

# **OCRACOCKE DEVELOPMENT ORDINANCE**

**Adopted by the Hyde County  
Board of Commissioners April 21, 1986  
1st Amendment November 6, 1989**

**Amended and Adopted in whole  
as amended by the Hyde County  
Board of Commissioners  
April 20, 1998  
1<sup>st</sup> Amendment September 6, 2005  
2<sup>nd</sup> Amendment November 20<sup>th</sup>, 2006**

## **ARTICLE I - AUTHORITY, TITLE, PURPOSE, AREA**

### **IA. AUTHORITY, TITLE**

The Hyde County Board of Commissioners, under the authority granted by Chapter 153A, Article 18 and Section 153-A, 121; 153-A, 122; and 153-A, 123 of the North Carolina General Statutes, hereby enacts an ordinance which shall be called the “Ocracoke Development Ordinance.”

### **IB. PURPOSE**

The purpose of this ordinance is to promote the public health, safety and general welfare by regulating the density of population; the size of yards and other open spaces; the height, size and location of buildings and other structures; to provide for an adequate transportation system; and to provide for adequate drainage, water supply, and sewage disposal.

### **IC. AREA**

Pursuant to G.S. 153A-342, that part of Ocracoke Island outside the boundaries of the Cape Hatteras National Seashore, including streams, creeks, ponds, harbors and the Pamlico Sound within one-half mile (0.5) of shore, as shown on the map which is adopted as a part of this ordinance and which shall be identified as the “Ocracoke Development Ordinance Map” is designated as a zoning area. The map shall contain the signatures of the Chairman of the Hyde County Board of Commissioners and the Clerk to the Board together with the seal of the County and the date of adoption of this ordinance. The official map shall be maintained in the office of the Hyde County Building Inspector, and two official copies shall be retained by the Chairman of the Board of Adjustment, one of which, shall be posted at a public place on Ocracoke Island. This ordinance shall apply only within such zoning area.

## **ARTICLE II - ADMINISTRATIVE AND ENFORCEMENT**

**IIA.** The Hyde County Board of Commissioners shall appoint a development ordinance officer who shall be responsible for the administration and enforcement of the ordinance.

### **IIB. Permit Required**

After the effective date of this ordinance, no building or structure shall be constructed, used or occupied and no land shall be used except in conformity with all of the applicable requirements of this ordinance. A development permit shall be required before any land is used or before any building or structure is constructed, moved or modified. A development permit shall be required before changing the use of any building structure or land. The development permit shall expire by limitation six (6) months from date it was issued if the work authorized by the permit has not begun. If the work is begun and then discontinued for twelve (12) months, the permit shall expire and no further work shall be performed until a new permit has been secured.

## III. CONTENTS OF PERMIT APPLICATION

An original and three copies of the application and all supporting documents shall be submitted to the Building Inspector. Each application shall be supported with a plat, plans, and additional documentation which shall contain the following:

1. A plot plan of the lot. It should show the lot shape, the names of the road on which it is located, if such is named, and the dimensions of the property. The plot plan should be drawn to scale and the scale shown;
2. The location and sizes of any buildings that are presently located on the lot and shown to scale on the plot plan;
3. The location and sizes of all proposed buildings or alterations, so designated and shown to scale on the plot plan;
4. The floor area of each building, existing and proposed. If multi-story, show for each floor.
5. The proposed use of the land and buildings;
6. If parking spaces are required, the required number, shown where they are to be located on the plot plan, and the total area of parking required;
7. The area of any surface that is impervious to water, shown on the plot plan.
8. If the property is located adjacent a body of water or marsh area, the distance from the development to the body of water or marsh area to be shown on the plot plan.
9. On a section drawing show by dimension the elevation of the first floor from the average grade of the property, and the heights of additional floors and the roof. Show any allowable structure proposed to extend above the roof line, with their dimensions, including height.
10. The number of families, housekeeping units or rental units the building is designed to accommodate;
11. Approval of the method for sewage disposal and water supply by the appropriate authority.
12. Certification that applicant will comply with all other laws and regulations which relate to the development of the subject property.
13. Any additional information which may be required to determine conformance with and to provide for the enforcement of this ordinance.

## IID. APPLICATION AND PERMITS PROCEDURE

### 1. Standard Procedure

An original and three copies, (each of which shall be stamped "COPY") of the application, plans, and all additional information submitted shall be filed with the Building Inspector. The Building Inspector shall at the same time send two copies of the application and all documents as filed to the Development Ordinance Enforcement Officer. The Building Inspector shall set the date for posting in the Ocracoke Post Office information concerning the application a minimum of three days after the documents are placed in the mail to the Development Ordinance Enforcement Officer. The posting by the Development Ordinance Enforcement Officer shall state the name of the person to contact, and phone number, for an appointment to review the application, and the address of the Building Inspection Department where all written comments are to be sent.

