

### 1.2.1. General Authority

B. The North Carolina General Statutes, including:

1. Chapter 153A, Article 6 (General Police Powers);
2. Chapter ~~160D~~ 153A, Article 18 (~~Local~~ Planning and Regulation of Development *Regulation*);
3. Chapter 113A, Article 4 (Sedimentation and Pollution Control);
4. Chapter 143, Article 21, Part 6 (Floodway Regulations); and

C. All other relevant laws of the State of North Carolina.

### 1.4.2. Exemptions

The following are exempted from this Ordinance:

- A. *Property used for* bona fide farm ~~purposes~~ lands as defined by the North Carolina General Statutes, except that the standards in Article 9: Flood Damage Prevention, shall apply to *property used for* bona fide farm ~~purposes~~ lands.

### 1.7.2. Construction in Progress

The adoption of this Ordinance does not require a change in the plans, construction, or designated use of any building *or structure* for which actual construction was lawfully begun before February 3, 2020 and on which actual construction has been diligently pursued. For the purpose of this provision, “actual construction” includes the erection of construction materials in permanent position and fastened in a permanent manner, or demolition, elimination, and removal of an existing structure in connection with such construction, provided that actual construction work must be diligently pursued until completion of the building *or structure*.

**1.7.3** Any re-application for an expired development approval or permit shall comply with the standards in effect at the time of re-application.

### 1.7.4. Applications in Progress Before Effective Date

#### A. Applications in Progress Before Effective Date

Applications for development approvals and permits that were submitted in complete form and are pending on February 3, 2020 shall be reviewed and decided in accordance with the regulations in effect when the application was accepted, *unless the applicant chooses an updated development regulation in accordance with Section 1.7.7, Permit Choice.*

### 1.7.7 Permit Choice

*In accordance with N.C.C.S. 160D-108 and 143-755, the following rules for permit choice shall apply to all application types and development regulations included in this ordinance:*

- A. *If an applicant submits an application for approval and a development regulation changes between the time the application was determined to be complete and a decision for approval was rendered, the applicant may choose which adopted version of the development regulation will apply to the approval.*

- B. Where multiple approvals are required to complete a development project, the applicant may choose the version of each of the development regulations applicable to the project upon submittal of the application for the initial approval. This provision is applicable only for those subsequent applications filed within 18 months of the date following the approval of the initial application.*
- C. By default, the adopted version of the development regulation in place at the time of each application submittal shall apply to each application, unless the applicant submits to the Planning Director a written request to apply a different adopted version of a development regulation pursuant to this section. The Planning Director shall make a determination on the validity of the request in accordance with this section.*
- D. If the applicant chooses the version of the rule in place at the time of the application, the applicant shall not be required to await the outcome of the amendment to the development regulation(s) prior to acting on the approval or permit.*
- E. If an application is placed on hold at the request of the applicant for a period of six (6) consecutive months or more, or the applicant fails to respond to comments or provide additional information reasonably requested by the County or State government for a period of six (6) consecutive months or more, the application review shall be discontinued and the development regulations in effect at the time permit processing is resumed apply to the application.*
- F. For the purposes of the vesting protections of this ordinance, an erosion and sedimentation control permit or a sign permit shall not be considered an initial application by this section.*

## **2.3 Definitions**

### ***Administrative Decision***

*Decisions made in the implementation, administration, or enforcement of development regulations that involve the application of objective standards set forth in this Ordinance.*

### ***Administrative Determination***

*A written, final, and binding order, requirement, or determination regarding an administrative decision.*

### **Agricultural and Forestry Uses, General**

Uses characterized by general active and ongoing agricultural activities, including agronomy, animal husbandry, aquaculture, biotechnical agriculture (including education parks for biotechnical agriculture or a demonstration farm), forestry, fisheries, apiculture, and similar uses. For the purposes of this UDO, this definition shall include *any property used for* bona fide farm *purposes* as defined in N.C.G.S. 160D-903.

### **Applicant**

A person who submits an application for a *text amendment, zoning map amendment, conditional zoning map amendment, planned development, subdivision, or other* development approval or permit under this UDO.

### **Application**

A formal application form submitted by an applicant for a *text amendment, zoning map amendment, conditional zoning map amendment, planned development, subdivision, or other* development approval or permit under this UDO.

**Bedroom**

*A room designated as sleeping or bedroom on the plans and permit application.*

**Bona Fide Farm Purposes**

*Agricultural activities as set forth in N.C.G.S. 160D-903.*

**Building**

*Any structure used or intended for supporting or sheltering any use or occupancy.*

**Conditional Zoning**

*A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.*

**Decision-Making Body or Decision-Making Board**

*The authorized body or person assigned to make decisions under this ordinance.*

**Developer**

*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. ~~Any person, firm, or corporation who develops any land.~~*

**Development**

*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.*
- d. The initiation or substantial change in the use of land or the intensity of use of land.*

*This definition does not alter the scope of regulatory authority granted by this Ordinance.*

~~Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.~~

**Development Approval**

*An administrative or quasi-judicial approval made pursuant to this Ordinance 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 compliance, site plan approvals, special use permits, and variances. The term also includes all other regulatory approvals required by regulations adopted pursuant to N.C.G.S. Chapter 160D, including plat approvals, permits issued, development agreements entered into, and building permits issued.*

**Development Regulation**

*A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, stormwater control regulation, wireless telecommunication facility regulation, housing code, State Building Code enforcement, or any*

*other regulation adopted pursuant to this ordinance and/or N.C.G.S. Chapter 160D, or a local act or charter that regulates land use or development.*

***Down-Zoning***

*A text or map amendment that affects an area of land in one of the following ways: (1) By decreasing the development density of the land to be less dense than was allowed under its previous usage. (2) By reducing the permitted uses of the land that are specified in this ordinance to fewer uses than were allowed under its previous usage.*

***Dwelling***

*Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.*

***Dwelling Unit***

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

~~*One or more rooms together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities*~~

***General Use Zoning***

*A legislative zoning map amendment to a conventional zoning district, as defined in NCGS 160D-703, without site-specific conditions incorporated into the zoning map amendment. A general use zoning map amendment may be referred to as a "straight rezoning".*

***Landowner or Owner***

*The holder of the title in fee simple. Absent evidence to the contrary, the County may rely on the county tax records 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.* ~~*The person or entity that owns land.*~~

***Manufactured Home or Mobile Home***

*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 HUD and complies with the standards established under the Act.*

