



CAROLINA BEACH
Planning and Zoning Meeting Agenda
Thursday, August 9, 2018 @ 6:30 PM
Council Chambers
1121 N. Lake Park Boulevard
Carolina Beach, NC 28428

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1. CALL TO ORDER	
a. Roll Call	
2. APPROVAL OF MINUTES	
a. Approval of Minutes	2 - 7
3. STAFF REPORT ON RECENT COUNCIL MEETINGS	
4. STAFF REPORT ON RECENT DEVELOPMENTS	
5. DISCUSSION ITEMS	
a. Tree Preservation Ordinance	8 - 31
<p>DISCUSSION: Staff is not recommending an ordinance to move forward to Council at this time. Staff would request direction on any amendments to the landscaping ordinance, if any, and bring back an ordinance for recommendation. Some communities do require tree preservation such as Oak Island, Wilmington, Wrightsville Beach and Emerald Isle (ordinances attached) while others encourage it, but don't require it like Atlantic Beach, Kure Beach, and Kitty Hawk.</p>	
6. NON-AGENDA ITEMS	
7. ADJOURNMENT	



AGENDA ITEM

Meeting: Planning and Zoning - 09 Aug 2018

Prepared By: Andrea Deopp-Norris

Department: Planning

Approval of Minutes

CAROLINA BEACH

Planning and Zoning Minutes
Thursday, July 12, 2018 @ 6:30 PM
Council Chambers
1121 N. Lake Park Boulevard
Carolina Beach, NC 28428

ASSEMBLY

The Town of Carolina Beach Planning and Zoning was held on Thursday, July 12, 2018 at 6:30 PM at Council Chambers.

PRESENT: Chairman Keith Bloemendaal, Committee Member Deb LeCompte, Commissioner Mike Hoffer, Commissioner Jerry Kennedy, Committee Member Wayne Rouse, and Committee Member Melanie Boswell

ABSENT: Vice Chair Nan Toppin

ALSO PRESENT: Assistant Director of Planning & Zoning Jeremy Hardison and Assistant Town Manager Ed Parvin

. **CALL TO ORDER**

. **APPROVAL OF MINUTES**

Planning and Zoning - May 10, 2018 Meeting Minutes

- a. Commissioner Rouse made a motion to approve the minutes as written. Commissioner Hoffer seconded, all in favor (6-0).

. **STAFF REPORT ON RECENT COUNCIL MEETINGS**

Mr. Parvin reported on the most recent Town Council Meeting - July 10, 2018

Updated on previous Council Meeting regarding the Latella Gelato CUP which P&Z recommended and was approved by Council.

On recent Council Meeting they heard the Flood Ordinance, there was a slight change from P&Z's recommendation which was to change to 3 Elevation Certificates and they kept it to 1 at the end. No preliminary and no foundation certificate just 1 at the end just like we have it now.

Chairman Bloemendaal felt not having a preliminary doesn't make much sense.

Commissioner Kennedy stated that not having anyone present to explain what P&Z had wanted to change. Said that one of the Council members kept asking why there were 3 needed and there were financial cost regarding this.

Chairman Bloemendaal mentioned that he had spoke with the Mayor and Councilman Shuttleworth regarding why. But it wasn't relayed at the meeting.

Commissioner Kennedy felt strongly about why they wanted to make the change but was apparent to the people at the meeting it would be an added cost.

Chairman Bloemendaal asked Mr. Parvin in the future when there is a permit submitted for building that's in the flood zone how will you know they're going to build it above flood elevation if they don't have a preliminary elevation certificate, how will you approve the permit without knowing the height.

Mr. Parvin replied there will be a reference level reflecting that but there won't be an actual elevation certificate.

The members discussed that there was only one certificate needed but other communities have 3. Members of the Council asked if adding the additional certificates would this raise our CR's and it does not. With the increased cost and no effect on our rating they weren't in favor of changing this. They asked Mr. Parvin what if a building isn't built at the correct height, which will be discussed later.

Mr. Parvin reported Council voted to continue with the lake dredging hopefully in the fall. Stated that most people were for the continuation and want to see the project completed. The Land Use Update is not on the agenda but wanted to inform them that it will be coming. It could take at least a year and has taken 5 years in the past but we are hoping under 2 years.

STAFF REPORT ON RECENT DEVELOPMENTS

Mr. Hardison reported on the recent activities in the Planning and Development Department regarding permits and violations as well as new businesses. Also mentioned about the FEMA Elevation Grants, which could be 100% FEMA funded or a 90/10 split with the homeowner. He reported on a house that was gutted and vacant for 18yrs and this week the building was demoed. Mr. Parvin added kudos to our Building Inspector and our Code Enforcement Officer for following through with this to make it happen. He also reported on a few private paved parking lots in the CBD that were permitted. He also reported on the Town Projects; Island Greenway, Cape Fear Blvd, Pedestrian Plan, and Ryder Lewis Park. And also reported on Special Events. We are currently working on; Tree Preservation Ordinance, Reorganizing Taxi Ordinance/Vehicles for hire, Wireless Telecommunications Towers, Bulkhead Ordinance, Minimal Commercial Code.

A few commissioners commented on our Code Enforcement Officer Chris Lewis and how professional he was when speaking with them.

Chairman Bloemendaal asked how long will the update take regarding the Town Marina before the public slips are available. Mr. Parvin stated that we are waiting on the CAMA permit for the dredging, staff is building the floating docks, should be a few more months well into the fall, several of the Boat Captains are wanting to tweak the plan a little but will be having a meeting on July 25th to discuss these items.

Commissioner Kennedy asked regarding the FEMA Elevation Grants do the homeowners apply, yes and we keep that list, do they lose their grandfather status and would everything be brought up to current standards, yes and they will be a much better rate. They can elevate within the same footprint but there could be some challenging aspects but the goal is to meet the setbacks. Asked if the Bulkhead Ordinance would be coming to P&Z because it can be a big financial issues and she feels it's more then just a water mitigation.

DISCUSSION ITEMS

- a. Discussion:
 1) What Requires a Permit - Building Inspector
 2) Site Plan, CAMA and Flood Requirements - Planner

1) Darrel Johnson Building Inspector –What Requires a Permit

(See below for Power Point attachment)

QUESTIONS FROM THE BOARD:

Commissioner Rouse asked is there a certain percentage of a home when renovating that would need to be up to code or does the whole building need to be.

Mr. Johnson replied anything new that is done to the building has to meet the current code. If there is a load-bearing wall that is involved that would need to have an engineer to design a beam.

Commissioner Kennedy asked if there would be an expansion of a wall that is not a load-bearing wall would that require a permit. Would a building that is over 50% of the renovation value have to come up to standards. You are getting an estimated dollar value on your building permit, correct.

Mr. Johnson replied yes that would require a demolition permit. A building that is being renovated over 49% and is located in a flood zone that would require to be up to the standard code. We start with the tax assessment amount, they have the option to have an appraisal and we try to guide them in the best way they can. We look out for the best interest of the town but in the same token they need to be honest with us upfront and then we can guide them properly.

Commissioner Rouse asked can you add a bathroom to a home.

Mr. Johnson replied yes you can do additions regarding plumbing. We don't do the trades but what we try to do is to let them know if something will end up costing the homeowner more money and guide them through the process.

Chairman Bloemendaal mentioned that best practice, the homeowner should consult with a licensed general contractor instead of a handyman and then they wouldn't run into the issues that they're having. Also if asked as committee members of the town we need to direct them to the Planning and Zoning Department.

Commissioner Kennedy asked can a homeowner be involved in the permitting process so that they are aware of exactly what the process is.

Mr. Johnson responded yes we make it a point to talk with the owner especially if they find a

discrepancy. We don't get involved with the contractor/homeowners contract but my job is to ensure the building code is met.

Chairman Bloemendaal asked if someone is covering existing siding would that require a permit.

Mr. Johnson responded yes it would because it needs to be installed correctly as well as the material needs to be approved.

Commissioner LeCompte asked if replacing a stove would that require a permit.

Mr. Johnson replied yes if it's a gas stove it would need a permit but through New Hanover trades.

Chairman Bloemendaal asked if just replacing a plug-and-place style electric.

Mr. Johnson replied no that wouldn't require a permit. He had mentioned any land disturbance would require a permit because of the stormwater runoff which has become a very large problem through the state.

Commissioner Rouse asked can you explain what the lien agent does.

Mr. Johnson replied their responsibility is to ensure that the house doesn't have any liens placed against it, it is an insurance policy if there is a lien claimed and the homeowner is charged \$35.00 through the marketing place for such a lien.