In order that the Development Ordinance Enforcement Officer may have an opportunity to consider any questions or objections before a permit is issued for any use of land or construction of a building or structure, persons having questions or objections may present them, in writing, to the Building Inspector, who shall inform the Development Ordinance Enforcement Officer of the questions or objections. The permit shall not be issued before the Development Ordinance Enforcement Officer has advised the Building Inspector concerning any questions or objections that have been made, and in no event less than ten (10) days after information concerning the application has been posted in the Post Office.

A decision on the permit application shall be made within twenty (20) days of the posting. After a permit has been issued or denied, any person aggrieved may appeal to the Board of Adjustment (see ARTICLE IV B 1).

After deciding upon an application for a permit, the Building Inspector shall mark the original and two (2) copies approved or disapproved, with a signed and dated explanation in the case of disapproval. One copy, along with the plans or sketch and a sheet containing information from the application, shall be sent by the Building Inspector to the Chairman of the Board of Adjustment, who shall post notice of the Building Inspector's decision in the Ocracoke Post Office. This first copy of the application and all accompanying documents shall be placed in the Ocracoke files of the Board of Adjustment. The second copy shall be returned to the applicant; in case of approval this copy shall be available on the construction site until completion of the project. The original of the application and accompanying documents shall be filed at the building Inspection Department.

### 2. When No Permit Required

Before beginning any construction, remodeling, or alteration Owners are encouraged to contact the Building Inspection Department to discuss the proposed project. The Building Inspector will decide whether a permit is required or not based on information received.

### **III. NON-CONFORMING SITUATIONS**

Within the jurisdiction of this ordinance there presently exist lots, uses and structures that were lawful before this ordinance was adopted or amended but which do not meet the development standards imposed by this ordinance. These non-conforming situations may continue, but there shall be no enlargement, expansion, or increase in their nonconformity. A single family dwelling may be built on any non-conforming lot which is in existence at the time of the adoption of this ordinance, for which an improvement permit can be issued by the Hyde County Health Department but in all other aspects it must comply with this ordinance. All other buildings and uses established after the effective date of the ordinance shall comply with the development standards unless they qualify for a variance under Article IV. Any destroyed non-conforming building may be rebuilt to its original dimensions if a permit for rebuilding is applied for within one hundred eighty (180) days from the date of destruction. Thereafter, it shall not be rebuilt except in conformity with the development standards of this ordinance.

### **III.F. VIOLATIONS**

If the Development Ordinance Officer finds that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for the violation, indicating the nature of the violation and ordering the action necessary to correct it. When a complaint is reviewed and found to be valid, a stop-work notice will be posted on the site and a certified letter will be sent to the violator in question within ten(10)days from the Ocracoke Development Officer. Under N.C.G.S. 153A-123 any person found in violation of the Ordinance shall be charged with a fine of \$ 50.00 per day. Each day the violation exists will be a separate offense and an additional \$ 50.00 per day will be assessed the violator. Violations of this ordinance shall be a misdemeanor under G. S. 14-4 and each day the violation continues shall be a separate offense. Notwithstanding the criminal penalties, the County may institute a civil action against the offender seeking enforcement by appropriate equitable remedy, injunction and order of abatement or by any remedy authorized by G. S. 153A-123 as amended.

### **III.G. Issuance of a Certificate of Occupancy**

All improvements shall be installed in concurrence with the building permit prior to the issuance of an occupancy permit including site improvements. The Building Inspector and Development Ordinance Officer shall both approve the Certificate of Occupancy before it is issued.

## TABLE OF DEVELOPMENT STANDARDS

**IIIA.** The following development standards are adopted for the classes indicated:

| BUILDING CLASSIFICATION   | SINGLE FAMILY AND TWO FAMILY RESIDENCE INCLUDING THOSE WITH LESS THAN FOUR HUNDRED (400) SQUARE FEET OF FLOOR AREA IN COMMERCIAL USE   | BUILDINGS USED FOR ANY PURPOSE OTHER THAN SINGLE FAMILY OR TWO FAMILY RESIDENCE |   |   |
|---|--|---|---|---|
|   |  | LESS THAN FIFTEEN HUNDRED (1500) SQUARE FEET OF FLOOR AREA                      | AT LEAST FIFTEEN HUNDRED (1500) BUT LESS THAN THREE THOUSAND (3000) SQUARE FEET OF FLOOR AREA | THREE THOUSAND (3000) SQUARE FEET OR MORE OF FLOOR AREA |
| MINIMUM LOT SIZE SHALL BE SUFFICIENT TO MEET THE REQUIREMENTS OF THE COUNTY HEALTH DEPARTMENT AND TO PROVIDE FOR ADEQUATE PLACEMENT OF STRUCTURES AND NECESSARY PARKING SPACES BUT NOT LESS THAN: | 5,000 square feet except for undeveloped lots of less than 5,000 square feet in existence on April 21, 1986. More than one dwelling may be built on lots of 10,000 square feet or larger as long as they meet all requirements of the Ordinance including 5,000 s.f. minimum per dwelling & have minimum of 16 feet between main structures. | 7,500 square feet   | 10,000 square feet  | 25,000 square feet                                      |
| MINIMUM SETBACK OF STRUCTURE FROM PROPERTY LINES AND PUBLIC RIGHTS OF WAY AND ALL BODIES OF WATER *   | 8 feet – Front, Side and Rear  | 30 feet – Front 10 feet – Side and Rear   | 30 feet – Front 15 feet – Side and Rear   | 30 feet – Front 20 feet – Side and Rear                 |
| MINIMUM DISTANCE BETWEEN STRUCTURES ON A LOT  | 8 feet-Front, Side and Rear  | 8 feet-Front, Side and Rear   | 8 feet-Front, Side and Rear   | 8 feet-Front, Side and Rear                             |
| MAXIMUM STRUCTURE HEIGHT **   | 35 feet ***  | 35 feet ***   | 35 feet ***   | 35 feet ***   |
| MAXIMUM LOT COVERAGE BY ALL STRUCTURES AND ANY SURFACE IMPERVIOUS TO WATER  | 50%  | 50%   | 50%   | 50%   |

