
Article 1: General Provisions

Section 1.1. Title

This Ordinance shall be officially known as the “Unified Development Ordinance of New Hanover County, North Carolina” and may be referred to as “the Unified Development Ordinance” or “this Ordinance” or the “UDO.”

Section 1.2. Authority

1.2.1. GENERAL AUTHORITY

This Ordinance consolidates the County’s zoning, subdivision, and flood damage prevention regulatory authority as authorized by the North Carolina General Statutes, and is adopted in accordance with:

- A. The authority granted to New Hanover County by the General Assembly of the State of North Carolina;
- B. The North Carolina General Statutes, including:
 - 1. Chapter 153A, Article 6 (General Police Powers);
 - 2. Chapter 160D (Local Planning and 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. *[05-03-2021]*

1.2.2. REFERENCES TO NORTH CAROLINA GENERAL STATUTES.

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

Section 1.3. General Purpose and Intent

It is the purpose of this Ordinance to:

- A. Promote the health, safety, and general welfare of the residents of New Hanover County;
- B. Implement the policies and goals contained within officially adopted County plans;
- C. Preserve the overall quality of life for residents and visitors;
- D. Maintain orderly and compatible land-use and development patterns;
- E. Support long-term community resilience;
- F. Establish clear and efficient development review and approval procedures; and
- G. Accommodate growth and development that complies with the preceding stated purposes.

Section 1.4. Applicability and Jurisdiction

1.4.1. GENERAL APPLICABILITY

The regulations set forth in this Ordinance shall be applicable within the planning jurisdiction of unincorporated New Hanover County, unless land or development is expressly exempted by a specific section or subsection of this Ordinance.

1.4.2. EXEMPTIONS

The following are exempted from this Ordinance:

- A.** Property used for bona fide farm purposes 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. *[05-03-2021]*
- B.** Court-ordered subdivisions of land that comply with state law and all relevant requirements of this Ordinance.

1.4.3. NO DEVELOPMENT UNTIL COMPLIANCE WITH THIS ORDINANCE

- A.** Unless exempted, no land shall be developed without compliance with this Ordinance and all other applicable County, state, and federal regulations.
- B.** No person shall use, occupy, or sell any land or buildings or authorize or permit the use, occupancy, or sale of land or buildings under their control, except in accordance with this Ordinance.
- C.** No building, or portion thereof, shall be erected, used, moved, or altered except in conformity with the regulations specified in the zoning district in which it is located.

Section 1.5. Relationship with the Comprehensive Plan

The New Hanover County Comprehensive Plan serves as the basic policy guide for the regulations included this Ordinance. The policies and actions of the Comprehensive Plan may be amended from time to time to meet the changing requirements of the County in accordance with state law.

Section 1.6. Relationship with other Laws

1.6.1. CONFLICTS WITH OTHER COUNTY CODES OR LAWS

When the requirements of this Ordinance conflict with the requirements of other lawfully adopted rules, regulations, or ordinances of New Hanover County, the more stringent requirements shall govern. The more restrictive provision is the one that imposes greater restrictions or burdens, or more stringent controls.

1.6.2. CONFLICTS WITH STATE OR FEDERAL LAW

If a provision of this Ordinance is inconsistent with a provision found in the law or regulations of the state or federal government, the more restrictive provision shall control, to the extent permitted by law.

1.6.3. RELATIONSHIP TO PRIVATE AGREEMENTS/CONFLICTS WITH PRIVATE AGREEMENTS

Nothing in this Ordinance is intended to supersede, annul, or interfere with any deed restriction, covenant, easement, or other agreement between private parties, but such deed restrictions, covenants, easements and other private agreements shall not excuse any failure to comply with this Ordinance. The County may review private agreements, such as those related to maintenance of private common open space set-asides, but the County shall not be responsible for monitoring or enforcing private covenants and restrictions.

1.6.4. EXISTING AGREEMENTS OR VESTED RIGHTS

Nothing in this Ordinance is intended to repeal, supersede, annul, impair, or interfere with any existing private agreements or vested rights previously adopted or issued in accordance with all applicable laws, provided such agreements or rights are lawfully established and remain in effect.

