

Chapter 2: - ADMINISTRATION

2.1 - SUMMARY PROCEDURES TABLE

The various types of approvals required for the administration of this Ordinance, the review and decision-making bodies responsible for each type of approval, the appeals bodies assigned to hear various types of appeals, requirements for public hearings, and public notice required for various types of approvals are summarized in Table 2.1 and explained in more detail in the remaining sections of this Chapter 2. In the event of any inconsistency between Table 2.1 and other provisions of this Chapter 2, the other provisions shall govern.

**TABLE 2.1: SUMMARY PROCEDURES TABLE**

**R = REVIEW BODY; D = DECISION-MAKING BODY; A = APPEALS BODY; /H = PUBLIC HEARING REQUIRED**

**N = NEWSPAPER NOTICE-SEC. 2.3.4(2); M = MAILED NOTICE- SEC. 2.3.9(3); P = POSTED NOTICE -SEC. 2.3.9(4)**

APPLICATION TYPE	REVIEW, DECISION-MAKING, AND APPEAL BODIES				PUBLIC NOTICE REQUIRED
	STAFF	PLANNING BOARD	BOARD OF ADJUSTMENT	BOARD OF COMMISSIONERS	
Zoning Text Amendment (Section 2.4.1)	R	R		D/H	N
Official Zoning District Map Amendment (Section 2.4.1)	R	R		D/H	N, M, P
Conditional Rezoning (Section 2.4.2)	R	R		D/H	N, M, P
Planned Unit Developments (Section 2.4.3)	R	R		D/H	N, M, P
Special Use Permit (Section 2.4.4)	consult			D/H	N, M,P
Subdivision of Land (Section 2.4.5)					
Sketch Plan	consult	R			

Preliminary and Final Plat	R	R		D	
<b>Special Plat Approval (Section 2.4.6)</b>					
<b>Preliminary and Final Plat</b>	R	R		D	
<b>Mobile Home Park or Recreational Vehicle Park Permit (Section 2.4.7)</b>	R	R		D	
<b>Commercial Plan Review (section 2.4.8)</b>					
Over 1000 sq. ft.	R	R		D	
Under 1000 sq. ft.	D		A		
<b>Stormwater Plan and Permit (Section 2.4.10)</b>	D,R	R	A	D	
<b>Variance (Section 2.4.17)</b>	R		D/H		N, M, P
<b>Floodplain Development Permit (Section 2.4.9)</b> Dunes and Vegetation Permit (Section 2.4.11) <b>Sign Permit (Section 2.4.12)</b>	D		A		
<b>Wireless Telecommunications Permit (Section 2.4.13)</b>	D	R	A	D	N,M,P
<b>Statutory Vested Rights (Section 2.4.14)</b>	Same as for Underlying Application				
<b>Zoning Permit (Section 2.4.15)</b>	D		A		
<b>Building Permit (Section 2.4.16)</b>	D		A		

## 2.2 - DECISION-MAKING AND ADMINISTRATIVE BODIES

### 2.2.1 - Board of Commissioners

In order to exercise the authority granted the Board of Commissioners by state law, the Board of Commissioners shall have the following powers and duties:

(1) **Powers and Duties**

To initiate, review, and decide applications for the following:

- (A) Amendments to the text of this Development Ordinance;
- (B) Amendments to the Official Zoning District Map;
- (C) Planned Development Master Plans;
- (D) Special Use Permits; and
- (E) Vested Rights Determinations
- (F) Subdivisions;
- (G) Special Plat Approvals;
- (H) Mobile Home Park or Recreational Vehicle Park Permit;
- (I) Commercial Architectural Review; and
- (J) Commercial Plan Review (over one thousand (1,000) sq. ft).

(2) **Schedule of Fees**

To approve by resolution a schedule of fees governing applications for permits and other permit approvals reviewed under this Ordinance.

(3) **Other Actions**

To take any other action not delegated to the Planning Board, Board of Adjustment, the Planning Director, or other decision-making body as the Board of Commissioners may deem desirable and necessary to implement the provisions of this Ordinance.

### 2.2.2 - Planning Board

(1) **Creation**

A Planning Board for the Town is hereby created under the authority of the North Carolina General Statutes.

(2) **Membership**

- (A) The Town Planning Board (referred to as the "Planning Board") shall consist of seven (7) permanent residents of the Town. The initial members of the Planning Board shall serve staggered terms. Appointments at the expiration of the terms of office for the initial members shall be for a term of two (2) years each. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term.
- (B) Appointments to the Planning Board shall be made by the Board of Commissioners. A member of the Planning Board may be removed by a majority vote of the Board of Commissioners, upon a finding by a majority of the Board of Commissioners that:
  - (i) The appointed member has missed three (3) consecutive meetings (special or regular or a combination of both) without the member being excused for his absence by a majority vote of the Planning Board. Absences due to sickness, death, or other

emergencies of like nature shall be regarded as approved absences, and the Planning Board shall vote on other excuses and justifications of the member for his absence; or

- (ii) Prolonged illness or absence, whether excused or not; or
- (iii) The appointed member has voted on an issue that represents a conflict of interest for the Planning Board member so voting; or
- (iv) The Board of Commissioners determines that removal is in the best interest of the Town.

**(3) Organization; Rules; Meetings; Records**

- (A) The Planning Board shall meet and elect a chairman, vice-chairman, and such other officers as they may determine necessary to fill. The term of the chairman and other officers shall be one (1) year, with eligibility for reelection. It shall adopt rules for the transaction of business and shall keep a record of its members' attendance and all resolutions, discussions, findings, and recommendations, which records shall be a public record. Robert's Rules of Order shall be followed and adhered to by the Planning Board in the conduct of its business. Four (4) Planning Board members present shall constitute a quorum.
- (B) The Planning Board shall hold a minimum of one (1) regular meeting monthly which shall be on a designated day of each month. Other regular and special meetings of the Planning Board shall be held at the call of the chairman or upon the written request of any two (2) members of the board. The regular meeting of the Planning Board may be cancelled upon concurrence of the Chairman and the Planning Director if doing so is in the best interest of the Board.

**(4) Powers and Duties**

The powers and duties of the Planning Board are as follows:

- (A) Make studies of the area within its jurisdiction and surrounding areas;
- (B) Determine objectives to be sought in the development of the study area;
- (C) Prepare and recommend to the Board of Commissioners a Land Use Plan for achieving these objectives;
- (D) Develop and recommend policies, ordinances, and administrative procedures; and other planning-related duties.
- (E) Advise the Board of Commissioners concerning the use and amendment of means for carrying out the comprehensive plan;
- (F) Review and advise the Board of Commissioners on all proposed plats of land subdivision;
- (G) Review and advise the Board of Commissioners on all requests of rezoning of property;
- (H) Report monthly to the Board of Commissioners; and
- (I) Perform any other related duties that the Board of Commissioners may direct.

**(5) Conflict of Interest**

A Planning Board member shall abstain from voting on any matter in which the member has a direct or indirect financial interests, or in which the applicant or any related party with a material role in the proposed development is related to the Planning Board member by blood or marriage, or in any other situation defined as a conflict of interest by the laws of North Carolina.

**(6) Compensation**

All members of the Planning Board may be compensated from time to time as deemed appropriate by the Board of Commissioners.

### 2.2.3 - Board of Adjustment

(1) **Designation of Planning Board as the Board of Adjustment**

The Planning Board is hereby authorized to perform all of the duties of a Board of Adjustment as provided under the authority of the North Carolina General Statutes.

(2) **Organization; Rules; Meetings; Records**

All meetings of the Planning Board acting as the Board of Adjustment shall be held at a regular place and shall be open to the public. The Board shall adopt rules governing its organization and for all proceedings before it. Final disposition of appeals shall be by recorded resolution indicating the reasons of the Board thereafter, all of which shall be a public record. No final action shall be taken on any matter unless a quorum is present. A quorum for the Planning Board acting as the Board of Adjustment shall consist of six (6) members.

Appeals from the enforcement and interpretation of this chapter and requests for variances shall be filed with the Planning Director specifying the grounds for the appeal. The Planning Director shall transmit to the Planning Board (acting as the Board of Adjustment) all applications and records pertaining to such appeals or variances. The Planning Board (acting as the Board of Adjustment) shall fix a reasonable time for the hearing of the appeal, and shall give the public notice thereof, published in a newspaper of general circulation in the town at least once each week for two (2) successive weeks prior to the hearing. An appeal stays all proceedings in furtherance of the action appealed from, unless the Planning Director certifies to the Planning Board (acting as the Board of Adjustment) that by reason of facts stated in the record a stay would, in his opinion, cause imminent peril to life and property, in which case proceedings shall not be stayed otherwise than by an order from the Superior Court of Carteret County.

(3) **Powers and Duties**

The Planning Board, acting as the Board of Adjustment, shall have the following powers and duties:

(A) **Appeal of Administrative Decisions and Interpretations**

To hear and decide appeals where it is alleged that there is an error in (1) an order, requirement, decision, or determination pursuant to this Unified Development Ordinance, made by the Planning Director, or (2) an interpretation of this Unified Development Ordinance, made by the Planning Director. A simple majority vote of the members of the Board present for the hearing of a particular case shall be necessary to reverse any order, requirement, decision, or determination of the Planning Director, or to decide in favor of the applicant any matter that it is required to pass under the Unified Development Ordinance.

(B) **Interpretation of Zoning Map**

To interpret the location of lines on the Official Zoning District Map where they appear to be unclear. Interpretations shall comply with the following criteria:

- (i) Boundaries delineated by the centerline of streets, highways, or alleys shall follow such centerlines.
- (ii) Boundaries delineated by lot lines shall follow such lot lines.
- (iii) Boundaries shown parallel to or as extensions of features indicated in this subsection shall be interpreted as such. Distances not specifically indicated on the Official Zoning District Map shall be determined by the scale of the map.
- (iv) Where the actual location of existing physical or natural features vary from those shown on the Official Zoning District Map, or in other circumstances not covered by

this subsection, the Planning Director shall have the authority to interpret the district boundaries.

(C) **Variances**

To grant variances from the terms of this Ordinance pursuant to section 2.4.17, Variances. The concurring vote of four-fifths ( $\frac{4}{5}$ ) of the members of the Board present for the hearing of a particular case shall be necessary to affect any variance in the Unified Development Ordinance.

(D) **Appeals**

Appeals of the decisions of the Planning Board, acting as the Board of Adjustment, shall be to the Carteret County Superior Court, pursuant to G.S. Ch. 7A.

(Ord. of [6-13-17\(1\)](#), § 1)

2.2.4 - Staff

(1) **Planning Director**

The Planning Director is generally responsible for administration of this Unified Development Ordinance, and serves as the zoning administrator for the Town, except in cases where specific authority for the implementation of this Ordinance has been specifically delegated to another Town official or body. The Planning Director shall serve as secretary to the Planning Board, both for Planning Board and Board of Adjustment deliberations.

(2) **Code Enforcement Officer**

The code enforcement officer is sometimes referred to as the "building official" or the "building inspector", and is generally responsible for administration and enforcement of the building code and for any portions of this Unified Development Ordinance that have been specifically delegated to him or her.

(3) **Dunes and Vegetation Protection Inspector**

A representative from the planning and inspections department (the "dunes and vegetation protection inspector") is hereby appointed to administer and implement the provisions of this Ordinance related to section 6.4, Dunes and Vegetation Protection.