\* Exempted from the water set-back requirement are structures not exceeding 256 square feet in total floor area and not exceeding 15 feet in height and used permanently and primarily to protect store, build or repair boats, nets and other fishing or water-related equipment of the land owner. Fences, bulkheads, driveways, boardwalks, not exceeding five (5) feet in width and one (1) foot in height, and other like structures are exempted from setback requirements.

\*\* No Structure or appurtenance attached to any structure except chimneys, antennas, and weather instruments shall exceed the thirty-five (35) feet maximum building height and no exempted structure shall exceed forty (40) feet.

\*\*\* The primary roof of a main structure shall have a minimum slope of 4" per foot. This requirement shall apply to accessory structures over 15 feet in height, as measured from 7 feet less 2 feet of the building site as shown on the elevation certificate. The primary roof of a main structure is that which shelters the major percentage of heated space within the structure. \*\*\*\* Where the Right of Way (R/W) is in excess of 100 feet the minimum set back to any part of the structure shall be five (5) feet. \*\*\*\*\* Sign set backs shall be in accordance with Paragraph IIIC. Signs.

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## TABLE OF OCRACOKE VILLAGE ROADS

1. The following list of roads are those where the State of North Carolina claims right of way, listed by State Road number (SR) within the Village of Ocracoke, Hyde County, North Carolina. This information is based on NC Department of Transportation correspondence from Gretchen A. Byrum, PE, to Earl W. O'Neal, Jr., dated June 25, 2004, letter from Mike Kinlaw, Division Right of Way Agent to Mr. Nathan Sears, subject: Existing R/W on NC 12 on Ocracoke Island, dated July 15, 2004, and letters from Mike Kinlaw, Division Right of Way Agent to Nathan Sears, dated July 25, 2004 and August 30, 2004. (To be used with the Table of Development Standards on Page 7 and the Ocracoke Village Development Ordinance Map on Page 9.)

