

ARTICLE 12. ZONING AND SPECIAL USE PERMIT APPROVAL

Section 12-1: Permits Required (Amended 8/2/2021)

- (A) Subject to Article 18 (Regulations for Signs), the use made of property may not be substantially changed, substantial clearing, grading, or excavation may not be commenced, and buildings or other substantial structures may not be constructed, erected, moved, or substantially altered except in accordance with and pursuant to one of the following permits:
- (1) A development permit issued by the administrator.
 - (2) A special use permit issued by the Town Council.
 - (3) Floodplain development permit.
 - (4) Watershed protection permit. (Amended 6/5/2017)
- (B) Development permits, special use permits, and sign permits are issued under this Ordinance only when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this Ordinance if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, and except as otherwise provided in Section 12-13, all development shall occur strictly in accordance with such approved plans and applications.
- (C) Physical improvements to land to be subdivided may not be commenced except in accordance with a special use permit issued by the Town Council.
- (D) A development permit, special use permit, or sign permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal and shall be accompanied by a signed affidavit designating such agent), shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements lawfully imposed by the permit-issuing authority. All such permits issued with respect to tracts of land in excess of one acre (except sign permits and development permits for single-family and two-family residential uses) shall be recorded in the Robeson County Registry after execution by the record owner as provided in Section 12-11.

Section 12-2: No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled (Amended 8/2/2021)

Issuance of a special use or development permit authorizes the recipient to commence the activity resulting in a change in use of the land or (subject to obtaining a building permit) to commence work designed to construct, erect, move, or substantially alter building or other substantial structures or to make necessary improvements to a subdivision. However, except as provided in Section 12-10, the intended use may not be commenced, no building may be occupied, and in the case of

subdivisions, no lots may be sold until all of the requirements of this Ordinance and all additional requirements imposed pursuant to the issuance of a special use permit have been complied with. Section 12-2 does not apply to the presale of subdivision lots as provided for in Section 24-20. (Amended 6/5/2017)

Section 12-3: Who May Submit Permit Applications (Amended 8/2/2021)

- (A) Applications for zoning, special use, or sign permits or subdivision plat approval will be accepted only from persons having the legal authority to take action in accordance with the permit or the subdivision plat approval. By way of illustration, in general this means that applications should be made by the owners or lessees of property, or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this Ordinance, or the agents of such persons (who may make application in the name of such owners, lessees, or contract vendees).
- (B) The administrator may require an applicant to submit evidence of his authority to submit the application in accordance with Subsection (A) whenever there appears to be a reasonable basis for questioning this authority.

Section 12-4: Applications To Be Complete (Amended 8/2/2021)

- (A) All applications for zoning, special use, or sign permits must be completed before the permit-issuing authority is required to consider the application.
- (B) An application is complete when it contains all of the information that is necessary for the permit-issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this Ordinance.
- (C) The administrator shall make every effort to develop application forms, instructional sheets, checklists, or other techniques or devices to assist applicants in understanding the application requirements and the form and type of information that must be submitted. In cases where a minimal amount of information is necessary to enable the administrator to determine compliance with this Ordinance, such as applications for development permits to construct single-family or two-family houses, or applications for sign permits, the administrator shall develop standard forms that will expedite the submission of the necessary plans and other required information.

Section 12-5: Staff Consultation After Application Submitted (Amended 8/2/2021)

- (A) Upon receipt of a formal application for a zoning or special use permit, or subdivision plat approval, the administrator shall review the application and confer with the applicant to ensure that he understands the planning staff's interpretation of the applicable requirements of this Ordinance, that he has submitted all of the information that he intends to submit, and that the application represents precisely and completely what he proposes to do.

- (B) If an application is for a special use permit or subdivision plat approval, the administrator shall place the application on the agenda of the appropriate board when the applicant indicates that the application is as complete as he intends to make it. However, if the administrator believes that the application is incomplete, he shall recommend to the appropriate board that the application be denied on that basis.

