or frame, or other structure)~~ and that is not itself an integral part of or attached to a building or other structure having a principal function other than the support of a sign. ~~A sign that stands without supporting elements, such as a “sandwich sign,” is also a FREESTANDING SIGN.~~

**SIGN, MONUMENT.** A ~~type of~~ freestanding sign that is detached from a building and having a support structure that is a solid-appearing base constructed of a permanent material, such as concrete block or brick. ~~All other freestanding sign types not meeting the definition of a MONUMENT SIGN shall either a pole sign or a pylon sign.~~

##### **§ 152.270 SIGNS REQUIRING A PERMIT AND FEE.**

H) Multiple use signs (non-residential) provided:

- 2) The allowed signage will be proportionally reduced for any properties less than three acres, ~~but never less than 64 square feet of display area or if~~ the property is greater than three acres, ~~the sign may not exceed never larger than~~ 160 square feet ~~of display area~~;

- I) Principal use signs. Principal use signs shall be permitted on the premises of the business to which they apply in districts in which the principle use is permitted or in districts, in which the principle use is allowed as a special use, provided the special use has been allowed pursuant to applicable law. This provision is subject to the following conditions and limitations:

- 1) Freestanding signs. Each tract of land shall be permitted one monument sign, unless the property is within the Historic District and is therefore subject to the Historic District Design Guidelines. See division (G) of this section.

#### § 152.273 PROHIBITED SIGNS.

The following types of signs are prohibited in all districts unless otherwise noted.

- M) Primary freestanding signs which are not monument signs unless the sign is located in the Historic District and is therefore subject to the Historic District Design Guidelines.

#### § 152.274 NONCONFORMING/NONPERMITTED SIGNS; AMORTIZATION.

Any sign existing as of the date of passage of this amendment which is not in conformity with the provisions of this amendment and other applicable ordinances, shall be deemed a nonconforming sign. Except as otherwise specifically addressed by this chapter, nonconforming signs existing on the date of passage of this amendment shall be allowed to remain in existence subject to the following provisions:

- A) At such time as any nonconforming sign receives structural damage from any source whatsoever, whether accidental, an act of God, or otherwise, and such damage amounts to at least 50% of the sign's supporting structure, the sign must be replaced with a conforming sign the non-affected supporting structure may be allowed to have signage put back into place. For the purposes of this subsection, damage to the face of the sign which does not otherwise damage the supporting structure of the sign shall NOT require the sign to be replaced affect the original sign area; however, the sign area shall not increase beyond what was originally in place. No additional lighting shall be added to any such sign.
- B) If the principal use of the property changes, any nonconforming signage must be replaced by conforming signage or removed from the premises prior to the issuance of a Certificate of Occupancy.
- C) If an existing building is vacant for more than 180 days without the intent to reestablish the previous use, any nonconforming signage must be replaced by conforming signage or removed from the premises prior to the issuance of a Certificate of Occupancy.
- ~~B) Notwithstanding the proscriptions of the immediately preceding subsection, if a single nonconforming sign support structure contains or supports more than one nonconforming sign, and if the face of a nonconforming sign is damaged, but its structure is not damaged, then the nonconforming sign area may be replaced on the same supporting structure, but replacement sign area shall be so located thereon as not to create an unsafe condition with traffic or pedestrian movement. The sign area shall not increase beyond what was originally in place.~~
- ~~C) Nonconforming signs with flashing lights or moving lights or external moving parts located in any zoning district shall be removed within 30 days after the adoption of this chapter.~~
- ~~D) Nonconforming signs made of paper, cloth, vinyl, or other nondurable material located in any zoning district shall be removed within 90 days after the adoption of this chapter.~~
- ~~E) Nonconforming freestanding signs in any zoning district (except for billboards, which are controlled by § 152.270(B) of this chapter) shall be removed within ten years after the adoption of this chapter. Within two years after the adoption of this chapter, the Administrator of the Town of Swansboro shall notify the owner (s) of any sign deemed by the Administrator to be in violation of this subsection; provided that notification of the person (s) indicated as owner (s) of the property upon which such sign is located from the records of the Onslow County Tax Office shall be deemed to comply with the notification required by this subsection. Notwithstanding the provisions of this subsection, at such time as any nonconforming sign (regardless of the extent of nonconformity) receives structural damage from any source whatsoever, whether accidental, act of God, or otherwise, and such damage amounts to at least 50% of the sign's supporting structure, then such sign shall be removed and shall not be replaced except by a~~

conforming sign. For purposes of this division, damage to the face of the sign which does not otherwise damage the supporting structure of the sign shall or may be enlarged in any manner, nor may any additional lighting be added to any such sign.

F) Nonconforming portable or other temporary signs located in any zoning district shall be removed within 120 days after the adoption of this chapter.

G) Any person who owns or maintains or who has erected a sign for which no permit has been issued and which has been erected within the two year period next preceding the adoption of this chapter shall within ninety days after the adoption of this chapter apply for a permit for such sign or signs and if any such sign is nonconforming, shall bring the sign into conformity with this chapter or shall remove said sign.

## § 152.277 PERMITTED SIGNS.

The Table of Permitted and Special Use Signs delineates the types of signs permitted within the various zoning districts in the Town of Swansboro (see §§ [152.170](#) through [152.180](#) for a complete description of the individual zoning districts).

Signs - Permitted/Special Use

| Sign Type    | RA | All Residential Districts | TNC | PUD | MHP | MHS | MHS-15SF | MHS-O | B1 | B2 | B3 | B2 HDO | MI | CON | O/I | G/E |
|--------------|----|---------------------------|-----|-----|-----|-----|----------|-------|----|----|----|--------|----|-----|-----|-----|
| Freestanding |    |                           |     |     |     |     |          |       | P  | P  |    | P      | P  |     | P   |     |
| Monument     |    | P                         |     | P   | P   |     |          |       | P  | P  | P  | P      | P  |     | P   | P   |

On inquiries from the Board, Mrs. Ansell clarified the following:

- A different date could be given to businesses based on when and why their sign became nonconforming but would be difficult due to all the changes and could be messy.
- The Historic District would be different due to their area and size preventing them from being able to have monument signs.

Mr. Buckley shared his opinion that all areas should be treated the same and made a motion to table. The motion failed due to lack of a second.

On a motion by Mr. Chadwick, seconded by Mr. McHale, the proposed amendment with the exclusion of §152.274 was recommended for approval to the Board of Commissioners and found consistent with the comprehensive plan. The motion was approved unanimously.

## New Business

### **Temporary Sign Allowances**

At the February 10, 2020 joint workshop meeting of the Planning Board and Board of Commissioners, further direction on temporary sign allowances was provided. At the May 4, 2020 regular meeting, the Planning Board voted unanimously to recommended approval of the proposed text amendments related to temporary signage. A second review by the Planning Board is now needed due to the identification of additional inconsistencies within the ordinance and the Historic Commission's recommendation for changes to the design guidelines.

Mrs. Ansell reviewed the proposed amendments that were for consideration. (See attachment A)

After discussion, Mr. McHale move to approve the amendment as prepared to the Board of Commissioners, with the addition to add the allowance of feather flags back to 152.169 with the same 45 day/year duration and size of 32 square feet. The amendment was found consistent with the comprehensive plan. Mr. Buckley seconded his motion and it passed 4:3.

#### **Chairman/Board Thoughts/Staff Comments**

Fred Schatcher shared that he felt signs were not an issue in town and that appearance of buildings were far worse. He commented that signs affect businesses in many ways and if they are going to be strictly limited, he thought elected official signs should be more limited as well, and he pointed out how doing so would affect a person's election if they could only place a few signs. Also suggested the board re-look at the Gateway.

Mike McHugh shared his appreciation for the recommendation to allow feather flags. He shared that signs and even feather flags were important for businesses because he helps to draw attention and bring in customers, which in part contributes to the Town in many way

#### **Adjournment**

On a motion by Mr. Conaway seconded by Mr. McHale the meeting was adjourned at 7:06 pm.

**TITLE XV: LAND USAGE**  
**CHAPTER 152: UNIFIED DEVELOPMENT ORDINANCE**

**GENERAL PROVISIONS**

**§ 152.016 DEFINITIONS OF BASIC TERMS.**

**SIGN, BANNER.** A temporary sign of light weight fabric or similar material which is rigidly mounted to a pole or a building by a rigid frame at two or more edges. National, state, ~~or~~ municipal flags, ~~or~~ the official flag of any institution or business, ~~or “open”~~ flags shall not be considered banners.

~~SIGN, BUSINESS IDENTIFICATION. Any sign which advertises an establishment, service, commodity, or activity conducted upon the premises where such sign is located.~~

~~SIGN, COMMERCIAL MESSAGE. Any sign wording, logo, or other representation that directly or indirectly names, advertises, or calls attention to a business, product, service, or other commercial activity. This definition does not include company nameplates or logos on instructional signs.~~

~~SIGN, IDENTIFICATION. A permanent sign announcing the name of a subdivision, residence, group housing project, church, school, park, or quasi-public structure or facility, and uses are permitted in agricultural/residential and residential zoning districts.~~

~~SIGN, INCIDENTAL. A sign which provides only information for the convenience and necessity of the public. Company logos may be displayed on such signs but must not occupy more than 25% of the sign area. INCIDENTAL SIGNS include directories, entrance, exit, and other necessary directional signs.~~

~~SIGN, MENU. A permanent on-premises sign located at businesses which provides drive-up or drive-through services such as fast food restaurants, banks, laundries, and the like. MENU SIGNS shall be located so as not to create vehicle stacking problems which will interfere with the flow of traffic.~~

**SIGN, ON-PREMISES.** A sign which publicizes and directs attention to a profession, commodity, activity, product, service or entertainment conducted, sold or offered upon the premises where such sign is located. ~~ON-PREMISES SIGNS include pole and ground mounted signs. Also included are high rise pole mounted signs where permitted.~~

~~SIGN, PENNANT. Any lightweight plastic, fabric, or other material, whether or not containing any message of any kind, suspended from a pole, rope, wire, or string. A string of lights shall be deemed to be a pennant.~~

**SIGN, PORTABLE.** Any sign ~~not exceeding 80 square feet of sign area and~~ designed to be moved without mechanical means.

~~SIGN, PROFESSIONAL OR OCCUPATIONAL (NAME PLATE). A sign which publicizes and directs attention to a rural family occupation or to a profession.~~

~~SIGN, PUBLIC INFORMATION. Any sign, usually erected and maintained by a public agency, which provides the public with information and in no way relates to a commercial activity, including, but not limited to: speed limit, stop signs, street name signs, and directional signs.~~

~~SIGN, UNLAWFUL. Any sign not listed within this definition section and/or is installed, erected, or constructed in violation of the terms of this chapter.~~

~~SIGN, VEHICLE. Any sign written or displayed on a parked vehicle if the vehicle is in front of the business or in a position to draw attention towards the business in the form of advertising. If the vehicle is parked within a compound for the storage of company vehicles and equipment, it is exempt from this definition. No vehicle/equipment compound can be located at the front of the business. VEHICLE SIGNS cannot be located on one parcel of property longer than eight hours.~~

~~SIGN, WIND DEVICE. Any flag, banner, balloon, pennant, streamer, or similar device that moves freely in the wind. All wind devices are considered to be signs and are regulated and classified as attached or detached by the same regulations as other signs if used to advertise special sales, announcements, festivals, or greetings.~~

## **SIGNS**

### **§ 152.268 SIGNS REQUIRING NEITHER PERMIT NOR FEE.**

~~(C) Political campaign signs, provided the following are met:~~

- ~~1) Signs shall be confined to private property, and not located within any street-right-of way unless otherwise permitted by State law;~~
- ~~2) Permission must be obtained from the property owner where the sign(s) are to be placed;~~
- ~~3) The owner of any property upon which the sign is placed shall insure the sign has been removed within ten days after the election or referendum;~~
- ~~4) Signs shall not create any unsafe conditions;~~
- ~~5) The placement of leaflets, signs, posters, or bulletins on vehicle windshields, utility poles, trees, or other sign posts is prohibited; and~~
- ~~6) Mobile signs require a special use permit per Section 152.270 (F).~~

### **§ 152.269 SIGNS REQUIRING PERMIT BUT NO FEE.**

~~(B) Directional signs, such as those identifying an entrance, exit, or parking location provided that such signs shall be located entirely upon the parcel or tract of land to which the directional signs apply and does not exceed two square feet.~~

~~(E) Community information banners can be located in designated area – contact Town Hall.~~

~~(FE) Business banners, pennants, and flags which are used to advertise sales, or announcements, or greetings provided they:~~

- ~~(1) Signs aAre located on the property of the business or leased unit that the banner relates to and are not displayed in undeveloped outparcels;~~
- ~~(2) Signs aAre not used more than 45 days in any one calendar year period per business;~~

- (3) Signs shall not be larger than 32 square feet or 25% of allowed useable wall area, whichever is less; and
- (4) Only one banner is permitted per business at any time;
- (5) Business banners are prohibited in the Historic District; and
- (4)(6) No unsafe condition is created.