(4) **Stormwater Administrator**

(A) **Designation of Stormwater Administrator**

A Stormwater Administrator shall be designated by the Town Manager to administer and enforce the provisions of this Ordinance related to section 6.4, Stormwater Management. In addition to the powers and duties conferred by other provisions of this development ordinance and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance.

(B) **Duties and Responsibilities**

- (i) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- (ii) To make determinations and render interpretations of stormwater management regulations of this development ordinance.
- (iii) To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the board of Commissioners on applications for development or redevelopment approvals.

- (iv) To enforce the provisions of the stormwater management regulations of this ordinance in accordance with its enforcement provisions.
- (v) To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of the stormwater management regulations of this development ordinance.
- (vi) To provide expertise and technical assistance to the Board of Commissioners upon request.
- (vii) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- (viii) To take any other action necessary to administer the stormwater management provisions of this development ordinance.

(5) **Floodplain Administrator**

**(A) Designation of Floodplain Administrator**

The Town Planner/Planning Director hereinafter referred to as the "floodplain administrator" is hereby appointed to administer and implement the provisions of this Ordinance related to floodplains. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement the provisions of this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

**(B) Duties and Responsibilities**

Duties of the floodplain administrator shall include, but not be limited to:

- (i) Review all floodplain development applications and issue permits for all proposed development within flood prone areas to assure that the requirements of the flood damage prevention regulations have been satisfied.
- (ii) Advise permittee that additional federal or state permits (i.e., wetlands, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.) may be required, and if specific federal or State permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit.
- (iii) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (iv) Assure that maintenance is provided within the altered or relocated portion of any watercourse so that the flood-carrying capacity is not diminished.
- (v) Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of sections 6.2.4(2) and 6.2.4(5) are met.
- (vi) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with section 2.4.9(3).
- (vii) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with section 2.4.9(3).

- (viii) Obtain actual elevation (in relation to mean sea level) of all public utilities, in accordance with section 2.4.9(3).
- (ix) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with sections 2.4.9(3) and 6.2.4(2)(B).
- (x) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation.
- (xi) When base flood elevation (BFE) data has not been provided in accordance with section 6.2.3(2), obtain, review, and reasonably utilize any base flood elevation (BFE) data, along with floodway data and/or non-encroachment area data available from a federal, state, or other source.
- (xii) When the exact location of boundaries of the special flood hazard areas conflict with the current, natural topography information at the site, the property owner may apply and be approved for a letter of map amendment (LOMA) by FEMA. A copy of the letter of map amendment issued from FEMA will be maintained by the floodplain administrator in the floodplain development permit file.
- (xiii) Permanently maintain all records that pertain to the administration of flood-related regulations and make these records available for public inspection. This includes maintaining records of all appeal actions and reporting of any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (xiv) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of this Ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (xv) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of the flood damage prevention regulations in this Ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (xvi) Revocation of floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.
- (xvii) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper

credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(xviii) Follow through with corrective procedures described in sections 9.3.3 and 9.5.1.

(xix) Review, provide input, and make recommendations for variance requests.

(xx) Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of Section 6.2.3 of this ordinance, including the revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

(Ord. of [6-13-17\(1\)](#), § 2)

## 2.3 - COMMON REVIEW PROCEDURES

### 2.3.1 - General

The Town may from time to time establish regulations or guidelines related to the following topics, and such regulations or guidelines shall govern all applications under this Unified Development Ordinance after their adoption:

- (1) Authority to File Applications;
- (2) Application Contents;
- (3) Application Review Procedures and Schedules;
- (4) Application and Review Fees;
- (5) Pre-Application Conference Requirements; and
- (6) Determinations of Application Completeness.

### 2.3.2 - Incomplete Applications

The Planning Director may refuse to process any application that the Planning Director determines to be incomplete unless and until the applicant has submitted any missing information or materials. If the Planning Director determines that an application is incomplete he or she shall notify the applicant of the specific missing information or materials.

### 2.3.3 - Public Hearing(s)

A public hearing shall be required in those cases shown in Table 2.1, and shall be scheduled so that required public notifications subject to section 2.3.4 can be completed.

### 2.3.4 - Public Notification

#### (1) **Content**

All notice required under this Ordinance shall comply with North Carolina General Statutes. In addition, all notices shall, unless otherwise specified in this Ordinance:

- (A) Identify the date, time, and place of the public hearing;

- (B) Describe the land involved by street address or by legal description and nearest cross street (if applicable);
- (C) Describe the nature, scope, and purpose of the proposed action;
- (D) Indicate that interested parties may appear at the hearing and speak on the matter; and
- (E) Indicate where additional information on the matter may be obtained.

(2) **Newspaper Notice**

When the provisions of this Ordinance or the provisions of North Carolina General Statutes require that notice of a development application be published in a newspaper, the Planning Director shall publish the notice in a newspaper of general circulation once a week for two (2) successive calendar weeks. The notice shall be published at least ten (10) days and not more than twenty-five (25) days before the first public hearing date. In computing such period, the day of publication shall not be counted, but the day of the hearing shall be counted.

(3) **Mailed Notice**

- (A) When the provisions of this Ordinance require that mailed notice be provided, the Planning Director shall prepare a notice of the public hearing and deliver the notice via first class mail to the following persons:
  - (i) The applicant; and
  - (ii) Listed owners of adjacent lands, as their names and addresses are shown and identified on the county tax maps and tax records.
- (B) Mailed notice shall be postmarked not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the hearing.
- (C) At each public hearing involving a zoning classification action for a parcel of land, the Planning Director or his designee shall certify, in writing, the mailing of the notice of public hearing to the owner of the parcel of land involved and as to each owner of abutting parcels in accordance with this section.
- (D) Mailed notice shall not be required when an application to amend the Official Zoning District Map includes more than fifty (50) lots or tracts, owned by at least fifty (50) different land owners provided the Town publishes a map (occupying at least one-half (½) of a newspaper page) showing the boundaries of the affected area in a newspaper of general circulation once a week for two (2) successive calendar weeks. Affected land owners whose addresses in the tax records reflect a mailing address outside the Town's jurisdiction or the newspaper circulation area shall be notified via first class mail pursuant to subsections (A) and (B) above.

(4) **Posted Notice**

- (A) When the provisions of this UDO require that notice be posted, the Planning Director shall post the notice on the subject property at least seven (7) days prior to the first public hearing. Posted notice shall be located adjacent to each public street right-of-way bordering the subject property. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. Posted notice shall remain in place until after the Board of Commissioners has rendered its final decision on the application.
- (B) If no part of the subject property is visible from the public right-of-way, the notice shall be posted along the nearest street in the public right-of-way in such a manner as to ensure consistency with the intent of this subsection.
- (C) In addition to posted notice on the subject property, notice of the first public hearing shall also be posted in a conspicuous location within Town Hall ten (10) days before the hearing.

(5) **Summary Table**

Applications that require newspaper, mailed, and posted notice are summarized in Table 2.1.

**(6) Constructive Notice**

- (A) Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in notice may include but are not limited to errors in a legal description or and typographical or grammatical errors that do not impede communication of the notice to affected parties.
- (B) Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a public hearing and the location of the subject property shall be strictly construed.
- (C) If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall direct the Planning Director to make a formal finding as to whether there was substantial compliance with the notice requirements of this Ordinance, and such finding shall be made available to the decision-making body prior to final action on the request.

**2.3.5 - Conditions of Approval**

**(1) General**

When a review body or the Planning Director may approve development application with conditions, such body or the Planning Director may impose restrictions and conditions on the approval. The conditions may be crafted to (a) ensure compliance with the general goals and policies of this Development Ordinance or with particular standards of this Development Ordinance, (b) prevent or minimize adverse effects from the proposed development on surrounding lands, (c) protect the health, safety and welfare of workers and residents of the community, and/or (d) protect the value, use and enjoyment of property in the general neighborhood.

**(2) Limitations**

The restrictions and conditions imposed must be related in both type and amount to the impact that the proposed development would have on the public and surrounding development. All conditions imposed shall be expressly set forth in the permit approval.

**2.3.6 - Simultaneous Processing of Applications**

Whenever two (2) or more forms of review and approval are required under this Development Ordinance, the applications for those permits or approvals may, at the option of the Planning Director, be processed simultaneously, so long as all applicable state and local requirements are satisfied.

**2.3.7 - Lapse of Approval**

Lapse of approval ("expiration") shall occur as provided by this Ordinance for the various types of development applications. If no provision for lapse is given by this Development Ordinance for a particular type of development permit or approval, and if no lapse period is imposed as part of an approval by the decision-making body, lapse shall occur if development is not commenced or a subsequent permit is not obtained within one (1) year.

**2.4 - SPECIFIC DEVELOPMENT APPROVALS**

The provisions of this section 2.4 supplement the Common Review Procedures of section 2.3. These provisions do not replace the Common Review Procedures, but in case of any direct conflict between

the requirements of this section 2.4 and a requirement of section 2.3, the provisions of section 2.4 shall govern,

#### 2.4.1 - Text and Map Amendments

Unless superseded by inconsistent provisions of subsections 2.4.2 or 2.4.3 below, the following terms and provisions shall apply.

(1) **Procedure**

A petition for a zoning amendment may be initiated by the Board of Commissioners, Town Staff, the Planning Board, or the owner or holder of any interest in the real property that is the subject of the rezoning petition within the zoning jurisdiction of the Town. Once a petition for a zoning amendment has been initiated, the Board of Commissioners may amend, supplement, change, modify, or repeal the zoning regulations established in this Development Ordinance after public notice and hearing, and upon a recommendation by the Planning Board. No regulation or map shall be amended, supplemented, changed, modified, or repealed until after a public hearing has been held on the proposed change, at which parties in interest and citizens shall have an opportunity to be heard.

(2) **Zoning District Intensity**

No application for any change in the zone of property for the same property or any part thereof shall be filed until the expiration of one (1) year from the date of final action by the Board of Commissioners on any rezoning request of that property, unless it shall be for a less intensive zoning district than originally requested within the one-year time frame.

(3) **Amendment Public Hearing**

Upon receipt of a recommendation of the Planning Board to amend the zoning district classification for any property, the Town Clerk shall publish notice of a public hearing to be held at the next regular meeting of the Board of Commissioners following the standard advertising schedule, as prescribed by state law. In addition to the published notice, text and map amendments shall comply with the requirements for mailed and posted notices following the procedure and requirements set forth in Section 2.3.4 of this Development Ordinance.

(4) **Mailed Notice**

- (A) When the provisions of this Ordinance require that mailed notice be provided, the Planning Director shall prepare a notice of the public hearing and deliver the notice via first class mail to the following persons:
- (i) The applicant; and
  - (ii) Listed owners of adjacent lands, as their names and addresses are shown and identified on the county tax maps and tax records.
- (B) Mailed notice shall be postmarked not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the hearing.
- (C) At each public hearing involving a zoning classification action for a parcel of land, the Planning Director or his designee shall certify, in writing, the mailing of the notice of public hearing to the owner of the parcel of land involved and as to each owner of abutting parcels in accordance with this section.
- (D) Mailed notice shall not be required when an application to amend the Official Zoning District Map includes more than fifty (50) lots or tracts, owned by at least fifty (50) different land owners provided the Town publishes a map (occupying at least one-half (½) of a newspaper page) showing the boundaries of the affected area in a newspaper of general circulation once a week for two (2) successive calendar weeks. Affected land owners whose addresses in the tax records reflect a mailing address outside the Town's

jurisdiction or the newspaper circulation area shall be notified via first class mail pursuant to subsections (A) and (B) above.