Section 12-6: Development Permits (Amended 8/2/2021)

- (A) A completed application form for a development permit shall be submitted to the administrator by submitting an application.
- (B) The administrator shall issue the development permit unless he finds, after reviewing the application, that:
- (1) The requested permit is not within his jurisdiction according to the Table of Permissible Uses, or
 - (2) The application is incomplete, or
 - (3) If completed as proposed in the application, the development will not comply with one or more requirements of this Ordinance (not including those requirements when a variance has been granted or those the applicant is not required to comply with under the circumstances specified in Article 8, Nonconforming Situations).
- (C) If the administrator determines that the development for which a development permit is requested will have or may have substantial impact on surrounding properties, he shall, at least 10 days before taking final action on the permit request, send a written notice to those persons who have listed for taxation real property any portion of which is within 150 feet of the lot that is the subject of the application, informing them that:
- (1) An application has been filed for a permit authorizing identified property to be used in a specified way,
 - (2) All persons wishing to comment on the application should contact the administrator by a certain date, and
 - (3) Persons wishing to be informed of the outcome of the application should send a written request for such notification to the administrator.

Section 12-7: Authorizing Use or Occupancy Before Completion of Development Under Development Permit (Amended 8/2/2021)

In cases when, because of weather conditions or other factors beyond the control of the zoning-permit recipient (exclusive of financial hardship), it would be unreasonable to require the zoning-permit recipient to comply with all requirements of this Ordinance prior to commencing the intended

use of the property or occupying any buildings, the administrator may authorize the commencement of the intended use or the occupancy of buildings (insofar as the requirements of this Ordinance are concerned) if the permit recipient provides a performance bond or other security satisfactory to the administrator to ensure that all of the requirements of the Ordinance will be fulfilled within a reasonable period (not to exceed 12 months) determined by the administrator. Upon completion of development, a certificate of zoning compliance shall be issued by the Administrator prior to the issuance of a certificate of occupancy. *(Amended 6/5/2017)*

Section 12-8: Authorizing Use, Occupancy, or Sale Before Completion of Development Under Special Use Permits *(Amended 8/2/2021)*

- (A) In cases when, because of weather conditions or other factors beyond the control of the special use permit recipient (exclusive of financial hardship) it would be unreasonable to require the permit recipient to comply with all of the requirements of this Article before commencing the intended use of the property or occupying any buildings or selling lots in a subdivision, the permit-issuing board may authorize the commencement of the intended use or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this section are concerned) if the permit recipient provides a performance bond or other security satisfactory to the board to ensure that all of these requirements will be fulfilled within a reasonable period (not to exceed 12 months).
- (B) When the developer proposes in the plans submitted to install amenities beyond those required by this Article, the Council may authorize the permittee to commence the intended use of the property or to occupy any building or to sell any subdivision lots before the additional requirements are fulfilled or the amenities installed if it specifies a date by which or a schedule according to which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:
 - (1) A performance bond or other security satisfactory to the Council is furnished;
 - (2) A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when application for renewal is made;
 - (3) The nature of the requirements or amenities is such that sufficient assurance of compliance is given by Section 7-4 (Penalties and Remedies for Violations) and Section 7-5 (Permit Revocation).
- (C) With respect to subdivisions in which the developer is selling only undeveloped lots, the Council may authorize final plat approval and the sale of lots before all the requirements of this Article are fulfilled if the subdivider provides a performance bond or other security satisfactory to the Council to ensure that all of these requirements will be fulfilled within not more than 12 months after final plat approval.

