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# ARTICLE 3. LEGISLATIVE/ QUASI-JUDICIAL PROCEDURES

## PART I. GENERAL PROVISIONS

### SECTION 3.1 PURPOSE AND INTENT.

Article 3, Legislative/Quasi-Judicial Procedures pertains to requirements for legislative and quasi-judicial procedures. Legislative procedures include UDO text and zoning map amendments. Quasi-judicial procedures include appeals, variances, conditional use permits, and subdivision waivers.

TABLE 3-1: REVIEW PROCEDURES				
	D = DECISION	R = RECOMMENDATION	< > = PUBLIC HEARING	
PROCEDURE	UDO ADMINISTRATOR	PLANNING BOARD	BOARD OF COMMISSIONERS	BOARD OF ADJUSTMENT
UDO Text Amendment	R	R	<D>	
Zoning Map Amendment	R	R	<D>	
Conditional Use Permit	R	R	<D>	
Appeal	R			<D>
Variance	R			<D>
Subdivision Waiver	R	R	<D>	

### SECTION 3.2 REQUESTS TO BE WITHIN A REASONABLE TIMEFRAME.

As provided in Article 2, Administrative, Legislative, & Quasi-Judicial Authority, the Planning Board, Board of Commissioners, and Board of Adjustment (as applicable) shall hear and decide all applications, appeals, and variance requests, within a reasonable timeframe, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Section 3.4, Notice of Hearing, and obtain the necessary information to make sound decisions.

### SECTION 3.3 PUBLIC HEARING REQUIRED.

**3.3.1.** Before making a decision on an application for an amendment, appeal, variance, conditional use permit, or subdivision waiver, the Board of Commissioners or Board of Adjustment (as appropriate) shall hold a public hearing on the application within a reasonable time. Holding the hearing within ninety (90) days of the submittal of a completed application (provided that the public advertising requirements are met) shall be presumed to be reasonable. Depending on the circumstances, a reasonable time may exceed 90 days. The required application and all supporting materials must be received by the UDO Administrator before an application is considered complete and a hearing scheduled.

**3.3.2.** The hearing shall be open to the public and all persons interested in the outcome of the application shall be given an opportunity to present evidence, the ability to make arguments, make motions, request continuances, cross-examine witnesses, and to call witnesses as delineated in NCGS 160A-393.

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**3.3.3.** The decision-making board may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay. Any review body conducting the public hearing shall act in accord with any time limits established in this Ordinance or the body's own rules of procedure. Action shall be taken as promptly as possible in consideration of the interests of the applicant, the citizens of the Town, and shall include a recommendation or decision of approval, approval with conditions, or disapproval (whichever is appropriate).

**3.3.4.** The decision-making board may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. Notice shall be given in accordance with Table 3-3 in subsection 3.4.4. If the decision-making board recesses a regular, special, or emergency meeting held pursuant to the public notice given, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required. Unless further specified, the continued hearing shall be at the next regular meeting.

**3.3.5.** The board may grant a continuance to any party for good cause shown or upon the board's own motion. Requests for continuances should be made in writing but may be made orally at a meeting of the board. The board chair may grant a continuance request prior to a meeting if the applicant or appellant makes a written request showing good cause. The chair may always defer ruling on such a request to allow for the decision to be made by the board.

**3.3.5.1. Good Cause.** Good cause for a continuance includes, but is not limited to: (a) the official issuing the decision subject to an appeal is unavailable; (b) there is insufficient membership of the board seated and present to hear a matter; or (c) if any party or the Town would be unduly prejudiced by the presentation of matters not presented in a notice of appeal.

**3.3.5.2. Re-notification Fees.** If notices of hearing have already been issued, the party granted a continuance is responsible for the administrative costs of noticing an additional hearing if such costs are incurred.

### **3.3.6. Required Public Hearings - Summary.**

TABLE 3-2: REQUIRED PUBLIC HEARINGS		
	L = LEGISLATIVE PUBLIC HEARING	Q = QUASI-JUDICIAL PUBLIC HEARING
APPLICATION TYPE	BOARD OF COMMISSIONERS	BOARD OF ADJUSTMENT
UDO Text Amendment	L	
Zoning Map Amendment	L	
Conditional Use Permit	Q	
Appeal		Q
Variance		Q
Subdivision Waiver	Q	

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### SECTION 3.4 NOTICE OF HEARING.

#### **3.4.1. Notice and Public Hearings – UDO Text Amendment.**

No amendment shall be adopted by the Board of Commissioners until after public notice and hearing consistent with the procedures and schedules established by Table 3-3 in subsection 3.4.4.

