

TOWN OF ATLANTIC BEACH



UDO UPDATE

MODULE 1: ADMINISTRATION

Public Review Draft

November 10, 2016

ACKNOWLEDGEMENTS



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TABLE OF AMENDMENTS¹

TABLE OF AMENDMENTS				
This table identifies the amendments that have been made to the UDO since adoption				
ORDINANCE #	DATE ADOPTED	TITLE	AFFECTED UDO SECTION(S)	DESCRIPTION

¹ This is a table included for the Town’s use following adoption of the UDO.

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KEY CHANGES IN UPDATED UDO

- All general provisions are consolidated into this single article
- The purpose and intent statements have been supplemented with language from the General Statutes
- The applicability provisions have been supplemented with language clarifying that the Town’s planning authority extends to submerged lands
- The standards have been supplemented with standards clarifying that the Town may review some private agreements such as HOA establishment documents, shared parking agreements, and cross-access easements
- The document now includes a consolidated set of provisions governing how conflict between different provisions in the UDO can be addressed
- There are transitional provisions that address how submitted and approved applications are handled in the new UDO



ARTICLE 18-1. GENERAL PROVISIONS

18.1.1. TITLE

This Ordinance is officially titled as the "Unified Development Ordinance of Atlantic Beach, North Carolina," and may be referred to as "the Unified Development Ordinance," "this Ordinance," and several abbreviated references ("the UDO," "this UDO," or "UDO").²

18.1.2. EFFECTIVE DATE

This Ordinance shall be in full force and effect on *[insert the effective date of this Ordinance]*, and repeals and replaces the Town of Atlantic Beach Unified Development Ordinance, as originally adopted on August 24, 2009, and subsequently amended.³

18.1.3. AUTHORITY

This Ordinance consolidates the Town's zoning, subdivision, and flood damage prevention regulations, as authorized by the North Carolina General Statutes. It is adopted in accordance with the following:

A. GENERAL ASSEMBLY

The authority granted to the Town of Atlantic Beach by the General Assembly of the State of North Carolina.

B. NORTH CAROLINA GENERAL STATUTES

The North Carolina General Statutes, including:

1. Chapter 160A, Article 8 (Police Powers);
2. Chapter 160A, Article 15 (Streets, Traffic, and Parking);
3. Chapter 160A, Article 19 (Planning and Regulation of Development);
4. Chapter 143, Article 21 (Water and Air Resources); and
5. Chapter 113a, Article 4 (Sedimentation and Pollution Control).

C. TOWN CHARTER

The Atlantic Beach Town Charter.

D. OTHER RELEVANT LAWS

1. All other relevant laws of the State of North Carolina; and
2. Any special legislation for the Town of Atlantic Beach enacted by the General Assembly.

18.1.4. GENERAL PURPOSE AND INTENT

The purpose of this Ordinance is to protect the public health, safety, morals, and general welfare of the citizens and landowners of the Town of Atlantic Beach, and to implement the policies and objectives of Town-adopted plans addressing the Town's growth and development. More specifically, the intent of this Ordinance is to:

- A. Acknowledge and protect the community character that is unique to Atlantic Beach;
- B. Foster convenient, compatible, and efficient relationships among land uses;
- C. Continue the established mixed-use pattern of certain portions of the community;
- D. Support and encourage a strong and diverse economy;
- E. Provide new investment and reinvestment opportunities;

² The language designating the official zoning map will be relocated to new Article 18-3, Zoning Districts.

³ This new section replaces the "Editor's note" at the head of the current UDO chapter.

⁴ The list of purpose and intent statements has been expanded to include language from the NCGS.

ARTICLE 18-1. GENERAL PROVISIONS

Section 18.1.6. Conformance with Policy

Subsection A. Adopted Policy Guidance

- F.** Better manage and lessen congestion in the streets;
- G.** Ensure the provision of adequate open space between uses for light, air, and fire safety;
- H.** Secure the safety of landowners and residents from flooding, fire, and dangers presented from extreme weather events, to the extent possible;
- I.** Require appropriate setbacks for buildings and other structures to facilitate the safe movement of vehicular and pedestrian traffic, provide adequate fire lanes, and ensure adequate distance from dust, noise, and fumes created by vehicular traffic;
- J.** Improve development quality and the quality of life for residents and visitors;
- K.** Preserve and enhance visual attractiveness;
- L.** Protect existing established development and neighborhoods from incompatible infill and redevelopment;
- M.** Protect existing and increased housing and lodging opportunities;
- N.** Ensure new development and redevelopment compliments and enhances community character; and
- O.** Implement thoughtful, controlled growth.

18.1.5. APPLICABILITY

A. WHERE APPLIED

1. The regulations set forth in this Ordinance shall apply to all property within the Town's corporate limits and within the various zoning districts as designated on the official zoning map, as established in Section <>, Official Zoning Map, including any submerged lands that fall within the Town's corporate limits.
2. The Town of Atlantic Beach does not exercise planning and zoning authority beyond its corporate limits.

B. APPLICATION TO GOVERNMENTAL UNITS

Except as stated elsewhere, this Ordinance shall apply to:

1. **The Town of Atlantic Beach**
Development by the Town or its agencies or departments;
2. **County and State Government**
Development of buildings by state or county agencies or departments, public colleges or universities, or other political subdivisions of the State, in accordance with the standards in Section 160A-392 of the North Carolina General Statutes; and
3. **Federal Government**
Development owned or held in tenancy by the government of the United States, its agencies, departments, or corporate services, to the full extent permitted by federal law.

C. NO DEVELOPMENT UNTIL COMPLIANCE WITH ALL APPLICABLE LAWS

1. **No Land Developed**
Unless exempted, no land shall be developed without compliance with this Ordinance and all other applicable Town, State, and federal regulations.
2. **No Use or Occupancy**
No person shall use, occupy, or divide any land or a building or authorize or permit the use, occupancy, or division of land or a building under their control, except in accordance with this Ordinance.
3. **No Building Constructed**

⁵ This section replaces the current Exemptions in Section 1.4.2.

ARTICLE 18-1. GENERAL PROVISIONS

Section 18.1.8. Conflict Between Laws

Subsection B. Conflicts with State or Federal Law

No building, or portion thereof, shall be erected, used, occupied, maintained, moved, or altered except in conformity with the applicable regulations in this Ordinance and other applicable Town regulations.

18.1.6. CONFORMANCE WITH POLICY⁶

A. ADOPTED POLICY GUIDANCE⁷

The administration, enforcement, and amendment of this Ordinance shall be accomplished in accordance with the Town's adopted planning policy framework. This includes the most recently adopted certified CAMA Land Use Plan and all other Town-adopted policy guidance.

B. CONFORMANCE

1. Advisory

Adopted policy guidance is advisory in nature and does not carry the effect of law.

2. Consistency

This Ordinance is intended to ensure that all development within the Town is consistent with the goals, objectives, policies, strategies, and actions contained in the Town's adopted policy guidance.

3. Amendment Upon Inconsistency

To the extent this Ordinance is or becomes inconsistent with the Town's adopted policy guidance, it should be amended to remain consistent. All amendments to this Ordinance's text or to the Official Zoning Map should maintain and enhance consistency between this Ordinance and adopted policy guidance.

18.1.7. RELATIONSHIP WITH OTHER AGREEMENTS, COVENANTS, OR DEED RESTRICTIONS⁸

A. MINIMUM REQUIREMENTS

In the application of this Ordinance, all provisions shall be considered as minimum requirements and shall not be deemed to limit or repeal any other powers or authority granted under the North Carolina General Statutes.

B. REVIEW OF PRIVATE AGREEMENTS

The Town may review and approve private agreements, such as those related to the establishment and operation of a home or property owner's association; maintenance and operation of shared parking or cross-access agreement; or access easement between landowners in favor of the general public; but the Town is not responsible for monitoring or enforcing private covenants and deed restrictions.

C. EXISTING AGREEMENTS OR VESTED RIGHTS

Nothing in this Ordinance is intended to repeal, supersede, annul, impair, or interfere with any existing private agreements or vested rights, provided such agreements or vested rights are lawfully established and remain in effect.

18.1.8. CONFLICT BETWEEN LAWS⁹

⁶ This is a new section and sets out the requirements for development to be in compliance with the CAMA Land Use Plan and any other applicable planning documents in accordance with G.S. §160A-383.

⁷ The Town may establish a user's guide or administrative manual, which would be referenced in this section.

⁸ This section replaces current Sections 1.5, Relationship to Other Ordinances, and 1.11, Deed Restrictions.

⁹ This new section address conflicts between the regulations in the UDO in a comprehensive way. It is not always the case that the most restrictive standards should apply, particularly in cases where incentives are being applied.

ARTICLE 18-1. GENERAL PROVISIONS

Section 18.1.9. Transitional Provisions

Subsection C. Pending Applications

A. CONFLICTS WITH OTHER TOWN CODES OR LAWS

If a provision of this Ordinance is inconsistent with another provision found in other adopted ordinances of the Town, the more restrictive provision shall govern unless the terms of the more restrictive provision specifies otherwise. The more restrictive provision is the one that imposes greater restrictions or burdens, or more stringent controls.

B. CONFLICTS WITH STATE OR FEDERAL LAW

If a provision of this Ordinance is inconsistent with State or federal law, the more restrictive provision controls, to the extent permitted by law.

C. CONFLICTS BETWEEN STANDARDS IN THIS ORDINANCE

1. In cases where two or more standards in this Ordinance conflict with one another, the more restrictive standard shall not necessarily control. Rather, the determination as to which standard controls by the Planning, Zoning, and Inspections Department shall be based on the degree to which the application of a particular standard results in:
 - a. Greater consistency with State or federal law;
 - b. Greater consistency with the goals and objectives contained within the adopted policy guidance;
 - c. A development that is more supportive of the purposes of this Ordinance as described in Section <>, General Purpose and Intent;
 - d. Increased compatibility with adjacent development and surrounding community character;
 - e. Enhanced environmental quality and natural resource protection;
 - f. Greater protection and preservation of historic and cultural resources; and
 - g. A superior level of building form, design, or architecture.
2. The text of this Ordinance shall be interpreted in accordance with Section <>, Interpretation.

18.1.9. TRANSITIONAL PROVISIONS¹⁰

A. PRIOR VIOLATIONS CONTINUE

Any prior violation of the previous ordinance shall continue to be a violation under this Ordinance, unless the development complies with this Ordinance. Violations of this Ordinance shall be subject to Article 18-9: Enforcement.

B. EXISTING NONCONFORMITIES

If any use, structure, lot or sign, legally existed on [insert the effective date of this Ordinance], but does not fully comply with the standards of this Ordinance, the use, structure, lot or sign, is considered nonconforming under this Ordinance and may continue in accordance with the requirements in Article 18-8: Nonconformities.

C. PENDING APPLICATIONS

1. Application Submitted

After [insert the effective date of this Ordinance] an application for a development permit or approval shall not be considered as a submitted application until it is determined by the UDO Administrator to be a complete application in accordance with Section <>, Completeness Review.

2. Complete Application

- a. Any submitted development application accepted as complete before [insert the

¹⁰ This is a new section that clarify whether or not existing violations and nonconformities will continue as such under the new regulations. They also address recently approved and pending applications made under the current ordinance.

ARTICLE 18-1. GENERAL PROVISIONS

Section 18.1.11. Severability

Subsection D. Approved Applications

effective date of this Ordinance], but still pending review or final action as of that date, shall be reviewed and decided in accordance with the regulations in effect when the application was accepted as complete.

- b. Complete applications shall be processed in good faith and shall comply with any time frames for review, approval, and completion as established in the regulations in effect at the time of the application is deemed by the UDO Administrator to be complete. If the application fails to comply with the required time frames, it shall expire and future development shall be subject to the requirements of this Ordinance.
- c. To the extent such an application is approved and proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the provisions of Article 18-8: Nonconformities.
- d. An applicant may request review under this Ordinance by submitting a written request to the UDO Administrator.

3. Application Not Complete

An applicant with a pending application that has been delivered to the Town but not determined to be complete before *insert the effective date of this Ordinance* shall be reviewed in accordance with the standards in this Ordinance.

D. APPROVED APPLICATIONS

1. Valid Until Expiration

Any development approvals or permits granted before *insert the effective date of this Ordinance* shall remain valid until their expiration date. Developments with valid approvals or permits shall be carried out in accordance with the terms and conditions of their approval and the development standards in effect at the time of approval, provided the approval or permit is valid and has not expired.

2. Expiration

If the prior approval expires or is revoked (e.g., for failure to comply with the terms and conditions of approval), any subsequent development of the site shall comply with this Ordinance.

3. Nonconforming Development

To the extent a prior-approved application proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the provisions of Article 18-8: Nonconformities.

18.1.10. RESERVED

18.1.11. SEVERABILITY

The legislative intent of the Town Council in adopting this Ordinance is that all provisions shall regulate development in accordance with the existing and future needs of the Town as established in this Ordinance, and promote the public health, safety, and general welfare of the landowners and residents of Atlantic Beach. If any section, subsection, sentence, boundary, or clause of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance. The Town Council hereby declares that it would have passed this Ordinance and any section, subsection, sentence, boundary, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, boundaries, clauses, or phrases are declared invalid.

ARTICLE 18-2. PROCEDURES

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KEY CHANGES IN UPDATED UDO

- All procedures are consolidated into this single article
- Article includes a detailed summary table of all development review procedures
- Section on the power and duties, rules of procedure, and composition for each decision-making body
- Updated UDO now includes a consolidated set of common review procedures used for all development review procedures
- Development review procedures use a standardized format with a flow chart
- All development review procedures include a set of approval criteria
- The updated UDO includes four new permits: administrative adjustments, development agreement, minor subdivision plat, and a temporary use permit
- The building, sign, and temporary use permit procedures are now codified
- The current amendment procedure is separated into a text amendment and a map amendment procedure
- Major site plans and major subdivision plats include a conceptual review procedural step
- Planning Board review of conditional use permits and vested rights determinations has been removed due to their quasi-judicial nature
- The UDO Administrator is authorized to decide final plats, interpret the UDO text, and interpret the zoning map

ARTICLE 18-2. PROCEDURES

18.2.1. SUMMARY DEVELOPMENT REVIEW TABLE

A. TABLE CONTENTS

Table <>, Review Procedures Summary Table, identifies the review authority for development applications reviewed under this Ordinance. The table also identifies:

1. The relevant section of this Ordinance where detailed procedural information may be found; and
2. If a public hearing is required.

TABLE 18.2.1: REVIEW PROCEDURES SUMMARY TABLE

D = Decide R = Recommendation A = Appeal <> = Public Hearing { } = Quasi-judicial Public Hearing

PROCEDURE	SECTION REFERENCE	ADVISORY & DECISION-MAKING BODIES					
		UDO ADMINISTRATOR	BUILDING INSPECTOR	TECHNICAL REVIEW COMMITTEE	PLANNING BOARD	TOWN COUNCIL	BOARD OF ADJUSTMENT
Administrative Adjustment	18.2.4.B	D	.	.	.	.	{A}
Appeal		.	.	.	.	.	{D}
Building Permit		.	D	.	.	.	.
CAMA Minor Permit		D [1]	.	.	.	.	.
Certificate of Occupancy		.	D	.	.	.	{A}
Conditional Use Permit		.	.	R	.	.	{D}
Development Agreement		.	.	R	<R>	<D>	.
Floodplain Development Permit		.	D [2]	.	.	.	{A}
Interpretation		D	.	.	.	.	{A}
Land Disturbance Permit		.	D	.	.	.	{A}
Sign Permit		D	.	.	.	.	{A}
Site Plan	Major	.	.	R	<R>	<D> [3]	.
	Minor	.	.	D	.	.	{A}
Subdivision, Major	Preliminary Plat	.	.	R	<D>	<R> [3]	.
	Final Plat	.	.	D	.	.	{A}
Subdivision, Minor		.	.	D	.	.	{A}
Temporary Use Permit		D	.	.	.	.	{A}
Text Amendment		R	.	.	<R>	<D>	.
Variance		.	.	.	.	.	{D} [4]
Vested Right Determination		R	.	.	.	{D}	.
Zoning Map Amendment		R	.	.	<R>	<D>	.
Zoning Permit		D	.	.	.	.	{A}

TABLE NOTES:

[1] CAMA general and major permits are reviewed and decided by the Coastal Resources Commission.

[2] The Building Inspector is designated as the Floodplain Administrator.

[3] A concept proposal is considered during a joint public hearing with the Planning Board and Town Council.

ARTICLE 18-2. PROCEDURES**Section 18.2.2. Development Review Responsibilities**

Subsection B. UDO Administrator

TABLE 18.2.1: REVIEW PROCEDURES SUMMARY TABLE

D = Decide R = Recommendation A = Appeal <> = Public Hearing { } = Quasi-judicial Public Hearing

PROCEDURE	SECTION REFERENCE	ADVISORY & DECISION-MAKING BODIES					
		UDO ADMINISTRATOR	BUILDING INSPECTOR	TECHNICAL REVIEW COMMITTEE	PLANNING BOARD	TOWN COUNCIL	BOARD OF ADJUSTMENT

[4] Includes variances to floodway/floodplain provisions.

18.2.2. DEVELOPMENT REVIEW RESPONSIBILITIES**A. OVERVIEW**

The following review authorities have powers and responsibilities in administering and reviewing development applications under this Ordinance:

1. UDO Administrator;
2. Building Inspector;
3. Technical Review Committee (TRC);
4. Planning Board;
5. Town Council; and
6. Board of Adjustment (BOA).

B. UDO ADMINISTRATOR¹¹**1. Powers and Duties**

The UDO Administrator shall have the following powers and duties:

a. Application Review and Decision

To review and decide applications for:

- i. Administrative Adjustment;
- ii. CAMA Minor Permit;
- iii. Interpretation;
- iv. Sign Permit;
- v. Temporary Use Permit; and
- vi. Zoning Permit

b. Recommendation Authority

To comment or make recommendations on the following applications:

- i. Text Amendment;
- ii. Vested Right Determination; and
- iii. Zoning Map Amendment.

c. Other Powers and Duties

- i. To investigate violations and enforce this Ordinance in accordance with Article 18-9: Enforcement.
- ii. To 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.
- iii. To establish application content requirements and a submission schedule for review of applications and appeals.

¹¹ Current code Section 3.1 relocated here.

ARTICLE 18-2. PROCEDURES

Section 18.2.2. Development Review Responsibilities

Subsection E. Technical Review Committee (TRC)

- iv. To ensure proper public notification regarding pending development applications is provided in accordance with state law.
- v. To serve as Chair of the TRC and prepare a report of its review and recommendations to the Planning Board or Town Council.
- vi. To review development applications for compliance with this Ordinance and submit staff reports to advisory and decision-making bodies.
- vii. To conduct meetings with applicants for development approval as necessary or appropriate.
- viii. To maintain the Official Zoning Map and related materials.
- ix. To provide expertise and technical assistance to Town staff and decision-making bodies, upon request.
- x. To maintain all records pertaining to the provisions of this Ordinance and make records available for public inspection.
- xi. To shall provide technical support for the implementation of the Land Use Plan.
- xii. To perform any other related duties that the Town Manager may direct.
- xiii. To exercise other powers and authority provided by the Town Council, this Ordinance, or state law.

C. BUILDING INSPECTOR¹²

1. Powers and Duties

The Building Inspector shall have the following powers and duties:

a. Application Review and Decision

To review and decide applications for:

- i. Building Permit;
- ii. Certificate of Occupancy;
- iii. Floodplain Development Permit; and
- iv. Land Disturbance Permit.

b. Other Powers and Duties

- i. To serve as the Floodplain Administrator with respect to administration of the special flood hazard provisions;
- ii. To administer the State Building Code;
- iii. To conduct inspections of construction and development sites to ensure health, safety, and compliance with applicable laws; and
- iv. To assist the UDO Administrator in the enforcement and administration of this Ordinance.

D. RESERVED

E. TECHNICAL REVIEW COMMITTEE (TRC)¹³

The Technical Review Committee (TRC) is hereby established in accordance with Section 160A-361 of the North Carolina General Statutes.

1. Powers and Duties

a. Application Review and Decision

To review and decide applications for:

- i. Minor Site Plan;
- ii. Final Plat; and

¹² The Building Inspector is not currently listed in the authorities section of the UDO. This is a new section.

¹³ Material from current code Sections 3.4 through 3.6 is relocated here. Section 3.3, Purpose, was deleted and replaced with the formal establishment of the TRC.

iii. Minor Subdivision.

b. Recommendation Authority

To comment or make recommendations on the following applications:

- i. Conditional Use Permit;
- ii. Development Agreement;
- iii. Major Site Plan; and
- iv. Preliminary Plat.

c. Other Powers and Duties

- i. To provide its expertise and technical assistance to the UDO Administrator in establishing application content requirements and a submission schedule for review of applications and appeals.
- ii. To perform any other related duties that the Town Manager may direct.
- iii. To exercise other powers and authority provided to it by the Town Council, this Ordinance, or State law.

2. Composition

a. Membership

The TRC may include, but not necessarily be limited to, the following governmental agencies, governmental officials, organizations, and individuals:

- i. UDO Administrator;
- ii. Town Manager;
- iii. Town Council member (appointed quarterly by Council at large);
- iv. Building Inspector;
- v. Public Services Director;
- vi. CAMA Local Permit Officer;
- vii. Fire Department;
- viii. Police Department;
- ix. Planning Board member (assigned on a quarterly basis by the Planning Board);
- x. Town Attorney;
- xi. Utilities providers;
- xii. Carteret County Health Department;
- xiii. Carteret County Board of Education;
- xiv. Downeast Rural Planning Organization;
- xv. NC Department of Transportation (NCDOT);
- xvi. NC Department of Environmental Quality;
- xvii. NC Division of Water Quality;
- xviii. NC Division of Coastal Management;
- xix. US Army Corps of Engineers;
- xx. Consulting engineer (as designated by the Town Manager); and
- xxi. Other Town representatives appointed by the Town Manager.

b. Officers

The UDO Administrator shall serve as the Chair of the TRC to preside over its meetings, document the proceedings, and may request the participation of professional experts or a representative from an adjacent municipality, county, regional or state agency if the UDO Administrator determines that such entities can provide expertise concerning the proposed development.

