

## Article 2: Administration and Procedures

### 2.1 GENERAL

This article contains powers and duties, approval procedures, amendment procedures, and enforcement mechanisms. The following bodies and town staff have powers and responsibilities in administering this ordinance, reviewing applications for development/subdivision proposals, hearing matters of a quasi-judicial nature, or amendments under this ordinance:

- A. Town Council
- B. Planning Board
- C. Board of Adjustment
- D. Technical Review Committee
- E. UDO Administrator

### 2.2 TOWN COUNCIL

#### A. POWERS AND DUTIES

1. The Sunset Beach Town Council has those powers and duties as provided herein and by Article 5 of Chapter 160A of the North Carolina General Statutes.
2. In considering proposed changes in the text of this ordinance or in the zoning map, the Town Council acts in its legislative capacity and must proceed in accordance with the requirements of this ordinance.
3. Unless otherwise specifically provided in this ordinance, in considering amendments to this ordinance or the zoning map, the Town Council shall follow the regular voting and other requirements as set forth in other provisions of the town code and those provided by NCGS 160A-75(a).
4. Make the necessary appointments to the Planning Board and Board of Adjustment.
5. The Town Council has the authority to adopt temporary moratoria in accord with NCGS 160D-107.

### 2.3 PLANNING BOARD

#### A. POWERS AND DUTIES

It shall be the duty of the Planning Board, in general:

1. To make studies of the area within its jurisdiction and surrounding areas;
2. To determine objectives to be sought in the development of the study area;
3. To prepare and adopt plans for achieving these objectives;
4. To develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans that the Town Council may support;
5. To advise the Town Council concerning the use and amendment of means for carrying out plans;
6. To promote public interest in and an understanding of its recommendations, and to that end, it may publish and distribute copies of its recommendations and may employ such other means of publicity and education as it may determine;

7. To exercise any functions in the administration and enforcement of various means for carrying out plans that the Town Council may direct; and
8. To perform any other related duties that the Town Council may direct related to this ordinance or other pertinent matters related to land use.

#### B. MEMBERSHIP, VACANCIES, AND MEETINGS

1. The Planning Board shall consist of five (5) members. Four (4) members shall be citizens and residents of the town, and shall be appointed by the Town Council. One (1) member shall be a citizen of the county who resides outside the town but within the Extraterritorial Jurisdiction (ETJ) of the town as specified by an extraterritorial boundary ordinance adopted pursuant to NCGS 160D-202(b), and shall be appointed by the County Board of Commissioners. The population estimates for proportional representation shall be updated no less frequently than after each decennial census. The members of the Planning Board shall serve for terms of three (3) years with no more than two (2) members being scheduled for replacement due to the expiration of a term in any one (1) year.
2. Vacancies occurring for reasons other than expiration of term may be filled as they occur for the unexpired remainder of the term by the Town Council.
3. Faithful attendance at meetings of the Planning Board shall be a prerequisite to continued membership. The Town Council may remove and replace any member who is absent from two (2) consecutive regular meetings as a result of unexcused absences.
4. The Planning Board shall elect a chairperson and create and fill such other offices as it may determine. The term of the chairperson and other officers shall be one (1) year, with eligibility for reelection. The Planning Board may adopt rules for transaction of its business and shall keep a record of its member's attendance and of its resolutions, discussions, findings, and recommendations, which record shall be a public record. The Planning Board shall hold at least one (1) meeting monthly, and all of its meetings shall be open to the public. There shall be a quorum of three (3) members for the purpose of taking any official action.
5. The member appointed to the Planning Board by the Board of County Commissioners as a representative of the ETJ shall have equal rights, privileges, and duties with the other members of the Planning Board in all matters pertaining to the regulation of both the ETJ and the area within the corporate limits.

#### C. GATHERING BACKGROUND INFORMATION, SPECIAL STUDIES, AND RECORDS UPON REQUEST

1. As background for its Comprehensive Plan and any ordinances it may prepare, the Planning Board may gather maps and aerial photographs of man-made and natural physical features of the area, statistics on past trends and present conditions with respect to population, property values, the economic base of the community, land use, and such other information as is important or likely to be important in determining the amount, direction, and kind of development to be expected in the area and its various parts.

2. In addition, the Planning Board may make, cause to be made, or obtain special studies on the location, condition, and adequacy of special facilities, which may include but are not limited to studies of housing, commercial and industrial facilities, parks, playgrounds and recreational facilities, public and private utilities, and transportation and parking facilities.
3. All officials of the town shall, upon request, furnish to the Planning Board such available records or information as it may require in its work. The Planning Board or its agents may, in the performance of its official duties, enter upon lands open to the public and make examination or surveys and maintain necessary monuments thereon.

#### D. COMPREHENSIVE PLAN

1. The Comprehensive Plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the Planning Board's recommendations to the Town Council for the development of any proposed area. The Comprehensive Plan may be referred to as the CAMA Land Use Plan (if the official Comprehensive Plan is thereby certified by CRC), the Town's land use plan, and/or similar titles.
2. The Comprehensive Plan and any ordinances or other measures to effectuate the plans shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the town and its environs which will, in accordance with present and future needs, best promote health, safety, and the general welfare, as well as efficiency and economy in the process of development.

## 2.4 BOARD OF ADJUSTMENT

#### A. ESTABLISHMENT

1. The Board of Adjustment of the town is hereby established to fulfill the duties and powers described to it by this ordinance, other applicable provisions of the town code, and by NCGS 160D-302.

#### B. POWERS AND DUTIES

1. The Board of Adjustment shall hear and decide appeals, variances, and special use permits.
2. The Board of Adjustment shall follow statutory quasi-judicial procedures for all development decisions in accordance with NCGS 160D-406.

#### C. MEMBERSHIP, VACANCIES, AND MEETINGS

1. The Board of Adjustment shall consist of five (5) regular members and one (1) alternate member. Five (5) members shall be citizens and residents of the town and shall be appointed by the Town Council; one (1) member shall be a citizen of the county who reside within the ETJ and shall be appointed by the County Board of Commissioners. The members of the Board of Adjustment, both regular and alternates, shall serve for terms of three (3) years, such term to be staggered as follows: no more than two (2) members will be scheduled for replacement due

- to the expiration of term in any one (1) year. Alternates may only participate or vote in the event of a vacant seat.
2. The Board of Adjustment may adopt rules of procedure for the conduct of its affairs and in keeping with the provisions of this ordinance. All meetings held by the Board of Adjustment shall be held in accordance with NCGS 160D-406 or as may be amended.
  3. The Board of Adjustment shall elect one (1) member to serve as chairperson and preside over its meetings and shall elect one (1) member to serve as vice-chairperson to fulfill the responsibilities of the chairperson when the chairperson cannot. The Board of Adjustment shall appoint a clerk, who may be a town officer or employee, a member of the Board, or such other person who is qualified to fulfill the requirements of the position. The Board of Adjustment may create and fill such offices and committees as it may deem necessary. The term of the chairperson and other offices shall be one (1) year with eligibility for reelection.
  4. The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it may take action as expeditiously as reasonably possible. All meetings of the Board of Adjustment shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public in accordance with the NCGS. The Board of Adjustment shall keep a record of its meetings, including attendance of its members, the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it, and all official actions.
  5. Any member of the Board of Adjustment who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year may lose his or her status as a member of the Board and may be replaced or reappointed by the Town Council or Board of County Commissioners, as appropriate. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the Board of Adjustment, except that in the event of a long illness or other such cause for prolonged absence, the member may be replaced.

#### D. QUORUM AND VOTING

1. The concurring vote of four-fifths (4/5) of the members of the Board of Adjustment shall be necessary to grant a variance.
2. A majority of the members shall be required to decide any other quasi-judicial matter.
3. For the purposes of this section, vacant positions on the Board of Adjustment and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board of Adjustment for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

#### E. OATHS AND SUBPOENAS

1. The chairperson or his/her designee are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a civil penalty.
2. The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under NCGS 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chairperson shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chairperson shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chairperson may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

## 2.5 TECHNICAL REVIEW COMMITTEE AND PROCEDURE

#### A. POWERS AND DUTIES

1. The purpose of the Technical Review Committee is to facilitate communication and coordination between departments responsible for development review.
2. The Technical Review Procedure may be used to review all applications for any application for development approval. The Technical Review Committee shall provide recommendations, as provided herein, regarding the application under its review. Such procedure shall consist of a review by the appropriate technical staff and departments at the discretion of the UDO Administrator. Any findings or recommendations shall be provided to the applicant and applicable approval authority for review purposes.
3. The Technical Review Committee may include, but not necessarily be limited to, the following individuals/departments: UDO Administrator, building inspector, town administrator, fire department, police department, public works department and/or Planning Board chair/liaison.
4. The UDO Administrator may request the participation of professional experts or a representative from consulting agencies, county, regional, or state agencies if the UDO Administrator determines that such entities can provide expertise concerning the proposed development.
5. Such committee may provide recommendations through digital communications or during a scheduled in-person meeting at the discretion of the UDO Administrator.