Section 12-9: Completing Developments in Phases

- (A) If a development is constructed in phases or stages in accordance with this section, then, subject to Subsection (C), the provisions of Section 12-2 (No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled) and Section 12-10 (exceptions to Section 12-2) shall apply to each phase as if it were the entire development.
- (B) As a prerequisite to taking advantage of the provisions of Subsection (A), the developer shall submit plans that clearly show the various phases or stages of the proposed development and the requirements of this Article that will be satisfied with respect to each phase or stage.
- (C) If a development that is to be built in phases or stages includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or tennis courts in a residential development) then, as part of his application for development approval, the developer shall submit a proposed schedule for completion of such improvements. The schedule shall relate completion of such improvements to completion of one or more phases or stages of the entire development. Once a schedule has been approved and made part of the permit by the permit-issuing authority, no land may be used, no buildings may be occupied, and no subdivision lots may be sold except in accordance with the schedule approved as part of the permit, provided that:
 - (1) If the improvement is one required by this Article then the developer may utilize the provisions of Section 12-9(A) or (C).
 - (2) If the improvement is an amenity not required by this Article or is provided in response to a condition imposed by the Council, then the developer may utilize the provisions of Section 12-9(B).

Section 12-10: Expiration of Permits (Vested Right Provisions are provided in Article 4, Part II)
(Amended 8/2/2021)

- (A) Zoning, special use, and sign permits shall expire automatically if, within six (6) months after the issuance of such permits, the use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use.
- (B) If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one year, then the permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 12-11.

Section 12-11: Effect of Permit on Successors and Assigns *(Amended 8/2/2021)*

- (A) Zoning, special use, and sign permits authorize the permittee to make use of land and structures in a particular way. Such permits are transferable. However, so long as the land

or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:

- (1) No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit, and;
 - (2) The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit is obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued, so long as the persons who subsequently obtain an interest in the property had actual or record notice (as provided in Subsection (b)) of the existence of the permit at the time they acquired their interest.
- (B) Whenever a zoning or special use permit is issued to authorize development (other than single-family or two-family residences) on a tract of land in excess of one acre, nothing authorized by the permit may be done until the record owner of the property signs a written acknowledgment that the permit has been issued so that the permit may be recorded in the Robeson County Registry by the Town of Pembroke and indexed under the record owner's name as grantor.

Section 12-12: Amendments to and Modifications of Permits

- (A) Insignificant deviations from the permit (including approved plans) issued by the Town Council, the Board of Adjustment, or the administrator are permissible and the administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernable impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
- (B) Minor design modifications or changes in permits (including approved plans) are permissible with the approval of the permit-issuing authority. Such permission may be obtained without a formal application, public hearing, or payment of any additional fee. For purposes of this section, minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
- (C) All other requests for changes in approved plans will be processed as new applications. If such requests are required to be acted upon by the Town Council or Board of Adjustment, new conditions may be imposed, but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.

- (D) The administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in Subsections (A), (B), and (C).
- (E) A developer requesting approval of changes shall submit a written request for such approval to the administrator, and that request shall identify the changes. Approval of all changes must be given in writing.

Section 12-13: Reconsideration of Council/Board Action (Amended 8/2/2021)

- (A) Whenever (i) the Town Council disapproves a special use permit application, or (ii) the Board of Adjustment disapproves an application for a variance, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the respective board at a later time unless the applicant clearly demonstrates that:
 - (1) Circumstances affecting the property that is the subject of the application have substantially changed, or
 - (2) New information is available that could not with reasonable diligence have been presented at a previous hearing. A request to be heard on this basis must be filed with the administrator within the time period for an appeal to superior court (see Section 7-6). However, such a request does not extend the period within which an appeal must be taken.
- (B) Notwithstanding Subsection (A), the Town Council or Board of Adjustment may at any time consider a new application affecting the same property as an application previously denied. A new application is one that differs in some substantial way from the one previously considered.

Section 12-14: Applications to be Processed Expeditiously

Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary costs on the appellant or applicant, the town shall make every reasonable effort to process appeals and permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this Ordinance.