3. Rules of Procedure

- a. Regular meetings of the TRC shall be held according to a schedule established from time to time by the Chair.
- b. The Chair shall prepare written summaries that include the date, the members present, and the recommendations of the committee.

- c. The applicant and representatives may be invited by the Chair to attend.
- d. The TRC shall make its recommendations in writing.

F. PLANNING BOARD¹⁴

The Planning Board is hereby established in accordance with Section 160A-361 and Section 160A-387 of the North Carolina General Statutes.

1. Powers and Duties**a. Application Review and Decision**

To review and decide applications for Preliminary Plats.

b. Recommendation Authority

To comment or make recommendations on the following applications:

- i. Development Agreement;
- ii. Major Site Plan;
- iii. Text Amendment; and
- iv. Zoning Map Amendment.

c. Other Powers and Duties

- i. To prepare and, from time to time, amend and revise a comprehensive and coordinated plan for the physical development within the Town (CAMA Land Use Plan).
- ii. To prepare and recommend to the Town Council ordinances providing orderly development along the lines indicated in the comprehensive plan.
- iii. To 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.
- iv. To report its recommendations to the Town Council upon the extent, location, and design of all public structures and facilities; on the acquisition and disposal of public properties; on the establishment of building lines, mapped street lines, and proposals to change existing street lines.
- v. To establish principles and policies for guiding action in the development within the Town.
- vi. To perform any other duties which may lawfully be assigned to it by this Ordinance, the Town Council, and State law.

2. Composition**a. Membership**

- i. The Planning Board shall consist of seven members from inside the Town limits and shall be appointed by the Town Council.
- ii. The seven members of the Planning Board shall have three-year staggered terms of office with three members being appointed in successive years and four members in the following year.
- iii. Regular attendance at meetings of the Planning Board is to be considered a prerequisite to continued membership, and upon certification by the Chair of the Planning Board that any member has missed four meetings within a calendar year, then the appointment to the Planning Board shall be declared open and the appointing body may replace the member.
- iv. Unless removed, Planning Board members serve until their replacements are appointed.

¹⁴ Current code Sections 3.7 to 3.16 are relocated to this section with only minor organizational changes.

Section 18.2.2. Development Review Responsibilities

Subsection I. Board of Adjustment (BOA)

b. Officers

The Planning Board shall elect a Chair and create and fill such other offices as it may determine. The term of the Chair and other officers shall be one year, with eligibility for reelection.

3. Rules of Procedure¹⁵**a. Rules of Conduct**

- i.** The Planning Board shall adopt rules for transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings, and recommendations, which record shall be of public record.
- ii.** A majority of the appointed and serving members of the Planning Board shall constitute a quorum for official action.

b. Meetings

- i.** All Planning Board meetings shall be open to the public.
- ii.** The dates of the regularly scheduled Planning Board meetings shall be adopted by Town Council.

G. RESERVED

H. TOWN COUNCIL¹⁶

1. Powers and Duties

The Town Council shall have the following powers and duties:

a. Application Review and Decision

To review and decide applications for:

- i.** Development Agreement;
- ii.** Major Site Plan;
- iii.** Text Amendment;
- iv.** Vested Right Determination; and
- v.** Zoning Map Amendment.

b. Other Powers and Duties

- i.** To approve, by resolution, a schedule of fees governing:
 - a).** Applications for permits and other development approvals reviewed under this Ordinance; and
 - b).** Civil penalties for violations of this Ordinance.
- ii.** To adopt temporary, strategic moratoria on development in accordance with Section 160A-381.e of the North Carolina General Statutes.
- iii.** To take any other action not delegated to the Planning Board, BOA, TRC, UDO Administrator, or Building Inspector, as the Town Council may deem desirable and necessary to implement the provisions of this Ordinance.

2. Conflict of Interest

- a.** A Council member shall not participate in or vote on any matter that has a direct, substantial, and readily identifiable financial impact on them or an immediate family member.
- b.** If an objection is raised to a member's participation and that member does not recuse himself or herself, then the remaining members shall by majority vote rule on the

¹⁵ We suggest information on the timing of submittals be relocated to an outside manual or removed from the UDO.

¹⁶ Material from current code Section 3.17 is relocated here and supplemented with clarifications on the applications that Town Council decides and conflicts of interest.

objection.

I. BOARD OF ADJUSTMENT (BOA)¹⁷

The Board of Adjustment (BOA) is hereby established in accordance with Section 160A-388 of the North Carolina General Statutes.

1. Powers and Duties

The Board of Adjustment shall have the following powers and duties:

a. Application Review and Decision

To review and decide applications for:

- i.** Appeals of decisions of the UDO Administrator, Building Inspector, or other Town staff member;
- ii.** Conditional Use Permit; and
- iii.** Variance.

b. Other Powers and Duties

- i.** To hear and decide appeals from and review any order, requirement, decision, or determination made by the UDO Administrator with regard to Chapter 6, Article 6 of the Town Code of Ordinances (the Minimum Housing Standards).
- ii.** To exercise other powers and authority provided to it by the Town Council, this Ordinance, or State law.

2. Composition

a. Membership

The BOA shall consist of five regular members and up to five alternate members.

b. Residence Location and Appointment

Members shall be residents of the Town of Atlantic Beach and shall be appointed by the Town Council.

c. Alternate Members

- i.** The BOA Chair may appoint alternate members to serve in the absence or temporary disqualification of regular members.
- ii.** Each alternate member attending a meeting and serving in the absence of a regular member has and may exercise all the powers and duties of a regular member.
- iii.** In no case, shall more than five regular members or combination of regular members and the alternate members be empowered to vote on any matter that comes before the Board.

d. Member Terms

- i.** Members may serve a three-year term and shall continue to serve until their successors are appointed, provided that upon initial appointment the terms of office may be staggered.
- ii.** The terms of all members shall not expire at the same time.
- iii.** Regular members shall not serve more than two full consecutive terms.
- iv.** Vacancies shall be filled by a new member or an alternate member appointed to serve for the remainder of the unexpired term.

e. Officers

- i.** The BOA shall elect from its members a Chair and Vice Chair for a one-year term of office commencing on July 1.

¹⁷ The material from Sections 3.18 through 3.21 of the current UDO are relocated here and updated to improve clarity and consistency to state law. The material in Sections 3.22 through 3.29 of the current UDO, which refers to the procedures the BOA decides upon, is relocated to Section 18.2.3 and 18.2.4 as appropriate.

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Subsection I. Board of Adjustment (BOA)

- ii. The Chair shall preside over all meetings.
- iii. In the absence of the Chair, the Vice Chair shall preside over meetings.
- iv. If both the Chair and Vice Chair are absent, the BOA membership shall vote to determine who shall serve as acting Chair for the meeting.

f. Staff

The Town Clerk shall:

- i. Provide administrative support to the BOA;
- ii. Record the minutes of all meetings;
- iii. Conduct all correspondence of the BOA;
- iv. Supervise all clerical work; and
- v. Provide other technical support, as needed.

3. Rules of Procedure**a. Schedule**

The BOA shall hold at least one regular meeting in each month unless the Chair determines that there are no agenda items for consideration.

b. Publication of Notice

Notice of all meetings shall be provided in accordance with State law.

c. Open Meetings

All meetings and hearings shall be open to the public.

d. Official Record

- i. The BOA shall keep minutes of its proceedings, showing the vote of each member upon every action or, if absent or failing to vote, indicate such fact.
- ii. The BOA shall keep records of its examinations and other official actions.
- iii. All records and minutes shall be public record.

e. Quorum

- i. No official business of the BOA may be conducted without a quorum present.
- ii. A quorum is the majority of the BOA membership, excluding vacancies.

f. Voting

- i. The concurring vote of 4/5 of the total number of BOA members shall be necessary to grant a variance.
- ii. A majority vote of the BOA members present and constituting a quorum shall be required to approve an appeal reversing or modifying a decision.
- iii. Vacant positions on the BOA and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the BOA for the calculation of the required majority if there are no qualified alternate members available to take the place of such members.
- iv. The Chair shall vote as any other member.

g. Oaths

When required, the Chair shall administer required oaths to witnesses in any matter coming before the BOA.

h. Continuance

The BOA may continue a public hearing or delay voting on any matter to a subsequent meeting, upon a showing of good cause, in accordance with Section <>, Deferral and Continuance.

i. Absence

- i. Members shall inform the UDO Administrator of any anticipated absence immediately after receipt of the agenda.
- ii. A regular member who misses three consecutive regular meetings or 33 percent or more of the regular meetings in a calendar year loses their status as

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Subsection I. Board of Adjustment (BOA)

a voting member until reinstated.

- iii. Absences due to sickness, death in the family, or other emergencies of a similar nature shall be regarded as approved absences and shall not affect the member's status on the BOA; except that in the event of a long illness or other such case resulting in a prolonged absence, the member may be replaced.

j. Special Committees

- i. The BOA may establish special committees to assist it in studying specific issues.
- ii. The membership of a special committee is not limited to BOA members.
- iii. In establishing these committees, the BOA may not delegate its official powers and duties.

k. Violation of Due Process

- i. A member shall not participate in or vote on any quasi-judicial matter that would violate an 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.
- ii. If an objection is raised to a member's participation and that member does not recuse himself or herself, then the remaining members shall by majority vote rule on the objection.

l. Rules of Procedure

- i. The BOA shall adopt rules necessary to conduct its affairs and establish its organization, committees, procedures, meeting notice, and meeting conduct.
- ii. The BOA's rules of procedure shall be made available for public inspection in the Planning, Zoning, and Inspections Department.

18.2.3. COMMON REVIEW PROCEDURES¹⁸**A. GENERAL**

This section describes the standard procedural steps and rules generally applicable to development applications reviewed under this Ordinance, unless otherwise specified in Section <>, Development Applications. The flow charts of specific procedures in Section 18.2.4 depict the procedural steps that apply to the review of the particular type of development application.

B. PRE-APPLICATION CONFERENCE**1. Purpose**

The purpose of a pre-application conference is to provide an opportunity for the applicant to learn about the submittal requirements, procedures, and standards applicable to a development application. A pre-application conference is also an opportunity for Town staff to become familiar with, and offer preliminary comments about, the scope, features, and impacts of the proposed development, as it relates to the standards in this Ordinance.

2. Applicability**a. Pre-Application Conference Required**

A pre-application conference between the applicant and Town staff shall be held before submittal of the following applications:

- i. Conditional Use Permit;
- ii. Development Agreement;
- iii. Major Site Plan;
- iv. Subdivision (Preliminary and Final Plat);
- v. Text Amendment;
- vi. Vested Right Determination; and
- vii. Zoning Map Amendment (to establish a more intense zoning district designation).

b. Pre-Application Conference Optional

A pre-application conference may be requested and held at the applicant's option for any development application other than those listed in Section <>, Pre-Application Conference Required.

3. Scheduling

Applicants shall contact the UDO Administrator to schedule a pre-application conference.

4. Procedure

- a. Following receipt of a request for a pre-application conference, the UDO Administer shall schedule the conference at the next available TRC meeting and notify the applicant of the time and location. During the conference, TRC members will explain the application review process and any special issues or concerns regarding the subject proposal.
- b. In cases where a pre-application conference is required, the UDO Administrator shall forward a brief written summary of the issues discussed at the pre-application conference to the applicant for inclusion with the application materials.

5. Effect

- a. When required, a completed pre-application conference entitles an applicant to take the next step in the application process.
- b. Discussions at a pre-application conference are not binding on the Town, and do not constitute submittal or formal review of an application.

¹⁸ This is a new section that guides a code user through all the possible steps of a development application from beginning to end. It serves as the set of common rules that will be referenced in Section 18.2.4 with regards to each individual development application.

C. NEIGHBORHOOD MEETING¹⁹**1. Purpose**

The purpose of the neighborhood meeting is to inform landowners and occupants of nearby lands about a development application that is going to be reviewed under this Ordinance, and to provide the applicant an opportunity to hear comments and concerns about the development proposal as a means of resolving conflicts and outstanding issues, where possible.

2. Applicability

- a. A neighborhood meeting is encouraged (but not required) for any development application type listed in this Ordinance.
- b. The Town Council or Planning Board may direct an applicant to conduct a neighborhood meeting prior to making a decision on an application.
- c. Applications for an appeal, interpretation, or text amendment should not be accompanied by a neighborhood meeting.

3. Procedure

If a neighborhood meeting is conducted, it shall comply with the following procedures:

a. Timing

- i. The applicant shall hold the neighborhood meeting at least seven days prior to submittal of an application.
- ii. In the event an applicant is directed to conduct a neighborhood meeting by the Town Council after an application has been submitted, the neighborhood meeting shall be conducted prior to a decision being made on the application.

b. Form

The neighborhood meeting can take the form of a meeting, gathering, or a telephone communication between the applicant or the applicant's representative and landowners or other interested parties. Nothing shall prohibit multiple meetings or telephone communications from taking place.

c. Notification

- i. Prior to the neighborhood meeting, the applicant shall provide notice of the meeting to all landowners of land located within 300 feet of the land subject to the application, as shown on the county tax listing.
- ii. Failure of a party to receive notice of the meeting shall not invalidate the application.

d. Posted Notice

- i. A sign advertising the neighborhood meeting shall be placed on subject property in a conspicuous location so as to be clearly visible to the traveled portion of the respective street. Where the land subject to the notice does not have frontage on a public street, the sign shall be erected on the nearest street right-of-way with an attached notation generally indicating the direction and distance to the land subject to the application.
- ii. The content and form of the notice shall comply with Section <>, Notice Content, and the North Carolina General Statutes.

e. Information Provided

The applicant shall provide the following information to those attending a meeting:

- i. A description of the proposed development;
- ii. The purpose of the neighborhood meeting;

¹⁹ Neighborhood meetings are a new concept proposed for the Town's consideration. These standards encourage applicants to conduct a neighborhood meeting and set out the procedure to follow should one be conducted.

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Subsection E. Application Submittal and Acceptance

- iii. The development review procedure(s) the application will follow;
- iv. The potential for changes in the applicant's development proposal as it proceeds through the review process;
- v. Sources of further information about the development review process; and
- vi. Any additional information that would promote understanding of the development proposal.

f. Conduct of Meeting

At the meeting, the applicant shall explain the development proposal and application, inform attendees about the application review process and the potential for change to the proposal as it proceeds through the process, respond to questions and concerns neighbors raise about the application, and propose ways to resolve conflicts and concerns.

g. Written Summary

Within three days of the completion of a neighborhood meeting, the applicant shall submit a written summary of the neighborhood meeting that includes:

- i. The date, time, and location of the meeting;
- ii. The method and date of notification about the meeting;
- iii. A list of landowners notified about the meeting;
- iv. A list of meeting attendees;
- v. If the meeting was conducted as a series of telephone calls;
- vi. The description of the development proposal presented to the attendees; and
- vii. A summary of attendee comments, ideas, and suggestions from citizens to be incorporated into the development proposal.

4. Staff Attendance

Town staff may, but are not required to, attend a neighborhood meeting. Staff members shall not act as facilitators or become involved in discussion about a development proposal.

D. RESERVED

E. APPLICATION SUBMITTAL AND ACCEPTANCE

1. Authority to File Applications

Unless expressly stated otherwise in this Ordinance, development applications reviewed under this Ordinance shall be submitted by the landowner, contract purchaser, or other person having a recognized property interest in the land on which development is proposed.

2. Application Content

- a. The UDO Administrator is authorized to establish the application content and forms, which may be located in this Ordinance or a separate document.
- b. The UDO Administrator may alter the requirements for submission of certain information when, in the Administrator's opinion, such information is otherwise not available or is not necessary to review the application.

3. Application Fees

- a. The Town Council shall establish application fees, and may amend and update those fees as necessary.
- b. No action shall be taken on an application and no application approval shall be issued until all required application fees are paid in full.

4. Submittal and Review Schedule

The UDO Administrator is authorized to and shall establish specific rules for submittal and review schedules (including time frames for review) for the various types of development applications, which shall be included in this Ordinance or a separate document.

5. Application Submittal

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Subsection F. Staff Review and Action

- a. Applications shall be submitted to the UDO Administrator in the form established by the UDO Administrator, along with the appropriate application fee.
- b. Except for applications initiated by the Town Council, no development application requiring approval by the Town Council may be filed that includes land subject to a pending appeal being considered by the BOA or the courts.
- c. An application shall not be considered submitted until it has been determined to be complete in accordance with subsection F below.

6. Completeness Review

On receiving a development application, the UDO Administrator shall determine, within fourteen days, whether the application is complete or incomplete. A complete application is one that:

- a. Contains all information and material established by the UDO Administrator as required for submittal of the particular type of application;
- b. Is in the form required by the UDO Administrator;
- c. Is legible and printed to scale (where appropriate);
- d. Includes information in sufficient detail to evaluate whether or not the application complies with the applicable review standards in this Ordinance;
- e. Is accompanied by the fee established for the particular type of application;
- f. Includes material associated with a pre-application conference, if one is required.

7. Application Incomplete

If the application is incomplete, the UDO Administrator shall notify the applicant of the deficiencies. The applicant may correct the deficiencies and resubmit the application for completeness determination.

8. Application Complete

On determining that the application is complete, it shall be considered as submitted, and the UDO Administrator shall commence review in accordance with the procedures and standards of this Ordinance.

F. STAFF REVIEW AND ACTION

1. Staff Review

- a. Applications shall be reviewed during the review cycle in place when the application is determined to be complete.
- b. When an application is determined complete, it shall be distributed by the UDO Administrator to all appropriate staff and review agencies for review and comment, and the preparation of a staff report, if appropriate.
- c. In considering the application, the UDO Administrator, the TRC, or other Town staff (as appropriate), shall review the application, relevant support material, and any comments or recommendations from other staff and review agencies to which the application was referred.
- d. If deficiencies in complying with applicable standards of this Ordinance are identified, the UDO Administrator shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to discuss them and revise the application accordingly.

2. Staff Report and Recommendation

- a. The UDO Administrator shall prepare a written staff report for any application to be reviewed or decided by the Planning Board, Town Council, or Board of Adjustment.
- b. The staff report shall conclude whether the application complies with all applicable review standards of this Ordinance, and recommend one of the decisions authorized for the particular type of application, based on the review standards applicable to the application type, in accordance with Section <>, Development Applications. The staff report may identify and recommend conditions of approval addressing how compliance deficiencies might be corrected and how adverse effects of the development application

might be mitigated.

- c. A staff report is not required for an application decided by the UDO Administrator, the Building Inspector, or the TRC, though one may be prepared.

3. Distribution and Availability of Application and Staff Report

In cases where a development application is reviewed or decided by the Planning Board, Town Council, or Board of Adjustment (see Table <>, Review Procedures Summary Table), the UDO Administrator shall take the following actions within a reasonable time period before the application is scheduled for review:

- a. Schedule and ensure any required notice of the application (if appropriate) is prepared in accordance with Section <>, Public Notification;
- b. Transmit the application, related materials, and staff report to the appropriate review authority;
- c. Transmit a copy of the staff report to the applicant; and
- d. Make the application, related materials, and staff report available for examination by the public in the Planning, Zoning, and Inspections Department during normal business hours.

4. Applications Subject to Decision by Staff

a. Decision

In cases where a development application is decided by the UDO Administrator, the Building Inspector, or the TRC in Table <>, Review Procedures Summary Table, the appropriate Town staff member shall approve, approve subject to conditions, or disapprove the application, based on the review standards set forth in Section <>, Development Applications, for the particular type of application.

b. Conditions of Approval

Conditions of approval shall be limited to those deemed necessary to ensure compliance with the standards of this Ordinance. They shall be related in both type and amount to the anticipated impacts of the proposed development on the public and surrounding development. All conditions of approval shall be expressly set forth in the development permit or approval.

G. PUBLIC NOTIFICATION

1. Public Hearing Scheduling

When a development application is subject to a public hearing, the UDO Administrator shall ensure that the public hearing is scheduled for a regular meeting or a meeting specially called for that purpose by the review authority.

2. Public Notification

All development applications subject to public notification shall comply with the North Carolina General Statutes, the provisions listed in Table <>, Public Notification Requirements, the provisions of this section, and other provisions in this Ordinance related to public notice.

a. Notification Requirements

The UDO Administrator shall ensure public notification is provided in accordance with the timing requirements in Table <>, Public Notification Requirements, for the type of application and the type of notice. In computing the required time periods, the day the notice is published, mailed, or posted shall not be included, but the day of the hearing shall be included.

ARTICLE 18-2. PROCEDURES**Section 18.2.3. Common Review Procedures**

Subsection G. Public Notification

TABLE 18.2.3.G: PUBLIC NOTIFICATION REQUIREMENTS

APPLICATION TYPE	DECISION-MAKING BODY	TYPE OF REQUIRED PUBLIC NOTIFICATION X= Required		
		PUBLISHED NOTICE	MAILED NOTICE	POSTED NOTICE [1]
Appeal	Board of Adjustment	X [2]	X [3]	X
Conditional Use Permit	Board of Adjustment	X [4]	X [5]	X
Development Agreement	Planning Board	X	X[5]	X
	Town Council	X [4]	X [5]	X
Major Site Plan (concept proposal)	Town Council	X [2]	.	X
Major Subdivision (concept proposal)	Planning Board	X [2]	.	X
Text Amendment	Planning Board	X	.	.
	Town Council	X [4]	.	.
Variance	Board of Adjustment	X [2]	X [3]	X
Vested Rights Determination	Town Council	X [4]	X [5]	X
Zoning Map Amendment	Planning Board	X	X [5]	X
	Town Council	X [4]	X [5]	X

TABLE NOTES:

[1] Posted notice provided between 10 and 25 days before the hearing.