~~(G) Holiday decorations placed by the Town of Swansboro or its designee during the holiday or festival season. Such decorations must be a minimum of eight feet above any public sidewalks.~~

~~(HF)~~ (4) Temporary event banners, yard signs and post-mounted signs for town-approved festivals and for events sponsored by non-profit organizations such as civic groups, church organizations, schools, and government agencies, provided that they are located in business, office and institutional, or government zoning districts along NC 24 or major thoroughfares and the following conditions are met:

- (a) ~~Devices (signs and banners)~~ Signs are not installed more than 14 days prior to event and are removed within two days of event's end;
- (b) No more than eight devices are allowed for the same event at one time;
- (c) Devices are not placed in rights-of-ways and are placed only with the permission of the property owners;
- (d) Unsafe conditions are not created, and devices are not placed in unsafe locations;
- (e) Signs and banners are not displayed above a highway without town and NCDOT approval in writing;
- (f) Signs and banners are not placed within Historic District unless along Highway 24, on Town-owned property, or on private property within the B-2 HDO zoning district, provided that the sign or banner advertises a town sponsored/approved festival or event;
- (g) The maximum size for each sign or banner is 32 square feet. The maximum height shall not exceed six feet; and
- (h) ~~Portable~~ Mobile signs, including trailer or vehicle-mounted signs, are prohibited, except directional or public information signs placed by the town at the Town Manager's discretion, or by the North Carolina Department of Transportation.

~~(2) Organization representatives may, after appropriate training and orientation by the Town staff regarding the ordinance requirements, be licensed to install the types of temporary signs and banners allowed in this subsection without obtaining individual permits. Such licenses may be withdrawn if signs or banners are installed in violation of the ordinance requirements by the licensee or the organization that they represent. Licensees may be required to include identification and contact information on signs or banners that they install.~~

~~(IG)~~ Construction signs, may be placed identifying the project, the owner or developer, architect, engineer, contractors, subcontractors, and funding sources or other related information provided the following conditions are met:

- 1) Signs must be entirely on property where construction is taking place;
- 2) Total residential signs area shall not exceed 32 square feet total. If a two-sided sign, each side counts toward total if NOT same copy;

- 3) Total commercial signs area shall not exceed 100 square feet total. If two-sided sign, each side counts toward total if NOT same copy;
- 4) All signs shall be removed prior to the certificate of occupancy or when applicable to the certificate of compliance; and
- 5) Grouping of all signs shall be in the same area (adjacent to each other) without creating a traffic safety problem.

**(JH)** Home occupation signs are allowed provided:

- 1) There shall be not more than one sign per parcel of land;
- 2) Signs shall be attached flat to the wall of the building and shall be non-illuminated; and
- 3) Signs shall not exceed eighteen inches in any dimension nor a total area of 324 square inches.

~~**(K)** Political campaign signs are allowed, provided the following are met:~~

- ~~1) Signs shall be confined to private property;~~
- ~~2) Signs shall not be erected sooner than 45 days before the election or referendum;~~
- ~~3) The owner of any property upon which the sign is placed shall make sure the sign has been removed within seven days after the election or referendum;~~
- ~~4) Sign shall not exceed 15 square feet and the height to the top of sign shall not exceed five feet from the ground. Should you elect to erect a sign larger than 15 square feet, an application must be submitted with an engineer sealed drawing of footing design with turn over moment calculations. The sign must be located in a commercial zone on non-public lands, out of rights-of-way, and have a permit from the Zoning Official prior to placement of the sign;~~
- ~~5) Signs shall not create any unsafe conditions;~~
- ~~6) Ordinance prohibits the placement of leaflets, signs, posters, bulletins on vehicle windshields, utility poles, trees, or sign post; and~~
- ~~7) Portable signs are prohibited. Signs affixed to or placed on trailers, in truck beds, etc., are considered portable signs and are prohibited.~~

**(LI)** Subdivision signs (temporary) are signs advertising the sale of lots or buildings within new subdivisions in which they are located shall be permitted provided:

- 1) Signs shall be non-illuminated;
- 2) No more than one two-sided not exceeding 32 square feet per side shall be located at each major approach to the subdivision ;
- 3) Signs shall be well maintained and in good structural condition;
- 4) Display of such signs shall be limited to a period until 70% of all lots within the subdivision are sold; and
- 5) Any and all signs must be on subdivision's property.

**(MJ)** Safety/warning Signs (i.e., "low clearance") shall be permitted provided:

- 1) The sign has no more than two sides;
- 2) The area of the sign is six square feet or less; and
- 3) The sign is not illuminated.

#### **§ 152.270 SIGNS REQUIRING A PERMIT AND FEE.**

## (K) Portable signs provided:

- (1) No part of a sign shall extend beyond the plane of the property line upon which the sign is located or into any easement;
- (2) No more than one portable sign is allowed per business or occupancy;
- (3) Total allowable sign area per lot shall be calculated as the remaining square footage for total sign area per lot. For example, if the lot already has utilized 138 square feet of the total allowed sign area of 150 square feet, then 12 square feet may only be utilized for the portable sign;
- (4) (3) Display area shall not exceed 16 square feet unless the sign is located in the Historic District and is therefore subject to the Historic Design Guidelines. If copy is different on each side of sign, then both sides count towards total area;
- (5) Sign height shall not exceed three feet measured vertically from ground level to top of sign;
- (6) Combination of allowed tenant signage square footage shall not be exceeded;
- (7) (4) Signs shall be displayed only during times when the business being advertised is open for business;
- (8) (5) Portable signs must be properly secured to prevent the sign from becoming windblown debris;
- (9) (6) Portable signs shall not be connected to or utilize an external power source, including (without limitation) by use of an electrical extension cord or cable;
- (10) (7) Certain Portable Signs are (prohibited), due to their poor aesthetic appearance and detractive value (see Figures 152.270.3 and 152.270.4).



Figure 152.270.3



Figure 152.270.4

- (11) (8) If a portable sign is desired, the following P portable signs must be post-mounted or sandwich board-style signs are allowed (see Figures 152.270.5 and 152.270.6).



Figure 152.270.5



Figure 152.270.6

**§ 152.271 ADDITIONAL SIGNS AS SPECIAL USE.**

~~(C) Banners, special event signs, bazaar signs, and temporary signs shall not require a special use permit. These signs will require a permit issued by the Administrator.~~

**§ 152.273 PROHIBITED SIGNS.**

The following types of signs are prohibited in all districts unless otherwise noted. Any sign located, placed, or allowed to remain in violation of this section may be impounded by the Administrator or his designee. Any sign impounded under this section shall be returned to the owner (s) thereof upon the following conditions:

- (a) The owner (s) shall provide the Administrator or his designee satisfactory proof of ownership of such sign; and
- (b) The owner (s) shall pay all applicable penalties assessed on account of such sign.

Any such sign not claimed within ten (10) days after its impoundment shall be considered abandoned by the owner (s) thereof and the Town of Swansboro may thereafter dispose of any such sign not reclaimed by the owner thereof within ten (10) days after its impoundment.

- A) Signs which are a copy of or deceptively similar to any official highway sign.
- B) Signs with flashing or moving lights if the sign and/or flashing lights are visible from any residence, or any street or thoroughfare open to vehicular traffic.
- C) Signs that obstruct visibility on any street, highway, or thoroughfare or at any intersection thereof.
- D) Signs which are erected or maintained upon trees, ~~or~~ painted or drawn upon rocks or other natural features, or attached to utility poles.

- E) Signs that obstruct access to or from any window, door, fire escape, or any other opening intended to provide light, air, ingress, or egress to or from any room or building as required by law.
- F) (4) Signs located in or over any street, highway, or any other public right-of-way. Any sign located, placed, or allowed to remain in violation of this section may be impounded by the Administrator or his designee. Any sign impounded under this section shall be returned to the owner (s) thereof upon the following conditions:
  - (c) The owner (s) shall provide the Administrator or his designee satisfactory proof of ownership of such sign; and
  - (d) The owner (s) shall pay all applicable penalties assessed on account of such sign.(2) Any such sign not claimed within 30 days after its impoundment shall be considered abandoned by the owner (s) thereof and the Town of Swansboro may thereafter dispose of any such sign not reclaimed by the owner thereof within 30 days after its impoundment.
- G) Signs which are illegal under state or federal law.
- H) Signs not in good repair.
- I) Signs not securely affixed to a substantial structure, except for mobile signs allowed as a special use in § 152.211.
- J) Signs which are painted on buildings which conduct a use not advertised by said sign.
- K) Signs which are not designed or constructed according to generally accepted engineering practices to withstand wind pressures and load distribution as set forth in the North Carolina Building Code and other applicable codes. Provided, however, that this division shall not apply to prohibit freestanding signs:
  - 1) Which have an area less than or equal to 32 square feet per side; and
  - 2) Which are not more than six feet from the ground to the top of the sign; and
  - 3) Which are supported by at least two support posts equivalent to two 4" x 4" treated wooden posts, buried at least four feet in the ground.
- L) Signs which do not meet the National Electric Code, when wiring or electrical connections are used.
- M) Primary freestanding signs which are not monument signs unless the sign is located in the Historic District and is therefore subject to the Historic District Design Guidelines.
- N) Signs commonly referred to as “yard signs” unless related to a Town approved festival or non-profit event (see Section 152.269 and Figure 152.270.7).
- O) Signs commonly referred to as “feather flags” (see Figure 152.270.8).



Figure 152.270.7



Figure 152.270.8

# § 152.277 PERMITTED SIGNS.

The Table of Permitted and Special Use Signs delineates the types of signs permitted within the various zoning districts in the Town of Swansboro (see §§ [152.170](#) through [152.180](#) for a complete description of the individual zoning districts).

## Signs - Permitted/Special Use

| Sign Type                                                  | RA | All Residential Districts | TNC | PUD | MHP | MHS | MHS-15SF | MHS-O | B1 | B2 | B3 | B2 HDO | MI | CON | O/I | G/E |
|------------------------------------------------------------|----|---------------------------|-----|-----|-----|-----|----------|-------|----|----|----|--------|----|-----|-----|-----|
| <b>Animated</b>                                            |    |                           |     |     |     |     |          |       | P  | P  |    |        |    |     |     |     |
| <b>Accessory Use (per 152.271)</b>                         | S  | S                         |     | S   | S   | S   | S        | S     | S  | S  | S  | S      | S  | S   | S   | S   |
| <b>Agricultural</b>                                        | P  | P                         |     | P   | P   | P   | P        | P     | P  | P  | P  | P      | P  | P   | P   | P   |
| <b>Awning/Canopy</b>                                       |    |                           |     | P   |     |     |          |       | P  | P  | P  | P      | P  |     | P   | P   |
| <b>Business Banner</b>                                     |    |                           |     | P   |     |     |          |       | P  | P  | P  | P      | P  |     | P   | P   |
| <b>Billboard*</b>                                          |    |                           |     |     |     |     |          |       | P  |    |    |        | P  |     |     |     |
| <b>Business Identification</b>                             |    |                           |     |     |     |     |          |       | P  | P  |    | P      | P  |     | P   |     |
| <b>Canopy</b>                                              |    |                           |     |     |     |     |          |       | P  | P  |    | P      | P  |     | P   |     |
| <b>Cemetery</b>                                            | P  |                           |     |     |     |     |          |       | P  |    |    |        |    |     |     |     |
| <b>Churches, Schools or Public Buildings (per 152.271)</b> | S  | S                         |     | S   | S   | S   | S        | S     | S  | S  | S  | S      | S  | S   | S   | S   |
| <b>Commercial Message</b>                                  |    |                           |     |     |     |     |          |       | P  | P  |    | P      | P  |     | P   |     |
| <b>Construction</b>                                        | P  | P                         | P   | P   | P   | P   | P        | P     | P  | P  | P  | P      | P  | P   | P   | P   |
| <b>Directional</b>                                         | P  |                           |     | P   | P   |     |          |       | P  | P  | P  | P      | P  |     | P   | P   |
| <b>Directory</b>                                           |    |                           |     | P   |     |     |          |       | P  | P  | P  | P      | P  |     | P   | P   |
| <b>Electronically Controlled Message</b>                   |    |                           |     |     |     |     |          |       | P  | P  |    |        | P  |     |     |     |
| <b>Festival Area</b>                                       | P  | P                         |     | P   | P   | P   | P        | P     | P  | P  | P  | P      | P  | P   | P   | P   |
| <b>Flashing</b>                                            |    |                           |     |     |     |     |          |       | P  | P  |    |        |    |     |     |     |
| <b>Freestanding</b>                                        |    |                           |     |     |     |     |          |       | P  | P  |    | P      | P  |     | P   |     |
| <b>Governmental</b>                                        | P  | P                         | P   | P   | P   | P   | P        | P     | P  | P  | P  | P      | P  | P   | P   | P   |
| <b>Home Occupation</b>                                     | P  | P                         |     | P   | P   | P   | P        | P     | P  | P  | P  | P      | P  |     | P   |     |
| <b>Identification</b>                                      | P  | P                         | P   | P   | P   | P   |          | P     |    |    |    |        |    |     | P   |     |

| Sign Type                                  | RA | All Residential Districts | TNC | PUD | MHP | MHS | MHS-15SF | MHS-O | B1 | B2 | B3 | B2 HDO | MI | CON | O/I | G/E |
|--------------------------------------------|----|---------------------------|-----|-----|-----|-----|----------|-------|----|----|----|--------|----|-----|-----|-----|
| Incidental                                 |    |                           |     |     |     |     |          |       | P  | P  |    | P      | P  |     | P   |     |
| Marquee                                    |    |                           |     |     |     |     |          |       | P  | P  | P  | P      | P  |     |     |     |
| Menu                                       |    |                           |     |     |     |     |          |       | P  | P  |    |        |    |     |     |     |
| Mobile                                     |    |                           |     |     |     |     |          |       | S  |    |    |        | S  |     |     |     |
| Monument                                   |    | P                         |     | P   | P   |     |          |       | P  | P  |    | P      | P  |     | P   |     |
| Multiple-Use                               |    |                           |     |     |     |     |          |       | P  | P  | P  | P      | P  |     | P   | P   |
| On-Premises                                |    |                           |     |     |     |     |          |       | P  | P  |    | P      | P  |     | P   |     |
| Pennant                                    |    |                           |     |     |     |     |          |       | P  | P  |    | P      | P  |     | P   |     |
| Political Campaign                         | P  | P                         |     | P   | P   | P   | P        | P     | P  | P  | P  | P      | P  | P   | P   | P   |
| Portable                                   |    |                           |     | P   |     |     |          |       | P  | P  | P  | P      | P  |     | P   | P   |
| Principal Use                              |    |                           |     | P   |     |     |          |       | P  | P  | P  | P      | P  | P   | P   | P   |
| Professional or Occupational               |    |                           |     |     |     |     |          |       | P  | P  |    |        | P  |     |     |     |
| Projecting                                 |    |                           |     |     |     |     |          |       | P  | P  | P  | P      | P  |     | P   | P   |
| Public Information                         |    |                           |     |     |     |     |          |       | P  | P  | P  | P      | P  |     |     |     |
| Real Estate Commercial/Residential         | P  | P                         | P   | P   | P   | P   | P        | P     | P  | P  | P  | P      | P  | P   | P   | P   |
| Roof                                       |    |                           |     |     |     |     |          |       | S  |    |    |        | S  | S   |     |     |
| Safety/Warning                             | P  | P                         | P   | P   | P   | P   | P        | P     | P  | P  | P  | P      | P  | P   | P   | P   |
| Subdivision                                | P  | P                         |     | P   |     | P   | P        | P     | P  | P  | P  |        |    |     | P   |     |
| Temporary Festival and Event (per 152.269) | P  | P                         |     |     | P   | P   | P        | P     | P  | P  | P  | P      | P  |     | P   | P   |
| Vehicle                                    |    |                           |     |     |     |     |          |       | P  |    |    |        |    |     |     |     |
| Wall                                       |    |                           |     |     |     |     |          |       | P  | P  | P  | P      | P  |     | P   | P   |
| Wind Device                                |    |                           |     |     |     |     |          |       | P  | P  | P  |        |    |     |     |     |
| Window                                     |    |                           |     |     |     |     |          |       | P  | P  |    | P      | P  |     | P   | P   |

