



## ORDINANCE NO. 09-813

**Amend Appendix A Article 3.8-1 Table of Permitted Uses; Article 12.2 Development standards for particular uses; Article 19 Administration, Enforcement, and Review, and Article 23 Definitions; and Amend the Town Code Chapter 4-58.**

### *Sec. 12.2. Development standards for particular uses.*

#### **Eating and/or Drinking Establishments**

Eating and/or drinking Establishments are family-oriented businesses that cater to the public and are strongly encouraged by the Town due to their support of a resort market niche and year round residency. Despite this some eating and/or drinking establishments may have adverse secondary impacts. To address possible adverse impacts and in order to ensure the health, safety, and well-being of the citizens of Carolina Beach, as well as that of the tourists and visitors to the Town, all persons requesting to open an eating and/or drinking establishment shall sign a statement of agreement to abide by the following regulations. Failure to comply with these regulations shall constitute a violation of this ordinance subject to the enforcement procedures as outlined in Article 19.

#### **(a) Standards for all Eating and/or Drinking Establishments:**

1. Shall not provide any material misrepresentation, misstatement or omission, concerning information required to be provided for approval;
2. Shall comply with all provisions of the ABC Commission and/or ALE requirements, if applicable. Any eating and/or drinking establishment that receives a permit from the ABC Commission as a private club shall be considered a bar/tavern and shall meet all requirements for that use.
- ~~2. Shall have a person in charge on duty at all times and clearly display the name of the person in charge in a prominent place.~~
- ~~3. Shall be sufficiently staffed to control unruly patrons and maintain order on the premises, and when necessary, must swear out arrest warrants on patrons engaging in violent, disorderly or illegal acts.~~
- ~~4. Shall keep interior and exterior of structure in good repair, clean and well maintained.~~

3. Shall adhere to standards and regulations of the Town's noise ordinance. Offenses shall be subject to the regulations as listed in Chapter 10 Sec. 10-10 Violations. If applicable, all violations shall be submitted to the North Carolina Alcohol Beverage Control (ABC) Commission by the Town to ensure all operators stay in compliance with all provisions of the ABC Commission. ~~After receiving three (3) or more noise or nuisance violations, the establishment shall be required to obtain a conditional use permit.~~
4. Shall meet fire codes and limit occupancy to the maximum number allowed for the facility establishment.
- ~~5. Shall comply with all provisions of the ABC Commission, if applicable. Any eating and/or drinking establishment that receives a permit from the ABC Commission as a private club shall be considered a bar/tavern and shall meet all requirements for that use.~~
5. At the time of application and excluding bar/taverns all eating and/or drinking establishments shall provide the Town with a menu having a food and/or non-alcoholic beverage as the primary business.
6. OUTDOOR AREAS:
  - a. Proposed temporary outdoor entertainment areas that are not identified on the approved site plan shall be reviewed in accordance with Chapter 8 Article XI Outdoor Performances and Events. ~~All outdoor entertainment shall obtain a special event permit.~~
  - b. ~~If outdoor seating includes outdoor service area and/or outdoor entertainment area a conditional use permit shall be required. If the property is inside the CBD and surrounded by CBD-zoned properties on all sides by a depth no less than 100 feet, this condition shall not apply.~~
  - e. ~~Applications for outdoor seating shall address the following:~~
    1. ~~The establishment's proximity to residential areas, schools, churches, and health care facilities;~~
    - b. ~~Whether outdoor lighting will create additional nuisance impacts to existing or planned adjacent uses; Outdoor artificial lighting fixtures shall not be designed and positioned so that the point source of light (light bulb) or any reflective surface from a light fixture is directly visible from adjacent properties, right of ways or ocean and soundfront areas.~~
    - e. ~~Whether it is necessary to restrict the hours of operation for the outdoor seating;~~
    4. ~~The establishment's history of compliance with noise and nuisance laws.~~
    5. ~~Access with respect to pedestrian and automotive safety, traffic flow, and emergency service;~~

~~e. The proposed use will not adversely impact public services and facilities such as parking, traffic, police, etc., and that the secondary effects would include but not be limited to noise, light, stormwater runoff, parking, pedestrian circulation and safety.~~

~~7. The determination of a kitchen shall be made by the Director of Planning and Development or his/her designee. The determination shall be based on: (1) whether or not specific areas are exclusively devoted to both food storage and preparation, and (2) the type of equipment utilized for cooking.~~

**(b) A conditional use permit shall be required if an eating and/or drinking establishment meets any of the following:**