Section 1.7. Transitional Provisions

1.7.1. EFFECTIVE DATE

This Ordinance was adopted on February 3, 2020 and became effective on February 3, 2020.

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. *[05-03-2021]*

1.7.3. APPROVALS GRANTED BEFORE EFFECTIVE DATE

- A.** Approved zoning permits, building permits, variances, special use permits, subdivision plans, and site plans that are valid on February 3, 2020 shall remain valid until their expiration date. Development may be completed in accordance with such approvals even if such building, development or structure does not fully comply with provisions of this Ordinance. If building is not commenced and diligently pursued in the time allowed under the original approval or any extension granted, then the building, development or structure shall be subject to the requirements of this Ordinance.
- B.** To the extent a prior-approved application proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the provisions of Article 11: Nonconforming Situations.

- C. Any re-application for an expired approval or permit shall comply with the standards in effect at the time of re-application. *[05-03-2021]*
- D. All development and use of land in a PD District that was approved before September 8, 2020 shall comply with the standards approved for that district. The Planning Director may approve minor deviations from the PD District standards identified in Section 10.3.4.C.8.b, Minor Deviations, provided the deviations have no material effect on the character of the approved development. All other modifications of the PD District standards shall be considered major modifications and are subject to the procedures and standards in Section 10.3.4, Master Planned Development. *[09-08-2020]*

1.7.4. APPLICATIONS IN PROGRESS BEFORE EFFECTIVE DATE

- A. Applications 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.
- B. Completed applications shall be processed in good faith and shall comply with any time frames for review, approval, and completion as established in the regulations in effect at the time of application acceptance. If the application fails to comply with the required time frames, it shall expire and future development shall be subject to the requirements of this Ordinance.
- C. An applicant with a pending application accepted before February 3, 2020 may opt to have the proposed development reviewed and decided under the standards of this Ordinance by withdrawing the pending application and submitting a new application in accordance with the standards of this Ordinance. The application submittal fees will be waived for this new application.
- D. An applicant with a pending application for a PD District that was accepted before September 8, 2020 may opt to have the proposed PD District reviewed and decided under either the zoning regulations in effect at the time the application was accepted, in whole, or the procedures and standards of this ordinance, in whole. If the applicant opts to have the proposed PD District reviewed under the procedures of this Ordinance, the applicant shall withdraw the pending application and submit a new application in accordance with the standards of this Ordinance. The application submittal fees will be waived for this new application. *[09-08-2020]*
- E. Except for a PD District approved in accordance with subsection D above, to the extent an application approved under this section proposes development that does not comply with this Ordinance, the development, although permitted, shall be nonconforming and subject to the provisions of Article 11: Nonconforming Situations.

1.7.5. VIOLATIONS CONTINUE

Any violation of the previous Ordinance and other regulations replaced by this Ordinance shall continue to be a violation under this Ordinance, and subject to the penalties set forth in Article 12: Violations and Enforcement, unless the development complies with the express terms of this Ordinance.

1.7.6. NONCONFORMITIES

If any use, structure, lot of record, or sign was legally established on the date of its development, but does not fully comply with the standards of this Ordinance or any amendments thereto, that use, structure, lot of record, or sign shall be considered nonconforming and subject to the provisions of Article 11:: Nonconforming Situations. If a use, structure, lot of record, or sign that was legally nonconforming under the previous Ordinance becomes conforming under this Ordinance, it shall no longer be deemed nonconforming and subject to the provisions of Article 11:: Nonconforming Situations.

1.7.7. PERMIT CHOICE

- 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. *[05-03-2021]*

Section 1.8. Severability

It is the legislative intent of the Board of County Commissioners that if any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity and continued enforcement of any other provision of this Ordinance. The Board of County Commissioners hereby declares that it would have adopted this Ordinance and any section, subsection, sentence, clause, or

phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases of the Ordinance is declared invalid by a court of competent jurisdiction.

Section 1.9. Technical Corrections

The Planning Director is authorized to make corrections of a purely technical nature to this Ordinance to cure typographical, formatting, or other similar errors.