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ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

SECTION 4.01 AMENDMENT/REZONING PROCEDURES

(A) *Procedure.* The ***Town Council*** may amend, supplement, or change the text of this Ordinance and ***zoning*** map following review and recommendation of the ***Planning Board*** according to the procedures established in this article.

(B) *Action by **Applicant**.* The following action shall be taken by the ***applicant***:

(1) Proposed changes or amendments may be initiated by the ***Town Council***, ***Planning Board***, or by one (1) or more interested parties.

(2) An application for any change or amendment shall contain a description and statement of the present and proposed ***zoning*** regulations or district boundary to be applied, the names and addresses of the ***applicant***, the owner of the parcel of land involved in the change if different from the ***applicant***, and all ***adjacent property*** owners as shown on the ***Brunswick County*** tax listing. Eight (8) copies of such application shall be filed with the ***UDO Administrator*** not later than thirty (30) days prior to the ***Planning Board*** meeting at which the application is to be considered.

(3) When a proposed amendment is initiated by individuals or parties other than the ***Town Council*** or ***Planning Board***, a fee established, from time to time, by the ***Town Council*** shall be paid to the Town for each application for an amendment to cover the necessary administrative costs and advertising.

(C) *Action by the **Planning Board**.*

(1) In any case where the ***Planning Board*** will consider a change in the ***zoning*** classification of a parcel of land, notice of the proposed petition or application shall be mailed by first class mail to the owner of the parcel of land involved in the change and all ***abutting*** property owners as shown on the ***Brunswick County*** tax listing at the addresses listed for such property owners on the ***Brunswick County*** tax abstracts, at least ten (10) days and not more than twenty-five (25) days prior to the ***Planning Board*** meeting at which the rezoning is to be considered. When multiple parcels are included in a proposed ***zoning*** map amendment, a posting of each individual site is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons. The ***UDO Administrator*** or his or her designee shall certify to the ***Planning Board*** that such notices have been made.

(2) In any case where the ***Planning Board*** will consider an amendment to the ***zoning*** code text, notice of the amendment to be considered shall be published once in a newspaper having general circulation in the area. The notice shall be published not less than ten (10) days before the date of the ***Planning Board*** meeting at which the text amendment will be considered.

(3) The ***Planning Board*** shall advise and comment on whether the proposed text amendment or map amendment is consistent with the adopted comprehensive plan and any other applicable officially adopted plans. The ***Planning Board*** shall provide a written recommendation to the ***Town Council*** that addresses plan consistency and other matters as deemed appropriate by the ***Planning Board***, but a comment by the ***Planning Board*** that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the ***Town Council***.

(D) *Action by the **Town Council**.*

(1) *Notice and Public Hearings.*

(a) No amendment shall be adopted by the ***Town Council*** until after public notice and hearing. Notice of such a public hearing shall be published once a week for two (2) successive calendar weeks in a local newspaper of general circulation in the Town. In any case where the ***Town Council*** will consider a change in the ***zoning*** classification of a parcel of land, notice of the proposed petition or application shall be mailed by first class mail to the owner of that parcel of land and all ***abutting*** property owners as shown on the ***Brunswick County*** tax listing at the last addresses listed for such property owners on the ***Brunswick County*** tax abstracts. The party applying for the change in ***zoning*** classification shall submit the following material with the request for rezoning; the application shall be considered incomplete without such material:

1. A list of names of owners, their addresses, the tax parcel numbers of the property involved in the change, and the properties immediately adjacent to the property of the request, including the property owners directly opposite the proposed request but separated by a ***street*** right-of-way, as shown on the ***Brunswick County*** tax listing.

2. Two (2) sets of plain, letter sized envelopes equal in number to the above list of names shall be furnished by the ***applicant***. Both sets of envelopes are to be unsealed, stamped, and addressed for mailing to the ***adjacent property*** owners as shown on the ***Brunswick County*** tax listing, and bear the return address of the Town.