*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 semipermanent 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 semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width.*

~~A moveable or portable dwelling not compliant with the North Carolina State Uniform Residential Building Code and that is over 32 feet in length and over 8 feet wide, constructed to be towed on its own chassis and designed without a permanent foundation for year-round occupancy. The dwelling may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or two or more units separately towable but designed to be joined in one integral unit. This definition does not apply to the provisions of Article 9: Flood Damage Prevention for “manufactured home”; for that meaning, see Section 9.5: Definitions.~~

### **Official Map or Plans**

Any maps, plans, charts, or texts officially adopted by the County Board of Commissioners for the development of New Hanover County. *This definition shall include the most recent version of all maps officially adopted or promulgated by State and federal agencies.*

### **Person**

*An individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.*

~~Any individual, corporation, partnership, joint venture, trust, company, agency, unincorporated association, organization, municipal corporation, county, state or federal agency, or any combination thereof.~~

### **Planning Board**

*The New Hanover County Planning Board.*

### **Preliminary Forum**

*A public meeting conducted by the New Hanover County Planning Board in association with a special use permit application in which the Planning Board, prior to the quasi-judicial public hearing conducted by the New Hanover County Board of Commissioners, receives public comment and conducts an advisory review for the applicant and public in order to identify potential relevant and material evidence, findings of fact, and issues or areas that the Board of Commissioners may need more information on in order to reach a required conclusion.*

### **Property**

*All real property subject to land-use regulation by New Hanover County. The term includes any improvements or structures customarily regarded as a part of real property.*

### **Site Plan**

*A scaled drawing and supporting text that is submitted as part of a Major or Minor Site Plan application showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot, as well as 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. For the purposes of this ordinance,*

*this definition does not include subdivision construction plans or plats. For definitions related to subdivision plans or plats, see “Preliminary Plan”, “Subdivision Construction Plans”, and “Plat, Final”.*

#### **Site-Specific Development Plan**

*A conceptual plan that describes with reasonable certainty the type and intensity of land use for a specific parcel or parcels that is submitted as part of a conditional zoning map amendment, special use permit, or master planned development. This definition shall include “conceptual development plan” as used in this ordinance and “site-specific vesting plan” as defined and used in N.C.G.S. 160D-108.1.*

~~A land development plan approved by the County Commissioners following notice and public hearing which describes with reasonable certainty the type and intensity of land use for a specific parcel or parcels. Site-specific development plans include performance residential developments, special use permits, site plans (major and minor), and master plan developments.~~

#### **Sleeping Unit**

*A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.*

#### **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.*

#### **Structure and/or Building**

Anything constructed or erected within a fixed location on the ground, or attached to something having a fixed location on the ground. The terms ~~building and/or~~ structure shall be construed to include *buildings*, porches, decks, carports, garages, sheds, roof extensions, overhangs extending more than two inches, and any other projections directly attached to the structure ~~and/or building~~. For purposes of Section 5.10, Airport Height Restriction, a structure is any object, including a mobile object, constructed or installed by man, including, but without limitation, buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines. This definition does not apply to the provisions of Article 9: Flood Damage Prevention; for that meaning, see Section 9.5: Definitions.

#### **Subdivision**

A "subdivision" shall include 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 are created for the purpose, whether immediate or future, of sale or building development, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this definition nor be subject to the regulations authorized by this UDO:

- (1) the combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the County as shown in Article 6: Subdivision Design and Improvements;
- (2) the division of land into parcels greater than ten acres where no street right-of-way dedication is involved;

(3) the public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors; or

(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 to or exceed the standards of the County as shown in Article 6: Subdivision Design and Improvements.

*(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.*

### **Substantially Commenced**

*For the purposes of this ordinance a development is determined by the Planning Director to have substantially commenced if evidence is provided that one or more of the following applies:*

- a. The development has received and maintained a valid erosion and sedimentation control permit and conducted grading activity on a continuous basis and not discontinued it for more than thirty (30) days; or*
- b. The development has installed substantial on-site infrastructure; or*
- c. The development has received and maintained a valid building permit for the construction and approval of a building foundation; or*
- d. Ten percent (10%) or more of the total cost of design- and construction-related activities authorized by such approvals or permits has been completed on the site.*

### **Vested Rights (Zoning)**

~~The right pursuant to Sections 153A-344.1, N.C.G.S., to undertake and complete the development of property pursuant to *N.C.G.S. 160D-108 and 160D-108.1* under the terms and conditions of an approved site specific development plan. The duration of vesting shall not exceed two years unless expressly provided for by the County.~~

### **Zoning Map Amendment or Rezoning**

*An amendment to the Official Zoning Map for the purpose of changing the zoning district that is applied to a specified property or properties. The term also includes the application of an overlay zoning district or a conditional zoning district. The term does not include 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.*

## **3.1.3 Superseding Dimensional Standards**

### **D. Performance Residential Development**

#### **8. *Performance Residential* Development Approval**

- b. An application for a Performance Residential Development shall be submitted and reviewed as a major subdivision application in accordance with Section 10.3.7, Subdivision, provided, an applicant may submit a major site plan application in accordance with Section 10.3.6, Site Plan, prior to submittal of a preliminary plan application in accordance with subsection 2 below
1. The applicant shall include a statement in the application that the applicant seeks a vested right in accordance with N.C.G.S. §§ *160D-108* ~~153A-344.1~~.

3. The Planning Board shall provide notice for and conduct a public hearing on the requested vested right in accordance with the requirements in N.C.G.S. §§ ~~160D-108.1~~ ~~153A-344.1~~, and shall make a decision on the application in accordance with 10.3.6.F, Site Plan Review Standards.

## E. Additional Dwelling Allowance

### 2. Location and Access

- b. The development shall have direct access to and from an existing major or minor arterial as indicated on the *most recent officially adopted* Wilmington MPO Functional Classification Map. This direct access requirement will be satisfied if:

Table 3.2.1: Zoning Districts		
Category	District	Abbreviation
Overlay and Special Purpose	Special Highway Overlay	SHOD
	Water Supply Watershed Overlay	WSW
	Conditional Zoning Districts	CZ
	<del>Conditional Use Zoning Districts</del>	<del>CUD</del>

Table 3.3.6.E.1: Exceptional Design Core Requirements	
Significant Species and Ecological Communities	<b>Option 1:</b> After consultation with the <i>most recent officially adopted</i> NC Natural Heritage Program map as found on the New Hanover County online mapping services, no species listed under the federal Endangered Species Act, NC endangered species list, or NC Natural Heritage Program as nationally, state, or regionally significant is present or likely to be present.
	<b>Option 2:</b> If initial consultation with the <i>most recent officially adopted</i> NC Natural Heritage Program map is inconclusive, then a qualified biological scientist performs biological surveys to determine the presence of endangered or significant species or the applicant consults with the NC Natural Heritage Program in Raleigh to receive a state determination, and none of the above species is present or likely to be present.