Section 12-15: Maintenance of Common Areas, Improvements, and Facilities (Amended 8/2/2021)

The recipient of any zoning, special use, or sign permit, or his successor, shall be responsible for maintaining all common areas, improvements, or facilities required by this Ordinance or any permit issued in accordance with its provisions, except those areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so

that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

Section 12-16: Special Use Permits Objectives and Purpose *(Amended 8/2/2021, 4/4/2022)*

Special uses add flexibility to the Zoning Ordinance. Subject to high standards of planning and design, certain property uses are allowed in the several districts where those uses would not otherwise be applicable. By means of controls exercised through the special use permit procedures, property uses which would otherwise be undesirable in certain districts can be developed to minimize any bad effects they might have on surrounding properties. Approval of a special use permit is made the duty of the Town of Council.

The uses for which special use permits are required are listed in the chart accompanying this section, along with a detailed description of the procedures which must be followed in the approval of each such permit. Uses specified in this section shall be permitted only upon the issuance of a special use permit.

Section 12-17: Procedure for Special Use Permit Granted by the Town Council *(Amended 1/4/2016, 8/2/2021, 4/4/2022)*

Special use permits may be issued by the Administrator, after approval by the Town Council, for the uses as designated in the table of regulations for special uses. The petition for a special use permit and the accompanying plans shall be submitted to the Administrator at least three weeks prior to the regular monthly Town Council meeting at which it is to be heard. Such application shall include all of the requirements pertaining to it as specified in this section. The Town Council shall give notice of a public hearing ten days prior to the date of the public hearing (see Section 6-2). Town Council consideration of special use permits are quasi-judicial decisions approved by a simple majority vote. Quasi-judicial decision must be conducted in accordance with Article 6. At the quasi-judicial public hearing, all directly affected persons shall be permitted to testify (see Sections 6-3 through 6-6). The Town Council shall consider the application and may approve or deny the requested special use permit.

The special use permit, if approved, shall include approval of plans as may be required. In approving the permit, the Town Council shall find as a specific finding of fact and reflect in their minutes that the permit will comply with the following four facts:

- (A) That the use will not materially endanger the public health, safety, or general welfare if located where proposed and developed according to the plan as submitted and approved;
- (B) That the use meets all required conditions and specifications;
- (C) That the use will not adversely affect the use or any physical attribute of adjoining or abutting property, or that the use is a public necessity; and

- (D) That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located. The special use shall demonstrate conformance to the Land Use Plan or other plan in effect at the time and address impacts of the project as required by GS 160A-382(b).

In approving the special use permit, the Town Council may impose reasonable and appropriate conditions and safeguards upon the approval. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Town Council. The applicant/landowner must consent in writing to all conditions imposed by the special use permit. Conditions and safeguards imposed under this subsection shall not include requirements for which the town does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the town, including without limitation, taxes, impact fees, building design elements within the scope of NCGS 160D-702(b), driveway related improvements in excess of those allowed in NCGS 136-18(29) and 160A-307, or other authorized limitations on the development or use of land. All specific conditions shall run with the land and shall be binding on the original applicant for the special use permit, the heirs, successors, and assigns. In order to ensure that such conditions and requirements for each special use permit will be fulfilled, the petitioner for the special use permit may be required to enter into a contract with the Town of Pembroke providing for the installation of the physical improvements required as a basis for the issuance of the special use permit. Performance of said contract shall be secured by cash or surety bond which will cover the total estimated cost of the improvements as determined by the Town of Pembroke; provided, however, that said bond may be waived by the Town Council within its discretion.

If the Town Council denies the permit, they shall enter the reason for its action in the minutes of the meeting at which the action is taken.

No appeal may be taken to the Board of Adjustment from this action of the Town Council in granting or denying a special use permit. Any such action by the Town Council shall be considered as the equivalent of action on a proposed zoning amendment and shall be reviewable only in the same manner as action on a proposed amendment.

In addition to the conditions specifically imposed by the Town Council, special uses shall comply with the height, area, and parking regulations of the zone in which they are located.