(b) At least ten (10) but no more than twenty-five (25) days prior to the date of the meeting at which the ***Town Council*** will consider the request for rezoning, the Town Clerk shall mail a letter of notification in the supplied envelopes containing a description of the request and the time, date, and location of the public hearing. Additionally, the site proposed for rezoning or an adjacent public right-of-way shall be posted with a notice of the public hearing not less than ten (10) days prior to the ***Town Council*** meeting at which the rezoning is to be considered. When multiple parcels are included in a proposed ***zoning*** map amendment, a posting of each individual site is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons. The Town Clerk shall certify to the ***Town Council*** that such notices have been made and such certification shall be deemed conclusive in the absence of fraud.

(c) The first class mail notice required under Subsections (a) and (b) of this section shall not be required if the ***zoning*** map amendment directly affects more than fifty (50) properties, owned by a total of at least fifty (50) different property owners, and the Town elects to use the expanded published notice. In this instance, the Town may elect to either make the mailed notice provided for in this section or may as an alternative elect to publish a notice of the hearing as required by NCGS 160A-364, but provided that each advertisement shall not be less than one-half ~~(2)~~ of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent ***Brunswick County*** property tax listing for the affected property, shall be notified according to the provisions of Subsections (a) and (b).

(d) Except for a Town-initiated ***zoning*** map amendment, when an application is filed to request a ***zoning*** map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the ***applicant*** shall certify to the ***Town Council*** that the owner of the parcel of land as shown on the ***Brunswick County*** tax listing has received actual

notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the ***Town Council*** that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud. Notice shall be made in any manner permitted under NCGS 1A-1, Rule 4(j).

(2) *Recommendations of **Planning Board**.* Before an item is placed on the consent agenda to schedule a public hearing, the ***Planning Board's*** recommendation on each proposed ***zoning*** amendment must be determined. If no recommendation is received from the ***Planning Board*** within sixty (60) days from the date when submitted to the ***Planning Board***, the petitioner may take the proposal to the ***Town Council*** without a recommendation from the ***Planning Board***. The ***Town Council***, at the close of public hearing, may defer taking lawful action on the proposed amendment until it has sufficient time to consider any new evidence or suggestions presented at the public hearing.

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

(b) Prior to adopting or rejecting any ***zoning*** amendment, the ***Town Council*** shall adopt a statement describing whether the action is consistent with the adopted comprehensive plan and any other applicable officially adopted plans and explaining why the Council considers the action taken to be reasonable and in the public interest.

(c) The ***Town Council*** shall adopt a statement of reasonableness for all small scale rezonings as defined by the North Carolina General Statutes. ~~State statute.~~

(3) *Qualified Protests.*

(a) In case of a qualified protest against a ***zoning*** map amendment, that amendment shall not become effective except by favorable vote of three-fourths (3/4) of all the members of the ***Town Council***. For the purposes of this division, vacant positions on the Council and members who are excused from voting shall not be considered "members of the Council" for calculation of the requisite supermajority. NOTE: Protest petitions do not apply to text amendments.

(b) To qualify as a protest under this section, the petition must be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change; or (ii) five percent (5%) of a one hundred (100) foot side ***buffer*** extending along the entire boundary of each discrete or separate area proposed to be rezoned. A ***street*** right-of-way shall not be considered in computing the one hundred (100) foot ***buffer*** area as long as that ***street*** right-of-way is one hundred (100) feet wide or less. When less than an entire parcel of land is subject to the proposed ***zoning*** map amendment, the one hundred (100) foot ***buffer*** shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the Town may rely on the ***County*** tax listing to determine the "owners" of potentially qualifying areas.

(c) The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the Ordinance as a result of annexation or otherwise, or to an amendment to an adopted (i) special use district, (ii) conditional use district, or (iii) conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential ***development***, or increase the total approved size of nonresidential ***development***, or reduce the size of any ***buffers*** or screening approved for the special use district, conditional use district, or conditional district.