Chairman Bloemendaal asked regarding Permit Requirements (e) - I can't get a CO's for the house if someone hasn't looked at a driveway, does that not go against what this says.

Mr. Johnson replied it says - otherwise authorized by law, local, state or federal law. Add as a board going with the tree ordinance that would have to be required and that it's there in place and needs to be abide by that.

Commissioner Kennedy stated that as a local ordinance we can adjust down the road versus state and there are local ordinances that would make life a little easier on the inspector and/or the homeowner.

The Board shared their appreciation for Mr. Johnson's presentation and he in turn shared his appreciation for them by helping him enforce his job.

Chairman Bloemendaal wanted to reiterate as a board if we are asked these questions out in the public and you're not 100% sure of the answer you need to tell them to call the Town's Planning Department.

Commissioner Kennedy wanted to add something regarding social media - we don't make recommendations or opinions but what you want to be able to do is know who you are and know a little bit about what the process is physically what the process is and how to do it and any outcomes or regulations need to be left to the professionals.

2) Miles Murphy Planner - Site Plan, CAMA and Flood Requirements

(See below for Power Point attachment)

ACTION: No action is required

Vote: UNANIMOUS

. **NON-AGENDA ITEMS**

Voting -

Commissioner Kennedy made a motion to keep the current Chairman - Keith Bloemendaal all in favor (6-0).

Voting on Chairman -
Bloemendaal all in favor (6-0).

Voting on Vice Chairman -
LeCompt - 4
Toppin - 2
Commissioner Deb LeCompte is the new Vice Chair

Chairman Bloemendaal asked about the preservation of our vegetation
Mr. Parvin stated we will give you more information regarding that later.

Video Timed Out.

. **ADJOURNMENT**

Commissioner Rouse made a motion to adjourn.
Commissioner Kennedy seconded, all in favor (6-0).



AGENDA ITEM

Meeting: Planning and Zoning - 09 Aug 2018

Prepared By: Jeremy Hardison

Department: Planning

Tree Preservation Ordinance

BACKGROUND:

Councilman Garza requested the Planning & Zoning Commission discuss amending the landscape ordinance to address tree preservation for residential lots to prevent “clear cutting”. Currently the zoning ordinance does not require landscaping or the preservation of trees for one and two-family dwellings. The only requirement for one and two-family development is to mulch, seed, sod, or otherwise protect it to limit erosion from occurring. Commercial and residential development that are three units or more require a landscape buffer around the perimeter of the property. It’s not required to preserve existing vegetation, but if it is done for these types of developments credit is given toward meeting the required buffer yard provided the caliper of the trees is equal to or exceeds the specifications.

In 2005 Council had a similar request and asked staff to review the landscaping ordinance to incorporate the preservation of trees for residential development. The Planning & Zoning Commission had concerns that on a 5,000 sq. ft. lot it is difficult to preserve any trees by the time you clear the lot for the house and driveway, there is not much yard to preserve. The Commission discussed other options that would require tree plantings at the end of construction but did not want to mandate the planting of trees, because not all lots have trees on them prior to building on them. Ultimately it was recommended and adopted to encourage existing trees to be preserved to the extent practical by retaining or planting a minimum of one (1) tree for each two thousand (2,000) square feet of lot area or fraction thereof. The ordinance encouraged preservation or plantings but it was not required and had no teeth and was removed from the ordinance as part of an ordinance update in 2015. Although it is not required the majority of residential development does landscape and plant trees after it is developed.

The state has granted the authority for a municipality to preserve trees on private lots except in conjunction with certain forestry activities. In 2014 there was a bill introduced to the general assembly that would prohibit a municipality from preserving or requiring

plantings on private lots, but it never materialized.

Staff has attached a map and spreadsheet of the total number of vacant lots by each zoning district. The town currently has 17% of all residential lots that are undeveloped.

ACTION REQUESTED:

DISCUSSION:

Staff is not recommending an ordinance to move forward to Council at this time. Staff would request direction on any amendments to the landscaping ordinance, if any, and bring back an ordinance for recommendation. Some communities do require tree preservation such as Oak Island, Wilmington, Wrightsville Beach and Emerald Isle (ordinances attached) while others encourage it, but don't require it like Atlantic Beach, Kure Beach, and Kitty Hawk.

COMMITTEE RECOMMENDATION:

Give staff direction on bringing back any amendment to the landscaping ordinance.

ATTACHMENTS:

- [proposed ord.](#)
- [Vacant Lots](#)
- [Oak Island](#)
- [Emerald Isle](#)
- [Wilmington](#)
- [Wrightsville Beach \(1\)](#)

Sec. 8.7. Tree preservation.

Option 1 – Must keep trees that are not in the construction footprint and replace the trees that are removed with one for one.

1. Existing trees of native species shall be preserved on all *lots* to the extent practical. Existing trees and other vegetation can be used to meet buffer/landscaping requirements in this ordinance.
2. Clearing, grading and other earth disturbing activities shall not occur on any site until a tree/landscaping plan has been submitted and approved for the site. The preservation or site plan for such *developments* shall identify types and locations of existing trees on the site with a caliper of four (4) inches or more and a height of ten (10) feet or more.
3. If an existing tree with a caliper of four (4) inches or more is removed it shall be replaced with a tree of a caliper of four (4) inches. Trees can only be removed for the following reasons:
 - a. Need for access to the building site for construction equipment;
 - b. Location of proposed structure and driveway(s); and
 - c. Location of proposed parking spaces and associated circulation required
4. The following trees can be removed without having to replace them.
 - a. If it is diseased, injured, or is in danger of falling,
 - b. Interferes with existing or proposed utility service,
 - c. Creates unsafe vision clearance,
 - d. Where it interferes with an existing or proposed right-of-way,
 - e. It is in the welfare of the general public that the tree be removed for a reason other than set forth above.

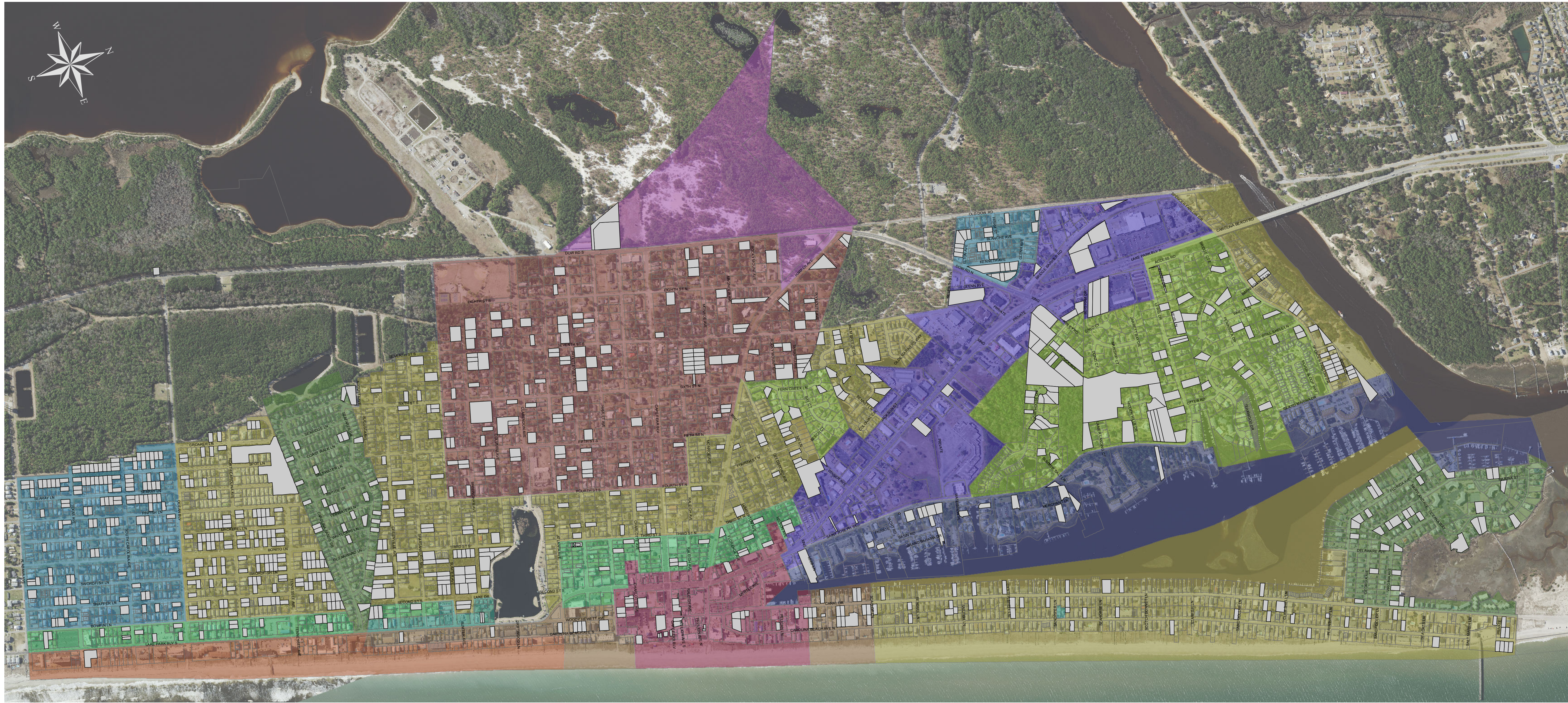
Option 2 – Must provide tree planting at the end of construction, but no requirement to keep trees

Preservation for residential lots.