In the event of failure to comply with the plans approved by the Town Council or with any other conditions imposed upon the special use permit, the permit shall thereupon immediately become void and of no effect. No building permits for further construction nor a certificate of compliance under this special use permit shall be issued, and the use of all completed structures shall immediately cease and such completed structures not thereafter be used for any purpose other than a use-by-right as permitted by the zone in which the property is located.

Where plans are required to be submitted and approved as part of the application for a special use permit, modifications of the original plans may be authorized by the Town Council.

Following approval of the special use permit, an additional more detailed site plan may be required in accordance with Article 13 Site Development Plans and Design Requirements.

Section 12-18: Table of Regulations for Special Uses (Amended 8/2/2021, 4/4/2022)

Detailed regulations for each special use are set forth in this section.

Use – For the uses listed in Article 10, Table of Permitted Uses, the following information must be submitted with the request for special use permit approval in the districts specified:

Minimum Lot Area: See Table of Yard, Area, and Height Requirements.

Buffering: As specified in Article 16 of this Ordinance, buffering shall be required by the Town Council.

Plans are required and must show:

- (A) Plans Required. The application shall be accompanied by a site plan drawn to scale, and necessary supporting text which shall include the following information:
- (1) Name, address, and phone number of the property owner or his or her agent, and the tax parcel number of the property. The property owner or his or her authorized agent are the only two parties who may initiate a request for a special use permit.
 - (2) A boundary survey and vicinity map, showing the property's total acreage, zoning classification(s), general location in relation to adjoining streets, railroads and/or waterways, date and north arrow.
 - (3) The owner's names and addresses, tax parcel numbers and existing land use(s) of all adjoining properties.
 - (4) Proposed use of all land and structures including the number of residential units, if applicable.
 - (5) Proposed number and location of all structures, their approximate area and their approximate exterior dimensions, including building height.
 - (6) All existing easements, reservations and rights-of-way.
 - (7) Delineation of areas located within a regulatory floodplain, as shown on the official Federal Emergency Management Act (FEMA) flood hazard boundary maps for the county.

- (8) Traffic, parking and circulation plans, showing the proposed location and arrangement of parking spaces and ingress and egress to adjacent streets.
- (9) The location and description of all proposed signage.
- (10) Description/definition of how the property is classified on the Town of Pembroke Comprehensive Plan Future Land Use Map.

(B) Additional Information.

- (1) In the course of evaluating the proposed special use, the Town Council may request additional information from the applicant. A request for any additional information may stay any further consideration of the application by the Town Council until the requested information is received and evaluated.
- (2) This information may include, but shall not be limited to, the following:
 - (a) Stormwater drainage plan.
 - (b) Existing and proposed topography at five-foot contour intervals or less.
 - (c) The existing and proposed location of all water and sewer lines and fire hydrants intended to serve the proposed development.
 - (d) Proposed design/exterior appearance of structures to ensure general consistency with adjacent properties/structures.
 - (e) Lighting plan, inclusive of wattage and illumination.
 - (f) An environmental impact statement which contains the following information:
 - (i) A cover sheet which provides, in summary form, a description of the proposed project;
 - (ii) A statement of purpose and need of the project;
 - (iii) For projects proposed by public entities, a list of alternatives of the proposed project;
 - (iv) A succinct description of the environment affected by the project;

- (v) A discussion of short- and long-term consequences of the project on the environment including any adverse environmental impacts which cannot be avoided; and
- (vi) A list of means which could be employed to mitigate any negative effects on the environment caused by this project.
- (g) A description of all screening and landscaping required by these regulations and/or proposed by the applicant.
- (h) Proposed phasing, if any, and approximate completion time for each phase and the complete project.

Other Requirements: The Town Council may provide additional requirements as it deems necessary in order to make the proposed project more compatible with adjacent areas and existing or proposed traffic patterns.