(d) No qualified protest against any change in or amendment to a ***Zoning*** Ordinance or ***zoning*** map shall be valid or effective for the purposes of NCGS 160A-385 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the Town Clerk in sufficient time to allow the Town at least two (2) normal work days, excluding Saturdays, Sundays, and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. All protest petitions shall be on a form prescribed and furnished by the Town. Such form shall prescribe any reasonable information deemed necessary to permit the Town to determine the sufficiency and accuracy of the petition. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed ***zoning*** amendment. Only those protest petitions that meet the qualifying

standards set forth in NCGS 160A-385 at the time of the vote on the ***zoning*** amendment shall trigger the supermajority voting requirement.

(4) *Statement of Consistency.* Prior to adopting or rejecting any ***zoning*** amendment, the ***Town Council*** shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the Council considers the action taken to be reasonable and in the public interest. This statement is not subject to judicial review.

(E) *Withdrawal of Application.* An ***applicant*** may withdraw his or her application at any time by written notice to the ***UDO Administrator***.

SECTION 4.02 VESTED RIGHTS PROVISION

(A) *Purpose.* The purpose of this section is to implement the provisions of NCGS 160A-385.1 pursuant to which a statutory ***zoning vested right*** is established upon the approval of a site specific ***development*** plan.

(B) *Establishment of a **Vested Right**.*

(1) A ***zoning vested right*** shall be deemed established upon the valid approval, or conditional approval, by the ~~***Town Council*** or~~ Board of Adjustment~~, as applicable,~~ of a site specific ***development*** plan, following notice and public hearing as provided for by law.

(2) The approving authority may approve a site specific ***development*** plan upon the terms and conditions as may reasonably be necessary to protect the public health, safety and welfare. The failure to satisfy any of the terms and conditions so imposed will result in a forfeiture of ***vested rights***.

(3) Notwithstanding divisions (1) and (2) above, 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.

(4) A site specific ***development*** plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto.

(5) The establishment of a ***zoning vested right*** shall not preclude the application of overlay ***zoning*** that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or ***regulations*** that are general in nature and are applicable to all property subject to land use regulation by the Town,

including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise, applicable new or amended ***regulations*** shall be 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 section.

(6) 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.

(C) *Approval Procedures and Approval Authority*

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

(2) In order to obtain a ***zoning vested right*** hereunder, the ***applicant*** must set forth, in writing, at the time of application that the ***applicant*** seeks a ***zoning vested right***. All applications for ***zoning vested rights*** shall be considered by the ~~***Town Council***~~ ~~or~~ Board of Adjustment following notice and a public hearing as provided in NCGS 160A-364 irrespective of whether or not prior approval procedures required the notice and hearing.

(3) 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.

(4) 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 NCGS 160A-385.1. Unless terminated at an earlier date, the ***zoning vested right*** shall be valid until (date)."

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

(6) Nothing in this section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the ***Zoning*** Ordinance.

(D) *Duration.*

(1) A ***zoning*** right that has been vested as provided in this section shall remain vested for a period of two (2) years unless specifically and unambiguously provided otherwise pursuant to Subsection 4.02(D)(2) below. 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.

(2) Notwithstanding the provisions of Subsection 4.02(D)(1) above, 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 ***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 the site specific ***development*** plan is approved.

(3) Upon the issuance of a building permit, the expiration provisions of NCGS 160A-418 and the revocation provisions of NCGS 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.

(E) *Termination.* A ***zoning*** right that has been vested as provided in this section shall terminate:

(1) At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;

(2) With the written consent of the affected land owners;

(3) Upon findings by the ***Town Council***, by ordinance after notice and a public hearing, that natural or man-made 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;

(4) Upon payment to the affected land owner of compensation for all costs, expenses and other losses incurred by the land owner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate until paid (compensation shall not include any diminution in the value of the property which is caused by the action);

(5) Upon findings by the ***Town Council***, by ordinance after notice and a hearing, that the land owner or his/her representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific ***development*** plan; or

(6) 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 a hearing.