#### **3.4.2. Notice and Public Hearings - Zoning Map Amendment.**

**3.4.2.1.** In any case where the Board of Commissioners will consider a change in the zoning classification of a parcel of land, the party applying for the change in zoning classification shall submit, with the request for rezoning, a list of the names of the owners, their addresses, and the tax parcel numbers of the property involved in the change and all properties abutting the property to be considered for rezoning, as shown on the Dare County property tax listing. The application shall be considered incomplete without such material.

**3.4.2.2.** The UDO Administrator shall post, publish, and mail (consistent with Table 3-3 in subsection 3.4.4) notification to the owners, on the supplied list, containing a description of the request and the time, date, and location of the public hearing. When multiple parcels are included in a proposed zoning map amendment, a posting of each individual site is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons. The UDO Administrator shall certify to the Board of Commissioners in writing that such notices have been made and such certification shall be deemed conclusive in the absence of fraud.

**3.4.2.3.** The first class mail notice required under subsections 3.4.2.1 and 3.4.2.2 of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the Town elects to use the expanded published notice. In this instance, the Town may elect to either make the mailed notice provided for in this section or may, as an alternative, elect to publish a notice of the hearing as referenced in Table 3-3 in subsection 3.4.4. (NCGS 160A-364), but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent Dare County property tax listing for the affected property, shall be notified according to the provisions of subsections 3.4.2.1 and 3.4.2.2.

#### **3.4.3. Notice and Public Hearings - Appeals, Variances, Conditional Use Permits, and Subdivision Waivers.**

**3.4.3.1.** Notice of hearings conducted pursuant to Section 3.8, Conditional Use Permits, Section 3.9, Appeals of Administrative Decisions, Section 3.10, Variances, and Section 4.28, Subdivision Waivers, 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

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parcel of land that is the subject of the hearing; and any other persons entitled to receive notice as provided by this UDO. In the absence of evidence to the contrary, the Town may rely on the Dare County property tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

**3.4.3.2.** In the case of conditional use permits, notice shall be given to other potentially interested persons by publishing a notice in a newspaper having general circulation in the area one (1) time not less than 10 nor more than 25 days prior to the hearing.

**3.4.3.3.** The notice required by this section shall state the date, time, and place of the hearing, reasonably identify the lot(s) that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

### **3.4.4. Notice and Public Hearings – Summary.**

TABLE 3-3: PUBLIC NOTIFICATION TIMING REQUIREMENTS			
APPLICATION TYPE	TYPES OF REQUIRED PUBLIC NOTICE		
	PUBLISHED NOTICE	MAILED NOTICE	POSTED NOTICE
UDO Text Amendment	Once a week for 2 successive calendar weeks, with first notice between 10 and 25 days before hearing		
Zoning Map Amendment	Once a week for 2 successive calendar weeks, with first notice between 10 and 25 days before hearing	Between 10 and 25 days before hearing (exception – see subsection 3.4.2.3)	At least 10 days before hearing
Conditional Use Permit	Once a week for 2 successive calendar weeks, with first notice between 10 and 25 days before hearing	Between 10 and 25 days before hearing	At least 10 days before hearing
Appeal		Between 10 and 25 days before hearing	At least 10 days before hearing
Variance		Between 10 and 25 days before hearing	At least 10 days before hearing
Subdivision Waiver		Between 10 and 25 days before hearing	At least 10 days before hearing

## PART II. LEGISLATIVE PROCEDURES

### SECTION 3.5 UDO TEXT AMENDMENT/ZONING MAP AMENDMENT.

#### **3.5.1. Procedure.**

The Board of Commissioners may by ordinance amend, supplement, change, modify or repeal the regulations and maps of this UDO after public notice and hearing and compliance with any other applicable rules prescribed in this UDO. Such amendment may be initiated by motion of the Board of Commissioners, by motion of the Planning Board, or by application by any person within the zoning jurisdiction of the Town. A person submitting application for a zoning map amendment must be the owner, or an agent of the owner with the owner's written consent, of the property which is the subject of the proposed zoning map amendment. A notice of the hearing shall be given in accordance with Section 3.4, Notice of Hearing. As used in this section, "comprehensive plan" includes a unified development ordinance and any other officially adopted plan that is applicable.