[2] Published notice provided once, at least 10 days before the hearing.

[3] Mailed notice provided to affected owners and landowners within 100 feet of the subject lot between 10 and 25 days before the hearing.

[4] Published notice provided once a week for 2 successive calendar weeks, with the first notice between 10 and 25 days before the hearing.

[5] Mailed notice provided to affected owners and landowners within 300 feet of the subject lot or site between 10 and 25 days before the hearing.

b. Published Notice Requirements

When the provisions of this Ordinance require that public notice be published, the UDO Administrator shall publish a notice in a newspaper having general circulation in the Town.

c. Mailed Notice Requirements

- i. Mailed notice specified in Table <>, **Public Notification Requirements**, shall be mailed to:
 - a). All landowners subject to the application;
 - b). The applicant, if different from the landowner; and
 - c). All landowners entitled to receive notice (including landowners located outside the Town) whose address is known by reference to the latest county tax listing.
- ii. Notice shall be deemed mailed by its deposit in the United States mail, first class or certified (as appropriate), properly addressed, postage paid. The content and form of the notice shall comply with Section <>, **Notice Content**, and the North Carolina General Statutes.
- iii. The UDO Administrator shall prepare an affidavit affirming that notice meeting these standards was mailed. The affidavit shall be conclusive that notice has been given in compliance with the terms of this subsection. The affidavit shall be included in the support materials of the application.

2. Not Bound by Rules of Evidence

Except as otherwise provided in the North Carolina General Statutes, the body conducting a quasi-judicial public hearing is not bound by the rules of evidence, or limited to consideration of evidence that is admissible in a court of law. The body may consider all testimony and evidence it deems competent and material to the application under consideration.

3. Cross Examination

Any inquiry under cross-examination shall be limited to matters raised in the direct examination of the person testifying. No re-direct or re-cross shall be allowed unless requested by the applicant, an affected party, or the Town—who shall state the desired area of inquiry. The request shall be approved by the person chairing the body conducting the quasi-judicial public hearing. If re-direct or re-cross is allowed, it shall be limited to questions of the witness on issues raised in the cross-examination or re-direct examination.

4. Ex Parte Communication

Ex parte communications between an applicant or an affected party and a member of the decision-making body is prohibited. If it occurs, it shall be disclosed during the quasi-judicial public hearing.

J. REVIEW AND ACTION BY DECISION-MAKING BODY

If an application is subject to a decision by the Planning Board, Town Council, or BOA, the decision-making body shall review and decide the application in accordance with the following procedures:

1. General

The decision-making body shall conduct any required public hearing(s) and consider the application, relevant support materials, staff report, any advisory body recommendations, and public comments. After the conclusion of the public hearing, it shall make one of the decisions authorized for the particular type of application based on the review standards applicable to the application type, as set forth in Section <>, Development Applications.

2. General Conduct

Members making a decision should act in accordance with the following guidelines:

a. No Prejudice

Consider the application without prejudice.

b. No Commitment Prior to Review

Make no commitment or agreement or take a public position on an application or on any proposed condition until the application is reviewed during the hearing.

c. Acknowledgement

Acknowledge any information obtained outside the public hearing that they believe has influenced their evaluation of the application.

d. Deliberation

Refrain from deliberation or formulation of a judgment or decision prior to the meeting to consider the application.

3. Quasi-Judicial Procedures

Required quasi-judicial public hearings (see Table <>, Review Procedures Summary Table) shall be conducted in accordance with Section <>, Quasi-Judicial Public Hearing Procedures.

4. Remand

The decision-making body may remand the application to Town staff or the appropriate advisory body for further consideration of new information or specified issues or concerns, if appropriate.

5. Clearly State Factors for Decision

Unless stated otherwise in this Ordinance, the decision shall clearly state the factors considered in making the decision and the basis or rationale for the decision.

6. Application Revision

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Section 18.2.3. Common Review Procedures

Subsection O. Deferral and Continuance

The decision-making body may revise an application to apply more restrictive requirements, or to ensure the application better serves the purpose and intent of this Ordinance. In cases where an application is revised by a decision-making body in this manner, additional public notification or public hearings are not required.

7. **Vote**

- a. A board member shall recuse themselves from voting on an application where the outcome of the matter being considered is reasonably likely to have a direct, substantial, or readily identifiable financial impact on them or an immediate family member.
- b. Vacant seats shall not be considered members for the calculation of the requisite supermajority.
- c. Upon failure of the Town Council to act on a request following a public hearing and any properly followed continuance procedures, the application shall be deemed denied.

8. **Timing**

The decision-making body shall take action on the application as promptly as reasonably possible in consideration of the public interest.

K. **CONDITIONS OF APPROVAL**

Unless expressly stated otherwise in the specific procedures in Section <>, **Development Applications**, a condition of approval shall be limited to those deemed necessary to ensure compliance with the review standards for the particular type of application, or to prevent or minimize adverse effects from the proposed development on surrounding lands. They shall be related in both type and amount to the anticipated impacts of the proposed development on the public and surrounding development. All conditions of approval shall be expressly set forth in the notice of decision or development permit approval.

L. **NOTIFICATION OF DECISION OR ACTION**

1. **Timing**

Except where otherwise stated in this Ordinance, the UDO Administrator shall provide the applicant written notification of a decision or action within 10 business days after a final decision on a development application.

2. **Copy of Decision**

In addition, the UDO Administrator shall make a copy of the decision available to the public in the offices of the Planning, Zoning and Inspections Department, during normal business hours.

M. **EFFECT OF DEVELOPMENT APPROVAL**

1. **Approval Limited**

Approval of a development application in accordance with this Ordinance authorizes only the particular use, plan for development, or other specific activity approved.

2. **Permit Prerequisite**

In the event a permit or development approval is prerequisite to another permit or development approval (e.g., administrative adjustment or variance approval prior to a site plan approval), development may not take place until all prerequisite approvals are obtained. Approval of one development application does not guarantee approval of any subsequent development application.

N. **RESERVED**

O. **DEFERRAL AND CONTINUANCE**

An applicant may request that an advisory or decision-making body's consideration of a development application at public hearing be deferred or continued by submitting a written request for deferral to the UDO Administrator.

ARTICLE 18-2. PROCEDURES

Section 18.2.3. Common Review Procedures

Subsection R. Expiration of Permit or Development Approval

1. UDO Administrator Action

If public notification has not been provided in accordance with this Ordinance, the UDO Administrator shall consider and decide the deferral or continuance request. A request for deferral or continuance shall be approved only in cases where the applicant needs additional time to prepare evidence, secure approval from outside agencies, or bring the application into closer alignment with the Land Use Plan or the requirements of this Ordinance.

2. Advisory or Decision-Making Body Action

a. If public notification has been provided in accordance with this Ordinance, the request for deferral or continuance shall be placed on the public hearing agenda of the advisory or decision-making body on the date the application is to be considered and acted upon by the body. The advisory or decision-making body may approve the request for good cause.

b. The applicant shall be responsible for any additional public notification expenses.

3. General Requirements

a. No more than one deferral or continuance may be granted.

b. The deferral or continuance shall not exceed six months in duration.

c. A second deferral request shall be considered as withdrawal of the application.

P. WITHDRAWAL

1. An applicant may withdraw an application at any time.

2. If an applicant withdraws an application for the same land after public notification two times within a single calendar year, the same application may not be resubmitted for a period of one year from the date of the second withdrawal.

Q. LIMITATION ON SUBSEQUENT SIMILAR APPLICATIONS

1. If a development application requiring a public hearing is denied, no application proposing the same or similar development on all or part of the same land shall be submitted within one year after the date of denial unless the decision-making body waives this time limit in accordance with subsection (2) below.

2. The owner of land subject to this subsection, or the owner's authorized agent, may submit a written request for waiver of the time limit, along with a fee to defray the cost of processing the request, to the UDO Administrator, who shall transmit the request to the decision-making body. The decision-making body may grant a waiver of the time limit only on a finding by two-thirds of its membership that the owner or agent has demonstrated that:

a. There is a substantial change in circumstances relevant to the issues or facts considered during review of the prior application that might reasonably affect the decision-making body's application of the relevant review standards to the development proposed in the new application; or

b. New or additional information is available that was not available at the time of review of the prior application and that might reasonably affect the decision-making body's application of the relevant review standards to the development proposed in the new application; or

c. The new application proposed to be submitted is materially different from the prior application; or

d. The final decision on the prior application was based on a material mistake of fact.

R. EXPIRATION OF PERMIT OR DEVELOPMENT APPROVAL

1. General

a. Development approvals granted in accordance with this Ordinance shall expire as provided in Section <>, Development Applications, for the particular type of development permit or approval.

b. If no expiration period is provided in Section <>, Development Applications, then the

ARTICLE 18-2. PROCEDURES

Section 18.2.3. Common Review Procedures

Subsection R. Expiration of Permit or Development Approval

development approval does not expire.

- c. A change in ownership of the land shall not affect the established expiration time period. The filing of an appeal shall delay the established expiration period until final resolution of the appeal.

2. Extension of Expiration Time Period

Except as otherwise provided in Section <>, Development Applications, for the particular type of development permit or approval, the UDO Administrator may, on receipt a written request for extension before the expiration date and on a showing of good cause, grant one or more extensions of the expiration time period for up to a cumulative total of one year.

18.2.4. DEVELOPMENT APPLICATIONS**A. OVERVIEW**

1. This section sets out supplemental procedures, review criteria, and related information for each of the specific review procedures identified in Table <>, Review Procedures Summary Table. They apply in addition to, or instead of, the standard procedures set forth in Section <>, Common Review Procedures.
2. Development application provisions in this section are organized in alphabetical order in accordance with the sequence of procedures in Table <>, Review Procedures Summary Table.
3. Each development application review procedure in this section includes a procedural flowchart that depicts the steps in the review process. White boxes indicate actions of the applicant. Light blue boxes indicate actions of Town staff. Black boxes show quasi-judicial public hearings, and grey boxes show public hearings or public meetings (as appropriate). Boxes with dashed lines show optional steps.

B. ADMINISTRATIVE ADJUSTMENT²⁰

1. **Applicability**
This section provides an administrative mechanism for allowing minor adjustments to certain numeric standards (e.g., setbacks) in this Ordinance, based on specific review criteria, with the intent of providing relief where application of a standard creates practical difficulties in allowing development that otherwise advances the purposes served by this Ordinance where the adjustment is compatible with the surrounding development.
2. **Timing**
 - a. An administrative adjustment may be requested either as a stand-alone application, or in combination with another application for development review.
 - b. In cases when submitted with another application, the administrative adjustment portion of the application shall be reviewed and decided prior to the other portion(s) of the application.
3. **Administrative Adjustment Amount**
 - a. Except where otherwise prohibited, an administrative adjustment may be requested for a modification or deviation of up to 10 percent to any district dimensional standard in Article 18-3: Zoning Districts, or any numeric standard in Article 18-5: Development Standards.
 - b. In no instance shall an administrative adjustment application seek to reduce the required minimum lot area or maximum residential density on a lot.
4. **Administrative Adjustment Procedure**
 - a. **Pre-Application Conference**
Optional (see Section <>, Pre-Application Conference).
 - b. **Application Submittal and Acceptance**
Applicable (see Section <>, Application Submittal and Acceptance).
 - c. **Staff Review and Action**
Applicable (see Section <>, Staff Review and Action).
5. **Administrative Adjustment Review Standards**
An administrative adjustment shall be approved if the applicant demonstrates all of the following:

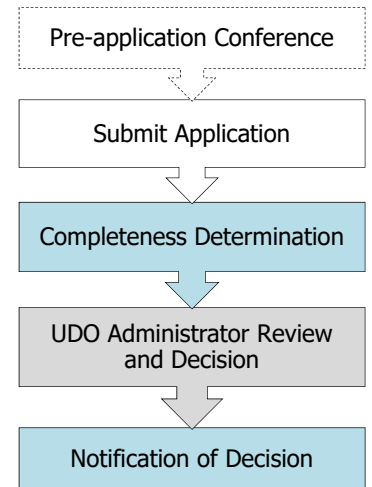
²⁰ This is a new procedure that allows the UDO Administrator to grant minor deviations (up to 10%) to any numeric provision (except lot area or density) based on clear criteria. Administrative adjustments can take place as part of another development application or as a stand-alone application for proposed or existing development.

Section 18.2.4. Development Applications

Subsection B. Administrative Adjustment

- a. The administrative adjustment does not exceed the maximum allowable threshold;
 - b. The administrative adjustment is consistent with the character of development on surrounding land, and is compatible with surrounding land uses;
 - c. The administrative adjustment:
 - i. Is required to compensate for some unusual aspect of the site or the proposed development that is not shared by landowners in general; or
 - ii. Supports an objective or goal from the purpose and intent statements of the zoning district where it is located; or
 - iii. Is necessary to allow for proper functioning of on-site wastewater or stormwater management devices; or
 - iv. Saves healthy existing trees;
 - d. The administrative adjustment will not pose a danger to the public health or safety;
 - e. The administrative adjustment will not negatively impact the function or performance of on-site wastewater or stormwater management devices;
 - f. Adverse impacts resulting from the administrative adjustment will be fully mitigated; and
 - g. The development standard being adjusted is not the subject of a previously approved administrative adjustment on the same site.
6. **Conditions of Approval**
Applicable (see Section <>, Conditions of Approval).
7. **Effect**
Approval of an administrative adjustment application allows consideration of any concurrent and related applications.
8. **Amendment**
Amendment of an administrative adjustment may only be reviewed and considered in accordance with the procedures and standards established for its original approval.
9. **Expiration**
If an administrative adjustment is associated with another permit or development approval, the expiration of the administrative adjustment shall be the same as the permit or development approval with which it is associated.
10. **Appeal**
Appeals may be filed in accordance with the procedure in Section <>, Appeal.

**FIGURE <>
ADMINISTRATIVE
ADJUSTMENT
PROCEDURE**



C. APPEAL²¹

1. Applicability

- a. This section sets out the procedure and standards for an aggrieved party, officer, department, or board of the Town affected by any decision or determination by a Town official to determine if the decision or interpretation complies with the requirements of this Ordinance.
- b. In the event an applicant wishes to appeal a standard outside this Ordinance, or a decision by a staff member not addressed by this Ordinance, the appeal is made to the Town Manager in accordance with Town policy, not this appeal procedure.

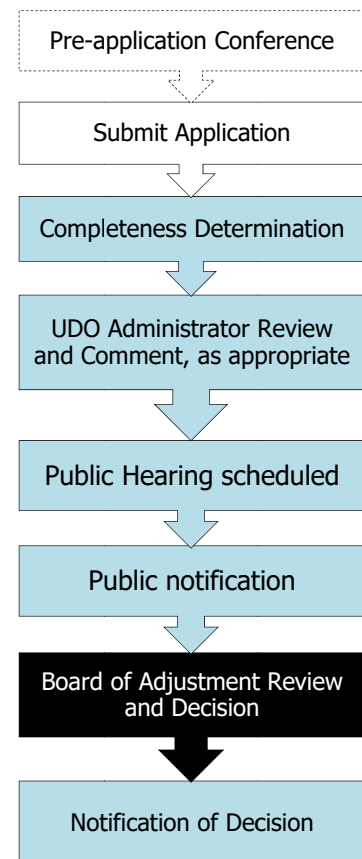
2. Initiation

An appeal shall be initiated by filing a written notice of appeal with the UDO Administrator within 30 days of the date the written determination or decision being appealed is received by the applicant (except where otherwise specified in this Ordinance).

3. Appeal Procedure

- a. **Pre-Application Conference**
Optional (see Section <>, Pre-Application Conference).
- b. **Application Submittal and Acceptance**
 - i. Applicable (see Section <>, Application Submittal and Acceptance).
 - ii. The written notice of appeal shall include a statement of the error or improper decision, the date of the decision or interpretation, the grounds for the appeal, and all related support materials.
- c. **Staff Review and Action**
 - i. Applicable (see Section <>, Staff Review and Action).
 - ii. On accepting a notice of appeal, the UDO Administrator shall transmit to the BOA the record of material considered by the decision-maker in making the decision or interpretation.
- d. **Public Notification**
Applicable (see Section <>, Public Notification).
- e. **BOA Review and Decision**
 - i. Applicable (see Section <>, Review and Action by Decision-making Body, and <>, Quasi-Judicial Public Hearing Procedures).
 - ii. The BOA, at the conclusion of a quasi-judicial public hearing, shall decide the application for the appeal.
 - iii. The decision shall be based on the competent, material, and substantial evidence in the record of the appeal, as supplemented by arguments presented at the quasi-judicial hearing, and the standards in Section <>, Appeal Review

**FIGURE <>
APPEAL PROCEDURE**



²¹ The material in Sections 3.22– 3.29 of the current UDO is relocated here and reorganized according to the common review procedures format.

Standards.

- iv.** The decision shall be one of the following:
 - a).** Affirmation of the decision or interpretation (in whole or in part);
 - b).** Modification of the decision or interpretation (in whole or in part); or
 - c).** Reversal of the decision or interpretation (in whole or in part).
- v.** A vote to reverse or modify a decision or determination shall require approval of a majority of a quorum present at the hearing.
- vi.** Each decision shall be made in writing and reflect the BOA's determination of contested facts and their application to the standards in this Ordinance.
- vii.** The written decision shall be signed by the Chair or other duly authorized member of the BOA.
- viii.** The decision of the BOA shall be effective upon the filing of the written decision.

f. Notification of Decision

The decision of the BOA shall be delivered by personal service, electronic mail, or by first-class mail to the applicant, the landowner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person providing notification of decision shall certify that proper notification has been made.

4. Appeal Review Standards

- a.** The BOA is limited to the following determinations in considering the appeal, which shall be based on clear and substantial evidence in the record:
 - i.** The decision-maker did not make an error or correctly applied the standards of this Ordinance in making the decision or interpretation;
 - ii.** The decision-maker made an error in determining whether a standard was met. The record must indicate that an error in judgment occurred or facts, plans, or regulations were misread in determining whether the particular standard was or was not met;
 - iii.** The decision-maker made an error because the decision was based on a standard not contained in this Ordinance or other appropriate Town ordinances, regulations, or state law, or that a standard more strict or broad than the standard established in this Ordinance was applied; or
 - iv.** The decision-maker made an error in applying a standard or measuring a standard.
- b.** Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility in terms of documentation and qualifications of those making the determination.
- c.** The BOA shall not hear any evidence or make any decision based on hardships or special conditions. (Such matters may only be considered in the context of an application for a variance.)

5. Effect

- a.** An appeal stays all proceedings in furtherance of the action appealed, unless the Town official from whom the appeal is taken certifies to the BOA, after notice of appeal has been filed, that because of facts stated in the certificate a stay would, in the Town official's opinion, cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance.
- b.** If certification by a Town official is filed, administrative proceedings shall not be stayed except through issuance of a restraining order by a court of competent jurisdiction.
- c.** If the appeal is not stayed, the appellant may file for an expedited hearing of the appeal, and the BOA shall meet to consider the appeal with 15 days of the date the

request is filed.

- d.** The filing of an appeal prevents the filing of an application for a zoning map amendment or conditional use permit for the same land subject to an appeal application, as well as the filing of a text amendment application by the same party filing the appeal until the appeal application is decided or appealed to the courts.

6. Appeal

- a.** Any decision by the BOA shall be subject to Superior Court of Carteret County review by proceedings in the nature of certiorari.
- b.** Appeal petitions must be filed with the Clerk of Court within 30 days of the date of the decision is filed in the office of Planning, Zoning, and Inspections.

D. BUILDING PERMIT**1. Applicability**

Unless exempted in accordance with the State Building Code, no construction, addition, alteration, repair, movement to another site, removal, or demolition of any building or structure may occur until a building permit is approved in accordance with the procedures and standards of this section.

2. Building Permit Procedure**a. Pre-Application Conference**

Optional (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

Applicable (see Section <>, Application Submittal and Acceptance).

c. Staff Review and Action

Applicable (see Section <>, Staff Review and Action).

3. Building Permit Review Standards

A building permit shall be issued on a decision that the application complies with:

- a. The State Building Code;
- b. The applicable requirements of the county Health Department;²²
- c. All standards or conditions of any prior, applicable permits and development approvals; and
- d. All other applicable requirements of this Ordinance and the Town Code of Ordinances.

4. Effect

Applicable (see Section <>, Effect of Development Approval).

5. Amendment

Amendment of a building permit may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

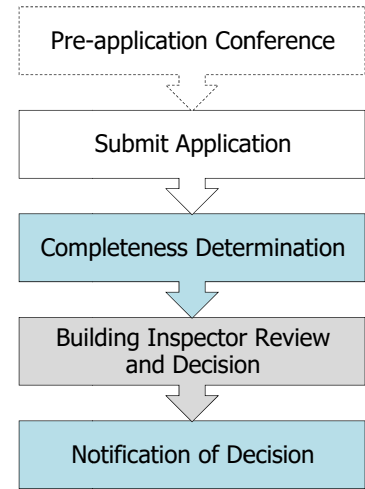
6. Expiration

- a. A building permit shall expire and become null and void if the development it authorizes is not commenced within six months of the permit issuance.
- b. If development authorized by a building permit commences but fails to achieve at least one passing inspection (foundation, footing, framing, mechanical, etc.) for a continuous period of 12 months, the permit shall expire and become null and void.