## 2.6 UDO ADMINISTRATOR

### A. POWERS AND DUTIES

1. The UDO Administrator, to be designated by the town administrator, is hereby authorized and it shall be his/her duty to enforce the provisions of this ordinance. It is the intention of this ordinance that all questions arising in connection with enforcement and interpretation shall be presented first to the UDO Administrator and/or designated agent. Appeal of his/her decision may be made to the Board of Adjustment.
2. In administering the provisions of this ordinance, the UDO Administrator and/or designated agent shall:
  - a) Make and maintain records of all applications for permits, special uses, and requests listed herein, and records of all permits issued or denied, with notations of all special conditions or modifications involved.
  - b) File and safely keep copies of all plans submitted, and the same shall form a part of the records of his/her office and shall be available for inspection at reasonable times by any interested party.
  - c) Transmit to the Planning Board, Town Council, and/or the Board of Adjustment all applications and plans for which their review and approval is required.
  - d) Conduct inspections of premises and, upon finding that any of the provisions of this ordinance are being violated, notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The UDO Administrator shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.
  - e) Prepare a report of the Technical Review Procedure and recommendations for the Planning Board, Board of Adjustment, or Town Council as may be required.
  - f) Provide administrative interpretations of the UDO.
  - g) Coordinate with the town's building inspectors regarding issuance of certificates of occupancy.
  - h) Conduct concept meetings with applicants for development approval as necessary or appropriate.
  - i) Maintain the official zoning map and the public records of the Planning and Inspections Department, Planning Board, and Board of Adjustment.
  - j) Perform site inspections. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the town at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

## 2.7 CONFLICTS OF INTEREST

- A. Members of the Town Council or any appointed board identified in this ordinance must act in the public interest and not to advance their own financial interests. A member of the elected or appointed board, shall not vote on any legislative decision regarding a development regulation adopted pursuant to this UDO where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
- B. Appointed boards. Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this UDO where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
- C. Quasi-Judicial Decisions. A member of any board exercising quasi-judicial functions pursuant to this UDO shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.
- D. When a member is disqualified for a conflict of interest, that member must not participate in the hearing in any way, neither asking questions, nor debating, nor voting on the case. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.
- E. Administrative Staff. No staff member shall make a final decision on an administrative decision required by this UDO if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this UDO unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the town to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the town, as determined by the Town Council.

## 2.8 - 2.11 RESERVED

### 2.12 COMMON REVIEW PROCEDURES

#### A. COMPLETE APPLICATIONS

1. All applications for any approval required by this ordinance must be complete. Applicants who submit incomplete applications will receive a written notice stating the information needed to complete the application and a date by which the information must be submitted to maintain the review schedule. No application for any provision of this ordinance will be considered complete until all fees required by the town's fee schedule have been paid in full.
2. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.
3. In accordance with NCGS 143-755(b1), if a permit application is placed on hold at the request of the applicant for a period of six (6) consecutive months or more, or the applicant fails to respond to comments or provide additional information reasonably requested by the town for a period of six (6) consecutive months or more, the application review is discontinued and the development regulations in effect at the time permit processing is resumed apply to the application.
4. Upon receipt of an application, the UDO Administrator shall determine if the application is complete. A complete application is one that:
  - a) Contains all information and materials established by the UDO Administrator and/or the requirements of this ordinance as required for submittal of the particular type of application.
  - b) Is in the form established by the UDO Administrator as required for submittal of the particular type of application.
  - c) Includes information in sufficient detail to evaluate the application to determine whether it complies with the appropriate substantive standards of this ordinance.
  - d) Is accompanied by the fee established for the particular type of application.
  - e) Is signed by the property owner, a designated owner's agent, or a contract purchaser of a property with authorization of the property owner. Written proof of authority must be submitted with every application.
5. An approved application for a development approval shall be issued in writing by the UDO Administrator. The UDO Administrator may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued.



## B. ZONING PERMIT

1. A zoning permit shall be required for changes of use or of any of the following: all new principal and accessory structures; enlargements of existing structures; construction/installation of fences/walls, piers, docks, decks, stairs, signs, and driveways; and/or any activity which proposes to increase the amount of impervious square footage on a lot.
2. It shall be unlawful to commence site preparation or excavation for the construction of any building or other structure including accessory structures or to commence the moving, alteration or repair of any structure or the use of any land or building including accessory structures, or the paving, site disturbance, tree removal, or other installation or construction of a hardened surface upon the site, until the UDO Administrator has issued a zoning permit for such work or use.
3. Zoning permits shall be void after one (1) year from date of issue if the use has not commenced. Unless substantial progress has been made or a building permit has been issued, an applicant must reapply for a zoning permit or submit an application for approval of vested rights in accordance with provisions of this ordinance.
4. Zoning permits are transferable 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.
5. A completed application form for a zoning permit shall be submitted to the UDO Administrator. An application for a zoning permit must be accompanied by the applicable minor site plan, major site plan, or any other plan as required by this ordinance.
6. The UDO Administrator shall issue the zoning permit if the proposed activity set forth in the application is in conformity with the provisions of this ordinance and any applicable approved plans.

## C. BUILDING PERMIT

1. Unless exempted in accordance with the State Building Code or NCGS 160D-1110, before commencing the construction, erection, repair, alteration, addition to, or moving of any building or structure or part thereof, or before commencing any excavation for such building or structure, or any form of activity pertaining to buildings and building regulations, a building permit for the same shall be obtained from the applicable building inspector with responsibility over building code and related matters. Compliance with all applicable provisions of the town's building code shall be required prior to the issuance of a building permit. Building permits shall be valid for six months in accordance with NCGS 160D-1111.
2. Before commencing the removal or demolition of any building or structure or part thereof, a building permit authorizing said removal or demolition shall be obtained from the building inspector.

#### D. TREE REMOVAL/CLEARING PERMIT

Tree removal or clearing permits shall be issued by the UDO Administrator for any proposed tree removal or clearing in accordance with Article 3: Zoning.

#### E. FLOODPLAIN DEVELOPMENT PERMIT

Floodplain development permits shall be issued by the UDO Administrator for all development located within the Special Flood Hazard Area (SFHA) in accordance with Article 5: Flood Damage Prevention Ordinance.

#### F. SIGN PERMIT

1. The UDO Administrator or his/her designee shall issue a sign permit for the erection or construction only for a sign which meets the requirements of the sign section in Article 3: Zoning and is not subject to exemption from permitting requirements. Each application shall be accompanied by a plan showing the following:
  - a) Name and address of the owner of the sign.
  - b) Exact size, shape, configuration, design, area, height, nature, number and type of sign to be erected.
  - c) Sign Area Calculation.
    - i) In measuring the area of signs permitted under these regulations, the entire face of the sign (one (1) side only), and any wall work incidental to its decoration, shall be included. Where both sides of a sign contain lettering or other allowable display, one (1) side only shall be used to compute the allowable size of the sign.
    - ii) Where the sign consists of individual letters or a sign face of irregular shape, the sign area shall include the area of the smallest rectangle that can encompass the letters or sign face.
    - iii) In calculating the total area of a monument sign, the first two (2) feet of the height of the base shall be excluded, providing that this portion of the base does not contain any lettering or graphics.
  - d) Height of sign means the vertical distance measured from the adjacent street crown grade to the top of the sign face or sign structure, whichever is greater.
  - e) The cost of the sign or sign structure.
  - f) The method and type of illumination, if any.
  - g) The location proposed for such signs in relation to property lines, zoning district boundaries, right-of-way lines, and existing signs.
  - h) A graphic representation (hand drawn if necessary), including color scheme, lighting, and landscaping of the proposed sign.
  - i) If conditions warrant it, such additional information as will enable the UDO Administrator to determine if such sign is to be erected in conformance with the requirements of this article.

- j) Before issuing a sign permit, the applicant shall pay all fees as set forth in the town's fee schedule.

#### G. TEMPORARY USE PERMIT

1. Purpose. It is the purpose of this section to recognize that there is a need for special allowances to be granted to certain temporary uses so that they may be permitted within the community. Because of the special problems related to temporary uses, it is also necessary to provide specific, separate, and distinct guidelines and standards for them. It is the express intent of these provisions to minimize any potential adverse impact of such temporary uses by eliminating, to the greatest possible extent, any major problems, threats, or dangers to the public health, safety, or welfare as may exist with any or all of these temporary uses.
2. Permits. A Temporary Use permit must be applied for and permitted before any temporary use may commence.
3. Standards. The following guidelines shall apply to all the allowable temporary uses:
  - a) For circuses, carnivals, bazaars, evangelistic, or religious congregations, open lot sales, fairs, or special entertainment events, and special sales, each permit applicant shall submit a parking and traffic plan which shall include the following:
    - i) Indication of area to be used by operators' vehicles and customers;
    - ii) Designation of entrances and exits, traffic flow, and parking areas;
    - iii) Total number of parking spaces available;
    - iv) A signed letter from the property owner, or designee shall be required if required event parking is on private property.
    - v) Estimated number of customers or participants;
  - b) Traffic control measures. The applicant shall also submit a plan for compliance with the Noise Control Ordinance as contained in Chapter 94 of the Town Code. Permitted hours of operation for circuses, carnivals, bazaars, fairs and special entertainment events are set forth by the Town Administrator.
4. If a temporary use is to be installed for six (6) months or more, the facility shall be connected to town water and sanitary sewer in accordance with the ordinances and policies of the Town of Sunset Beach. Otherwise, approved portable toilets shall be provided.
5. Where a tent or similar structure is to be used, the following requirements or documentation shall be met:
  - a) A limitation on the number of occupants in a structure shall be observed as per the NC Fire Code and Building Code.

- b) In conjunction with an occupancy limit, a seating plan, if seating is provided for an audience, must also be submitted and approved by the Fire Marshall.
  - c) If a tent is to be used for human occupancy, a certificate of insurance must be submitted which will cover liability on the part of the applicant or sponsor in the event of an accident.
  - d) A certificate of flame resistance shall be submitted which will provide assurance that the structure has been properly treated with flame retardant and has been maintained as such.
6. Where temporary structures, tents, mobile offices, accessory uses, existing structures, or similar uses are required in connection with the temporary use, a sketch plan or layout generally drawn to scale shall be submitted and shall show the location or placement of the temporary uses, structures, and accessory uses in conjunction with adjacent streets, parking, attendant accessory uses, existing or proposed structures, and traffic movement or flow pattern, and entrances and exits.
7. Special Sales or temporary markets shall be reviewed by the UDO Administrator and shall be reviewed using the Technical Review Procedure for completeness, and compliance with this ordinance.
8. Any Temporary Events permitted in the Sunset Beach Town Park must meet the standards contained in Chapter 99 of the Town Code.