(5) **Posted Notice**

- (A) When the provisions of this UDO require that notice be posted, the Planning Director shall post the notice on the subject property at least seven (7) days prior to the first public hearing. Posted notice shall be located adjacent to each public street right-of-way bordering the subject property. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. Posted notice shall remain in place until after the Board of Commissioners has rendered its final decision on the application.
- (B) If no part of the subject property is visible from the public right-of-way, the notice shall be posted along the nearest street in the public right-of-way in such a manner as to ensure consistency with the intent of this subsection.
- (C) In addition to posted notice on the subject property, notice of the first public hearing shall also be posted in a conspicuous location within Town Hall 10 days before the hearing.

2.4.2 - Conditional Rezoning for Overlay Districts

(1) **Petition**

Specific property may be rezoned to the Village-East Conditional Zoning Overlay District, the Village-West Conditional Zoning Overlay District, and the Marina Village Conditional Zoning Overlay District only in response to and consistent with a petition submitted by the owners of all of the property to be included in the district. The petition shall be on forms provided by the Town.

(2) **Procedure**

Conditional zoning district decisions pertaining to the Village-East, Village-West or Marina Village are a legislative process subject to judicial review using the same procedures and standard of review as apply to general use district zoning decisions. Conditional zoning district decisions shall be made in consideration of identified relevant adopted land use plans for the area, including but not limited to, comprehensive plans, strategic plans, district plans, area plans, and other land-use policy documents.

(A) **Plans and Other Information to Accompany Petition**

Specific property may be rezoned to the Village-East Conditional Zoning Overlay District, the Village-West Conditional Zoning Overlay District or the Marina Village Conditional Zoning Overlay District only in response to and consistent with a petition submitted by the owners of all of the property to be included in the district. A petition for conditional zoning must include a site plan, drawn to scale, and supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property. The site plan and any supporting text shall constitute part of the petition for all purposes under the UDO. The Planning Director has the authority to waive any application requirement where the type of use or scale of proposal makes providing that information unnecessary or impractical. Unless waived by the Planning Director, each site plan must provide the following information, if applicable.

- (i) The name of the proposed development, the names and addresses of the owners and the designer of the development and his qualifications.
- (ii) Date, approximate north arrow and scale.
- (iii) The boundary line of the tract to be developed drawn accurately to scale and with accurate linear and angular dimensions.

- (iv) The location of primary dunes as established by CAMA, including all required CAMA setbacks and limits of Areas of Environmental Concern (AEC), if applicable.
- (v) The location of existing and platted property lines, streets and public utility easements. The names of adjoining subdivisions or the names of record owners of adjoining parcels of unsubdivided land.
- (vi) The names, proposed locations, and approximate dimensions of all proposed improvements, both public and private. All lots created shall have adequate access to a dedicated public street. The public streets to each of these lots shall conform to the design standards for town streets specified in Chapter 6 of this Unified Development Ordinance unless modified as a condition of the overlay district. In no case shall a public street be allowed to have a right-of-way width of less than forty (40) feet.
- (vii) Proposed changes. In all cases, shall be shown in a manner that will distinguish them clearly from the existing characteristics of the land.
- (viii) The site plan shall include all applicable utilities including street lighting. All utilities shall be underground.
- (ix) The site plan shall provide for a minimum of a four-foot wide sidewalk along both sides of all streets. These standards may be modified as a condition of the overlay district if based on an acceptable pedestrian plan.
- (x) Areas in which structures will be located.
- (xi) The proposed uses of structures.
- (xii) The proposed intensity of use (height, floor area, number of dwelling units)

**(xiii)** The existing and proposed points of access to existing public streets.

**(xiv)** Proposed phasing, if any.

- (xv) The location and nature of proposed wastewater treatment facilities intended to serve the proposed development.

**(xvi)** Generalized traffic, parking, and circulation plans. Plans for streets should, to the best extent possible, insure connectivity within the proposed development and with adjacent developments and existing streets.

**(xvii)** Areas proposed for landscaping.

**(xviii)** Proposed location of any public areas including, but not limited to, parking, beach access, sound access, boat, ramps, recreational uses and other similar public access and recreational amenities.

**(B) Conditions to Approval of Petition**

In approving a petition for the reclassification of property to the Village-East Conditional Zoning Overlay District, the Village-West Conditional Zoning Overlay or the Marina Village Conditional Zoning Overlay District, the Planning Board may recommend, and the Board of Commissioners require, that reasonable and appropriate conditions be attached to approval of the petition. Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, stormwater drainage, the

provision of open space including beach access, sound access, boat ramps, fishing piers, recreational uses and similar public uses, and other matters that the Board of Commissioners may find appropriate or the petitioner may propose. Such conditions to approval of the petition or application for approval of the project as Village-East Conditional Zoning Overlay, Village-West Conditional Zoning Overlay or Marina Village Conditional Zoning Overlay or the varying of any conditions, setting aside or dedication of streets, beach access sites, sound access, boat ramps, open spaces, piers, water related or recreational facilities or sites, utility easements and the like to either the Town, county, or state or public as deemed appropriate by the Town as a prerequisite to approval. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Board of Commissioners.

**(C) Effect of Approval**

- (i) If a petition for the Village-East Conditional Zoning Overlay District, the Village-West Conditional Zoning Overlay District or the Marina Village Conditional Zoning Overlay District is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Official Zoning District Map.
- (ii) If a petition is approved, the ordinance, site plan and any additional approved rules, regulations and conditions will be recorded in the Carteret County Registry and shall be binding on the applicant and all future owners of the real property described in and covered by the approval shall be obligated to carry out and comply with the plan as approved. The plan as approved shall be binding on the applicant and all future owners, and the uses, dimensions and development and zoning requirements for each and every parcel within the real property as approved in the petition may not be changed or altered by any future owners except upon return to and amendments of the petition and approval by the Town if the Town deems such amendments or modifications appropriate.
- (iii) If a petition is approved, the petitioner shall comply with all requirements established in this Ordinance for obtaining a building permit and certificate of occupancy. Only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. A change of location or use of the structures may be authorized pursuant to subsection (D) below.

**(D) Alterations to Approval**

- (i) Except as provided in subsection (ii) below, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the Official Zoning District Map and shall be processed in accordance with the procedures in this Ordinance.
- (ii) The Planning Director shall have the delegated authority to approve an administrative amendment change to an approved site plan. The standard for approving or denying such a requested change shall be that the change does not significantly alter the site plan or its conditions and that the change does not have a significant impact upon abutting properties. An administrative amendment shall not be subject to a protest petition. Any decision must be in writing stating the grounds for approval or denial.
- (iii) The Planning Director shall always have the discretion to decline to exercise the delegated authority either because he/she is uncertain about approval of the change pursuant to the standard or because a rezoning petition for a public hearing and Board of Commissioners' consideration is deemed appropriate under the circumstances.

- (iv) Any request for an administrative amendment shall be pursuant to a written letter, signed by the property owner, to the Planning Director, detailing the requested change. Upon request, the applicant must provide any additional information that is requested.

**(3) Preliminary and Final Subdivision Plats**

After approval of the Conditional Zoning Overlay District in accordance with this section 2.4.2, the petitioner may proceed with the development of preliminary and final subdivision plats pursuant to section 2.4.5. The standards set forth in this Ordinance, and all other applicable requirements of the Town Code, shall apply unless modified as a condition of approval of the overly district. The preparation and approval of a sketch plan shall not be required for projects approved pursuant to this section 2.4.2.

**2.4.3 - Planned Unit Developments**

**(1) General Description and Purpose**

Planned unit developments are planned residential developments in which the principal use of land within a development is for both attached and detached single-family dwellings and/or condominiums, townhouses and other multifamily dwellings. A planned unit development is an alternative procedure for development that may be utilized by owners and developers with regard to the development of any parcel of land in those districts where planned unit developments are permitted or special uses. The purposes of a planned unit development are as follows:

- (A) To provide for the preservation of large areas of open space for recreation and preservation of natural amenities;
- (B) To provide flexibility in design to take the greatest advantage of natural land, water, trees, and environmental and historical features;
- (C) To provide for the creation of compatible neighborhood arrangements that give the home buyer greater choice in selecting his living environment;
- (D) To provide sufficient freedom for the developer to submit plans that embody a creative approach to the use of lands and related physical development, as well as utilizing innovative techniques to enhance the visual character of the development;
- (E) To provide for the efficient use of land that may result in smaller street and utility networks, better maintenance and upkeep of sewage disposal systems, and reduced development and maintenance costs;
- (F) To establish criteria for the inclusion of compatible or associated uses to complement the residential area within the planned unit development;
- (G) To simplify the procedures for obtaining approval of proposed development through expeditious review of proposed land use, site layout, public needs, and health and safety factors;
- (H) To minimize expenditures of public funds for services and maintenance of streets, roads, central sewage systems, and similar utilities, and to promote the efficient investment of community resources.

**(2) Location**

Planned developments may be established in those zoning districts in which a planned unit development is shown as a permitted use in Table 4.1. Single-family dwellings, townhouses, condominiums, multifamily dwellings or combinations thereof may be located within a planned unit development. Provided, that nothing in this Ordinance shall permit within the R2 Zoning District any uses other than residential single-family detached and two-family dwellings.

(3) **Preliminary and Final Review Procedures and Approvals**

The procedure for both preliminary and final approval by the Planning Board and the Board of Commissioners as described in sections 2.4.5(2), 2.4.5(3), 4.2.1, shall also be applicable to planned unit developments. The preliminary and final plats and documents shall meet the requirements of this Ordinance as applicable and, in addition thereto, the following additional information and documents shall be submitted to the Planning Board and Board of Commissioners simultaneously with the final plat:

- (A) Documents creating the homeowners' association. The documents creating the homeowners' association shall provide for control by the property owners other than developer at such time as over fifty (50) percent of the dwelling units within the project have been sold.
- (B) A proposed annual budget for the association that includes the proposed monthly expenditures and income.
- (C) A proposed ten-year income and expense budget reflecting the establishment of a sinking fund for capital replacement.
- (D) A copy of the proposed declaration of unit ownership and the proposed bylaws meeting the requirements of G.S. ch. 47A, in the event condominiums are involved in the planned unit development.
- (E) If the proposed planned unit development is to consist of townhouses, rowhouses, or other attached single-family dwellings other than condominiums, a copy of the proposed restrictions, covenants and easements shall be provided. The proposed annual budget for the homeowners' association shall also be included.

2.4.4 - Special Use Permits

(1) **Application Requirements**

The application for a special use permit shall contain the following information and be accompanied by the following documents:

- (A) Name and address of applicant;
- (B) Address of property;
- (C) Name and address of owner, developer and all proposed tenants of the property which is the subject of the special use permit application;
- (D) Legal description of the property which may include a copy of the deed or other document vesting ownership of the property in the present owner;
- (E) A detailed statement of all proposed use of the property;
- (F) A site plan showing all buildings, outdoor facilities, parking lots, proposed lighting, and utilities.
- (G) Names and addresses of all abutting or adjoining property owners.