#### **3.5.2. Action by Applicant.**

The following action shall be taken by the applicant:

**3.5.2.1.** For any proposed text amendment, the application shall provide the name(s) and address(es) of the applicant(s) and the actual text of the proposed amendment in a form such that one can determine what provisions of this UDO will be changed and how they will be changed by the amendment.

**3.5.2.2.** An application for any map change or amendment shall contain a description and statement of the present and proposed zoning regulation or district boundary to be applied, the name(s) and address(es) of the applicant(s), the owner (s) of the parcel of land involved in the change if different from the applicant, and all adjacent property owners as shown on the Dare County property tax listing. If the applicant for a map change or amendment is not the property owner, documentation shall be provided in accordance with subsection 3.5.1.

**3.5.2.3.** One (1) hard copy and one (1) electronic copy of such application shall be filed with the UDO Administrator not later than 45 calendar days prior to the Planning Board meeting at which the applicant desires for the application to be considered.

#### **3.5.3. Action by the Planning Board.**

**3.5.3.1.** Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.

**3.5.3.2.** Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board

of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.

**3.5.3.3.** Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map 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.

**3.5.4. Action by the Board of Commissioners.**

Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.

**3.5.4.1.** Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

**3.5.4.2.** After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

**3.5.4.3.** The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.

**3.5.4.4.** No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.

**3.5.4.5.** Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.

**3.5.4.5.1.** A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

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**3.5.4.5.2.** A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

**3.5.4.5.3.** A statement approving the amendment and containing at least all of the following:

**3.5.4.5.3.1.** A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.

**3.5.4.5.3.2.** An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.

**3.5.4.5.3.3.** Why the action was reasonable and in the public interest.

**3.5.4.6.** In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:

**3.5.4.6.1.** The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.

### **3.5.5. Citizen Comments.**

This ordinance may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the Town submits a written statement regarding a proposed amendment, modification, or repeal to this UDO to the Town Clerk at least two business days prior to the proposed vote on such change, the Town Clerk shall deliver such written statement to the Board of Commissioners. If the proposed change is the subject of a quasi-judicial proceeding under NCGS 160A-388, the Town Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the Board shall not disqualify any member of the Board from voting.

### **3.5.6. Withdrawal of Application.**

An applicant may withdraw his or her application at any time by written notice to the UDO Administrator and may resubmit at a subsequent date in compliance with the submittal schedule contained herein. These limitations shall not apply to the withdrawal of an application submitted by Town staff or any Town Board.

### **3.5.7. Denial of Application.**

When the Board of Commissioners denies an application, the Board shall not consider another application for the same or similar amendment until the expiration of a 12-month period, extending from the date of denial. If the request involves a zoning map amendment request, no similar amendment request affecting the same property or a portion thereof, shall be considered within the

same time period. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

### **SECTION 3.6 ESTABLISHMENT OF VESTED RIGHTS.**

**3.6.1.** A vested right, in accordance with NCGS 160A-385.1, may be established upon the approval or conditional approval of a site-specific development plan by the Board of Commissioners in accordance with the provisions outlined in this section. Approval by the Board of Commissioners of a site-specific development plan shall follow the procedural requirements for the issuance of a conditional use permit as outlined in Section 3.8, Conditional Use Permits. Changes in or modifications to an approved site-specific development plan shall be made only with the concurrence of the Board of Commissioners in accordance with the provisions of subsection 3.8.8. A right which has been vested as provided for in this section shall, as a general rule, remain valid for two (2) years and shall attach to and run with the land. A vested right shall expire at the end of two (2) years if no building permit applications have been filed with the Town to construct the use or uses proposed in the approved site-specific development plan. If building permits are issued, the provisions of NCGS 160A-418 and NCGS 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the lack of progress during the two-year vesting period.

**3.6.2.** Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this subsection shall have the meaning indicated when used in this section.

**3.6.2.1. Landowner.** Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site-specific development plan.

**3.6.2.2. Property.** All real property subject to the regulations and restrictions of this Ordinance as well as the zoning district boundaries established by this Ordinance and depicted on the official zoning map.

**3.6.2.3. Site-Specific Development Plan.** A site-specific development plan which has been submitted to the Town by a landowner in accordance with NCGS 160A-385.1(b)(5) describing in detail the type and intensity of use for a specific parcel or parcels of property. Such plan shall be in the form of a site plan required to obtain a conditional use permit and shall include the information required by subsection 3.8.2 and Article 4, Development Review Process. All site-specific development plans require the consideration and approval of the Board of Commissioners.