7. Appeal

An appeal of a decision on a building permit may be filed with the North Carolina Commissioner of Insurance, in accordance with Section 160A-434 of the North Carolina General Statutes.

**FIGURE <>
BUILDING PERMIT
PROCEDURE**



²² Additional discussion between the Town and the Health Department is necessary. In cases where an applicant seeks an addition, expansion, or other enlargement to an existing use, the Town needs to confirm whether it will or will not require the applicant to demonstrate proof of approval from the Health Department regarding the ability of the on-site wastewater treatment system to function as originally permitted following the addition or expansion.

E. RESERVED**F. CAMA MINOR PERMIT****1. Applicability**

- a.** This section sets out the procedure and standards for Coastal Resources Commission (CRC) review of development proposed in an Area of Environmental Concern (AEC) – areas in or near the water, near a water supply, beach dunes, marshes, or other areas of environmental significance as part of the Coastal Area Management Act (CAMA) of 1974.

- b.** CAMA minor permits are required for development proposed in affected areas that occupies less than 20 acres and less than 60,000 square feet of structure. Single-family homes, docks, shoreline armoring, and similar forms of development are the most common type of development required to obtain a CAMA minor permit.

- c.** CAMA general and major permits are decided by the CRC.

2. CAMA Minor Permit Procedure

- a. Pre-Application Conference**

Optional (see Section <>, Pre-Application Conference).

- b. Adjacent Owner Notification**

Applicants for a CAMA minor permit shall notify all adjacent landowners who own riparian (or waterfront) property that an application for a CAMA minor permit has been filed.

- c. Application Submittal and Acceptance**

Applicable (see Section <>, Application Submittal and Acceptance).

- d. Staff Review and Action**

Applicable (see Section <>, Staff Review and Action).

3. CAMA Minor Permit Review Standards

A CAMA minor permit shall be issued on a decision the application complies with:

- a.** All applicable standards for development in an AEC found in the North Carolina Administrative Code (Sections 15A NCAC 7H .0208-310 or .0405-6);
- b.** Applicable Land Use Plan policy guidance; and
- c.** Any applicable local development regulations.

4. Conditions of Approval

Applicable (see Section <>, Conditions of Approval).

5. Effect

Applicable (see Section <>, Effect of Development Approval).

6. Amendment

Amendment of a CAMA minor permit may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

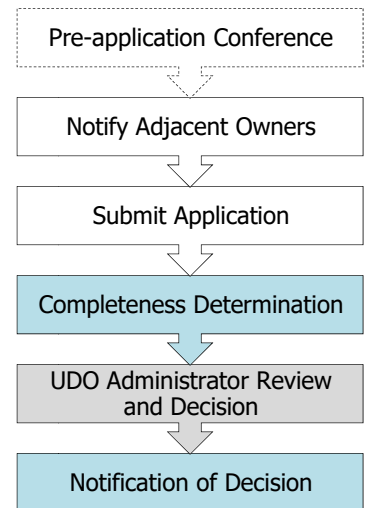
7. Expiration

Applicable (see Section <>, Expiration of Permit or Development Approval).

8. Appeal

An appeal of a decision on a CAMA minor permit may be filed with the Coastal Resources Commission within 20 days of the date of the permit decision.

**FIGURE <>
CAMA MINOR PERMIT
PROCEDURE**



G. CERTIFICATE OF OCCUPANCY**1. Applicability**

No land, newly erected building or structure, or existing building or structure that has been moved or enlarged or changed in use shall be occupied or used until a certificate of occupancy is approved and issued in accordance with this section, certifying that the land, building, or structure, and its use complies with this Ordinance and the applicable standards of the State Building Code.

2. Certificate of Occupancy Procedure**a. Pre-Application Conference**

Optional (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

Applicable (see Section <>, Application Submittal and Acceptance).

c. Staff Review and Action

Applicable (see Section <>, Staff Review and Action).

3. Certificate of Occupancy Review Standards

A certificate of occupancy shall be approved only upon a finding that the land, building, structure, or proposed use complies with:

- a. All relevant standards of this Ordinance;
- b. Any other applicable Town requirements;
- c. All applicable conditions of approval; and
- d. The applicable State Building Code requirements.

4. Effect

Approval of a certificate of occupancy allows a building, structure, or site to be occupied or used in accordance with the approved purpose.

5. Performance Guarantee

The Building Inspector may require the applicant to submit a performance guarantee (see Section <>, Performance Guarantees) in an amount necessary to ensure that any work not completed as specified in the development permit or approval will be completed within the specified timeframe for a certificate of occupancy.

6. Temporary Certificate of Occupancy

A temporary certificate of occupancy may be issued by the Building Inspector prior to the completion of all construction or changes if occupancy will not violate any health or safety considerations of any applicable codes.

- a. The Building Inspector shall specify the duration of the temporary certificate of occupancy, which shall not exceed 90 days.
- b. If all remaining work is not completed within the specified timeframe of the temporary certificate of occupancy, the Building Inspector shall order the applicant to cease occupancy immediately.

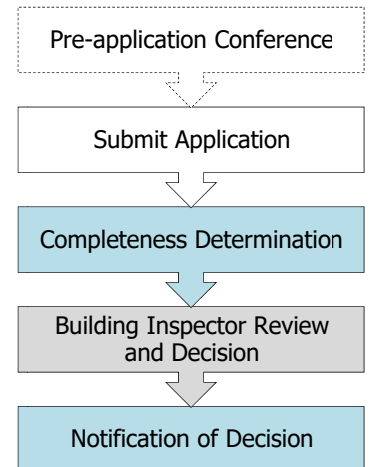
7. Amendment

Amendment of an certificate of occupancy may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

8. Appeal

- a. Appeals may be filed in accordance with the procedure in Section <>, Appeal.
- b. An appeal pertaining to a State Building Code issue shall be filed with to the North Carolina Commissioner of Insurance in accordance with Section 160A-434 of the North Carolina General Statutes.

**FIGURE <>
CERTIFICATE OF
OCCUPANCY PROCEDURE**



H. CONDITIONAL USE PERMIT

1. Applicability

Uses identified as requiring a conditional use permit in Table <>, Principal Use Table, shall be approved as a conditional use permit in accordance with the procedures and standards of this section, prior to development. A conditional use permit is a use that may be appropriate in a zoning district, but because of its nature, extent, and external effects, requires special consideration of its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings.

2. Conditional Use Permit Procedure

a. Pre-Application Conference

Optional (see Section <>, Pre-Application Conference).

b. Neighborhood Meeting

Optional (see Section <>, Neighborhood Meeting).

c. Application Submittal and Acceptance

i. Applicable (see Section <>, Application Submittal and Acceptance).

ii. An application shall be submitted only by the landowner(s), and shall include a site plan.

d. Staff Review and Action

i. Applicable (see Section <>, Staff Review and Action).

ii. The TRC prepare a staff report and provide a recommendation in accordance with Section <>, Conditional Use Permit Review Standards.

e. Public Notification

Applicable (see Section <>, Public Notification).

f. Review and Action by Decision-making Body

i. Applicable (see Section <>, Review and Action by Decision-Making Body, and Section <>, Quasi-Judicial Public Hearing Procedure).

ii. The BOA, after the conclusion of a quasi-judicial public hearing, shall decide the application in accordance with Section <>, Conditional Use Permit Review Standards. The decision shall be the one of the following:

- a). Approval of the conditional use permit as proposed;
- b). Approval of a revised conditional use permit; or
- c). Denial of the conditional use permit.

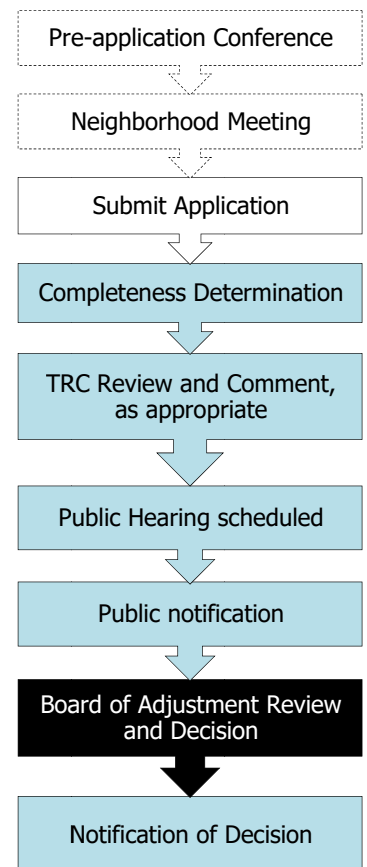
iii. Any conditions of approval shall meet or exceed the minimum requirements of this Ordinance.

3. Conditional Use Permit Review Standards

A conditional use permit shall be approved upon a finding that the applicant demonstrates the proposed conditional use:

- a. Will not materially endanger the public health or safety if located where proposed;
- b. Complies with all required standards, conditions, and specifications of this Ordinance, including Article 18-4: Use Standards;
- c. Will not substantially injure the value of the abutting land, or the conditional use is a public necessity;

**FIGURE <>
CONDITIONAL USE
PERMIT PROCEDURE**



- d. Will be in harmony with the area in which it is to be located; and
- e. Is in general conformity with the Town's adopted policy guidance.

4. Conditions of Approval

Applicable (see Section <>, Conditions of Approval).

5. Effect

- a. Applicable (see Section <>, Effect of Development Approval).
- b. A conditional use permit and the associated site plan approval are perpetually binding and run with the land, unless amended.
- c. An action invalidating a condition of approval for any reason shall render the conditional use permit null and void.

6. Amendment**a. Minor Changes**

- i. The BOA may approve a minor change to a conditional use permit requested by the applicant without a public hearing, upon receipt of a report from the TRC on the proposed minor change.
- ii. A minor change includes changes to conditions of a conditional use permit or associated site plan which will result in equal or better performance of the conditions and that do not alter the objectives and purposes of the conditional use.
- iii. In granting a minor change, the BOA may require such conditions as will address the objectives of the requirements or conditions changed.

b. Material Changes are Amendments

- i. A material change to a conditional use permit or to an associated site plan that alters the objectives and purposes of the requirements or conditions of the conditional use constitute an amendment to the conditional use permit.
- ii. An amendment includes but is not limited to:
 - a). Boundary changes;
 - b). Use changes; and
 - c). Increases in density or intensity of development.
- iii. Amendments of a conditional use permit may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

7. Expiration

- a. Unless otherwise stated in the conditional use permit approval, a conditional use shall expire and become null and void 18 months after the date of issuance if an initial inspection (such as a footing inspection) for the development approved has not been passed or an applicant has not requested an extension.
- b. If development approved with a conditional use permit is discontinued for a period exceeding 12 months, or if a conditional use is replaced by a use otherwise permitted by right in the zoning district, the conditional use permit approval is deemed abandoned and the approval is null and void.

8. Appeal

- a. Any decision by the BOA shall be subject to Superior Court of Carteret County review by proceedings in the nature of certiorari.
- b. Appeal petitions must be filed with the Clerk of Court within 30 days of the date of the decision is filed in the office of Planning, Zoning, and Inspections.

I. DEVELOPMENT AGREEMENT

1. Applicability

In order to provide more regulatory certainty, establish a schedule for development, coordinate the provision of public facilities, and improve management of environmentally sensitive lands, the Town Council may enter into a development agreement with a developer, subject to Section 160A-400 of the North Carolina General Statutes, and the provisions of this section. In entering into a development agreement the Town may not exercise any authority or make any commitment that is unauthorized by general or local act, and may not impose any unauthorized tax or fee.

2. Development Agreement Procedure

a. Pre-Application Conference

Applicable (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

Applicable (see Section <>, Application Submittal and Acceptance).

c. Staff Review and Action

i. Applicable (see Section <>, Staff Review and Action).

ii. The TRC shall prepare a staff report and provide a recommendation in accordance with Section <>, Development Agreement Review Standards.

d. Public Notification

Applicable (see Section <>, Public Notification).

e. Review and Action by Decision-making Body

i. Applicable (see Section <>, Review and Action by Decision-Making Body).

ii. The Town Council, after the conclusion of a public hearing, shall decide the application in accordance with Section <>, Development Agreement Review Standards.

iii. The action taken shall be one of the following:

- a). Enter into the development agreement, as submitted;
- b). Enter into the development agreement, subject to changes agreed to in writing by the developer; or
- c). Not enter into the development agreement.

f. Recordation

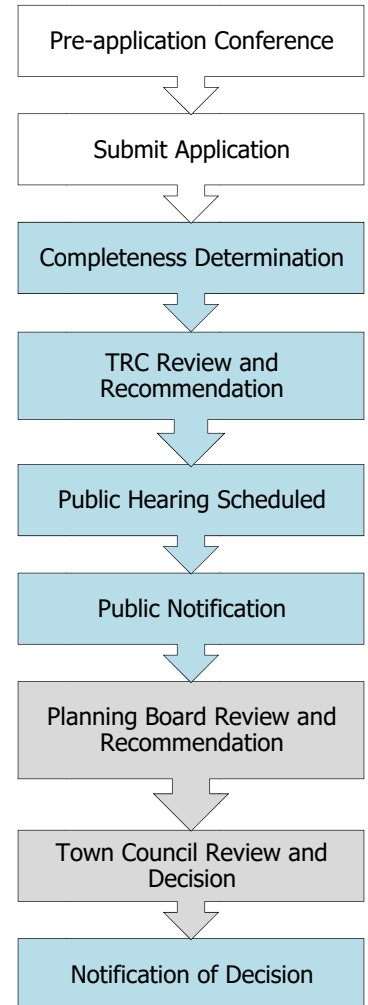
Within 14 days after entering into a development agreement, the applicant shall record the agreement in the office of the Register of Deeds for Carteret County.

3. Development Agreement Review Standards

For consideration of the Town to participate in a development agreement, a development subject to the agreement must:

- a. Comply with the requirements in Section 160A-400.20-400.31 of the North Carolina General Statutes;
- b. Indicate proposed phasing;
- c. Demonstrate the impact on existing and future provisions of capital improvements by

**FIGURE <>
DEVELOPMENT
AGREEMENT PROCEDURE**



the Town, including at least one of the following: transportation, potable water, solid waste, stormwater management, parks and recreation, and health systems and facilities.

4. Effect**a. Burdens and Benefits**

The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

b. Rights and Obligations

Rights and obligations established by a development agreement shall not preclude or supersede rights and obligations established pursuant to other law regarding building permits, site specific development plans, phased development plans, or other provisions of law.

c. Building and Housing Code

A development agreement shall not exempt the property landowner or developer from compliance with the State Building Code or applicable Minimum Housing Code.

d. Identify Subsequently Enacted Laws

Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

e. Application of Subsequently Adopted Laws

Except for grounds specified in Section 160A-385.1(e) of the North Carolina General Statutes, the Town may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

f. Change in State or Federal Law

If state or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the Town, by ordinance after notice and a hearing, may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the development agreement.

g. Vested Rights

This Ordinance does not abrogate any rights preserved by Sections 160A-385 or 160A-385.1 of the North Carolina General Statutes, or that may vest pursuant to common law or otherwise in the absence of a development agreement.

5. Approval of Debt

If any of the obligations of the Town in the development agreement constitute debt, the Town shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the Town, with any applicable constitutional and statutory procedures for the approval of the debt. The agreement shall be signed by the Town Manager, Town Attorney, and the Town Clerk.

6. Periodic Review and Breach of Agreement**a. Annual Review**

During any period of time in which a permit or development approval subject to a development agreement is active, the UDO Administrator shall review the development at least once every year for compliance with the agreement and file a report with the Town Council. The developer must demonstrate good faith compliance with the terms of the development agreement. Failure to meet a commencement or completion date specified in the development agreement shall not, in and of itself, constitute a material breach of the agreement, but must be judged based upon the totality of the circumstances.

b. Material Breach

If the Town Council finds and determines that the developer has committed a material breach of the terms or conditions of the development agreement, the Town Attorney shall serve written notice of the breach upon the developer within a reasonable time after the periodic review. Such notice shall set forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and shall provide the developer a reasonable time in which to cure the material breach.

c. Failure to Cure Material Breach

If the developer fails to cure the material breach within the time given, then the Town Council may unilaterally terminate or modify the development agreement.

7. Amendment**a. Mutual Consent**

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

b. Minor Change

The UDO Administrator may approve minor changes of the development agreement with the mutual consent of the other parties to the agreement, without following the same procedures as required for initial approval of the agreement, upon making written findings that the proposed minor changes would not significantly change the use, intensity, or design of the development, would be consistent with the purposes and goals of the agreement, would comply with this Ordinance, and would not adversely affect the public health, safety, or general welfare.

c. Material Changes are Amendments

Consideration of a proposed material change of a development agreement beyond the scope of a minor change shall be reviewed and considered in accordance with the procedures and standards established for the original approval of a development agreement.

J. RESERVED**K. FLOODPLAIN DEVELOPMENT PERMIT****1. Applicability**

To reduce the potential for damage to land and life from flooding or floodwaters, development proposed on land in a special flood hazard area within the Town's zoning jurisdiction shall obtain a floodplain development permit in accordance with this section prior to or concurrent with an application for a site plan, building permit, or zoning permit, as appropriate.

2. Floodplain Development Permit Procedure**a. Pre-Application Conference**

Optional (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

Applicable (see Section <>, Application Submittal and Acceptance).

c. Staff Review and Action

i. Applicable (see <>, Staff Review and Action).

ii. The Floodplain Administrator shall review and decide the application in accordance with Section <>, Floodplain Development Permit Review Standards.

3. Floodplain Development Permit Review Standards

A floodplain development permit shall be approved on a decision that the application complies with the following:

a. The permit is issued prior to the commencement of development; and

b. The development complies with all applicable standards in Section <>, Development in Special Flood Hazard Areas.

4. Conditions of Approval

Applicable (see Section <>, Conditions of Approval).

5. Effect

Approval of a floodplain development permit authorizes an applicant to obtain all required elevation certificates or other required certificates and proceed with development following issuance of a building permit.

6. Amendment

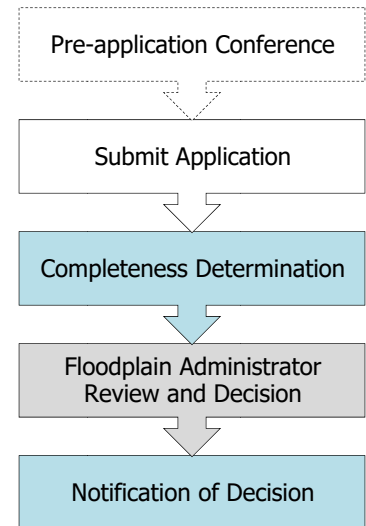
Amendment of a floodplain development permit approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

7. Expiration

A floodplain development permit shall expire and become null and void if the development it authorizes is not commenced within six months of permit issuance.

8. Appeal

Appeals may be filed in accordance with the procedure in Section <>, Appeal.

FIGURE <> FLOODPLAIN DEVELOPMENT PERMIT PROCEDURE

L. INTERPRETATION**1. Applicability**

The UDO Administrator is responsible for written interpretations of all provisions of this Ordinance, including, but not limited to:

- a. Interpretations of the meaning of the text;
- b. Interpretations of the zoning district boundaries on the Official Zoning Map;
- c. Interpretations of whether an unlisted use in Table <>, Principal Use Table, is comparable to a listed use or not, and should be allowed in a zoning district or prohibited in that district; and
- d. Interpretations of compliance with a condition of approval.

2. Interpretation Procedure**a. Pre-Application Conference**

Optional (see Section <>, Pre-Application Conference).

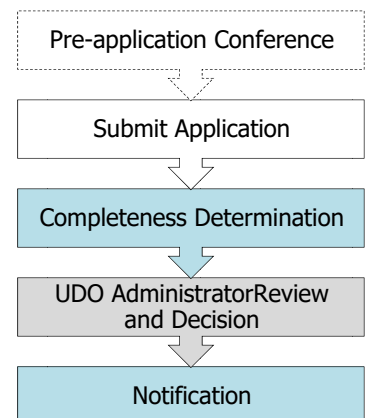
b. Application Submittal and Acceptance

- i. Applicable (see Section <>, Application Submittal and Acceptance).
- ii. An application for a formal written interpretation may be initiated by any person having an interest in the matter in question.

c. Staff Review and Action

- i. Applicable (see Section <>, Staff Review and Action).
- ii. The UDO Administrator shall review the request and make interpretations in accordance with Section <>, Interpretation Review Standards.
- iii. The UDO Administrator may request additional information as necessary to make an interpretation.
- iv. Prior to rendering an interpretation, the UDO Administrator may consult with the Town Attorney and other affected Town officials.

**FIGURE <>
INTERPRETATION
PROCEDURE**

**3. Interpretation Review Standards****a. Zoning District Map Boundaries**

Interpretation of zoning district boundaries on the Official Zoning Map shall be in accordance with the standards in Section <>, Interpretation of Official Map Boundaries, and consistent with the Town's adopted policy guidance.

b. Unlisted Uses

Interpretation of whether an unlisted use is similar to a use identified in Table <>, Principal Use Table, shall be based on consistency with the Town's adopted policy guidance and the following standards:

- i. The function, product, or physical characteristics of the use;
- ii. The impact on adjacent lands created by the use;
- iii. The type, size, and nature of buildings and structures associated with the use;
- iv. The type of sales (retail, wholesale), and the size and type of items sold and displayed on the premises;
- v. The types of items stored (such as vehicles, inventory, merchandise, chemicals, construction materials, scrap and junk, and raw materials including liquids and powders);
- vi. The volume and type of vehicle traffic generated by the use, and the parking demands of the use;
- vii. Any processing associated with the use, including assembly, manufacturing,

warehousing, shipping, distribution, and whether it occurs inside or outside a building;

- viii. Any dangerous, hazardous, toxic, or explosive materials associated with the use;
- ix. The amount and nature of any nuisances generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation, and fumes; and
- x. Any prior interpretations made by the UDO Administrator or decisions made by the BOA.

c. Text Provisions

Interpretation of the text and its application shall be based on the standards in Section <>, Rules of Language Construction, and the following considerations:

- i. The clear and plain meaning of the provision's wording, as defined by the meaning and significance given specific terms used in the provision—as established in Section <>, Definitions, and by the common and accepted usage of the term;
- ii. The intended purpose of the provision, as indicated by purpose statements, its context and consistency with surrounding and related provisions, and any legislative history related to its adoption;
- iii. The general purposes served by this Ordinance, as set forth in Section <>, General Purpose and Intent; and
- iv. Consistency with the Town's adopted policy guidance.