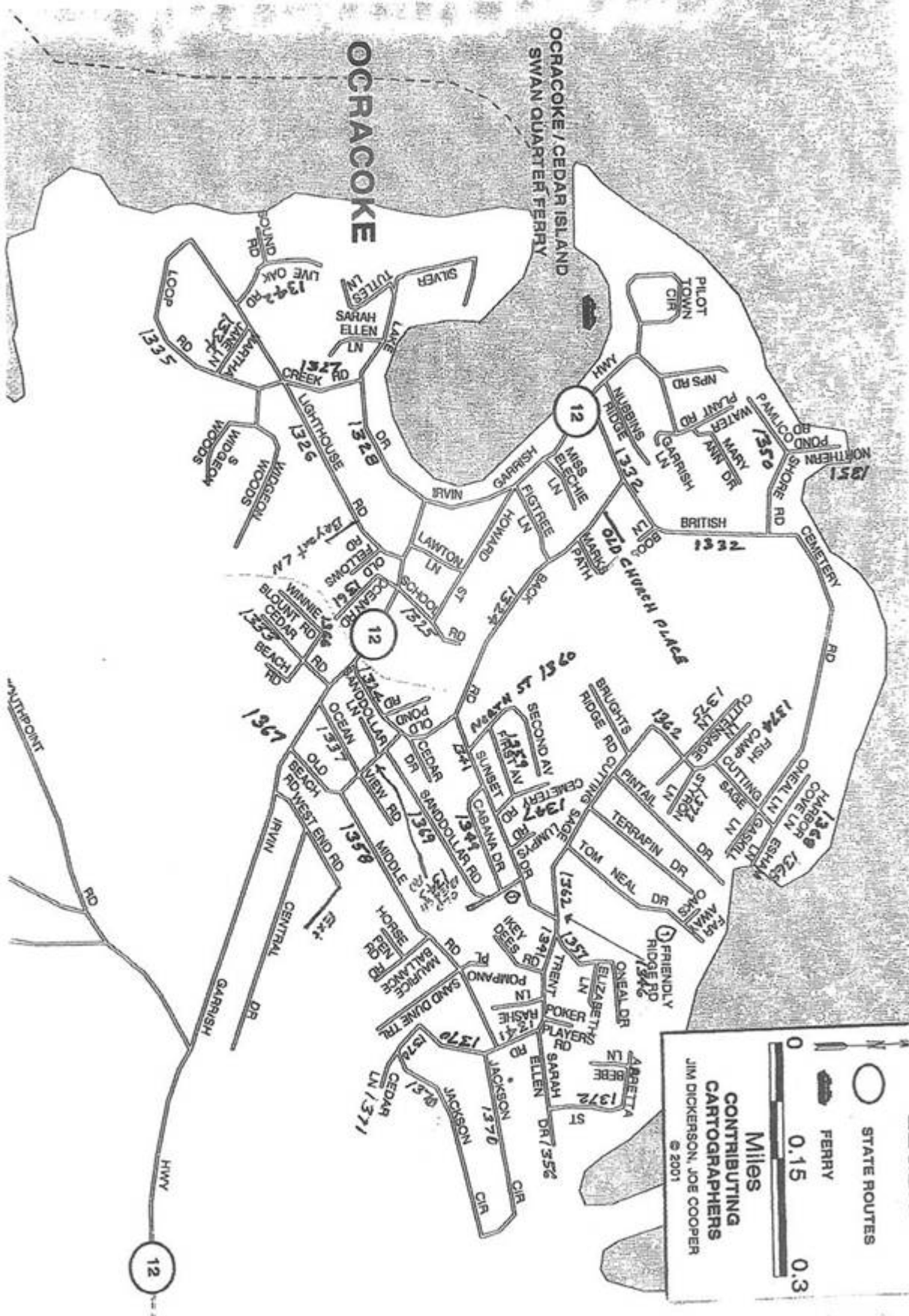
SR 1324 SR 1325 SR 1326 SR 1327 SR 1328 SR 1332 SR 1334 SR 1335 SR 1337 SR 1341 SR 1341 SR 1342 SR 1343 SR 1346 SR 1347 SR 1349 SR 1350 SR 1351 SR 1356 SR 1357 SR 1358 SR 1359 SR 1360 SR 1361 SR 1362 SR 1366 SR 1367 SR 1368

### **“Per 911 County Map all shown in red.”**

Back Road Schoolhouse Road Lighthouse Road. Creek Road. Silver Lake Drive-British Cemetery Road SR 1333 Cedar Road – Martha Jane Lane Loop Road Ocean View Road Sunset Drive Trent Road Live Oak Road Old Beach Rd which turns into 1367 ) Friendly Ridge Road Cemetery Road Cabana Drive Pamlico Shores Road Northern Pond Road Sarah Ellen Drive O'Neal Drive Middle Road First Ave North Street Ocean Road Cutting Sage Winnie Blount Road Old Beach Road Harbor Cove Road

SR 1369 SR 1370 SR 1371 SR 1372 SR 1373 SR 1374 SR 1375 SR 1376 NC Hwy 12

Sanddollar Road  
Jackson Circle  
Cedar Lane  
Arretta Street  
Styron Lane  
Fish Camp Lane  
Cuttensage Lane  
Pintail Drive  
Irvin Garrish



## **IIIB. INDUSTRY**

Due to limited land space and a limited infrastructure with relation to roads, water, and electrical power, there will be no heavy industry allowed in the district with the exception of industry related to seafood processing and production which has been the traditional industry on Ocracoke.

## **IIIC. SIGNS**

**1.** All Commercial signs shall require a permit. Permit shall be applied for by submitting a request to the Ocracoke Development Officer along with design and location information consisting of an original and two copies.

All signs shall meet the following standards

1.a. Location of sign shall not be in street right of way.

1.b. Location of sign shall not obstruct clear vision at driveways and intersections.

1.c. Illuminated signs may be illuminated from within if neon type signs or from an external source, but such illumination must be in a manner which avoids glare or reflection which in any way or manner interferes with traffic safety. Any external source of illumination such as a spot light or flood light shall be placed so that it is not directly visible from any adjacent property.

1.d. All signs shall be constructed and installed in accordance with applicable provisions of the North Carolina State Building Code. All illuminated signs shall be installed in accordance with the applicable provisions of the North Carolina Electrical Code and all illuminated detached signs shall have underground electrical service.

1.e. All signs shall be maintained in good structural and aesthetic condition. Chipped paint, broken plastic, missing letters and exposed light bulbs are evidence of inadequate maintenance.

1.f. Obsolete signs and their supporting structure shall be removed within 90 days after they become obsolete. An extension of ninety (90) days may be granted by the Ordinance Officer.

2. Commercial sign standards:

No sign shall be permitted which exceeds twenty-four (24) feet in height or thirty-two (32) square feet in area. No sign shall be permitted within ten (10) feet of a road, street, path, way or other such passageway. No free-standing sign shall be placed within fifty (50) feet of another freestanding sign on the same lot. Any lighted sign must be so lighted as not to interfere with the operation of a motor vehicle or the use and enjoyment of another's property.