(2) **Procedure and Criteria for Approval**

Permission may be granted for the establishment of uses listed as special uses if the Board of Commissioners finds from the evidence, maps and documents filed or produced after a study of the complete records and following a public hearing regarding the application for a special use permit:

- (A) That the proposed use will not materially endanger the public health or safety if located where proposed and if developed according to the plan as submitted and approved.

- (B) That the use meets all conditions and specifications required by this Ordinance and other applicable Town, county, state and federal laws and regulations.
- (C) That the proposed use will not substantially injure the value of abutting or adjoining property, or that the use is a public necessity.
- (D) That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the land use plan as updated and amended for the Town.

(3) **Restrictions and Conditions for Special Uses**

The Board of Commissioners may impose or require such additional restrictions and standards on the proposed special use pursuant to section 2.3.5, Conditions of Approval.

(4) **Written Conditions and Signatures**

All special use permits, if granted by the Board of Commissioners, must be reduced to writing and state any and all conditions regarding the special use permit. All special use permits issued by the Board of Commissioners must be signed by the applicant, tenant, developer, and/or owners, and shall be binding on those executing the special use permit and their successors and assigns during the period of time that the special use permit is in effect.

(5) **Term**

All special use permits shall be issued for a period to be established by the Board of Commissioners. The Board of Commissioners is authorized to issue special use permits appurtenant to the special use so approved for the property. Provided, however, that any such special use permit shall become invalid upon the cessation of the special use for twelve (12) months.

(6) **Board of Commissioners Review**

The Board of Commissioners may require that the applicant submit such other information, data and documents as the Board deems necessary in order to consider the applicant's request for a special use permit.

(7) **Public Hearing**

The Board of Commissioners shall hold a public hearing regarding the application for a special use permit. The notices for the hearing shall be provided pursuant to section 2.3.4(2).

(8) **Decision**

If the Board of Commissioners finds that the application for a special use permit meets the requirements of this Ordinance, in addition to the additional requirements imposed by the Board of Commissioners in order to protect the health, safety and welfare of the community and the neighborhood where the special use is proposed, then the Board of Commissioners may, but is not required to, issue a special use permit.

(9) **Revocation**

The Board of Commissioners may revoke any special use permit following notification to the special permit use holder that one (1) or more of the conditions of the special use permit are believed to have been violated and following a hearing in which the Board of Commissioners finds that one (1) or more of the conditions have been violated and that the special use permit should be revoked.

2.4.5 - Subdivision of Land

Subdivisions shall be subject to the following procedures and requirements in addition to any other applicable terms and conditions set forth in this Ordinance. Both preliminary and final plats and other documents required by this Ordinance shall be submitted for approval to the Planning Board and the Board of Commissioners.

(1) **Sketch Design Plan**

Prior to the filing of an application for approval of the preliminary plat, the subdivider shall submit to the Planning Board a sketch design plan and a vicinity sketch showing the relationship of the proposed subdivision to surrounding properties and areas of environmental concern. The Planning Board shall review the sketch design plan for compliance with the requirements of this Ordinance and inform the subdivider about the regulations that govern the proposed development and the procedure the subdivider is to follow in preparing and submitting the preliminary and final plats. The subdivider is to informally explain to the Planning Board the plans for developing the proposed subdivision, including the kind and extent of proposed improvements. The Planning Board is to discuss with the subdivider any suggested changes deemed advisable. Discussion of a sketch design plan with or without modifications shall not constitute or imply approval of any preliminary or final subdivision plat based on the sketch design plan.

Applicants shall submit twelve (12) copies of all required application materials. The sketch design plan and site planning sketches shall be drawn at an approximate scale of one (1) inch to one hundred (100) feet (1" = 100') and include:

- (i) The name and address of the owner and the subdivider.
- (ii ) Existing conditions of the site including streets, roads, rights-of-way, easements, watercourses, wetlands, and structures.
- (ii i) Approximate location of lot lines, approximate number of lots, and total tract acreage.
- (iv ) Proposed rights-of-way, easements, and any sites to be dedicated for places of worship or public use.

(2) **Preliminary Plat**

(A) **Application Requirements**

A preliminary plat shall be drawn at a scale of not less than one hundred (100) feet to the inch and show the following:

- (i) **Name**  
The subdivision name, the names and addresses of the owners and the designer of the subdivision and his qualifications.
- (ii) **Date, Etc.**  
Date, approximate north arrow and scale.
- (iii) **Boundaries**  
The boundary line of the tract to be subdivided drawn accurately to scale and with accurate linear and angular dimensions.
- (iv) **Location Map**  
A map with a scale of not less than one (1) inch equals one thousand (1,000) feet showing the location of the subdivision.
- (v) **Contours, Contour Interval, and Finished Grades**

Contours with a vertical interval of two (2) feet referenced to sea level datum perimeter and in the interior shown in a manner that clearly distinguishes proposed elevations from existing elevations.

(vi) **Primary Dunes**

The location of the primary dunes as established by the NC Division of Coastal Management (CAMA) or CAMA Local Permit Officer (LPO).

(vii) **Existing Property Lines, Etc.**

The location of existing and platted property lines, streets, buildings, watercourses, railroads, bridges, water mains, sewers, culverts, drainpipes, and public utility easements, both on the land to be subdivided and on the land immediately adjoining and any other pertinent characteristics of the land. The names of adjoining subdivisions or the names of record owners of adjoining parcels of unsubdivided land.

**(viii) Proposed Improvements**

The names, proposed locations, and approximate dimensions of all proposed improvements. All subdivision plats which will create lots not directly abutting a dedicated and accepted public street shall include proposed improvements for roadway access, either public or private, to each of these lots and such roadways shall conform to the design standards for town streets specified in Chapter 6, section 6.1.5 of this Unified Development Ordinance.

(ix) **Proposed Changes**

In all cases, shall be shown in a manner that will distinguish them clearly from the existing characteristics of the land.

(x) **Drainage**

The preliminary plat shall also indicate and show surface water drainage plans and methods. The preliminary plat shall include a drawing showing storm water drainage supported by design computations. The design shall conform to the standards set forth in Chapter 6, section 6.3 of the UDO.

(xi) **Utilities**

The preliminary plat shall include all applicable utilities including street lighting. All utilities shall be underground. Utility distribution boxes; such as, water meter boxes and transformers, shall be located where side yard property lines intersect with street right-of-way lines (front yard property lines) and placed at the property corners in a manner that incompatible types of utility services will not conflict with each other. (i.e., electric services combined at a common corner of two (2) adjacent lots and water services combined at another common corner in order to serve two (2) lots from each location when possible.)

(xii) **Environmental Concern Standards**

In order to be in compliance with area of environmental concern standards, the preliminary plat shall contain a statement that the subdivision is located either within or without a North Carolina Coastal Area Management Act Area of Environmental Concern and shall show all required AEC data.

**(xiii) Profiles**

Profiles of all streets showing natural and finished grades drawn to scale of not less than one (1) inch equals forty (40) feet horizontal and one (1) inch equals four (4) feet vertical.

**(xiv) Health Department Approval**

Where public water and/or public sewage is not available for extension to each lot in the subdivision, a written report from the county health department shall be submitted as to the adequacy of the land area, and the suitability as to the soil and topography of the proposed subdivision to accommodate the proposed methods of water supply and sewage disposal.

**(xv) Required Data**

The preliminary plat shall be accompanied by a copy of all applications required by agencies other than the town. Applications must contain all pertinent data required to process applications.

**(xvi) Street Access to Subdivided Lots**

Except as otherwise provided by this chapter, every subdivision of property within the jurisdiction of the town shall include access to each and every lot of the subdivision by way of dedicated and accepted public streets or by establishment of private street systems which are platted and approved pursuant to the requirements of this chapter. All public or private streets shall meet the design standards for town streets specified in Chapter 6, section 6.1.5 of this Development Ordinance and/or any amendments thereof.

**(xvii) Other Information**

Other information as deemed necessary.

**(B) Approval Procedure**

The submission of a preliminary plat shall be accompanied by a letter of transmittal describing the proposed subdivision and a statement that the plat is in compliance with this Ordinance. The Planning Board shall review the preliminary plat and shall approve the preliminary plat if it finds that the subdivision meets or exceeds the standards of this Development Ordinance.

**(C) Tentative Approval**

Approval of a preliminary plat shall constitute tentative approval of a final subdivision plat. Such approval shall be valid for a period of one (1) year, with the exception of preliminary plats for subdivisions located within the NC Coastal Area Management Act Area of Environmental Concern (AEC), for which such approval shall be valid for a period of two (2) years.

**(D) Approval and Conditional Approval**

- (i) When a preliminary plat is approved, approval shall be so indicated on the preliminary plat by the Planning Director and forwarded to the Board of Commissioners for review and approval.
- (ii) When a preliminary plat is granted only a conditional approval, the reasons for conditional approval and the conditions to be met must be stated in writing. In lieu of granting conditional approval of the preliminary plat, the Planning Board may require

the subdivider to resubmit the preliminary plat in a revised format that incorporates recommended changes.

- (iii) When a preliminary plat is disapproved by the Planning Board, reasons for such action shall be stated in writing. One (1) copy of the plat with the reasons for disapproval shall be provided to the subdivider and one such copy shall be retained by the Planning Director. The subdivider may make the recommended changes and submit a revised plat to the Planning Board for approval.
- (iv) If only conditional approval of a preliminary plat has been granted by the Planning Board, the preliminary plat, along with the conditions of approval shall be submitted to the Board of Commissioners for consideration.
- (v) If the Board of Commissioners approves the preliminary plat, one (1) copy approved by the Board of Commissioners shall be sent to the subdivider and one (1) to the Planning Director. If the preliminary plat is granted conditional approval, the conditions for approval by the Board must be noted and these conditions must be found by the Planning Director to be satisfied prior to the plat being deemed acceptable. If the preliminary plat is not acceptable to the Board of Commissioners, the plat, along with the reasons for non-approval, shall be returned to the Planning Board for further consideration and appropriate action.

### (3) **Final Plat**

#### (A) **Application Requirements**

The final plat shall be a reproducible map on linen, film, or other permanent material and shall have an outside marginal size of twenty-four (24) inches by thirty-six (36) inches including one and one-half (1½) inches for binding on the left margin and one-half-inch border on each of the other sides. Where the size of land areas is of a suitable scale, to assure legibility requirements maps may be placed on two (2) or more sheets with appropriate match lines. It shall be drawn to the same scale as the preliminary plat, and shall contain the following:

##### (i) **Boundary, Etc.**

The exact boundary of the tract of land being subdivided, showing clearly the disposition of all portions of the tract into designated tracts, lots, streets, alleys, parks, open spaces, easements, or other classifications, the exact location and width of all existing or recorded streets intersecting the boundary of the tract being subdivided, and the names of adjoining subdivisions or the name of record owners or adjoining parcels of unsubdivided land, including the boundaries of all special flood hazard areas. All existing characteristics of the land shall be clearly defined from those characteristics that are proposed.

##### (ii) **Streets, Etc.**

The lines and names of all streets, alleys, boundary lines, lot lines, building lines, easements, areas devoted to public use, and lot and block numbers.

##### (iii) **Title**

A note shall appear on the final plat stating the deed reference under which title to the property being subdivided is held.

##### (iv) **Lines**

Sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement, boundary line, and building line whether straight or curved. This shall include tangent distance, the central angle, the radius, arcs, and chords of all curves. All linear

dimensions shall be given in feet and hundredths thereof, and angular dimensions shall be of comparable accuracy within the limits of good surveying practice.