Notes:

P = Indicates permitted.

S = Special use permit required. Blank = Indicates not permitted.

\*NOTE: Within the Swansboro corporate limits, billboard signs are prohibited on all parcels adjoining the NC 24 right-of-way anywhere within the Town or extraterritorial jurisdiction.

## Appendix III

### HISTORIC DISTRICT DESIGN GUIDELINES

#### SECTION 18 SIGNAGE.

##### 18.1 Signage – Guidelines

- 1) Use a traditional palette of materials for new signs such as wood, metal, or stone. Synthetic materials are only appropriate when they resemble one of the materials listed above. Signage on commercial canvas awnings and in storefront display windows is also appropriate. (Note: Internal glass-mounted signs are not subject to SHPC review. However, the SHPC shall review interior neon signs that are located within five feet of a window or glass door on an exterior wall and are so placed as to be seen from the outside). New exterior neon signs installed following the date of adoption of this amendment are prohibited.
- 4) Use of neon or fluorescent colors on signs is appropriate prohibited. Sign colors must be consistent with the approved color palette.
- 10) Use free-standing signs that are low mounted and do not obscure pedestrian views. No more than one free-standing sign shall be allowed per street frontage. Free-standing sign pole supports should be simple and unobtrusive in design.
- 14) Avoid the placement of banners, pennants, and flags in the Historic District is prohibited unless related to a Town-approved festival or non-profit event in areas that will obscure or damage the architectural features of buildings. The SHPC shall also evaluate the impact of such devices on the character of the streetscape.
- 15) Use of sandwich board signs in the historic district is permitted if:
  - Size is no more than 2' x 3'.
  - Location is not within cannot impede pedestrian traffic along a public walkway.
  - Blocks no exit or exit way.
  - Removed at end of business day.

**TOWN OF SWANSBORO  
PLANNING BOARD  
REGULAR MEETING MINUTES  
MARCH 2, 2021**

**Call to Order**

The meeting was called to order at 5:30 pm. Board members in attendance were Michael Favata, David Mohr, Christina Ramsey, Scott Chadwick, Jeff Conaway, Brad Buckley, and Ed McHale.

It was noted that members Jeff Conaway and Brad Buckley attended via ZOOM, an electronic platform put into place to allow virtual meetings due to the COVID-19 pandemic that had recently taken a huge toll on the United States and other parts of the world requiring social distancing and limited public appearances.

**Election of Chair & Vice Chair**

On a motion by Mrs. Ramsey, the Board unanimously approved for Scott Chadwick to be appointed as Chair.

On a motion by Mr. Chadwick, the Board unanimously approved for Mrs. Ramsey to be appointed as Vice- Chair.

**Minutes**

On a motion by Mr. Conaway, seconded by Mrs. Ramsey the October 6, 2020 Regular Meeting minutes were approved unanimously.

**Old Business**

**Preservation of Wetlands**

The Carolina Wetlands Association initiated discussion on steps we can take to revise our ordinances to protect and aid in the restoration of wetlands.

David Shouse, Rick Savage, Mackenzie Taggart, and Amanda Willis of the Carolina Wetland Association were present through the Zoom platform.

Mr. Shouse reviewed that the Town of Swansboro has 3 established plans; Watershed Restoration Plan, Economic Strategy, and CAMA Land Use plan, all speak to the conservation and recognition of wetlands and stream corridors. He shared that there could be an ability to entice landowners in many ways such as waive or reduce stormwater costs, land taxes, and other financial assistance on properties that have wetlands.

In response to inquiries from the Board the following details were clarified:

- ETJ areas could be challenging due to the boundaries of streams and wetlands having overlaps
- The Watershed Restoration Plan and the CAMA Land Use Plan identified the geographic areas of wetlands in the Town of Swansboro, of those areas the ones with most concern for protection should be identified
- Further mapping in the CAMA Land Use Plan would be needed because that plan lumps wetlands, forestry, and flood plains together
- Foreseen stumbling blocks on wetlands would occur with who owns the property more than the boundaries of the wetlands, but could also be perceived as an opportunity

- There was an application submitted for Division of Coastal Management Resilient Coast Community's Program grant and the first phase is a planning grant that includes identifying wetlands to protect the community.

During discussion, it was noted that the recently approved Swansgate Subdivision elected to use the residential cluster development regulations provided through the towns UDO and the development was able to have higher density. The provided regulation could be reviewed, and that portion of the ordinance updated to add incentives.

In response to an inquiry from the Board on how properties with wetland are evaluated, Mrs. Ansell share that the Onslow County Tax administration does have a scale they use to evaluate properties. She offered reach out and see if a representative from that department could attend an upcoming meeting to cover those protocols.

### **Land Use Plan Implementation-Program of Work**

In February of 2019, the Planning Board established a timeline for the implementation of the CAMA Land Use Plan Update. In May of 2019, it was revised to reflect those items remaining, however a timeline was not established. At the February 3, 2020 regular meeting, the Board revised the program of work to reflect their immediate goals and forthcoming amendments. The Board of Commissioners has made implementation of the plan a high priority for this budget cycle, FY 21-22.

Mr. Chadwick shared that the board should consider having a special meeting each month over the next several months to handles items in the program of work. The Board agreed to holding a special meeting on the 3<sup>rd</sup> Monday of the month until further notice to review/recommend implementation measures for the Land Use Plan. At each meeting, the board would provide directives for which item they would review at the next meeting.

Mrs. Ansell stated she could have the Residential Cluster Development Regulations ready for review at that first special meeting on March 15th and would reach out to Onslow County Tax Administration to see if they were available to provide details to the board at that meeting as well.

### **Adjournment**

On a motion by Mrs. Ramsey, seconded by Mr. McHale, the meeting adjourned at 6:22 pm.

**TOWN OF SWANSBORO  
PLANNING BOARD  
SPECIAL MEETING MINUTES  
MARCH 15, 2021**

**Call to Order**

The meeting was called to order at 5:30 pm. Board members in attendance were Michael Favata, Christina Ramsey, Scott Chadwick, Jeff Conaway, and Brad Buckley arrived late.

Ed McHale was on a leave of absence and was excused.

It was noted that Brad Buckley arrived to the meeting at 6:11 pm and attended via ZOOM, an electronic platform put into place to allow virtual meetings due to the COVID-19 pandemic that had recently taken a huge toll on the United States and other parts of the world requiring social distancing and limited public appearances.

**Business**

*Tax Valuation Discussion*

Kevin Turner, Appraisal Supervisor with Onslow County Tax Administration reviewed that wetlands on properties are broken down and rated by type and size/acreage. Onslow County GIS provides breakdown of the wetland size in acres.

In response to an inquiry from the Board, Mr. Turner advised that properties that have wetlands are rated based on the type and usage available for the wetlands. Usable wetlands are rated higher than unusable ones, and the rates vary by location. Additionally, he indicated that zoning played a role in rates calculation as well.

*Residential Cluster Development Regulations*

At the March 2, 2020 regular meeting, the 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.

Mrs. Ansell reviewed the following proposed text amendment.

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**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 in the form of a conservation easement. 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.
- 

Mrs. Ansell shared that this process was an elective process that a developer could choose. The suggested edits strengthen the ordinance to possibility prevent a future situation similar to the Swansgate Subdivision where 401/404 wetlands were dedicated as open space. Wetlands could still be dedicated to the Town but would be in addition to meeting the open space requirements. Additionally, once this option is chosen by a developer, it would be required to reflect at preliminary plat review.

The board members shared their support in keeping open space and wetland dedication separate.

On a motion by Mr. Conway seconded by Mr. Favata the proposed amendment was found to be consistent with the comprehensive plan and was recommended for approval to the Board of commissioners. The motion was unanimous.

#### **Chairman/Board Thoughts/Staff Comments**

Mr. Chadwick commented that the clear cutting that occurred at the beginning phases of the Swansgate Subdivision should of never happened because the landscaping that was removed could never be replaced due to the age of the trees. He inquired how this could be prevented in the future. Mrs. Ansell advised that these types of land clearing is not permitted by the Town and is usually not known about until it occurs. She shared that when something like this occurs certain parts of the subdivision approval can be withheld until the developer corrects the issue. Additional provisions could be considered in the landscaping section of the UDO.

Mrs. Ansell shared that the next items from the Planning Board Program of Work to be handled were:

- Text amendment related to the overall appearance of commercial, industrial and mixed-use development; and
- Text amendment related to tying square foot to the use of higher quality materials, additional stormwater control measures.

Review of the landscaping section of the UDO could also be covered. The Board agreed for all items to be discussed/reviewed at the next special meeting on April 19, 2021.

#### **Adjournment**

On a motion by Mr. Conaway, seconded by Mr. Favata the meeting was adjourned at 6:18 pm.



# Planning Board Meeting Agenda Item Submittal

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Item To Be Considered: **The Blazin' Bird Special Use Permit**

Board Meeting Date: **April 6, 2021**

Prepared By: **Jennifer Ansell, Planner**

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**Overview:** Chase Hanford has submitted an application for special use to utilize the property at 632 W. Corbett Ave, the former Seaside Coney Island, as a restaurant.

Though the property was previously used as a restaurant, "Restaurants (including take-out only establishments)" now require a special use in the B-2 General Business zoning district. Because the property has been vacant due to damage from Hurricane Florence in September 2018, the use has been discontinued for more than 180 days, and a special use is required.

**Action Needed:** Per Section 152.033 of the Unified Development Ordinance, the Planning Board is charged with reviewing and commenting on proposed special use permit requests and evaluating the application based on the criteria under Section 152.210. Comments should address plan consistency and any other items deemed appropriate.

## **Attachments**

Applicable Ordinance Sections

Special Use Application

TRC Comments

Appraised Building Value

Value Impact Report

## TOWN CODE OF ORDINANCES

### CHAPTER 93: STREETS AND SIDEWALKS

#### EXCAVATIONS AND REPAIRS

##### § 93.030 SIDEWALK CONSTRUCTION.

- B) *Sidewalks required.* Any person, firm or corporation that engages in any development of vacant property, in the redevelopment of property, or in substantial additions to property, shall construct, or cause to be constructed upon the property, sidewalks that comply with the specifications of the town. Such sidewalks shall extend for the entire length of the property's frontage along any public street or highway abutting the property, unless the Town Manager finds that the public interest does not require construction of a sidewalk to provide for the adequate safety and convenience of pedestrians (e.g., a service street or alley). If sidewalk alignments are permitted that extend outside the public right-of-way, appropriate easements for the sidewalk area shall be provided to the town. No certificates of occupancy for buildings shall be issued until these requirements are met or guaranteed by a town-approved bond.
- 2) *REDEVELOPMENT OF PROPERTY* shall include construction or development in which major changes are made to the use, design or construction of existing buildings or site features (such as driveways and parking areas). *This is not a change in use, there is no significant or major renovation planned, so sidewalks are not required.*

### CHAPTER 152: UNIFIED DEVELOPMENT ORDINANCE

#### NONCONFORMITIES

##### § 152.090 ABANDONMENT OR DISCONTINUANCE OF A NONCONFORMITY.

- A) When a nonconforming use is (1) discontinued for a consecutive period of 180 days, or (2) discontinued for any period of time without a present intention to reinstate the nonconforming use (maintaining minimum services, water, sewer, electricity), the property involved may thereafter be used only for conforming purposes, except as provided in division (B) of this section. *A special use permit is required because though the use may have been conducted by the previous business, it has been discontinued for more than 180 days without the intent to reestablish it.*

#### PERMITS AND FINAL PLAT APPROVAL

##### § 152.107 WHO MAY SUBMIT PERMIT APPLICATIONS.

- A) Applications for zoning, special use, conditional zoning district permit, and improvement, or sign permits, or subdivision plat approval will be accepted only from persons having the legal authority to take action in accordance with the permit or the subdivision plat approval. By way of illustration, in general this means that applications should be made by the owners or lessees of property, or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this chapter, or the agents of such persons (who may make application in the name of such owners, lessees, or contract vendees).