## 3.3.7 Planned Development (PD) District

D. District Dimensional and Density Standards			
Standard	Residential Uses	Commercial Uses	Industrial Uses
Minimum district size, under common ownership or joint petition: 10 acres			
Building setback from PD District boundary (feet)	20	CB Setback Requirements	I-1 Setback Requirements
Building setback from pedestrian and bicycle paths (feet)	10		
Front setback (feet)	Established in MPD Master Plan in accordance with Section 3.3.3.A, MPD Master Plan		
Side setback, street (feet)			
Side setback, interior (feet)			
Rear setback (feet)	*		
Density, maximum (du/acre)			
Intensity, maximum	Established in MPD Master Plan in accordance with Section 3.3.3.A, MPD Master Plan		



Building height, maximum (feet)	40**
<p>* Maximum density in Urban Mixed Use areas identified on the New Hanover County Future Land Use Map shall be established in the MPD Master Plan. Maximum Density in areas outside of the Urban Mixed Use areas shall also be established in the MPD Master Plan but shall not exceed 17 dwelling units per acre.</p> <p>** There is no maximum building height for Agricultural or Industrial uses. The maximum building height is 80 feet for buildings located within the Urban Mixed Use, Community Mixed Use, or Employment Center areas identified on the New Hanover County Future Land Use Map and fronting along a collector, minor arterial, or principal arterial as indicated on the <i>most recent officially adopted</i> Wilmington Urban Area MPO functional classification map.</p>	

### 3.4.5. Regional Business (B-2) District

D. District Dimensional Standards	
Standard	All Uses
Lot area, minimum (square feet)	None
Lot width, minimum (feet)	None
<b>1</b> Front setback (feet)	50 along highways and major thoroughfares; 35 along all other public highways or streets
<b>2</b> Side setback, street (feet)	50 along highways and major thoroughfares; 35 along all other public highways or streets
Side setback, interior	*
Rear setback	*
Building height, maximum (feet)	40**
<p>* Determined in accordance with Section 3.1.3.C, Setback Requirements in Certain Commercial and Industrial Districts</p> <p>** Buildings located within the Employment Center, Community Mixed Use, Urban Mixed Use, or Commerce Zone place types and fronting along a collector, Minor Arterial, or Principal Arterial as indicated on the <i>most recent officially adopted</i> Wilmington MPO Functional Classification Map, may exceed 40 feet in height provided their FAR does not exceed 1.0. The FAR may exceed 1.0, but shall not exceed 1.4 if (1) the ratio of the total building footprint to the total buildable site area does not exceed 40% and (2) the required parking (exclusive of off-loading and service parking) is included within the building footprint. If all surface parking (excluding visitor drop-off and pick-up) is within the building footprint, additional floor area can be added at the rate of one foot of floor per one foot of parking area. The total height of the parking structure shall be excluded from the height limit.</p>	

### 3.4.6. Office and Institutional (O&I) District

#### E. Other District Standards

##### 1. Signs.

- i. Properties located adjacent to minor or major arterials as identified on the *most recent officially adopted* WMPO Functional Classification Map shall be limited to total signage of 75 square feet in surface area.

### 3.4.10. Light Industrial (I-1) District

D. District Dimensional Standards	
Standard	All Uses
Lot area, minimum (square feet)	None
<b>1</b> Lot width, minimum (feet)	None
<b>2</b> Front setback (feet)	50
<b>3</b> Side setback, street (feet)	50
Side setback, interior	*

Rear setback	*
Building height, maximum (feet)	45**

\* Determined in accordance with Section 3.1.3.C Setback Requirements in Certain Commercial and Industrial Districts

\*\* Buildings located within the Employment Center or Commerce Zone place types and fronting along a Collector, Minor Arterial, or Principal Arterial as indicated on the *most recent officially adopted* Wilmington MPO Functional Classification Map, may exceed 45 feet in height provided their FAR does not exceed 1.0.

### 3.5.4. Water Supply Watershed Overlay (WSW) District

#### B Applicability

1. Unless exempted by subsection 3 below, the development and improvement of property, including the subdivision of land, that is located within the water supply watershed shall be subject to the standards in this section (3.5.4). *The most recent officially adopted* Official maps of, and information pertaining to, the water supply watershed shall be maintained by, and shall be available for review at, the County Planning and Land Use Department. These maps shall serve as the official source by which to identify the boundaries of the water supply watershed.

~~4. Official maps of an information pertaining to the water supply watershed shall be maintained by and shall be available for review at the New Hanover County Planning and Land Use Department. These maps shall serve as the official source by which to identify the boundaries of the watershed.~~

### 3.5.5. Conditional Zoning (CZ) District

#### D. District Requirements

##### 1. Eligible Uses

Only uses allowed by right in the corresponding general use district are eligible for CZ district consideration and any such use within a CZ district shall, as a minimum requirement, satisfy all the regulations of the corresponding general use district. *Uses allowed by special use permit in the corresponding general use district shall require a special use permit in the conditional district.*

### ~~3.5.6. Conditional Use Zoning (CUD) Districts~~

#### ~~A. Purpose~~

~~The Conditional Use (CUD) Zoning District option is established to address situations where a particular land use or uses would be consistent with the Comprehensive Plan and the objectives of this Ordinance but none of the general zoning district classifications that would allow that use are acceptable. It is primarily intended for use with transitions between zoning districts of dissimilar character where a particular use or uses, with restrictive conditions to safeguard adjacent uses can create a more orderly transition benefiting all affected parties and the community at large. It is not intended as a routine substitute for the general rezoning process or for frequent use because creating a large number of such specialized districts can lead to excessive administrative complexity and great difficulty in maintaining consistent and predictable land use policies. It is intended only for firm development proposals and should not be used for tentative projects without definitive plans.~~

#### ~~B. Applicability~~

~~CUD districts are intended only for voluntary proposals submitted in the names of the owners of all property included in the petition/application.~~

### **C. Districts Established**

The following conditional use zoning districts, each bearing the designation "CUD", are hereby established:

1. The residential conditional use zoning districts include: CUD-RA, CUDAR, CUD-R20S, CUD-R-20, CUD-R15, CUD-R-10, CUD-R-7, CUD-R-5, CUD-RMF-L, CUD-RMF-M, CUD-RMF-MH, CUD-RMF-H.
2. The commercial and industrial conditional use zoning districts include: CUD-B-1, CUD-CB, CUD-B-2, CUD-O&I, CUD-SC, CUD-CS, CUD-I-1, and CUD-I-2.