#### H. FILL AND GRADE PERMITS

- 1. Such permits shall be issued by the UDO Administrator in accordance with the requirements of this ordinance.
- 2. No lot, parcel or tract of land may be disturbed by grading, filling, excavation, and removal of trees or removal of stumps without a Town Fill and Grade permit. Permits for Fill and Grade shall be accompanied by a scaled grading plan depicting elevation change prepared by a licensed surveyor, landscape architect, or professional engineer. For single-family residential and duplex dwelling uses, when fill is not proposed in excess of four (4) inches, a scaled grading plan is not required.
- 3. Exceptions to this section:
  - a) Fill that is necessary to meet any County or State requirements for a Health or Storm Water permit. In which case, fill shall only be allowed to the minimum extent necessary to obtain a permit.
- 4. Site work in accordance with the approved Town Fill and Grade permit must be complete within 90 days of issuance. Upon expiration and provided that substantial progress has occurred, the Town Fill and Grade permit may be extended for a period of 90 days.

#### I. CAMA PERMIT

CAMA permits shall be issued by the Division of Coastal Management or designated town Local Permit Officer for any development within a regulated Area of Environmental Concern as defined by NCGS 113A-113.

#### J. FOUNDATION SURVEYS AND AS-BUILT SURVEYS

1. A foundation survey prepared by a registered land surveyor must be submitted within 14 days after the foundation or the setting of pilings has been completed for new construction of any principal building. This survey shall illustrate the location of all structures under construction as well as existing structures, all property lines, building setback lines, buffers, and easements.
2. A final as-built survey prepared by a registered land surveyor licensed to practice in North Carolina must be submitted to the UDO Administrator for new construction of any principal building or for compliance with impervious coverage or fill/grade requirements as necessary.
  - a) The as-built survey must include information regarding impervious surface percentages.
  - b) If the subject property is within a CAMA AEC, the survey must include information specific to the impervious surface percentage within the limits of the AEC.
  - c) The as-built survey must include elevations for the average finished grade of the subject property, the average finished grades of the adjacent properties, and the elevation of the crown of the road in accordance with town regulations for fill and grade.

#### K. CERTIFICATE OF OCCUPANCY

1. No new building or part thereof shall be occupied, and no addition or enlargement of any existing building shall be occupied, and no existing building after being altered or moved shall be occupied, and no change of use shall be made in any existing building or part thereof, until a certificate of occupancy has been issued therefor.
2. A temporary certificate of occupancy may be issued for a stated period of time for a portion or portions of a building which may safely be occupied prior to final completion and occupancy of the entire building or for other temporary uses.
3. The certificate of occupancy shall be issued after all final inspections have been made.
4. In the case of existing buildings or other uses not requiring a building permit, after supplying the information and data necessary to determine compliance with this ordinance and appropriate regulatory codes of the town for the occupancy intended, a certificate of occupancy shall be issued when, after examination and inspection, it is found that the building or use in all respects conforms to the provisions of this ordinance and appropriate regulatory codes of the town for the occupancy intended.
5. A certificate of occupancy may be withheld pending the UDO Administrator determination of compliance with any other requirements of this ordinance.

#### L. MODIFICATION OF PERMITS OR APPROVALS

1. Insignificant deviations from a permit issued or approval granted by the Town Council, the Planning Board, the Board of Adjustment, or the UDO Administrator are permissible and the UDO Administrator may authorize such insignificant deviations unless classified as a major change as provided below.
2. Major changes to approved permits, plans, and conditions of development may be authorized only by the permit issuing authority in the same manner as outlined in this article for original submission. Major changes include, but are not limited to:
  - a) Change in use.
  - b) Any increase in development density; such as, increase in density of units, whether residential, office, commercial or industrial; or an increase in impervious surface area.
  - c) An increase in overall ground coverage by structures.
  - d) A change in any site dimension by more than 10 percent.
  - e) A reduction in approved open space or screening.
  - f) A change in access and internal circulation design.
3. The UDO Administrator shall determine whether amendments to and modifications of permits constitute an insignificant deviation or a major change as described herein.
4. A developer requesting approval of changes shall submit a written request for such approval to the UDO Administrator, and that request shall identify the changes. Approval of all changes must be given in writing.

#### M. PERMIT REVOCATION

1. Any permit issued under this ordinance may be revoked by the permit-issuing authority by the same process as was used for the approval (in accordance with the provisions of this section) if the following occurs:
  - a) The permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this ordinance, or any additional requirements lawfully imposed by the permit-issuing board, or
  - b) The permit was issued based on erroneous information.
2. Before a special use permit may be revoked, all of the notice and hearing requirements shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.
3. Before permits other than special use may be revoked, the UDO Administrator shall give the permit recipient 10 days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his/her right to request an informal hearing on the allegations. If the permit is revoked, the UDO Administrator shall provide to the permittee a written statement of the decision and the reasons therefor. Appeals of revoked permits may be made to the Board of Adjustment .

4. No person may continue to make use of land or building in the manner authorized by any permit issued under this ordinance after such permit has been revoked in accordance with this ordinance.

#### N. RECONSIDERATION OF DENIAL

1. Whenever an application for a permit or approval authorized by this ordinance is denied, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered within a 12 month period unless explicitly specified by this ordinance or the applicant clearly demonstrates that:
  - a) Circumstances affecting the property that is the subject of the application have substantially changed or new information is available that could not with reasonable diligence have been previously presented. A request to be heard on this basis must be filed in writing with the UDO Administrator.

## 2.13 STORMWATER MANAGEMENT AND EROSION CONTROL

#### A. PURPOSE

1. Development and redevelopment alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;
2. These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and
3. These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development sites.
4. Therefore, the Town of Sunset Beach establishes this set of water quality and quantity regulations to manage stormwater runoff and discharge.

#### B. APPLICABILITY

1. Development activities including one (1) or more acres of land disturbance requiring an erosion and sediment control plan or CAMA Major Permit shall be governed by the NC State Stormwater Regulations and the Brunswick County Stormwater Quality Management and Discharge Control Ordinance and shall obtain a State and County stormwater permit.
2. Residential development may not exceed 45% impervious surface of total lot area and the total amount of impervious surface must remain below the maximum impervious surface coverage allowed by any other regulatory agency. For the purposes of this section, residential development shall include single-family and duplex dwellings.
3. In accord with the requirements of Article 97 of the Town's General Code no person shall cause water to flow from their property onto of over the streets of the town.

4. Within the CR-1, CR-2, and AF-1 zoning district, not more than 20% of the total lot area may be covered by impervious surfaces.
5. In addition to the requirements from subsection (1) above, all development and redevelopment of single-family or duplex residences greater than 200 square feet must provide appropriate control systems that are any combination of infiltration systems, bio-retention systems, constructed stormwater wetlands, sand filters, cisterns, rain gardens, or alternative low impact development stormwater management systems designed in accordance with the NC Department of Environmental Quality's Stormwater Design BMP Manual and any town required design criteria to control and treat the runoff from all surfaces generated by one and one-half (1 ½) inches of rainfall or less from all impervious surfaces on site.
6. All development and redevelopment projects not exempt from the provisions of this article must consider low impact development (LID) practices to analyze the infiltration capacity and natural drainages of the site and develop a system of controls which mimic the existing natural hydrology. An LID guidance manual and evaluation tools are available from Brunswick County.

#### C. STORMWATER MANAGEMENT PLAN AND EROSION CONTROL

1. A stormwater management plan shall be required prior to the issuance of any permits for new construction or renovation/expansion projects where the impervious surface coverage increases by greater than 200 square feet. For renovation/expansion of existing single-family or duplex residences all additional impervious surfaces must be controlled and treated in accordance with 2.13(B)(4). If the renovation/expansion exceeds 50% of its reproducible value at the time of application the runoff generated from one and one-half (1 ½) inches of rainfall from all impervious surfaces, existing and new, must be controlled and treated in accordance with (4) above. All stormwater management plans must be designed according to the following:
  - a) When the project adding impervious surfaces exceeds \$30,000 in value, the stormwater management plan shall be designed, inspected and approved after construction by a North Carolina professional engineer prior to issuance of a certificate of occupancy.
  - b) When the project adding impervious surfaces is less \$30,000 in value, the stormwater management plan shall be designed by a licensed professional engineer or surveyor and inspected and approved after construction by the UDO Administrator or designee prior to issuance of a certificate of occupancy.
2. For all development and redevelopment, no grading, cutting or filling shall be commenced until erosion and sedimentation control devices have been installed in order to retain sediment on the site. Erosion control devices must be maintained during all phases of construction and after development.



