

# ARTICLE 2. ADMINISTRATIVE, LEGISLATIVE, & QUASI-JUDICIAL AUTHORITY

## ARTICLE 2. ADMINISTRATIVE, LEGISLATIVE, & QUASI-JUDICIAL AUTHORITY

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### SECTION 2.1 PURPOSE AND INTENT; DUTIES SPECIFIED.

**2.1.1.** It is the intent of this Article that all questions arising in connection with the enforcement of this UDO shall be presented first to the UDO Administrator, and that such questions shall be presented to the Board of Adjustment only on appeal from a decision of the UDO Administrator. From the decision of the Board of Adjustment, recourse shall be had to courts as provided by law.

**2.1.2.** It is the intent of this Article that the duties of the Board of Commissioners in connection with this UDO shall not include the hearing and deciding on disputed questions that may arise in connection with enforcement, but that the procedure for determining such questions shall be as set out in Section 2.5, Board of Adjustment and Article 3, Part III, Quasi-Judicial Procedures. The duties of the Board of Commissioners in connection with this UDO shall be to render decisions on site plans, special use applications, and vested right applications, as well as decisions pertaining to any proposed amendment of this UDO or zoning map as outlined in Article 3, Legislative/Quasi-Judicial Procedures, and Article 4, Development Review Process.

**2.1.3.** It is the intent of this Article that the Planning Board review, gather information, and make recommendations to the Board of Commissioners on site plans, special use applications, and vested right applications as required by Article 3, Legislative/Quasi-Judicial Procedures, and Article 4, Development Review Process. The Planning Board also shall review and make recommendations to the Board of Commissioners concerning any proposed amendment of this UDO or map as required by Section 3.5, UDO Text Amendment/Zoning Map Amendment. The duties of the Planning Board are of an advisory nature to assist the Board of Commissioners in making its determinations.

**2.1.4.** Any recourse afforded the public seeking relief from a decision of the Board of Commissioners shall not be to the Board of Adjustment, but only to the courts as provided by law.

**2.1.5.** Recourse to the courts from any decision of the Board of Commissioners shall be in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board of Commissioners is made. Any such decision is that which is determined by a majority vote of a quorum of the Board of Commissioners in an open session at which the matter under consideration has appeared on the agenda of the Board of Commissioners.

### SECTION 2.2 UDO ADMINISTRATOR.

**2.2.1.** The Director of Planning and Development shall be designated as the UDO Administrator and shall be responsible for the administration and enforcement of the provisions of this UDO. The UDO Administrator may be provided with the assistance of such other persons as may be directed or authorized by the Town Manager.

**2.2.2.** In administering the provisions of this UDO, the UDO Administrator shall:

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- 2.2.2.1.** Enforce the provisions of this UDO in accordance with Section 1.10, Violation of UDO Regulations.
- 2.2.2.2.** Make and maintain records of all applications for permits, special uses, and requests listed herein, and records of all permits issued or denied, with notations of all special conditions or modifications involved.
- 2.2.2.3.** File and safely keep copies of all plans and permits/applications submitted, and the same shall form a part of the records of the UDO Administrator's office and shall be available for inspection at reasonable times by any interested party.
- 2.2.2.4.** Conduct pre-application and sketch plan meetings with applicants for development approval as necessary or appropriate in accordance with Article 4, Development Review Process.
- 2.2.2.5.** Transmit to the Planning Board, Board of Commissioners, and/or the Board of Adjustment all applications and plans for which their review and approval is required along with a report of recommendations as may be required.
- 2.2.2.6.** Review, make recommendations on, and approve zoning permit applications, minor site plans, minor subdivisions, engineering drawings, and final plats.
- 2.2.2.7.** Provide administrative interpretations of the UDO.
- 2.2.2.8.** Provide nonconformity determinations, including expansions of nonconforming uses and structures.
- 2.2.2.9.** Conduct inspections of premises and, upon finding that any of the provisions of this Ordinance are being violated, notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The UDO Administrator shall order discontinuance of illegal use of land, buildings or structures; inform the Building Inspector of illegal buildings or of additions, alterations, or structural changes thereto which are not compliant with the UDO; order discontinuance of any illegal work being done; or shall take any other action authorized by this UDO to insure compliance with or to prevent violation of its provisions.
- 2.2.2.10.** Maintain the public records of the Planning Board and Board of Adjustment.
- 2.2.2.11.** Perform site inspections.

### **SECTION 2.3 CONFLICTS OF INTEREST.**

**2.3.1. Governing Board.** A governing board member shall not vote on any legislative decision regarding a development regulation subject to this UDO where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if

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the landowner of the property subject to a rezoning petition of the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

**2.3.2. Appointed Boards.** Members of appointed boards shall not vote on advisory or legislative decisions regarding a development regulation subject to this UDO where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

**2.3.3. Administrative Staff.** No staff member shall make a final decision on an administrative decision subject to this UDO if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or other such staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this UDO unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the Town to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the Town, as determined by the Town.