**3.6.2.4. Vested Right.** The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

**3.6.3.** A vested right shall be deemed established upon the effective date of approval by the Board of Commissioners of a site-specific development plan. Following the approval of a site-specific

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development plan, the UDO Administrator shall issue a vested right certificate to the landowner which indicates the duration of the vesting period, the conditions, if any, imposed by the Board of Commissioners on the approval of the site-specific development plan, and any other information determined by the UDO Administrator to be necessary to administer the vested right.

**3.6.4.** A vested right shall confer upon the landowner the right to undertake and complete the development and use of the property as delineated in the approved site-specific development plan. The Board of Commissioners may approve a site-specific development plan upon such terms and conditions as may be determined necessary to protect the public health, safety, and welfare. Failure to comply with the approved terms and conditions shall result in a forfeiture of vested rights.

**3.6.5.** A vested right, once established or provided for in this section, precludes any zoning action by the Town which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in this approved site-specific development plan, except:

**3.6.5.1.** With the written consent of the affected landowner;

**3.6.5.2.** Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards 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 development plan;

**3.6.5.3.** To the extent that the affected landowner receives 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 Town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;

**3.6.5.4.** Upon findings, by ordinance after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Town of the site-specific development plan; or

**3.6.5.5.** Upon the enactment or promulgation of a state or federal law or regulation which precludes development as contemplated in the site-specific development plan, in which case the Town 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 public hearing.

**3.6.6.** The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the Town, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.

**3.6.7.** Notwithstanding any provisions of this section, the establishment of a vested right shall not preclude, change, or impair the authority of the Town to enforce provisions of this Ordinance governing nonconforming situations or uses.

**3.6.8.** A vested right obtained under this section is not a personal right but shall attach to and run with the applicable property. After approval of a site-specific development plan, all successors to the original landowner shall be entitled to exercise such vested rights.

**3.6.9.** The Town shall not require a landowner to waive his vested rights as a condition of developmental approval.

### **SECTION 3.7 MORATORIUM.**

The Town may adopt temporary moratoria on any Town development approval required by law in accordance with NCGS 160A-381(e).

## PART III. QUASI-JUDICIAL PROCEDURES

### SECTION 3.8 CONDITIONAL USE PERMITS.

#### **3.8.1. Purpose and Applicability.**

This Ordinance provides for a number of uses to be located by-right in each general zoning district subject to the use meeting certain prescriptive criteria including area, height, yard requirements, buffering, and off-street parking and loading requirements. In addition to these uses, this Ordinance allows certain uses subject to the issuance of a conditional use permit which, without additional careful consideration, may not be consistent with the goals of the community. The conditional use permit allows the Board to establish conditions which will mitigate any negative effects of the proposed use on adjacent properties or to the community at-large. The Board of Commissioners' consideration of conditional use permits are quasi-judicial decisions. The purpose of having the uses be conditional is to ensure that they would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which they are located and would meet other criteria as set forth in this section.

#### **3.8.2. Application Process/Completeness.**

**3.8.2.1.** The deadline for which a conditional use permit application shall be filed with the UDO Administrator is not later than 45 calendar days prior to the Planning Board meeting at which the application will be heard. Permit application forms shall be determined and prepared by the UDO Administrator. Such forms are available upon request made to the UDO Administrator. In the course of evaluating the proposed conditional use, the Planning Board or Board of Commissioners may request additional information from the applicant to determine whether the applicant has met the requirements of this UDO. With the applicant's agreement, the Board may continue the hearing until such time as the applicant can provide the information. Without the agreement of the applicant, the Board may make a determination of whether the UDO requirements are met for permit issuance. In that case, the applicant bears the risk that their evidence could be insufficient to the met UDO requirements and that had they provided the information requested they might have cured a deficiency.

**3.8.2.2.** The written application shall include a listing of the names and addresses of all abutting property owners affected being the subject of the conditional use application. The list shall be supplied by the applicant and shall be current according to the most recent Dare County property tax listing. The Board of Commissioners shall hold a public hearing on the conditional use permit request after providing notice as required by Section 3.4, Notice of Hearing.

**3.8.2.3.** No application shall be deemed complete unless it contains or is accompanied by a site plan, if applicable, drawn to scale which complies with the site plan requirements contained in Article 4, Development Review Process and a fee as specified in subsection 3.3.1.

**3.8.2.4.** Eight (8) hard copies and one (1) digital copy of the application, and all attachments and maps, shall be submitted to the UDO Administrator.