4. Effect

a. General

- i. A written interpretation shall be binding on subsequent decisions by the UDO Administrator or other administrative officials in applying the same provision of this Ordinance or the Official Zoning Map in the same circumstance, unless the interpretation is modified in accordance with this section, or the text of this Ordinance is amended.
- ii. The UDO Administrator shall maintain a record of written interpretations that shall be available in the Planning, Zoning, and Inspections Department for public inspection, on reasonable request, during normal business hours.

b. Approval of Unlisted Use

- i. After the UDO Administrator determines the use category or use type in which the unlisted use is best classified, then the unlisted use shall be subject to all applicable requirements of that use category or use type.
- ii. After making an interpretation of an unlisted use, the UDO Administrator shall determine whether the unlisted use is likely to be common or recur frequently, and whether its omission is likely to lead to uncertainty and confusion. On determining that the unlisted use is likely to be common and would lead to confusion if unlisted, the UDO Administrator shall initiate an application for a text amendment. Until final action is taken on the text amendment, the UDO Administrator's decision shall be binding.
- iii. If after making an interpretation of an unlisted use, the UDO Administrator determines that the unlisted use is of an unusual or transitory nature, and unlikely to recur frequently, the determination shall be binding without further action or amendment of this Ordinance.

5. Appeal

Appeals may be filed in accordance with the procedure in Section <>, Appeal.

M. RESERVED**N. LAND DISTURBANCE PERMIT****1. Applicability**

In order to avoid groundwater contamination, sediment accumulation in drainage conveyances and surface waters, and unnecessary loss of erodible soils, land-disturbing activities require approval of a land disturbance permit in accordance with this section, prior to commencement. For the purposes of this section, "land disturbing activities" include, but are not limited the following:

- a. Excavation or movement of sand or soil in an amount exceeding 100 square feet;
- b. Deposition of soil or fill material in a manner that raises the ground elevation by more than five inches generally or more than three inches within three feet of a lot line;
- c. Installation, repair, or removal of underground equipment such as a well, wastewater treatment system, irrigation, or stormwater retention device;
- d. Installation of a wall or edging material that will obstruct the flow of stormwater between lot lines; or
- e. Shoreline stabilization in any form.

2. Exemptions

The following activities are exempted from the requirement to obtain a land disturbance permit:

- a. Land disturbing activities subject to permit approval by the North Carolina Department of Environmental Quality;
- b. Gardening;
- c. Installation, removal, or maintenance of landscaping material, provided it does not increase the ground elevation by more than three inches within three feet of a lot line; or
- d. Construction or development activity conducted in accordance with an approved Building or Zoning Permit.

3. Land Disturbance Permit Procedure**a. Pre-Application Conference**

Optional (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

Applicable (see Section <>, Application Submittal and Acceptance).

c. Staff Review and Action

i. Applicable (see Section <>, Staff Review and Action).

ii. The Building Inspector shall review and decide the application in accordance with Section <>, Land Disturbance Permit Review Standards.

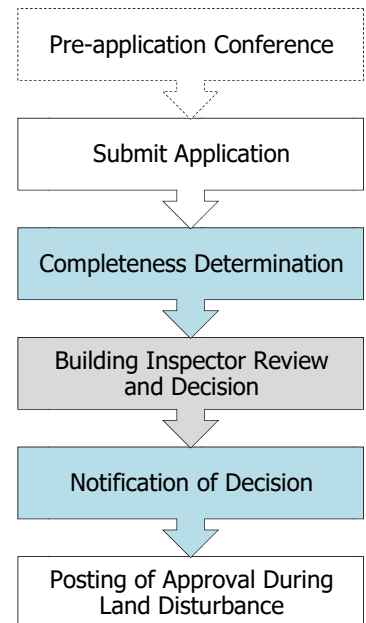
4. Land Disturbance Permit Review Standards

- a. Land disturbance shall not result in accelerated stormwater runoff leaving the site;
- b. Activity requiring a land disturbance permit shall not cause sediment, trash, debris or other material leaving the site subject to the permit;
- c. Disturbed land shall be stabilized by vegetation, mulching, sodding, or other approved means no later than 21 days after the land disturbing activity takes place.

5. Conditions of Approval

Applicable (see Section <>, Conditions of Approval).

FIGURE <> LAND DISTURBANCE PERMIT PROCEDURE



6. Effect

- a. Applicable (see Section <>, Effect of Development Approval).
- b. The applicant shall post the approved land disturbance permit in a prominent location on the site where the land disturbance is occurring at all times while it is in effect.

7. Amendment

Amendment of a land disturbance permit may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

8. Expiration

The land disturbance permit shall be null and void if work authorized is not completed within one year from the issuance of the permit.

9. Appeal

Appeals may be filed in accordance with the procedure in Section <>, Appeal.

O. SIGN PERMIT**1. Applicability**

All signs, unless exempted in accordance with Section <>, Signage, shall obtain a sign permit in accordance with this section before being erected, replaced, relocated, or altered.

2. Sign Permit Procedure**a. Pre-Application Conference**

Optional (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

Applicable (see Section <>, Application Submittal and Acceptance).

c. Staff Review and Action

i. Applicable (see Section <>, Staff Review and Action).

ii. The UDO Administrator shall review and decide the application in accordance with Section <>, Sign Permit Review Standards.

3. Sign Permit Review Standards

A sign permit shall be approved on a decision the application complies with:

- a. The standards in Section <>, Signage;
- b. The State Building Code;
- c. All standards or conditions of any prior applicable permits and developments approvals; and
- d. All other applicable requirements of this Ordinance and in the Town Code of Ordinances.

4. Conditions of Approval

Applicable (see Section <>, Conditions of Approval).

5. Effect

Applicable (see Section <>, Effect of Development Approval).

6. Amendment

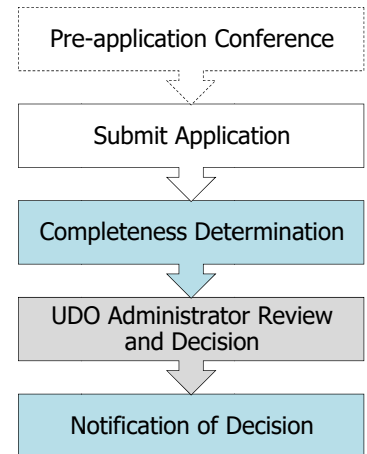
Amendment of a sign permit may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

7. Expiration

If the work authorized by a sign permit is not commenced within six months from the date of issuance, the permit shall become null and void.

8. Appeal

Appeals may be filed in accordance with the procedure in Section <>, Appeal.

FIGURE <> SIGN PERMIT PROCEDURE

P. SITE PLAN (MAJOR/MINOR)²³

1. Applicability

Site plan review is applicable to any development activity that includes constructing a building or increasing the amount of impervious surface other than those forms of development listed in Section <>, Exemptions from Site Plan Requirements.

2. Exemptions from Site Plan Requirements

The following forms of development are not required to obtain site plan approval but are subject to the requirements for a zoning permit (see Section <>, Zoning Permit), or building permit (see Section <> Building Permit):

- a. Construction of a single-family detached home on an individual lot;
- b. Establishment of an accessory use or structure;
- c. Enlargements of existing principal structures by up to 20 percent of the total gross floor area, provided the enlargement does not result in a need for additional parking spaces or landscaping; and
- d. Changes of use that do not result in increased lot coverage, the need for additional parking spaces, or additional landscaping.

3. Site Plans Distinguished

a. Major Site Plan

A major site plan shall be required for the following types of development:

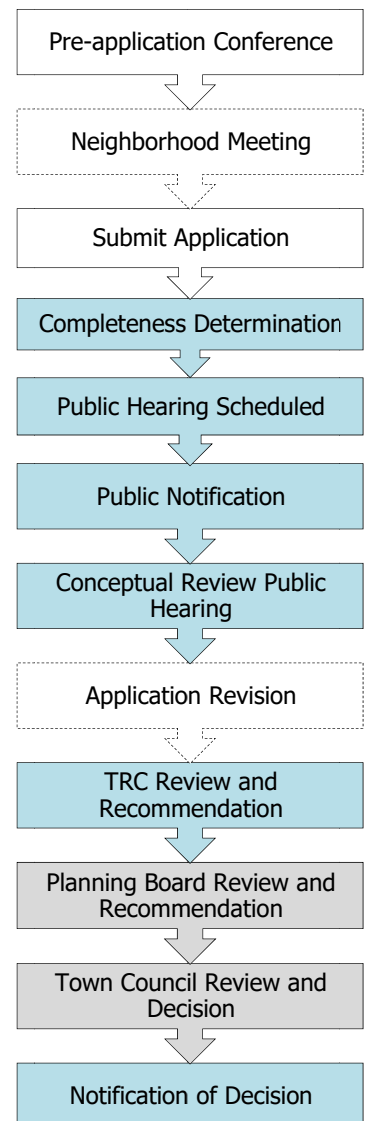
- i. Residential developments greater than four units;
- ii. Residential developments involving two or more principal structures on an individual lot;
- iii. Nonresidential developments greater than 2,500 square feet of gross floor area;
- iv. Manufactured home park developments;
- v. Recreational vehicle park developments;
- vi. Nonresidential development within the CDD and COD districts;
- vii. Single-family attached, duplex, multi-family, manufactured home, mobile home, or upper-story residential development within the CDD and COD districts; and
- viii. Any form of development not exempted from site plan review or reviewed as a minor site plan.

b. Minor Site Plan

A minor site plan approval shall be required for the following forms of development:

- i. Development of a two-family dwelling on an individual platted lot or pair of platted lots;
- ii. Development of a three- or four-family dwelling on an individual platted lot or series of lots; and
- iii. Nonresidential development of less than 2,500

FIGURE <> MAJOR SITE PLAN PROCEDURE



²³ NOTE TO STAFF: This section replaces Section 14.4 of the current ordinance. It relies on the pre-application conference instead of a sketch plan and includes a new joint public hearing for major site plans by the Planning Board and Town Council before plan review starts. Additional discussion is needed regarding the Engineering Drawing review and submittal requirements.

Section 18.2.4. Development Applications

Subsection P. Site Plan (Major/Minor)

square feet of gross floor area located outside the CDD or COD zoning districts.

4. Major Site Plan Procedure**a. Pre-Application Conference**

Applicable (see Section <>, Pre-Application Conference).

b. Neighborhood Meeting

Optional (see Section <>, Neighborhood Meeting).

c. Application Submittal and Acceptance

i. Applicable (see Section <>, Application Submittal and Acceptance).

ii. If a land disturbance plan is required, it shall be submitted concurrently with the site plan application.

d. Public Notification

Applicable (see Section <>, Public Notification).

e. Concept Proposal Public

i. Prior to initial review by Town staff, the Planning Board and Town Council shall conduct a joint public hearing to review and comment on the major site plan application. A decision on the application shall not be made during the concept proposal hearing.

ii. An applicant for a major site plan may choose to revise the application in accordance with the comments received during the concept proposal hearing.

f. Staff Review and Action

i. Applicable (see Section <>, Staff Review and Action).

ii. The TRC shall prepare a staff report and provide a recommendation in accordance with Section <>, Site Plan Review Standards.

g. Review and Decision by Decision-making Body

i. Applicable (see Section <>, Review and Action by Decision-Making Body).

ii. During a regular meeting, the Planning Board shall review the staff report and TRC recommendation and then make a recommendation to the Town Council in accordance with Section <>, Site Plan Review Standards.

iii. Following review of the major site plan application by the Planning Board, the Town Council shall review and decide the application during a regular meeting in accordance with Section <>, Site Plan Review Standards. The decision shall be the one of the following:

a). Approval of the major site plan as proposed;

b). Approval of a revised major site plan; or

c). Denial of the major site plan.

iv. Any conditions of approval shall meet or exceed the minimum requirements of this Ordinance.

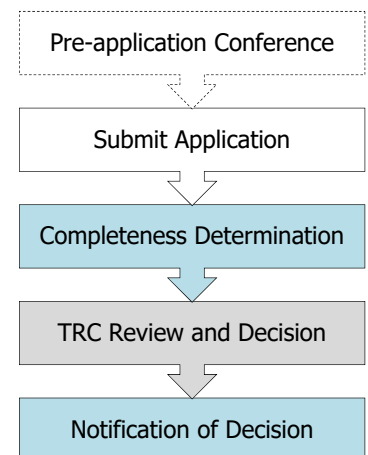
5. Minor Site Plan Procedure**a. Pre-Application Conference**

Optional (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

i. Applicable (see Section <>, Application Submittal and Acceptance).

ii. If a land disturbance plan is required, it shall be submitted concurrently with the site plan application.

FIGURE <> MINOR SITE PLAN PROCEDURE

c. Staff Review and Action

- i. Applicable (see Section <>, Staff Review and Action).
- ii. The TRC shall review and decide the application in accordance with Section <>, Site Plan Review Standards.

6. Site Plan Review Standards

A site plan shall be approved on a decision the application complies with:

- a. All standards or conditions of any prior applicable permits and development approvals; and
- b. All applicable requirements of this Ordinance and the Town Code of Ordinances.

7. Conditions of Approval

Applicable (see Section <>, Conditions of Approval).

8. Effect

Approval of a site plan authorizes the submittal of construction plans, if applicable, and the submittal of an application for a building permit in accordance with Section <>, Building Permit, or a zoning permit in accordance with Section <>, Zoning Permit.

9. Amendment

Amendment of a site plan approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval

10. Expiration

Site plan approval shall expire and become null and void if the development approved in the site plan does not begin within 18 months of issuance of the site plan approval.

11. Appeal

Appeals of a decision on a minor site plan application may be filed in accordance with the procedure in Section <>, Appeal.

Q. RESERVED

R. SUBDIVISION, MAJOR

1. Subdivisions Distinguished

Subdivisions of land are classified as major subdivisions and minor subdivisions. Minor subdivisions are subdivisions of land into five or fewer lots. Subdivisions creating six or more lots from a parent parcel in existence on [insert the effective date of this ordinance] are major subdivisions. Major subdivisions are reviewed in two steps: a preliminary plat and a final plat. Minor subdivisions only require review of a final plat.

2. Applicability

Unless exempted in accordance with Section 160A-376 of the North Carolina General Statutes, all divisions of land including six or more lots shall comply with the provisions of this section.

3. Preliminary Plat

a. Preliminary Plat Review Procedure

i. Pre-Application Conference

Applicable (see Section <>, Pre-Application Conference).

ii. Neighborhood Meeting

Optional (see Section <>, Neighborhood Meeting).

iii. Application Submittal and Acceptance

a). Applicable (see Section <>, Application Submittal and Acceptance).

b). A preliminary plat shall be prepared by a licensed professional surveyor, registered professional landscape architect, or licensed professional engineer.

iv. Public Notification

Applicable (see Section <>, Public Notification).

v. Concept Proposal Public

a). Prior to initial review by Town staff, the Planning Board and Town Council shall conduct a joint public hearing to review and comment on the major subdivision application. A decision on the application shall not be made during the concept proposal hearing.

b). An applicant for a major subdivision may choose to revise the application in accordance with the comments received during the concept proposal hearing.

vi. Staff Review and Action

a). Applicable (see Section <>, Staff Review and Action).

b). The TRC shall prepare a staff report and provide a recommendation in accordance with Section <>, Preliminary Plat Review Standards.

vii. Review and Decision by Decision-making Body

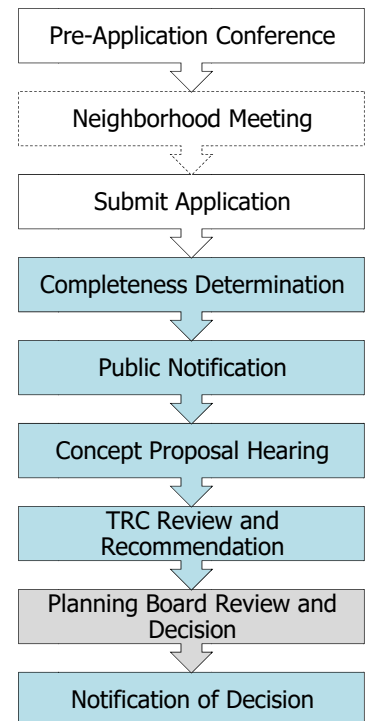
a). Applicable (see Section <>, Review and Action by Decision-Making Body).

b). During a regular meeting, the Planning Board shall review and decide the application in accordance with Section <>, Preliminary Plat Review Standards. The decision shall be the one of the following:

01). Approval of the preliminary plat as proposed;

02). Approval of a revised preliminary plat; or

**FIGURE <>
PRELIMINARY PLAT
PROCEDURE**



Section 18.2.4. Development Applications

Subsection R. Subdivision, Major

03). Denial of the preliminary plat.

- c).** Any conditions of approval shall meet or exceed the minimum requirements of this Ordinance.

b. Preliminary Plat Review Standards

An application for a preliminary plat shall be approved on a decision that the application complies with:

- i.** All applicable standards in Article 18-7: Subdivisions;
- ii.** All standards or conditions of any prior applicable permits and development approvals; and
- iii.** All other applicable requirements of this Ordinance and in the Town Code of Ordinances.

c. Conditions of Approval

Applicable (see Section <>, Conditions of Approval).

d. Effect

Approval of a preliminary plat authorizes the submittal of construction plans and/or a final plat.

e. Amendment

Amendment of a preliminary plat approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

f. Expiration

An approved preliminary plat shall be valid for two years from the date of approval.

g. Appeal

Appeals may be filed in accordance with the procedure in Section <>, Appeal.

4. Final Plat**a. Applicability**

A final plat, reviewed and approved in accordance with this section, shall be required for all subdivisions of land required to obtain a preliminary plat under this Ordinance. A landowner shall not submit an application for final plat review until a preliminary plat is approved and all required improvements serving the subdivision are installed and inspected by the Town, or the developer provides a performance guarantee in accordance with Section <>, Performance Guarantees.

b. Final Plat Review Procedure**i. Pre-Application Conference**

Applicable (see Section <>, Pre-Application Conference).

ii. Application Submittal and Acceptance

Applicable (see Section <>, Application Submittal and Acceptance).

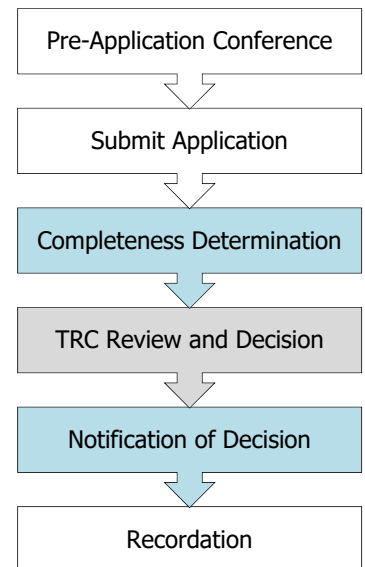
iii. Staff Review and Action

a). Applicable (see Section <>, Staff Review and Action).

b). The TRC shall review and decide the application in accordance with Section <>, Final Plat Review Standards.

iv. Recordation

Once a final plat is approved, a signed statement by the UDO Administrator shall be entered on the

FIGURE <> FINAL PLAT PROCEDURE

face of the plat. The final plat may not be recorded without this certification. Failure to record the final plat in accordance with Section <>, Expiration, shall render the plat null and void.

c. Final Plat Review Standards

A final plat shall be approved on a decision that the application complies with the following:

- i. The final plat is prepared and sealed by a licensed professional land surveyor or professional engineer.
- ii. The final plat is in substantial conformance with the preliminary plat and all applicable requirements in Article 18-7: Subdivisions;
- iii. All required improvements depicted on the preliminary plat and final plat are installed and inspected by the Town, or are subject to a performance guarantee (see Section <>, Performance Guarantees);
- iv. The final plat complies with all standards and conditions of any applicable permits and development approvals; and
- v. The final plat complies with all other applicable requirements in this Ordinance and the Town Code of Ordinances.

d. Effect

i. General

Approval of a final plat allows the sale or conveyance of lots within the subdivision. Building permits may be issued following recordation of the final plat.

ii. Acceptance of Public Infrastructure

- a). Approval and recordation of a final plat constitutes dedication by the owner and acceptance by the Town and the public of the right-of-way of each public street, alley or utility easement shown on the plat.
- b). Approval of the final plat does not constitute acceptance for maintenance responsibility of any improvements within such right-of-way or easement and the Town assumes no responsibility to open, operate, repair, or maintain any improvements until it is in the public interest to do so. Improvements within such right-of-ways or easements, such as utilities, streets, drainage facilities or sidewalks may be accepted for maintenance by the Town Council when appropriate.
- c). The subdivider shall retain responsibility for public improvements until maintenance responsibility is accepted by the Town, NCDOT, or a public utility provider, as appropriate.

e. Amendment

Amendment of a final plat approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

f. Expiration

- i. A final plat shall be null and void unless it is recorded in the office of the Carteret County Register of Deeds within 60 days of approval.
- ii. If a final plat is not recorded within two years of the associated preliminary plat approval, or if there is a lapse of more than two years between the recording of different sections or phases, then the preliminary plat shall expire.

g. Appeal

Appeals may be filed in accordance with the procedure in Section <>, Appeal.