- B) The administrator shall require an applicant to submit evidence of his authority to submit the application in accordance with division A) of this section. *The property owner signed*

the affidavit on the Special Use permit application allowing Mr. Hanford to submit the application on his behalf.

## SPECIAL USES

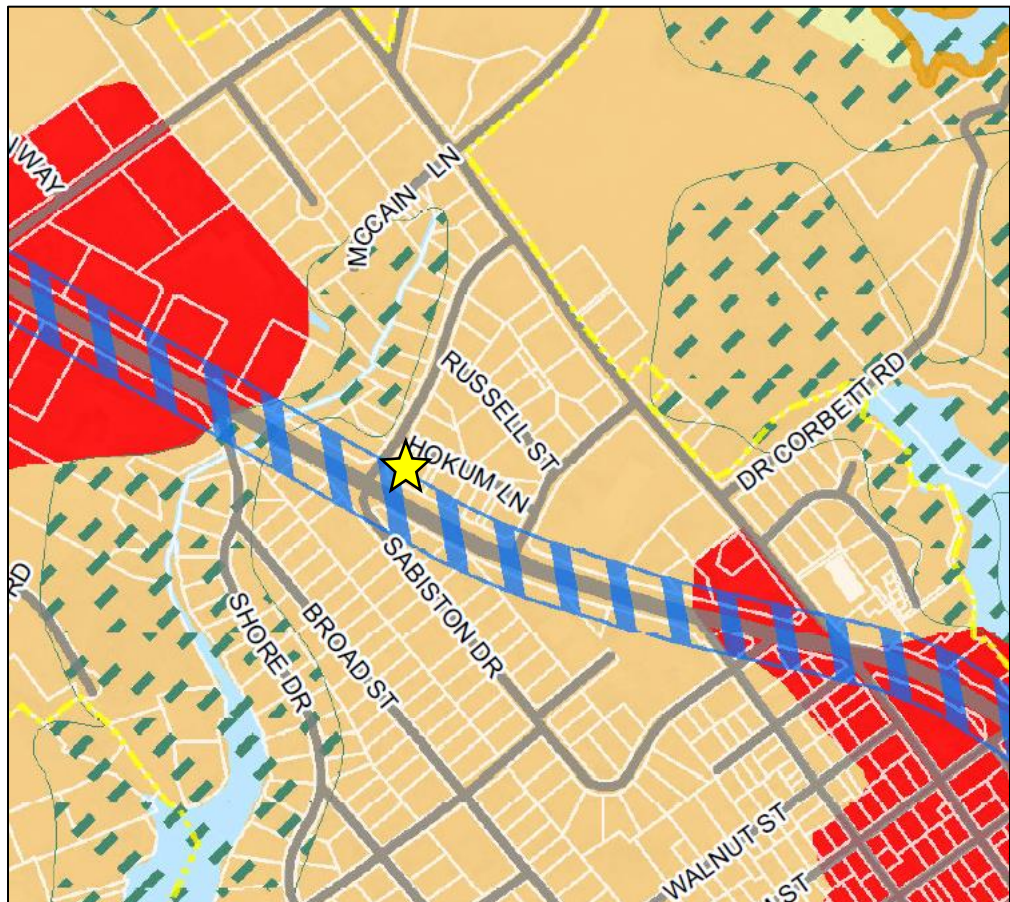
### § 152.210 PROCEDURE FOR SPECIAL USE PERMITS.

- A) Special use permits may be issued by the Administrator, after approval by the Board of Commissioners, for the uses as designated in the table of regulations for special uses. Applications shall include all of the requirements pertaining to it as specified in this section. A hearing shall be held, and all interested persons shall be permitted to offer relevant comments. The Town Board of Commissioners shall consider the application and may approve or deny the requested special use permit.
- B) In granting a special use permit, the Board of Commissioners shall give due regard to the nature and state of all adjacent structures and uses, and the districts within which the proposed use is to be located, and shall make written findings of fact concerning the existence or absence of the following criteria:
- 1) The special use is allowed pursuant to § [152.210](#) and meets all the required conditions and specifications, including without limitation, those set out in § [152.211](#). The use, “Restaurants (including take-out only establishments)” is allowed as a special use in the B-2 zoning district. There are no specific criteria for the use under Section 152.211.
  - 2) The special use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved. The business does not directly abut any residential properties; however it is just south of Lisk Drive and Hokum Lane in the Russell Park neighborhood which is predominantly single-family residential.

The business is proposed to operate from 11:00 am to 9:00 pm on Mondays and Wednesday through Sunday. They have requested to remain open on NFL, college football and college basketball gamedays, and for playoff games until the game concludes.



- 3) The special use will not substantially injure the value of adjoining or abutting property, OR the special use is a public necessity. An analysis from Suzanne H. Nelson, MAI, with Realty Services of Eastern Carolina, Inc., has been included with the application to address this finding.
- 4) The location and character of the special use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is located. The special use shall demonstrate conformance to the Land Use Plan or other plan in effect at the time and address impacts of the project as required by G.S. §160A-382(b). The CAMA Land Use Plan Update (2019) identifies this property as Coastal Traditional Neighborhood, with the portion of the property fronting on NC Highway 24 as Gateway Corridor:



**Future Land Use Designations**

- Traditional Town Center (TTC)
- Suburban Town Center (STC)
- Coastal Traditional Neighborhood (CTN)
- Low Density / Suburban Neighborhood (LDSN)
- Rural / Agricultural (RA)
- Employment / Light Industrial (ELI)
- ▨ Conservation Priority Area (CPA)
- ▨ Gateway Corridor (GC)

The Coastal Traditional Neighborhood (CTN) land use designation is described as a walkable, compact, residential district laid out based on traditional neighborhood development patterns. It generally surrounds the Traditional Town Center and contains single and two-family residential with small-scale multi-family and neighborhood commercial.

The Gateway Corridor (GC) land use designation is intended to enhance the function and appearance of the NC 24 corridor, as well as other main entranceways to the town. Generally, the GC area encompasses properties that are directly adjacent to, visible from, and interact with NC 24.

- 5) Upon the issuance of any special use permit, the Board of Commissioners shall consider whether it is necessary or appropriate to affix conditions thereto for the purposes of protecting neighboring properties and/or the public interest assuring that the use is harmonious with the area, and ensuring that the use is consistent with the spirit of the ordinance, and shall affix to such permit such reasonable and appropriate conditions as it finds are necessary for any of those purposes. If any conditions affixed to any special use permit or any part thereof is held invalid by any competent authority, then said special use permit shall be void.
- C) *Orders of Board of Commissioners.* Upon its determination that all of the criteria set out in this section are met, the Board of Commissioners shall enter a written order with findings of fact and conclusions of law and shall issue the special use permit as requested or with such conditions as it finds necessary and appropriate pursuant to this section.
  - D) Upon its determination that one or more of the criteria set out in this section are not met, the Board of Commissioners shall issue its written order with findings of fact and conclusions of law and shall deny the requested special use permit.
  - E) Any special use permit approved or approved with conditions shall be recorded in the office of the Register of Deeds of Onslow County, North Carolina.
  - F) All such additional conditions shall be entered in the minutes of the meeting at which the special use permit is granted and also on the special use permit approval, and on the approved plans submitted therewith. All specific conditions shall run with the land and shall be binding on the original applicant for the special use permit, the heirs, successors, and assigns. In order to ensure that such conditions and requirements for each special use permit will be fulfilled, the petitioner for the special use permit may be required to enter into a contract with the Town of Swansboro providing for the installation of the physical improvements required as a basis for the issuance of the special use permit. Performance of said contract shall be secured by cash or surety bond which will cover the total estimated cost of the improvements as determined by the Town of Swansboro; provided, however, that said bond may be waived by the Town Board of Commissioners within its discretion.
  - G) In addition to the conditions specifically imposed by the Town Board of Commissioners, special uses shall comply with the height, area, and parking regulations of the zone in which they are located (no variances from requirements within zoning ordinance are allowed).
  - H) In the event of failure to comply with the plans approved by the Board of Commissioners or with any other conditions imposed upon the special use permit, the permit shall thereupon immediately become void and of no effect. No building permits for further construction nor a certificate of compliance under this special use permit shall be issued, and the use of all completed structures shall immediately cease and such completed structures not thereafter be used for any purpose other than a use-by-right as permitted by the zone in which the property is located.

- I) 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.

## OFF-STREET PARKING AND OFF-STREET LOADING REQUIREMENTS

### § 152.292 MINIMUM PARKING REQUIREMENTS.

- (A) The following off-street parking spaces shall be required and maintained:

|                                |                                                                          |
|--------------------------------|--------------------------------------------------------------------------|
| Eating and drinking facilities | Six (6) spaces per 1,000 square feet including any outdoor seating area. |
|--------------------------------|--------------------------------------------------------------------------|

Per the site plan, 8 new parking spaces will be added, bringing the total to 20. 17 are required including the outdoor patio seating. NCDOT will not allow the addition of any spaces in the front of the building along NC Hwy 24.

### § 152.291 GENERAL.

- (B) Minimum parking requirement.

(1) Each application for a building permit shall include information as to the location and dimensions of off-street parking and loading space and the means of ingress and egress to such space. Required off-street parking area for three or more automobiles shall have individual spaces marked, and shall be so designed, maintained, and regulated that no parking or maneuvering incidental to parking shall be on any public street, walk, or alley, unless the speed limit on the public street, walk, or alley is no greater than 20 miles per hour. Automobiles must be parked and unparked without moving another. This information shall be in sufficient detail to enable the Administrator to determine whether or not the requirements of this chapter are met. Per the Town Code, Chapter 74, Hokum Lane is not listed, however the speed limit on Lisk Drive is 20 mph. Hokum Lane dead-ends into the Bank of America parking lot which connects to Park Lane, which is also 20 mph.

## TRAFFIC IMPACT STUDY

### § 152.312 APPLICABILITY.

A traffic impact study shall be required for all projects where the Town Manager or his or her designee has determined from the information submitted that the site generated traffic will have a significant impact on the transportation network. Determinations shall be based on the following criteria:

- (A) *Special use permit*. Estimated traffic generated by the permit exceeds 200 trips/day.  
 (B) *Single business*. Estimated traffic generated by a single business exceeds 200 trips/day.

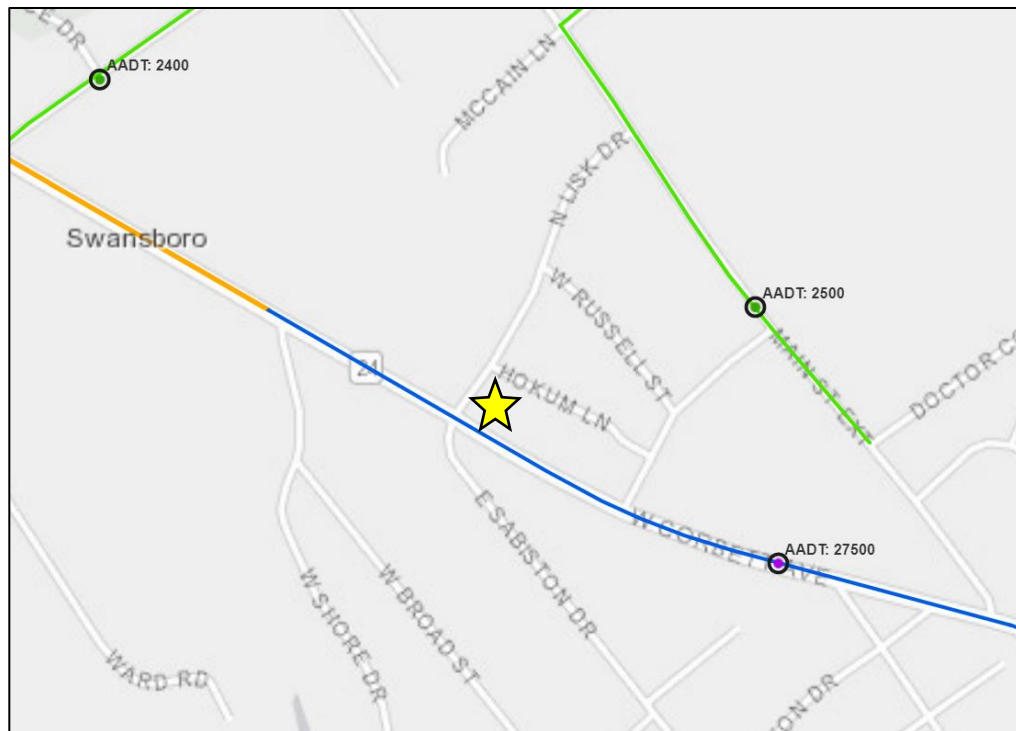
Justin Lins, Engineering Specialist II with NCDOT, estimates the number of trips per day will not exceed 190:

**1,692 SF**

Daily Trips: 190 (Total), 95 (Entry), 95 (Exit)

| Land Use                            | Type       | ITE Code* | Size  | Unit     | Adj/Gen   | Rate | Eq | 24 Hour Volumes | AM Peak Hour Trips |      | PM Peak Hour Trips |      | Saturday Peak Hour trips |      |
|-------------------------------------|------------|-----------|-------|----------|-----------|------|----|-----------------|--------------------|------|--------------------|------|--------------------------|------|
|                                     |            |           |       |          |           |      |    |                 | Enter              | Exit | Enter              | Exit | Enter                    | Exit |
| High-Turnover (Sit-Down) Restaurant | Restaurant | 932       | 1,692 | 1000 GFA | Generator | X*   |    | 190             | 14                 | 10   | 15                 | 14   | 10                       | 9    |

Per the 2019 NCDOT Annual Average Daily Traffic (AADT) map, this section of NC Hwy 24 sees an average of 27,500 trips per day:



## LIGHTING

No additional lighting is proposed at this time.