## 2.14 SPECIFIC REVIEW PROCEDURES

### A. MINOR SITE PLAN

1. Purpose. Minor site plan review is intended to ensure that the layout and general design of low-intensity development is compatible with all applicable standards in this ordinance and all other applicable town regulations.
2. Applicability. The following development types must submit a minor site plan as specified in this ordinance:
  - a) Proposals for single-family residential uses and duplexes consisting of two (2) or fewer dwelling units or for renovation/rehabilitation projects that will modify an existing structure's footprint. A minor site plan is not required for changes of use whereby no increase in impervious square footage or an enlargement in an existing structure's footprint is proposed.
  - b) Nonresidential development projects whereby less than 10,000 square feet of impervious surfaces are proposed.
  - c) Accessory structures, construction/installation of fences/walls, piers, docks, decks, stairs, signs, driveways, and/or similar ancillary support items.
3. Application Materials and Submittal. One (1) digital copy and three (3) hard copies of the minor site plan shall be submitted with all such applications. Minor site plans shall be submitted for review along with the typical building permit application, when required. When a building permit is not required, a copy of the plan should be submitted directly to the UDO Administrator for review and approval. Minor site plans shall be prepared and sealed by a licensed land surveyor, landscape architect, or engineer registered to practice in the State of North Carolina.
  - a) Accessory structures less than 150 square feet and construction/installation of fences/walls, piers, docks, decks, stairs, signs, driveways, and similar ancillary items do not require a minor site plan to be prepared by a licensed professional. A hand drawn sketch shall be provided.
4. Minor site plans shall include all required information as provided in Appendix A: Submission Requirements.
5. Minor site Plan Review Procedure:
  - a) Within 30 working days of receipt of a complete application for a minor site plan, the UDO Administrator shall review the plans and make a determination to approve or disapprove plans based on this ordinance and other applicable land development ordinances.
  - b) If it is determined that more information is needed or that a significant number of changes must be made before the plan can be approved, the applicant shall make the necessary changes; and re-submit the plans. All re-submissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.

- c) If plan approval is denied, the reasons for this action shall be communicated to the applicant in writing.
  - d) Minor site plan approval expires 24 months from the date of approval.
  - e) Zoning permits may be issued once the minor site plan is approved.
6. In the event of failure to comply with an approved minor site plan or condition related thereto, the plan shall immediately become void and of no effect, no further permits for construction or compliance shall be issued and existing permits may be suspended or revoked by the UDO Administrator.

#### B. MAJOR SITE PLAN

1. Purpose. A major site plan is intended for more intense development proposals requiring more comprehensive review by the town.
2. Applicability. The following development types must submit a major site plan as specified in this ordinance:
  - a) Nonresidential development whereby 10,000 square feet or more of impervious surfaces are proposed.
  - b) All other development not subject to minor site plan or special use permit approval.
3. Pre-Application Meetings. Applicants may request a pre-application meeting with the UDO Administrator prior to submission of an application to discuss procedural and substantive matters related to the proposed application. A sketch plan may be submitted for initial comments and review prior to the applicant's final submission.
4. Application Materials and Submittal. One (1) digital copy and 12 hard copies of the major site plan shall be submitted with all such applications.
5. The major site plan shall be prepared by and sealed by a licensed land surveyor, landscape architect, or engineer registered to practice in the state of North Carolina and shall include all of the required information as provided in Appendix A: Submission Requirements.
6. In the course of evaluating the proposed major site plan, the UDO Administrator may request additional information from the applicant. A request for such additional information shall stay until a date certain established by UDO Administrator any further consideration of the application.
7. Major Site Plan Review Procedure:
  - a) The UDO Administrator shall review the major site plan and may require a Technical Review Procedure.
  - b) If the UDO Administrator determines that more information is needed or that a significant number of changes must be made before the plan can be approved, the applicant shall make the necessary changes; and re-submit the plans. All re-submissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.
  - c) Upon determination that a major site plan application is complete, within 30 working days of the submittal date, the UDO Administrator and

- the Technical Review Committee (if applicable) shall review the plans and make a recommendation to the Planning Board as to compliance with this ordinance. The major site plan will be placed on the agenda of the next regularly scheduled Planning Board meeting following 30 working days of submittal of a complete application for a major site plan.
- d) The Planning Board shall review the major site plan and written recommendations of the UDO Administrator and the Technical Review Committee (if applicable) prior to approving, denying, or conditionally approving the site plan. If the site plan submitted otherwise meets all of the standards of this ordinance, the Planning Board shall approve such.
  - e) If plan approval is denied, the reasons for this action shall be communicated to the applicant in writing within 14 days of the official decision.
  - f) Major site plan approval expires 24 months from the date of approval.
  - g) Zoning permits may be issued once the site plan is approved.
8. In the event of failure to comply with an approved major site plan or condition related thereto, the plan shall immediately become void and of no effect, no further permits for construction or compliance shall be issued and existing permits may be suspended or revoked by the UDO Administrator.

#### C. SPECIAL USE PERMIT

1. The procedure set forth in this section for considering requests for special use permits is designed to provide an orderly process for reviewing requests for those land uses specified as permissible on application to the Board of Adjustment. The Board of Adjustment shall hold a hearing on the application within 60 days of the submittal of a completed application.
2. Special use permits shall not be issued as a matter of right, but only after the Board of Adjustment finds that the applicant has met all standards and requirements set forth herein for the granting of the permits.
3. The purpose of having the uses being special is to ensure that they would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which they are located and would meet other criteria as set forth in this section.
4. Special use permits shall be issued by the UDO Administrator, after approval by the Board of Adjustment. The petition for a special use permit and accompanying plans shall be submitted to the UDO Administrator. The application shall be processed in accordance with provisions pertaining to quasi-judicial hearings.
5. Application Materials and Submittal. One (1) digital copy and 12 hard copies of the special use permit site plan shall be submitted with all such applications.
6. The special use permit site plan shall be prepared by and sealed by a licensed land surveyor, landscape architect, or engineer registered to practice in the state of North Carolina, and shall include all of the required information as provided in Appendix A: Submission Requirements.

7. Notice of quasi-judicial hearing. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
8. Special Use Permit Review Procedure:
  - a) The UDO Administrator shall review the special use site plan and may require a Technical Review Procedure.
  - b) If the UDO Administrator determines that more information is needed or that a significant number of changes must be made before the plan can be approved, the applicant shall make the necessary changes; and re-submit the plans. All re-submissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.
  - c) Upon determination that a special use permit application is complete, within 30 working days of the submittal date, the UDO Administrator shall review the plans and make a recommendation to the Board of Adjustment as to compliance with this ordinance. Any Technical Review Committee comments (if applicable) shall accompany the UDO Administrators staff report and recommendation. The special use permit site plan will be placed on the agenda of the next regularly scheduled Board of Adjustment meeting following 30 working days of submittal of a complete application for a special use permit.
  - d) The Board of Adjustment shall approve, modify, or deny the application for a special use permit. In approving a special use permit the Board of Adjustment, with due regard to the nature and state of all adjacent structures and uses in the district, shall make written findings that the following are fulfilled:
    - i) 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;
    - ii) That the use meets all required conditions and specifications;
    - iii) 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
    - iv) 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 and in general conformity with the Town of Sunset Beach Comprehensive Plan.

- e) In approving the special use permit, the Board of Adjustment may designate, such conditions in addition and in connection therewith as will, in its opinion, assure that the use in its proposed location will be harmonious with the area in which it is proposed to be located and with the spirit of this ordinance. All such additional conditions shall be entered in the minutes of the meeting at which the special use permit is granted and also on the special use permit issued, and on the approved plans submitted therewith. 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 NCGS 160A-307, or other unauthorized limitations on the development or use of land. All such conditions shall be consented to in writing by the applicant or landowner. 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. Such conditions may include the following:
  - i) A time limitation.
  - ii) Conditions may be imposed which require that one or more things be done before the use requested can be initiated. For example, "that a solid board fence be erected around the site to a height of six (6) feet before the use requested is initiated."
  - iii) Conditions of a continuing nature may be imposed. For example: "exterior loudspeakers shall not be used between the hours of 10:00 p.m. and 9:00 a.m."
- f) The decision of the Board of Adjustment shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective, by the town clerk. If the Board of Adjustment denies the permit, it shall enter the reason for its action in the minutes of the meeting at which the action is taken.
- g) Approved special use permits shall be recorded in the Brunswick County Registry by the Town of Sunset Beach and indexed under the record owner's name as grantor.
- h) Effect of Approval. If an application for a special use permit is approved by the Board of Adjustment, the owner of the property shall have the ability to develop the use in accordance with the stipulations contained in the special use permit, or develop any other use listed as a permitted use for the general zoning district in which it is located.
- i) A special use permit, after approval by the Board of Adjustment, shall expire two (2) years after the approval date if work has not commenced

or in the case of a change of occupancy the business has not opened; however, it may be, on request, continued in effect for a period not to exceed six (6) months by the UDO Administrator. No further extension shall be added except on approval of the Board of Adjustment. If such use or business is discontinued for a period of 12 months, the special use permit shall expire. Any expiration as noted or any violation of the conditions stated on the permit shall be considered unlawful and the applicant will be required to submit a new special use application to the appropriate agencies for consideration. Prior to nullification of any expired special use permit, the permit revocation procedures as provided in this article shall be complied with, including notification and hearing requirements.

- j) All businesses operating under a special use permit are subject to annual inspection by the UDO Administrator. Inspections will be carried out to ensure that the terms and conditions of the permit are being followed

#### D. VARIANCE

1. An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the UDO Administrator. Applications shall be handled in the same manner as applications for permits. The Board of Adjustment shall hold a hearing on the application within 60 days of the submittal of a completed application.
2. Notice of quasi-judicial hearing. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
3. A variance may be approved by the Board of Adjustment if it concludes that, by granting the variance, all the following findings of fact are met by the Board of Adjustment's decision and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure. The Board may reach these conclusions if they find that:
  - a) Unnecessary hardship would result from a strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
  - b) The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis from granting a variance. A variance may be granted when

- necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability;
- c) The hardship did not result from actions taken by the applicant or property owner. The act of purchasing property with knowledge that circumstances exist that might justify a variance shall not be considered as a self-created hardship;
  - d) The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice achieved.
- 4. In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.
  - 5. The Board of Adjustment may take a separate vote and vote affirmatively (by a four-fifths (4/5) majority on each of the four (4) required statutory findings as provided in NCGS 160D-705(d). Insofar as practicable, a motion to make an affirmative finding on all of the requirements set forth in NCGS 160D-705(d) shall include a statement of the specific reasons or findings of fact supporting such motion.
  - 6. A motion to deny a variance may be made on the basis that any one (1) or more of the four (4) criteria set forth in NCGS 160D-705(d) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board of Adjustment's decision if supported by more than one-fifth (1/5) of the Board's membership (excluding vacant seats).
  - 7. Findings of fact made by the Board of Adjustment under this section shall be based upon only the evidence presented at the hearing at which the variance is considered.
  - 8. The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this ordinance.
  - 9. No change in permitted uses may be authorized by variance.
  - 10. A variance may be issued for an indefinite duration or for a specified duration only.
  - 11. The decision of the Board of Adjustment shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective, by the town clerk.
  - 12. An aggrieved person may appeal a decision by the Board of Adjustment on an application for appeal to the Superior Court. Such appeal shall be in the nature of certiorari and must be filed within 30 days of the effective decision and as provided by NCGS 160D-406(k).