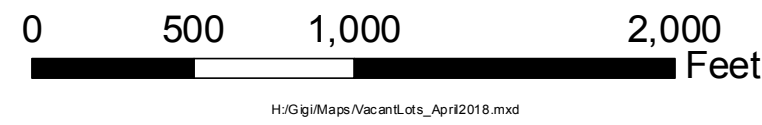
The town requires owners of single family or two-family residential *lots* to observe the objectives of this ordinance by retaining or planting a minimum of one (1) tree for each two thousand (2,000) square feet of *lot* area or fraction thereof. Any portion of any *lot* occupied by a recorded utility easement shall not be included as part of the total *lot* area.

Option 3 – Keep existing ordinance that exempt single and two-family dwellings from meeting landscaping requirements.

Vacant Lots by Zone



Zone	Undeveloped Lots	Total Number of Lots	Percentage Undeveloped
Conservation (C)	2	26	7.7%
Central Business District (CBD)	31	159	19.5%
Neighborhood Goods and Services (NB)	3	31	9.7%
Highway Commercial (HB)	20	115	17.4%
Water-Oriented Businesses (MB-1)	21	253	8.3%
Hotels and Motels (T-1)	21	117	17.9%
Industrial (I)	2	6	33.3%
Multi-Family, Single-Family/Two-Family (MF)	1	90	1.1%
Manufactured Homes, Single-Family/Two-Family (MH)	150	618	24.3%
Mixed Use (MX)	44	265	16.6%
Single-Family/Two-Family (R-1)	324	1652	19.6%
Single-Family (R-1B)	60	479	12.5%
Single-Family (R-2)	64	533	12.0%
Single-Family (R-3)	128	646	19.8%



Legend

Grey square: Vacant Parcels (871)

CBZONING

- CBD
- MX
- HB
- NB
- I-1
- R-1
- MB-1
- R-1B
- MF
- R-2
- MH
- R-3
- T-1

ARTICLE III. - VEGETATION MANAGEMENT PROGRAM

Sec. 32-71. - Purpose of article.

- (a) The purpose of the tree and vegetation preservation program is to provide a means to preserve and manage significant natural areas and specimen trees in the community.
- (b) The objectives of the program are as follows:
 - (1) Maintain and enhance property values;
 - (2) Preserve and enhance the visual appearance of the town;
 - (3) Preserve unique and productive coastal habitats;
 - (4) Reduce the impacts of development on the town's stormwater system;
 - (5) Assist the town in preserving and enhancing the quality of its estuarine waters; and
 - (6) Help create and protect the protective dune systems.

(Ord. of 3-10-2009; Amend. of 5-15-2012; Amend. of 12-9-2014)

Sec. 32-72. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bush hogging. The clearing of a lot using a Bush Hog or similar type mower for the purpose of ridding a lot of vines and shrubs, but leaving trees not small enough to be cut with a Bush Hog (usually with a caliper of greater than five inches at breast height). Bush hogging is done prior to clearing and may be done without obtaining a permit. Rutting and soil disturbance is prohibited.

Caliper. The measurement of the diameter of a tree; measurement is taken at breast height or four and one-half feet above ground level. If a tree splits or forks into multi-trunks, the trunk is measured at its narrowest point below the split or fork.

Clearing. The permitted removal and proper disposal of any existing structures, rubble, brush, trees as well as roots and other debris which might interfere with construction of a permitted building. This may be done only after the issuance of a permit by development services.

Clearing permit. A permit that must be obtained from development services prior to the removal and proper disposal of specimen trees.

Crown. The totality of branches, twigs, and leaves extending from the trunk or main stems.

Drip line. The outside edge of the area underneath a plant which would be encompassed by perpendicular lines dropped from the farthest edges of the crown of the plant.

Dune. Those mounds of sand and/or sand management project areas, either manmade or natural, in existence as of December 10, 1999, and/or those restored by the town or other public entity after that date. A primary dune is the first mound of sand (measured from the ocean) that is six feet taller than the mean flood level for the area. Frontal dunes are the first mounds of sand that have enough vegetation, height and continuity to offer protection.

Fence. A barrier intended to mark a boundary, screen a view or prevent intrusion that is designed and built in a sound workmanlike manner with adequate footings to withstand normal wear while keeping an attractive appearance.

Grading. Altering the shape of the ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping or any combination thereof and shall include the land in its cut or filled condition.

Ground cover. Any plant less than three feet in height.

Introduced plant. Any non-existing plant that is added during the development of a property.

Natural area. An area of at least 50 square feet comprised of native vegetation.

Parking facility. An area used for the parking, storage, or display of motor vehicles, boats, recreational vehicles, etc.

Peninsula. A planting area that extends out into the parking area, and is bounded on three sides by the parking area.

Permeable paving. Any paving which due to its inherent nature, or construction, allows fluids and gases to penetrate through it at least in some areas, as described in the North Carolina Stormwater BMP Manual.

Preserved vegetation. Any plant or groups of plants existing prior to development of a property that is protected so that it remains after the development has been completed.

Pruning. The elimination of live and dead branches from a tree's crown to improve tree structure, enhance vigor and/or maintain safety.

Root protection zone. For a shrub shall be the area contained by the shrub's drip line. The root protection zone for a tree shall be the area defined by a circle with a radius equal to one-third of the drip line, but not less than three feet.

Rut. A long deep track made by the repeated passage of the wheels or tracks of a vehicle.

Shrub. Any plant between three feet and 15 feet in height.

Specimen tree. For the purpose of this chapter, any perennial woody plant, such as a lane shade or pine tree, which usually has one main stem or trunk and the following caliper measurements taken at breast height: a hardwood tree, six inches; a conifer other than species of southern pine, six inches; southern pines, 14 inches; and any small flowering tree; such as crepe myrtle, five inches.

Topping. The severe cutting back of branches to a stub, bud, or a lateral branch not large enough to assume the terminal role.

Town forester. The qualified designated town employee who is assigned by the town manager to carry out the provisions of this chapter.

Tree. Any plant 15 feet in height or over at maturity.

Tree value. For applications under this chapter, the appraised value of a tree based on the latest edition of the "Guide for Plant Appraisal" by the council of tree and landscape appraisers.

Utility. Public utilities, businesses or organizations in the business of supplying communication services, electrical energy, gas, heat, steam, water, or sewage disposal and treatment.

Vegetation plan. A plan submitted to the development services department staff in conjunction with subdivision of land, alteration of an existing drainage system, issuance of a clearing permit, issuance of a building permit, or start of site development. The vegetation plan is a scaled drawing that shows the site information specified in section 32-74. Photographs are not acceptable to locate natural areas and tree heights may be estimated on the plan.

(Ord. of 3-10-2009; Amend. of 5-15-2012; Amend. of 12-9-2014)

Cross reference— Definitions generally, § 1-2.

Sec. 32-73. - Reserved.

Sec. 32-74. - Vegetation plans required.

- (a) A vegetation plan must be submitted to the department of development services for the following actions:
- (1) Recording a subdivision plat;
 - (2) Alteration of an existing drainage system;
 - (3) Issuance of a building permit;
 - (4) Issuance of a development permit.
- (b) Agricultural activities that do not involve artificial drainage of land and the maintenance, alteration, or improvement of an existing structure that does not involve a material increase in impervious surface are exempt from the requirement for a landscape plan.
- (c) The sketch vegetation plan may be prepared in conjunction with the stormwater plan required by article V of chapter 18 of this Code and must include the following information:
- (1) Lot width and length;
 - (2) Front, rear and side setbacks;
 - (3) Location of house, driveway, walkways, and accessory buildings;
 - (4) Species and location of all trees five inches' caliper at breast height and greater noted; trees to be left marked with an (L) on the plan/worksheet (marked with flagging on the ground); trees to be removed marked with an (R) on the plan/worksheet;
 - (5) Location and type of vegetation that will be replaced after development or construction;
 - (6) Location of natural areas to be left;
 - (7) Location of areas to be filled.