**3.8.3. Planning Board Review and Comment.**

**3.8.3.1.** The Planning Board may, in its review, suggest reasonable conditions to the location, nature, and extent of the proposed use and its relationship to surrounding properties, parking areas, driveways, pedestrian and vehicular circulation systems, screening and landscaping, timing of development, and any other conditions the Planning Board may find appropriate. The conditions may include dedication of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development.

**3.8.3.2.** The Planning Board shall forward its recommendation to the Board of Commissioners within 45 days of reviewing the application. If a recommendation is not made within 45 days, the application shall be forwarded to the Board of Commissioners without a recommendation from the Planning Board.

**3.8.3.3.** Review of the conditional use application by the Planning Board shall not be a quasi-judicial procedure. Comments of the Planning Board may be considered with other evidence submitted at the public hearing.

**3.8.4. Board of Commissioners Action.**

**3.8.4.1.** Board of Commissioners consideration of conditional use permits are quasi-judicial decisions approved by a simple majority vote. Quasi-judicial decisions must be conducted in accordance with Section 3.13, Procedures for Quasi-Judicial Hearings. For the purposes of this section, vacant positions on the Board of Commissioners 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.

**3.8.4.2.** Once the comments of the Planning Board have been made, or the 45-day period elapses without a recommendation, at the next regularly scheduled meeting of the Board of Commissioners, the Board of Commissioners shall consider the scheduling of a public hearing. Notice of the public hearing shall be as specified in Section 3.4, Notice of Hearing.

**3.8.4.3.** In approving an application for a conditional use permit in accordance with the principles, conditions, safeguards, and procedures specified herein, the Board of Commissioners may impose reasonable and appropriate conditions and safeguards upon the approval. Prior to the granting of any conditional use, the Board of Commissioners may require conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the conditional use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified above. The reasons/justification for special conditions must be stated/tied to subsection 3.8.4.6. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Board of Commissioners. Violations of those conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be considered a violation of this Ordinance and shall be subject to Section 1.10, Violation of

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UDO Provisions of this Ordinance. The Board of Commissioners may prescribe a time limit within which the action for which the conditional use permit is required shall be begun or completed. Failure to comply within the time limit set shall void the conditional use permit.

**3.8.4.4.** If the Board of Commissioners does not prescribe a time limit for any part of such conditional use permit pursuant to subsection 3.8.4.3 of this section, then the time limitations prescribed in Section 4.15, Time Limitations for Site Plans, Zoning Permits, and Building Permits, or Section 3.6, Establishment of Vested Rights shall apply.

**3.8.4.5.** The applicant has the burden of producing competent and substantial evidence of facts establishing that the proposed development meets the requirements of subsection 3.8.4.6 below by a preponderance of the evidence.

**3.8.4.6.** The Board of Commissioners shall issue a conditional use permit if it has evaluated an application through a quasi-judicial process and determined that:

**3.8.4.6.1.** The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.

**3.8.4.6.2.** The use, as proposed, will not overburden the firefighting capabilities and the municipal water supply capacity of the Town as such facilities and capabilities will exist on the completion date of the conditional use for which application is made.

**3.8.4.6.3.** The conditional use will be in harmony with the existing development and uses within the area in which it is to be located.

**3.8.4.6.4.** Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.

**3.8.4.6.5.** Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

**3.8.4.7.** The Board of Commissioners may not attach additional conditions that modify or alter the specific requirements set forth in this Ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.

### **3.8.5. Effect of Approval.**

If an application for a conditional use permit is approved by the Board of commissioners, the property shall be developed in accordance with the application to the extent not modified by the conditional use permit and the conditional use permit including any conditions placed upon the development.

### **3.8.6. Binding Effect.**

Any conditional use permit shall be binding to the property included in the permit unless subsequently changed or amended by the Board of Commissioners.

### **3.8.7. Certificate of Occupancy.**

No certificate of occupancy for a use listed as a conditional use shall be issued for any building or land use on a piece of property which has received a conditional use permit for the particular use unless the building is constructed or used, or the land is developed or used, in conformity with the conditional use permit approved by the Board of Commissioners. In the event that only a segment of a proposed development has been approved, the certificate of occupancy shall be issued only for that portion of the development constructed or used as approved.

**3.8.8. Change in Conditional Use Permit.**

Requests to modify or change a conditional use permit once it has been issued shall be presented in writing to the UDO Administrator, who shall then determine within ten (10) business days whether the change is minor or material, and therefore, major. Minor changes may be approved by the UDO Administrator. Major changes must first be submitted, reviewed, and approved in accordance with subsections 3.8.3 and 3.8.4, including payment of a fee in accordance with the fee schedule approved by the Board of Commissioners.