(F) *Voluntary Annexation.*

(1) A petition for annexation filed with the Town under NCGS 160A-31 or NCGS 160A-58.1 shall contain a signed statement declaring whether or not any ***zoning vested right*** with respect to the properties subject to the petition has been established under NCGS 160A-385.1 or NCGS 153A-344.1.

(2) A statement that declares that no ***zoning vested right*** has been established under NCGS 160A-385.1 or NCGS 153A-344.1, or the failure to sign a statement declaring whether or not a ***zoning vested right*** has been established, shall be binding on the land owner and any such ***zoning vested right*** shall be terminated.

(G) *Limitations.* Nothing in this section is intended or shall be deemed to create any ***vested right*** other than those established pursuant to NCGS 160A-385.1.

SECTION 4.03 TEMPORARY MORATORIA PROCEDURES

North Carolina General Statute 160A-381(e) explicitly recognizes the authority of cities/towns to adopt temporary moratoria. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a ***development***

moratorium with a duration of sixty (60) days or any shorter period, the ***Town Council*** shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven (7) days before the date set for the hearing. A ***development*** moratorium with a duration of sixty-one (61) days or longer, and any extension of a moratorium so that the total duration is sixty-one (61) days or longer, is subject to the notice and hearing requirements of NCGS 160A-364. Absent an imminent threat to public health or safety, a ***development*** moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to NCGS 160A-417 is outstanding, to any project for which a ***special use permit*** application has been accepted, to ***development*** set forth in a site-specific or phased ***development*** plan approved pursuant to NCGS 160A-385.1, to ***development*** for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or ***final subdivision plats*** that have been accepted for review by the Town prior to the call for public hearing to adopt the moratorium. Any ***preliminary subdivision plat*** accepted for review by the Town prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to ***final plat*** approval without being subject to the moratorium.

Any ordinance establishing a ***development*** moratorium must expressly include at the time of adoption each of the following:

(A) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the Town and why those alternative courses of action were not deemed adequate.

(B) A clear statement of the ***development*** approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(C) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(D) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the Town during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the Town shall have taken all reasonable and feasible steps proposed to be taken by the Town in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance

renewing or extending a ***development*** moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (A) through (D) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on ***development*** approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. In any such action, the Town shall have the burden of showing compliance with the procedural requirements of this subsection.

SECTION 4.04 APPEALS, VARIANCES, AND INTERPRETATIONS

(A) ***Appeals.***

(1) An ***appeal*** from any final order or decision of the ***UDO Administrator*** may be taken to the Board of Adjustment by any person aggrieved. An ***appeal*** is taken by filing with the ***UDO Administrator*** and the Board of Adjustment a written notice of ***appeal*** specifying the grounds therefor. A notice of ***appeal*** shall be considered filed with the ***UDO Administrator*** and the Board of Adjustment when delivered to the ~~Building Inspections~~ Planning and Inspections D~~d~~epartment, and the date and time of filing shall be entered on the notice by the ***UDO Administrator***.

(2) An ***appeal*** must be taken within thirty (30) days after the date of the decision or order ***appealed*** from.

(3) Whenever an ***appeal*** is filed, the ***UDO Administrator*** shall forthwith transmit to the Board of Adjustment all the papers constituting the record relating to the action ***appealed*** from.

(4) An ***appeal*** to the Board of Adjustment regarding any order by the ***UDO Administrator*** shall result in the following:

(a) All petitions and/or progress relating to the project for which the ***appeal*** was filed shall cease.

(b) The temporary stay may be lifted if the ***UDO Administrator*** certifies to the Board of Adjustment that a stay would result in an immediate threat to life and/or property.

(c) If the stay is repealed based on evidence presented by the ***UDO Administrator***, the Board of Adjustment or a court of record may enact a restraining order against the ***UDO Administrator***. This action will enact a stay ceasing all progress regarding the project for which the ***appeal*** was filed.