### **D. Other District Standards**

#### **1. Eligible Uses**

Only uses allowed by right of by special use permit in the corresponding general use district are eligible for consideration of approval of a CUD district. Any such use within a CUD district shall, as a minimum requirement, satisfy all the regulations of the corresponding general use district.

#### **2. Conditions and Requirements**

- a. Within a CUD district, no use is allowed except by special use permit. This permit may specify additional conditions and requirements that represent greater restrictions on development and use of the tract than the corresponding general use district regulations or other limitations on land that may be regulated by state law or local ordinance. Such conditions and requirements shall not specify ownership status, race, religion, character or other exclusionary characteristics of occupants; shall be objective, specific, and detailed to the extent necessary to accomplish their purpose; and shall relate rationally to making the permit compatible with the Comprehensive Plan, the requirements for a special use permit, other pertinent requirements of this Ordinance, and to secure the public health, safety, morals, and welfare.
- b. The special use permit application shall include a development plan if appropriate to illustrate conditions and requirements that are difficult to describe with text. The development plan shall be of sufficient detail to depict the conditions and requirements proposed by the applicant.

#### **3. Relationship to Overlay District Standards**

Regulations governing development in an overlay zoning district shall apply in addition to the regulations governing development in the CUD district. If the standards governing a CUD district expressly conflict with those governing an overlay district, the more restrictive standards shall control.

Table 3.6.2: Established Overlay and Special Purpose Zoning Districts		
Category	District	Abbreviation
Special Purpose Districts	Conditional Zoning Districts	CZ
	Conditional Use Zoning Districts	CUD

#### 4.3.3. Civic & Institutional Uses

##### A. Child & Adult Care

##### 2. Family Child Care Home

- c. No outside sign in excess of two square feet shall be permitted, except when such facility is located on an existing roadway identified as a collector or arterial facility on the *most recent officially adopted* Wilmington MPO Functional Classification Map, in which case the maximum sign area shall be 12 square feet.

##### B. Civic

##### 4. Religious Assembly

- a. Religious Assemblies in the R-7, R-5 and RMF districts shall comply with the following standards:
  2. The following uses are prohibited without a special use permit:
    - iv. Religious institutions with more than 1,000 seats, provided that such facilities shall only be allowed if direct access is provided from a Minor Collector road or greater as identified on the *most recent officially adopted* Wilmington MPO Functional Classification Map.
- b. Religious Assemblies in the B-1, CB and CS districts shall comply with the following standards:
  1. Religious institutions are permitted with no seat limitations if located on a Minor Collector road or greater as identified on the *most recent officially adopted* Wilmington MPO Functional Classification Map

#### 4.3.4. Commercial Uses

##### A. Amusement & Entertainment Uses

##### 4. Indoor Recreation Establishment

- c. Access to the site shall be provided by a Minor Collector road or greater, as designated on the *most recent officially adopted* Wilmington MPO Functional Classification Map.

##### 5. Outdoor Recreation Establishment

- c. Access to the site shall be provided by a Minor Collector road or greater, as designated on the *most recent officially adopted* Wilmington MPO Functional Classification Map.

#### 4.3.5. Industrial Uses

##### B. Industry & Manufacturing

##### 1. Artisan Manufacturing

- c. Off-site distribution via tractor trailer is only permitted if the truck traffic is limited to streets classified as arterials on the *most recent officially adopted* Wilmington MPO Functional Classification Map.

#### 4.4.4. Standards for Specified Accessory Uses and Structures

##### B. Accessory Structure

Accessory structures shall comply with the following standards:

1. No accessory structure shall be erected in any required yard nor within five feet of any other ~~structure building~~, except that accessory ~~structures buildings~~ not exceeding 600 square feet may be permitted in the required side and rear yards provided such accessory ~~structures buildings~~ are at least five feet from the property line and do not encroach into any required easements.

2. Accessory structures not exceeding 50 square feet and used exclusively to house well and pump equipment may be permitted in the required front, side, and rear yards, provided such accessory ~~structures buildings~~ are at least five feet from any property line and do not encroach into any required easements or sight angles.
4. An accessory ~~structure building~~ or use may be located on another contiguous or noncontiguous lot from the principal use it is associated with to the extent that the principal use itself would also be permitted on such lot.

#### **F. Home Occupation**

4. No home occupation shall be conducted in any accessory ~~structure building~~.

### **4.5.2. General Standards for Temporary Uses**

- A. No temporary ~~structures buildings~~ or trailers shall at any time be located closer than 25 feet to a property line of any adjacent property, notwithstanding the required setbacks of the zoning district in which such temporary ~~structure building~~ or trailer is located.

### **5.1.3. Alternative Parking Plans**

#### **D. Deferred Parking**

##### **4. Use of Reserve Areas**

Areas reserved for future parking shall be brought to the finished grade and landscaped with an appropriate ground cover. These areas shall not be used for ~~structures buildings~~, storage, loading, or other purposes except for temporary overflow parking, provided such use is sufficiently infrequent to ensure maintenance of its ground cover in a healthy condition.

### **5.7.2. Applicability**

- B. ~~The most recent~~ officially ~~adopted~~ maps of and information concerning resources identified in subsection A above are available for review at the County Planning and Land Use Department. These maps serve as an initial resource to determine if a parcel is associated with conservation resources identified in subsection A above, but all conservation resources outlined above shall be identified on all required site plans, regardless of whether they are identified on County maps.

### **5.8.5. Design Standards**

#### **E. Flexibility in Administration Authorized**

1. The ~~decision-making approval~~ body is authorized to permit minor deviations from amount, size, location, and nature of open space set-aside standards whenever it is determined that: (i) the objectives underlying these standards can be met without strict adherence to them; and (ii) because of peculiarities in the developer's tract of land or the facilities proposed, it would be unreasonable to require strict adherence to these standards.
2. Whenever the ~~decision-making approval~~ body authorizes some deviation from the standards set forth in this section, the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation.