S. SUBDIVISION, MINOR**1. Applicability**

Unless exempted in accordance with Section 160A-376 of the North Carolina General Statutes, all divisions of land including five or fewer lots shall comply with the provisions of this section.

2. Minor Subdivision Procedure**a. Pre-Application Conference**

Applicable (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

Applicable (see Section <>, Application Submittal and Acceptance).

c. Staff Review and Action

i. Applicable (see Section <>, Staff Review and Action).

ii. The TRC shall review and decide the application in accordance with Section <>, Minor Subdivision Review Standards.

d. Recordation

Once a minor subdivision is approved, a signed statement by the UDO Administrator shall be entered on the face of the plat. The minor subdivision plat may not be recorded without this certification. Failure to record the minor subdivision plat in accordance with Section <>, Expiration, shall render the minor subdivision plat null and void.

e. Minor Subdivision Review Standards

A minor subdivision shall be approved on a decision that the application complies with the following:

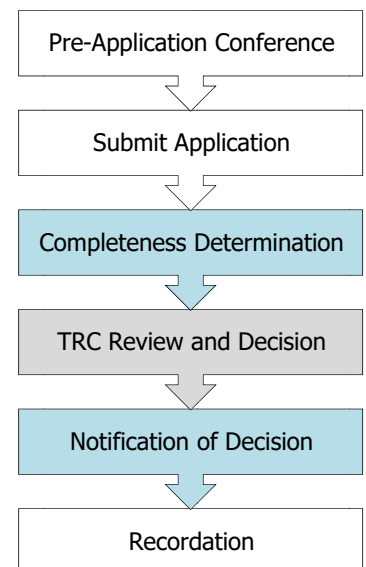
- i. The minor subdivision is prepared and sealed by a licensed professional land surveyor or professional engineer.
- ii. The minor subdivision is in substantial conformance with the preliminary plat and all applicable requirements in Article 18-7: Subdivisions;
- iii. All required improvements depicted on the minor subdivision plat are installed and inspected by the Town, or are subject to a performance guarantee (see Section <>, Performance Guarantees);
- iv. The minor subdivision complies with all standards and conditions of any applicable permits and development approvals; and
- v. The minor subdivision complies with all other applicable requirements in this Ordinance and the Town Code of Ordinances.

f. Effect**i. General**

Approval of a minor subdivision allows the sale or conveyance of lots within the subdivision. Building permits may be issued following recordation of the minor subdivision plat.

ii. Acceptance of Public Infrastructure

- a). Approval and recordation of a minor subdivision plat constitutes dedication by the owner and acceptance by the Town and the public of the right-of-way of each public street, alley or utility easement shown on the plat.
- b). Approval of the minor subdivision plat does not constitute acceptance

FIGURE <> MINOR SUBDIVISION PROCEDURE

Section 18.2.4. Development Applications

Subsection S. Subdivision, Minor

for maintenance responsibility of any improvements within such right-of-way or easement and the Town assumes no responsibility to open, operate, repair, or maintain any improvements until it is in the public interest to do so. Improvements within such right-of-ways or easements, such as utilities, streets, drainage facilities or sidewalks may be accepted for maintenance by the Town Council when appropriate.

- c).** The subdivider shall retain responsibility for public improvements until maintenance responsibility is accepted by the Town, NCDOT, or a public utility provider, as appropriate.

- g.** **Amendment**

Amendment of a minor subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

- h.** **Expiration**

- i.** Applicable (see Section <>, Expiration of Permit or Development Approval).

- ii.** A minor subdivision plat shall be null and void unless it is recorded in the office of the Carteret County Register of Deeds within 60 days of approval.

- i.** **Appeal**

Appeals may be filed in accordance with the procedure in Section <>, Appeal.

T. RESERVED

U. TEXT AMENDMENT

1. Applicability

This section provides a uniform means for amending the text of this Ordinance whenever the public necessity, changed conditions, convenience, general welfare, or appropriate land use practices justify or require doing so.

2. Text Amendment Procedure

a. Pre-Application Conference

Applicable (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

i. Applicable (see Section <>, Application Submittal and Acceptance).

ii. An application for a text amendment may be filed by anyone.

c. Staff Review and Action

i. Applicable (see Section <>, Staff Review and Action).

ii. The UDO Administrator shall prepare a staff report and provide a recommendation in accordance with Section <>, Text Amendment Review Standards.

d. Public Notification

Applicable (see Section <>, Public Notification).

e. Review and Decision by Decision-making Body

i. Applicable (see Section <>, Review and Action by Decision-Making Body).

ii. During a public hearing meeting, the Planning Board shall review the application and make a recommendation in accordance with Section <>, Text Amendment Review Standards. The Planning Board shall comment on whether or not the text amendment is consistent with the Town's adopted policy guidance.

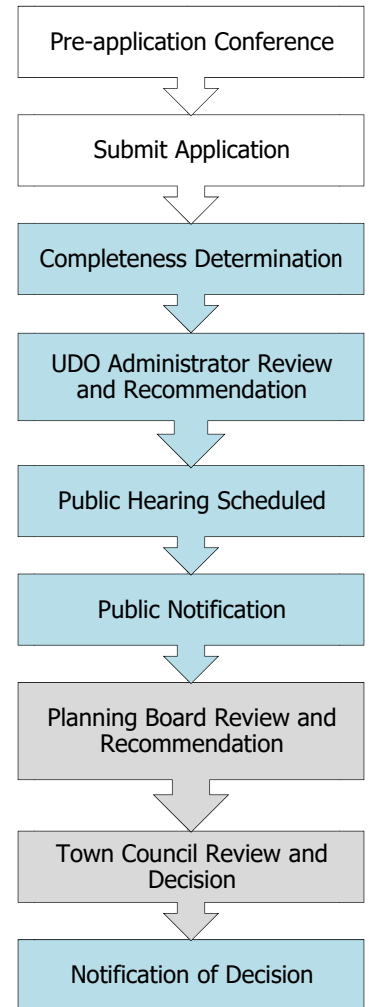
iii. After consideration of the application by the Planning Board, the Town Council shall conduct a public hearing on the application. The Town Council shall decide the application in accordance with Section <>, Text Amendment Review Standards. The decision shall be one of the following:

- a). Adoption of the text amendment as proposed;
- b). Adoption of a revised text amendment;
- c). Denial of the text amendment; or
- d). Remand of the text amendment application to the Planning Board for further consideration.

iv. In making its decision, the Town Council shall adopt a written statement of consistency and reasonableness that:

- a). Describes whether the decision is consistent with the Town's adopted policy guidance; and

FIGURE <> TEXT AMENDMENT PROCEDURE



- b). Explains why the decision is reasonable and in the public interest.

3. Text Amendment Review Standards

The advisability of amending the text of this Ordinance is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the Town Council may weigh the relevance of and consider whether and the extent to which the proposed text amendment:

- a. Is consistent with the Town's adopted policy guidance;
- b. Is not in conflict with any provision of this Ordinance or the Town Code of Ordinances;
- c. Is required by changed conditions;
- d. Addresses a demonstrated community need;
- e. Addresses an unforeseen matter not present when the Ordinance was adopted;
- f. Is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and ensure efficient development within the Town;
- g. Would result in a logical and orderly development pattern; and
- h. Would not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, and the natural functioning of the environment.

4. Effect

Applicable (see Section <>, Effect of Development Approval).

5. Amendment

Amendment of a text amendment approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

V. TEMPORARY USE PERMIT**1. Applicability**

The provisions of this section shall apply to all proposed temporary uses, temporary structures, and special events set forth in Section <>, Temporary Use Standards.

2. Temporary Use Permit Procedure**a. Pre-Application Conference**

Optional (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

Applicable (see Section <>, Application Submittal and Acceptance).

c. Staff Review and Action

i. Applicable (see Section <>, Staff Review and Action).

ii. The UDO Administrator shall review and decide the application in accordance with Section <>, Temporary Use Permit Review Standards.

3. Temporary Use Permit Review Standards

A temporary use permit shall be approved on a finding the applicant demonstrates the proposed temporary use, temporary structure, or special event complies with the relevant standards in Section <>, Temporary Use Standards.

4. Effect

Applicable (see Section <>, Effect of Development Approval).

5. Amendment

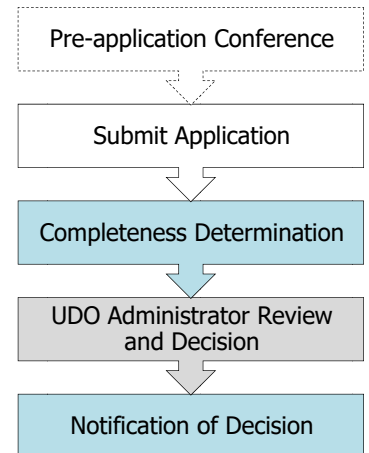
Amendment of a temporary use permit approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

6. Expiration

Approval of a temporary use permit shall be effective beginning on the date of approval and shall remain effective for the period indicated in the permit.

7. Appeal

Appeals may be filed in accordance with the procedure in Section <>, Appeal.

FIGURE <> TEMPORARY USE PERMIT PROCEDURE

W. VARIANCE**1. Applicability**

Development that would otherwise be subject to undue and unique hardship from the applications of the standards in this Ordinance may seek relief from the standards in accordance with this section.

2. Variances Distinguished

This section sets out the procedure and review standards for two type of variances:

a. Zoning Variance

The zoning variance procedure may be used to seek hardship relief from a district, use, or development standard in this Ordinance. A variance shall not be requested to:

- i. Vary from density or intensity beyond that allowed in a base zoning district;
- ii. Permit a use not allowed in a zoning district; or
- iii. Modify any standards in Section <>, Signage other than sign height or allowable sign location.

b. Flood Damage Prevention Variance

The flood damage prevention variance may be used to request relief from the standards in Section <>, Development in a Special Flood Hazard Area, for:

- i. A functionally dependent facility, provided it is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety; and
- ii. Any other type of development, provided it meets the standards of this section for a flood damage prevention variance.

3. Variance Procedure**a. Pre-Application Conference**

Applicable (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

Applicable (see Section <>, Application Submittal and Acceptance).

c. Staff Review and Action

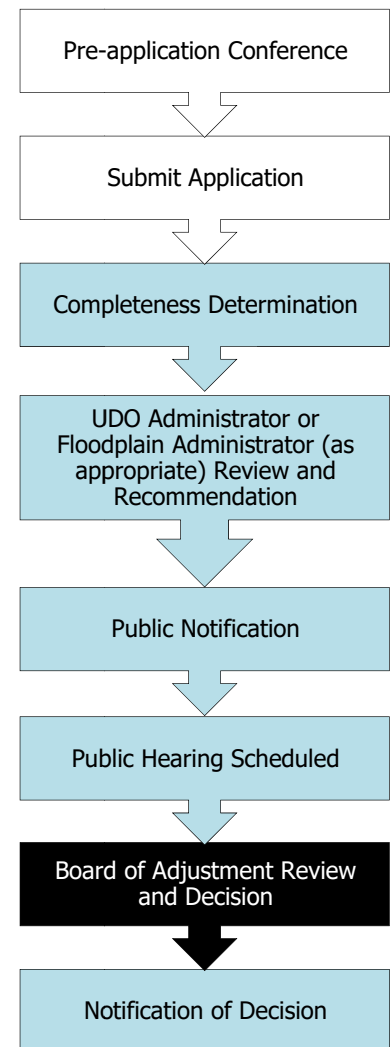
- i. Applicable (see Section <>, Staff Review and Action).
- ii. The UDO Administrator, or Floodplain Administrator (as appropriate) shall review the application, prepare a staff report, and provide a recommendation in accordance with Section <>, Variance Review Standards.

d. Public Notification

Applicable (see Section <>, Public Notification).

e. Review and Action by a Decision-making Body

- i. Applicable (see Section <>, Review and Action by Decision-Making Body, and Section <>, Quasi-Judicial Public Hearing Procedures).

FIGURE <> VARIANCE PROCEDURE

- ii. The BOA, after the conclusion of a quasi-judicial public hearing, shall decide the application for a variance.
- iii. The decision shall be based on the competent, material, and subsequent evidence in the record, as supplemented by the arguments presented at the quasi-judicial hearing, and the standards in Section <>, Variance Review Standards.
- iv. The decision shall be one of the following:
 - a). Approval of the variance as proposed;
 - b). Approval of the variance with revisions; or
 - c). Denial of the variance.
- v. Each decision shall be made in writing and reflect the BOA's determination of contested facts and their application to the standards in this Ordinance.
- vi. The written decision shall be signed by the Chair or other duly authorized member of the BOA.
- vii. The decision of the BOA shall be effective upon the filing of the written decision.

f. Notification of Decision

The decision of the BOA shall be delivered by personal service, electronic mail, or by first-class mail to the applicant, the landowner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person providing notification of decision shall certify that proper notification has been made.

4. Variance Review Standards

a. Zoning Variance Standards

i. Required Findings

A zoning variance shall be approved on a finding the applicant demonstrates all of the following:

- a). Unnecessary hardship would result from the 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 for granting a variance.
- c). 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 the variance shall not be regarded 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 is achieved.

ii. Other Considerations

In addition to the making the required findings in subsection (a) above, the BOA may also consider the following:

- a). The variance approval is the minimum necessary to make possible the reasonable use of the land, building, or structure.
- b). None of the following may be used as the basis for approving a variance:
 - 01). Neither the nonconforming use of lands, buildings, or

structures in the same zoning district, or the permitted use of lands, buildings, or structures in other zoning districts, or personal circumstances;

- 02).** A request for a particular use that is expressly, or by inference, prohibited in the zoning district;
- 03).** Hardships resulting from factors other than application of the relevant standards of this Ordinance;
- 04).** The fact that land or a structure may be utilized more profitably or be more marketable with a variance;
- 05).** The citing of other conforming or nonconforming uses of land or structures in the same or other zoning districts; or
- 06).** Financial hardship.

b. Flood Damage Prevention Variance Standards

i. Required Findings

A flood damage prevention variance shall be approved on a finding the applicant demonstrates all of the following standards are met:

- a).** There is a good and sufficient cause to grant the variance.
- b).** Failure to grant the variance would result in exceptional hardship to the landowner.
- c).** Granting the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with this Ordinance.

ii. Other Considerations

In addition to making the required findings in subsection (a) above, the BOA may also consider the following:

- a).** The variance is the minimum necessary, considering the flood hazard, to afford relief.
- b).** Approval of the variance will not render the building in violation of applicable federal, state, or local requirements.
- c).** Approval of the variance will not result in any increase in flood levels within any designated floodway or non-encroachment area during the base flood discharge.
- d).** The variance is issued prior to any other prerequisite permit or development approvals.
- e).** All of the following factors shall be considered by the BOA if an application for a flood damage prevention variance is denied:
 - 01).** The danger that materials may be swept onto other lands and injure others;
 - 02).** The danger to life and land due to flooding or erosion damage;
 - 03).** The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual landowner;
 - 04).** The importance of the services provided by the proposed facility to the community;
 - 05).** The necessity to the facility of a waterfront location as a functionally-dependent facility;
 - 06).** The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - 07).** The compatibility of the proposed use with existing and anticipated development;

- 08).** The relationship of the proposed use to the Town's adopted policy guidance and the Town's floodplain management program;
- 09).** The safety of access to the use in times of flood for ordinary emergency vehicles;
- 010).** The expected height, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- 011).** The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

5. Conditions of Approval

In granting a variance the BOA may prescribe conditions of approval to ensure compliance with the standards of this section, and to assure that the use of the land to which the variance applies will be compatible with surrounding lands and will not alter the essential character of the neighborhood.

- a.** A variance granted subject to a condition of approval shall be permitted as long as there is compliance with the condition.
- b.** Violation of a condition of approval shall be deemed a violation of this Ordinance.
- c.** If a violation or invalidation of a condition of approval occurs, the UDO Administrator may revoke the certificate of occupancy for the development subject to the variance.

6. Effect**a. General**

Approval of a zoning variance or flood damage prevention variance authorizes only the particular regulatory relief approved by the BOA. It does not exempt the applicant from the responsibility to obtain all other permits or development approvals required by this Ordinance or any other applicable laws, and does not indicate that the development for which the variance is granted should receive other permits or development approvals under this Ordinance unless the relevant and applicable portions of this Ordinance are met.

b. Notification Regarding Flood Insurance Costs

- i.** An applicant for whom a flood damage prevention variance is approved shall be provided written notice by the Floodplain Administrator specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is built. The notice shall inform the applicant about the risks to life and property from construction below the BFE and that issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance.
- ii.** The notification shall be maintained by the UDO Administrator with the record of the flood damage prevention variance action.

c. Records

Upon request, the UDO Administrator shall report all flood damage prevention variances approved in accordance with this section to the Federal Emergency Management Agency and the State of North Carolina.

7. Amendment

Amendment of a variance may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

8. Expiration

If the BOA does not include a time period by which development subject to a zoning variance or a flood damage prevention variance expires, development shall commence within 12 months of the date of issuance of the variance or the variance shall expire and become null and void.

9. Appeal

- a.** Any decision by the BOA shall be subject to Superior Court of Carteret County review by proceedings in the nature of certiorari.
- b.** Appeal petitions must be filed with the Clerk of Court within 30 days of the date of the decision is filed in the office of Planning, Zoning, and Inspections.

X. VESTED RIGHT DETERMINATION

1. Applicability

- a. A vested right may be established, in accordance with Section 160A-385.1 of the North Carolina General Statutes and this section, for the following permits and development approvals:

- i. Conditional Use Permit
- ii. Major or Minor Site Plan;
- iii. Preliminary Plat; or
- iv. Minor subdivision Plat.

- b. Any application for a vested rights certificate shall be processed concurrently or after the approval of the associated permit or development approval.

2. Vested Rights Certificate Procedure

a. Pre-Application Conference

Required (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

- i. Applicable (see Section <>, Application Submittal and Acceptance).
- ii. Applications may be initiated by the landowner or any person who may submit an application in accordance with Section <>, Authority to File Applications.

c. Staff Review and Action

- i. Applicable (see Section <>, Staff Review and Action).
- ii. The UDO Administrator shall prepare a staff report and provide a recommendation in accordance with Section <>, Vested Rights Determination Review Standards.

d. Public Notification

Applicable (See Section <>, Public Notification).

e. Review and Action by a Decision-making Body

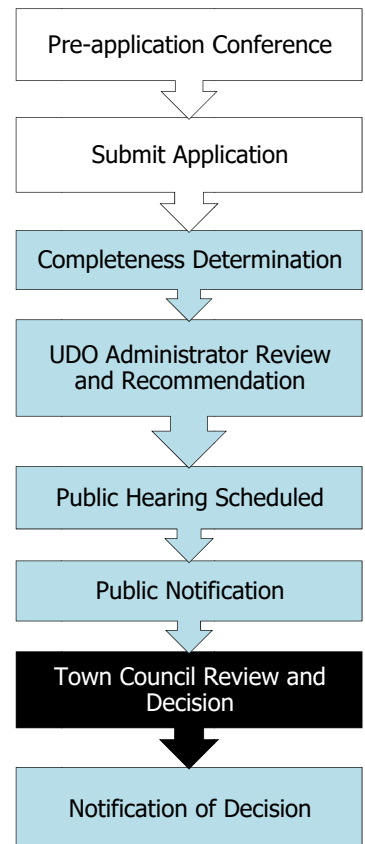
- i. Applicable. (See Section <>, Review and Action by Decision-Making Body, and Section <>, Quasi-Judicial Public Hearing Procedures).
- ii. The Town Council, after the conclusion of a quasi-judicial public hearing, shall decide the application in accordance with Section <>, Vested Rights Determination Review Standards.
- iii. The decision shall be one of the following:
 - a). Approval of the vested rights determination as proposed;
 - b). Approval of a revised vested rights determination;
 - c). Denial of vested rights determination; or
 - d). Remand of the vested rights certificate application to the UDO Administrator for further review.

3. Vested Rights Determination Review Standards

A vested rights determination shall be approved if the applicant demonstrates:

- a. The vested rights determination is for an approved conditional use permit, major or minor site plan, preliminary plat, or minor subdivision plat;
- b. The development is valid and unexpired; and

FIGURE <> VESTED RIGHTS DETERMINATION PROCEDURE



Section 18.2.4. Development Applications

Subsection X. Vested Right Determination

- c. Any required variances have been obtained.
4. **Effect**
 - a. Applicable (see Section <>, Effect of Development Approval).
 - b. A vested rights determination shall be approved prior to issuance of a building permit.
5. **Amendment**

Amendment of vested rights determination may only be reviewed and considered in accordance with the procedures and standards established for its original approval.
6. **Expiration**
 - a. A vested right determination shall expire and become null and void:
 - i. If a building permit application for the development subject to the determination is not submitted within five years of the approval of the vested rights determination.
 - ii. Upon a finding by the Town Council after notice and a public hearing, that:
 - a). Natural or man-made hazards on or in the immediate vicinity of the land, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated; or
 - b). The landowner or landowner's representative intentionally supplied inaccurate information or made material misrepresentations which affected the approval; or
 - c). The landowner failed to comply with any condition imposed upon the establishment of the associated development.
 - iii. With the written consent of the affected landowner.
 - b. Upon enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the conditional use permit, major or minor site plan, preliminary plat, or minor subdivision plat, the Town Council may modify the affected provisions of the certificate by ordinance, if after conducting a hearing, it finds the changed conditions created by the change in the state or federal law have a fundamental effect.
7. **Appeal**
 - a. Any decision by the Town Council of a vested rights determination shall be subject to Superior Court of Carteret County review by proceedings in the nature of certiorari.
 - b. Appeal petitions must be filed with the Clerk of Court within 30 days of the date of the decision is filed in the office of Planning, Zoning, and Inspections.

