

## Article 2: Administration and Procedures

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## 2.1 GENERAL

This article contains powers and duties, approval procedures, amendment procedures, and enforcement mechanisms. The following bodies and city 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. Board of Alderman
- B. Planning Board
- C. Board of Adjustment
- D. UDO Administrator

## 2.2 BOARD OF ALDERMEN

### A. POWERS AND DUTIES

The Board of Aldermen has the following responsibilities in relation to this ordinance:

1. Hear and decide applications for zoning map and text amendments to this ordinance.
2. Hear and decide proposals for Major Subdivision Preliminary and Final Plats, as specified in this ordinance.
3. Establish rules of procedure for the conduct of hearings and other proceedings before the Board of Aldermen.
4. Make the necessary appointments to the Planning Board and Board of Adjustment.
5. Such other actions as are, or may be, authorized by North Carolina General Statutes (NCGS) Chapter 160D.

### B. CONFLICTS OF INTEREST

A Board of Aldermen member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this ordinance 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 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.

## 2.3 PLANNING BOARD

### A. POWERS AND DUTIES

The Planning Board has the following responsibilities in relation to this ordinance:

1. Acquire and maintain in current form such basic information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions.
2. Prepare and from time to time amend and revise a comprehensive and coordinated plan for the physical, social, and economic development of the area.
3. Establish goals and policies for guiding action in the development of the area.

4. Prepare and recommend to the Board of Aldermen ordinances promoting orderly development along the lines indicated in the comprehensive plan.
5. Review and recommend to the Board of Aldermen proposals for any zoning map or text amendment.
6. Review and recommend to the Board of Aldermen applications for Major Subdivision Preliminary and Final Plats, as specified in this ordinance.
7. Hear and decide applications for Major Site Plans, as specified in this ordinance.
8. Determine whether specific proposed developments conform to the principles and requirements of the comprehensive plan for the growth and improvement of the area.
9. Keep the Board of Aldermen and the general public informed and advised as to these matters.
10. Make recommendations for the timely implementation of programs to meet the goals and policies as adopted in the comprehensive plan.
11. Perform any other duties which may be lawfully assigned to it.
12. The Planning Board shall review and report as recommendations to the Board of Aldermen upon the extent, location, and design of all public structures and facilities, on the acquisition and disposal of public properties, and on the establishment of building lines. However, in the absence of a recommendation from the Planning Board, the Board of Aldermen may after the expiration of thirty (30) days from the date on which the questions have been submitted in writing to the Planning Board for review and recommendation, take final action.
13. Attend planning conferences or meetings of planning institutes or hearings upon pending planning legislation.

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

1. The Planning Board shall consist of seven (7) members and two (2) alternate members. Five (5) members and one (1) alternate member shall be citizens and residents of the city and shall be appointed by the Board of Aldermen. Two (2) members and (1) alternate member shall be citizens and residents of the extra-territorial jurisdiction of the city as described pursuant to NCGS 160D-307 and shall be appointed by the Brunswick County Board of Commissioners. All members shall serve a term of three (3) years. The Chairman and Vice-Chairman shall serve a term of one (1) year and may be reappointed following the end of the term at the discretion of the Planning Board.
2. The city clerk will advertise for vacancies when they occur. All candidates, including board members whose terms are expiring and who are seeking reappointment, must have an application no less than 30 days prior to the Board of Aldermen meeting in which the selection(s) are made and [no older than 90 days prior to the date of vacancy] on file with the city clerk's office and must inform the clerk they wish to be considered for the vacant position. All applicants must be interviewed by a committee, selected by the Board of Aldermen, consisting of two (2) Board of Aldermen members and the Chairman of the Planning Board. If the Chairman's term is expiring and he/she wants to apply for

reappointment, the Vice-Chairman of the Planning Board will be selected for the committee. The committee will make recommendations to the Board of Aldermen for the vacant position(s). Any citizen who has filed a current application and completed the interview shall be eligible for nomination. Citizens who have not met these requirements are not eligible for nomination to the Planning Board. The city clerk will place the applications of all candidates who meet these requirements in the agenda packets prior to the meeting in which the selection(s) are made.

3. Alternate members shall not be entitled to vote on matters before the Planning Board except when a regular Planning Board member is absent from a duly called meeting. In that situation, the alternate shall have the same privileges as the regular members and may count for quorum purposes and vote if a regular member is absent. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term. Faithful attendance at the meetings of the board is considered a pre-requisite for the maintenance of membership on the board. Extraterritorial representatives shall have equal rights, privileges, and duties with the other members of the board to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area.
4. Meetings of the Planning Board will normally occur on the third Thursday of the month at a time and place designated by the board and shall be open to the public. A quorum shall consist of four (4) members of the board.
5. All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section 2.3(C). A vote of a majority of the members present and voting shall decide issues before the board.
6. Special meetings may be called by the Chairman. It shall be the duty of the Chairman to call such a meeting upon a recommendation of the board. During a special meeting, no other business may be considered except that which was specified by advanced notice. The city clerk shall notify all members of the board in writing not less than five (5) days in advance of such special meeting. Notice of time, place, and subject of such meeting shall be published in a newspaper having general circulation in the City of Southport when possible.
7. The order of business at regular meetings shall be as follows:
  - a) Call to Order;
  - b) Approval of Minutes of Previous Meetings;
  - c) Approval of the Agenda;
  - d) Public Input;
  - e) Unfinished Business;
  - f) New Business;
  - g) Announcements;
  - h) Adjournment.