## REGULATIONS FOR LANDSCAPING

### § 152.525 PURPOSE AND APPLICABILITY.

(B) *Application.* The requirements of this section shall apply to:

- 1) All new or changed uses of land, buildings, and structures located within the Town of Swansboro Planning and Zoning Jurisdiction which are not exempted in division (C) of this section; and
- 2) Any use of building or structure which sits idle more than 180 consecutive days or is abandoned, except those uses exempted in sections (C)(1) through (C)(3).

(C) None of the landscaping and screening requirements of this section shall apply to:

- 1) Existing uses and buildings, including repairs, alterations, or improvements to the interiors and exteriors of existing buildings which do not result in a change of use or additions or expansions to the buildings; *The requirements are not applicable to this project, the repairs/improvements will not change the use or alter the existing building.*

### § 152.539 TRASH CONTAINMENT AREAS.

(A) All site plans shall show method of garbage collection as well as appropriate details to demonstrate compliance with this subchapter.

(B) All trash containment devices, including compactors and dumpsters, shall be screened on all four sides.

(C) All trash containment devices shall meet the following standards.

- (1) All trash containment areas shall be enclosed with walls and gates designed to contain windblown litter.

- (2) The enclosure shall be at least eight feet tall or two feet taller than (whichever is greater) the highest point of the compactor or dumpster.
  - (3) The enclosure shall be made of a material that is at least 80% opaque and compatible with the design and materials of the principal building . The preferable material is masonry with solid metal gates ; however, wood or other similar material may be used as long as the material used protects the enclosure from damage caused by unloading the trash container.
  - (4) The screening enclosure must be surrounded with a continuous landscaped buffer composed of shrubs, ground cover and trees that further visually hide the compactor or dumpster from view. Mulch and ground cover used with the vegetative buffer shall be composed of organic materials.
  - (5) Because of the environmental risk from spills, dumpster pads cannot be in a drainage flow area and must be designed to prevent the leaching of waste.
  - (6) The enclosure shall contain gates to allow for access and security. Gates must be maintained in good working order, and remain closed and secured during inactivity.
- (D) All driveways and turnarounds leading to the enclosure for use by trash collection vehicles shall be paved with concrete or asphalt.

The dumpster pad proposed will meet these requirements.

## **BUILDING DESIGN AND COMPATIBILITY**

### **§ 152.556 APPLICABILITY.**

- A) (1) The standards and guidelines contained in this subchapter shall apply to all new nonresidential and mixed-use development and to 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 within the current tax year. The building is presently listed with a value of \$0.00 per Onslow County. The improvements proposed to the structure will not exceed 50% of the building value based the private appraisal received from Suzanne H. Nelson, MAI, with Realty Services of Eastern Carolina, Inc., and the cost breakdown received from the applicant:



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[County Website▼](#)

Owner

Address

Parcel ID

Advanced

[Profile](#)

[Sales](#)

[Residential](#)

[Commercial](#)

[OBY](#)

[Permits](#)

[Land](#)

[Sketch](#)

[Full Legal](#)

[Agricultural](#)

[Photos](#)

[Values](#)

[Onslow County GIS](#)

Parcel ID: 025406 Map #: 1404-163 Tax Year: 2021  
Luc: Commercial Class: Commercial NBHD: CORBETT AVE  
WELLS DAVE & WANDA H COMMERCIAL  
632 W CORBETT AVE

### Values

|                               |         |
|-------------------------------|---------|
| Spec Proc Flag                |         |
| Appraised Land                | 179,690 |
| Appraised Building            | 3,060   |
| Appraised Total               | 182,750 |
| Cost Land Value               | 179,690 |
| Cost Building Value           | 3,060   |
| Cost Total Value              | 182,750 |
| Market Value                  |         |
| Income Value                  | 0       |
| GRM Value                     | 0       |
| Total Residential Living Area |         |
| Total Commercial Living Area  | 1,692   |
| Note 1                        |         |
| Note 2                        |         |
| Solid Waste Fee Units         |         |
| Land Use Value                |         |
| Land Deferred Value           |         |
| Final Land Value              | 179,690 |
| Final OBY Value               | 3,060   |
| Final Building Value          | 0       |
| Senior Exclusion              | 0       |
| 100% Exemption                | 0       |
| Partial Exemption             | 0       |
| VET Exclusion                 | 0       |
| =====                         | =====   |
| Taxable Total                 | 182,750 |

1 of 1

### Actions

[Printable Summary](#)  
[Printable Version](#)

### Reports

Property Record Card

Go

Data Copyright Onslow Tax Office

Last Updated: 03/FEB/2021

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**Board of Commissioners**

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



sm

**Town Manager**

Christopher D. Seaberg  
[cseaberg@ci.swansboro.nc.us](mailto:cseaberg@ci.swansboro.nc.us)

**Assistant Manager/Town Clerk**

Paula W. Webb, MMC-NCCMC  
[pwebb@ci.swanboro.nc.us](mailto:pwebb@ci.swanboro.nc.us)

## Town of Swansboro

Friendly City by the Sea • Established 1783  
[www.swansboro-nc.org](http://www.swansboro-nc.org)

March 19, 2021

**TRC Comments**  
**Blazin' Bird**  
**632 W. Corbett Ave**

**Fire**

- The closest hydrant is located behind the building on Hokum Lane.

**Duke Energy**

- The property is served by Duke Energy.

**ONWASA**

- No comments received.

**Onslow County Environmental Health**

- No application on file; if the restaurant is a franchise, the application should be submitted to NC DHHS.

**NCDOT**

- A driveway permit will not be required;
- No additional parking spaces to be added in front adjacent to NC Hwy 24 (W. Corbett Ave); and
- The estimated number of trips per day is 190.

**MCAS Cherry Point**

- The proposed use will not impact air operations associated with MCAS CP.

**Planning**

- *Signage.* No new signage has been proposed at this time.
- *Parking.* Based on the square footage of the restaurant and proposed outdoor seating area, 17 parking spaces are required; 20 have been provided.
- *Sidewalks.* Sidewalks are not required as this is not redevelopment of the property.

- *Traffic Impact Study.* In conversation with Justin Lins, Engineering Specialist II with NCDOT, the number of trips per day will not exceed 200, which would necessitate a traffic impact study per the UDO, trip generation calculations included with the staff report.
- *Landscaping.* The requirements are not applicable to this project, the repairs/improvements will not change the use or alter the existing building.
- *Trash Containment.* The dumpster enclosure will be required to meet the standards of Section 152.539.
- *Building Design.* Not applicable as the improvements proposed are not over 50% of the value per the private appraisal obtained and estimated costs reported.

TOWN OF SWANSBORO  
Special Use Application

APPLICANT'S NAME Marvin Chase Hanford

MAILING ADDRESS 550 W. Willis Landing Rd. Phone # 910-228-9664

OWNER'S NAME Dave Wells

OWNER'S ADDRESS 112 John Hurst Dr. Swansboro Phone # 910-340-7705  
28584

TAKE NOTICE THAT THE UNDERSIGNED HEREBY PETITIONS THE BOARD OF COMMISSIONERS OF THE TOWN OF SWANSBORO FOR A SPECIAL USE AS DESCRIBED BELOW AND AS ALLOWED BY ARTICLE 10 OF THE UNIFIED DEVELOPMENT ORDINANCE:

Restaurant

ON THE PREMISES LOCATED AT: 132 W. Corbett Ave. Swansboro, NC 28584

LOT \_\_\_\_\_ BLOCK \_\_\_\_\_ MAP 1404-1603

THE PROPERTY IS ZONED: B2

THIS 11 DAY OF March, 2021.

APPLICANT'S SIGNATURE Marvin C. Hanford

DATE FILED 3/11/21

RECIPIENT SIGNATURE \_\_\_\_\_

ZONING ADMINISTRATOR [Signature]

APPLICANT OR APPLICANT REPRESENTATIVE MUST BE PRESENT FOR AN APPLICATION TO BE HEARD. IF SOMEONE OTHER THAN THE APPLICANT WILL BE THE REPRESENTATIVE, THE FOLLOWING MUST BE COMPLETED.

I /We DAVID E. WELLS am /are the owner(s) of the property located at 632 W. CORBETT AVE, SWANSBORO, NC 28584. I /We hereby authorize MARVIN CHASE HANFORD to appear my behalf in order to ask for a special use permit at this location. I /We understand that the special use permit, if granted, is permanent and runs with the land unless otherwise conditioned.

David E. Wells 3/11/21  
Owner Date

Owner Date

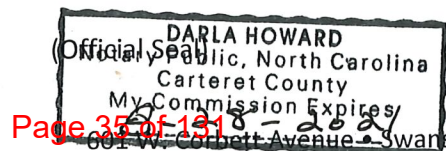
Onslow County, North Carolina

I certify that the above person(s) personally appeared before me this day, each acknowledging to me that he/she voluntarily signed the foregoing document for the purpose stated herein.

Date: 3-11-21

[Signature]  
Notary Public

My commission expires: 8/28/2021





**TOWN OF SWANSBORO**  
**BOARD OF COMMISSIONERS**

**Remote Meeting Consent and Acknowledgement  
for Holding a Virtual Quasi-Judicial Hearing**

I, Marvin Chase Herold (print name), applicant for the requested Special Use Permit, acknowledge and consent to a virtual format, via Zoom, for the project's required quasi-judicial hearing before the Town of Swansboro Board of Commissioners. I understand that I have the burden of proof, and that remote meetings can be disadvantageous. I acknowledge that intangible factors like veracity and rapport are difficult to establish or show via videoconference, and that it can be difficult to explain a map or other exhibit on video. I further acknowledge that technical glitches may occur, which may interfere with the presentation of my evidence.

3/11/21  
Date

Marvin C. Herold  
Signature

910-228-9664  
Phone number

MC1893@gmail.com  
Email address

The Blazin' Bird Hours of operation

Monday - 11-9

Tuesday - Closed

Wednesday – 11-9

Thursday – 11-9

Friday – 11-9

Saturday – 11-9

Sunday 11-9

With the exception of gamedays specific to NFL, College Football and College basketball games. On major games and playoffs, we would like to stay open until end of the game Approx. 11pm.

Number of employees are estimated at 8-12.

In Regard to Procedure for Special Permits B 1-4

- 1.) Restaurants are allowed in zone B2 if a special use permit is acquired.
- 2.) If a new special permit is allowed, it will not endanger the public health or safety of the people of Swansboro. It will be developed to the plans as submitted and approved. It has been a commercial location for decades. It has also been permitted as a restaurant as recently as 2019.
- 3.) See Attached appraisal report.
- 4.) This location will conform to the costal traditional neighborhood as stated in the planning guide. Commercial is allowed in this zone and as previously stated, it has recently operated as a restaurant.

Upon Survey Appraisal the estimated cost of the building structure is 151,058.00. This is a list of actual costs to upfit the building to not exceed 50% of the value of the building.

- 1.) Cooler and Freezer combo is 29,500.00.
- 2.) 17ft Hood System is 17,000.00
- 3.) 8 Parking Spaces 10x18ft in rear of building starting on west side of property – 6600.00.  
(Permeable concrete pavers 4.00 sq ft. 1600sq ft for 8 spots is 6400.00. Plus 200.00 6 yards of sand.)
- 4.) Concrete paver patio 1050Sq ft. – 4212.50
- 5.) Dumpster construction- 1500.00

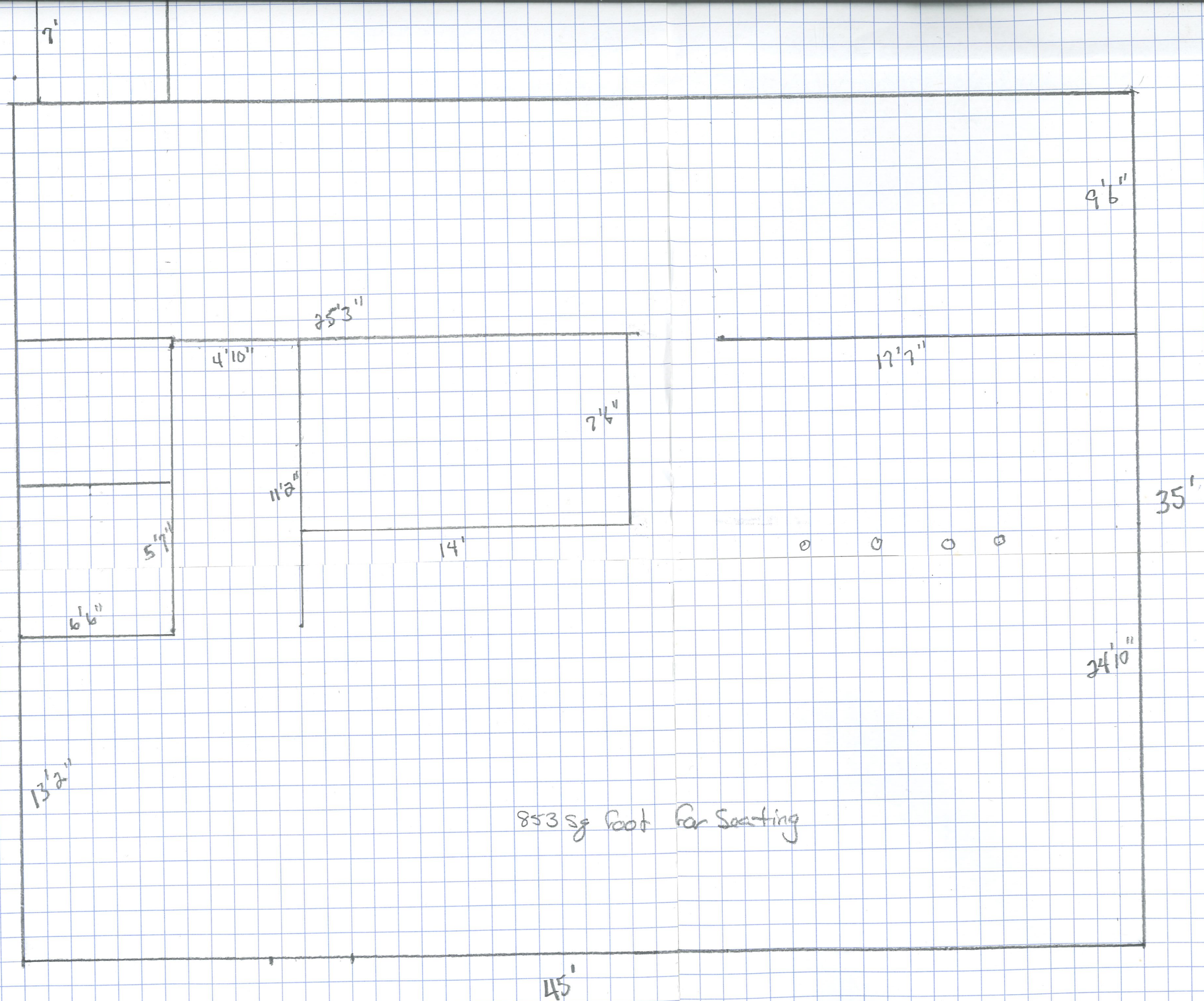
These hard assets total 58,812.50 that bring the total construction to 39% of replacement cost of building.