Y. ZONING MAP AMENDMENT

1. Applicability

This section provides a uniform means for reviewing and deciding proposed amendments to the Official Zoning Map whenever the public necessity, general welfare, the Town's adopted policy guidance, or appropriate land use practices justify or require doing so.

2. Zoning Map Amendment Procedure

a. Pre-Application Conference

Applicable when a more intense zoning map designation is requested (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

i. Applicable (see Section <>, Application Submittal and Acceptance).

ii. Applications may be initiated by the Town Council or any person who may submit applications in accordance with Section <>, Authority to File Applications.

c. Staff Review and Action

i. Applicable (see Section <>, Staff Review and Action).

ii. The UDO Administrator shall prepare a staff report, and provide a recommendation in accordance with Section <>, Zoning Map Amendment Review Standards.

d. Public Notification

Applicable (see Section <>, Public Notification).

e. Review and Action by Decision-making Body

i. Applicable (see Section <>, Review and Action by Decision-Making Body).

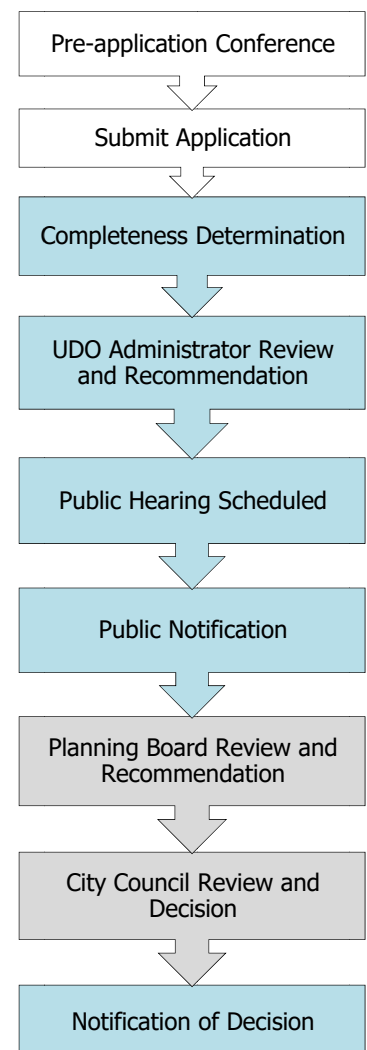
ii. During a public hearing meeting, the Planning Board shall review the application and make a recommendation in accordance with Section <>, Zoning Map Amendment Review Standards. The Planning Board shall comment on whether or not the text amendment is consistent with the Town's adopted policy guidance.

iii. After consideration of the application by the Planning Board, the Town Council shall conduct a public hearing on the application. The Town Council shall decide the application in accordance with Section <>, Zoning Map Amendment Review Standards. The decision shall be one of the following:

- a). Adoption of the zoning map amendment as proposed;
- b). Adoption of a revised zoning map amendment;
- c). Denial of the zoning map amendment; or
- d). Remand of the zoning map amendment application to the Planning Board for further consideration.

iv. In making its decision, the Town Council shall adopt a written statement of

FIGURE <> ZONING MAP AMENDMENT PROCEDURE



consistency and reasonableness that:

- a). Describes whether the decision is consistent with the Town's adopted policy guidance; and
- b). Explains why the decision is reasonable and in the public interest.

f. Designation on Official Zoning Map

The UDO Administrator shall make changes to the Official Zoning Map promptly after approval of a map amendment application by the Town Council.

3. Zoning Map Amendment Review Standards

The advisability of an amendment to the Official Zoning Map is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In determining whether to adopt or deny a proposed zoning map amendment, the Town Council may weigh the relevance of and consider the following:

a. Consistency with Adopted Plans

Whether and the extent to which the proposed zoning map amendment is appropriate for its proposed location, and is consistent with the purposes, goals, objectives, and policies of the Town's adopted policy guidance.

b. Reasonableness/Public Interest

Whether an approval of the zoning map amendment is reasonable and in the public interest.

4. Effect

Applicable (see Section <>, Effect of Development Approval).

5. Amendment

Amendment of an approved zoning map amendment may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

Z. ZONING PERMIT**1. Applicability**

Approval of a zoning permit is required for:

- a. Construction of a single-family detached dwelling on an individual lot;
- b. Additions, enlargements or expansions of a building footprint or outdoor use area (e.g. equipment storage); and
- c. Development that does not require a building permit).

2. Zoning Permit Procedure**a. Pre-Application Conference**

Optional (see Section <>, Pre-Application Conference).

b. Application Submittal and Acceptance

Applicable (see Section <>, Application Submittal and Acceptance).

c. Staff Review and Action

- i. Applicable (see Section <>, Staff Review and Action).
- ii. The UDO Administrator shall review and decide the application in accordance with Section <>, Zoning Permit Review Standards.

3. Zoning Permit Review Standards

A zoning permit shall be approved on a decision the application complies with:

- a. All standards or conditions of any prior applicable permits and developments approvals; and
- b. All applicable requirements of this Ordinance and in the Town Code of Ordinances.

4. Conditions of Approval

Applicable (see Section <>, Conditions of Approval).

5. Effect

Approval of a zoning permit authorizes an applicant to commence construction or move forward with the approved development.

6. Amendment

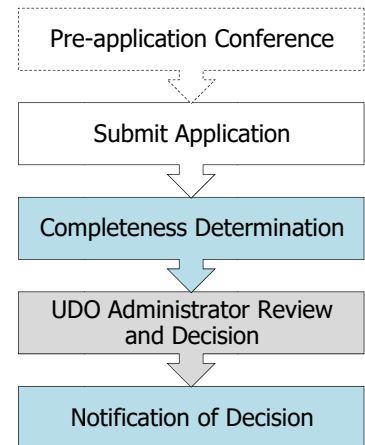
Amendment of a zoning permit may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

7. Expiration

A zoning permit shall expire and become null and void if development it authorizes is not commenced within 180 days of permit issuance.

8. Appeal

Appeals may be filed in accordance with the procedure in Section <>, Appeal.

FIGURE <> ZONING PERMIT PROCEDURE

ARTICLE 18-9. ENFORCEMENT

9-1

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18.9.2. Compliance Required 9-1

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KEY CHANGES IN UPDATED UDO

- Articles sets out a comprehensive list of violations of the Ordinance
- The enforcement procedures address complaint-driven and staff-initiated investigations
- It identifies the enforcement responsibilities of the UDO Administrator, Building Inspector, and Floodplain Administrator
- Includes a broad range of remedies and penalties, including remedies related to violations of sedimentation and erosion control provisions



ARTICLE 18-9. ENFORCEMENT

18.9.1. PURPOSE

This article establishes procedures through which the Town seeks to ensure compliance with the provisions of this Ordinance and obtain corrections for violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this article are intended to encourage the voluntary correction of violations, where possible.

18.9.2. COMPLIANCE REQUIRED

Compliance with all the procedures, standards, and other provisions of this Ordinance is required by all persons owning, developing, managing, using, or occupying land or structures in the Town.

18.9.3. VIOLATIONS

Any of the following activities shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided by this article and by State law.

A. DEVELOPMENT WITHOUT AUTHORIZATION

Engage in any development, use, construction, land disturbance, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required plans, permits, certificates, or other forms of authorization as set forth in this Ordinance.

B. DEVELOPMENT INCONSISTENT WITH AUTHORIZATION

Engage in any development, use, construction, land disturbance, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.

C. VIOLATION BY ACT OR OMISSION

Violate, by act or omission, any term, variance, modification, adjustment, condition, or qualification placed upon any required plan, permit, certificate, or other form of authorization for the development, use, construction, land disturbance, or other activity upon land or improvements thereon.

D. USE IN VIOLATION

Erect, construct, alter, repair, maintain or use any building or structure, or use any land in violation of this Ordinance or any regulation made under the authority conferred thereby.

E. SUBDIVIDE IN VIOLATION

Subdivide land in violation of this Ordinance or transfer or sell land by reference to a plat or map showing a subdivision of land before the plat or map has been properly approved under this Ordinance and recorded in the office of the Carteret County Register of Deeds. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction for violation this Ordinance.

F. CONTINUE A VIOLATION

Continuance of any violations in this section is a separate and distinct offense.

18.9.4. RESERVED

²⁴ This article replaces the enforcement and penalty standards in Section 4.5 of the current ordinance.

18.9.5. RESPONSIBLE PERSONS**A. GENERAL**

The landowner, tenant, or occupant of any land or structure, and an architect, engineer, builder, contractor, agent, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Ordinance may be held responsible for the violation and is subject to the remedies and penalties set forth in this article.

B. FAILURE BY TOWN DOES NOT RELIEVE INDIVIDUAL

Failure of a Town official charged with enforcement responsibility to observe or recognize conditions which violate the intent and purpose of this Ordinance, or to deny the issuance of a development or land disturbance permit, shall not relieve the landowner from responsibility for the condition or damages resulting therefrom and shall not result in the Town, its officers, or agents being responsible for conditions or damages resulting therefrom.

C. REMEDY UPON NOTICE

Upon notice of a violation, the landowner and any other responsible person shall immediately remedy the violation.

18.9.6. ENFORCEMENT GENERALLY**A. RESPONSIBILITIES****1. Building Inspector**

The Building Inspector is responsible for enforcing the provisions of this Ordinance pertaining to land disturbance, construction on private land, and the construction of public infrastructure.

2. Floodplain Administrator

The Floodplain Administrator is responsible enforcing the provisions of this Ordinance pertaining to flood damage prevention, soil erosion and sedimentation control, and the inspection of stormwater management devices.

3. UDO Administrator

The enforcement of the remaining provisions of this Ordinance are the responsibility of the UDO Administrator.

B. COMPLAINTS

Whenever the UDO Administrator receives a written, signed complaint alleging a violation of this Ordinance, they shall investigate the complaint and take action in accordance with the standards in this article.

C. INVESTIGATIONS

As appropriate, any of the staff members listed in **Section <>, Responsibilities**, has the power to conduct such investigation as may be deemed necessary to carry out their duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating any complaints or alleged violations of this Ordinance.

D. INSPECTIONS

As appropriate, any of the staff members listed in **Section <>, Responsibilities**, has the right upon presentation of proper credentials, or inspection warrant if necessary, to enter on any premises within the jurisdiction at any reasonable hour for the purposes of inspecting the sites of any complaints or alleged violations, or determination of compliance or other enforcement action of this Ordinance.

E. SUPPORTING DOCUMENTATION

As appropriate, any of the staff members listed in **Section <>, Responsibilities**, has the power to require written statements, certificates, certifications, or the filing of reports with the respect to pertinent questions relating to complaints or alleged violations of this Ordinance.

ARTICLE 18-9. ENFORCEMENT

Section 18.9.8. Enforcement Procedure

Subsection C. Failure to Comply With Order

F. INTERFERENCE

No person shall refuse entry or access to any authorized representative or agent of the Town who requests entry for purposes of inspection and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out their official duties.

18.9.7. ENFORCEMENT PROCEDURE

When the UDO Administrator, Building Inspector, or Floodplain Administrator, as appropriate, finds a violation of this Ordinance, it shall be their duty to notify the responsible persons of the violation.

A. NOTICE OF VIOLATION

If the landowner or occupant of the land, building, structure, sign, or use in violation fails to take prompt action, any of the staff members listed in Section <>, **Responsibilities**, as appropriate, shall give the owner or occupant written notice (by certified or registered mail to their last known address, by personal service, or by posting notice conspicuously on the property) of the following:

1. Violation Exists

That the land, building, structure, sign, or use is in violation of this Ordinance;

2. Nature of the Violation

The nature of the violation and citation of the section(s) of this Ordinance violated;

3. Remedy

The measures necessary to remedy the violation;

4. Allowable Time Period

The time period in which the violation must be corrected; except that no time period need be given for grading without a permit or interference with official duties;

5. Penalties That May Be Assessed

That penalties or remedies may be assessed; and

6. Appeal

That the party cited has the right to appeal the notice in accordance with Section <>, **Appeal**.

B. EMERGENCY SITUATIONS

In cases where delay would seriously threaten the effective enforcement of the Ordinance or pose a danger to the public health, safety, or welfare, the UDO Administrator may seek enforcement without first filing a written notice of violation.

C. FAILURE TO COMPLY WITH ORDER

If the owner or occupant of a property fails to comply with a notice of violation from which no appeal has been taken, or a final decision by the BOA following an appeal, the landowner or occupant shall be subject to such remedies and penalties as may be provided for by State law or by Section <>, **Remedies and Penalties**.

18.9.8. RESERVED

18.9.9. REMEDIES AND PENALTIES

The following are remedies and penalties available to address violations of this Ordinance.

A. CIVIL PENALTIES**1. Notice****a. Notification Required**

Civil penalties may not be assessed until the responsible person in violation has been notified in accordance with Section <>, Enforcement Procedure.

b. Civil Penalty Imposed

If after receiving a notice of violation under Section <>, Notice of Violation, the person fails to take corrective action or file an appeal, a civil penalty may be imposed in accordance with this section.

c. Notice of Penalty Assessment

Notice of the civil penalty assessment shall be served in the same manner as a notice of violation.

d. Assessment Contents

The assessment notice shall state the nature of the violation, the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within 15 days of the date of the notice.

e. Separate Notices

Separate notices must be provided for the first, second, third and fourth violations. After notice for the fourth violation, penalties may be assessed and accrue on a daily basis without any further notice to the property owner.

f. Assessment Until Compliance

Civil penalties may be assessed until compliance is achieved.

2. Continuing Violation

For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

3. Demand for Payment

If compliance is not achieved, then any of the staff members listed in Section <>, Responsibilities, as appropriate, shall make written demand for payment of penalties that have accrued while the property has been in violation. The demand for payment shall be sent to the responsible person in violation and must include a description of the violation for which the civil penalties have been imposed.

4. Nonpayment

If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the matter shall be referred to legal counsel to institute a civil action for recovery of the civil penalty. Moreover, if the civil penalty is not paid within the time prescribed, any of the staff members listed in Section <>, Responsibilities, as appropriate, may have a criminal summons or warrant issued against the violator. Upon conviction, the violator is subject to any criminal penalty the court may impose pursuant to Section 14-4 of the North Carolina General Statutes.

5. Fines**a. Fine Amount, Generally**

Any person who violates any provision of this Ordinance, except for soil and erosion control violations, shall be subject to assessment of a civil penalty in the amount of \$50.00 for the first violation, \$100.00 for the second violation, \$200.00 for the third violation, and \$500.00 for the fourth and each succeeding violation.

b. Fines for Soil Erosion and Sedimentation Control Violations

ARTICLE 18-9. ENFORCEMENT

Section 18.9.9. Remedies and Penalties

Subsection B. Conditional Permit or Temporary Certificate

Civil penalties for specific violations of Section <>, Soil Erosion and Sedimentation Control, are assessed as follows:

- i. **Grading Without Permit**
\$5,000 per day for failure to secure a valid land disturbance permit prior to conducting a land-disturbing activity for which a soil erosion and sedimentation control plan is required.
- ii. **Failure to Protect**
\$500 per day for failure to take all reasonable measures to protect public property or private property, including lakes and/or natural watercourses, from damage caused by land-disturbing activities.
- iii. **Failure to Follow Plan**
\$300 per day for failure to conduct a land-disturbing activity in accordance with the provisions of an approved soil erosion and sedimentation control plan.
- iv. **Failure to Install Devices**
\$500 per day for failure, when more than one acre is disturbed (\$250 per day when one acre or less is disturbed), to install erosion and sedimentation control devices sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract(s) and prevent off-site sedimentation.
- v. **Failure to Maintain Measures**
\$300 per day for failure to maintain satisfactory soil erosion and sedimentation control measures, structures and/or devices on the site that are designed to provide protection from the calculated maximum peak rate of runoff from the 10-year storm.
- vi. **Failure to Maintain Temporary Measures**
\$250 per day for failure to maintain temporary soil erosion and sedimentation control measures and facilities during the development of the site.
- vii. **Failure to Maintain Slopes**
\$250 per day for failure on graded slopes and fills to maintain an angle sufficient to retain vegetative cover or other adequate soil erosion and sedimentation control devices or structures.
- viii. **Failure to Cover Slopes**
\$250 per day for failure, within 7 days of completion of any phase of grading, to plant or otherwise provide exposed, graded slopes or fills with ground cover, devices, or structures sufficient to restrain erosion.
- ix. **Failure to Plant Cover**
\$250 per day for failure on a tract when more than one contiguous acre is disturbed, to plant or otherwise provide ground cover sufficient to restrain erosion within 14 days of completion of any phase of grading.
- x. **Failure to Revise Plan**
\$250 per day for failure to file an acceptable, revised soil erosion and sedimentation control plan after being notified of the need to do so.
- xi. **Failure to Maintain Buffer**
\$250 per day for failure to retain a buffer zone of sufficient width along a lake or natural watercourse to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity.
- xii. **Interference with Official Duties**
\$500 per day for obstructing, hampering, or interfering with any authorized agent of the Town or the NC Sedimentation Control Commission while in the process of carrying out their official duties.

ARTICLE 18-9. ENFORCEMENT

Section 18.9.9. Remedies and Penalties

Subsection F. Injunctive Relief

6. Use of Fines From Soil Erosion and Sedimentation Control

Civil penalties collected for soil erosion and sedimentation control violations must be used or disbursed as directed by Section 113A-64(a) of the North Carolina General Statutes.

B. CONDITIONAL PERMIT OR TEMPORARY CERTIFICATE

As appropriate, any of the staff members listed in Section <>, Responsibilities, shall condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security approved by appropriate governmental authority.

C. STOP WORK ORDERS

1. General

Whenever a building, structure, sign, or part thereof is being constructed, altered, repaired, moved, or demolished in violation of this Ordinance, any of the staff members listed in Section <>, Responsibilities, as appropriate, may order the work to be immediately stopped.

2. Order in Writing

The stop work order shall be in writing and directed to the landowner, occupant, or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed.

3. In Accordance with State Statutes or Building Code

Such action shall be in accordance with Section 160A-421 of the North Carolina General Statutes or the State Building Code.

D. REVOCATION OF PERMITS

1. As appropriate, any of the staff members listed in Section <>, Responsibilities, may revoke and require the return of a permit by notifying the permit holder in writing, stating the reason for the revocation.

2. Permits or certificates may be revoked for:

- a. Any substantial departure from the approved application, plans, or specifications;
- b. Refusal or failure to comply with the requirements of State or local laws;
- c. Making false statements or misrepresentations in securing the permit or certificate; or
- d. Issuance by mistake in violation of an applicable State or Town law.

E. CRIMINAL PENALTIES

1. Violation of Erosion and Sedimentation Control

Any person who knowingly or willfully violates any soil erosion and sedimentation control provision of this Ordinance, or rule or order adopted or issued pursuant to the soil erosion and sedimentation control provisions, or who knowingly or willfully initiates or continues a land-disturbing activity for which a soil erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, is guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed \$5,000, or both.

2. All Other Violations

Any violation of this Ordinance may be enforced as a misdemeanor as provided for by NCGS 14-4, subject to a maximum fine of \$500, and NCGS 113A-64, subject to a maximum fine of \$5,000.

F. INJUNCTIVE RELIEF

1. Action by Town Council

Whenever the Town Council has reasonable cause to believe that any person is violating or threatening to violate this Ordinance, or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an approved development plan, or soil

ARTICLE 18-9. ENFORCEMENT

Section 18.9.9. Remedies and Penalties

Subsection K. Remedies—Cumulative and Continuous

erosion and sedimentation control plan, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the Town, for injunctive relief to restrain, correct, abate, mandate, or enjoin the violation or threatened violation.

2. Superior Court

The action shall be brought in the Superior Court of Carteret County. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation.

3. No Relief from Criminal Penalties

The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

G. ORDER OF ABATEMENT

1. General

In addition to an injunction, the Town may apply for and the court may enter an Order of Abatement as part of the judgment in the case. An Order of Abatement may direct any of the following actions:

- a. That buildings or other structures on the property be closed, demolished, or removed;
- b. That fixtures, furniture, or other moveable property be moved or removed entirely;
- c. That improvements, alterations, modifications, or repairs be made; or
- d. That any other action be taken as necessary to bring the property into compliance with this Ordinance.

2. Lien

As appropriate, any of the staff members listed in **Section <>, Responsibilities**, may execute the Order of Abatement and have a lien placed on the property in the nature of a mechanic's and material man's lien for the cost of executing the order.

H. EQUITABLE REMEDY

The Town may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. The fact that other remedies are provided under general law or this Ordinance shall not be used by a violator as a defense to the Town's application for equitable relief.

I. STATE AND COMMON LAW REMEDIES

In addition to other enforcement provisions contained in this section, the Town Council may exercise any and all enforcement powers granted to it by state law or common law.

J. PREVIOUS ENFORCEMENT

Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions.

K. REMEDIES—CUMULATIVE AND CONTINUOUS

1. Cumulative Violations

All such remedies provided herein shall be cumulative. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

2. Repeat Violations

If a landowner or occupant repeats the same violation within a two-year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies.