8. The petitioner or applicant who is on the agenda may withdraw the petition or application at any time; but if a motion is pending to make a recommendation to grant or deny, such motion shall have precedence.

#### C. RULES OF CONDUCT

Members of the Board may be removed for cause, including violation of any rule stated below:

1. Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite of continuing membership on the Board. Absence from four (4) regularly scheduled Board meetings during any one calendar year shall be considered cause for a recommendation to the Board of Aldermen of dismissal from the Board.
2. Members of the Planning Board shall not vote on recommendations regarding any zoning map, text amendment, or development approval where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member or where the member has a close familial, business, or other associational relationship.
3. No board member shall discuss any case with any parties thereto prior to the meeting on that case; provided however, that members may receive and/or seek information pertaining to the case from any other member of the board, or staff prior to the meeting. Board members shall disclose publicly any contact made by any party to a matter before the board.
4. Members of the board shall not express individual opinions on the proper judgment of any case with any parties thereto prior to the board's determination of that case. Violation of this rule shall be cause for dismissal from the board.

#### D. BASIC STUDIES

As background for its comprehensive plan and any ordinances it may prepare, the Planning Board may gather maps and aerial photographs of manmade 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. The Planning Board may make studies as to the community's social, economic, as well as its physical needs. In addition, the Planning Board may make, cause to be made, or obtain special studies on the location, condition, and adequacy of specific 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 traffic, transportation, and parking facilities. All city officials shall, upon request, furnish to the Planning Board such available records or information as it may require in its work. The board or its agents may, in the performance of its official duties, enter upon lands and make examinations or surveys and maintain necessary monuments thereon.

#### E. COMPREHENSIVE PLAN

1. The comprehensive plan, with the accompanying maps, charts, and descriptive matter, shall be the Planning Board's recommendations to the Board of Aldermen for the development of such territory, including, among other things, the general location, character, and extent of streets, bridges, boulevards, parkways, playgrounds, squares, parks, aviation fields, and other public ways, grounds, and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes; the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of any of the foregoing ways, buildings, grounds, open spaces, property, utilities, or terminals; and the most desirable patterns of land use within the area.
2. The plan and any ordinances or other measures to effectuate it shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the city and its environs which will, in accordance with present and future needs, best promote health, safety, morals, and the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provisions for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities, services, and other public requirements and the improvement of the community social and economic attributes.

#### F. ZONING AND SUBDIVISION REGULATIONS

1. The Planning Board may initiate, from time to time, proposals for amendment of this ordinance, based upon its studies and comprehensive plan. In addition, it shall review and make recommendations to the Board of Aldermen concerning all proposed amendments to this ordinance.
2. The Planning Board shall review, from time to time, the need for regulations for the control of land subdivision in the area and submit to the Board of Aldermen its recommendations, if any, for adoption or revision of such regulations.

#### G. PLANNING BOARD PROCEDURES FOR REPORTING TO THE BOARD OF ALDERMEN

The Planning Board will submit copies of all minutes of its regular and special meetings to the Board of Aldermen. Minutes shall be submitted to the city clerk within seven (7) days of approval of the minutes by the Planning Board.

#### H. ADVISORY COUNCIL AND SPECIAL COMMITTEES

1. The Planning Board may establish an unofficial advisory council and may cooperate with this council to the end that its investigations and plans may

receive fullest consideration, but the board may not delegate to such advisory council any of its official prerogatives.

2. The Planning Board may set up special committees, of up to three members, to assist in the study of specific questions and problems.

## 2.4 BOARD OF ADJUSTMENT

### A. POWERS AND DUTIES

The Board of Adjustment is established to conduct hearings in a quasi-judicial manner as provided in this ordinance in the course of the following:

1. Deciding whether variances from the requirements of this ordinance should be granted. Nothing in this ordinance shall be construed to authorize the Board of Adjustment or other approval body to permit a use in a district where that use is neither a permitted use nor Special Use.
2. Hear, review, and decide appeals from any final order, final decision of this ordinance, or official determination made by the UDO Administrator in the performance of official duties. Administratively review appeals from interpretation and enforcement of this ordinance by an official which is subject to an administrative appeal.
3. Hear and decide applications for Special Use Permits, as specified in this ordinance.
4. Pass upon, decide, or determine such other matters as may be required by this ordinance.

### B. MEMBERSHIP, VACANCIES, AND MEETINGS

1. The City of Southport Board of Adjustment is hereby created under the authority of NCGS 160D-302.
2. The Board of Adjustment shall consist of seven (7) members and two (2) alternate members. Five (5) members and one (1) alternate member shall be citizens and residents of the city and shall be appointed by the Board of Aldermen. Two (2) members and one (1) alternate member shall be citizens and residents of the extraterritorial jurisdiction of the city as described pursuant to NCGS 160D-307 and shall be appointed by the Brunswick County Board of Commissioners. The members of the board serving on the effective date of this ordinance, under the ordinance effective prior hereto, shall be considered as the five (5) members to be appointed by the Board of Aldermen, and each of these members shall serve the balance of the term to which he was appointed. The members of the board shall be appointed for terms of three (3) years.
3. The alternate members shall serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving



- on the behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.
4. The Board of Adjustment shall elect one (1) of its members as Chairman and another as Vice- Chairman who shall serve for one (1) year. The city clerk, or designee, shall serve as secretary to the Board of Adjustment. The board shall draw up and adopt the rules of procedures under which it will operate. Meetings of the board shall be held at the call of the Chairman and at such other times as the board may determine. The Chairman, or in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon every question, or his absence or failure to vote, indicating such fact, and also keep records of its examination and any other official action.
  5. The city clerk will advertise for vacancies when they occur. All candidates, including board members whose terms are expiring and who are seeking reappointment, must have an application no less than 30 days prior to the Board of Aldermen meeting in which the selection(s) are made and [no older than 90 days prior to the date of vacancy] on file with the city clerk's office and must inform the clerk they wish to be considered for the vacant position. All applicants must be interviewed by a committee, selected by the Board of Aldermen, consisting of one (1) appointed Board of Aldermen liaison and the Chairman of the Board of Adjustment. If the Chairman's term is expiring and he/she wants to apply for reappointment, the Vice-Chairman of the Board of Adjustment will be selected for the committee. The committee will make recommendations to the Board of Aldermen for the vacant position(s). Any citizen who has filed a current application and completed the interview shall be eligible for nomination. Citizens who have not met these requirements are not eligible for nomination to the Board of Adjustment. The city clerk will place the applications of all candidates who meet these requirements in the agenda packets prior to the meeting in which the selection(s) are made.
  6. A quorum of the Board of Adjustment, necessary to conduct any business of the BOA, shall consist of four (4) members.
  7. Pursuant to NCGS 160D-109(d), a member of the board or any other body exercising the functions of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate an affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts 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. 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.

8. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered “members of the board” for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

#### C. QUASI-JUDICIAL DECISIONS AND JUDICIAL REVIEW

1. The Board of Adjustment shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record and subject to the procedures provided in NCGS 160D-406 . Each quasi-judicial decision shall be reduced to writing and reflect the board’s determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chairman or other duly authorized member of the Board of Adjustment. A quasi-judicial decision is effective upon filing the written decision with the clerk to the Board of Adjustment. The decision of the board 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. The person required to provide notice shall certify that proper notice has been made.
2. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to NCGS 160D-1402. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with section (1) of this subsection. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

## 2.5 UDO ADMINISTRATOR

### A. POWERS AND DUTIES

The duty of the UDO Administrator is to assure enforcement of the provisions of this ordinance. The UDO Administrator is empowered to do those things set forth in this ordinance and other ordinances as specified as necessary to carry out his/her duties. The UDO Administrator shall be appointed by the city manager. 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. Appeal from the UDO Administrator’s decision shall be to the Board of Adjustment. In administering the provisions of this ordinance, the UDO Administrator shall:

1. Make and maintain records of all applications for land development permits and requests, and records of all permits issued or denied, with notations of all special conditions or modifications involved.
2. Make interpretations and determinations of this ordinance as requested.
3. Modify typographical errors, spelling changes, numerical reference errors, errors in section or page numbering or other purely non-substantive editorial changes without formal adoption by the Board of Aldermen provided that such corrections do not change the meaning of the ordinance and any correction

made pursuant to this section shall be reported in writing to the Board of Aldermen and made a part of the board's regular meeting minutes.

4. File and safely keep copies of all plans submitted, and the same shall form a part of the records of his or her office and shall be available for inspection at reasonable times by any interested party.
5. Transmit to the appropriate board or commission and the Board of Aldermen all applications and plans for which their review and approval is required.
6. Conduct inspections of premises and, upon finding that any of the provisions of this ordinance is 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. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the city 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.
7. Except as otherwise provided by law, the UDO Administrator shall administer, review and enforce the city's land development ordinances and all approvals issued under the same. All development approvals shall be issued in writing. Any development approval issued exclusively in electronic form shall be protected from further editing once issued.
8. In addition to powers and duties of the official enumerated herein, the UDO Administrator shall have all those powers set forth in other provisions of this ordinance and those provided in NCGS Chapter 160D.
9. The UDO Administrator or any staff member shall not make a final decision on an administrative decision required by this ordinance 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.
10. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this ordinance 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 city to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the city, as determined by the Board of Aldermen.

## 2.6 COMMON REVIEW PROCEDURES

### A. COMPLETE APPLICATIONS

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 city's fee schedule have been paid in full.

Upon receipt of an application, the UDO Administrator shall determine if the application is complete. A complete application is one that:

1. 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.
2. Is in the form established by the UDO Administrator as required for submittal of the particular type of application.
3. Includes information in sufficient detail to evaluate the application to determine whether it complies with the appropriate substantive standards of this ordinance.
4. Is accompanied by the fee established for the particular type of application.
5. 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.

### 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 City's Building Code shall be required prior to the issuance of a building permit. Building permit 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 IMPACT PERMIT

Tree impact permits shall be issued by the UDO Administrator for any proposed removal or alteration of a regulated tree, as defined by this ordinance, and 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

Sign permits shall be issued by the UDO Administrator in accordance with Article 3: Zoning.

#### G. STORMWATER PERMIT

Stormwater permits shall be issued by the Public Services Director in accordance with Article 6: Stormwater Discharge Control Ordinance.

#### H. CAMA PERMIT

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

#### I. ANNUAL ZONING PERMIT FOR HOMESTAYS AND SHORT-TERM VACATION RENTALS

An annual zoning permit is required for certain land uses, including Homestays and Short-Term Vacation Rentals. The UDO Administrator shall issue homestay and Short-Term Vacation Rental permits in accordance with Article 3: Zoning. These annual zoning permits must be renewed each year before the expiration date and in accordance with the terms of this UDO. The Annual Zoning Permit for Homestays and Short-Term Vacation Rentals is valid from January 1 thru December 31 in the year of issue and must be renewed annually. In addition, the annual zoning permit for a nonconforming Short-Term Vacation Rental located in a residential zoning district must be renewed by the property owner of record prior to the expiration of the existing zoning permit to maintain the nonconforming use. Failure to maintain a valid zoning permit for a nonconforming short-term vacation rental will result in forfeiture of all legal rights and claims to continue that use.