### 5.8.6. Ownership, Management, And Maintenance

#### B. Responsibility

Responsibility for managing and maintaining open space set-asides rests with the owner of the land of the open space set-asides. Failure to maintain open space set-asides in accordance with this section and the development approval or permit shall be a violation of this Ordinance.

### 5.8.7. Payments In-Lieu of Dedication

- A. As part of a conditional rezoning, master development plan, special use permit, or major residential subdivision consideration, the *decision-making approval* body may authorize a payment in-lieu of dedication for all or a portion of the required open space when such is determined to be in the best interest of the citizens of the areas to be served. Criteria to be used in this determination shall include:
- B. If the *decision-making approval* body authorizes the payment in-lieu of dedication, the amount of such payment shall be the product of the number of acres to be dedicated and the average fair market value of the land being subdivided at the time of the submission of the application. The fair market value of the land shall be determined based on the value of the land for property tax purposes and other relevant information.

### 5.10.3. Jurisdiction

Pursuant to G.S. 63-31(d), New Hanover County exercises its statutory authority as owner of the Wilmington International Airport, and in order to protect the approaches of said airport, the jurisdiction of this section is extended to all areas depicted on the *most recent officially adopted* Wilmington International Airport Height Restriction Map, including areas within the City of Wilmington, Pender County, and Brunswick County.

### 5.10.6. Airport Zones

In order to insure compliance with the provisions of this section, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to the Wilmington International Airport. Such zones are shown on the *most recent officially adopted* Wilmington International Airport Height Restriction Map ~~consisting of one sheet, prepared by Talbert & Bright, Inc, and dated July 7, 2003.~~ The map referred to in this section is on file in the office of the county clerk. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

## 8.5 General Requirements

**E. Building Permits:** No building permit, unless excluded by Section 8.17, Permits, shall be issued without an erosion control sign-off pursuant to G.S. *§ 160D-1110* ~~153A-357 and G.S. 160A-417 as amended.~~

## 9.1. Statutory Authorization

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; ~~Parts 3 and 4 of Article 18 of Chapter 153A; and Part 121, Article 6 of Chapter 153A;~~ *Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D*, N.C.G.S., delegated to local governmental units the *authority* responsibility to adopt regulations designed to promote the public health, safety, and general welfare. Therefore, the Board of Commissioners of New Hanover County, North Carolina, does ordain as follows:

### 9.6.1 Applicability and Basis for Special Flood Hazard Areas

- A. This article applies to all land and development in the Special Flood Hazard Areas within unincorporated New Hanover County, as identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated December 6, 2019 for New Hanover County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this Ordinance, *and all revisions hereto*.
- ~~B. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the unincorporated County are also adopted by reference and declared a part of this Ordinance. Any subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within three months.~~

#### 10.1.1. General

- B. Table 10.1.1: Summary Table of Development Review Responsibilities, summarizes the specific review responsibilities of advisory and decision-making bodies and County staff for each type of *application* development approval or permit.

Table 10.1.1: Summary Table of Development Review Responsibilities						
R = review and recommendation or report; D = decision; A = appeal; <i>F = preliminary forum</i> ; <> = hearing						
Type of Application	Board of Commissioners	Planning Board	Board of Adjustment	Technical Review Committee (TRC)	County Engineer	Planning Director
<b>Discretionary Review</b>						
Special Use Permit	<D>	< <i>FR</i> >		R [2]		R
<b>Relief</b>						
Variance – Zoning and Subdivision			<D>			R
<del>Variance – Zoning and Subdivision</del>		<D>				
Variance – Floodplain	<i>See Article 9: Flood Damage Prevention</i>					
Reasonable Accommodation			<D>			R
<b>NOTES:</b>						
[3] The decision may be appealed directly to the Superior Court of New Hanover County (see N.C.G.S. <i>160D-1403</i> <del>153A-336</del> ).						

#### 10.1.2. Board of Commissioners

- B. To adopt a schedule of fees governing applications for development approvals and permits reviewed under this Ordinance, and civil penalties for violations of this Ordinance; and
- D. To enter into private development agreements as provided in *Article 10 of N.C.G.S. Chapter 160D* ~~NCGS 153A Part 3A~~ after conducting a public hearing. These development agreements may require a commitment of public and private resources for large scale projects containing at least 25 acres or more exclusive of wetlands, mandatory buffers, and other portions of the property precluded from

development. In entering into such agreements, the County may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law.

### **10.1.3. Planning Board**

#### **A. Powers and Duties**

1. To review and make a recommendation on the following applications:

- c. Conditional zonings (Section 10.3.3); *and*
- d. Planned Developments (Section 10.3.4);
- ~~e. Special use permits (Section 10.3.5); and~~
- ~~f. Subdivision variances (Section 10.3.14)~~

*2. To provide a preliminary forum for review of special use permits (Section 10.3.5), provided that no part of the preliminary forum or recommendation may be used as a basis for the deciding board.*

### **10.1.4. Board of Adjustment**

#### **A. Powers and Duties**

1. To review and make a decision on the following:

- a. Zoning *and subdivision* variances (Section 10.3.11);

### **10.2.4. Application Submittal and Acceptance**

#### **A. Authority to File Applications**

2. Applications for text amendments and *general use* zoning map amendments may be submitted by any person, organization, or interested party, including the Board of Commissioners, the Planning Board, or County staff except that *no text amendment or general use zoning map amendment that down-zones property, as defined by this ordinance, shall be initiated or considered without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the amendment is initiated by the County.*

### **10.2.6. Public Hearing & Preliminary Forum Scheduling and Public Notification**

If a public hearing is required for the application (see Table 10.1.1: Summary Table of Development Review Responsibilities), the scheduling and public notification of the public hearing shall comply with the requirements in this section. *The scheduling and public notification requirements of this section shall apply to Special Use Permit Preliminary Forums.*

### **10.2.7. Public Hearing & Preliminary Forum Procedures**

If a public hearing *or preliminary forum* is required for the application (see Table 10.1.1: Summary Table of Development Review Responsibilities), the public hearing *or preliminary forum* shall comply with the requirements in this section.