(5) The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination ***appealed*** from and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the ***appeal*** is taken.

(B) ***Variances***.

(1) An application for a ***variance*** shall be submitted to the Board of Adjustment by filing a copy of the application with the ***UDO Administrator***. Applications shall be handled in the same manner as applications for permits.

(2) A ***variance*** may be ~~granted~~ approved by the Board of Adjustment if it concludes that, by granting the ***variance***, all the following findings of fact are ~~supported~~ met by the Board of Adjustment's decision and that the variance is the minimum ***variance*** that will make possible the reasonable use of the land, building, or structure.~~:~~ ~~(1) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance; (2) that the ***variance*** is in harmony with the general purpose and intent of the Ordinance and preserves its spirit; and (3) that in the granting of the ***variance***, the public safety and welfare have been assured and substantial justice has been done.~~ ~~It~~ The Board ~~may~~ shall reach these conclusions if ~~it~~ they find~~s~~ that:

(a) ~~If the ***applicant*** complies strictly with the provisions of the Ordinance, he/she can make no reasonable use of his/her property.~~ Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

(b) ~~The hardship of which the ***applicant*** complains is one suffered by the ***applicant*** rather than by neighbors or the general public.~~ The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well

as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;

(c) ~~The hardship is unique, or nearly so, rather than one shared by many surrounding properties.~~ The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship;

(d) ~~The hardship is not the result of the ***applicant's*** own actions.~~ The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

(3) In granting ***variances***, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the ***variance*** applies will be as compatible as practicable with the surrounding properties.

(4) In denying a ***variance***, the Board of Adjustment shall make findings of fact that one (1) or more of the requirements specified hereinabove do not exist.

(5) Findings of fact made by the Board of Adjustment under this section shall be based upon only the evidence presented at the hearing at which the ***variance*** is considered.

(4) The nature of the ***variance*** and any conditions attached to it shall be entered on the face of the ***zoning*** permit, or the ***zoning*** permit may simply note the issuance of the ***variance*** and refer to the written record of the ***variance*** for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

(C) *Interpretations.*

(1) The Board of Adjustment is authorized to interpret the ***zoning*** map and to pass upon disputed questions of ***lot lines*** or district boundary lines and similar questions. If such questions arise in the context of an ***appeal*** from a decision of the ***UDO Administrator***, they shall be handled as provided in Section 4.04(A).

(2) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with ***UDO Administrator***. The

application shall contain sufficient information to enable the Board of Adjustment to make the necessary interpretation.

(3) Where uncertainty exists as to the boundaries of districts as shown on the Official ***Zoning*** Map, the rules of interpretation as specified in Section 1.10 shall be applied. Where uncertainties continue to exist after application of the above rules, ***appeal*** may be taken to the Board of Adjustment as provided in Section 4.04(A) of this Ordinance.

(4) Interpretations of the location of ***floodway*** and ***floodplain*** boundary lines may be made by the ***UDO Administrator*** as provided in Article 12, Part I.

(D) *Requests to be Heard Expeditiously.* As provided in Article 3, the Board of Adjustment shall hear and decide all ***appeals***, ***variance*** requests, and requests for interpretations, including map boundaries, as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Section 4.04(F), and obtain the necessary information to make sound decisions.

(E) *Hearing Required on **Appeals**, **Variances** and Interpretations.*

(1) Before making a decision on an ***appeal*** or an application for a ***variance*** or interpretation, the Board of Adjustment shall hold a hearing on the ***appeal*** or application within sixty (60) days of the submittal of a completed ***appeal*** or application.

(2) Subject to Subsection (3), the hearing shall be open to the public and all persons interested in the outcome of the ***appeal*** or application shall be given an opportunity to present evidence and arguments. All persons presenting evidence or arguments shall be sworn in by the Chairperson prior to the presentation of any evidence or arguments.

(3) The Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.

(4) The Board of Adjustment may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six (6) weeks or more elapses between hearing dates.