**2.3.4. Quasi-Judicial Decisions.** A member of any board exercising quasi-judicial functions pursuant to this UDO shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

**2.3.5. Resolution of Objection.** If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

**2.3.6. Familial Relationship.** For purposes of Section 2.3 and subsections thereof, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

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### SECTION 2.4 PLANNING BOARD.

#### **2.4.1. Established; Jurisdiction.**

There is hereby established a board known as the Town Planning Board, whose jurisdiction shall include the area within the corporate limits of the Town and areas of extraterritorial jurisdiction as the law provides.

#### **2.4.2. Composition; Terms; Vacancies; Attendance of Members; Extraterritorial Member.**

**2.4.2.1.** The Planning Board shall be composed of seven (7) members who shall be residents of the Town and shall be appointed by the Board of Commissioners. The members shall be appointed for a term of three (3) years. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term. Faithful attendance (as defined in the Town of Nags Head Policy on Boards and Committees) at the meetings of the Planning Board is considered a prerequisite for the maintenance of membership on the Planning Board.

**2.4.2.2.** In addition to the seven (7) regular members of the Planning Board, one (1) member shall be appointed to represent the extraterritorial area of jurisdiction. Such additional member shall be a resident of the County and shall be appointed by the County Board of Commissioners. If the County Board of Commissioners fails to make such appointment within ninety (90) days after receiving a resolution from the Town Board of Commissioners requesting that the appointment be made, the Town Board of Commissioners shall make the appointment. The appointment shall be for a term of three (3) years. The extraterritorial member shall function and vote only with regard to matters within the extraterritorial area and shall not be eligible for office.

**2.4.2.3. Compensation.** The members of the Planning Board may be compensated according to a schedule adopted by the Board of Commissioners.

**2.4.2.4. Oath.** Pursuant to NCGS 160D-309 and 160A-61, all members of the Planning Board shall, before entering their duties, qualify by taking an oath of office as prescribed in Article VI, § 7 of the Constitution. Oaths of office shall be administered by some person authorized by law to administer oaths, and shall be filed with the city clerk.

#### **2.4.3. Chair; Officers; Rules; Records; Meetings; Quorum.**

The Planning Board shall elect a Chair and a Vice-Chair and create and fill such other offices as it may determine, consistent with any applicable Town rules, regulations, or policies. The term of the Chair, Vice-Chair, and other officers shall be one (1) year, with eligibility for re-election. The Planning Board shall conduct business consistent with the most recent version of the *Rules of Procedure for the Town of Nags Head Board of Commissioners and the Town's Boards and Committees*; the Planning Board may adopt rules and regulations for all other business consistent with the aforementioned rules of procedure, which shall be a public record. The Planning Board shall hold at least one (1) meeting

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monthly, and all meetings of the Planning Board shall be open to the public. The quorum required for the Planning Board to take official action is four members.

### **2.4.4. Powers and Duties.**

Pursuant to NCGS 160D-301(b), the Planning Board shall have the following powers and duties:

**2.4.4.1.** To prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.

**2.4.4.2.** To facilitate and coordinate citizen engagement and participation in the planning process.

**2.4.4.3.** To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.

**2.4.4.4.** To advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by NCGS 160D-604.

**2.4.4.5.** To exercise any functions in the administration and enforcement of various means for carrying out plans that the governing board may direct.

**2.4.4.6.** To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.

**2.4.4.7.** To perform any other related duties that the governing board may direct.

### **2.4.5. Advisory Committees.**

**2.4.5.1.** From time to time, the Board of Commissioners may appoint one (1) or more individuals to assist the Planning Board to carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the Board of Commissioners may appoint advisory committees to consider thoroughfare plan(s), bikeway plan(s), housing plans, and economic development plans, etc.

**2.4.5.2.** Members of such advisory committees shall sit as nonvoting members of the Planning Board when such issues are being considered and lend their talents, energies, and expertise to the Planning Board. However, all formal recommendations to the Board of Commissioners shall be made by the Planning Board.

**2.4.5.3.** Nothing in this Article shall prevent the Board of Commissioners from establishing independent advisory groups, committees, or boards to make recommendations on any issue directly to the Board of Commissioners.

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### SECTION 2.5 BOARD OF ADJUSTMENT.

#### **2.5.1. Established.**

There is hereby established a board known as the Board of Adjustment, whose jurisdiction shall include the area within the corporate limits of the Town and areas of extraterritorial jurisdiction as the law provides.