(v) **Monuments and Control Corners**

The accurate location, material, and size of all monuments and the designation of specific control corners in conformance with the letter and intent of G.S. 39-32.1, 39-32.2, 39-32.3, 39-32.4, shall be known.

(vi) **Name of Engineer, Etc.**

The title, including the name of the subdivision, the town, the name of the registered engineer or registered surveyor under whose supervision the plat was prepared, the date of the plat, and a north arrow. Indication shall be made as to whether the north index is true, magnetic, or grid.

(vii) **Certificate of Ownership and Dedication of Streets and Right-of-Way**

For any plat submitted which incorporates public roadways, streets, easements, and other rights-of-way, a certificate of ownership and dedication shall be shown properly completed and signed by the owners and all other interested parties, similar in wording to the following:

"The undersigned hereby acknowledge(s) this plat and allotment to be (his, her, their) free act and deed, and hereby dedicate(s) to public use as streets, playgrounds, parks, open spaces, and easements forever all areas so shown or indicated on said plat.

Signed \_\_\_\_\_."

**(viii) Owners' Association Documents for Maintenance of Private Improvements**

For any plat submitted incorporating private roadways, streets, easements, and other rights-of-way, the following documents shall be submitted simultaneously with the final plat in order to provide for ongoing maintenance of private improvements that will not be dedicated to the town:

- (a) Documents creating the owners' association. The documents creating the association shall provide for control by the property owners other than the developer at such time as over fifty (50) percent of the lots within the subdivision have been sold.
- (b) Proposed annual budget for the owners' association which includes the proposed monthly expenditures and income.
- (c) A proposed ten-year income and expense budget reflecting the establishment of a sinking fund for capital replacement.
- (d) A copy of the proposed bylaws of the association, and, when applicable, a declaration of unit ownership meeting the requirements of G.S. ch. 47A or 47C.
- (e) If the project is to consist of single-family dwellings, townhouses or structures other than condominiums, a copy of the proposed restrictions, covenants and assessments shall also be provided.

(ix) **Form for Endorsement**

A form for the endorsement of the town Board of Commissioners shall be similar to the following:

Approved by the Board of Commissioners of the Town of Emerald Isle, North Carolina, effective on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed \_\_\_\_\_

Mayor

Town of Emerald Isle

(x) **Certification**

The plat shall show proper certificates of the engineer or surveyor, notary public and the probate clerk as required by state law.

(xi) **AEC Standards**

The AEC certification shall be similar to the following:

"This subdivision conforms to the standards of the North Carolina Coastal Area Management Act of 1974 and is not located within an Area of Environmental Concern.

\_\_\_\_\_  
Local Permit Officer"

"This subdivision conforms to the standards of the North Carolina Coastal Area Management Act of 1974, and portions of the subdivision located within an Area of Environmental Concern is duly noted.

\_\_\_\_\_  
Local Permit Officer"

(B) **Preparation of Final Plat**

Upon approval of the preliminary plat by the Board of Commissioners, the subdivider may proceed with the preparation of the final plat, and the construction of required improvements in accordance with the approved preliminary plat and the requirements of this Ordinance. Prior to approval of the final plat, the subdivider must complete the construction of all required improvements, or substantially complete all required improvements and guarantee completion by posting a letter-of-credit or cashiers check in accordance with subsection (H) below.

(C) **Planning Board Review**

The Planning Board shall review the final plat to insure that the subdivision meets or exceeds the standards of this Ordinance. Upon determination that these standards have been achieved, the Planning Board shall recommend to the Board of Commissioners that the final subdivision plat be approved.

(D) **Submitting Final Plat**

After the preliminary plat has been approved, the final subdivision plat shall be prepared and submitted for final approval within one (1) year after approval of the preliminary plat, with the exception of preliminary plats for subdivisions located within the NC Coastal Area Management Act Area of Environmental Concern (AEC), for which such approval shall be valid for a period of two (2) years. Such owner or subdivider shall submit an original linen, film, or other permanent material tracing, one (1) print on cloth, one (1) sepia, and two (2) blueprint copies of the final plat, properly signed and executed as required for recording in the office of the Register of Deeds of the county along with the necessary probate and recording fees to the Planning Director. Upon approval by the Board of Commissioners, the

Planning Director, or designee, shall forward the final plat to the Register of Deeds for recording.

**(E) Conformity with Preliminary Plat**

The final plat shall conform with the preliminary plat as approved, and, if desired by the owner or subdivider, it may constitute only that portion of the approved preliminary plat that he proposes to record and develop at the time provided; however that:

- (i) The Planning Board shall find that the subdivision is reasonably located with respect to existing roads and utility lines; and
- (ii) Such portion shall conform to all requirements of this Ordinance.

**(F) State Board Compliance**

The final plat shall conform in all ways to the state statute (G.S. 47-30) as amended and to the state board of registration for professional engineers and land surveyors "Manual of Practice for Land Surveying."

**(G) AEC Standards**

Area of environmental concern standards certification shall be provided on the final plat by the local permit officer that the subdivision is either within or without a North Carolina Coastal Management Act of 1974 Area of Environmental Concern.

**(H) Security for Uncompleted Improvements**

If the required improvements and utilities are substantially complete, with only punch list items remaining, the owner or subdivider shall have the right to provide a letter-of-credit or cashiers check in an amount equal to one hundred fifty (150) percent of the estimated cost of the remaining improvements. The letter-of-credit or cashiers check shall guarantee the construction of required improvements and utilities and shall satisfy the requirements of this section to secure final plat approval. The expiration date on the letter-of-credit or cashiers check shall be established by the Board of Commissioners at the time of final plat approval.

**(I) Areas for Use**

All property shown on the plat as dedicated for public use shall be deemed to be dedicated for any other public use authorized by the Town Charter or any general, local, or special law pertaining to the Town, when such other use is approved by the Board of Commissioners as in the public interest.

**(J) Recordation of Plat**

No plat shall be recorded until the final subdivision plat is approved in accordance with this Ordinance.

**2.4.6 - Special Plat Approval**

The following types of development shall be subject to special plat approval by the Board of Commissioners, regardless of whether they involve a formal subdivision of land.

**(1) Group Housing and Other Special Developments**

**(A) Generally**

This section 2.4.6 shall apply to group housing and special developments shall include apartments, condominiums, townhouses, and planned unit developments.

**(B) Application Requirements**

The application for preliminary approval and the preliminary plat as shall contain the following information on one (1) or more sheets, and shall comply with the following requirements:

(i) **General information:**

- (a) Name of development;
  - (b) Name of owner and developer;
  - (c) Name of land planner, architect, engineer or surveyor;
  - (d) Scale of map which shall be fifty (50) feet to an inch;
  - (e) Date of preliminary plan.
- (ii) A vicinity map showing all roads in the general area of the proposed group housing development, and also showing the relationship of the group housing project site to major roads in the area.
- (iii) The dimensions and bearings of all exterior property lines shall be shown on the preliminary plat.
- (iv) Land contours with vertical intervals of not more than two (2) feet shall be provided for all projects and shall be shown either on the preliminary plat or on a topographic survey which accompanies the preliminary plat. In the event a topographic survey is submitted with the preliminary plat, it shall be drawn to the same scale as the preliminary plat and shall show land contours with vertical intervals of not more than two (2) feet. Final grades around the perimeter and at significant locations inside the lot(s) shall be shown on the drawings.
- (v) The preliminary plat shall show all roads within the group housing project area to include access roads and adjacent roads to the project area.
- (vi) The preliminary plat shall include a drawing showing storm water drainage supported by design computations. The design shall conform to the standards set forth in Chapter 6 of this Unified Development Ordinance for Stormwater Management.
- (vii) The preliminary plat shall show and specifically locate all structures and buildings within the project site to include both present and proposed structures and buildings. The dimensions of the buildings and structures shall be shown in detail.

**(viii)** All recreational and open spaces both existing and proposed shall be indicated in detail, and all structures, uses and buildings both existing and proposed within the recreation and open spaces shall be indicated in detail.

- (ix) The preliminary plat shall be accompanied by detailed plans of the developer concerning the method of surfacing roads and parking areas.
- (x) The preliminary plat shall indicate in detail the location and intensity of area lights in the general plan of the electrical system for the proposed area.
- (xi) The preliminary plat shall indicate the source of water and the distribution system for the source of water. In the event the water system requires approval by state and/or federal agencies, then plans and specifications approved by the state and federal agencies having jurisdiction over the system must be approved. If the water distribution system requires approval from the county health department, then the approval of the county health department must accompany the preliminary plats.
- (xii) Sanitary sewage system. If a sewage collection disposal system is used, plans and specifications approved by state and/or federal agencies must be submitted. If the public sewage system is not required and such system comes under the jurisdiction of

the county health department, then their approval must accompany the preliminary plats.

**(xiii)** The preliminary plats shall indicate bodies of water, marshes, wooded areas, rivers, creeks, and other natural conditions which may affect development within the project site.

**(xiv)** The preliminary plat shall indicate all adjoining property owners.

(xv) The north arrow and graphic scale shall be shown.

**(xvi)** The preliminary plat shall indicate in detail the site data as follows:

- (a) Total acreage in the project, and natural area and method of calculation;
- (b) Type of group housing project units to be approved;
- (c) Number of one-bedroom, two-bedroom, three-bedroom and four-bedroom group housing project units;
- (d) Maximum project area covered by all structures and improvements;
- (e) Minimum front, rear and side yards for each unit within the group housing project;
- (f) Minimum distance between principal buildings;
- (g) Height of each building;
- (h) Parking area and parking spaces for the project;
- (i) If the group housing project proposes townhouses, row houses or other attached single-family dwellings, other than condominiums, the size of each lot shall be indicated. The minimum lot width and side, rear, and front yards of each unit shall be indicated in detail;

**(xvii)** The preliminary plat shall also indicate the height above sea level for the project site, and shall indicate whether or not any of the project area is within the area of environmental concern as defined under the Coastal Area Management Act.

**(xviii)** All utilities, including street construction, shall conform to the construction standards of the town. The width and rights-of-way of streets shall meet the minimum standards for streets within the town as contained in Chapter 6 of this Unified Development Ordinance. The dedication of streets to the public use shall not be required, but the streets shall be designed and constructed meeting the minimum standards of the town in the event of future dedication of such streets to the town or the state department of transportation.

(xix) ;hg;The declaration of unit ownership, bylaws, restrictions or covenants shall contain information as to whom shall be responsible for payment of premiums for liability insurance, local taxes, maintenance of recreational facilities, parking lots, streets and drives, and other common areas, assessments, maintenance and repair expenses, and similar costs.

(xx) All natural areas, as defined in Chapter 10 of the UDO, shall be clearly delineated with dimensions shown, in order to verify the calculations of the reserved areas. All requirements of the "Dunes and Vegetation Protection Ordinance" are applicable.

(C) **Procedure for Approval**

Both preliminary and final plats and other documents required by this Ordinance shall be submitted for approval to the Planning Board and the Board of Commissioners in the same manner as preliminary and final subdivision plats. The application for preliminary and final approval of the group development shall contain the information and documents as required in section 2.4.3, in addition to the information required on preliminary and final subdivision plats, except as varied in this section. The same procedure for preliminary and final approval of subdivision plats as set forth in sections 2.4.5(2), 2.4.5(3) and applicable provisions of this Unified Development Ordinance shall be applicable to preliminary and final approval of group housing plats, except as varied herein. Once final approval has been given by the Board of Commissioners, all final plats shall be recorded in the office of the Carteret County Register of Deeds.