(5) The required application fee and all supporting materials must be received by the ***UDO Administrator*** before an application is considered complete and a hearing scheduled.

(F) *Notice of Hearing.* The ***UDO Administrator*** shall give notice of any hearing required by Section 4.04(E) as follows:

(1) Notice shall be given to the appellant or ***applicant*** and any other person who makes a written request for such notice by mailing to such persons a written notice not later than ten (10) days before the hearing.

(2) Notice shall be given to neighboring property owners by mailing a written notice not later than ten (10) days before the hearing to those persons who have listed for taxation real property any portion of which is located within one hundred fifty (150) feet of the ***lot*** that is the subject of the application or ***appeal***.

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

(G) *Burden of Proof in **Appeals** and **Variances.***

(1) When an ***appeal*** is taken to the Board of Adjustment in accordance with Section 4.04(A), the ***UDO Administrator*** shall have the initial burden of presenting to the Board of Adjustment sufficient evidence and argument to justify the order or decision ***appealed*** from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

(2) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Section 4.04(B)(2), as well as the burden of persuasion on those issues, remains with the ***applicant*** seeking the ***variance***.

(H) *Board of Adjustment Action on **Appeals** and **Variances**.*

(1) ***Appeals***. A motion to reverse, affirm, or modify the order, requirement, decision, or determination ***appealed*** from shall include a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the ~~four-fifths (4/5)~~ majority vote necessary for adoption (see Section 3.20), then a motion to uphold the decision ***appealed*** from shall be in order. This motion will be adopted as the Board of Adjustment's decision if

supported by more than one-fifth (1/5) of the Board's membership (excluding vacant seats).

(2) ***Variance.*** The Board of Adjustment ~~must~~ may take a separate vote and vote affirmatively (by a four-fifths (4/5) majority-see Section 3.20) on each of the four (4) required findings stated in Section 4.04(B)(2). Insofar as practicable, a motion to make an affirmative finding on ~~each~~ all of the requirements set forth in Section 4.04(B)(2) shall include a statement of the specific reasons or findings of fact supporting such motion.

(3) A motion to deny a ***variance*** may be made on the basis that any one (1) or more of the four (4) criteria set forth in Section 4.04(B)(2) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board of Adjustment's decision if supported by more than one-fifth (1/5) of the Board's membership (excluding vacant seats).

(I) *Evidence/Presentation of Evidence.*

(1) The provisions of this section apply to all hearings for which a notice is required by Section 4.04(F).

(2) All persons who intend to present evidence to the Board of Adjustment shall be sworn in by the Chairperson.

(3) All findings and conclusions necessary to the issuance or denial of the requested permit or ***appeal*** (necessary findings) shall be based upon reliable evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may necessary findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.

(4) The Board of Adjustment has the authority to limit testimony that is irrelevant.

(5) The entirety of a quasi-judicial hearing and deliberation shall be conducted in open session.

(6) Parties to a quasi-judicial hearing have a right to cross-examine witnesses.

(7) Factual findings must not be based on hearsay evidence which would be inadmissible in a court of law.

(8) If a Board of Adjustment member has prior or specialized knowledge about a case, that knowledge should be disclosed to the rest of the Board of Adjustment and parties at the beginning of the hearing.

(9) The Board of Adjustment, in conducting the hearing, has the authority to issue subpoenas to compel testimony or the production of evidence deemed necessary to determine the matter.

(J) *Modification of Application at Hearing.*

(1) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Adjustment, the ***applicant*** may agree to modify his/her application, including the plans and specifications submitted.

(2) Unless such modifications are so substantial or extensive that the Board of Adjustment cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the Board of Adjustment may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the planning staff.

(K) *Record.*

(1) Accurate written minutes shall be kept of all such proceedings.

(2) Whenever practicable, all documentary evidence, including any exhibits, presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the Town for at least two (2) years.