(Ord. of 3-10-2009; Amend. of 5-15-2012; Amend. of 12-9-2014)

Sec. 32-75. - Vegetation plan review.

- (a) The vegetation plan will be reviewed by development services staff for compliance with the requirements and guidelines provided in section 32-76.
- (b) Plan submittal, review, and approval are mandatory for any land use activity. Changes made to the approved vegetation plan during the construction process must be approved and documented by development services. Compliance with the approved vegetation plan is required prior to issuance of a certificate of occupancy, and the recording of a final plat for all but single-family residences.

(Ord. of 3-10-2009; Amend. of 5-15-2012; Amend. of 12-9-2014)

Sec. 32-76. - Tree and vegetation guidelines.

Vegetation plans shall comply with the following guidelines:

- (1) Provide for the retention and protection of existing trees and the planting of new trees as follows:
 - a. For lots with available sewer, a minimum of one existing specimen tree shall be saved per 1,450 square feet of lot size except where a determination has been made that the retention of existing trees would interfere with essential site improvements. This determination will be made by the department of development services following consultations with the developer. Every effort will be made to retain and protect specimen trees. If retention is not a viable option, the minimum stocking level required will be dependent upon the number of specimen trees removed from the lot. One tree with a

minimum caliper at breast height of two inches shall be planted for every specimen tree removed from the lot, up to five trees. Lots other than oceanfront properties shall have a minimum of two trees planted prior to completion of development. Oceanfront properties are excluded from the above requirements. Owners of oceanfront properties are encouraged to preserve existing specimen trees, vegetation, and dunes. However, a combination of trees and/or grasses will be planted to provide a planted area of 50 square feet for each 700 square feet of heated area for oceanfront lots.

- b. For lots with no available sewer and a septic system will be used, a minimum of one existing specimen tree shall be saved per 1,625 square feet of lot size except where a determination has been made that the retention of existing trees would interfere with essential site improvements. This determination will be made by the department of development services following consultations with the developer. Every effort will be made to retain and protect specimen trees. If retention is not a viable option, the minimum stocking level required will be dependent upon the number of specimen trees removed from the lot. One tree with a minimum caliper at breast height of two inches shall be planted for every specimen tree removed from the lot, up to five trees. Lots other than oceanfront properties shall have a minimum of two trees planted prior to completion of development.
 - (2) Preserve and protect as much natural area on the site as is practicable. Where existing trees and shrubs are being preserved or replaced, applicants will provide continuous planted areas of at least 50 square feet for every 700 square feet of building area.
 - (3) Incorporate existing vegetation, natural areas, and specimen trees into required shoreline, wetland, and visual buffers where possible.
 - (4) Where vegetation is being replaced, applicants may select plant types from the list provided in Seacoast Plants of the Carolinas (University of North Carolina Sea Grant Program, Publication UNC-SG-73-06), "Trees for Oak Island," or other comparable resources.
 - (5) Applicants shall not completely clear shrubs and grasses in areas designated as preserved natural areas in vegetation plans without the approval of development services.

(Ord. of 3-10-2009; Amend. of 5-15-2012; Amend. of 12-9-2014)

Sec. 32-76.1. - Parking facilities landscaping for new development projects.

- (a) For new development projects requiring more than ten off-street parking spaces, it is required by this chapter that a site plan and parking facility vegetation plan be submitted to the development services staff for review and approval and for purposes of compliance with the requirements of the section.
- (b) *Minimum standards.* At least eight percent of the gross area of a parking facility shall be landscaped.
 - (1) Trees and shrubbery planted pursuant to this section shall include at least one tree with a minimum caliper at breast height of two inches at breast height and six shrubs at least 18 inches in height in at least three gallon containers at planting per 2,500 square feet of parking facility. At least 50 percent of the trees planted shall be of a shade/canopy tree species as defined by the International Society of Arboriculture. (Example: in each required peninsula one tree and six shrubs minimum.)
 - a. All plantings shall be reasonably distributed throughout the parking facility or adjacent to the facility;
 - b. All interior plantings shall be protected by raised concrete curbing or other devices such as wheel stops;

- c. Consecutive parking spaces shall incorporate landscape peninsulas no more than ten spaces apart and at least on the ends of all parking rows. Peninsulas shall contain at least 100 square feet in area and at least eight feet in width, measured from back of curb/barrier to back of curb/barrier.
 - d. Lots less than 15,000 square feet shall meet a landscape standard of at least six percent of the gross area of a parking facility with vegetation selected from a list maintained by development services of one tree with a minimum caliper of three inches at breast height and four shrubs at least 18 inches high in at least three gallon pots per 1,800 square feet of parking facility.
- (c) When a parking facility is within 50 feet of the public right-of-way, a perimeter planted strip shall be installed, consisting of a low buffer incorporated into the streetyard.
 - (d) The development services staff may waive all or part of the requirements of this section for any facility which is limited to periodic or intermittent use for vehicular parking, such as parking lots for churches or recreational facilities, provided the parking facility is completely covered by grass or otherwise presents a landscaped effect.
 - (e) The development services staff may waive the requirements of this section for temporary parking lots when determined that a waiver is necessary to relieve hardship and will not violate the purposes of this section. Any such waiver shall not exceed one year.

(Ord. of 3-10-2009; Amend. of 5-15-2012; Amend. of 12-9-2014)

Sec. 32-76.2. - Tree and shrub preservation.

- (a) A major objective of this Code is to encourage the preservation of existing vegetation wherever possible while allowing quality development to take place. To qualify for landscape, buffer and screening requirements, the following measures shall be required for preserved trees and shrubs:
 - (1) Protective fencing not less than four feet high or other construction barrier shall be placed at and completely encompass the root protection zone of all preserved plants.
 - (2) Any tree whose root protection zone will be affected by soil removal shall have roots cut clearly by trenching at a point at least one foot outside the construction barrier installed as required above.
 - (3) The following shall be prohibited within the root protection zone of any preserved plant:
 - a. Grading and excavation which involves cutting or filling to a depth of more than three inches;
 - b. Installing, depositing, placing, storing, or maintaining any stone, brick, sand, concrete or other materials which may impede the free unobstructed growth of or passage of water, air, and fertilizer to the roots;
 - c. No storing of any construction materials within the root protection zones of the preserved vegetation;
 - d. Attaching any sign, poster, notice or other object, or fastening any guy wire, cable, rope, nail, screw, or other device to any preserved plant for any reason other than that of a protective nature to the plant;
 - e. Causing or encouraging any fire or burning of any kind near or around any plant;
 - f. Parking or operating construction or passenger vehicles of any type within the root protection zone.
- (b) The pouring of any material on the ground that is toxic to plants, e.g., gasoline, oil-based paints, shall be prohibited.

(Ord. of 3-10-2009; Amend. of 5-15-2012; Amend. of 12-9-2014)

Sec. 32-76.3. - Landscaping maintenance for projects other than single family residential.

The owner and/or their agent shall jointly and severally be responsible for the maintenance of landscape improvements and other requirements of this Code. The requirements of this Code shall be maintained according to the following:

- (1) All landscaping shall be maintained in a neat and orderly manner.
- (2) Preserved vegetation which dies within five years from the date of completed construction shall be replaced by approved introduced plants within 12 months of loss. Failure to do so will result in a penalty being assessed by the town council.
- (3) Introduced plants which die within the first five years of establishment shall be replaced with plants of similar variety and size within six months of loss. Failure to do so will result in a penalty being assessed as outlined in subsection (2) above.
- (4) Although not mandatory, pruning should be done according to National Arborist Association pruning standards.

(Ord. of 3-10-2009; Amend. of 5-15-2012; Amend. of 12-9-2014)

Sec. 32-77. - No clearing without permit.

No clearing or removal of vegetation other than bush hogging shall be permitted on any undeveloped lot or parcel or any lot or parcel to be redeveloped without a valid land use permit from the town. The following activities are exempt from this section: bona fide forestry and agricultural practices, hobby farms (such as vegetable or flower gardens and nurseries), gardening or landscape maintenance, and minor clearing of vegetation for line-of-sight surveying, footpaths, and minor clearing and/or cutting of grasses, weeds, vines and so on as required for responsible property maintenance. Vegetative material will be disposed of properly as indicated in section 24-65.

(Ord. of 3-10-2009; Amend. of 5-15-2012; Amend. of 12-9-2014)

Sec. 32-78. - Flexible setbacks.