No sign other than those required by a local, state, or federal agency or government shall be permitted to be attached to the bottom of or to float on any body of water included within the

“Ocracoke Village Development Ordinance Map.” This provision shall not preclude on-premise signs on permitted docks.

### **IIID. PARKING**

1. Parking spaces outside the public right-of-way and any private access easement shall be provided according to the following schedule:

1.a. All residences shall provide one (1) parking space for each bedroom.

1.b. Motels, inns, hotels and other buildings designed to accommodate three or more families shall provide one and one-half (1.5) parking spaces for each lodging unit and one parking space for each bedroom within a dwelling unit. Parking spaces shall be clearly defined, when parking area is gravel, it may be defined by tire stops. Each parking space shall be readily accessible by motor vehicles.

1.c. Restaurants shall provide one (1) parking space for each four (4) seats. Parking spaces shall be clearly defined, when parking area is gravel, it may be defined by tire stops. Each parking space shall be readily accessible by motor vehicles.

1.d. All other commercial structures, home occupation, or cottage industry, with up to two hundred (200) square feet of floor area shall provide two (2) parking spaces; one parking space shall be provided for each additional 200 square feet of floor area. Parking spaces shall be clearly defined, when parking area is gravel, it may be defined by tire stops. Each parking space shall be readily accessible by motor vehicles.

1.e. All required parking spaces will be clearly designated, marked and usable as such on the lot prior to an Occupancy permit being issued by the Inspection Department.

1.f. Loading zones: Any business establishment regularly supplied by vans or trucking exceeding fourteen feet in length or any establishments consisting of more than 2,000 square feet of commercial space on the same lot shall provide a clearly marked loading zone which shall be at least twelve (12) feet by fifty (50) feet with a least fifteen feet of height clearance.

1.g. Drystack boat storage facilities shall provide parking spaces to satisfy the formula in this Section paragraph d. above for all other commercial structures multiplied by the number of levels provided to store boats.

1.h. The owner of a boat slip shall provide parking space for service and loading. For users of the boat slip, the owner shall either provide parking on-site or elsewhere, and shall in any event take steps to assure that users will park their vehicles in permitted locations, not in a public right of way and not on private property without the consent of its owner.

### **IIIE. FENCES**

Fences or shrubs may not be constructed or maintained in a manner that interferes with visibility and the operation of motor vehicles.

### **IIIF. BOAT STORAGE**

Drystack storage facilities must meet all requirements for a building as defined within this ordinance. No “open” stack storage (ie., storing of more than one boat on the same “footprint”) is allowed. This paragraph does not apply to kayaks, canoes, surf boards or other light craft that are lifted by hand.

### **IIIG. ACCESSORY STRUCTURES**

An accessory building, structure, or use is subordinate to the principal structure on the lot and shall be of a character related to the principal structure on the lot.

1.a. A detached accessory structure, except for well houses less than 25 square feet and play equipment, shall be located to meet with property setbacks. An accessory structure may not exceed one story with a maximum height of 35 feet. Accessory structures shall meet side and rear setbacks for single family and duplex uses. For non single family and duplex uses, side and rear setbacks for accessory buildings shall be a minimum of 10 feet.

1.b. A travel trailer is an accessory use if it is connected to the water or septic system on a property or remains on the property for more than 4 weeks.

### **IIIH. CAMPERS AND TRAVEL TRAILERS AS ACCESSORY USES TO PROVIDE AFFORDABLE SEASONAL AND YEAR ROUND HOUSING**

Hyde County has a Manufactured Housing and Travel Trailer Park Ordinance adopted March 6, 2000 which is not applicable to Ocracoke.

The requirements for Ocracoke are as follows:

For control of density, one trailer only can be placed on a lot with a home or business.

A building permit is required to place a trailer, including building permit requirements such as septic capacity verified, set backs shall be met, parking requirements shall be met, trailer dimensions shall be included in the impervious area calculations.

Placement is subject to CAMA, DWQ, US Corps of Engineers as required.

Also, a letter would be required from the Ocracoke Sanitary District verifying impact units are sufficient to accommodate the trailer capacity.

### **IIII. TEMPORARY STRUCTURES**

1.a. A building permit is required for temporary structures. A temporary structure is a structure that is not located on a permanent foundation and does not have permanent connection to power, water and waste water treatment. A permit is required for each location that a temporary structure may occupy.

- 1.b. A temporary structure is subject to building setbacks.
- 1.c. A temporary structure may not be located in public rights of way or utility easements.
- 1.d. Uses located in temporary structures are subject to the parking ordinance.
- 1.e. A travel trailer is allowed as a temporary structure during the rebuilding of a building destroyed or partially destroyed by fire or natural disaster.
- 1.f. Temporary structures needed as a result of a natural disaster or other health and safety emergency are allowed for the duration of the emergency.
- 1. g. A travel trailer is allowed as a temporary structure during site and building construction.