#### J. MODIFICATION OF PERMITS OR APPROVALS

1. Insignificant deviations from the permit (including approved plans and conditional district rezoning) issued by the Board of Aldermen, 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; an increase in number of off-street parking or loading spaces; 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.

#### K. PERMIT REVOCATION

1. Any permit required by this ordinance may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if 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.
2. Before a special use permit may be revoked, all of the notice and hearing requirements as provided in NCGS 160D-406(b) shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.
3. Before any other permit 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 obtain 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.
4. No person may continue to make use of land or buildings in the manner authorized by any required permit after such permit has been revoked in accordance with this ordinance.

#### L. 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
  - b) 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.

## 2.7 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 city 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, duplexes, and attached residential units consisting of three (3) 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, and driveways.
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, and driveways do not require a minor site plan to be prepared by a licensed professional.
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 six (6) 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 greater discretion of the city.



2. Applicability. The following development types must submit a major site plan as specified in this ordinance:
  - a) Residential development of four (4) or more dwelling units on a lot.
  - b) Nonresidential development whereby 10,000 square feet or more of impervious surfaces are proposed.
  - c) All other development not subject to minor site plan 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.
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. The Technical Review Committee may include, but not necessarily be limited to, the following individuals/departments: UDO Administrator, building inspector, city manager, Fire Department, Police Department, NC Division of Coastal Management, NC Department of Environmental Quality, Brunswick County Utilities, or Brunswick County Environmental Health.
  - 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. A revised plan may then be submitted in the manner of a new application.
  - 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. Special use permits may 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. Please note, all previously issued conditional use permits shall be subject to the conditions outlined in the initial approval. Additionally, any valid conditional use permit issued prior shall be deemed a special use permit.
2. 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.
3. 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.
  - a) Applications for home occupations, commercial or residential accessory dwellings, duplexes, triplexes, quadraplexes, bed & breakfast uses, and temporary sales offices shall prepare a minor site plan that includes all of the applicable information as provided in Appendix A: Submission Requirements. Preparation of the minor site plan for these uses by a licensed surveyor, landscape architect, or engineer is encouraged, but not required.
4. In the course of evaluating the proposed special use permit 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. This information may include (but not be limited to) the following:
  - a) Approved NC stormwater permit.
  - b) Proposed sign types and locations.
  - c) Scale of buildings relative to abutting property.
  - d) Exterior features and illumination of proposed development.
  - e) Description and copies of proposed deed restrictions to be placed on the property.

- f) Any other information reasonably needed to consider the application in reference to these regulations.
5. 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 city 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.
6. Special Use Permit Review Procedure:
- a) The UDO Administrator shall review the special use site plan and may require a Technical Review Procedure. The Technical Review Committee may include, but not necessarily be limited to, the following individuals/departments: UDO Administrator, building inspector, city manager, Fire department, Police Department, NC Division of Coastal Management, NC Department of Environmental Quality, Brunswick County Utilities, or Brunswick County Environmental Health.
  - 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 and the Technical Review Committee (if applicable) shall review the plans and make a recommendation to the Board of Adjustment as to compliance with this ordinance. 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 City of Southport 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 approving, and on the approved plans submitted therewith. 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 shall be consented to in writing by the applicant/landowner and 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) Conditions and safeguards imposed under this subsection shall not include requirements for which the city does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the city, 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.
- g) 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 city 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.

- h) Approved special use permits shall be recorded in the Brunswick County Registry by the City of Southport and indexed under the record owner's name as grantor.
- i) In a case where a special use permit has not been exercised within the time limit set by the Board of Adjustment or within 12 months if no specific time limit has been set, then without further action, the special use permit shall be null and void. The term "exercised," as set forth in this subsection, means that binding contracts for the construction of the main building have been let; or in the absence of contracts that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewerage, drainage, etc.). When construction is not a part of the use, the term "exercised" means that the use is in operation in compliance with the conditions set forth in the permit.

#### 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.
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 city 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. When unnecessary hardships would result from carrying out the strict letter of the UDO, a variance shall be granted by the Board of Adjustment upon a showing of the following:
  - 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;
  - 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. Before granting a variance, the Board of Adjustment must take a separate vote and vote affirmatively (by a four-fifths majority) on each of the four (4) required findings stated above in Section 2.7.D.3. Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth herein shall include a statement of the specific reasons or findings of fact supporting such motion.
5. 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 Section 2.7.D.3 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.
6. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any variance issued by the Board of Adjustment.
7. No change in permitted uses may be authorized by variance.
8. A variance may be issued for an indefinite duration or for a specified duration only.
9. 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.
10. 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 city clerk.
11. 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 NCGS160D-1402.

#### 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 NCGS160D-1402. Appeals of a final subdivision decision may be made in accordance with NCGS 160D-1403(b). 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 city clerk, and the date and time of filing shall be entered on the notice by the clerk.

2. The owner or other party shall have 30 days from the date of the receipt of a written final, binding determination by the official to file an appeal. The written notice shall be delivered by personal delivery, electronic mail, or by first class mail. Any other person with standing to appeal shall have 30 days from the receipt of any source of actual or constructive notice of the decision 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 city 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 certifies by affidavit to the Board of Adjustment that a stay would, in his/her opinion, cause imminent peril to life or property or because the violation is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order issued 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 of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
6. The official, or person currently occupying that position, 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 city.