The allowable building area on each lot or parcel may be moved toward one side lot line and either the rear lot line or the front street line a distance of up to 25 percent of the required setback for the zoning district for the purpose of preserving natural areas and/or specimen trees. This section does not increase the maximum permitted length and width of the allowable building area. Such setback or yard modifications must be approved by the development services staff in writing prior to construction beginning. Setback adjustments must be notated in the final survey.

(Ord. of 3-10-2009; Amend. of 5-15-2012; Amend. of 12-9-2014)

Sec. 32-79. - Enforcement; penalties for violations of article.

Any person removing vegetation from a lot or tract in violation of the requirements of this article shall be subject to a civil penalty of \$500.00 as permitted by G.S. 14-4. The department of development services may stay enforcement of the civil penalty if the offender replants the disturbed area in accordance with an approved vegetation preservation plan that meets the guidelines of subsection 32-74(c) and section 32-76. Appeals of decisions of the department of development services concerning enforcement of this article may be made to the board of adjustments within ten days of the decision. Appeals to the board of adjustments shall be made in accordance with section [18-334 of this Code].

(Ord. of 3-10-2009; Amend. of 5-15-2012; Amend. of 12-9-2014)

6.4 - DUNES AND VEGETATION PROTECTION

6.4.1 - Intent

This section 6.4 has been created to regulate development and redevelopment within the Town to ensure compatibility with the environmentally sensitive nature of the unique coastal landforms contained within the community. Development and redevelopment of property shall be regulated by the underlying zoning designation already in place as well as the regulations contained herein in order to achieve the following:

(1) **Natural Features and Attractiveness**

Preserve the natural features and visual attractiveness of the area. Such features include ocean frontal dunes, naturally vegetated areas, interior dune topography, maritime forest areas, and estuarine buffer areas.

(2) **Soil Stabilization**

Preserve vegetation acting as soil stabilizers, and that provide wind or salt mist intrusion protection value, including the dune ridge plants and naturally vegetated forested areas, and that absorb storm water runoff and reduce flooding concerns.

(3) **Natural Topography**

Preserve to the greatest extent possible the existing and natural topography of the Town.

(4) **Rights of Property Owners**

Preserve the rights of property owners to develop their property while understanding the impact of development on the natural environment.

6.4.2 - Applicability

These regulations shall apply to all lots of record within the Town, including but not limited to all previously developed lots of record within the Town. Unless exempted by section 6.4.3, a dunes and vegetation permit shall be obtained pursuant to section 2.4.11 for all new development, redevelopment, or disturbance of previously developed lots within the Town. Such permit must be obtained prior to any land disturbing activity and/or tree removal. All proposed new development and redevelopment applications, as well as all proposed disturbance of previously developed lots shall be reviewed by the dunes and vegetation protection inspector (DVPI). The issuance of a permit by the DVPI allowing any site disturbance on a parcel of land does not confer onto the property owner or their agent(s) the legal authority to begin any construction project. The property owner or their agent(s) are required to obtain all other necessary permits, including but not limited to a zoning permit and a building permit, prior to the commencement of any construction project.

6.4.3 - Exemptions

The following activities are considered exempt from this section 6.4:

- (1) Removal of sand, seashells, or similar small materials in such amounts as may be carried easily upon the person;
- (2) The normal maintenance of any lot or parcel including, but not limited to, lawn maintenance, the relocation, removal, and/or replacement of shrubs, and the cutting and/or removal of nuisance vegetation;
- (3) The removal of trees with a caliper less than three (3) inches at a height of thirty-six (36) inches;

- (4) Pruning of vegetation with a caliper greater than three (3) inches at a height of thirty-six (36) inches, provided that such pruning shall not be designed to result in the eventual death of the tree or other vegetation;
- (5) The cutting of brush or vegetation by a registered land surveyor or engineer for the purpose of completing survey work on a parcel of property;
- (6) The cutting of brush or vegetation to allow for the evaluation of a parcel for wastewater system purposes;
- (7) The clearing of no more than five hundred (500) square feet of property to allow for the incidental use of an undeveloped property by the owner;
- (8) The removal of trees under the following circumstances:
 - (A) The tree poses a safety hazard to pedestrians or vehicular traffic or threatens to cause disruption of public service;
 - (B) Poses a safety hazard to a building;
 - (C) Is diseased or weakened by age, so as to pose a safety hazard;
 - (D) Is necessary to foster productive growth of adjacent trees and vegetation;
 - (E) Will be replaced with another tree of at least a three-inch caliper as measured at a height of thirty-six (36) inches;
- (9) Nothing in this section 6.4 shall be construed to allow the willful destruction of any identified frontal or interior dune or allow alteration of the natural topography of a lot without first applying for a permit as prescribed in this Ordinance. Such actions shall constitute a violation of this Ordinance.

6.4.4 - Design Standards

The following design standards shall be adhered to in order to protect the unique natural features and vegetation of the Town:

(1) **New Development and Redevelopment**

(A) **Site Selection**

In designing the location of a proposed development on a parcel of property, the Town in coordination with the property owner will consider the most suitable building sites on a given parcel of land to be those areas that will require the minimum alterations of the natural vegetation and topography to accommodate the proposed development project.

(B) **Least Disturbance**

Where vegetation must be removed for the building site(s), the most suitable site(s) shall be those that disturb the minimum number of healthy trees.

(C) **Residential Area Natural Area Designation**

For residential properties, there shall be a minimum of thirty-five (35) percent of the total lot area designated as natural area established in the following manner:

- (i) The applicant must demonstrate for the DVPI where the mandatory thirty-five (35) percent natural area shall be designated on the property. This area, marked on the submitted site plan, shall be staked off on the property for verification by the DVPI before the commencement of construction. During construction this area shall be left in its natural state. Appropriate actions shall be taken by the applicant to protect this area from disturbance.

- (ii) Where practical, the Town encourages property owners/developers to maintain a natural area buffer ten (10) feet in width from the front and rear property lines, excluding the driveway cut allowing vehicular access to the lot, and a five-foot buffer from the side property lines. This area shall count towards the mandatory thirty-five (35) percent natural vegetative area. Pruning or removal of vegetation in this area shall be permitted in accordance with the regulations contained within this section 6.4. The applicant shall be required to demonstrate to the DVPI where the remaining percentage of natural area shall be designated on the property. If the fringe buffer area, as defined above, satisfies the thirty-five (35) percent requirement then the applicant is not responsible for preserving any additional natural vegetation on the property.

(D) Commercial Area Natural Area Designation

For commercial properties, the area left in a natural vegetative state shall be designated as follows:

- (i) The percentages of site area shown in Table 5.1 shall be maintained.
- (ii) In cases where a commercial property abuts Emerald Drive (Hwy 58) a minimum of five-foot buffer of green or natural area, consisting of grass, flowers and shrubs not exceeding three (3) feet height, shall either be left bordering the street or planted in order to provide the required buffer. Branches of trees retained or established in the five-foot buffer area may be trimmed or cut up to a maximum of ten (10) feet as authorized by the DVPI. Additionally, the DVPI may require that trees be retained or established every fifteen (15) feet in this area.
- (iii) For all commercial property, natural area can be utilized to support on-site septic systems.

(E) Topography

The finished topography of any lot altered shall be aligned with and graded with existing neighboring elevation in such a manner as to minimize erosion. In any case where two (2) feet of fill are added to a lot, the lot owner shall be required to obtain an engineered storm water plan indicating that the use of fill shall in no way create a burden on adjacent property;

(F) Stable Slopes

Areas where land-disturbing activities have created slopes in excess of three (3) to one (1) shall require a retaining wall to stabilize the slope and preserve vegetation on, above, and below the slope;

(G) Shared Driveways

The use of shared driveways is encouraged. Driveways shall follow the natural contour lines of the land insofar as possible. Driveway construction and connection with local rights-of-way shall be in accordance with this Ordinance;

(H) Interior Dunes

Designs that minimize the degree of alteration to interior dunes to the maximum extent practical are encouraged.

(2) Disturbance of Previously Developed Lots where Additional Development is Planned

(A) Site Selection

In designing the location of additional development on a previously developed lot, the Town considers the most suitable building sites on a given parcel of land to be those areas that will require the minimum alterations of the existing natural vegetation and topography

of the parcel to accommodate the additional development after considering the practical limitations created by the existing development.

(B) Least Disturbance

Where vegetation must be removed for the building site(s), the most suitable site(s) shall be those that disturb the minimum number of healthy trees after considering the practical limitations created by the existing development.

(C) Percentage of Natural Area

The minimum percentages of natural areas, as described within this Ordinance for properties within all zoning districts shall conform to the standards set for in this Unified Development Ordinance.