### **IIIJ. HOME OCCUPATIONS**

1.a. Single family and two family residences may contain up to 400 square feet floor area of business and or commercial use. This provision is intended to allow limited production of saleable goods such as jewelry, pottery and art, sales of goods and limited professional service to the public from the main residence.

1.b. The hours of operation shall be limited to between 8:00 a.m. to 7:00 p.m. If non-family members are employed by the business, on site employee parking shall be provided. For commercial uses serving the public, adequate parking shall be provided with a minimum of one space in addition to residential and employee parking requirements. Any catering or food service must meet health codes.

1.c. The following uses are not permitted under this provision.

- 1) Adult uses.
- 2) Alcohol sales for on site consumption.
- 3) Public recreation uses.
- 4) Uses that produce adverse offsite impacts of noise, fumes or odors which are adverse to a neighbor's right to enjoy normal use and living in their residence.

1.d. Change Of Use Permit is required to verify:

- 1) Septic capacity.
- 2) Property set backs.
- 3) Water meter capacity is adequate.
- 4) Parking spaces are required under Paragraph IIID. D. of this ordinance
- 5) Total square footage doesn't exceed the limit of impervious area.

1.e. Any and all aspects of the commercial activity shall be contained in the 400 square feet.

1.f. Any commercial entity that claims the 400 square foot residential exemption, shall be inhabited by the business owner.

### **IIIIK. COTTAGE INDUSTRY**

1.a. Cottage Industries for the production of and sales of plants or food up to 400 square feet on a property site are permitted only if no part of the main residence is used under IIII G above.

1.b. In addition, all of the provisions required under IIII J. subparagraphs b. through f., shall apply.

1.c. Where there are daily deliveries needed, requirements of Paragraph IIII D. subparagraph f. Loading Zones shall apply.

## **ARTICLE IV -BOARD OF ADJUSTMENT CREATION, POWERS, DUTIES**

### **IV A. BOARD OF ADJUSTMENT**

A Board of Adjustment is created by this ordinance for the purposes set out in N.C. General Statutes Section 153A-345. The word “board” when used in this Article shall mean the Board of Adjustment. The Board shall consist of five (5) regular members, two (2) alternates. Their terms of office shall be three (3) years except for original appointments which shall be staggered so the terms of all members do not expire at the same time. An alternate shall vote only in the case of absence or disqualification of a regular member.

The concurring vote of four-fifths (4/5) of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Development Ordinance Officer, or to decide in favor of the applicant any matter upon which it is required to pass under this ordinance, or to grant a variance from the provisions of this ordinance.

### **IV B. APPEALS FROM DECISION OF THE DEVELOPMENT ORDINANCE OFFICER AND INTERPRETATION**

#### **1. APPEALS**

The Board may hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Development Ordinance Officer in the enforcement of this ordinance.

An appeal from the decision of the Development Ordinance Officer may be taken to the Board by any person aggrieved, or by any officer, department, or bureau of the county affected by such decision. The appeal must be taken within thirty (30) days by filing with the Development Ordinance Officer a notice of appeal specifying the grounds for it. The Development Ordinance Officer shall transmit to the Board within ten (10) days all papers constituting the record upon which the action appealed from was based. The Board shall render a decision within forty-five (45) days after the Development Ordinance Officer has delivered the record to the Board.

An appeal stays all proceedings in furtherance of the action appealed from, unless the Development Ordinance Officer certifies to the Board after the notice of appeal shall have been filed with him that: (1) because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property; or that, (2) because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by a Court of record on application, on notice to the Development Ordinance Officer from whom the appeal is taken and due cause shown.

In exercising the above mentioned powers, the Board may, so long as the action is in conformity with the terms of this ordinance, reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, and shall make any order, requirement, decision or determination that in its opinion ought to be made in the circumstances, and to this end the board has all of the powers of the officer from whom the appeal is taken.

## 2. INTERPRETATION

The Board shall pass on disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of the ordinance.

## IVC. VARIANCES

The Board may authorize upon appeal in specific cases a variance from the dimensional requirements of this ordinance which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship.

In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Section IIE. A variance from the terms of this ordinance shall not be granted by the Board unless and until:

1.A written application for a variance is submitted demonstrating:

1.a. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same neighborhood;

1.b. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same neighborhood under the terms of this ordinance.

1.c. That the special conditions and circumstances do not result from the actions of the applicant.

1.d. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures or buildings in the same neighborhood.

1.e. No nonconforming use of neighboring lands, structures, or buildings in the same neighborhood, and no permitted use of lands, structures, or buildings in other areas of the district shall be considered grounds for the issuance of a variance.

2. Notice shall be given at least fifteen (15) days in advance of public hearing. The owner of the property for which the variance is sought or his agent and the owners of adjacent property shall be notified by mail. Notice of the hearing shall be posted on the property for which the variance is sought at least fifteen (15) days prior to the public hearing.

3. The public hearing shall be held as advertised. Any party may appear in person or be represented by attorney or by agent with written power of attorney.