(2) **Commercial and Business Condominiums**

Condominiums and townhouses designed, developed and constructed primarily for business and/or commercial use shall be subject to the procedure for preliminary and final approval by the Planning Board and the Board of Commissioners as detailed in section 4.2.1 in addition to any other terms and conditions set forth in this Ordinance.

The preliminary application and preliminary plats shall meet the requirements of for Group Housing and Other Special Developments above, as applicable, and in addition thereto the following additional information and documents shall be submitted to the Planning Board and Board of Commissioners prior to final approval for approval by the Planning Board and Board of Commissioners, and such information and documents shall be submitted simultaneously with the final plats:

- (i) Documents creating the condominium owners' association. The documents creating the association shall provide for control by the property owners other than the developer at such time as over fifty (50) percent of the condominium units within the project have been sold.
- (ii) Proposed annual budget for the association including monthly assessments. The proposed monthly assessments shall be in such amounts as to ensure success of the association.
- (iii) A proposed ten-year income and expense budget reflecting the establishment of a sinking fund for capital replacement.
- (iv) A copy of the proposed declaration of unit ownership and proposed bylaws meeting the requirements of G.S. ch. 47A.
- (v) If the project is to consist of townhouses or other structures other than condominiums, a copy of the proposed restrictions, covenants and assessments shall also be provided.
- (vi) Once final approval has been given by the Board of Commissioners, all final plats shall be recorded in the office of the county Register of Deeds.

2.4.7 - Mobile Home Park or Recreational Vehicle Park Permit

(1) **Application**

The application for a mobile home park permit or a recreational vehicle park permit shall be filed with the Planning Director before the appropriate deadline established prior to the regular meeting of the Planning Board. The application will be reviewed by the Planning Director for completeness prior to submittal to the Planning Board. After receipt of a favorable recommendation by the Planning Board, the Board of Commissioners will review application for final approval. Park plans that have been approved under previous ordinances are exempt from this requirement.

**(2) Mobile Home Park Permit or Recreational Vehicle Park Permit**

**(A) Permit Application**

All applications for a mobile home park construction permit or recreational vehicle park will be accompanied by twelve (12) prints of the preliminary plan. Park plans that have been approved under previous ordinances are exempt from this requirement.

**(B) Contents of Preliminary Plan**

The preliminary plan shall be drawn at a scale of not more than two hundred (200) feet to the inch and shall show the following on one (1) or more sheets:

- (i) Name of park.
- (ii) Name of developer.
- (iii) Scale.
- (iv) Date.
- (v) Vicinity map showing all roads in the vicinity and the relationship of the site to major roads.
- (vi) Dimensions and bearings of exterior property lines.
- (vii) Land contours with vertical intervals of not more than two (2) feet shall be provided for all mobile home parks that have sufficient land area for twenty-five (25) spaces or more.

**(viii)** Roads in vicinity to include access roads and adjacent roads.

- (ix) Mobile home spaces well defined.
- (x) Surface water drainage plans.
- (xi) All structures in the park site both present and proposed.
- (xii) Recreation areas and open spaces.

**(xiii)** Method of surfacing roads within the park.

**(xiv)** Location and intensity of area lights and typical connections to mobile homes, or a statement from the power company servicing the area where the park is to be located indicating that it will be responsible for design and installation of the electric system.

- (xv) Source of water and water distribution system. If water source is a well, the applicant must provide proper county and state permits indicating approval for the use of well water to serve the proposed development.

**(xvi)** Sanitary sewage. If a public sewage collection and disposal system is used, plans and specifications approved by the state department of water and air resources must be submitted. If system is not connected to sewage collection, show location and size of septic tanks, mobile homes connected to each septic tank, layout of drain fields, date and result of percolation tests.

**(xvii)** Adequate facilities for fire protection.

(xviii) Landscaping plans. The preliminary plan shall indicate appropriate landscaping at the entrance, on the boundaries, and around utility buildings, utility systems, and other structures as considered necessary by the reviewing boards.

(xix) Fee. The preliminary plan as filed with the town for approval shall be accompanied by a fee in such amount as may be established, from time to time, by the Board of Commissioners by resolution.

**(3) Approval Process for Alteration of Existing Mobile Home Park or Recreational Vehicle Park**

With regard to any application to alter an existing mobile park whereby the mobile home park owner proposes to recombine or alter not more than three (3) existing mobile home lots or spaces, the Planning Director shall have authority to make a determination as to whether or not the alterations meet the requirements of this section, as amended, for the zoning district in which the mobile home spaces or lots are located, and the Planning Director shall have the authority to either grant or deny approvals for the alterations. For all alterations involving more than three (3) existing spaces or lots within existing mobile home parks, the review process provided for below shall apply.

**(A) Review of Preliminary Plan**

After preliminary plans for a mobile home park or recreational vehicle park have been properly submitted to the Planning Director, the following agencies shall be responsible for reviewing the proposed plans:

**(i) Planning Board**

The Planning Board shall secure the plans for the mobile home park or recreational vehicle park and shall be responsible for the review of the following to determine if the proposed design is in accordance with the specifications of this Ordinance regarding:

- (a) Title information;
- (b) Vicinity map;
- (c) Dimensions and bearing of exterior property lines;
- (d) Roads in the vicinity;
- (e) Method of surfacing road within the park;
- (f) Location of park;
- (g) Street and lot design;
- (h) Adequate lot size; and
- (i) Adequate screening, the natural terrain within ten (10) feet of adjacent property lines may not be disturbed.

**(ii) County Health Department**

The county health department or appropriate regulatory and licensing agency shall review plans for the mobile home park or recreational vehicle park to determine if they are in accordance with the minimum health standards and regulations regarding:

- (a) Source of water and water distribution system;
- (b) Sanitary sewage system;
- (c) Surface water drainage; and

(d) Adequate lot size.

(iii) **Code Enforcement Officer**

The code enforcement officer shall review the plans for the mobile home park or recreational vehicle park that include buildings to be constructed within the proposed park. In addition, the code enforcement officer shall review plans for the mobile home park or recreational vehicle park, to determine if the proposed electrical system is in accordance with electrical codes adopted by the state.

(iv) **Board of Commissioners**

This agency shall review preliminary plans for final approval.

(B) **Deficiencies Found During Review**

Should any agency find deficiencies in the review of the plans of a mobile home park or recreational vehicle park, that agency shall notify the developer of the park to correct such deficiencies. Each agency must notify the developer and shall also notify the Planning Board, in writing, through the building official, after approval of the plans for a proposed park. The Planning Board shall notify the developer of its decision to recommend approval or disapproval of the preliminary plan to the Board of Commissioners.

(C) **Issuance of Construction Permit and Zoning Permit**

(i) **Construction Permit**

After approval of the preliminary plans for a mobile home park or recreational vehicle park by the Planning Board and the Board of Commissioners concerned, the Planning Director is authorized to issue a construction permit. The intent of this permit is to enable the execution of the plan in the field and shall not be construed to entitle the recipient to offer space for rent or lease or to operate a park. All field work shall be in accordance with the approved plans. It shall be the responsibility of the developer to inform the various county inspection officials as to the progress of field work so that timely inspections may be made.

(ii) **Zoning Permit**

The Planning Director is authorized to issue a Zoning Permit after the installation of the number of spaces the developer wished to initially install. In no case shall the Zoning Permit be issued for less than the minimum spaces required by this Ordinance. The Zoning Permit will be issued only after the Planning Director is satisfied that all work has been executed as outlined in this Ordinance. Should additional spaces be added to a park that has preliminary plans approved, a Zoning Permit for the additional spaces will be necessary before such spaces are offered for rent or lease. In the case of a mobile home park each final permit for additional spaces to be added to an existing park that has preliminary approval shall be for a minimum of five (5) spaces.

(iii) **Authorization to Operate**

Upon receipt of the Zoning Permit, the permittee is duly authorized to operate and maintain his park in any way that is not contrary to the provisions of the permit and this Ordinance. However, should the Planning Director find at any time subsequent to the issuance of the permit that the park is operating in violation of the terms of this Ordinance, or of special conditions set forth in the permit, he shall revoke the Zoning Permit and further operation of the park without a Zoning Permit shall be cause for legal action.

**(1) Review of Plans Required**

In order to promote the appearance of the Town as a family beach and to protect the value of adjoining properties as well as the aesthetic qualities of the Town, each applicant for the approval of a commercial use structure, or an addition to a commercial structure, shall as a condition for issuance of a building permit apply for approval of both a site plan and architectural plans of the proposed commercial structure. The architectural plans shall include front, rear, and side elevations, exterior building colors, lighting fixtures and any proposed exterior decorative construction and/or roof line. Except as noted in subsections (2) and (4) below, approval of the site plan and architectural plans shall require review by both the Planning Board and the Board of Commissioners, and such approval shall be a condition for issuance of the building permit for the commercial structure.

**(2) Application Requirements**

As a condition for approval of all site and architectural plans for motels, hotels, and other commercial use structures and additions, modifications or changes to them:

- (A) The number, type, candlepower, location, purpose and characteristics of all exterior lighting shall be shown on the plans;
- (B) All architect's plans shall indicate the colors or tones to be used on the exterior of the commercial structure; and
- (C) All architects plans for motel, hotels, shopping centers, retail stores and other commercial use structures and additions, modifications or changes thereto, shall indicate the construction of the exterior wall facings.

**(3) Planning Director Site Plan Review**

Site plans for additions to existing structures, not exceeding one thousand (1,000) square feet can be reviewed and approved by the Planning Director to ensure compliance with this Ordinance and applicable building regulations. The Planning Director has the authority to recommend that the site plans, not exceeding one thousand (1,000) square feet be reviewed by the Planning Board and Board of Commissioners if he or she feels such review is necessary. Not more than two (2) additions of five hundred (500) square feet or less, each, will be added to the original site plan. Subsequent request of more than one hundred (100) square feet will require review by the Planning Board and Board of Commissioners. Additions constructed prior to January 14, 1997 (the date on which this provision was originally adopted) shall not be exempt from when a subsequent request is sought.

**(4) Exemption for Architectural Plan Review**

The requirement for approval of architectural plans in accordance with this section 2.4.8 shall not be applicable to any existing commercial buildings and/or new commercial structures for which building permits have been issued prior to the effective date of this section. However, any repairs, modifications, alterations, reconstruction and/or additions to existing commercial structures that exceed fifteen (15) percent of the fair market value of the existing commercial structure shall be required to conform obtain review and approval of architectural and site plans pursuant to this section 2.4.8. Notwithstanding the previous sentence, the requirements set forth in subsection 6.1.3(2), Permitted Exterior Colors, shall be applicable to all commercial structures, regardless of when a building permit was issued, and shall include the painting or repainting of any commercial structure. Exterior commercial colors must be approved by the Town prior to the painting or repainting of any commercial structure.

**(5) Criteria for Approval**

Both the site and architectural plans must meet all requirements of this Ordinance, including without limitation the requirements of section 6.1.3 and all other applicable Town ordinances and regulations.

## 2.4.9 - Floodplain Development Permit

No development shall occur in flood hazard areas, as defined in section 6.2, Flood Damage Prevention, unless the Floodplain administrator shall first issue a floodplain development permit pursuant to the following requirements and criteria, unless a variance has been approved pursuant to section Error! Reference source not found., Variances.