(D) Topography

The finished topography of any lot altered shall be aligned with and graded with existing neighboring elevation in such a manner as to minimize erosion. In any case where two (2) feet of fill are added to a previously developed lot, the lot owner shall be required to obtain an engineered storm water plan indicating that the use of fill shall in no way create a burden on adjacent property.

(E) Stable Slopes

Areas where land-disturbing activities have created slopes in excess of three (3) to one (1) shall require a retaining wall to stabilize the slope and preserve vegetation on, above, and below the slope.

(F) Interior Dunes

Designs that minimize the degree of alteration to interior dunes to the maximum extent practical are encouraged.

6.4.5 - Natural Area Restrictions

(1) Topography

The topography of the designated natural area shall not be altered. No land disturbing activity is permitted in the designated natural area.

(2) Natural Vegetation

(A) Permitted Removal

The removal of natural vegetation in the natural area that has a caliper less than three (3) inches at a height of thirty-six (36) inches is permitted without authorization from the DVPI. The removal of natural vegetation in the natural area that has a caliper greater than three (3) inches at a height of thirty-six (36) inches shall not be removed unless authorized by the DVPI, and meets the following criteria:

- (i) Poses a safety hazard to pedestrians or vehicular traffic or threatens to cause disruption of public service;
- (ii) Poses a safety hazard to a building; or
- (iii) Is diseased or weakened by age, so as to pose a safety hazard;
- (iv) Is necessary to foster productive growth of adjacent trees and vegetation;
- (v) Will be replaced with another tree with at least a three-inch caliper.

(B) Nuisance Vegetation

The removal of nuisance vegetation is permitted in the natural area without authorization from the DVPI.

(C) **Planting of Additional Foliage**

Nothing in this section 6.4 shall be deemed to restrict the planting of additional foliage within the designated natural area.

6.4.6 - Special Restrictions on Oceanfront and Estuary Lots

(1) **Oceanfront Lots**

The removal of any and all vegetation within the ocean-erodible setback area, as defined by the North Carolina Division of Coastal Management, is hereby prohibited, except for the construction of walkways and other structures designed to provide ocean access.

(2) **Estuary Lots**

The removal of any and all vegetation within the estuarine setback area shall be in accordance the regulations of the North Carolina Division of Coastal Management.

(3) **Special Restrictions**

The special restrictions included in this section 6.4.6 supersede other restrictions contained in this section 6.4.

6.4.7 - Variances

The Board of Adjustment shall have the authority to vary the percentage of the lot or parcel that shall be left in its natural state where, owing to special conditions, a literal enforcement of the provisions of this section 6.4 will, in an individual case, result in practical difficulty or unnecessary hardship so that the spirit of this section 6.4 shall be observed, public safety and welfare secured, and substantial justice done. Variances shall be granted in accordance with the procedures and criteria outlined section 2.4.17, Variances.

DIVISION II. - TREE PRESERVATION

Sec. 18-455. - General.

Vegetation existing on a site at the time of development that is required to be retained in accordance with the following provisions shall be inventoried on a tree survey. The inventory and identification shall be performed by a qualified professional and the location of existing vegetation shall be performed and certified by a professional land surveyor, and submitted as part of the site plan application. The inventory must include the size and species of each protected tree. The inventory must clearly indicate trees that are to be retained, and those for which removal is proposed. Areas that are designed as tree protection areas and that will not be disturbed can be delineated as such and do not require inventorying individual trees.

(Ord. No. O-2008-25, 4-8-08; Ord. No. O-2010-91, § 29, 12-7-10)

Sec. 18-456. - Protected trees.

The following categories of existing vegetation shall be considered protected and shall be retained as indicated:

- (a) *Regulated trees.* Hardwood trees at least eight (8) inches DBH, all conifer trees at least twelve (12) inches DBH, and all dogwoods, magnolias, other ornamental flowering trees, and American hollies at least four (4) inches DBH anywhere on the site shall be considered regulated and protected, and shall be preserved according to this chapter and incorporated into required landscaping. If these trees are removed, regardless of location on the site, they shall be mitigated with replacement trees in accordance with section 18-460, or by use of credits in accordance with section 18-448, unless the trees are shown to be dead, dying or greater than fifty (50) percent damaged or diseased as a result of natural factors, or are otherwise exempted from mitigation. The total number of replacement trees shall be determined pursuant to section 18-460.
- (b) *Significant trees.* Hardwood, long leaf pine, pocosin (pond) pine, black pine, and non-pine conifer trees at least twenty-four (24) inches DBH, all other pines at least thirty-two (32) inches DBH, and dogwoods, magnolias, American hollies and other ornamental flowering trees at least eight (8) inches DBH, anywhere on the site shall be considered significant and protected, and shall be preserved according to this chapter and incorporated into required landscaping. If these trees are removed, regardless of location on the site, they shall be mitigated with replacement trees in accordance with section 18-460, or by use of credits in accordance with section 18-448, unless the trees are shown to be dead, dying or greater than fifty (50) percent damaged or diseased as a result of natural factors, or are otherwise exempted. The total number of replacement trees shall be pursuant to section 18-460.
- (c) *Street yards.* Any regulated or significant trees within required street yards shall be retained and supplemented as necessary to meet the street yard planting requirements.
- (d) *Buffers.* Any existing trees or shrubs within required buffers shall be retained and supplemented as necessary with other plantings, fences, or berms to meet the buffer requirements. Vines and weeds may be cleared by hand or with hand-held tools, including hand-held power tools to improve the appearance of the buffer.

(Ord. No. 0-2008-25, 4-8-08; Ord. No. O-2012-85, Exh. A, § 26, 12-4-12)

Sec. 18-457. - Retention standards for protected trees.

Protected trees may be removed only if essential site improvements, as defined in Article 15 of this chapter, cannot be accommodated elsewhere on the site. If any protected trees are to be cleared from

the site for essential site improvements, the proposed removal must be indicated, the reasons for doing so shall be clearly stated on the tree survey, and a tree removal permit must be obtained pursuant to Division III of this article. Such factors as nonselective clearing by bulldozer is less expensive than selective clearing by chainsaw or removal to accommodate nonessential site improvements shall not be valid reasons for removal of protected trees. Clearing of sites shall be limited to areas approved for construction.

- (a) Every reasonable effort shall be made to protect and retain existing trees and shrubs not actually lying in planned roadways, drainage ways, building foundation footprints, and construction activity areas. Applicants shall contact the reviewing agency and the reviewing agency will determine whether a meeting is required prior to site plan development to evaluate the site and tree retention opportunities. Roadways and building sites should be planned to minimize the removal of protected trees.
- (b) No land disturbance, including removal of any trees, is permitted on areas outside of necessary grading limit for essential site improvements other than necessary to tie back into the existing contours, or to meet landscaping requirements.
- (c) Significant trees must be preserved inside the limits of disturbance where possible. Trees requiring removal will be mitigated pursuant to section 18-460.
- (d) Land clearing and construction contractors shall receive adequate instruction on tree protection requirements and methods.
- (e) The following may be required or permitted by the reviewing agency to accommodate protected trees:
 - (1) Site sensitivity in location and designing parking, stormwater facilities, utilities, streets, and buildings in relation to existing topographic features and vegetative cover. Adjustments to the location or positioning of essential site improvements that do not compromise the intended use may be required.
 - (2) Reduction of parking to the minimum required per the zoning ordinance for the appropriate use.
 - (3) Reduction in required street yards, landscape islands, foundation plantings, or setbacks for the purpose of retaining trees.
- (f) Wooded sites shall be developed with careful consideration of the natural characteristics of the site. Forested areas and vegetated areas unsuitable for development shall be preserved to the greatest extent practical and set aside as conservation areas, stormwater treatment areas, or open space.
- (g) A minimum of fifteen (15) trees at least two (2) inches DBH shall be retained or planted on the parcel for each acre or proportionate area disturbed by development.

(Ord. No. 0-2008-25, 4-8-08; Ord. No. O-2012-85, Exh. A, § 27, 12-4-12)

Sec. 18-458. - Tree protection during construction.

- (a) To preserve existing trees specified on the required landscape plan to remain on the site as a function of fulfilling purposes of this section, the critical root zone shall be protected by proper installation of barricades and signage from vehicular movement, material storage, compacting, grading, excavating, and other development related activities during construction and in the final landscape design.
- (b) The critical root zone (CRZ) shall be protected during construction by approved tree protection fencing and practices. Tree protective fencing shall be shown on site plans and grading plans around each tree, cluster of trees, at perimeter of tree-save areas, and at limits of disturbance. No equipment is allowed on the site until all tree protection fencing and silt fencing has been installed

and approved. Tree protective fencing shall remain in place through completion of construction activities.