7. 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 city clerk.
8. 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 NCGS160D-1402.

## 2.8 CREATION OF NEW LOTS/DIVISION OF LAND

### A. GENERAL

No land within the city'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 city 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. MINOR SUBDIVISION REVIEW

1. Applicability. The city only requires submittal of a final plat for review of minor subdivision if it meets the criteria as provided in NCGS 160D-802(c) or the tract to be subdivided is five (5) acres or less in size and is subject to the following provisions:
  - a) Fronts on an existing approved street;
  - b) Does not involve any new public streets, right-of-way dedication, or prospectively requiring any new street for access to interior property;
  - c) Does not require drainage improvements or easements to serve the applicant's property or interior properties;
  - d) Does not involve any utility extensions; and
  - e) Does not require any easements, other than rear and side lot line easements.
  - f) However, if the subdivider owns, leases, holds an option on, or holds any legal or equitable interest in any property adjacent to or located directly across a street, easement, road, or right-of-way from the property to be subdivided, the subdivision shall not qualify under the minor subdivision procedure. Furthermore, the minor subdivision procedure may not be used a second time within three (3) years on any property less than 1,500 feet from the original property boundaries by anyone who owned, had an option on, or any legal interest in the original subdivision at the time the subdivision received preliminary or final plat approval.
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 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. MAJOR SUBDIVISION SKETCH PLAN REVIEW

1. **Applicability.** Subdivisions and/or divisions of land not qualifying as exempt or as a minor subdivision.
2. **Application Materials and Submittal.** Prior to the filing of an application for approval of a major subdivision preliminary plat, the subdivider may submit to the UDO Administrator one (1) digital copy and 12 hard copies of a sketch design plan of the proposed subdivision which generally depicts the concept of the development and any explanatory materials as may be desirable. Copies of any pertinent additional information regarding the proposed subdivision or of adjoining property as may be useful to the Planning Board in formulating an overall plan for any given section of the city may be submitted.
3. The Planning Board at their next regularly scheduled meeting following acceptance of the sketch design plan by the UDO Administrator shall meet with the potential subdivider and the subdivider shall meet with the Planning Board. At this stage the subdivider should discuss his or her thoughts and ideas pertaining to the subdivision and also become familiar with the regulations affecting the land to be subdivided.
4. The discussion and any recommendations made by the Planning Board shall be advisory.

#### E. MAJOR SUBDIVISION PRELIMINARY PLAT

1. **Applicability.** Subdivisions and/or divisions of land not qualifying as exempt or as a minor subdivision.
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 and may require a Technical Review Procedure. The Technical Review Committee may include, but not necessarily be limited to, the following individuals/departments: UDO Administrator, building inspector, city manager, Fire department, Police Department, NC Division of Coastal Management, NC Department of Environmental Quality, Brunswick County Utilities, or Brunswick County Environmental Health.
  - b) 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.
  - c) 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.
  - d) The Planning Board shall review the major subdivision preliminary plat and written recommendations of the UDO Administrator and the Technical Review Committee (if 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 transmit a formal recommendation to the Board of Aldermen.
  - e) Should the Planning Board fail to act on the major subdivision preliminary plat within 90 days after acceptance of the preliminary plat by the Planning Board, the subdivider may proceed to major subdivision preliminary plat approval by the Board of Aldermen without a recommendation of the Planning Board.
  - f) The Board of Aldermen shall consider approval or denial of the major subdivision preliminary plat at any of the next three (3) regularly scheduled meetings following receipt of the preliminary plat.
  - g) The Board of Aldermen 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.

- h) Approval of the major subdivision preliminary plat by the Board of Aldermen 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 Board of Aldermen shall expire 24 months from the date of action by the Board of Aldermen. However, extensions may be granted upon application and request for such to the Board of Aldermen. Such time limits shall expire automatically unless extended by the Board of Aldermen, and once lapsed shall not be extended.

#### F. MAJOR SUBDIVISION FINAL PLAT

1. **Applicability.** Subdivisions and/or divisions of land not qualifying as exempt or as a minor subdivision and whereby a major subdivision preliminary plat has been approved and all necessary and/or required improvements have been installed in accordance with Article 4: Subdivision Regulations, Section 4.7, shall comply with the following procedures in order to obtain final plat approval. No final plat will be accepted for review by the Board of Aldermen unless accompanied by written notice by the city clerk acknowledging compliance with the improvement standards of this ordinance.
2. All improvements required by Article 4: Subdivision Regulations, Section 4.7, shall be installed, inspected, and approved prior to approval of any final plat. Performance guarantees in lieu of installation of required improvements shall not be allowed.
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 12 hard copies of the major 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 city.
6. The subdivider shall within 24 months of the date of major subdivision preliminary plat approval or approval with conditions, unless an extension is granted by the Board of Aldermen, 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 major 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. Major Subdivision Final Plat Review procedure:
  - a) The UDO Administrator or his/her designee shall review the major subdivision final plat and may require a Technical Review Procedure. The Technical Review Committee may include, but not necessarily be limited to, the following individuals/departments: UDO Administrator, building inspector, city manager, Fire department, Police Department, NC Division of Coastal Management, NC Department of Environmental Quality, Brunswick County Utilities, or Brunswick County Environmental Health.
  - b) 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.
  - c) Upon determination that a major subdivision 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 make a recommendation to the Board of Aldermen as to compliance with this ordinance.
  - d) The Board of Aldermen shall review the major subdivision final plat and written recommendations of the UDO Administrator and the Technical Review Committee (if applicable) prior to approval, denial, or conditional approval of the major subdivision final plat.
  - e) The Board of Aldermen shall approve or disapprove, according to the provisions of this ordinance, the final plat within fifty (50) days after receipt of the plat. Failure of the Board of Aldermen to act within fifty (50) days shall constitute denial of the plat.
  - f) If the Board of Aldermen by formal motion 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.