4. The Board shall make findings that the requirements of Subsection (1) above have been met by the applicant for a variance.

5. The Board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

6. The Board shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

#### **IVD. APPEALS FROM DECISION BY BOARD OF ADJUSTMENT**

Any appeal from a decision of the Board shall be taken to Superior Court of Hyde county and shall be taken within thirty (30) days after the decision is filed in the office of the County Clerk or after a copy of the decision is delivered to the appellant (and any aggrieved party who has filed a written request for such copy with the secretary or chairman of the Board at the time the case is heard) by registered or certified mail, whichever is later. The Development Ordinance Officer shall file decisions of the Board in the office of the County Clerk and shall send a copy by registered or certified mail to the appellant and other parties entitled thereto within ten (10) working days after a decision is rendered.

### **ARTICLE V. - CHANGES AND AMENDMENTS**

#### **VA. MOTION TO AMEND**

The Board of Commissioners may, on its own motion or upon motion or petition by any citizen or taxpayer of Hyde County, after public notice and hearing, amend, supplement, change, modify, or repeal these regulations subject to the rules prescribed in this ordinance. No change shall be made until after a public hearing is held by the Board of Commissioners at which parties in interest and citizens shall have an opportunity to be heard. A notice of the hearing shall be

given once a week for two successive calendar weeks in a newspaper of general circulation in the county. The notice shall be published the first time not less than (10) days nor more than twenty-five (25) days prior to the date fixed for the public hearing.

## **VB. PLANNING BOARD ACTION**

The Planning Advisory Board shall review this ordinance as a minimum, once each five years on the same schedule as the Land Use Plan Up-Date to retain both documents in agreement, and make a recommendation report to the Board of County Commissioners whether an Amendment is necessary or not.

Every proposed amendment, supplement, change, modification or repeal to this ordinance shall be referred to the Planning Advisory Board for its recommendation report.

The following procedure shall be followed in processing petitions for amendments submitted by citizens or taxpayers of Hyde County:

1. Petitioner completes zoning amendment application form at least ten (10) days prior to the Planning Advisory Board meeting at which the amendment is to be considered.
2. Development Ordinance Officer places item on Planning Advisory Board agenda.
3. Development Ordinance Officer evaluates request and gets comments from other departments and agencies for staff recommendation.
4. Planning Advisory Board makes a recommendation to the County Commissioners. The Planning Advisory Board shall have thirty (30) days after its first consideration of the request in which to make its recommendation.
5. The County Commissioners may deny the request at this point or schedule a public hearing. A public hearing must be held after notice as prescribed in G. S. 153A-323 before any amendment may be made.

## **VC. APPLICATION**

An application for any change or amendment to the text of the ordinance shall contain a statement of the present and proposed regulation. The application shall be filed with the Development Ordinance Officer not later than ten (10) days prior to the meeting of the Board at which the application is to be considered.

## **VD. FEE**

A non refundable fee, according to a regularly adopted fee schedule of the County, shall be paid to the County for each application for amendment to defray some of the advertising and other administrative expenses involved.

## **ARTICLE VI – DEFINITIONS**

Certain words or terms used in this ordinance shall be interpreted as follows: Where a word or term is not defined, the State Building Code meaning or the customary dictionary meaning shall apply.

### **VIA. INTERPRETATION OF COMMON WORDS AND TERMS**

Words used in the present tense include the future tense.

Words used in the singular number shall include the plural and words used in the plural shall include the singular.

The word “person” includes a firm, partnership, company, organization, trust, association, corporation or any other entity as well as an individual.

The word “lot” includes the words “plot”, “parcel”, or “tract”.

The word “building” includes the word “structure”.

The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged, or designed to be used or occupied”.

The word “shall” is always mandatory.

The word “may” is permissive.

### **VIB. DEFINITION OF SPECIFIC TERMS AND WORDS**

**Adult Use:** Any use defined as an adult establishment by North Carolina General Statutes 14-202.10.

**Building:** Any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry or other purposes.

**Building/Structure Height:** The vertical distance from the base flood elevation, 7 feet less 2 feet, of the building site as shown on the elevation certificate, as of the date of this ordinance, to the highest finished roof surface or with regard to structures to the highest point of the structure.

**Building Setback Line:** A line parallel to or concentric with the street right-of-way, property line, or high-water mark establishing the minimum allowable distance between such right-of-way, property line, or high-water mark and the nearest portion of any building, excluding the outermost three feet of any uncovered porches, decks, steps, eaves, gutters and similar fixtures.

**Commercial Use:** As used in this ordinance, a structure used in the sale of products or services. In rare instances, where a structure and use can be proved not to require the defined parking under this ordinance, it may be considered on a case by case basis.