- (c) If the entire CRZ cannot be preserved, the disturbed area shall extend no closer to the protected tree trunk than one half ($\frac{1}{2}$) the radius of the CRZ. In no case can more than forty (40) percent of the CRZ be disturbed.
- (d) Disturbance of the CRZ will only be allowed on one (1) side of the retained tree and only with prior approval by the appropriate reviewing agency.
- (e) Prior to grading, tree roots shall be pruned using appropriate arboriculture pruning tools and practices.
- (f) Disturbance other than that allowed on the approved plan, including incorrectly placed tree protection fencing or improper root pruning constitutes negligence and will require the owner to post an irrevocable letter of credit or other means of financial assurance approved by the reviewing agency for three (3) years to provide for mitigation of the tree per section 18-460 to be released if determined by the reviewing agency that the tree is not at risk of dying due to the disturbance.
- (g) Any person who is responsible for failing to properly install or maintain protection measures pursuant to this article shall be subject to a fine of five hundred dollars (\$500.00) per day and a stop work order shall be placed on the project. The owner of the property shall also be a jointly and severally responsible party if the improper practices are conducted by an employee, agent, or other person under the control, employ, or direction of the property owner.

(Ord. No. 0-2008-25, 4-8-08; Ord. No. O-2012-85, Exh. A, § 28, 12-4-12)

Sec. 18-459. - Negligence.

If a tree required to be protected is destroyed, substantially damaged, or dies as a result of negligence or failure to comply with the requirements of this section on the part of any property owner and/or agent of the owner, within three (3) years after completion of construction, then replacement trees of a similar species shall be planted on the site pursuant to section 18-460.

Sec. 18-460. - Mitigation.

- (a) Protected trees. Protected trees shall be mitigated on the site using trees of equal or higher value in Table IV and of the size specified in section 18-448.
- (b) Significant trees. The total number of replacement trees shall be determined by multiplying the total DBH of the removed significant trees by two (2) times the percentage for the type of tree in Table IV and dividing by three (3).
- (c) Regulated trees. The total number of replacement trees shall be determined for regulated trees removed by multiplying the total DBH of the removed regulated tree(s) by the percentage for the type of tree in Table IV and dividing by three (3).
- (d) A minimum growing area of one hundred forty-four (144) square feet of pervious surface shall be provided for each replacement tree.
- (e) Pines may be mitigated on site with long-leaf pine plugs spaced ten (10) feet apart at a rate of one (1) plug per inch DBH of the removed tree multiplied by the percentage in Table IV divided by three (3). Alternatively, up to one-half ($\frac{1}{2}$) of the pine plugs required for replacement may be substituted with replacement hardwoods of equal or higher value in Table IV at the rate of one (1) hardwood per pine plug required.
- (f) If in the determination of the city manager, the site cannot accommodate the required numbers of trees or pine plugs, then only the amount of trees or pine plugs which can be accommodated on the site will be replaced and the remainder of caliper inches shall be mitigated through a payment in lieu of providing on-site trees. This payment shall be made into the City Tree Improvement Fund to be

used for plantings of public spaces in the general vicinity of the project. The amount of the payment shall be in accordance with the pricing standards of the respective jurisdiction.

- (g) Mitigation payment in lieu will not be required if in the judgment of the reviewing agency trees are retained on the site to the maximum extent practical, and the following conditions are met:
- (1) The site has a definable street yard with canopy that exceeds the standard width made up at least in part by retained tree clusters;
 - (2) The site exceeds the buffer requirements, at least in part by retained trees, tree clusters, and vegetation;
 - (3) The site exceeds the interior parking area landscaping minimum percent coverage requirements, at least in part by retained trees and tree clusters; and
 - (4) A minimum DBH of one hundred seventy-five (175) inches per acre of trees of two (2) inches DBH or greater is retained on the site in natural clusters.
- (h) Any mitigation trees required as a result of the removal of protected tree(s) shall not be counted to meet the requirements of the street yard, buffers or interior parking requirements. These trees must be provided in addition to any tree required by this ordinance.

(Ord. No. 0-2008-25, 4-8-08; Ord. No. O-2012-85, Exh. A, § 29, 12-4-12)

Sec. 18-461. - Exemptions to mitigation.

- (a) Protected trees removed within the footprint of the lot coverage are exempt from mitigation, provided the total building footprint does not exceed twenty-five (25) percent of the total lot area, and provided that the applicant has designed around trees in order to retain as many trees as practicable.
- (b) Regulated trees removed within the area of disturbance necessary for essential site improvements are exempt from mitigation, provided the applicant has designed around trees in order to retain as many trees as practicable.
- (c) Protected trees that are removed by spading the trees and planted elsewhere on the site are exempt from mitigation. Additionally, protected trees that are removed by spading and accepted by the city for planting on public property at the location designated by the city manager are exempt from mitigation. Any tree that has been transplanted for the purpose of this section and that becomes diseased or dies within three (3) years of transplanting shall be replanted by the party requesting the exemption with a tree of the same species and size or mitigated pursuant to this article.

(Ord. No. 0-2008-25, 4-8-08)

Sec. 18-462. - Landscaping plans.

Landscaping plans shall be submitted before or at the time of application for the building permit for all development projects. These plans shall contain the following information.

- (a) Date of plan preparation.
- (b) Project name and description of land use.
- (c) Project owner and mailing address.
- (d) A map at a scale of one (1) inch equals one hundred (100) feet (1"=100') or less showing:
 - (1) North arrow.
 - (2) Scale.

- (3) Approximate locations, species, and critical root zones of all protected trees. Groves of protected trees that will not be disturbed may be labeled as such on the map, stating the approximate number of protected trees and species mix, without specifying data on each individual tree.
- (4) Note on plan stating that prior to any clearing, grading, or construction activity, tree protection fencing will be installed around protected trees or groves of trees. No construction workers, tools, materials, or vehicles are permitted within the tree protection fencing.
- (5) Locations, dimensions, and square footages of required buffer yards and parking lot landscaping.
- (6) Details of required landscaping showing species, dimensions, and spacing of planted materials and the use and protection of existing vegetation.
- (7) All existing and proposed utilities and if applicable, their associated easements.
- (8) Location and square footage of structures and parking lots.
- (9) Adjacent zoning districts.
- (10) Approximate locations of all trees greater than eight (8) inches DBH within required buffers and of all areas of natural vegetation to be used as part of the buffer.
- (11) Setbacks of all structures and specifications and shielding of certain uses, as required.
- (12) Locations of any conservation resources associated with the parcel including any rare and endangered species in accordance with the North Carolina Wildlife Resources Commission.
- (13) Proposed schedule for landscaping.
- (14) Approximate location of all existing protected trees clearly indicating those to be retained and those proposed for removal and all trees to be planted on site to meet any mitigation requirements.
- (15) Triangular sight distance.

(Ord. No. 0-2008-25, 4-8-08; Ord. No. O-2012-85, Exh. A, § 30, 12-4-12)

Secs. 18-463—18-470. - Reserved.

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Section 155.9.23 Tree Preservation.**(A) Purpose.**

(1) The purpose of this section is to protect important trees located at Wrightsville Beach, to provide wildlife habitat, to provide stabilization of sand and soil, and to provide a vital link in natural stormwater management through absorption. Trees act as a filter helpful to maintaining the health and quality of waters.

(2) The objectives of this section are as follows:

- (a) Maintain and enhance property values;
- (b) Preserve and enhance the visual appearance of the Town of Wrightsville Beach;
- (c) Preserve unique and productive coastal habitats;
- (d) Reduce impacts of development on the town's stormwater system;
- (e) Assist the town in preserving and enhancing the quality of its estuarine waters; and
- (f) Increase tree canopy.

(B) Tree Protection Permit Required.

(1) No protected tree shall be removed or be caused to be removed, through injury or damage, from public or private property without first obtaining and having an approved tree removal permit. Removal of any protected tree is prohibited except in accordance with an approved tree protection plan. The following tree removal activities may be undertaken without an approved tree protection plan and that is consistent with good horticultural practices:

- (a) Clearing or maintenance of town rights-of-way.
- (b) Clearing or maintenance required by the town in accordance with Section 2.6 (Site Visibility Triangle).
- (c) Emergencies. During the period of an emergency such as a hurricane, tropical storm, flood, ice storm or any other act of nature that causes damage to a tree such that it imperils life, property, or other trees.
- (d) A permit shall not be required in order to remove minor tree limbs or to do other minor pruning.
- (e) Hazardous trees. In the event that any tree shall be determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and requires immediate removal without delay, verbal authorization may be given by the Planning and Inspections Department and the trees removed without obtaining a written permit as herein required.