- g) Within 30 working days after the approval of the Board of Aldermen of 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.

## 2.9 PLANNED UNIT DEVELOPMENT

### A. PURPOSE

A Planned Unit Development (PUD), is planned and developed as an integral unit, in a single development operation or a definitely programmed series of development operations and according to an approved master development plan. All PUDs require an amendment to the city's zoning map and master development plan approval, followed by the major subdivision approval process as specified in this ordinance.

### B. APPLICABILITY

The minimum amount of land (unified control to be planned and developed as a whole) required for a PUD district shall be eight (8) acres of net buildable area within the city corporate limits, on one or more contiguous parcels or 25 acres of net buildable area in the ETJ, on one (1) or more parcels (this may include parcels on both sides of a street).

### C. APPLICATION AND PLANNED UNIT DEVELOPMENT REVIEW PROCEDURE

1. The application for a planned unit development (PUD) shall be accompanied by an application to amend the zoning map (rezoning) to the planned unit development zoning district. The rezoning application shall be submitted concurrently with the PUD master development plan. The procedure for such shall be followed as outlined in Section 2.10. The approved master development plan shall provide the framework for development in the PUD. 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 include such things as parking, landscaping, design guidelines, and buffers. The proposal shall comply with the design guidelines provided in Article 4: Subdivision Regulations, Section 4.15.
2. An application for PUD approval shall be accompanied by 12 hard copies and one (1) digital copy of a PUD master development plan.
3. 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 and shall include all of the required information as provided in Appendix A: Submission Requirements, any other required information in Article 4: Subdivision Regulations, and any other information deemed necessary by the UDO Administrator, Planning Board, or Board of Aldermen.
4. The UDO Administrator or his/her designee will review the PUD master development plan and may require a Technical Review Procedure. The Technical Review Committee may include, but not necessarily be limited to, the following individuals/departments: UDO Administrator, building inspector, city manager,

Fire department, Police Department, NC Division of Coastal Management, NC Department of Environmental Quality, Brunswick County Utilities, or Brunswick County Environmental Health.

5. The UDO Administrator shall, in writing, provide a recommendation to the Planning Board within 60 days following receipt of the complete application for a PUD proposal and associated master development plan.
6. Following receipt of recommendation from the Planning Board, the Board of Aldermen shall approve, conditionally approve, or deny the PUD master development plan.
7. When evaluating an application for the creation of a PUD zoning district, the Planning Board and Board of Aldermen shall consider the following:
  - a) The application's consistency to the general policies and objectives of the City's Comprehensive 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.
8. Following Board of Aldermen approval of a rezoning petition to establish a planned unit development district (PUD), the property for which approval was granted by the ordinance shall be labeled "PUD" on the official zoning map of the City of Southport. No permits for development shall be issued within any area designated as "PUD" except in accordance with an approved petition and applicable site plan, subdivision plat, and/or permit for development within the PUD. If an application for an applicable site plan, subdivision plat, and/or permit for development within the PUD is not filed with the UDO Administrator within 12 months of such approval, the Board of Aldermen shall reserve the right to rezone the property to the original zoning classification.

## 2.10 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 city'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 Board of Aldermen. In no case shall final action by the Board of Aldermen 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 Board of Aldermen 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 Board of Aldermen, Planning Board, city 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.
  - c) 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 city. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:
    - i) By decreasing the development density of the land to be less dense than was allowed under its previous usage.
    - ii) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.
2. 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.
3. Public hearing requirement, advertised, mailed, and posted notice.
- a) Public hearing. A public hearing is required for all amendments prior the final decision before the Board of Aldermen. Public hearings are optional for advisory recommendations of the Planning Board.
    - i) Notification of the Board of Aldermen public hearing shall be published once a week for two (2) successive calendar weeks in a local newspaper of general circulation in the city. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing.
  - b) Mailed notice. When a change in the zoning classification of a piece of property is requested (zoning map change), the applicant shall provide to the UDO Administrator a list of names and addresses, as obtained from the county tax listings and tax abstract, of all abutting property owners and all owners of property within the area under consideration for rezoning, along with two sets of business (No. 10) envelopes stamped with a first class stamp and addressed to each person on the list. For the purposes of this section, properties are abutting even if separated by a street, railroad, or other transportation corridor. These addressed envelopes and the list shall be submitted at least 30 workdays prior to the Board of Aldermen meeting and public hearing at which the amendment will be considered. The UDO Administrator shall then mail notices of the public hearing to each person on the list at least 10 but no



more than 25 days prior to the date of the meetings at which the Board of Aldermen will consider the request for a zoning map amendment. The letter of notification shall contain a description of the request and the time, date, and location of the public hearing. Such certification shall be deemed conclusive in the absence of fraud.