E. APPEAL

1. An appeal from any final order or decision of the UDO Administrator or official charged with enforcement of the UDO or other ordinance that regulates land use or development may be taken to the Board of Adjustment by any party who has standing under NCGS 160D-1402(c). Appeals of a final subdivision decision may be made in accordance with NCGS 160D-1403. The official who made the decision shall give written notice to the owner of the property and the party who sought the decision, if different. A notice of appeal, specifying the grounds therefor, shall be considered filed with the official and the Board of Adjustment when delivered to the town clerk, and the date and time of filing shall be entered on the notice by the clerk.
2. An appeal must be taken within 30 days after the date of the decision or order appealed from. Any person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the final decision or notice of determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to NCGS 160D-403(b) by first class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.
3. Notice of quasi-judicial hearing. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
4. Whenever an appeal is filed, the official shall forthwith transmit to the Board of Adjustment all the papers, documents and exhibits constituting the record relating to the action appealed from, with a copy provided to the appellant and land owner, if the landowner is not the appellant.
5. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the Board of Adjustment and any subsequent appeal in accordance with NCGS 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the



appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed.

6. Notwithstanding any other provision of this section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or town may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.
7. The official who rendered the determination that has been appealed shall appear at the hearing as a witness. The Board of Adjustment may reverse or affirm (wholly or partly) 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 case before it. To this end the board shall have all the powers of the officer from whom the appeal is taken. The board shall continue the hearing if new issues are presented at the hearing that were not in the notice of appeal and immediate consideration might unduly prejudice a party of interest or the town.
8. The final written decision of the Board of Adjustment shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective, by the town clerk.
9. An aggrieved person may appeal a decision by the Board of Adjustment on an application for appeal to the Superior Court. Such appeal shall be in the nature of certiorari and must be filed within 30 days of the effective decision and as provided by NCGS 160D-406(k).

## 2.15 CREATION OF NEW LOTS/DIVISION OF LAND

### A. GENERAL

No land within the town's planning jurisdiction shall be subdivided, combined, or re-subdivided and offered for sale, gifted, exchanged, or in any other way conveyed until a plat thereof has been approved as herein provided. No plat shall be recorded by the Brunswick County Register of Deeds until this approval is entered in writing on the face of the plat as herein provided.

### B. EXEMPT PLAT REVIEW

1. Applicability. Divisions or land and creation of lots which do not meet the statutory definition of subdivision in accordance with NCGS 160D-802 or are as provided in this section. In accordance with NCGS 160D-802(a)(1) & (4), newly created lots must be equal to or exceed the dimensional standards of the zoning district in which they are located.
2. Application Materials and Submittal. The applicant shall submit one (1) digital copy and one (1) hard copy of the final plat so marked to UDO Administrator for approval. The final plat shall be prepared by a licensed land surveyor or engineer registered to practice in the state of North Carolina. The final plat shall conform

- to the provisions for plats, subdivisions, and mapping requirements set forth in NCGS 47-30 and the Standards of Practice for Land Surveying in North Carolina.
3. Property owners or their authorized agents must present a paper or recordable map to the UDO Administrator for determination of whether the action created by the recording of the map meets the ordinance standards to be exempt.
  4. If the proposal meets the exemptions listed in this ordinance or in NCGS 160D-802 the UDO Administrator shall sign an exemption note on the face of the recordable map before it is recorded.
  5. In addition to the divisions of land identified in NCGS 160D-802(a)(1) through (4), the following divisions of land shall not be included within the definition of the term “subdivision” and shall not be subject to the lot dimensional standards in this ordinance: (1) the division of land for the purpose of creating a lot for use as a site for a public utility; (2) the creation of a lot to be conveyed to the town or to a non-profit entity for the purpose of creating public parks, public access, or public open space, provided that the plat and the deed creating such parcel shall specifically state that the parcel created may not be used for any other purpose, and (3) the division of land owned by a governmental entity to facilitate the conveyance of a portion of said land to another governmental entity for governmental or public use.
  6. If the proposal does not meet the exemptions, the UDO Administrator shall return the unsigned map to the property owner or authorized agent with a written description of why the map does not qualify to be exempt.
  7. The applicant shall file any approved exempt plat with the Register of Deeds of Brunswick County within 30 days of approval; otherwise, such approval shall be null and void.
  8. The exempt plat shall include all of the required certificates as provided in Appendix A: Submission Requirements.

#### C. EXPEDEDITED MINOR SUBDIVISION REVIEW

1. **Applicability.** The town only requires submittal of a final plat for review of an expedited minor subdivision if it meets the criteria as provided in NCGS 160D-802(c).
2. **Application Materials and Submittal.** The applicant shall submit one (1) digital copy and one (1) hard copy of the final plat so marked to the UDO Administrator for approval. The final plat shall be prepared by a licensed land surveyor or engineer registered to practice in the state of North Carolina. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in NCGS 47-30 and the Standards of Practice for Land Surveying in North Carolina.
3. The UDO Administrator shall review the final plat and shall proceed with approval, conditional approval with modifications to bring the plat into compliance, or disapproval of the final plat with reasons within 30 working days of initial receipt of a complete application for a minor subdivision plat.

4. The applicant shall file any approved final plat with the Register of Deeds of Brunswick County within 30 days of approval; otherwise, such approval shall be null and void.
5. The minor subdivision plat shall include all of the required information and certificates as provided in Appendix A: Submission Requirements.

#### D. MINOR SUBDIVISION PRELIMINARY PLAT

1. **Applicability.** Subdivisions of 19 or fewer lots, regardless of right-of-way dedication or utility extension.
2. The minor subdivision preliminary plat shall be prepared by and sealed by a licensed land surveyor or engineer registered to practice in the state of North Carolina, and shall include all of the required information and certificates as provided in Appendix A: Submission Requirements in addition to any other required information in Article 4: Subdivision Regulations.
3. **Minor subdivision preliminary plat review procedure:**
  - a) The UDO Administrator or his/her designee will review the minor subdivision preliminary plat. If the UDO Administrator determines that more information is needed or that a significant number of changes must be made before the plat can be approved, the applicant shall make the necessary changes; and re-submit the plat. All re-submissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.
  - b) Upon determination that a minor subdivision preliminary plat application is complete, within 30 working days of the submittal date, the UDO Administrator and the Technical Review Committee (if applicable) shall review the plat and may approve, conditionally approve, or disapprove the preliminary plat. If the plat is disapproved, the reasons shall be set forth in writing and refer specifically to those parts of this ordinance or other land development ordinances with which the plat does not comply.
  - c) Approval of the minor subdivision preliminary plat by UDO Administrator is authorization for the subdivider to proceed with the construction of the required improvements in preparation for submission of the final plat.
4. The minor subdivision preliminary plat shall include all of the required information and certificates as provided in Appendix A: Submission Requirements.

#### E. MAJOR SUBDIVISION PRELIMINARY PLAT

1. **Applicability.** Subdivisions of 20 or more lots.
2. **Pre-Application Meetings.** Applicants may request a pre-application meeting with the UDO Administrator prior to submission of an application to discuss procedural and substantive matters related to the proposed application.

3. Application Materials and Submittal. One (1) digital copy and 12 hard copies of the major subdivision preliminary plat shall be submitted with all applications for such.
4. The major subdivision preliminary plat shall be prepared by and sealed by a licensed land surveyor or engineer registered to practice in the state of North Carolina, and shall include all of the required information and certificates as provided in Appendix A: Submission Requirements in addition to any other required information in Article 4: Subdivision Regulations.
5. Major subdivision preliminary plat review procedure:
  - a) The UDO Administrator or his/her designee will review the major subdivision preliminary plat. If the UDO Administrator determines that more information is needed or that a significant number of changes must be made before the plat can be approved, the applicant shall make the necessary changes; and re-submit the plat. All re-submissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.
  - b) Upon determination that a major subdivision preliminary plat application is complete, within 30 working days of the submittal date, the UDO Administrator and the Technical Review Committee (if applicable) shall review the plat and make a recommendation to the Planning Board as to compliance with this ordinance. The major subdivision preliminary plat will be placed on the agenda of the next regularly scheduled Planning Board meeting following 30 working days of submittal of a complete application for a major subdivision preliminary plat.
  - c) The Planning Board shall review the major subdivision preliminary plat and written recommendations of the UDO Administrator and the Technical Review Committee (as applicable) prior to recommending approval, denial, or conditional approval of the major subdivision preliminary plat to the Board of Aldermen. Within 90 days of receipt of the major subdivision preliminary plat, the Planning Board shall approve or deny the preliminary plat.
  - d) The Planning Board by formal motion may approve, conditionally approve, or disapprove the preliminary plat. If the plat is disapproved, the reasons shall be set forth in writing and refer specifically to those parts of this ordinance or other land development ordinances with which the plat does not comply.
  - e) Approval of the major subdivision preliminary plat by the Planning Board is authorization for the subdivider to proceed with the construction of the required improvements in preparation for submission of the final plat.
6. The approval granted by the Planning Board shall expire 24 months from the date of action by the Planning Board, unless subject to vesting as a multi-phased development in accordance with NCGS 160D-108. However, extensions may be granted upon application and request for such to the Planning Board. Such time

limits shall expire automatically unless extended by the Planning Board, and once lapsed shall not be extended.