### (1) Plans and Application Requirements

Application for a floodplain development permit shall be made to the floodplain administrator on forms furnished by him or her prior to any development activities proposed to be located within flood prone areas. . The following items/information shall be presented to the floodplain administrator to apply for a floodplain development permit.

#### (i) Plot Plan

A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development.

- (a) The nature, location, dimensions, and elevations of the area of development disturbance; existing and proposed structures, the location of utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
- (b) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in 6.2.3(2) of the UDO or a statement that the entire lot is within the special flood hazard area;
- (c) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in section 6.2.3(2) of the UDO;
- (d) The boundary of the floodway(s) or non-encroachment area(s) as determined in section 6.2.3(2) of the UDO;
- (e) The base flood elevation (BFE) where provided as set forth in section 6.2.3(2); subsections 2.2.4(3)(B)(xi) and (xii); sections 6.2.4(3) and (4); and subsection 6.2.4(2)(E) of the UDO;
- (f) The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
- (g) The boundary and designation date of the Coastal Barrier Resource System (CBRS) area of Otherwise Protected Areas (OPA), if applicable.
- (h) Preparation of the plot plan by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.

#### (ii) Development Plan

Proposed elevation, and method thereof, of all development within a special flood hazard area including but not limited to:

- (a) Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;
- (b) Elevation in relation to NAVD 1988 to which any non-residential structure will be flood-proofed;
- (c) Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed;

#### (iii) Floodproofing Plan

If floodproofing, a floodproofing certificate (FEMA Form 086-0-34) and back-up plans from a registered professional engineer or architect certifying that the non-residential flood-proofed development will meet the flood-proofing criteria in subsections 6.2.4(2)(B) and 6.2.4(3)(B) of the UDO.

**(iv) Foundation Plan**

A foundation plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this article are met. These details include but are not limited to:

- (a) Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers);
- (b) Should solid foundation perimeter walls be used in floodplains other than coastal high hazard areas, details of sufficient openings to facilitate the unimpeded movements of floodwaters in accordance with Division 5, subsection 6.2.4(2)(D) of the UDO;
- (c) In coastal high hazard areas, the following must also be submitted prior to floodplain development permit issuance. Specific requirements are detailed in section 6.3.4(5) and subsection 6.2.4(2)(D)(iii) of the UDO.
  - (i) V-zone certification form with accompanying plans and specifications verifying the engineered structure and breakaway wall designs as set forth in subsection 6.2.4(2)(D)(iii) of the UDO;
  - (ii) Plans for lattice work or decorative screening, if applicable. Plans for any structures that will have lattice work or decorative screening must be submitted to the floodplain administrator for approval prior to floodplain development permit issuance;
  - (iii) Plans for non-structural fill, if applicable. Plans for placement of any non-structural fill must be submitted to the floodplain administrator for approval prior to floodplain development permit issuance. Requirements are detailed in section 6.2.4(5)(H) of the UDO.

**(v) Usage Details**

Usage details of any enclosed space below the regulatory flood protection elevation.

**(vi) Utility Protection**

Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

**(vii) Other Relevant Permits**

Copy of all other local, state and federal permits required prior to floodplain development permit issuance (i.e. wetlands, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.)

**(viii) Recreation Vehicle Requirements**

If floodplain development permit is issued for placement of recreational vehicles and/or temporary structures, documentation to ensure sections 6.2.4(2)(F) and (G) of the UDO are met.

**(ix) Engineering Report for Watercourse Alteration**

If a watercourse is proposed to be altered and/or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed

project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

## **(2) Floodplain Development Permit Data Requirements**

The following information shall be provided at a minimum on the floodplain development permit to ensure compliance with this Code.

- (A) A complete description of the development to be permitted under the floodplain development permit issuance (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation, or drilling operations, or storage of equipment or materials, etc.).
- (B) The special flood hazard area determination for the proposed development per available data specified in section 6.2.3(2).
- (C) The regulatory flood protection elevation required for the reference level and all attendant utilities.
- (D) The regulatory flood protection elevation required for the protection of all public utilities.
- (E) All certification submittal requirements with timelines.
- (F) Provide a minimum of:
  - (i) Two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding.
  - (ii) The bottom of all openings shall be no higher than one (1) foot above grade.
  - (iii) If a design does not meet these minimum criteria it must either be certified by a professional engineer or architect.
- (G) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

## **(3) Certification Requirements**

### **(A) Elevation and Floodproofing**

An Elevation Certificate (FEMA Form 086-0-33) or Floodproofing Certificate (FEMA Form 86-0-34) is required after the reference level is completed. Within twenty-one (21) calendar days of establishment of the reference level elevation, or floodproofing, by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, or floodproofed elevation, whichever is applicable in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the certification or failure to make said corrections required shall be cause to issue a stop-work order for the project.

### **(B) Final As-Built Elevation and Floodproofing**

A Final As-Built Elevation Certificate (FEMA Form 086-0-33) or Floodproofing Certificate (FEMA Form 86-0-34) is required after construction is completed and prior to zoning permit/occupancy issuance. It shall be the duty of the permit holder to submit to the

floodplain administrator a certification of final as-built construction of the elevation or floodproofed elevation of the reference level and all attendant utilities. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. The Finished As-Built Elevation Certificate certifier shall provide at least 2 photographs showing front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram including foundation. If the building has split-level or multi-level areas, provide at least 2 additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3"x3". Digital photographs are acceptable. When floodproofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to zoning permit. A Finished As-Built Floodproofing Certificate, with supporting data, an operational plan and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. Failure to submit the certification shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

**(C) V-Zone/Breakaway Wall**

A V-Zone Certification with accompanying design plans and specifications is required prior to issuance of a Floodplain Development permit within coastal high hazard areas. It shall be the duty of the permit applicant to submit to the Floodplain Administrator said certification to ensure the design standards of this ordinance are met. A registered professional engineer or architect shall develop or review the structural design, plans, and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this ordinance. This certification is not a substitute for an Elevation Certificate. In addition, prior to the Certificate of Compliance/Occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE Zone construction

**(D) Manufactured Homes**

If a manufactured home is placed within an A, AE, AH, AO, A99 zone and the elevation of the chassis is above thirty-six (36) inches in height, an engineered foundation certification is required in section 6.2.4(2)(C).

**(E) Altered Watercourses**

If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

**(F) Certification Exemptions**

The following structures, if located within AE1 through AE12 zones, are exempt from the elevation/floodproofing certification requirements specified in sections 2.4.9(1) and (2) above:

- (i) Recreational vehicles meeting requirements of section 6.2.4(2)(F)(i).
- (ii) Temporary structures meeting requirements of section 6.2.4(2)(G); and

- (iii) Accessory Structures less than one hundred fifty (150) square feet or less or five thousand dollars (\$5,000) or less meeting requirements of section 6.2.4(2)(H).

#### **(4) Determination for Existing Buildings and Structures**

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (i) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (ii) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (iii) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (iv) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

#### 2.4.10 - Stormwater Management Plan and Permit

##### **(1) Plan Required**

Any person planning a development, as defined by this development ordinance, unless exempted, shall submit a stormwater management plan to the Stormwater Administrator.

##### **(2) Permit and Fee**

A permit fee will be collected at the time the stormwater management plan is submitted and will reflect the cost of administration and management of the permitting process. The Stormwater Administrator shall recommend a fee schedule based upon the relative complexity of the project. The fee schedule will be established, by the Board of Commissioners by resolution. The fee schedule is not printed therein but is on file in the Town Clerk's Office.

##### **(3) Plan Approval**

The stormwater management plan shall not be approved unless it clearly demonstrates that the proposed development will meet the performance standards and the design standards in section 6.3, except where a variance has been granted pursuant to section 2.4.17.

Within thirty (30) days after submission of the completed stormwater management plan, the Stormwater Administrator shall approve, with or without specified conditions or modifications, or reject the plan and shall notify the applicant accordingly. If the Town has not rendered a decision within thirty (30) days after plan submission, it shall inform the applicant of the status of the review process and the anticipated completion date. If the plan is rejected or modified, the Stormwater Administrator shall state its reason. While it is not customary for the town or its designated agents to actually design an acceptable project for the applicant; it will do all it can to work with the applicant to achieve an acceptable project plan in harmony with the stormwater management provisions of this ordinance. Projects requiring formal Planning Board and Board of Commissioner review shall not be subject to the 30-day requirement. Approval of stormwater management plans for these projects shall be determined in conjunction with the Planning Board's and Board of Commissioner's formal review process.

(4) **Expiration**

Should the development not be completed within three (3) years, the stormwater management plan will no longer be considered approved. The applicant must resubmit a stormwater management plan for approval by the Stormwater Administrator before construction may begin. The applicant may request, and the Stormwater Administrator may grant, a single one-year extension to the approved plan provided the initial three-year approval period has not lapsed.

(5) **Inspections**

No stormwater management plan may be approved without adequate provision for inspection of the property before development activity commences. The applicant shall arrange with the town's building inspector or his designated agent for scheduling the following inspections:

(A) **Initial Inspection**

Prior to approval of the stormwater management plan;

(B) **Bury Inspection**

Prior to the burial of any underground drainage structure;

(C) **Erosion Control Inspection**

As necessary to ensure effective control of erosion and sedimentation;

(D) **Finish Inspection**

When all work including installation of all drainage facilities has been completed;

(E) **As Built Drawings**

For projects disturbing ten thousand (10,00) square feet or more of land and all multi-family residential, commercial and industrial projects, as-built drawings of the stormwater treatment system shall be provided to the Town.

The town building inspector or his designated agent shall inspect the work and shall either approve it or notify the applicant in writing in what respects there has been a failure to comply with the requirements of the approved stormwater management plan. Any portion of the work which does not comply shall be promptly corrected by the applicant or the applicant will be subject to the penalty provisions of section 6.3.

(6) **Appeals**

Any person aggrieved by the action of any official charged with the enforcement of the stormwater regulations of this development ordinance, as a result of the disapproval of a properly filed application for a permit, issuance of a written notice of violation, or an alleged failure to properly enforce this ordinance in regard to a specific application shall have the right to appeal the action to the town Board of Adjustment. The appeal must be filed in writing within twenty (20) days of the mailing date of the official transmittal of the final decision or determination to the applicant, and it must state clearly the grounds on which the appeal is based, and shall be processed in the manner prescribed for hearing administrative appeals under local and state statutes.

2.4.11 - Dunes and Vegetation Permit

No development regulated by the dune and vegetation protection standards in section 6.4 shall occur, unless the dunes and vegetation protection inspector shall first issue a dunes and vegetation permit pursuant to the following requirements and criteria, unless a variance has been approved pursuant to section Error! Reference source not found., Variances.

(1) **Application Requirements**

The following information is required in order to issue a permit:

(A) **New Development and Redevelopment**

(i) **Site Plan**

A site plan indicating the proposed location of the principal and accessory structures on the lot and associated parking areas, septic system, driveways, storm water system, and any and all other structures or impervious surfaces that are intended for location on the property;

(ii) **Topography**

The site plan shall be transposed on a topographic map of the property;

(iii) **Natural Area Reserve**

The site plan shall indicate the proposed area to be reserved as natural area on the property;

(iv) **Fill Areas**

The site plan shall indicate the proposed use of fill on the property;

(v) **Compliance with Design Standards**

The site plan shall demonstrate compliance with the design standards contained within this article;

(vi) **Flag Natural Areas**

The applicant shall be required to physically flag the required natural areas on the property.