**SECTION 3.9 APPEALS OF ADMINISTRATIVE DECISIONS**

**3.9.1. Administrative Decisions.**

**3.9.1.1. Defined.** An appealable "administrative decision" is any final and binding order, requirement, or determination issued in writing by an administrative official charged with enforcement of this UDO. Administrative decisions include, but are not limited to: (i) permit issuance or denial, (ii) issuance of a notice of violation, warning citation, or civil citation or (iii) issuance of a formal interpretation of a provision of this UDO.

**3.9.1.2. Formal Interpretation.** Only formal interpretations issued in accordance with this subsection are subject to being appealed as an administrative decision. Any written or oral interpretations that do not meet the strict requirements of this subsection are merely advisory and represent only the view, opinion or belief of the administrative official issuing them. Advisory interpretations have no binding force or effect and there is no right to appeal advisory interpretations to the board. There is no right to have an informal interpretation issued.

**3.9.1.2.1. Request.** Any person may request a formal interpretation of any provision of this UDO or of the location of zoning district boundary unassociated with a permit application or enforcement action. Such request must relate to a specific parcel of property, must be made in writing, must state all of the necessary facts to make the determination and must specifically state the ordinance provisions subject to the interpretation request. If the applicant for the formal interpretation is not the owner of the property, the applicant must certify that a copy of the request has been provided to the property owner.

**3.9.1.2.2. Response.** Only the UDO Administrator is authorized to issue a formal interpretation under this subsection. The UDO Administrator may in their discretion decide whether or not to respond to a request for a formal interpretation. A response

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to a request may only be made with the approval of the Town Manager. A response to a request is not a formal interpretation unless it is made in writing and includes a notation on its face that states "This is a Formal Unified Development Ordinance Interpretation."

**3.9.1.2.3. Notice.** Formal interpretations are not appealable under this subsection unless they include a certificate of service certifying that a copy of the formal interpretation has been provided to the Town Manager and the owner of the land subject to the interpretation if the applicant for the interpretation was not the owner of the land. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

**3.9.1.3. Notice of Decisions.** The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. Landowners or applicants for a decision may provide for actual or constructive notice to persons who have standing to appeal the decision by acting in accordance with subsection 3.9.2.3.

### **3.9.2. Appeals of Administrative Decisions.**

The Board of Adjustment shall hear and decide appeals of administrative decisions of administrative officials charged with enforcement of this UDO and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

**3.9.2.1. Who May Appeal.** Any person who has standing under G.S. 160A-393(d) or the Town may appeal an administrative decision to the Board of Adjustment. Any other party who has such standing may also intervene in an existing appeal by filing a written request to do so with the Town Clerk prior to the expiration of that party's time to appeal under subsection 3.9.2.3 or within 10 days of receiving actual or constructive notice of the appeal, whichever is later. If the property subject to the appeal is owned by someone other than the applicant, the owner of the property is considered a party to the proceeding without intervention.

**3.9.2.2. Form of Appeal.** An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal. Each notice of appeal shall include a listing of the names and addresses of all of the persons listed in subsection 3.4.3.1 who are entitled to receive notice. The list shall be supplied by the appellant and shall be current according to the most recent property tax listing as filed in the office of the Dare County Tax Department.

**3.9.2.3. Time to Appeal.** The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision"

or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

**3.9.2.4. Duties of Official Who Made Decision.** No less than one week before an appeal is to be heard, the official who made the decision being appealed shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner. The official who made the decision being appealed shall be present at the hearing as a witness.

**3.9.2.5. Stay Pending Appeal.** An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board after notice of appeal has been filed that because of the facts stated in an affidavit: (i) a stay would cause imminent peril to life or property or (ii) because the violation is transitory in nature, a stay would seriously interfere with enforcement of the UDO. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the UDO 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.

**3.9.2.6. Timing of Hearing.** Subject to the provisions of subsection 3.9.2.5 of this section, the Board shall hear and decide the appeal within a reasonable time.

**3.9.2.7. Appeals in the Nature of Certiorari.** When hearing an appeal from a UDO provision that requires the appeal be heard in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in NCGS 160A-393(k).

**3.9.2.8. Alternative Dispute Resolution.** The Town and other parties to an appeal may agree to mediation in accordance with the applicable rules for mediated settlement conferences in Superior Court. If the parties agree to mediation, a hearing on the merits of the matter will be delayed until the regular board meeting following the mediation.