F. MINOR AND MAJOR SUBDIVISION FINAL PLAT

1. Applicability. Minor and major subdivisions whereby a subdivision preliminary plat (as applicable) has been approved and all necessary and/or required improvements have been installed in accordance with Article 4: Subdivision Regulations. No final plat will be accepted for review by the UDO Administrator unless accompanied by written notice by the town clerk acknowledging compliance with the improvement standards of this ordinance or for guarantee of final minor improvements as specified herein.
2. All improvements required by Article 4: Subdivision Regulations shall be installed, inspected, and approved prior to approval of any final plat. All required improvements, except the final inch of asphalt on roadways, landscaping, and sidewalks shall be installed, inspected, and approved prior to approval of any final plat. A Subdivision Improvement Agreement shall be entered into for the purpose of guaranteeing the proper installation of the final lift of asphalt, landscaping, and sidewalks.
  - a) Subdivision Improvement Agreements. The UDO Administrator shall have the authority to review and approve all subdivision improvement agreements. The Subdivision Improvement Agreement shall guarantee completion of all eligible on-site and off-site public improvements no later than one (1) year following the date upon which the final plat is recorded unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one (1) year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the guarantee or any extension. If the improvements are not completed to the specifications of town, and the current improvement guarantee is likely to expire prior to completion of the required improvements, the guarantee shall be extended by the UDO Administrator for additional period not to exceed six (6) months. An extension under this subdivision shall only be for a duration necessary to complete the required improvements. The Applicant shall bear the responsibility to prepare a Subdivision Improvement Agreement. The town attorney shall approve any Subdivision Improvement Agreement as to form.
  - b) Performance Security. Whenever an applicant is subject to enter into a Subdivision Improvement Agreement, the applicant shall be required to provide sufficient security to ensure completion of the required public improvements. The security shall be in any form authorized by NCGS

160D-804.1(1). If in the form of a surety bond, the bond shall be reviewed annually.

- c) The letter of credit, cash escrow, or surety bond, or other approved guarantee shall be in an amount reflecting one hundred twenty-five percent (125%) of the cost of the improvements and shall be sufficient to cover all promises and conditions contained in the Subdivision Improvement Agreement. An engineer selected by the town shall review and approve the estimated cost of improvements before the Agreement is executed. The applicant shall be required to pay for the cost of such services. The estimated cost shall be broken down separately for each element of the agreement. In addition to all other security, when the town participates in the cost of an improvement, the applicant shall provide a performance bond from the contractor, with the town as a co-obligee. The issuer of any surety bond shall be subject to the approval of the town attorney and the UDO Administrator.
- d) If security is provided in the form of a cash escrow, the applicant shall deposit with the town finance director a cash amount or certified check endorsed to the escrow agent for a face value in an amount not less than the amount specified herein. The surety bond or cash escrow account shall accrue to the town for administering the construction, operation, and workmanship of the improvements. Where oversized facilities are required, the UDO Administrator and applicant shall specify a reimbursement procedure in the Subdivision Improvement Agreement.
- e) Release of Performance Security. Upon completion of all improvements required by the Subdivision Improvement Agreement, the UDO Administrator shall have the work inspected. If the UDO Administrator determines that the work is satisfactory and complete, the letter of credit, cash escrow, or surety bond shall be released. The UDO Administrator shall also require evidence from the subdivider that all contractors have been paid in full prior to the release of the performance security.
- f) Failure to Complete Improvements. If a Subdivision Improvement Agreement has been executed and security has been posted and required public improvements are not installed pursuant to the terms of the Agreement, the UDO Administrator may:
  - i) Declare the Agreement to be in default 30 days prior to the expiration of the guarantee instrument, and require that all public improvements be installed regardless of the extent of completion of the development at the time the agreement is declared to be in default;
  - ii) Obtain funds pursuant to the surety and complete the public improvements by itself or through a third party;
  - iii) Assign its right to receive funds pursuant to the surety in whole or in part to any third party, including a subsequent owner of the subdivision or addition for whom the public improvements were not

constructed, in exchange for the subsequent owner's Agreement to complete the required public improvements; and/or

iv) Exercise any other rights available under the law.

3. Pre-Application Meetings. Applicants may request a pre-application meeting with the UDO Administrator prior to submission of an application to discuss procedural and substantive matters related to the proposed application.
4. Application Materials and Submittal. One (1) digital copy and (1) hard copy of the subdivision final plat shall be submitted with all such applications.
5. Final As-Built Drawings. Accompanying the application for a major subdivision final plat approval will be digital copies of as-built drawings showing the actual construction, location, and materials used in the installation of all required improvements as required by Article 4: Subdivision Regulations. These drawings will become a part of the public record of the town.
6. The subdivider shall within 24 months of the date of minor or major subdivision preliminary plat approval or approval with conditions, unless subject to vesting as a multi-phased development in accordance with NCGS 160D-108, to submit to the UDO Administrator a complete application for approval of a final plat. If the preliminary plat was approved with conditions, the final plat shall show the modifications made to meet the conditions attached to the preliminary plat approval. Final plats can continue to be submitted for subsequent sections of the major subdivision beyond the 24 months provided the first phase receives final approval during the initial 24-month period. Each successive final plat for a stage of the subdivision shall be submitted for approval within 24 months of the date of approval of the previous final plat for a stage of the subdivision.
7. The subdivision final plat shall be prepared by and sealed by a licensed land surveyor or engineer registered to practice in the state of North Carolina. The final plat shall constitute only that portion of the approved preliminary plat which the subdivider proposes to record and develop at the time and shall include all of the required information and certificates as provided in Appendix A: Submission Requirements in addition to any other required information in Article 4: Subdivision Regulations.
8. Minor and Major Subdivision Final Plat Review procedure:
  - a) The UDO Administrator or his/her designee shall review the subdivision final plat. If the UDO Administrator determines that more information is needed or that a significant number of changes must be made before the plat can be approved, the applicant shall make the necessary changes; and re-submit the plat. All re-submissions shall contain a list of the changes made. A new 30-day review period may begin on the date of the re-submission of a required information.
  - b) Upon determination that the final plat application is complete, within 30 working days of the submittal date, the UDO Administrator and the Technical Review Committee (if applicable) shall review the plat and provide any necessary comments or revisions to the applicant.

- c) The UDO Administrator shall approve or disapprove, according to the provisions of this ordinance, the final plat within 30 working days after receipt of the complete application for a final plat.
- d) If the UDO Administrator disapproves the final plat, the reasons shall be set forth in writing and refer specifically to those parts of this ordinance or other land development ordinances with which the plat does not comply.
- e) Within 30 working days after the approval of the the final plat, the subdivider shall file the final plat with the Brunswick County Register of Deeds. Failure to file an approved final plat within 30 days shall make such approval null and void.

## 2.16 UDO TEXT AND ZONING MAP AMENDMENTS

### A. INITIATION OF AMENDMENTS

1. Purpose and applicability. Pursuant to NCGS 160D-601, the text of this ordinance or the zoning district boundaries as shown on the town's zoning map may be amended in accordance with the procedures established herein. A petition by the appropriate person or entity shall be submitted to the UDO Administrator and reviewed by the Planning Board, which shall consider its merit and make a recommendation to the Town Council. In no case shall final action by the Town Council be taken on amending, changing, supplementing, modifying or repealing the regulations or district boundaries hereby established until a public hearing has been held by the Town Council at which parties in interest and citizens shall have an opportunity to be heard.
  - a) Proposed changes or amendments to the zoning map may be initiated by the Town Council, Planning Board, town administration, or by the owner, or his or her agent, of property within the area proposed to be changed.
  - b) Proposed amendments to the text of the ordinance may be initiated by any interested party.
2. No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the town. For purposes of this section, "down-zoning" means a zoning amendment that affects an area of land in one of the following ways by decreasing the development density of the land to be less dense than was allowed under its previous usage or by reducing the permitted uses of the land to fewer uses than were allowed under its previous usage.
3. Application. An application for any change or amendment shall contain a description and/or statement of the present and proposed zoning regulation or district boundary. If a zoning map amendment is proposed, the names and addresses of the owners of the property involved shall be included. Such application shall be filed not later than 30 days prior to the meeting of the



Planning Board at which the application is to be considered, and in all cases with enough lead time to properly advertise.