(B) **Disturbance of Previously Developed Lots Where Additional Development is Planned**

(i) **Site Plan**

A site plan indicating the location of existing principal and accessory structures on the lot and associated parking areas, septic system, driveways, storm water system, and any and all new structures or impervious surfaces that are intended for location on the property;

(ii) **Topography**

The site plan shall be transposed on a topographic map of the property;

(iii) **Natural Area Reserve**

The site plan shall indicate the proposed area reserved as natural area on the property;

(iv) **Fill Areas**

The site plan shall indicate the proposed use of fill on the property;

(v) **Compliance with Design Standards**

The site plan shall demonstrate compliance with the design standards contained within this article;

(vi) **Flag Natural Areas**

The applicant shall be required to physically flag the required natural areas on the property.

(2) **Review and On-site Visit**

All submitted permit application materials will be reviewed and an on-site visit shall be conducted to determine compliance with the requirements of section 6.4. Approval will be authorized if it is in compliance with all relevant design standards outlined within section 6.4.

(3) **Permitted Activities and Inspection**

The permit shall indicate the activities and the locations that are permitted. The planning and inspections department shall conduct the necessary inspections to ensure that the permitted activities are conducted in accordance with the approved dunes and vegetation permit.

(4) **Permit Duration**

All dunes and vegetation permits shall be valid for a period of eighteen (18) months, with work commencing on a parcel of property within six (6) months from the date the permit was issued. Failure to commence work within the allotted time period shall void the existing permit and require applicant to secure another permit.

2.4.12 - Sign Permit

(1) **Procedure**

The Planning Director may approve an application for a sign permit if it complies with all applicable provisions of this Ordinance.

2.4.13 - Wireless Communication Permit

(1) **Procedure**

All applications will first be checked for compliance by the Planning Director or his designee. If the Planning Director is unable to approve the application, then the application will be reviewed by the Planning Board at its next regular meeting. Discussion and recommendation for approval or denial will then be made to the Board of Commissioners. At their next regular meeting, the Board of Commissioners will review all findings and, following their discussion, decide upon approval or denial of the application. The application will be treated as either a permitted or special use, dependent upon the type of structure, and the time frame will approximate that of any other permitted use or special use within the Town. Public comment for any permitted use or special use is always allowed at public meetings. In determining whether a Wireless Telecommunications Support Structure (WTSS) application should be approved or denied, the Planning Director and the Board of Commissioners shall take into account the structure's harmony with the surrounding area, its compatibility with adjacent properties, and the availability, or lack thereof of more suitable sites. The aesthetic effects of the WTSS, as well as any mitigating factors concerning aesthetics, may be used to evaluate the application. In reaching a decision, the Board of Commissioners may request modification of the height, design, screening, placement, or other characteristics of the WTSS to produce a more harmonious situation.

(2) **Notice of Approval or Disapproval**

Notice of approval or disapproval will be provided in writing by the Board of Commissioners following their decision. All discussion and review notes from both the Planning Board and Board of Commissioners shall be maintained in writing as part of the public record, and shall be available for review by all interested parties.

(3) **Building Permits and Certificates of Occupancy**

Following approval by the Board of Commissioners, the inspections department shall issue a building permit. Construction of the Wireless Telecommunications Antennae (WTA) or WTSS shall commence within one (1) year from the date of issue of the building permit. If construction has not commenced within one (1) year, the building permit shall be considered null and void. An application for a one-time extension of six (6) months may be made by petition to the Board of Adjustment. If the construction has not commenced by the end of this extension period, then the permit shall be considered null and void. The inspections department shall issue a certificate of occupancy following satisfactory completion of the structure according to design and stated intent. Any unapproved changes to the structure shall prohibit issue of a certificate of occupancy, and shall require a new application and fees to reinitiate the tiered review process.

(4) **Town Code**

Nothing in this section 2.4.13 shall have the effect of releasing in whole, or in any part, any applicant's or their facilities' obligations to comply with Town Code.

2.4.14 - Statutory Vested Rights

(1) **Purpose**

The purpose of this section 2.4.14 is to implement the provisions of G.S. 160A-385.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan.

(2) **Establishment of a Zoning Vested Right**

(A) **Approval by Applicable Authority**

A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the Board of Commissioners, Board of Adjustment, or Planning Board, as applicable, of a site specific development plan, following notice and public hearing.

(B) **Terms and Conditions**

The approving authority may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare.

(C) **Condition of Variance**

Notwithstanding subsections (A) and (B), approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.

(D) **Effective Date**

A site development plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating to it.

(E) **Overlay Zoning**

The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the Town, including, but not limited to, building, fire, plumbing, electrical and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific

development plan upon the expiration or termination of the vested right in accordance with this Ordinance.

(F) **Applicable to Property**

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

(3) **Approval Procedures and Approval Authority**

(A) **Approval by Applicable Authority**

Except as otherwise provided in this section, an application for site specific development plan approval shall be processed in accordance with the procedures established by ordinance and shall be considered by the designated approval authority of the specific type of zoning or land use permit or approval for which application is made.

(B) **Delegated Authority**

Notwithstanding the provisions of subsection (A), if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to the board, committee or administrative official other than the Board of Commissioners, Board of Adjustment or Planning Board, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the Board of Commissioners, Board of Adjustment or the Planning Board following notice and a public hearing as provided in G.S. 160A-364.

(C) **Time of Application**

In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of application, on a form to be provided by the Town, that a zoning vested right is being sought.

(D) **Necessary Notation**

Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under G.S. 160A-385.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

(E) **Subsequent Review**

Following approval or conditional approval of a site specific development plan, nothing in this section 2.4.14 shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.

(F) **Revocation**

Nothing in this section 2.4.14 shall prohibit the revocation of the original approval or other remedies for failure to comply with the applicable terms and conditions of the approval or this Unified Development Ordinance.

(4) **Duration**

(A) **Two-Year Period**

A zoning right that has been vested as provided in this section 2.4.14 shall remain vested for a period of two (2) years unless specifically and unambiguously provided otherwise pursuant to subsection (B). This vesting shall not be extended by any amendments or

modifications to a site specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.

**(B) Authority to Extend Duration**

Notwithstanding the provisions of subsection (A), the approval authority may provide that rights shall be vested for a period exceeding two (2) years but not exceeding five (5) years where warranted in light of all relevant circumstances, including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the approval authority at the time of the site specific development plan is approved.

**(C) Expiration**

Upon issuance of a building permit, the expiration provisions of G.S. 160A-418 and the revocation provisions of G.S. 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

**(5) Termination**

A zoning right has been vested as provided in this section 2.4.14 shall terminate:

- (A) At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
- (B) With the consent of the affected landowner;
- (C) Upon findings by the Board of Commissioners, by ordinance after notice and a public hearing, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as contemplated in the site specific development plan;
- (D) Upon payment to the affected landowner of compensation for all costs, expenses and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property that is caused by such action;
- (E) Upon findings by the Board of Commissioners, by ordinance after notice and hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the approval authority of the site specific development plan; or
- (F) Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the approval authority may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and hearing.

**2.4.15 - Zoning Permit**

It shall be unlawful to use or permit the use of any building or premises or part of a building or premises until a zoning permit has been issued by the Town; provided, however, no zoning permit shall be required for the continuance of a use in effect at the time of adoption of this Ordinance.

**2.4.16 - Building Permit**

Before the erection, construction or alteration of any building or structure, or part of the same, there shall be submitted to the building inspector by the owner or authorized agent, an application for a building permit on appropriate blanks to be furnished by the town. Each application for a building permit shall be accompanied by a plat, showing accurate dimensions of the lot to be built upon, accurate dimensions of the building to be erected and its location on the lot. If it shall appear to the building inspector that the provisions of this chapter and all requirements of fees have been paid, if any, he will then issue the building permit. Plats and plans submitted to the building inspector shall be kept in the files in the town for future reference.

#### 2.4.17 - Variances

##### (1) **General**

The Board of Adjustment may authorize in specific cases such variances from the terms of this Ordinance that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of this Ordinance would result in unnecessary physical hardship.

##### (2) **Procedure**

In order to initiate a variance request, the applicant shall file an application with the Board of Adjustment on forms approved by the Town, and with supporting information required by the Town. The Board of Adjustment shall review the application and shall approve or deny the variance, pursuant to the criteria established for different forms of variance in subsections (3), (4), (5), and (6) below. The Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance.

##### (3) **Criteria for General Variance Approval**

A variance from any of the terms of this Ordinance not governed by subsections (4) or (5) below shall be granted by the Board of Adjustment only if it shall make the following findings:

- (A) That special conditions and circumstances exist that are peculiar to the land, structure, or building involved and that are not applicable to other lands, structures, or buildings in the same district; and
- (B) That literal interpretation of the provisions would deprive the applicant of rights commonly enjoyed by other properties in the same district under terms of this Ordinance; and
- (C) That the special conditions and circumstances do not result from the actions of the applicant; and
- (D) That the hardship is of a physical nature and not economic; and
- (E) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other land, structures, or buildings in the same district.

##### (4) **Criteria for Floodplain Variance Approval**

###### (A) **Application Requirements**

Applications for floodplain variances shall include a written report addressing each of the above factors:

- (i) The danger that materials may be swept onto other lands to the injury of others;
- (ii) The danger to life and property due to flooding or erosion damage;
- (iii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (iv) The importance of the services provided by the proposed facility to the community;
- (v) The necessity to the facility of a waterfront location, where applicable;

- (vi) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (vii) The compatibility of the proposed use with existing and anticipated development;

**(viii)** The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

- (ix) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (x) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
  - (xi) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas.
- (B) In passing upon floodplain variances, the Board of Adjustment shall consider all technical evaluations, all required application materials and reports, all standards specified in other sections of this Ordinance, and all other relevant factors.
- (C) A variance from any of the terms of this Ordinance related to floodplain protection shall be granted by the Board of Adjustment only if it shall make the following findings:
- (i) The applicant has shown good and sufficient cause; and
  - (ii) Failure to grant the variance would result in exceptional hardship; and
  - (iii) The granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - (iv) No increase in flood levels during the base flood discharge will result within any designated floodway or non-encroachment area as a result of the variance.
  - (v) The variance will not result in any structure being in violation of other federal, state, or local laws or regulations.
  - (vi) The variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (vii) If the proposed variance is for the repair or rehabilitation of a historic structure, the Variances the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (D) The Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Ordinance and to protect the public health, safety, and welfare.
- (E) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.

**(5) Criteria for Stormwater Management Variances**

The Board of Adjustment may grant a written variance from any requirement of section 6.3 or related stormwater management requirements if it makes a written finding that the following criteria have been met:

- (A) That the criteria of subsection (3) above have been met;

- (B) The variance will not significantly increase or decrease the rate or volume of surface water runoff;
- (C) The variance will not have a significant adverse impact on an interdunal trough, basins, wetland, watercourse or water body;
- (D) The variance will not significantly contribute to the degradation of water quality; and
- (E) The variance will not otherwise significantly impair attainment of the objectives of section 6.3 and related stormwater management regulations.

(6) **Variance Conditions**

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this the provisions of section 6.3 and related stormwater regulations.