**Definitions for impervious area:** Built upon area means that portion of a development that is covered by impervious or partially impervious cover including buildings, pavement (e.g. paved roads, paved parking lot, paved paths) recreation facilities (e.g. tennis courts), septic tanks, etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

**Lot Coverage:** that portion of the lot area, expressed as a percentage, that is occupied and obstructed by an improvement or a structure above the ground, including but not limited to buildings, decks, paved parking areas, private sidewalks of impervious surfaces, paved driveways and paved roadways and any accessory use or structure requiring location on or above the ground. The following exemptions shall be allowed for residential lot coverage calculations:

1. The 'wet' or water area of the swimming pool shall be exempt from the lot coverage calculations however, this exemption for the 'wet' or water area of the pool shall not exceed 500 square feet of area. Pool aprons and decking shall be counted as lot coverage.
2. Wooded walkways over estuarine areas, 6 feet or less in width, shall be exempt from the lot coverage calculations.
3. Peat System pods shall be exempt from the lot coverage calculations since they help mitigate contamination caused by storm water run off.

**Impervious surface area:** That portion of a site that allows little or no infiltration of precipitation into the soil. Impervious areas include, but are not limited to, that portion of a development project that is covered by buildings, pavement, paved roads and paved parking lots, patios, paved driveways, and streets. Wooden slatted decks and the water area of a swimming pool are considered pervious. Gravel parking or driveways are considered pervious.

**Dwelling Unit:** A single unit providing complete, independent living facilities for a single family including permanent provisions for living, sleeping, cooking and sanitation.

**Family:** One or more persons occupying a single family dwelling unit, provided that unless all members are related by blood or marriage, no such family shall contain more than (5) persons.

**Lodging Unit:** One room, or rooms connected together, that are offered for occupancy to transient guests for compensation.

**Lot:** A parcel of land which abuts and has ingress and egress by means of a public right-of-way or private street or easement and which is occupied or intended to be occupied by a building or group of buildings as provided herein with the customary accessory uses and open space.

Lot Area: The total horizontal area included within lot lines.

Motel: Any group of separate or connected dwelling units or lodging units used for the purpose of accommodating transient guests whether designated as a motel, hotel, inn, motor lodge or otherwise.

Parking space: A vehicular storage space of not less than ten (10) feet by twenty (20) feet, plus the necessary access space. It shall always be located outside any dedicated right-of-way.

Public Recreation Use: Recreation activity open to the general public for a fee including games of skill, game machines, climbing walls and pool halls.

Seat or Seats: A chair or other device located either inside or outside of a restaurant where patrons are served. Where larger seats are used, such as benches or other means, each eighteen (18) inches of width shall constitute a seat.

Sign: A sign is any surface, fabric or device bearing lettered, pictorial or sculptured matter designed to convey information visually and exposed to public view, or any structures, including billboard or poster panels designed to carry visual information. However, the following shall not be included in the application of these regulations:

1.a. Signs not exceeding one (1) square foot in area and bearing only property numbers, post box numbers, names of occupants of premises, or other identification not having commercial connotations;

1.b. Flags and insignia of any government except when displayed in connection with any commercial promotion;

1.c. Legal notices, identification, informational, or directional signs erected or required by governmental bodies or public utilities.

1.d. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights;

1.e. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.

Sign Area: The area of a sign shall be computed as including the entire area within a regular geometric form or combination of regular geometric forms comprising all of the display area of the sign and including all of the elements of the matter displayed. Frames and structural members not bearing advertising matter shall not be included in computation of surface area. The area of a double faced sign shall be the area of one face of the sign, provided that the two faces are of the same size and are parallel to one another with no more than twenty-four (24) inches between each sign face.

Structure: Anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground.

Use: A “Use” is:

1.a. Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained or occupied, or,

1.b. Any activity, occupation, business, or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

Variance: A variance is a relaxation of the terms of the ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance a variance is authorized only for area, and size of structure or size of yards and open spaces. The establishment or expansion of any use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformity in other areas.

## **ARTICLE VII - LEGAL STATUS PROVISIONS**

### **VIIA. EFFECT UPON OUTSTANDING BUILDING PERMITS**

Nothing contained in this ordinance shall require any change in the plans, construction, size, or designated use of any building, structure or part of one for which a building permit has been granted by the Building Inspector prior to the time of passage of this ordinance. However, where construction is not begun under any outstanding permit within a period of one hundred and eighty (180) days subsequent to the issuance of the permit or where construction has begun but has been discontinued for a period of twelve (12) months subsequent to passage of this ordinance, the permit shall expire and any further construction or use shall be in conformity with the provisions of this ordinance.

### **VIIIB. CONFLICT WITH COVENANTS AND OTHER LAWS**

It is not intended by this ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties. Where this ordinance imposes a greater restriction upon the use of building or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of this ordinance shall govern. Where the provisions of any other ordinance, law, or covenant require more restrictive standards, such provisions shall govern.

### **VIII. VALIDITY**

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid that decision shall not affect the validity of the remaining portions of this ordinance. The Board of Commissioners declares that it would have passed this ordinance and each article, section, clause and phrase of it even if any one or more articles, sections, sentences, clauses or phrases may be declared invalid.

### **VIII. EFFECTIVE DATE**

This ordinance shall become effective from and after its passage by the Board of Commissioners of Hyde County.