4. Planning Board public hearing requirement, advertised, mailed, and posted notice.
  - a) In any case where the Planning Board will consider a change in the zoning classification of a parcel of land (rezoning), notice of the proposed petition or application shall be mailed by first class mail to the owner of the parcel of land involved in the change and all abutting property owners as shown on the Brunswick County tax listing at the addresses listed for such property owners on the Brunswick County tax abstracts, at least 10 days and not more than 25 days prior to the Planning Board meeting at which the rezoning is to be considered. The town shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. When multiple parcels are included in a proposed zoning map amendment, a posting of each individual site is not required, but the town shall post sufficient notices to provide reasonable notice to interested persons. The UDO Administrator or his or her designee shall certify to the Planning Board that such notices have been made.
  - b) In any case where the Planning Board will consider an amendment to the zoning code text, notice of the amendment to be considered may be published once in a newspaper having general circulation in the area (optional). The notice may be published not less than 10 days before the date of the Planning Board meeting at which the text amendment will be considered.
5. Town Council public hearing requirement, advertised, mailed, and posted notice.
  - a) No amendment shall be adopted by the Town Council until after public notice and hearing. Notice of such a public hearing shall be published once a week for two (2) successive calendar weeks in a local newspaper of general circulation in the town. In any case where the Town Council will consider a change in the zoning classification of a parcel of land, notice of the proposed petition or application shall be mailed by first class mail to the owner of that parcel of land and all abutting property owners as shown on the Brunswick County tax listing at the last addresses listed for such property owners on the Brunswick County tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. The party applying for the change in zoning classification shall submit the following material with the request for rezoning; the application shall be considered incomplete without such material:
    - i) A list of names of owners, their addresses, the tax parcel numbers of the property involved in the change, and the properties immediately adjacent to the property of the request,

- including the property owners directly opposite the proposed request but separated by a street right-of-way, as shown on the Brunswick County tax listing.
- ii) Two (2) sets of plain, letter sized envelopes equal in number to the above list of names shall be furnished by the applicant. Both sets of envelopes are to be unsealed, stamped, and addressed for mailing to the adjacent property owners as shown on the Brunswick County tax listing, and bear the return address of the town.
- b) At least 10 but no more than 25 days prior to the date of the meeting at which the Town Council will consider the request for rezoning, the town clerk shall mail a letter of notification in the supplied envelopes containing a description of the request and the time, date, and location of the public hearing. Additionally, the site proposed for rezoning or an adjacent public right-of-way shall be posted with a notice of the public hearing not less than 10 but no more than 25 days prior to the Town Council meeting at which the rezoning is to be considered. When multiple parcels are included in a proposed zoning map amendment, a posting of each individual site is not required, but the town shall post sufficient notices to provide reasonable notice to interested persons. The town clerk shall certify to the Town Council that such notices have been made and such certification shall be deemed conclusive in the absence of fraud.
  - c) The first class mail notice required under Subsections (a) and (b) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the town elects to use the expanded published notice. In this instance, the town may elect to either make the mailed notice provided for in this section or may as an alternative elect to publish a notice of the hearing as required by NCGS 160D-601, but provided that each advertisement shall not be less than one-half (2) of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent Brunswick County property tax listing for the affected property, shall be notified according to the provisions of Subsections (a) and (b).
  - d) Except for a town-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the Town Council that the owner of the parcel of land as shown on the Brunswick County tax listing has received actual notice of the proposed amendment and a copy of the

notice of public hearing. The person or persons required to provide notice shall certify to the Town Council that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud. Notice shall be made in any manner permitted under NCGS 1A-1, Rule 4(j).

6. Citizen Comments. If any resident or property owner in the town submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the Town Council.
7. Reapplication for amendment. With the exception of requests originating with the Town Council, Planning Board, or town administration, an application for any rezoning of the same property or any application for the same amendment to the ordinance text shall be permitted only once within any 12 month period following official action. The Town Council, by simple majority, may waive this restriction if it finds any emergency exists.
8. Withdrawal of Application. An applicant may withdraw his or her application at any time by written notice to the UDO Administrator.

#### B. PLANNING BOARD ACTION

1. Every proposed amendment, supplement, change, modification or repeal of this ordinance shall be referred to the Planning Board for its recommendation and report.
2. Recommendations of Planning Board. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed zoning amendment must be determined. If no recommendation is received from the Planning Board within 60 days from the date when presented to the Planning Board, the petitioner may take the proposal to the Town Council without a recommendation from the Planning Board.
3. The Planning Board shall advise and comment on whether the proposed text amendment or map amendment is consistent with the adopted Comprehensive Plan and any other applicable officially adopted plans. The Planning Board shall provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Town Council. If a zoning map amendment qualifies as a large-scale rezoning under NCGS 160D-602(b), the Planning Board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

C. TOWN COUNCIL ACTION

1. Before taking such lawful action as it may deem advisable, the Town Council shall consider the Planning Board's recommendations on each proposed text or zoning map amendment.
2. The Town Council, at the close of public hearing, may defer taking lawful action on the proposed amendment until it has sufficient time to consider any new evidence or suggestions presented at the public hearing.
3. No member of the Town Council shall vote on any zoning map amendment or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.
4. Prior to adopting or rejecting any zoning amendment, the Town Council shall adopt a statement describing whether the action is consistent with the adopted Comprehensive Plan and any other applicable officially adopted plans and explaining why the Council considers the action taken to be reasonable and in the public interest. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Town Council meeting that at the time of action on the amendment the Town Council was aware of and considered the Planning Board's recommendations and any relevant portions of an adopted Comprehensive Plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a large-scale rezoning under NCGS 160D-602(b), the Town Council statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.
5. When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Town Council. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a large-scale rezoning under NCGS 160D-602(b), the Town Council statement on reasonableness may address the overall rezoning. The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

#### D. APPLICATION WITHDRAWAL

An applicant may withdraw his or her application at any time by written notice to the UDO Administrator, but fees are nonrefundable.

## 2.17 CONDITIONAL ZONING

#### A. PURPOSE

1. A conditional zoning district is intended for a development that has a high level of certainty of being constructed and the most commonly expected application will contain a specified use or uses, permitted by right or special use, on small- and large-scale projects.
2. All uses listed as part of any application must be in the same format and description as listed in the table of uses.
3. Except as provided herein, all applications to establish a conditional zoning district must follow the regulations prescribed in this section in addition to the standard zoning map amendment (rezoning) process as described in this ordinance.

#### B. APPLICATION AND CONDITIONAL ZONING REVIEW PROCEDURE

1. The application for a conditional rezoning approval shall follow the zoning map amendment process, including any required notification and hearing. The approved master development plan shall provide the framework for development in the conditional zoning district. All applications must include a master development plan, supporting information and text which specifies the use or uses intended for the property, dimensional standards, and any development standards to be approved concurrently with the rezoning application. Development standards may include, but not be limited to such things as parking, landscaping, design guidelines, and buffers.
2. Applications and proposals for conditional zoning approval shall not be considered within the BR-1, BR-2, CR-1, and CR-2 zoning districts. No conditional zoning proposals shall be considered within a residential zoning district on the island portion of the town's planning jurisdiction. Within mainland residential zoning districts, a minimum one (1) acre contiguous tract is required for any conditional zoning request. Such tract may consist of individually-owned parcels, including parcels separated by a street or roadway, under single site control through a duly established agent agreement.
3. Development agreements may be incorporated into any conditional zoning request.
4. An application for conditional zoning approval shall be accompanied by 12 hard copies and one (1) digital copy of a conditional zoning master development plan.
5. The master development plan shall be prepared by and sealed by a licensed land surveyor, landscape architect, or engineer registered to practice in the state of North Carolina. The master development plan shall include the submission requirements contained in Appendix A. For nonresidential projects, the master development plan may be prepared

in accordance with the site plan requirements of this ordinance to satisfy the site plan approval process thus necessitating only the issuance of a zoning permit following approval.

6. The UDO Administrator or his/her designee will review the conditional zoning master development plan and may require a Technical Review Committee procedure. Comments and review statements shall be included in the UDO Administrator's staff report to the Planning Board which shall be provided within 60 days of receipt of a complete application.
7. The Planning Board shall provide a recommendation to the Town Council within 60 days following the first meeting at which the conditional zoning application and master development plan were to be presented and included on the agenda.
8. Following receipt of recommendation from the Planning Board, the Town Council shall approve, conditionally approve, or deny the conditional zoning master development plan.
9. When evaluating an application for the creation of a conditional zoning district, the Planning Board and Town Council shall consider the following:
  - a) The application's consistency to the general policies and objectives of the Town's Comprehensive Land Use Plan, any other officially adopted plan that is applicable, and the Unified Development ordinance.
  - b) The potential impacts and/or benefits on the surrounding area, adjoining properties.
  - c) The report of results from the public input meeting.
10. The Town Council may not vote to rezone property to a conditional zoning district during the time period beginning on the date of a municipal general election and concluding on the date immediately following the date on which the Town Council holds its organizational meeting following a municipal general election unless no person spoke against the rezoning at the public hearing.

#### C. PUBLIC INPUT MEETING

1. Prior to the Planning Board meeting on the conditional zoning application, the applicant must conduct one (1) public input meeting and file a report of the results with the UDO Administrator. Applicants are strongly encouraged to hold an additional public input meeting where all interested persons could not be accommodated at the first scheduled meeting. Notice requirements for any additional public input meetings shall be at the discretion of the applicant.
2. The report for the first Planning Board meeting will include a summary of the public input meeting.
3. The applicant shall mail a notice for the public input meeting to the owners of all properties located within 500 feet of the perimeter of the project bounds not less than 30 days prior to the scheduled meeting.
4. The notice shall include the time, date, and location of the meeting as well as a description of the proposal. The applicant shall also provide

their contact information within the notice so that interested parties may contact said applicant regarding their proposal.

5. The applicant's report of the meeting shall include:
  - a) A copy of the letter announcing the meeting
  - b) A list of adjoining property owners contacted
  - c) An attendance roster
  - d) A summary of the issues discussed
  - e) The results of the meeting including changes to the project's proposal, if any.

#### D. CONDITIONS TO APPROVAL OF PETITION

1. In approving a petition for the reclassification of property to a conditional zoning district, the Planning Board may recommend, and the Town Council may request that the applicant add reasonable and appropriate conditions to the approval of the petition.
2. Any such conditions shall be in accordance with NCGS 160D-703 and should relate to the relationship of the proposed use to the impact on Town services, surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, stormwater drainage, the provision of open space, and other matters that the participants in the public input meeting, staff, Planning Board, and Town Council find appropriate or the petitioner may propose.
3. The petitioner shall consider and respond to any such conditions after the Planning Board meeting and within seven (7) days prior to the staff report for the Town Council being published. If the applicant does not agree with the Planning Board or staff's recommendations of additional conditions, the Town Council shall have the authority to accept any or all of the conditions forwarded from the review process. All conditions shall be consented to in writing by the applicant.
4. If for any reason any condition for approval is found to be illegal or invalid or if the applicant should fail to accept any condition following approval, the approval of the site plan for the district shall be null and void and of no effect and proceedings shall be instituted to rezone the property to its previous zoning classification.