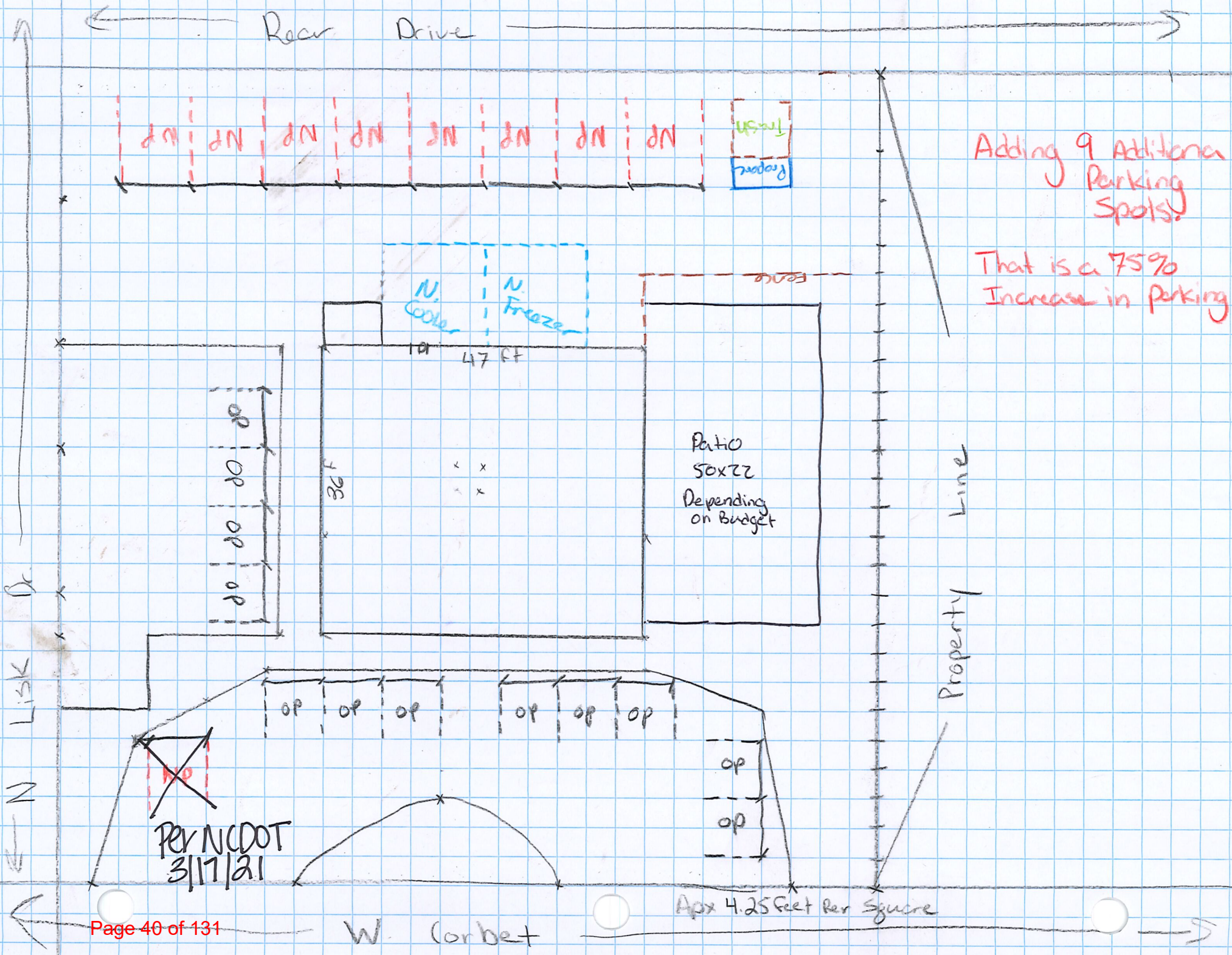
We will make sure dumpsters are gated at least 8ft high or 2 ft over top. With landscaping around it.

As far as seating goes, we are looking at 50 inside and 15 outside(1050SQft) for a total of 65 seats.

Hydrant Location is directly across the street at Farm Bureau.

The Blazin' Bird is chicken at its finest. It will offer high quality food at an affordable price in a clean, unique environment. We will offer chicken cooked Nashville style and from scratch sides. Features different levels of heat for all pallets. We will also be cooking chicken rotisserie style in several flavor profiles for healthy minded individuals. With sandwiches, salads and house made desserts. Simple, Good, Fast, Friendly.





Adding 9 Additional  
Parking  
Spots!

That is a 75%  
Increase in Parking

Property Line

Patio  
50x22  
Depending  
on Budget

N. Cooler  
N. Freezer

10' 47 ft

36 ft

op  
op  
op  
op  
op

op op op op op op

op  
op

Per NCDOT  
3/17/21

Apx 4.25 Feet Per Square

W. Corbet

A REPLACEMENT COST ESTIMATE

OF

WELLS PROPERTY  
632 W CORBETT AVENUE  
SWANSBORO, NC 28584

PREPARED FOR:

MR. CHASE HANFORD  
550 W WILLIS LANDING ROAD  
HUBERT, NC 28539

BY

SUZANNE H. NELSON, MAI  
REALTY SERVICES OF EASTERN CAROLINA, INC.  
2313 GRACE AVENUE  
POST OFFICE BOX 15069  
NEW BERN, NC 28561-5069

078-21

**REALTY SERVICES OF EASTERN CAROLINA, INC.**

*Appraisers, Consultants and Brokers*

Suzanne H. Nelson, MAI

suzanne.nelson@realtyservicesec.com

[www.realtyservicesec.com](http://www.realtyservicesec.com)

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Post Office Box 15069 (28561-5069)  
2313 Grace Avenue  
New Bern, NC 28562

Office (252) 633-6484, Ext. 227  
Cell (910) 376-1874

February 25, 2021

Mr. Chase Hanford  
550 W Willis Landing Road  
Hubert, NC 28539

RE: Wells Property  
Depreciated Value of Improvements  
50% Rule Appraisal

Dear Mr. Hanford:

As you requested, I have completed an appraisal of the above-referenced commercial building for the purpose of estimating the depreciated value of the building without the underlying land value, as of the effective date of value, February 12, 2021. The information will be used to determine the basis for the 50% rule regarding planned improvements to the building. The intended users of this replacement valuation are you and the local building department. I am not responsible for unauthorized use of this report.

The global outbreak of a "novel coronavirus" known as COVID-19 was officially declared a pandemic by the World Health Organization (WHO). The reader is cautioned, and reminded that the conclusions presented in this appraisal report apply only as of the effective date(s) indicated. The appraiser makes no representation as to the effect on the subject property of any unforeseen event subsequent to the effective date of the appraisal.

I trust the attached report meets the intended use of this assignment. Thank you for your business.



*Suzanne H. Nelson*  
Suzanne H. Nelson, MAI  
NC Certified General Real Estate Appraiser A6424

**IDENTIFICATION OF THE PROPERTY:** The subject property is identified as the Wells Property located at 632 W Corbett Avenue in Swansboro, Onslow County, North Carolina. The property is further identified as Tax Map No. 1404-163 and Tax Parcel No. 025406.



The 0.33-acre site is improved with a single-story restaurant building and related site improvements. The improvement was originally constructed around 1953 and contains 1,671 square feet with an attached storage building containing 68 square feet. The interior floor plan consists of a hostess/waiting area, dining area, kitchen, two restrooms and storage area. As confirmed, the improvement has been renovated/remodeled since constructed. The roof was replaced within the last year and the HVAC was replaced within the last five years. Photographs of the property are provided below.



**VIEW OF SUBJECT PROPERTY**



**VIEW OF SUBJECT PROPERTY**



**VIEW OF SUBJECT PROPERTY**



**VIEW OF SUBJECT PROPERTY**



**VIEW OF SUBJECT PROPERTY**



**VIEW OF SUBJECT PROPERTY**



**VIEW OF SUBJECT PROPERTY**



**VIEW OF SUBJECT PROPERTY**

The basic physical construction of the building is summarized as follows:

|                                   |                                                         |
|-----------------------------------|---------------------------------------------------------|
| Identification                    | Wells Property<br>632 W Corbett Avenue<br>Swansboro, NC |
| Foundation                        | Concrete footings                                       |
| Floor                             | Reinforced concrete slab on compacted fill              |
| Frame                             | Concrete Block; Wood Frame                              |
| Exterior Wall Finish              | Block; Brick Veneer; Stucco; Siding                     |
| Entry Doors                       | Front: Storefront<br>Side: Flush Metal                  |
| Windows                           | Storefront                                              |
| Roof (style, construction, cover) | Flat Design; Wood Rafters/Truss;<br>Membrane Covering   |
| Floor Cover                       | Concrete                                                |
| Interior Wall Finish              | Drywall; Metal Panel; FRP                               |
| Interior Doors                    | Panel Hollow-Core                                       |
| Plumbing                          | Two Restrooms; Kitchen                                  |
| HVAC                              | Central HVAC                                            |
| Electrical/Lighting               | Pendants; Florescent Strip                              |
| Appliances                        | None                                                    |

**PURPOSE OF THE APPRAISAL:** The purpose of this appraisal is to provide the appraiser's best estimate of the depreciated value of the subject property, without the underlying land value, as of the effective date. The depreciated value has been determined by the Actual Cash Value method. "Actual Cash Value" is defined as follows:

Actual Cash Value (ACV) is the cost to replace a building on the same parcel with a new building of like-kind and quality, minus depreciation due to age, use and neglect. ACV does not consider loss in value simply due to outmoded design or location factors. The concept of ACV is a reasonable approximation of "market" value of the structure.

Depreciation accounts for the physical condition of a structure. Depreciation does not take into account functional obsolescence (e.g., outmoded design or construction that pre-dates current codes) or factors that are external to the structure (e.g., reputation of schools or distance to shopping and parks). Commercially available references provide tables and formulas to calculate physical depreciation. These tables and formulas are objective and are used by most professionals in the fields of property appraisal and building inspection.

**INTENDED USE OF REPORT:** The intended use of this appraisal is to provide a depreciated value of the improvements without the underlying land, to assist in the determination of the permissible amount for renovations for the subject property.

The appraiser has not identified any other intended use at the time of this assignment.

**INTENDED USER OF REPORT:** The intended users of this report are the client/owner of record, Mr. Hanford, and the local building department.

The appraiser has not identified any other intended users at the time of this assignment.

**EFFECTIVE DATE OF VALUE:** February 12, 2021.

**DATE OF REPORT:** February 25, 2021.

**SCOPE OF WORK:** The scope of work for this assignment is to appraise the improvements of the subject property without the underlying land value and develop an opinion of the depreciated value of the structure. As the assignment calls for the depreciated value of the improvements only, no Sales Comparison or Income Approach is necessary. A development of the Highest and Best Use is also not necessary for this kind of assignment. For the scope of work the following steps were taken:

- Identification of the subject property;
- Understanding the intended use of the report;
- Interior and exterior inspection of the subject improvement;
- Applying the appropriate methodology – in this case an actual cash value (replacement cost new less depreciation) analysis; and
- Preparation of a report identifying the subject and showing the valuation methodology.

Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use.

#### **EXTRAORDINARY ASSUMPTIONS AND HYPOTHETICAL CONDITIONS:**

An **Extraordinary Assumption** is defined as “an assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions. *USPAP 2020-2021*, page 4.

Comment: Uncertain information might include physical, legal, or economic characteristics of the subject property; or conditions external to the property, such as market conditions or trends; or the integrity of data used in an analysis.

No extraordinary assumptions were required to develop the value conclusion as stated in this report.