**ARTICLE 18-10. DEFINITIONS &
MEASUREMENT**

10-1

18.10.1. General Rules for Interpretation.....10-1

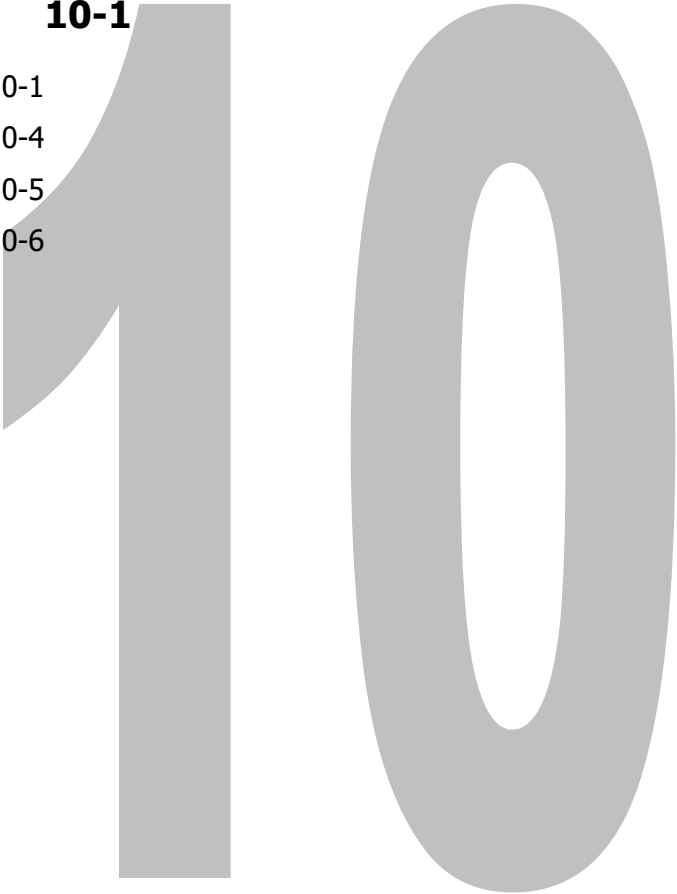
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KEY CHANGES IN UPDATED UDO

- Consolidates the rules of language construction
- Includes a table of abbreviations
- Consolidates the definitions into a single section
- Article will be amended with additional definitions with each additional module



ARTICLE 18-10. DEFINITIONS & MEASUREMENT

18.10.1. RULES OF LANGUAGE CONSTRUCTION

The following rules shall apply for construing or interpreting the terms and provisions of this Ordinance.

A. MEANINGS AND INTENT

1. All provisions, terms, phrases, and expressions contained in this Ordinance shall be interpreted in accordance with the general purposes set forth in Section <>, General Purpose and Intent, and the specific purpose statements set forth throughout this Ordinance.
2. When a specific section of these regulations gives a different meaning than the general definition provided in Section <>, Definitions, the specific section's meaning and application of the term shall control.
3. Terms that are not defined are subject to their common or customary meaning.

B. HEADINGS, ILLUSTRATIONS, AND TEXT

In the event of a conflict or inconsistency between the text of this Ordinance and any heading, caption, figure, illustration, table, or map, the text shall control. Graphics and other illustrations are provided for informational purposes only and should not be relied upon as a complete and accurate description of all applicable regulations or requirements.

C. LISTS AND EXAMPLES

Unless otherwise specifically indicated, lists of items or examples that use terms like "for example," "including," and "such as," or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

D. COMPUTATION OF TIME

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town, the deadline or required date of action shall be the next day that is not a Saturday, Sunday, or holiday observed by the Town.

E. TIME-RELATED LANGUAGE

1. **Time Standard**
Whenever certain hours are named, they shall mean standard time or daylight saving time as may be in current use in Atlantic Beach.
2. **Day**
The term "day" means a calendar day.
3. **Holiday**
The term "holiday" means a legal holiday recognized by the Town, State, or federal government.
4. **Month**
The term "month" means a calendar month.
5. **Year**
The term "year" means a calendar year.
6. **Temporary**
The term "temporary" shall mean a condition lasting for only a limited period of time; not permanent.

F. REFERENCES TO THIS ORDINANCE

ARTICLE 18-10. DEFINITIONS & MEASUREMENT

Section 18.10.1. Rules of Language Construction

Subsection Q. Term Not Defined

A reference to an article, section, subsection, or paragraph means an article, section, subsection, or paragraph of this Ordinance, unless otherwise specified.

G. REFERENCES TO OTHER REGULATIONS/PUBLICATIONS

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall be construed as a reference to the most recent edition of such regulation, resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.

H. REFERENCES TO NORTH CAROLINA GENERAL STATUTES

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

I. DELEGATION OF AUTHORITY

Whenever a provision of this Ordinance requires or authorizes an officer or employee of the Town to do some act or perform some duty, the officer or employee may designate, delegate, and authorize subordinates to perform the act or duty unless the terms of the provision specifically provide otherwise

J. JOINT AUTHORITY

All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

K. TECHNICAL AND NON-TECHNICAL TERMS

Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

L. PUBLIC OFFICIALS AND AGENCIES

All public officials, bodies, and agencies to which references are made are those of the Town of Atlantic Beach, unless otherwise indicated.

M. MANDATORY AND DISCRETIONARY TERMS

The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may," "can," and "should" are permissive in nature.

N. CONJUNCTIONS

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

1. "And" indicates that all connected items, conditions, provisions or events apply.
2. "Or" indicates that one or more of the connected items, conditions, provisions, or events apply.

O. TENSES, PLURALS, AND GENDER OF WORDS

1. Tense

Words used in the past or present tense include the future tense as well as the past and present.

2. Number

Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise.

3. Gender

Words used in the masculine gender include the feminine gender and the neuter, and vice versa.

P. OATH

The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in like cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."

Q. TERM NOT DEFINED

If a term used in any chapter of this Ordinance is not defined, the UDO Administrator is authorized to provide a definition in accordance with **Section <>, Interpretation**, based upon the definitions used in professionally accepted sources.

18.10.2. RULES OF MEASUREMENT

[Rules of Measurement will be included in Modules 2 & 3.]

Section 18.10.4. Table of Abbreviations

Subsection Q. Term Not Defined

18.10.3. TABLE OF ABBREVIATIONS

Table <>, Abbreviations, includes the abbreviations and their corresponding terms as used in this Ordinance.

TABLE 18.10.3: ABBREVIATIONS	
ABBREVIATION	ASSOCIATED TERM
AEC	Area of Environmental Concern
BFE	Base Flood Elevation
BOA	Board of Adjustment
CAMA	Coastal Area Management Act
CB	Community Business District
CDD	Circle Development District
COD	Causeway Overlay District
CRC	Coastal Resource Commission
DCM	Division of Coastal Management
DEQ	North Carolina Department of Environmental Quality
DOT	North Carolina Department of Transportation
ETJ	Extra-Territorial Jurisdiction
GB	General Business District
NC	North Carolina
NCAC	North Carolina Administrative Code
NCGS	North Carolina General Statutes
RMU	Resort Mixed Use District
RS	Resort Service District
TRC	Technical Review Committee
UDO	Unified Development Ordinance

18.10.4. RESERVED

ARTICLE 18-10. DEFINITIONS & MEASUREMENT**Section 18.10.5. Definitions****TERM****18.10.5. DEFINITIONS**

This section includes definitions of terms used throughout the UDO. Use classifications, use categories, and use types are defined in [Section <>, Use Classifications, Categories, and Types](#).

TERM	DEFINITION
A	
ACCESSORY BUILDING	A detached building, the use of which is incidental to that of the principal building and which is located on the same lot as the principal building.
ACCESSORY STRUCTURE	A detached subordinate or incidental structure, the use of which is incidental to the principal structure and which is located on the same lot as the principal structure.
ACCESSORY USE	A use that is incidental, appropriate, and subordinate to the principal use of land or buildings and located on the same lot.
ADDITION	See "Expansion."
ADOPTED POLICY GUIDANCE	The combined future land-use policy guidance provided by the adopted CAMA Land Use Plan, area plans prepared for specific parts of the Town, and system plans related to the Town's infrastructure systems.
AFFECTED PARTY	Owners of land adjoining the land subject to an application and any other person who could suffer an adverse effect to a property interest from a proposed development.
AGGRIEVED PARTY	A person, with a legally recognized interest (i.e., fee simple ownership) and standing to appeal, that is injuriously affected by a decision from any decision-making body of the Town, including any officer or agent of the Town.
ALTERATION	Any change or expansion in the size, configuration, or location of a structure; or any change or expansion in the use of a structure or lot, from a previously approved or legally existing size, configuration, location, or use.
APPLICANT	A person who has submitted a development application for review under applicable provisions of this Ordinance.
APPLICATION	The completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by the appropriate Town department or board as part of the development review processes.
AREA OF ENVIRONMENTAL CONCERN	Areas of natural importance including estuarine and ocean areas, areas where public water supplies originate, marshes, wetlands, and other natural and cultural resource areas identified by the Coastal Resources Commission as areas that could be damaged by uncontrolled development.
AS-BUILT PLANS	A set of engineering or site drawings that delineate the specific permitted development as actually constructed.
AUTHORIZED AGENT	A person with express written consent to act upon another's behalf.
B	
BASE FLOOD	The flood having a one percent (1%) chance of being equaled or exceeded in any given year.
BASE FLOOD ELEVATION	A determination of the water surface elevations of the base flood as published in the flood insurance study.
BOARD OF ADJUSTMENT	A decision-making body responsible for hearing appeals, variance requests, and conditional use permits in Atlantic Beach, NC
BUILDING	A structure having a roof supported by walls or columns constructed or used for residence, business, industry, or other public or private purposes.
BUILDING INSPECTOR	The professional staff member responsible for inspecting new construction and issuing building permits, certificates of occupancy, and land disturbance permits.
C	

ARTICLE 18-10. DEFINITIONS & MEASUREMENT**Section 18.10.5. Definitions**

CAMA

TERM	DEFINITION
CAMA	North Carolina's Coastal Area Management Act. This act, along with the Dredge and Fill Law and the federal Coastal Zone Management Act, is managed through North Carolina Department of Environmental Quality's (NCDEQ's) Division of Coastal Management (DCM).
CHANGE OF USE	The change in the use of a structure or land. Change of use includes a change from one use type to another use type.
CONDITION (OF APPROVAL)	A limitation or stipulation on the range of allowable uses, density, intensity, configuration, or operational parameters of new development or redevelopment. A condition may be proposed by an applicant, a staff member, or an advisory or decision-making body that must be accepted by an applicant to become binding.
CORPORATE LIMITS	The legal name that refers to the boundaries of a municipal corporation.
CONSTRUCTION PLANS	Drawing and specifications prepared by a qualified person showing buildings, structures, utilities, infrastructures, and site configuration aspects associated with development.
COUNTY	Carteret County, North Carolina.
COVENANT	A binding written agreement between two or more private parties regarding the use, occupancy, or configuration of development.
D	
DEED RESTRICTION	A written private agreement that restricts the use, occupancy, or configuration placed upon the title of real estate often by the developer.
DEVELOPER	A person engaging in land, site, or building development.
DEVELOPMENT	Any manmade change to improved or unimproved real estate, including but not limited to: buildings or other structures; mining; dredging; filling; grading; paving; excavation; drilling operations; or storage of equipment or materials.
E	
EASEMENT	The right to use or temporarily occupy the real property of another owner for a specifically identified purpose. An easement is a recognized interest in real property, but legal title to the underlying land is retained by the owner granting the easement.
ELEVATION CERTIFICATE	A written certificate of the elevation of a building or structure located in a special flood hazard area used to determine the proper flood insurance premium rate for the building.
EX PARTE COMMUNICATION	Any communication between a member of a decision-making body and a person involved in a development application that is made without the presence or knowledge of the other members of the same decision-making body.
EXPANSION	An increase in the floor area of an existing structure or building, or the increase of area of a use.
F	
FEE	An amount charged in accordance with the regularly adopted fee schedule of the Town.
FINAL PLAT	A plan or drawing recorded in the office of the register of deeds that identifies the metes and bounds as well as all applicable conditions applied to a lot or group of lots that have been subdivided.
FINE	A sum of money imposed on a violator as punishment for violation of law.
FLOODPLAIN	Any land area susceptible to being inundated by water from the base flood.
FLOODPLAIN ADMINISTRATOR	The professional staff member responsible for inspecting stormwater management practices, floodplain development permits, and elevation certificates.
FUNCTIONALLY-DEPENDENT FACILITY	A facility or structure that cannot be used for its intended purpose unless it is located within or in close proximity to water, such as a dock, port, or use type associated with the operation of boats.

ARTICLE 18-10. DEFINITIONS & MEASUREMENT**Section 18.10.5. Definitions**

G

TERM	DEFINITION
G	
GENERAL ASSEMBLY	The General Assembly for the State of North Carolina. Also referred to as the Legislature.
GENERAL STATUTES	A statute is a written law passed the General Assembly that sets forth general propositions of law that courts apply to specific situations.

H**I**

IMPROVEMENT	The construction of buildings and the establishment of basic services and amenities associated with development, including, but not limited to streets and sidewalks, parking areas, water and sewer systems, drainage system, property markers and monuments, recreation facilities (i.e., lakes, swimming pools, tennis courts, golf courses, club houses, cabanas, marinas, docks and the like) and other similar construction or establishment.
INFILL	The process of developing vacant or under-used parcels within existing developed areas that are already largely developed.
INTERPRETATION	A determination, made in writing, by the UDO Administrator regarding the proper application of provisions in the UDO, the boundaries on the Official Zoning Map, or a prior-approved condition of approval.

J

JOINT PUBLIC HEARING	A lawfully noticed and conducted public hearing regarding a development application conducted by the Town Council and the Planning Board.
JUST CAUSE	Legitimate cause; legal or lawful ground for action.

K**L**

LAND DISTURBANCE	Any movement of earth or substrate, manually or mechanically, including but not limited to any modification of existing grade by dredging, demolition, excavation or fill, grading, scraping, vegetation removal, landscaping, coring, well drilling, pile driving, undergrounding utility lines, trenching, bulldozing, sheeting, shoring and excavation for laying or removing foundations, pilings or other purposes.
LANDOWNER	As applied to the standards related to vested rights, an owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of the owner.
LOT	A legally described piece of contiguous land that has been or may be developed as a unit. This term is synonymous with "parcel."

M

MINIMUM HOUSING CODE	Article 6 of Chapter 6 of the Town's Code of Ordinances titled "Minimum Housing Standards."
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N

NEIGHBORHOOD MEETING	A meeting conducted by an applicant on a proposed development before an application for the development permit or approval is submitted or upon request by the Town Council.
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ARTICLE 18-10. DEFINITIONS & MEASUREMENT**Section 18.10.5. Definitions**

New Construction

TERM	DEFINITION
NEW CONSTRUCTION	As used in the flood damage prevention standards, structures for which the start of construction commenced on or after the effective date of the flood damage prevention standards.
NONCONFORMITY	Any land use, development, structure, or site, including any lot of record, that was legally established, but that is not presently in full compliance with the provisions of this Ordinance.
NOTICE OF VIOLATION	A notice indicating a violation of this Ordinance not associated with a fine.
O	
OCCUPANCY	The act, state, or condition of holding, possessing, residing, or otherwise using a premises, lot, site, building, or dwelling.
OFFICIAL ZONING MAP	The Official Zoning Map upon which the boundaries of various zoning districts are drawn and which is an integral part of this Ordinance.
OPEN SPACE	Areas of land free from buildings, structures, or encumbrances, as well as lands with buildings or structures devoted to active or passive recreational purposes.
ORDINANCE	A legislative enactment of the Town of Atlantic Beach, North Carolina.
OWNER	One who has legal title or right to something. An owner shall include any part owner or joint owner.
P	
PARCEL	See "Lot."
PENALTY	Punishment for violation of a law or rule.
PERFORMANCE GUARANTEE	Cash or other guarantee provided by an applicant in-lieu of completion of public infrastructure or installation of required private site features prior to issuance of a building permit or other development approval.
PERSON	Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, or public or private institution, utility, cooperative, interstate body, or other legal entity.
PERSONAL PROPERTY	All forms of property, except real property.
PLAT	A surveyed map or plan for a parcel of land which is to be, or has been, subdivided.
PLANNING BOARD	An advisory or decision-making body responsible for decisions on preliminary plat applications, review and recommendations on UDO text and Official Zoning Map amendments and development agreements. The Planning Board also makes special studies of land use and assists in the preparation and revision of the Land Use Plan.
PRE-APPLICATION CONFERENCE	A meeting or conference conducted by a potential applicant for a permit or development approval and the Technical Review Committee for the purposes of discussing a potential application or Town rules regarding development.
PRELIMINARY PLAT	A drawing or plan showing the proposed organization of lot boundaries, streets, public infrastructure, open space, and other site configuration features associated with a proposed development including two or more lots.
PRINCIPAL USE	A primary or predominate use of a lot or parcel.
PROPERTY OWNER	See "Landowner."
PUBLIC HEARING, QUASI-JUDICIAL	A formal public hearing involving the legal rights of specific parties conducted by the Town Council or the Board of Adjustment based on evidence and sworn testimony presented during the public hearing. Decisions made during such hearings are based upon and supported by the record developed at the hearing, and typically involve findings of fact made by the decision-making body.
PUBLIC INFRASTRUCTURE	Infrastructure or facilities (such as water lines, streets, storm drainage, sidewalks, trails, etc.) owned by the public and intended for use by the public.

ARTICLE 18-10. DEFINITIONS & MEASUREMENT**Section 18.10.5. Definitions**

Q

TERM	DEFINITION
Q	
QUORUM	The minimum number of board or commission members that must be present in order to conduct official business or take official action.
R	
RE-DIRECT EXAMINATION	As used in quasi-judicial public hearings, redirect examination is the process by which the party who offered a witness has a chance to explain or otherwise qualify any damaging or accusing testimony brought out by the opponent during cross-examination. Redirect examination may question only those areas brought out on cross-examination.
RE-CROSS EXAMINATION	As used in quasi-judicial public hearings, re-cross examination is the resumption of cross-examination by the original cross-examiner in order to respond to matters that may have arisen during the re-examination of a witness.
REAL PROPERTY	All land, structures, firmly attached and integrated equipment (such as light fixtures or a well pump), anything growing on the land, and all "interests" in the property which may be the right to future ownership (remainder), right to occupy for a period of time (tenancy or life estate) the right to drill for oil, the right to get the property back (a reversion) if it is no longer used for its current purpose, use of airspace, or an easement across another's property.
REDEVELOPMENT	Installation of any improvements, new construction, or reconstruction on a lot or site that has pre-existing uses.
REGISTER OF DEEDS	A public officer designated by Carteret County to register documents, mainly related to real estate. The register of deeds verifies mortgage ownership and property ownership, such as houses and land, in official record books.
REMEDY	The manner in which a right or law is enforced or satisfied by the Town or a court when a violation of the UDO or related law has occurred.
RESOLUTION	The official written expression of the opinion or the will of the Town Council.
S	
SIGN	An object, device, display, or structure, or part thereof, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including but not limited to words, letters, pennants, banners, emblems, trademarks, trade names, insignias, numerals, figures, design, symbols, fixtures, colors, illumination, or projected images or any other attention directing device.
SPECIAL FLOOD HAZARD AREA	The land area anticipated to be covered by the floodwaters associated with the base flood event.
STATE BUILDING CODE	A series of ordinances enacted by the General Assembly and State Building Code Council that establish the minimum requirements that must be met in the construction and maintenance of buildings and structures.
STRUCTURE	Any material constructed, erected or placed in or upon the ground, including buildings.
SUBDIVIDER	A person who subdivides land.

ARTICLE 18-10. DEFINITIONS & MEASUREMENT**Section 18.10.5. Definitions**

Subdivision

TERM	DEFINITION
SUBDIVISION	<p>A division of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new street or a change in existing streets.</p> <p>The following are not included within this definition and are not subject to any subdivision regulations in this Ordinance:</p> <ol style="list-style-type: none"> The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this Ordinance. The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved. The public acquisition by purchase of strips of land for the widening or opening of streets. The division of a tract in single ownership, the entire area of which is not greater than two acres, into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this Ordinance.
SUBORDINATE	A staff member designated to fulfill the function of the UDO Administrator, Building Inspector, or Floodplain Administrator, as appropriate.
SUPERIOR COURT	The Superior Court for Carteret County, North Carolina.
T	
TECHNICAL REVIEW COMMITTEE	A group of Town staff members and others associated with development review in the County who decides applications for minor site plans, final plats, and minor subdivisions. The TRC reviews and makes a recommendation on applications for conditional use permits, development agreements, major site plans, and preliminary plats. The TRC also conducts pre-application conferences.
TEMPORARY USE PERMIT	A permit authorizing the operation of a temporary use or special event.
TEXT AMENDMENT	An amendment to the language of this Ordinance.
TOWN	The Town of Atlantic Beach, North Carolina.
TOWN ATTORNEY	The Town official responsible for advising the Town Manager, Town Council, and Town staff on legal matters.
TOWN CLERK	The Town official responsible for maintaining official Town records.
TOWN COUNCIL	The duly elected and sworn members of the Town Council of Atlantic Beach, North Carolina.
TOWN MANAGER	The Town executive responsible for the day-to-day operation of the Town of Atlantic Beach, North Carolina.
U	
UDO ADMINISTRATOR	The Town official responsible for interpretation and enforcement of the UDO text and the Official Zoning Map as well as serving as the Chair of the Technical Review Committee.
V	
VESTED RIGHT	A development right that cannot be changed or altered by changes in regulation.
VIOLATION	A breach, infringement, or transgression of a law or requirement in this Ordinance or a permit or development approval.
W	

ARTICLE 18-10. DEFINITIONS & MEASUREMENT

Section 18.10.5. Definitions

TERM	DEFINITION
	X
	Y
	Z

**ZONING MAP,
OFFICIAL**

See "Official Zoning Map."

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