#### E. EFFECT OF APPROVAL

1. If a petition for conditional zoning is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's classification, the approved master development plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the zoning maps.
2. The conditional zoning request, once approved, shall be effective upon property owner signature(s).

3. Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the zoning map by the appropriate district designation. A parallel conditional zoning shall be identified by the same designation as the underlying general district followed by the letters "CZ" (for example "MB-1-CZ").
4. No zoning or building permit shall be issued for any development activity within a conditional zoning district except in accordance with the approved petition and applicable site plan and/or subdivision plat. Residential projects shall follow the subdivision approval process following the approval of conditional zoning request. Nonresidential projects may comply with the site plan requirement of this ordinance by including said requirements on the approved master development plan. Accordingly, resubmittal of a minor or major site plan is not required.
5. Any violation of the approved regulations and conditions for the district shall be treated the same as any other violation of this ordinance and shall be subject to the same remedies and penalties as any such violation.

## 2.18 - 2.20 RESERVED

## 2.21 VESTED RIGHTS

### A. PURPOSE

The purpose of this section is to implement the provisions of NCGS 160D-108; 108.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific vesting plan.

### B. ESTABLISHMENT OF A ZONING VESTED RIGHT

1. A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the Town Council of a site specific vesting plan, following notice and hearing as provided for by law.
2. The approving authority may approve a site specific vesting plan upon the terms and conditions as may reasonably be necessary to protect the public health, safety and welfare. The failure to satisfy any of the terms and conditions so imposed will result in a forfeiture of vested rights.
3. Notwithstanding divisions (1) and (2) above, approval of a site specific vesting plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.
4. A site specific vesting plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto.
5. The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the town, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise, applicable new or amended regulations shall be effective with respect to property that is subject to a site specific vesting plan



upon the expiration or termination of the vested right in accordance with this section.

6. A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific vesting plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

#### C. APPROVAL PROCEDURES AND AUTHORITY

1. Except as otherwise provided in this section, an application for site specific vesting plan approval shall be processed in accordance with the procedures established by Ordinance and shall be considered by the designated approval authority for the specific type of zoning or land use permit or approval for which application is made.
2. In order to obtain a zoning vested right hereunder, the applicant must set forth, in writing, at the time of application that the applicant seeks a zoning vested right. All applications for zoning vested rights shall be considered by Town Council following notice and a legislative hearing as provided in NCGS 160D-602 irrespective of whether or not prior approval procedures required the notice and hearing.
3. In order for a zoning vested right to be established upon approval of a site specific vesting plan, the applicant must indicate, at the time of application, on a form to be provided by the town, that a zoning vested right is being sought.
4. Each map, plat, site plan or other document evidencing a site specific vesting plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under NCGS 160D-108; 108.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."
5. Following approval or conditional approval of a site specific vesting plan, nothing in this section shall exempt the plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that the reviews and approvals are not inconsistent with the original approval.
6. Nothing in this section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the UDO.

#### D. DURATION

1. A zoning right that has been vested as provided in this section shall remain vested for a period of two (2) years unless specifically and unambiguously provided otherwise pursuant to Subsection 2.21.D.2 below. This vesting shall not be extended by any amendments or modifications to a site specific vesting plan unless expressly provided by the approval authority at the time the amendment or modification is approved.
2. Notwithstanding the provisions of Subsection 2.21.D.1 above, the approval authority may provide that rights shall be vested for a period exceeding two (2) years, but not exceeding five (5) years where warranted in light of all relevant circumstances, including, but not limited to, the size of development, the level of

investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the approval authority at the time the site specific vesting plan is approved.

3. Upon the issuance of a building permit, the expiration provisions of NCGS 160D-1110 and the revocation provisions of NCGS 160D-1111 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

#### E. TERMINATION

1. A zoning right that has been vested as provided in this section shall terminate:
  - a) At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
  - b) With the written consent of the affected land owners;
  - c) Upon findings by the Town Council, by ordinance after notice and an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific vesting plan;
  - d) Upon payment to the affected land owner of compensation for all costs, expenses and other losses incurred by the land owner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal and other consultant's fees incurred after approval by the town, together with interest thereon at the legal rate until paid (compensation shall not include any diminution in the value of the property which is caused by the action);
  - e) Upon findings by the Town Council, by ordinance after notice and a hearing, that the land owner or his/her representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific vesting plan; or
  - f) Upon the enactment or promulgation of a State or Federal law or regulation that precludes development as contemplated in the site specific vesting plan, in which case the approval authority may modify the affected provisions, upon a finding that the change in State or Federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

#### F. VOLUNTARY ANNEXATION

1. A petition for annexation filed with the town under NCGS 160A-31 or NCGS 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under NCGS 160D-108; 108.1.
2. A statement that declares that no zoning vested right has been established under NCGS 160D-108; 108.1, or the failure to sign a statement declaring whether or

not a zoning vested right has been established, shall be binding on the land owner and any such zoning vested right shall be terminated.

#### G. LIMITATIONS

Nothing in this section is intended or shall be deemed to create any vested right other than those established pursuant to NCGS 160D-108; 108.1.

#### H. PERMIT CHOICE

If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, NCGS 143-755 applies. An applicant may proceed with a complete application for a development approval prior to final action on a proposed change to the UDO.

## 2.22 REVIEW PROCEDURES SUMMARY

Table 2.1: Review Procedures Summary						
Application Type	Advisory or Decision-Making Body					
	Town Council	Planning Board	Board of Adjustment	UDO Administrator	CAMA LPO	Building Inspector
FD = Final Decision; R = Advisory Recommendation; PH = Public Hearing; QJ = Quasi-judicial Hearing						
Complete Application				FD		
Zoning Permit, Sign Permit, Floodplain Permit, Tree Removal Permit				FD		
Building Permit						FD
CAMA Minor Permit					FD [1]	
Minor Site Plan				FD		
Major Site Plan		FD		R		
Special Use Permit			FD-QJ	R		
Variance, Appeal			FD-QJ			
Exempt Plat, Minor Subdivision Preliminary Plat				FD		
Major Subdivision Preliminary Plat		FD				
Minor and Major Subdivision Final Plat				FD		
Text Amendment	FD-PH	R[2]		R		
Zoning Map Amendment (Rezoning)	FD-PH	R-[PH]		R		
Conditional Zoning District	FD-PH	R-[PH]		R		
Statutory Zoning Vested Rights	FD-PH			R		
[1] CAMA general and major permits are decided by the NC Division of Coastal Management and Coastal Resources Commission. [2] Public hearings may be held at the discretion of the Planning Board for any proposed text amendment.						

## 2.23 PUBLIC NOTIFICATION REQUIREMENTS

Table 2.2: Public Notification Summary				
Application Type	Advisory or Decision-Making Body	Published Notice [1]	Mailed Notice [2]	Posted Notice [3]
<b>X = Notification Required; PH = Public Hearing; QJ = Quasi-judicial Hearing</b>				
Special Use Permit	Board of Adjustment		X-QJ	X-QJ
Variance	Board of Adjustment		X-QJ	X-QJ
Appeal	Board of Adjustment		X-QJ	X-QJ
Text Amendment	Planning Board	X-PH[4]		
	Town Council	X-PH		
Zoning Map Amendment, Conditional Zoning District	Planning Board		X-PH	X-PH
	Town Council	X-PH	X-PH	X-PH
Statutory Zoning Vested Rights	Town Council		X-PH	X-PH
[1] Published notice provided once a week for 2 successive calendar weeks, with the first notice between 10 and 25 days before the hearing. [2] Mailed notice provided to affected owners and landowners abutting the subject lot between 10 and 25 days before the hearing. [3] Posted notice provided on site or adjacent street between 10 and 25 days before the hearing. [4] Public hearings are optional and may be held at the discretion of the Planning Board for any proposed text amendment.				

## 2.24 ENFORCEMENT

### A. COMPLAINTS REGARDING VIOLATIONS

Whenever the UDO Administrator receives a complaint alleging a violation of the ordinance, he/she shall investigate the complaint, take whatever action is warranted, and inform the complainant what actions will be taken. Complaints can be accepted in any manner and shall be confidential. The building inspector shall be responsible for enforcement matters pertaining to the town and State Building Code.

### B. PERSONS LIABLE

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this ordinance may jointly and/or independently be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

### C. PROCEDURES UPON DISCOVERY OF VIOLATIONS

1. If the UDO Administrator finds that any provision of this ordinance is being violated, he/she shall send a written notice to the person responsible for such

violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the UDO Administrator's discretion. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the town clerk that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud.

2. The final written notice (and the initial written notice may be the final notice) shall state what action the UDO Administrator intends to take if the violation is not corrected and shall advise that the UDO Administrator's decision or order may be appealed to the Board of Adjustment.
3. Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this ordinance or pose a danger to the public health, safety, or welfare, the UDO Administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies as described herein.

#### D. PENALTIES AND REMEDIES FOR VIOLATIONS

1. Unless otherwise noted, any violation of the Unified Development Ordinance shall subject the offender to a civil penalty of one hundred dollars (\$100) in accordance with the provisions of NCGS 14-4. In addition to issuance of civil penalties, any provision of this ordinance or any other Town ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate and it shall not be a defense to the application of the Town of equitable relief that there is an adequate remedy at law.
2. Each day that any violation continues after notification by the UDO Administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section. Separate notices will not be provided for each violation.
3. Any one (1), all, or any combination of the foregoing penalties and remedies may be used to enforce this ordinance.