#### **A. General**

2. Any person may appear at a public hearing *or preliminary forum* and submit testimony, documents, and materials, either individually or as a representative of a person or an organization. Each person who speaks at a public hearing *or preliminary forum* shall identify themselves, state their home or



business address, and if appearing on behalf of a person or organization, state the name and mailing address of the person or organization they represent.

3. The body conducting the public hearing *or preliminary forum* may place reasonable time restrictions on the presentation of testimony and the submission of documents and other materials. The body conducting the hearing *or preliminary forum* may exclude testimony that it finds to be irrelevant, immaterial, or unduly repetitious.
4. The body conducting the public hearing *or preliminary forum* may, on its own motion or at the request of any person, continue the public hearing *or preliminary forum* to a fixed date, time, and place.
5. The body conducting the public hearing *or preliminary forum* shall record the proceedings by any appropriate means. The written or taped record of oral proceedings, the hearing minutes, all applications, exhibits, and papers submitted in any proceeding before the body conducting the public hearing *or preliminary forum*, the staff report, and the recommendation or decision shall constitute the record. All records of public hearings *or preliminary forums* conducted by an advisory or decision-making body shall be a public record, and open for inspection at the County offices during normal business hours upon reasonable notice.

#### ***D. Order of Proceeding for Preliminary Forums***

*The order of proceedings at a preliminary forum shall be as follows:*

##### ***1. Staff Introduction***

*The Planning Director shall briefly introduce the application.*

##### ***2. Applicant Presentation***

*The applicant shall present any information the applicant deems appropriate.*

##### ***3. Public Comment***

*Public comments shall be heard. Any person other than the applicant or applicant's representatives may be permitted to speak in accordance with the Planning Board's rules of procedure, or at the Board's discretion, as appropriate, in support of or in opposition to the application.*

##### ***4. Response to Comments and Presentation***

*The applicant, public, and Planning Director may respond to any comments, documents, or materials presented as deemed appropriate by the Planning Board.*

#### **10.2.8. Advisory Body Review and Action**

If review by an advisory body (the Planning Board) is required for the application (see Table 10.1.1: Summary Table of Development Review Responsibilities), the body shall review and act on the application in accordance with the following procedures.

##### **A. Review and Recommendation**

1. The advisory body shall conduct a public hearing *or preliminary forum* on the application in accordance with 10.2.7, Public Hearing Procedures, and shall consider the application, relevant support materials, the staff report, and any public comments made during the public hearing *or preliminary forum*. Following the public hearing, the body shall recommend one of the decisions authorized for the particular type of application, based on the applicable review standards.

2. The advisory body's recommendation shall be in writing and shall clearly state the factors considered in making the recommendation and the basis or rationale for the recommended decision.
3. If permitted for the particular type of application in accordance with Section 10.3, Application-Specific Procedures, the advisory body may recommend conditions of approval. Conditions of approval must relate in both type and extent to the anticipated impacts of the proposed development.
4. Unless the hearing is deferred or subject to a continuance, the advisory body shall take action as promptly as reasonably possible in consideration of the applicant, affected parties, and citizens of the County.
5. *In the case of a special use permit preliminary forum, no recommendation shall be made to the Board of Commissioners.*

#### **B. Revision of Application**

Prior to the advisory body's action on an application, the advisory body may continue the public hearing to allow the applicant to make minor modifications to the application that directly respond to specific requests or suggestions made by the staff or the advisory body. *In the case of a special use permit preliminary forum, such minor modifications shall not require a continuance nor an additional preliminary forum.*

### **10.2.9. Decision-Making Body Review and Action**

#### **A. Review and Decision**

5. Any conditions of approval shall be expressly set forth in the approval, ~~and~~ shall relate in both type and scope to the anticipated impacts of the proposed development, *and shall be mutually agreed to in writing by both the applicant and decision making body.*
6. *Any approval subject to conditions shall not take effective until the Planning Director has received the applicant's written consent to all conditions of approval.*

### **10.2.10. Post-Decision Limitations and Actions**

#### **D. Expiration of Approval**

1. Approval of an application shall be valid as authorized for the approved development activity until the end of the expiration time period provided in Section 10.3, Application-Specific Procedures, for the particular type of application *unless work authorized by the approval or permit has substantially commenced*, subject to subsection 4 below.
2. If no expiration period is provided in Section 10.3, Application-Specific Procedures, for a specific type of ~~development~~ approval or permit, the ~~development~~ approval or permit shall expire if a building permit or zoning compliance approval authorizing the approved development is not obtained with ~~in~~ two years *unless work authorized by the approval or permit has substantially commenced*.
4. Failure to comply with the terms of an ~~development~~ approval or permit, including any conditions of approval, shall constitute a violation of this Ordinance (see Article 12: Violations and Enforcement) and shall render the ~~development~~ approval or permit void and of no effect. No building permits for further construction or certificates of occupancy under the ~~development~~

approval or permit shall be permitted, and all completed structures shall be regarded as nonconforming uses subject to Article 11: Nonconforming Situations.

#### **E. Termination of Site Specific Development Plans**

1. Any site specific development plan approved by the County pursuant to this Ordinance shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed, *unless work authorized by the approval or permit has substantially commenced*.

### **10.3.2. Zoning Map Amendment**

#### **A. Applicability**

- ~~1. The procedure in this section is required for any amendment of the Official Zoning Map, unless the amendment is part of a conditional zoning (see Section 10.3.3), or a planned development (see Section 10.3.4).~~
- ~~2. If the proposed Zoning Map amendment involves a rezoning to a Conditional Use Zoning District (see Section 3.5.6, Conditional Use Zoning (CUD) Districts), the provisions in subsections a and b below, apply:~~
  - ~~a. The Zoning Map amendment application must be submitted and reviewed concurrently with a special use permit application (see Section 10.3.5, Special Use Permit). The Zoning Map amendment for the proposed Conditional Use Zoning District rezoning is considered first, then the companion special use permit application, except, if the Zoning Map amendment is denied, the special use permit is not considered.~~
  - ~~b. If the Zoning Map amendment to the Conditional Use Zoning District is approved but the special use permit is denied, then the Board of Commissioners shall immediately rescind its approval of the Zoning Map amendment.~~

### **10.3.3. Conditional Zoning**

#### **C. Conditional Zoning Procedure**

##### **6. Board of Commissioners Review and Action**

- d. Conditions of approval shall comply with the following requirements:
  1. Only conditions of approval mutually agreed to *in writing* by both the applicant and the Board of Commissioners are allowed.