(L) *Written Decision.*

~~(1)~~ Any decision made by the Board of Adjustment regarding an ***appeal***, ***variance***, or interpretation shall be reduced to writing and served upon the ***applicant*** or appellant and all other persons who make a written request for a copy.

~~(2) In addition to a statement of the Board of Adjustment's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the Board of Adjustment's findings and conclusion, as well as supporting reasons or facts, whenever this Ordinance requires the same as a prerequisite to taking action.~~

SECTION 4.05 SPECIAL USE PERMITS

(A) *Purpose.*

(1) The procedure set forth in this section for considering requests for ***special use permits*** is designed to provide an orderly process for reviewing requests for those land uses specified as permissible on application to the Board of Adjustment.

(2) ***Special use permits*** shall not be issued as a matter of right, but only after the Board of Adjustment finds that the ***applicant*** has met all standards and requirements set forth herein for the granting of the permits.

(3) The purpose of having the uses being special is to ensure that they would be compatible with surrounding ***development*** and in keeping with the purposes of the general ***zoning*** district in which they are located and would meet other criteria as set forth in this section. All ***special use permits*** require some form of a ***site plan*** as outlined in Article 5.

(B) *Application and Fees.*

(1) Any person having a freehold interest in land, a possessory interest entitled to exclusive possession, or a contractual interest which may become a freehold or exclusive possessory interest and which is specifically enforceable may file an application for a ***special use permit***.

(2) The deadline for which a ***special use permit*** application shall be filed with the ***UDO Administrator*** is the first business day of the month. Permit application forms shall be provided by the ***UDO Administrator***. In the course of evaluating the proposed special use, the Board of Adjustment may request additional information from the ***applicant***. A request for any additional information may stay any further consideration of the application by the Board of Adjustment.

(3) Applications for ***special use permits***, signed by the ***applicant***, shall be addressed to the Board of Adjustment. A fee shall be paid at the time of application according to a fee schedule as set by the ***Town Council***.

(4) The application shall be accompanied by a ***site plan*** drawn to scale which complies with the ***site plan*** requirements contained in Section 5.03(C). ~~Each application shall contain or be accompanied by the legal description, maps, plans, and other~~

~~information as required by the Board of Adjustment so as to completely describe the proposed use and existing conditions and shall include the following:~~

~~(a) Location of all structures within fifty (50) feet of the property and location and depth, if known, of any existing utility lines in the property or along any adjacent ***street***;~~

~~(b) Location of property boundaries and location of any ***easements*** for utility lines of passage which cross or occupy any portion of the property for proposed lines;~~

~~(c) Detailed construction plans shall be submitted prior to issuance of a building permit; and~~

~~(d) A list of names and addresses of all ***adjacent property*** owners along with one (1) set of envelopes stamped and with typed addresses to each person on the list. These addressed envelopes and the list shall be submitted at least ten (10) working days prior to the public hearing and shall be used to mail the required public notice to each ***adjacent property*** owner.~~

(5) One (1) copy of the application, and all attachments and maps, for a ***special use permit*** shall be submitted to the ***UDO Administrator***.

(C) *Board of Adjustment Action.*

(1) All applications for a ***special use permit***, including required ***site plans***, ~~shall~~ may, at the discretion of the UDO Administrator, follow the Technical Review Procedure (Article 3, Part II) before being submitted to the Board of Adjustment for review and consideration. The ***UDO Administrator*** shall forward any comments received during the Technical Review Procedure to the Board of Adjustment.

(2) ***Special use permits*** are quasi-judicial decisions approved by ~~a four-fifths (4/5)~~ majority vote of the members of the Board of Adjustment. Quasi-judicial decisions must be conducted in accordance with Sections 4.04(I) through 4.04(L). For the purposes of this section, vacant positions on the Board of Adjustment and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite ~~super~~majority if there are no qualified alternates available to take the place of such members.