(2) Public utilities removing trees or cutting trees in conjunction with construction, maintenance or repair of utility lines shall be subject to the following requirements:

- (a) A public utility shall submit a tree protection plan and shall acquire a tree protection permit before removing any protected tree within a utility easement or right-of-way. There shall be no charge for such permit.
- (b) A public utility shall submit a tree protection plan and shall acquire a tree protection permit before undertaking any tree trimming or pruning activities in connection with the construction, maintenance or repair of utility lines within a utility easement or right-of-way. There shall be no charge for such permit.

(C) Tree Protection Permit Application and Procedure. A tree removal application and tree protection plan must be filed with the town and approved by the UDO Administrator or their designee prior to protected tree removal. Requests for multiple tree removal shall be specified on the application. A permit will be issued for any approved plan. The fee for submission of a plan is set forth in the schedule of fees.

(1) Tree protection plans submitted in connection with applications for permits for the removal, relocation or replacement of trees shall include the following information and details which shall be summarized on the plan:

- (a) Name of property owner.
- (b) Date, including the month, day, and year that the original drawing was completed and the month, day, and year for each revision to the original drawing.
- (c) Location of all existing or proposed structures, improvements and site uses, property dimensions and referenced property lines, setback and yard requirements as they apply to tree removal.
- (d) The common names, sizes and location of all protected trees on the site, designating the trees which are respectfully to be retained, removed, relocated, or replaced. Trees proposed for removal shall be marked with an "X" through the tree symbol in the document. Trees not marked shall be conserved.
- (e) The location and type of trees that will be planted after development or construction and the time frame for completion of such planting.

(2) The UDO Administrator or his or her designee will review the tree protection plan according to the requirements in this section.

(D) *Standards for Plan Approval or Denial.* Protected trees are to be retained and protected to the maximum extent feasible. The UDO Administrator or his or her designee shall issue or deny a tree permit within five business days of receiving application for such. No permit shall be issued for the removal of protected trees unless one of the following conditions exists:

(1) The tree is located in the buildable area of a yard area where a structure or improvements may be placed and it unreasonably restricts the permitted use of the property and such trees cannot reasonably be relocated elsewhere on the property. Necessity to remove trees in order to construct proposed improvements as a result of the following:

(a) Need for access to the building site for construction equipment;

(b) Essential grade changes for surface water drainage and utility installations;

(c) Location of proposed structure and required driveway(s); and

(d) Location of proposed parking spaces and associated circulation required to be installed by Article 155.9, Part I.

(2) The tree cannot be relocated on or off the site because of the age, type, or size of the tree.

(3) The tree is diseased, injured, in danger of falling, too close to existing or proposed structures, interferes with existing utility service, creates unsafe vision clearance, or conflicts with other ordinances or regulations.

(4) Where tree removal is consistent with an approved subdivision plat or site plan.

(5) It is in the welfare of the general public that the tree be removed for a reason other than set forth above.

(6) If a plan is approved that allows the removal of protected trees, the approval shall be conditioned upon compliance with a mitigation plan meeting the standards of the mitigation policy in subsection 155.9.23(F).

(E) *Tree Protection During Construction.* Tree preservation is a pre-planning activity and will be thoroughly considered prior to development of engineering and/or architectural plans and prior to initiation of construction projects. Protected trees shall be guarded during development against the following:

(1) Unnecessary cutting, breaking or skinning of roots.

(2) Skinning and bruising of bark.

(3) Excessive vehicular and foot traffic within drip lines.

(4) Parking vehicles within drip lines.

(5) During the land clearing and construction stage of development, the developer shall erect and maintain protective barriers (to the Building Inspector's specifications consistent with good management practices) around all trees or groups of trees to be protected. The developer shall not allow the movement of equipment or the storage of equipment, materials, debris or fill to be placed within the protective barrier.

(6) During the construction stage of development, the developer shall not allow the cleaning of equipment or material within the drip line of any tree or groups of trees to be protected. Neither shall the developer allow the disposal of waste materials such as paint, oil solvents, asphalt, concrete, mortar and so on within the drip line of any tree or groups of trees.

(7) No attachments or wires other than those of a protective nature shall be attached to any tree.

(8) Soil disturbances within the drip line of a protected tree shall be limited to two inches in depth removed or two inches in depth added. Any soil added under the drip line of the tree shall be a loamy soil mix to ensure minimal compaction.

(9) During land clearing and construction stage of development, the UDO Administrator shall periodically inspect the site to insure compliance with the provisions of this section.

(10) Tree location and replacement activity permitted or required under this section shall be done in accordance with standard forestry practices and procedures, and all such plantings shall be reasonably maintained and attended to promote successful establishment thereof.

(F) *Tree Loss Mitigation Policy.* To offset negative impacts to natural environment, aesthetics, and property values of Wrightsville Beach and to uphold the intent of this section, the following tree replacement schedule shall be followed, which shall be in addition to any and all fees and/or fines paid or incurred by a party that removes or alters a tree, the effect of which is to eliminate it.

(1) All protected trees removed shall be replaced in accordance with the following criteria:

(a) All trees required by this section, all trees on town-owned property and other protected trees, excluding specimen trees, shall be replaced in a one-to-one ratio with trees that at maturity will be of comparable DBH and height of the tree removed. All replacement trees shall have a DBH of at least three inches when planted.

(b) Specimen trees shall be replaced on a two-to-one ratio with trees of the same species. All replacement trees shall have a DBH of at least three inches when planted.

(c) All mitigation shall occur on the property where the tree was removed. Mitigation in connection with construction shall be completed prior to issuance of a certificate of occupancy.

(2) Tree loss mitigation shall not take effect when a tree removed is that lost to natural causes, such as age, disease, or storm, or other causes beyond the control of the landowner and property developer, such as a car crash or fire for which no party is found responsible. Tree loss mitigation shall take effect for all other trees allowed to be removed by permit from the UDO Administrator or by variance from the Board of Adjustment as well as for those trees altered or removed in violation of this section.

(3) A developer or property owner may be excused from the requirement to install new required trees that would cause the lot in question to contain more than five total protected trees, to include new and existing trees, if the UDO Administrator determines that the size of a given property and presence of existing vegetation is such that the introduction of a significant number of new trees may be detrimental to both existing vegetation and proposed trees. The decision of the UDO Administrator in such matter shall be final.

(G) *Penalties.*

(1) Any person who violates the provisions of Article 155.9, Section 9.23, Tree Preservation, shall be deemed guilty of a misdemeanor or infraction punishable as provided in NCGS 14-4 and shall be subject to a maximum fine upon conviction of up to \$2,500. Additionally, conviction thereof shall be grounds for the revocation or suspension of any permit granted for the construction or remodeling of any building or structure on the site so involved.

(2) The violation of the provisions of Article 155.9, Section 155.9.23, Tree Preservation, shall subject the offender to a civil penalty for each violation as follows:

(a) The removal of each protected tree, excluding specimen trees, without first obtaining an approved tree removal permit, shall subject the offender to a civil penalty in the amount of \$500.

(b) The removal of each specimen tree without first obtaining an approved tree removal permit shall subject the offender to a civil penalty in the amount of \$1,000.

(c) The violation of any other provision of Article 155.9, Section 155.9.23, Tree Preservation, shall subject the offender to a civil penalty of \$50 for each violation.

(d) Each day that a violation of Article 155.9, Section 155.9.23, Tree Preservation, as described in subsection (G)(2)(c) above continues shall constitute a separate and distinct offense and shall be subject to a fine of \$50 per day.

(3) No building permit or certificate of occupancy shall be issued for any improvements upon a property where the provisions of Article 155.9, Section 155.9.23, Tree Preservation, have not been complied with. A stop work order shall be issued until violations of the provisions of Article 155.9, Section 155.9.23, Tree Preservation, are corrected and until all fines and penalties are paid.

(4) The UDO Administrator may defer any civil penalty levied under the provisions of Article 155.9, Section 155.9.23, Tree Preservation, if the offender obtains an approved tree permit and if the offender replants the disturbed area in accordance with an approved tree protection plan meeting the requirements of Article 155.9, Section 155.9.23, Tree Preservation.

(5) Damages to protected trees shall be repaired to the maximum extent possible. Each tree removed, destroyed, or damaged in violation of Article 155.9, Section 155.9.23, Tree Preservation, shall be considered a separate offense.

(Ord. 1695, passed 11-8-12)