**3.9.2.9. Authority of the Board.** The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or

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determination that ought to be made. The Board shall have all the powers of the official who made the decision.

**3.9.2.10. Hearing on Appeal.** The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.

### SECTION 3.10 VARIANCES

#### **3.10.1. Standards for Granting a Variance.**

When unnecessary hardships would result from carrying out the strict letter of this UDO, the Board of Adjustment shall vary any of the provisions of the UDO upon a showing of all of the following:

**3.10.1.1.** Unnecessary hardship would result from the strict application of the UDO. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

**3.10.1.2.** 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 for granting a variance.

**3.10.1.3.** The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

**3.10.1.4.** The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

**3.10.2.** Under no circumstances shall the Board of Adjustment grant a variance to allow a use either expressly or by implication not permissible under the terms of this UDO in the district involved.

**3.10.3.** Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Violation of such conditions shall be deemed a violation of this UDO and punishable under Section 1.10, Violation of UDO Regulations.

**3.10.4.** A variance that is granted shall be the minimum variance that will resolve the unnecessary hardship resulting from the strict application of this UDO to the land, building or structure.

**3.10.5.** No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

#### **3.10.6. Application Requirements.**

Each application for a variance must be in writing, accompanied by any associated administrative fee and shall include all of the following information:

**3.10.6.1.** A listing of the specific section(s) and subsection(s) of this UDO that the applicant is seeking to vary.

**3.10.6.2.** For each provision, the applicant is requesting to vary, a listing of how the provision applies to the property without the requested variance and how the applicant proposes the provision should be varied.

**3.10.6.3.** A description of how the property can be used without the requested variance compared with how it could be used with the requested variance.

**3.10.6.4.** A description of the unnecessary hardship which results from the strict application of this UDO.

**3.10.6.5.** A description of the conditions that are peculiar to the property, such as location, size, or topography which cause the unnecessary hardship.

**3.10.6.6.** A certification that the hardship did not result from actions taken by the applicant or the property owner other than the act of purchasing property with knowledge that circumstances exist requiring a variance.

**3.10.6.7.** A narrative explaining how the requested variance is consistent with the spirit, purpose, and intent of this UDO, such that public safety is secured, and substantial justice is achieved.

**3.10.6.8.** A certification that the requested variance, if granted, will not allow an increase or extension of an existing nonconforming structure or use of land.

**3.10.6.9.** A certification that the requested variance, if granted, will not allow a use of the land otherwise prohibited in the applicable zoning district to occur on the property.

**3.10.6.10.** A listing of the names and addresses of all of the persons listed in subsection 3.4.3.1 who are entitled to receive notice. The list shall be supplied by the applicant and shall be current according to the most recent property tax listing as filed in the Dare County Tax Department.

**3.10.7.** In addition to the foregoing requirements, when considering a variance from Article 11, Part III, Flood Damage Prevention, the Board shall follow the additional provisions of such article.

**3.10.8. Amendments.**

The owner of land which has been granted a variance may apply for an amendment to the previously granted variance. All of the standards for granting a variance shall apply to the consideration of an amendment to an existing variance. An amendment may only be granted if:

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**3.10.8.1.** The circumstances on the property have substantially changed since the time of the granting of the prior variance in such a way that the use of the property in accordance with prior variance is itself an unnecessary hardship; or

**3.10.8.2.** The amendment requested will be equal to or less of a variance than the previously granted variance.

### SECTION 3.11 BURDEN OF PROOF IN APPEALS AND VARIANCES

**3.11.1.** When an appeal is taken to the Board of Adjustment in accordance with Section 3.9, Appeals of Administrative Decision, the burdens of production, persuasion and proof for all quasi-judicial decisions of the board lie with the applicant or appellant seeking such a decision.

### SECTION 3.12 BOARD OF ADJUSTMENT ACTION/VOTING

The concurring vote of four-fifths majority of the Board of Adjustment shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. 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.

### SECTION 3.13 PROCEDURES FOR QUASI-JUDICIAL HEARINGS.

#### **3.13.1. Evidence/Presentation of Evidence.**

**3.13.1.1. Applicability.** The provisions of this section apply to all hearings for which a notice is required by Section 3.4, Notice of Hearing.

**3.13.1.2. Oaths.** All persons who intend to present evidence to the decision-making board shall be sworn in. The Chair of the Board, any member acting as Chair, the Clerk to the Board, and public notaries are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the decision-making board, willfully swears falsely is guilty of a Class 1 misdemeanor.