1. meets the criteria for a bar/tavern; or

~~2. receives three (3) or more noise or nuisance violations; After receiving three (3) or more noise or nuisance violations from the Town or ABC Commission during a 12 month period; or~~

2. Outdoor service area, and/or outdoor entertainment area are proposed (if the property is inside the CBD and surrounded by CBD zoned properties on all sides by a depth no less than 100 feet, this condition shall not apply); or

3. more than 15 percent of the restaurant's gross floor area is dedicated to accessory entertainment; if more than 15 percent of the eating and/or drinking establishment's indoor gross floor area is dedicated to accessory entertainment; or

4. meets the definition of a Specialty Restaurant Shop Any eating and/or drinking establishment other than a standard restaurant that proposes to serve alcohol for on-premise consumption; or

5. Any eating and/or drinking establishment located in the MX zoning district and proposes to sell alcohol for on-premise consumption.

**(c) Standards for Bars/Taverns:**

~~Bars/Taverns which because of their nature may have serious adverse secondary impacts objectionable operational characteristics, particularly when they are in congested areas, require special regulations so that any such adverse effect will not contribute to the downgrading of the surrounding neighborhood or area. Due to these characteristics, and are therefore required to meet the following minimum separation requirements:~~

~~No new bars/taverns shall be permitted within: (1) 200 feet of an established church or school; (2) 200 feet of any residential district. (3) 200 feet of another bar/tavern (in the CBD the measurement shall be 100' distance from another bar/tavern); (4) A "new" bar/tavern as used herein shall be defined as a bar or tavern that did not exist on May 13, 2003.~~

2. ~~A conditional use permit shall be reviewed or revoked under the procedures as defined in (d) of this section may be revoked if any of the following are discovered:~~

a. ~~Upon a preponderance of evidence that the establishment's patrons display a pattern of disorderly, violent, indecent or unlawful conduct;~~

- ~~b. If the application contains any material misrepresentation, misstatement or omission, concerning information required to be provided.~~
  - ~~c. If an ABC license is revoked then the conditional use permit shall also be null and void.~~
  - ~~d. If the use is found guilty by the Town of Carolina Beach and/or the ABC Commission of three (3) or more violations within any twelve month period then the Town Council shall hold a public hearing to review the conditional use permit.~~
- ~~4. Conditional use permits are subject to review for continued compliance in accordance with Article 14 Sec. 21 of the zoning ordinance. A conditional use permit may be revoked in accordance with Article 19 Sec. 19.8.~~

(d) Provisions Construed As Consistent With State Law

The provisions of this Section are:

1. not to be construed as regulating any activity which the Town is forbidden by State law to regulate;
2. not to be construed as applying to any activity the Town is prohibited from regulating because the North Carolina General Assembly has so clearly expressed its intent in the course of providing a complete and integrated regulatory scheme that municipalities are prohibited from enacting provisions concerning matters covered by the regulatory scheme;
3. not to be interpreted or construed as imposing requirements different from those that are imposed by the State of North Carolina;
4. to be interpreted so that they are consistent with any requirements and regulations imposed by the State of North Carolina

(Authority: N.C.G.S. §§160A-174 & -181; 18B-100)

**Standards for Restaurants:**

PURPOSE:

~~Restaurants are family oriented businesses that are strongly encouraged by the Town due to their support of a resort market niche and year round residency. Despite this some restaurants may have objectionable characteristics.~~

- ~~1. The determination of a kitchen shall be made by the Director of Planning and Development or his/her designee. The determination shall be based on: area devoted to food storage and preparation, and type of equipment utilized for cooking.~~

- ~~2. A conditional use permit shall be required if more than 15 percent of the restaurant's gross floor area is dedicated to accessory entertainment uses including: dance floors, stages, live performances, disc jockey areas, and any other amplified entertainment. Any space planned for accessory entertainment purposes and/or dining areas where seats are moved to accommodate accessory entertainment shall count towards the area dedicated for these activities.~~
  
- ~~3. Restaurants that serve alcohol and fail to meet any of the following criteria shall result in the use being categorized as a bar/tavern.
  - a. Eating and drinking establishments serving alcoholic beverages shall provide the Town with a menu having a food and/or non-alcoholic beverage as the primary business.
  - b. Any eating and drinking establishment that is under 36 seats and wishes to serve liquor for on-premise consumption shall be classified as a bar.~~
  
- ~~4. If the following restaurants propose to sell alcohol for on-premise consumption they shall obtain a conditional use permit:
  - a. Specialty Restaurants
  - b. Restaurants in the MX zoning district~~

(Ord. No. 08-756, 09-09-2008; Ord. No. 08-769, 12-09-2008)