#### **2.5.2. Composition; Terms; Vacancies; Attendance of Members; Extraterritorial Member.**

**2.5.2.1. Board Members.** The Board of Adjustment shall have five (5) regular members and four (4) alternates who shall be citizens of the Town appointed by the Board of Commissioners. The term of office for each member and alternate member shall be for a period of three years. Members and alternates serving on the board at the time of the adoption of this UDO shall continue the term to which they are appointed. Vacancies shall be filled for the unexpired term only. Members may be removed for cause by the Board of Commissioners upon written charges and after public hearing.

**2.5.2.2. Compensation.** The members of the board may be compensated according to a schedule adopted by the Board of Commissioners.

**2.5.2.3. Alternate Membership.** Alternate members may serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.

**2.5.2.4. Extraterritorial Membership.** In addition to the five (5) regular members of the board, one (1) member shall be appointed to represent the extraterritorial area of jurisdiction. Such additional member shall be a resident of the County and shall be appointed by the County Board of Commissioners. If the County Board of Commissioners fails to make such appointment within 90 days after receiving a resolution from the Town Board of Commissioners requesting that the appointment be made, the Town Board of Commissioners shall make the appointment. The appointment shall be for a term of three years. The extraterritorial member shall function and vote only with regard to matters within the extraterritorial area and shall not be eligible for office.

**2.5.2.5. Oath.** Pursuant to NCGS 160D-309 and 160A-61, all members of the Board of Adjustment shall, before entering their duties, qualify by taking an oath of office as prescribed in Article VI, § 7 of the Constitution. Oaths of office shall be administered by some person authorized by law to administer oaths, and shall be filed with the city clerk.

#### **2.5.3. Chair; Officers; Records; Meetings; Quorum.**

**2.5.3.1.** At a Board of Commissioners' regular meeting, the Board of Commissioners shall designate one of the members of the board as Chair and another as Vice-chair who shall serve

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for one year. In the event that the Board of Commissioners does not make such a designation, the Chair and Vice-chair shall continue in their respective offices. In the absence, disqualification or vacancy of the Chair and Vice-chair, the most senior member seated and present shall act as Chair for any meeting until a duly appointed Chair or Vice-chair is available.

**2.5.3.2.** All meetings of the board shall be held at a regular place and shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, an indication of that fact. Any party may appear in person or be represented by an attorney.

**2.5.3.3.** A quorum of three (3) members shall be seated and present in order to open a meeting of the board and to take action on non-quasi-judicial matters. In order to take action on a quasi-judicial matter, the board must have a quorum of five (5) members seated and present unless the appellant or applicant consents to moving forward with less than five (5) members. For calculating a quorum to take action on a quasi-judicial matter, the number of members seated and present includes members who were seated at the opening of the meeting that have been disqualified from voting on the particular matter if there are no qualified alternates available to take the place of such members. In the event that a quorum cannot be met due to vacant positions or a lack of qualified members, the board may continue its meeting in order for absent members to become available and, if necessary, for the Board of Commissioners to make appointments filling vacant seats and/or to make appointments of temporary alternate members who can fulfill the board's duties.

### **2.5.4. Powers and Duties.**

**2.5.4.1.** The Board of Adjustment shall hear and decide:

**2.5.4.1.1.** Requests for variances of the provisions of this UDO and appeals of decisions of administrative officials charged with enforcement of this UDO. The board shall follow quasi-judicial procedures when deciding appeals and requests for variances. As used in this subsection, the term "decision" includes any final and binding order, requirement, or determination. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

**2.5.4.1.2.** Any other matter the Board is required to act upon by any other Town ordinance.

**2.5.4.2.** The Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Article.

## **SECTION 2.6 BOARD OF COMMISSIONERS.**

**2.6.1.** The Board of Commissioners has the authority to initiate, review, and decide applications for the following: UDO text amendments, zoning map amendments, and special use permits in accordance with



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Article 3, Legislative/Quasi-Judicial Procedures, as well as major site plans, major subdivision preliminary plats, and subdivision waivers in accordance with Article 4, Development Review Process.

**2.6.2.** The Board of Commissioners, in considering special use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Section 3.13, Procedures for Quasi-Judicial Hearings.

**2.6.3.** In considering proposed changes in the text of this UDO or in the zoning map, the Board of Commissioners acts in its legislative capacity and must proceed in accordance with the requirements of Section 3.5, UDO Text Amendments/Zoning Map Amendments.

**2.6.4.** Unless otherwise specifically provided in this Article, in acting upon special use permit requests or in considering amendments to this Ordinance or the zoning map, the Board of Commissioners shall follow the regular voting and other requirements as set forth in other provisions of the Town code, the Town charter, Rules of Procedure, or general law as applicable.

**2.6.5.** The Board of Commissioners, in considering the approval of a site-specific development plan (as defined in Section 3.6, Establishment of Vested Rights), shall follow the procedural requirements set forth in Section 3.8, Special Use Permits for the issuance of a special use permit.

**2.6.6.** A failure to vote by a Board member who is physically present in the Commissioners chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an abstention, not an affirmative vote.