A **Hypothetical Condition** is defined as “a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.” *USPAP 2020-2021*, page 4.

Comment: Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

No hypothetical condition have been considered in this analysis.

## SUMMARY OF ANALYSIS AND VALUATION:

**Actual Cash Value:** The actual cash value consists of the following:

1. Determination of replacement value new (RCV)
2. Calculation of depreciation
3. RCV less depreciation to arrive at ACV

Estimate the replacement cost new of the improvements less depreciation from all causes.

A comparative method of cost estimating has been utilized. The cost data has been taken from the current edition of the *Marshall Valuation Service Manual* as well as support from several local building contractors and past construction cost estimates from local contracts. The calculations of this cost estimate have been included on the following page. To obtain knowledge of the local building costs, conversations were also held with Atlantic Construction, Inc. in Jacksonville/Onslow County. The cost estimates utilized in this analysis, taken from the *Marshall Valuation Service Manual*, have been verified and supported by conversations with local builders.

The single-story restaurant building was originally constructed around 1953 and contains 1,671 square feet with an attached storage building containing 68 square feet. The interior floor plan consists of a hostess/waiting area, dining area, kitchen, two restrooms and storage area. As confirmed, the improvement has been renovated/remodeled since constructed. The roof was replaced within the last year and the HVAC was replaced within the last five years.

Physical depreciation is a loss in value due to physical deterioration. As noted, the improvement was constructed around 1953 with renovations/remodeling since constructed. The typical life for this type of improvement is 50 years. The actual age is around 68 years with an effective age of 25 years. The remaining economic life is 25 years. The estimated physical depreciation has been based on the age/life method.

Functional obsolescence is the loss of value due to lack of utility or desirability of part or all the property inherent to the improvement. No percentage of loss for obsolescence is attributed to the improvement as designed and constructed.

Entrepreneurial incentive is the minimum amount of profit necessary to entice a developer to take on the time, effort and risk of a new development/project. This line item is projected at 12 percent, and was derived from the market and supported by interviews/conversations with market participants.

Soft costs are those costs that, unlike hard costs, are not instantly visible or tangible, and are not directly related to labor or building materials. Soft cost items can include, but are not limited to: fees, permits, insurances, taxes, advertising costs, and off-site costs. A line item of eight percent is considered appropriate.

**PROPERTY:** Wells Property  
**LOCATION/ADDRESS:** 632 W Corbett Ave  
 Swansboro, NC 28584

**Prepared By:** Suzanne H Nelson

**DATE OF REPLACEMENT COST CALCULATIONS:** February 12, 2021

**REPLACEMENT COST CALCULATIONS:**

**Tax No.:** 1404-163  
**Building Address:** 632 W Corbett Ave  
**Building Size (SF):** 1,671  
**Building/Structure Class:** C  
**Quality of Construction:** Avg-Good  
**Marshall Valuation Section:** Sec 13; Pg. 14  
**Base Cost PSF:** \$158.00  
**Additions/(Subtractions) (PSF):** \$0.00  
**Subtotal:** **\$158.00**

**Number of Stories Multiplier:** 1.00  
**Height Per Story Multiplier:** 1.00  
**Floor Area Multiplier:** 1.19  
**Current Cost Multiplier:** 1.09  
**Local Multiplier:** 0.87  
**Adjusted Cost PSF:** **\$177.81**  
**Total (Cost x SF):** **\$297,117**  
**Add: Storage Bldg** **\$5,000**

***Est. Replacement Cost of Bldg./Structure:*** **\$302,117**

**Property Condition** Avg  
**Estimated Effective Age of the Building/Structure** 25  
**Estimated Physical Life of the Structure** 50  
**Estimated % of Physical Depreciation** 50.00%  
**Estimated Physical Depreciation** **\$151,059**

***Estimated Actual Cash Value of the Building/Structure*** **\$151,058**

Add the depreciated cost of the improvements plus entrepreneurial incentive/softs costs to arrive at the actual cash value estimate.

| "As Is"                                        |           |
|------------------------------------------------|-----------|
| Building Improvements                          | \$151,058 |
| Add: Soft Cost/Entrepreneurial Incentive (20%) | \$30,212  |
|                                                |           |
| Total ACV                                      | \$181,270 |
| Rounded To                                     | \$181,000 |

## ASSUMPTIONS AND LIMITING CONDITIONS

This is a **Restricted Appraisal Report** which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Restricted Appraisal Report. As such, it may not include full discussions of the data, reasoning, and analysis that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning and analyses is retained in the appraiser's file. The information contained in this report is specific to the needs of the client and for the intended use stated in this report. The appraiser is not responsible for unauthorized use of this report.

- No responsibility is assumed for the legal description provided or for matters pertaining to legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.
- The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated.
- Responsible ownership and competent property management are assumed.
- The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.
- All engineering studies are assumed to be correct. The plot plans and illustrative material in this report are included only to help the reader visualize the property.
- It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for obtaining the engineering studies that may be required to discover them.
- It is assumed that the property is in full compliance with all applicable federal, state, and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the appraisal report.
- It is assumed that the property conforms to all applicable zoning and use regulations and restrictions unless a non-conformity has been identified, described, and considered in the appraisal.
- It is assumed that all required licenses, certificates of occupancy, consents, and other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the opinion of value contained in this report is based.

## **ASSUMPTIONS AND LIMITING CONDITIONS**

(continued)

- It is assumed that the use of the land and improvements is confined within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.
- Unless otherwise stated in this report, the existence of hazardous materials, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, and other potentially hazardous materials may affect the value of the property. The value estimated is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for such conditions or for any expertise or engineering knowledge required to discover them. The intended user is urged to retain an expert in this field, if desired.
- Any allocation of the total value estimated in this report between the land and the improvements applies only under the stated program of utilization. The separate values allocated to the land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
- Possession of this report, or a copy thereof, does not carry with it the right of publication.
- The appraiser, by reason of this appraisal, is not required to give further consultation or testimony or to be in attendance in court with reference to the property in question unless arrangements have been previously made.
- Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraiser.
- Only preliminary plans and specifications were available for use in the preparation of this appraisal; the analysis, therefore, is subject to a review of the final plans and specifications when available.
- Any proposed improvements are assumed to have been completed unless otherwise stipulated so any construction is assumed to conform with building plans reference in the report.

## ASSUMPTIONS AND LIMITING CONDITIONS

(continued)

- The appraiser assumed that the reader or user of this report has been provided with copies of available building plans and all leases and amendments, if any, that encumber the property.
- When no legal description or survey was furnished, the appraiser used the county tax plat to ascertain the physical dimensions and acreage of the property. Should a survey prove this information to be inaccurate, it may be necessary for the appraisal to be adjusted.
- The forecasts, projections, or operating estimates contained herein are based on current market conditions, anticipated short-term supply and demand factors, and a continued stable economy. These forecasts are, therefore, subject to changes with future conditions.
- Any opinions of value provided in the report apply to the entire property, and any proration or division of the total into fractional interest will invalidate the opinion of value, unless such proration or division of interest has been set forth in the report.
- The Americans with Disabilities Act (ADA) became effective January 26, 1992. The appraiser has not made a specific compliance survey or analysis of the property to determine whether or not it is in conformity with the various detailed requirements of ADA. It is possible that a compliance survey of the property and a detailed analysis of the requirements of the ADA would reveal that the property is not in compliance with one or more of the requirements of the act. If so, this fact could have a negative impact upon the value of the property.



*Suzanne H. Nelson*

Suzanne H. Nelson, MAI  
NC Certified General Real Estate Appraiser A6424

A&LC2020

## **CERTIFICATION**

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, conclusions and recommendations.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to any property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

## CERTIFICATION

(continued)

- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal or appraisal consulting assistance to the person signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I have completed the continuing education program of the Appraisal Institute.



Suzanne H. Nelson, MAI  
NC Certified General Real Estate Appraiser A6424

CERT2020

**Suzanne H. Nelson, MAI**  
Realty Services of Eastern Carolina, Inc.  
2313 Grace Avenue  
New Bern, NC 28562  
252 633-6484, Ext. 227  
suzanne.nelson@realtyservicesec.com

**Experience**

- Joined Realty Services of Eastern Carolina, Inc. in 2003
- Appraising Commercial, Residential, Industrial and Vacant Land
- Primary Areas of Practice: Commercial Appraisals – Neighborhood Business, Shopping Centers, Retail and Office Properties, Development Acreage, Subdivisions

**Recent Real Estate Training**

- National USPAP 7 Hour Update, 2020-2021, Appraisal Institute
- Analyzing Operating Expenses, 2019, Appraisal Institute
- Online Small Hotel/Motel Valuation, 2019, Appraisal Institute
- Online Business Practices and Ethics, 2018, Appraisal Institute
- Appraising Automobile Dealerships, 2018, Appraisal Institute
- National USPAP 7 Hour Update, 2018, Appraisal Institute
- NC Department of Transportation Appraisal Principles and Procedures, NCDOT, 2017
- The Complexities of Appraising Rural Properties, NCDOT, 2017
- "Can You Support that Adjustment?", 2016
- Online Comparative Analysis, Appraisal Institute, 2015
- Appraisal of Self-Storage Facilities, McKissock, 2015
- General Demonstration Report Writing, Appraisal Institute, February 2015
- Evaluation Appraisal Seminar, Appraisal Institute, 2014
- Appraisal Laws and Rules (2013), Brightpath Education, March 2013
- Advanced Sales Comparison and Cost Approaches, Appraisal Institute, 2010
- General Market Analysis and Highest and Best Use, Appraisal Institute, 2009
- Advanced Income Capitalization, Appraisal Institute, 2009
- Rates and Ratios, Appraisal Institute, 2009
- Real Estate Finance Statistics and Valuation Modeling, Appraisal Institute, 2008
- Highest and Best Use Applications, Appraisal Institute, 2006
- Subdivision Valuation, Appraisal Institute, 2006
- Business Practice and Ethics, Appraisal Institute, 2005
- Report Writing and Valuation Analysis, Appraisal Institute, 2005
- Applied Income Property Valuation, Appraisal Schools by M. Curtis West, 2004
- Advanced Income Capitalization Procedures, Appraisal Schools by M. Curtis West, 2004
- Introduction to Income Property Appraisal, Williams Appraisers Education Center, 2003

**Education**

- East Carolina University, 2001  
Bachelor of Science in Business Administration, Concentration in Management

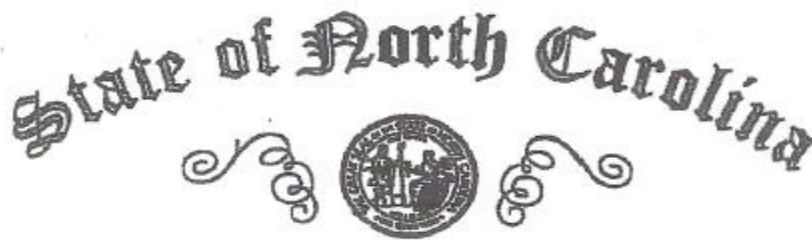
**Licensure**

- NC Certified General Real Estate Appraiser, A6424

**Professional Affiliation**

- Appraisal Institute Member, (MAI) Designated January 2016

Certificate No A6424



**North Carolina  
Appraisal Board**

**SUZANNE HENDERSON NELSON**

having satisfied the North Carolina Appraisal Board regarding the qualifications to practice as a General Real Estate Appraiser in this State and having complied with the requirements prescribed by law, is hereby certified as a

**State-Certified  
General Real Estate Appraiser**

Given under and by virtue of the provisions of Article 1 Chapter 93E of the General Statutes of North Carolina, I hereunto set my hand and seal of the North Carolina Appraisal Board at Raleigh on the date below shown:

This certificate shall expire on the 30th day of June following the date shown below unless renewed prior to expiration



| NORTH CAROLINA APPRAISAL BOARD |                              |                        |
|--------------------------------|------------------------------|------------------------|
| APPRAISER QUALIFICATION CARD   |                              |                        |
| Expires June 30, 2021          |                              |                        |
| REGISTRATION                   | LICENSE / CERTIFICATE HOLDER |                        |
| 20                             | SUZANNE HENDERSON NELSON     | 21                     |
| A6424                          | G                            | Y                      |
| APPRAISER NUMBER               | TYPE                         | NATIONAL REGISTRY      |
| <br>APPRAISER'S SIGNATURE      |                              | <br>EXECUTIVE DIRECTOR |

Post Office Box 15069 (28561-5069)  
2313 Grace Avenue  
New Bern, NC 28562

Office (252) 633-6484, Ext. 227  
Cell (910) 376-1874

February 26, 2021

Swansboro Planning Board  
Swansboro Board of Commissioners  
601 W. Corbett Avenue  
Swansboro, NC 28584

*Via email*

RE: Proposed Blazin' Bird  
632 W. Corbett Avenue  
Swansboro, Onslow County, NC

The purpose of this report is to analyze the impact, if any, that the proposed restaurant may have on surrounding properties. The proposed use will be located at 632 W. Corbett Avenue. The property is further identified as Tax Map No. 1404-163 and is under the ownership of Dave and Wanda Wells.