- c) Posted notice. Notice of a proposed zoning change for any parcel, shall be prominently posted on the site proposed for rezoning or on an adjacent public street or highway right-of-way for at least 10 but no more than 25 days prior to the public hearing before the Board of Aldermen. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the UDO Administrator or his/her designee shall post sufficient notices to provide reasonable notice to interested persons. The posted notices shall be provided and erected by the UDO Administrator and shall include in the message the:
  - i) Present zoning classification
  - ii) Proposed zoning classification
  - iii) Time and place of the public hearing
  - iv) Location where additional information may be obtained.

4. Reapplication for amendment. With the exception of requests originating with the Board of Aldermen, Planning Board, or city 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 six (6) month period following official action. The Board of Aldermen, by simple majority, may waive this restriction if it finds any emergency exists.

#### 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. A petition to amend the district boundaries or regulations established by this ordinance shall be considered by the Planning Board at its next regular monthly meeting or any called special meeting, provided it has been filed, complete in form and content, at least 30 days prior to such meeting. Otherwise, consideration may be deferred until the following monthly meeting.
3. The Planning Board shall provide an advisory recommendation on any properly filed petition within 90 days after the introduction of such petition at a regularly scheduled meeting and shall transmit its recommendation and report, including the reasons for its determinations, to the Board of Aldermen.
4. Pursuant to NCGS 160D-604, the Planning Board shall advise and comment on whether the proposed text or zoning map amendment is consistent with the comprehensive plan or any other officially adopted plans that are applicable. The Planning Board shall provide a written recommendation to the Board of Aldermen that addresses plan consistency and other matters 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 Board of Aldermen. 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. BOARD OF ALDERMEN ACTION

1. Before taking such lawful action as it may deem advisable, the Board of Aldermen shall consider the Planning Board's recommendations on each proposed text or zoning map amendment.
2. Board of Aldermen members shall not vote on any zoning map 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. A Board of Aldermen 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.
3. Prior to adopting or rejecting any zoning amendment, the Board shall adopt a written statement describing whether its action is consistent with the City Comprehensive Plan or any other officially adopted plans that are applicable. For zoning map amendments, a statement of reasonableness shall also be provided explaining why the Board considers the action to be reasonable and in the public interest. If a zoning map amendment qualifies as a "large-scale rezoning" under NCGS 160D-602(b), the statement describing plan consistency and reasonableness may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered.
4. 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.
5. Pursuant to NCGS 160A-75, no member shall be excused from voting except upon matters involving the consideration of the member's own conflict of interest or official conduct. A failure to vote by a member who is physically present in the aldermen's chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.
6. An affirmative vote equal to a majority of all the members of the Board of Aldermen not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt any

amendment to this ordinance or to take any action having the effect of an ordinance.

7. If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal this ordinance to the city clerk at least five (5) business days prior to the proposed vote on such change, the city clerk shall deliver such written statement to the Board of Aldermen.

#### D. APPLICATION WITHDRAWAL

Any application submitted for a text or zoning map amendment may be withdrawn at any time, but fees are nonrefundable.

## 2.11 CONDITIONAL REZONING

### 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 also be accompanied by an application to amend the zoning map (rezoning) to the conditional development zoning district. The rezoning application shall be submitted concurrently with the conditional zoning master development plan. The procedure for such shall be followed as outlined in Section 2.9. 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 include such things as parking, landscaping, design guidelines, and buffers.
2. Applications and proposals for conditional zoning approval shall only be considered within a nonresidential zoning district. All proposals for a conditional zoning application must abide by the uses and the dimensional standards required by the underlying base zoning district for which the proposal is located. No conditional zoning proposals shall be considered within the Open Space or PUD zoning district.

3. 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.
4. 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 and shall include all of the required information as provided in Appendix A: Submission Requirements and any other information deemed necessary by the UDO Administrator, Planning Board, or Board of Aldermen.
5. The UDO Administrator or his/her designee will review the conditional zoning master development plan and may require a Technical Review Procedure. The Technical Review Committee may include, but not necessarily be limited to, the following individuals/departments: UDO Administrator, building inspector, city manager, Fire department, Police Department, NC Division of Coastal Management, NC Department of Environmental Quality, Brunswick County Utilities, or Brunswick County Environmental Health.
6. The UDO Administrator shall, in writing, provide a recommendation to the Planning Board within 60 days following receipt of the complete application for a conditional zoning district proposal and associated master development plan.
7. Following receipt of recommendation from the Planning Board, the Board of Aldermen shall approve, conditionally approve, or deny the conditional zoning master development plan.
8. When evaluating an application for the creation of a conditional zoning district, the Planning Board and Board of Aldermen shall consider the following:
  - a) The application's consistency to the general policies and objectives of the City's Comprehensive 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.
9. The Board of Aldermen 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 Board of Aldermen 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 scheduling a public hearing on the rezoning application, the applicant must conduct one (1) public input meeting and file a report of the results with the UDO Administrator.
2. The report for the public hearing 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 10 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.
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 Board of Aldermen may request that the applicant add reasonable and appropriate conditions to the approval of the petition.
2. Any such conditions should relate to the relationship of the proposed use to the impact on city 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 Board of Aldermen find appropriate or the petitioner may propose. Such conditions to approval of the petition may include right-of-way dedication, easements for streets, water, sewer, or other public utilities necessary to serve the proposed development.
3. The petitioner shall consider and respond to any such conditions after the Planning Board meeting and within three (3) days prior to the staff report for the Board of Aldermen being published. If the applicant does not agree with the Planning Board or staff's recommendations of additional conditions, the Board of Aldermen shall have the authority to accept any or all of the conditions forwarded from the review process.
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. All conditions must be consented to in writing by the petitioner.