##### **7. Post-Decision Limitations and Actions**

###### **b. Minor Deviations**

Subsequent applications for development within a conditional zoning district may include minor modifications from the approved conceptual site plan, provided such modifications *do not result in a change in permitted uses or density, and otherwise* have no material effect on the character of the approved development. Changes in the following constitute minor modifications that may be approved by the Planning Director:

1. Modifications in building *or structure* placement, provided the placement complies with the setbacks of the corresponding base zoning, and does not decrease the setbacks agreed to and approved during the conditional rezoning process by more than 10 percent;

2. Increases to building *or structure* size and height not to exceed 10 percent provided all other applicable standards of this Ordinance are met;

**c. Expiration**

1. If no building permit has been issued for the subject tract within two years after the date of approval of the conditional zoning, *or if work authorized by the approvals or permits associated with the conditional zoning has not substantially commenced*, the Planning Director may, at the Planning Director's discretion, schedule a hearing for the Planning Board to consider whether active efforts are proceeding in accordance with the approved conditional zoning. If the Planning Board determines that such efforts are not proceeding, the Board may, at the Board's discretion, initiate a Zoning Map amendment in accordance with Section 10.3.2, Zoning Map Amendment, to rezone the land within the CZ district to its classification prior to approval, or to another zoning district the Board determines is appropriate.

### 10.3.4 Master Planned Development

**C. Master Planned Development Procedure**

**7. Board of Commissioners Review and Action**

- c. Only conditions of approval mutually agreed to *in writing* by both the applicant and the Board of Commissioners are allowed.

**8. Post-Decision Limitations and Actions**

**a. Effect of Approval**

2. Approval of an MPD Master Plan shall establish a vested right in accordance with N.C.G.S. § ~~160D-108.1~~ *153A-344.1(c) and (d)*.

**b. Minor Deviations**

Subsequent applications for development within a master planned development district may include minor modifications from the approved MPD Master Plan and MPD Terms and Conditions document, provided such modifications *do not result in a change in permitted uses or density, and otherwise* have no material effect on the character of the approved development. Changes in the following constitute minor modifications that may be approved by the Planning Director:

1. Modifications in building *or structure* placement, provided the placement does not decrease approved setbacks by more than 10 percent;
2. Increases to building *or structure* size and height not to exceed 10 percent provided all other applicable standards of this Ordinance are met;

**c. Expiration**

1. If no building permit has been issued for the land approved as a master planned development district within two years of the date of approval, *or if work authorized by the approvals or permits associated with the master planned development has not substantially commenced*, the Planning Director may, at the Planning Director's discretion, schedule a hearing for the Planning Board to consider whether active efforts are proceeding in accordance with the approved master planned development. If the Planning Board determines that such efforts are not proceeding, the Board may, at the Board's discretion, initiate a Zoning Map amendment in accordance with Section

10.3.2, Zoning Map Amendment, to rezone the master planned development district to its classification prior to approval, or to another zoning district the Board determines is appropriate.

### 10.3.5. Special Use Permit

#### C. Special Use Permit Procedure

**Figure 10.3.5.C: Summary of Special Use Permit Procedure**



\*Special use permits for single-family dwellings, including mobile homes, shall not require a Planning Board *preliminary forum* review prior to the Board of Commissioners Hearing & Decision.

#### 3. Staff Review and Action

b. In preparation for the Planning Board's *preliminary forum* public hearing on the application, the Planning Director shall review the application and prepare a *brief introduction to the application*. ~~staff report in accordance with Section 10.2.5, Staff Review and Action, which the Clerk to the Planning Board shall publish in the agenda package for the Planning Board meeting for which the public hearing on the application is scheduled. The staff report shall:~~

- ~~1. Summarize the proposed development and preliminary findings of fact; and~~
- ~~2. Address the review standards in Section 10.3.5.D, Special Use Permit Review Standards, stating whether each standard is met or identifying, in staff's view, any additional information necessary for the Planning Board to provide a recommendation to the Board of Commissioners whether each standard is met.~~

c. In preparation for the Board of Commissioners' public hearing on the application, the Planning Director shall prepare a staff report in accordance with Section 10.2.5, Staff Review and Action, which the Clerk to the Board of Commissioners shall publish in the agenda package for the Board of Commissioners meeting for which the public hearing on the application is scheduled. The staff report shall:

1. Summarize the special use permit request, the information and materials provided in the application package and presented at the Planning Board public hearing(s), the Planning Board's recommendations, and preliminary findings of fact; and

#### 4. Public Hearing & *Preliminary Forum* Scheduling and Public Notification

The Planning Director shall schedule the *preliminary forum* and public hearings and provide public notification *for both meetings* in accordance with Section 10.2.6.

#### 5. Planning Board Review and Action

a. The Planning Board shall conduct a *preliminary forum* public hearing on the application *as a way to provide advisory review and recommendations to the applicant and public on potential relevant*

*and material evidence, findings of fact, and issues or areas that the Board of Commissioners may need more information on in order to reach a required conclusion* ~~make a recommendation on the application in accordance with Section 10.2.8, Advisory Body Review and Action, and Section 10.3.5.D, Special Use Permit Review Standards.~~

~~b. Following the hearing and the Planning Board's recommendation, the Planning Director shall prepare a report to inform the Board of Commissioners of whether the standards in Section 10.3.5.D, Special Use Permit Review Standards, have been met or to identify, from staff's perspective, issues or areas that the Board of Commissioners may need more information on in order to reach a required conclusion. The report shall summarize the special use permit request, the information and materials provided in the application package and presented at the Planning Board public hearing(s), the Planning Board's recommendations, and preliminary findings of fact.~~

#### **6. Board of Commissioners Review and Action**

c. *Subject to subsection d below*, the Board of Commissioners may attach conditions of approval, including time limits for completion of development or for the start or end of certain uses or activities. Conditions of approval shall meet or exceed the minimum requirements of this Ordinance.

*d. Only conditions of approval mutually agreed to in writing by both the applicant and the Board of Commissioners are allowed.*

#### **7. Post-Decision Limitations and Actions**

##### **b. Minor Deviations**

Subsequent applications for development pursuant to an approved special use permit may include minor modifications from the approved special use permit, provided such modifications *do not result in a change in permitted uses or density, and otherwise* have no material effect on the character of the approved development. Changes in the following constitute minor modifications that may be approved by the Planning Director:

1. Modifications in building *or structure* placement, provided the placement does not decrease approved setbacks by more than 10 percent;
2. Increases to building *or structure* size and height not to exceed 10 percent provided all other applicable standards of this Ordinance are met;

##### **c. Expiration**

1. A special use permit shall automatically expire and become null and void if ~~construction or occupancy of the proposed use as specified on the special use permit is~~ *or work authorized by the approvals or permits associated with the special use permit has not substantially* commenced within two years after the date of issuance, unless the applicant submits a written request for an extension to the Planning Director prior to the expiration, and the request is granted in accordance with subsection 2 or 3 below.