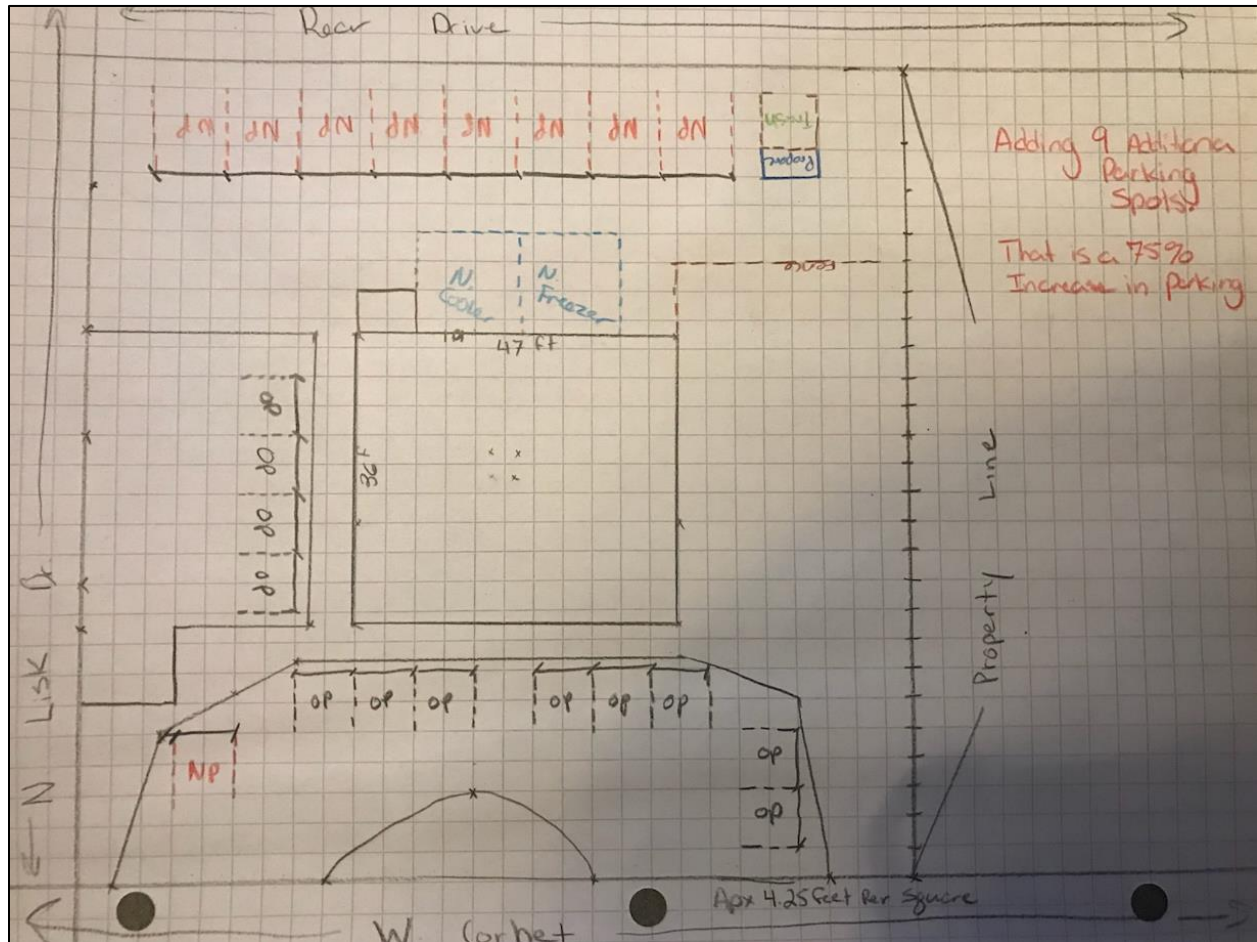
The subject property is located at the corner of W. Corbett Avenue, Lisk Drive and Hokum Lane in Swansboro. Corbett Avenue serves as NC Highway 24, the main traffic artery through Swansboro and the main connecting link to Jacksonville to the west and Morehead City to the east. Lisk Drive and Hokum Lane are secondary residential streets located off W. Corbett Avenue. The subject property is bound to the north by Hokum Lane, to the south by W. Corbett Avenue, to the east by Pat's Express Alterations and to the west by Lisk Drive.



The 0.33-acre lot is improved with a single-story building that has been designed and utilized for a restaurant, formerly Seaside Coney Island. The improvement was originally constructed around 1953 and contains 1,671 square feet with an attached storage building containing 68 square feet. As confirmed, the improvement has been renovated/remodeled since constructed. The roof was replaced within the last year and the HVAC was replaced within the last five years. The interior floor plan includes a hostess/waiting area, dining area, kitchen and two restrooms. The improvement is currently vacant with no restaurant equipment in place. Related site improvements include concrete walks, landscaping and asphalt-paved parking area.



The subject property is proposed to be utilized for a restaurant, Blazin' Bird. Proposed up-fits will include installation of restaurant equipment, minor cosmetic items to the interior/exterior, construction of a small outdoor patio to provide additional seating and expansion of the existing parking area creating additional space along Hokum Lane.



As requested, the purpose of this report is to analyze the impact, if any, of the proposed use of the property for a restaurant, on adjoining/abutting properties. Therefore, my analysis includes a review of similar restaurants located within the Swansboro market area – former Seaside Coney Island, Bamboo Asian House and Jordan's Smokehouse & Seafood. I have analyzed each property, neighborhood, surrounding parcels, market transactions and historical tax-assessed values to determine if the restaurants have had a negative impact on the neighborhood and/or surrounding parcels.

For many years, the subject property was locally known and operated as Seaside Coney Island. Due to damage from Hurricane Florence in September 2018, the restaurant permanently closed.



Due to lack of market transactions (re-sales), I have provided the historical tax-assessed values of the adjoining/surrounding parcels.

| Location           | Property                  | Tax Values |           |           |           |
|--------------------|---------------------------|------------|-----------|-----------|-----------|
|                    |                           | 2015       | 2017      | 2018      | 2020      |
| 630 W. Corbett Ave | Pat's Express Alterations | \$53,040   | \$53,040  | \$49,571  | \$49,571  |
| 108 Lisk Dr        | Single-Family Residential | \$139,460  | \$139,880 | \$109,850 | \$114,170 |
| 105 Lisk Dr        | Single-Family Residential | \$125,960  | \$125,960 | \$133,860 | \$133,860 |
| 636 W. Corbett Ave | Western Auto              | \$262,050  | \$262,050 | \$260,419 | \$260,419 |
| 628 W. Corbett Ave | Strip Center              | \$219,690  | \$219,690 | \$299,056 | \$299,056 |

630 W. Corbett Avenue – Land value increased; building value decreased.

108 Lisk Drive – Land value decreased; improvement value increased.

636 W. Corbett Avenue – Land value increased; building value decreased.

Although there has been some fluctuation in the tax-assessed values, there is no evidence that the use of the site for Seaside Coney Island restaurant had an adverse/negative impact on the properties.

Bamboo Asian House is located at 918 W. Corbett Avenue. The 0.81-acre lot is improved with a restaurant and related site improvements. The single-story improvement was originally designed and constructed around 1950. Since constructed the improvement has been renovated/remodeled and utilized for a variety of uses. In 2013, the property was leased and operated as New Bridge Organic Market. In 2017, Kitty and Eva leased the property and opened, Bamboo Asian House. The interior floor plan includes a hostess/waiting area, dining area, sushi bar, kitchen, restrooms, office and storage area. In addition, patio dining is located along the front covered area. In June 2018, Kitty and Eva purchased the property.



Due to lack of market transactions (re-sales), I have provided the historical tax-assessed values of the adjoining/surrounding parcels. As noted in the chart below, there is no evidence that the use of the site for a restaurant has had an adverse/negative impact on property values.

| Location           | Property                 | Tax Values |           |
|--------------------|--------------------------|------------|-----------|
|                    |                          | 2017       | 2020      |
| 910 W. Corbett Ave | Vacant Lot               | \$297,950  | \$402,710 |
| W. Corbett Ave     | Sanders Ford             | \$528,280  | \$528,280 |
| 915 W. Corbett Ave | Tom & Joe's Sport Center | \$535,020  | \$645,670 |
| 921 W. Corbett Ave | Las Fincas               | \$452,490  | \$476,705 |

Jordan's Smokehouse & Seafood is located at 129 Phillips Loop Road. In December 2017, Donald Jordan, Jr. leased the property and opened Jordan's Smokehouse & Seafood. The 0.66-acre lot is improved with a restaurant and related site improvements. The single-story wood frame building was originally designed and constructed around 1979 for an office/warehouse. Over the years the improvement has been renovated/remodeled and utilized for several uses including, but not limited to, office/warehouse, nightclub/bar and a restaurant. The interior floor plan includes a dining area, bar, full kitchen, beverage room, oyster cooler area, food pantry, one 2-fixture restroom, one 3-fixture restroom and one 4-fixture restroom. The improvement contains 3,872 square feet. Related site improvements include an asphalt-paved parking lot, gravel parking area, privacy fence and landscaping. In June 2018, the property was purchased by Mr. Jordan.



Due to lack of market transactions (re-sales), I have provided the historical tax-assessed values of the adjoining/surrounding parcels. As noted in the chart below, there is no evidence that the use of the site for a restaurant has had an adverse/negative impact on property values.

| Location             | Property                  | Tax Values |             |
|----------------------|---------------------------|------------|-------------|
|                      |                           | 2017       | 2020        |
| 905 W. Corbett Ave   | McDonald's                | \$981,400  | \$1,166,706 |
| 915 W. Corbett Ave   | Tom & Joe's Sport Center  | \$535,020  | \$645,670   |
| 130 Phillips Loop Rd | Swansboro Animal Hospital | \$415,560  | \$615,315   |
| 128 Phillips Loop Rd | Vacant Lot                | \$13,070   | \$13,070    |

Therefore, based on the physical characteristics of the proposed project, study of the neighborhood and analysis of local restaurants, it is my opinion the proposed use of the subject site for the Blazin' Bird restaurant, to be located at 632 W. Corbett Avenue in Swansboro, would be in harmony with the neighborhood. In addition, if the proposed project adheres to the regulations and guidelines of the local municipality as well as the state of North Carolina, it will not substantially injure or alter the value of the adjoining or abutting property owners.



Respectfully,

Suzanne H. Nelson, MAI  
NC Certified General Real Estate Appraiser A6424

079-21



# Planning Board Meeting Agenda Item Submittal

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

Board Meeting Date: **April 6, 2021**

Prepared By: **Jennifer Ansell, Planner**

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**Overview:** 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.

**Action Needed:** Recommend approval, approval with modifications, denial, or table the proposed changes to the Town Code of Ordinances and Unified Development Ordinance related to the NC GS Chapter 160D Amendments.

Per § 160A-383, zoning regulations shall be made in accordance with a comprehensive plan. Prior to consideration by the governing board of any proposed zoning amendment, the planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan.

The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

## **Attachments**

Proposed Ordinance 2021-?

Planning Board Statement of Consistency

**ORDINANCE 2021-O**  
**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**

**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 ordinance 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 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-1104A 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, the 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 (CZD).

**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. **CLASS 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 building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition:~~

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-LOCATION.** ~~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 approved ~~site-specific development plan or an approved phased development plan.~~ 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. §160A-393D-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. §160A-361D-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 administrative vein 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) No change in permitted uses may be authorized by variance.

(D) If any of those issues are not resolved as indicated herein, then the Board of Adjustment shall deny the requested variance.

(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.

(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. 2005-03, 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, the 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~~

~~(DE)~~ 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 ~~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 § 152.0656, 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 from 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 alteration 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~~.

#### **§ 152.1132 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 Statutes 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 subdivision plat, 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 may 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.

#### **§ 152.1521 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.

#### **§ 152.1532 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 TERMINATION TYPES 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 from 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. §160A-400.20 et seqD-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/<br>SPECIAL USES                                                    | ICS <sup>a</sup> | C<br>O<br>N | R<br>A | R<br>6 | R6<br>SF | R8<br>SF | R10<br>SF | R15<br>SF | R20<br>SF | R40<br>SF | PUD <sup>b</sup> | MHP | MHS | MHS-<br>15SF | MHS<br>-O <sup>c</sup> | O<br>/I | G<br>/<br>E | B<br>1 <sup>d</sup> | B<br>2 <sup>e</sup> | B<br>3 <sup>f</sup> | B2H<br>DO <sup>g</sup> | MI <sup>h</sup> |
|-------------------------------------------------------------------------------|------------------|-------------|--------|--------|----------|----------|-----------|-----------|-----------|-----------|------------------|-----|-----|--------------|------------------------|---------|-------------|---------------------|---------------------|---------------------|------------------------|-----------------|
| 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<br>(see §152.180, note 39)                                   | 623990           |             |        | P      | P        | P        | P         | P         | P         | P         |                  | P   | P   | P            | P                      | P       |             | P                   |                     |                     |                        |                 |
| Temporary family<br>health care structures<br>(see §152.180, note 40)         |                  |             | P      | P      | P        | P        | P         | P         | P         | P         |                  |     | P   | P            | P                      | S       |             | S                   | S                   |                     |                        |                 |
| Wireless<br>telecommunication<br>towers-facilities<br>(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. §160A-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).~~

(ba) Flexible lot development, requiring rezoning to Conditional Zoning Districts (CDZ).

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 “CDZ”, (for example “B-2(CZD)”).

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 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, Aa 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 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 municipalityTown'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 Historic District 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**

#### **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-SHPO) 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.

#### **22.31 Demolition of Buildings - Guidelines**

##### **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 amendment shall be effective upon adoption.

Adopted this 10<sup>th</sup> day of May 2021.

Town of Swansboro Board of Commissioners

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John Davis, Mayor

ATTEST:

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Paula W. Webb, Assistant Town 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 6<sup>th</sup> day of April 2021.

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Vote

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Scott Chadwick, Planning Board Chairperson

# 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](http://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*. (G.S. 160D-706; 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).)
- ☐ 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.)

## 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.)
- △ **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.)

## 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 or land-use plan 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)(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)(e), -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(f).)
- △ **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.)