**3.13.1.3. Competent Evidence.** All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (necessary findings) shall be based upon competent, substantial evidence. The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (1) the evidence was admitted without objection or (2) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

**3.13.1.3.1.** The use of property in a particular way would affect the value of other property.

**3.13.1.3.2.** The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

**3.13.1.3.3.** Matters about which only expert testimony would generally be admissible under the rules of evidence.

**3.13.1.4. Other Requirements.** The entirety of a quasi-judicial hearing and deliberation shall be conducted in open session. Parties to a quasi-judicial hearing have reasonable and typical due process rights of parties to administrative and judicial proceedings, including, but not limited to present evidence, to call witnesses, to cross examine witnesses, to object to evidence, to make appropriate motions, and make appropriate arguments. This does not preclude the decision-making body from entering into a justifiable closed session pursuant to NC GS 143-318.11.

**3.13.1.5. Subpoenas.** The decision-making board through the Chair, or in the Chair's absence, anyone acting as the Chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under NCGS 160A-393(d) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full decision-making board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the decision-making board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all property parties.

**3.13.2. Continuances.**

The decision-making board may grant a continuance to any party for good cause shown or upon the Board's own motion. Requests for continuances should be made in writing but may be made orally at a meeting of the Board. The Board Chair may grant a continuance request prior to a meeting if the applicant or appellant makes a written request showing good cause. The Chair may always defer ruling on such a request to allow for the decision to be made by the Board.

**3.13.2.1. Good Cause.** Good cause for a continuance includes, but is not limited to: (i) the official issuing the decision subject to an appeal is unavailable; (ii) there is insufficient membership of the board seated and present to hear a matter; or (iii) if any party or the Town would be unduly prejudiced by the presentation of matters not presented in a notice of appeal.

**3.13.2.2. Re-notification Fees.** If notices of hearing have already been issued, the party granted a continuance is responsible for the administrative costs of noticing an additional hearing if such costs are incurred.

### **3.13.3. Modification of Application at Hearing.**

**3.13.2.1.** In response to questions or comments made in sworn testimony at the hearing, the applicant may agree to modify the application, including the plans and specifications submitted.

**3.13.2.2.** Unless such modifications are so substantial or extensive that the decision-making board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the decision-making board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the UDO Administrator.

### **3.13.4. Record.**

**3.13.4.1.** A record shall be made of all hearings required by Section 3.3, Public Hearing Required, and such recordings shall be kept as provided by state law. Minutes shall also be kept of all such proceedings. A transcript may be made but is not required.

**3.13.4.2.** All documentary evidence, including any exhibits, presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the Town in accordance with NCGS 160A-393(i).

### **3.13.5. Quasi-Judicial Decision.**

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 Board shall determine contested facts and make its decision within a reasonable time. A reasonable time in which to issue an oral decision shall not be less than 45 days following the completion of the public hearing on the matter. A reasonable time in which to issue a final decision shall not be less than 45 days following the issuance of an oral decision. Otherwise, a reasonable time greater than those specified in this subsection shall be determined by the circumstances of the matter under consideration. Every quasi-judicial decision shall be based upon competent, substantial evidence in the record. The written decision shall be signed by the Chair or other duly authorized member of the Board. In absence of specific board direction, the written decision will be prepared by the Town via the Clerk to the Board after review by the Town's attorney and board attorney and will be presented to the chair for execution if the chair deems it appropriate. The chair, in their discretion, may seek the approval of the board for all or any portion of a decision so prepared. Otherwise, the board may at the time of its oral decision direct any party to prepare a proposed written decision and may consider the written decision at its next regular meeting. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board or such other office or official as this Ordinance specifies. 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.

**SECTION 3.14 REHEARINGS.**

When an application involving a quasi-judicial procedure/petition is denied by the Board of Commissioners or Board of Adjustment, reapplication involving the same property, or portions of the same property, may not be submitted unless the petitioner can demonstrate a substantial change in the proposed use, conditions governing the use of the property, or conditions surrounding the property itself.

**SECTION 3.15 APPEALS OF QUASI-JUDICIAL DECISIONS.**

**3.15.1.** Every quasi-judicial decision shall be subject to review by the Superior Court of Dare County by proceedings in the nature of certiorari pursuant to NCGS 160A-393.

**3.15.2** A petition for review shall be filed with the Dare County Clerk of Superior Court by the later of thirty (30) days after the decision is effective or after a written copy thereof is given in accordance with subsection 3.13.5. When first class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.