### 10.3.7 Subdivision

#### B. Applicability

3. The provisions of this section shall not prohibit any landowner or landowner's agent from entering into contracts to sell or lease by reference to an approved preliminary plan in accordance with N.C.G.S. § ~~160D-807~~ ~~153A-334~~.

#### D. Major Subdivision Procedures and Standards

##### 1. Preliminary Plan Procedure

##### c. Post-Decision Limitations and Action

4. Preliminary plan approval shall automatically expire and become void if the subdivider does not submit a final plat for all or part of the lands subject to the approved preliminary plan *or if work authorized by approvals or permits associated with the subdivision has not substantially commenced* within two years of the preliminary plan approval date, unless an extension of time is granted in accordance with subsection 5 below.

### 10.3.8. Zoning Compliance Approval

#### B. Applicability

A zoning compliance approval is required for the following activities:

1. Establishment of a new use other than bona fide farms;
2. Erection, alteration, moving, or repair of any building *or structure*; and

### 10.3.9. Tree Removal Permit

#### C. Tree Removal Permit Procedure

##### 3. Post-Decision Limitations and Actions

The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply, except that a tree removal permit shall automatically expire *one year* ~~six months~~ after the date it is issued.

### 10.3.11. Variance – Zoning and Subdivision

#### C. Zoning and Subdivision Variance Procedure

Figure 10.3.11.C: Summary of Zoning and Subdivision Variance Procedure



##### 4. Decision-Making Body Review and Action

- a. The Board of Adjustment shall conduct a quasi-judicial public hearing on the application and make a decision in accordance with Section 10.2.9, Decision-making Body Review and Action, and

Section 10.3.11.D, Zoning and Subdivision Variance Review Standards, ~~for a zoning variance and the Planning Board for a subdivision variance.~~ The Board's decision shall be one of the following:

*c. Only conditions of approval mutually agreed to in writing by both the applicant and the Board of Adjustment are allowed.*

#### **5. Post-Decision Limitations and Actions**

b. Any appeal of the Board of Adjustment's ~~or Planning Board's~~ decision shall be to the Superior Court of New Hanover County, in accordance with state law.

#### **D. Zoning and Subdivision Variance Review Standards**

1. Except as otherwise provided by subsection 2 below, the Board of Adjustment ~~or Planning Board~~ shall grant a variance only if it reaches each of the following conclusions based on findings of fact supported by competent, substantial, and material evidence presented at the hearing:

### **10.3.13. Reasonable Accommodation**

#### **B. Reasonable Accommodation Procedure**

##### **4. Decision-Making Body Review and Action**

*B. The concurring vote of four-fifths of the Board shall be necessary to grant a reasonable accommodation.*

### **10.3.14. Appeal of Administrative Decision**

#### **A. Applicability**

Any person who has standing under N.C.G.S. ~~160D-1402~~ ~~160A-393(d)~~, or the County, may appeal a decision, interpretation, or determination made by the Planning Director or the TRC under this Ordinance to the Board of Appeals in accordance with the procedures and standards in this section and state law.

### **11.5. Change in Kind of Nonconforming Use**

**11.5.3.** A nonconforming accessory use or ~~structure~~ ~~building~~ may only be changed to another nonconforming accessory use or building in accordance with subsection 11.5.2 above. Changes in a principal use are also considered as changes to any accessory use or building for the principal use.

#### **12.2.1. Violations Generally**

A. Any failure to comply with a standard, requirement, prohibition, or limitation imposed by this Ordinance, or the terms or conditions of any permit or other ~~development~~ approval or authorization granted in accordance with this Ordinance shall constitute a violation of this Ordinance punishable as provided in this article.

B. Permits or ~~permit~~ approvals issued by a decision-making body authorize only the use, arrangement, location, design, density or intensity, and development set forth in such permits or development approvals.

#### **12.2.2. Specific Violations**

A. Develop property or a structure without first obtaining all appropriate permits or ~~development~~ approvals, and complying with their terms and conditions.



- B. Occupy or use land or a structure without first obtaining all appropriate permits or ~~development~~ approvals, and complying with their terms and conditions.
- C. Subdivide land without first obtaining all appropriate permits or ~~development~~ approvals required to engage in subdivision, and complying with their terms and conditions.
- D. Excavate, grade, cut, clear, mine, extract earth resources, or undertake any land disturbing activity without first obtaining all appropriate permits and ~~development~~ approvals, and complying with their terms and conditions.
- H. Install, create, erect, alter, or maintain any sign without first obtaining the appropriate permits or ~~development~~-approvals, and complying with their terms and conditions.

### 12.2.3. Responsible Persons

- B. An owner of the property on which a violation occurs, and any tenant or occupant of that property who has control over, or responsibility for its use or development, except tenants shall subject the owner only to civil penalties and/or civil action as set forth in this Ordinance, *N.C.G.S. 160D-404*, and N.C.G.S. §§ 153A-123(a), (c), (d), (e), (f), and (g), and an owner shall not incur criminal penalties for violations by any tenants. The owner's responsibilities in relation to a tenant in no way relieves any tenant from liability for any violations.

## 12.4 Remedies and Penalties

**12.4.1.** This Ordinance may be enforced by any one or more of the remedies authorized by Section 153A-123, N.C.G.S., and in accordance with the provisions of Section *160D-404* ~~153A-324~~, N.C.G.S., including but not limited to the following:

### B. Revocation of Permit or Approval

The *County Planning Director* may revoke any development permit or approval granted under this Ordinance, by written notice to the permit or approval holder *stating the reason(s) for the revocation*, when false statements or misrepresentations were made in securing the permit or approval, work is being or has been done in substantial departure from the approved application or plan, there has been a failure to comply with the requirements of this Ordinance, or a permit or approval has been mistakenly granted in violation of this Ordinance. *The County shall follow the same development review and approval process required for issuance of a development approval, including any required notice or hearing, in the review and approval of any revocation of that approval.*