*Sec. 12.2. Development standards for particular uses.*

**ARTICLE 23. DEFINITIONS**

Eating and/or Drinking Establishment: An establishment ~~bar or restaurant~~ whose principal business is the sale of foods, frozen desserts, and/or both alcoholic and nonalcoholic beverages to a customer in a ready-to-consume state, and whose design and principal method of operation determines its classification as follows:

1. Bars and taverns: Establishments primarily engaged in the sale and service of alcoholic beverages for on-premises consumption during any period of the day as permitted by law. The incidental sale or provision of food or snacks shall not entitle such a use to be considered a restaurant under other provisions of this Code. ~~The hours of operation of these types of establishments may exceed the normal operating hours of a restaurant or similar establishment.~~ Synonyms: private club as defined by the ABC Commission, tavern, saloon, barroom, inn, pub, watering hole, drinking hole, gin mill, tap room. ~~No kitchen is required.~~
  
2. Drive-in Restaurant: Establishments serving from edible containers or in paper, plastic, or other disposable containers by an employee at a standing counter or drive-in window. Consumption shall be off-premises, within the principal building, or at other facilities on the premises outside the principal building. ~~Drive-in restaurants shall have a kitchen.~~
  
3. Eatery: Establishments serving by: delivery; pick-up; from an inside; outside; and/or a walk up ordering counter. These eateries cater to the sale of baked goods, sandwiches, salads, ice, cream, donuts, beverages and/or other similar foods.

3. ~~Limited Service Restaurant: Establishments serving by delivery, pick-up or from a walk-up ordering counter. Consumption shall be off premise, within your vehicle or at an outside seating area. Limited service restaurants shall have a kitchen.~~
4. ~~Specialty Shop Restaurant: Establishments serving from inside, outside and/or from a walk-up ordering counter, and may include retail sales. Specialty shops cater to a specific food item and/or beverage item sales for on-site or off-site consumption without providing and may provide a kitchen (i.e. coffee shops and ice cream shops).~~

~~The intent of defining a specialty shop is to recognize and provide for shops that are: (1) different from most eateries in that what is served is not a meal but a specific food item; (2) typically found in beach communities; and (3) supported as part of the community's resort market niche. The "specialty" shall be a specific food item such as: donuts (i.e. Britts); coffee (i.e. Magic Beans); ice cream (i.e. Squiggly's); hotdogs (i.e. The Trolley Stop); etc. A "specialty" is not an establishment where an array of food items are available such as: ethnic food (i.e. Italian); a brand (i.e. fast food chain); a style of cooking (i.e. country); etc.~~

4. ~~Standard Restaurant: Establishments substantially engaged in preparing and serving meals. Standard restaurants shall have an inside dining area, and may include outside dining. To qualify as a standard restaurant, the establishment shall meet all criteria of the ABC Commission for a restaurant designation as defined by NCGS § 18B-1000. an establishment's gross receipts from food and nonalcoholic beverages shall be not less than thirty percent (30%) of the total gross receipts from food, nonalcoholic beverages and alcoholic beverages. A standard restaurant shall also have a kitchen.~~
5. ~~Coffee Shop: Establishments serving from inside, outside and/or from a walk-up ordering counter. These shops cater to the sale of a coffee or other similar hot or cold beverages for on-site or off-site consumption. Coffee shops may provide a kitchen.~~
6. ~~Donut Shop: Establishments serving from inside, outside and/or from a walk-up ordering counter. These shops cater to the sale of a pastries, donuts or similar baked goods for on-site or off-site consumption. Donut shops may provide a kitchen.~~
7. ~~Ice Cream Shop: Establishments serving from inside, outside and/or from a walk-up ordering counter. These shops cater to the sale of ice cream or similar frozen desserts for on-site or off-site consumption. Ice cream shops may provide a kitchen.~~
8. ~~Sandwich Shop: Establishments serving from inside, outside and/or from a walk-up ordering counter. These shops cater to the sale of hot or cold subs or sandwiches for on-site or off-site consumption. Sandwich shops may provide a kitchen.~~
9. ~~Other Eating and/or drinking establishments: All types of eating and/or drinking establishments at Carolina Beach have been identified under this definition. In accordance with Article 3.8(b)(2), when a proposal for an eating and/or drinking establishment is submitted that does not fit under an existing category then the applicant may apply for a text amendment or appeal the decision to the board of adjustment.~~

Accessory Entertainment: Cumulatively all areas that include dance floors, stages, live performances, disc-jockey areas, and/or any other entertainment. ~~Any space planned for accessory entertainment where seats are movable to accommodate accessory entertainment shall count towards the area dedicated for these activities.~~