#### 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. Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the zoning maps 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 "CBD-CZ").
3. The master development plan does not substitute for an approved minor site plan, site plan, or subdivision plat as required by this ordinance.
4. No permit shall be issued for any development activity within a conditional zoning district except in accordance with the approved petition and applicable site plan, subdivision plat, and or permit for the district.
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.

#### F. REVIEW OF APPROVAL OF A CONDITIONAL ZONING DISTRICT

1. It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than three (3) years after the date of approval of the petition, the Planning Board may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval.
2. If the Planning Board determines that progress has not been made in accordance with the approved petition and conditions, the Planning Board shall forward to the Board of Aldermen a report which may recommend that the property be rezoned to its previous zoning classification or to another district.

## 2.12 VESTED RIGHTS

### A. PURPOSE

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

### B. ESTABLISHMENT OF A ZONING VESTED RIGHT

1. A zoning vested right shall be deemed established following the valid approval, or conditional approval, of a site-specific vesting plan and separate approval by the Board of Aldermen of a request for statutory zoning vested rights.
2. Notwithstanding subsection (1) this section, 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.
3. 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

city, including, but not limited to, building, fire, plumbing, electrical and mechanical codes. Otherwise applicable new or amended regulations shall become 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 article.

4. 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 and approval of an application for statutory zoning vested rights before the Board of Aldermen, 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 development 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. Consideration and approval of a zoning vested right constitutes a separate approval process under the sole discretion of the Board of Aldermen. Any application for a zoning vested right shall be processed concurrently or after the approval of the associated site-specific vesting plan and a duly advertised public hearing.
2. In order to obtain a zoning vested right, the applicant must request in writing at the time of application for the particular site-specific vesting plan type that the application for a zoning vested right be considered concurrently or following approval of such and acted on by the Board of Aldermen following notice and a public 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 and 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 city 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. In order for a zoning vested right to be established following approval of a site-specific vesting plan, the applicant must indicate at the time of application, on a form to be provided by the city, 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-108.1. 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 and approval of zoning vested rights by the Board of Aldermen, nothing in this article shall exempt such a plan from subsequent reviews and approval to ensure

compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.

6. Nothing in this article shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this ordinance.

#### D. DURATION

1. A zoning right that has been vested as provided in this article shall remain vested for a period of two (2) years unless specifically and unambiguously provided otherwise pursuant to subsection (2) of this section. 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 (1) of this section, 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 the 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 Board of Aldermen in consideration of approval of vested rights.
3. Upon issuance of a building permit, the expiration provisions of NCGS 160D-1111 and the revocation provisions of NCGS 160D-1115 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 ordinance shall terminate in accordance with any one of the following:
  - 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 landowner.
  - c) Upon findings by the Board of Aldermen, by ordinance after notice and a quasi-judicial hearing, that natural or manmade 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 landowner of compensation for all costs, expenses and other losses incurred by the landowner, 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 city, together with interest thereon at their legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action.



- e) Upon findings by the Board of Aldermen, by ordinance after notice and a quasi-judicial hearing, that the landowner or his 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.
- 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

A petition for annexation filed with the city under NCGS 160A-31 or 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 or 160D-108.1. A statement that declares that no zoning vested right has been established under NCGS 160D-108 or 160D-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 landowner and any such zoning vested right shall be terminated.

#### G. LIMITATIONS

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

### 2.13 REVIEW PROCEDURES SUMMARY

Table 2.1: Review Procedures Summary						
Application Type	Advisory or Decision-Making Body					
	Board of Aldermen	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				FD		
Major Subdivision Sketch Plan		R		R		
Major Subdivision Preliminary Plat	FD	R		R		
Major Subdivision Final Plat	FD			R		
Planned Unit Development (PUD)	FD-PH	R		R		
Text Amendment, Zoning Map Amendment (Rezoning)	FD-PH	R		R		
Conditional Zoning District	FD-PH	R		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.						

## 2.14 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 Aldermen		X-QJ	X-QJ
Variance	Board of Adjustment		X-QJ	X-QJ
Appeal	Board of Adjustment		X-QJ	X-QJ
Text Amendment	Planning Board			
	Board of Aldermen	X-PH		
Zoning Map Amendment	Planning Board			
	Board of Aldermen	X-PH	X-PH	X-PH
Statutory Zoning Vested Rights	Board of Aldermen		X-QJ	X-QJ
[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.				

## 2.15 ENFORCEMENT

### A. COMPLAINTS REGARDING VIOLATIONS

Whenever the UDO Administrator receives a complaint, which may be anonymous, alleging a violation of this ordinance, he shall investigate the complaint, take whatever action is warranted, and inform the complainant what actions have been or will be taken. The building inspector shall be responsible for enforcement matters pertaining to the City 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 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. 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 city clerk that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Additional written notices may be sent at the UDO Administrator's discretion.

2. The final written notice (and the initial written notice may be the final notice) shall state what action the administrator intends to take if the violation is not corrected and shall advise that the 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. Violations of the provisions of this ordinance or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances or special use permits, shall constitute a misdemeanor, punishable by a fine of \$100, or a maximum 30 days imprisonment, or both.
2. Any act constituting a violation of the provisions of this ordinance or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of variances or special use permits, shall also subject the offender to a civil penalty of \$25. If the offender fails to pay this penalty within 10 days after being cited for a violation, the penalty may be recovered by the city in a civil action in the nature of debt.
3. This ordinance may also be enforced by any appropriate equitable action.
4. Each day that any violation continues after notification by the administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section.
5. Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this ordinance.