(3) Once the comments of the Technical Review Process have been made, the Board of Adjustment shall hold a public hearing to consider the application at its next regularly scheduled meeting. A quorum of the Board of Adjustment is required for this hearing. Notice of the public hearing shall be as specified in Section 4.04(F). In addition, notice shall be given to other potentially interested persons by publishing a notice one (1) time in a newspaper having general circulation in the area not less than ten (10) nor more than twenty-five (25) days prior to the hearing.

(4) In approving an application for a ***special use permit***, the Board of Adjustment may attach fair and reasonable conditions to the approval. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Board of Adjustment. In no instance shall any of these conditions be less restrictive than any requirements which would pertain to that particular ***development*** found elsewhere in a similar ***zoning*** district.

(5) The ***applicant*** has the burden of producing competent, material and substantial evidence tending to establish the facts and conditions which Subsection 4.05(C)(6) below requires.

(6) The Board of Adjustment shall issue a ***special use permit*** if it has evaluated an application through a quasi-judicial process and determined that:

(a) The use requested is listed among the special uses in the district for which application is made and the use meets all required conditions and specifications.

(b) The requested use will be in harmony with the area in which it is located, and in general conformity with the character of the surrounding or adjoining districts, and will not adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property if developed according to the submitted plans.

(c) The use will not substantially injure the value of adjoining or ***abutting*** property.

(d) The requested use will be in conformity with the current land use plan.

(e) Adequate utilities, ***access*** roads, drainage, sanitation, and other necessary facilities have been or are being provided.

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

(g) The special use shall, in all other respects, conform to the applicable ***regulations*** of the district in which it is located.

(7) *Conditions and Guarantees.* Prior to the granting of any special use, the Board of Adjustment may require conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the special use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified above. In all cases in which special uses are granted, the Board of Adjustment shall require evidence and guarantees as it may deem necessary as proof that the conditions required in connection therewith are being and will be complied with.

(a) The conditions may include a time limitation.

(b) Conditions may be imposed which require that one or more things be done before the use requested can be initiated. For example, that a solid board ***fence*** be ***erected*** around the site to a height of six (6) feet before the use requested is initiated.

(c) Conditions of a continuing nature may be imposed. For example, exterior loud speakers shall not be used between the hours of 10:00 p.m. and 9:00 a.m.

(D) *Effect of Approval.* If an application for a ***special use permit*** is approved by the Board of Adjustment, the owner of the property shall have the ability to develop the use in accordance with the stipulations contained in the ***special use permit***, or develop any other use listed as a permitted use for the general ***zoning*** district in which it is located.

(E) *Binding Effect.* Any ***special use permit*** so authorized shall be binding to the property included in the permit unless subsequently changed or amended by the Board of Adjustment.

(F) ***Certificate of Occupancy***. No ***certificate of occupancy*** for a use listed as a special use shall be issued for any building or land use on a piece of property which has received a ***special use permit*** for the particular use unless the building is constructed or used, or the land is developed or used, in conformity with the ***special use permit*** approved by the Board of Adjustment. In the event that only a segment of a proposed ***development*** has

been approved, the ***certificate of occupancy*** shall be issued only for that portion of the ***development*** constructed or used as approved.

(G) *Change in* ***Special Use Permit****.* Any request to materially change the ***special use permit*** once it has been issued must first be reviewed and approved in accordance with Section 4.05(B) and 4.05(C).

(H) *Implementation of* ***Special Use Permit****.*

(1) A ***special use permit***, after approval by the Board of Adjustment, shall expire one (1) year after the approval date if work has not commenced or in the case of a change of occupancy the business has not opened; however, it may be, on request, continued in effect for a period not to exceed six (6) months by the ***UDO Administrator***. No further extension shall be added except on approval of the Board of Adjustment. If such use or business is discontinued for a period of twelve (12) months, the ***special use permit*** shall expire. Any expiration as noted or any ***violation*** of the conditions stated on the permit shall be considered unlawful and the ***applicant*** will be required to submit a new special use application to the appropriate agencies for consideration and the previously approved ***special use permit*** shall become null and void.

(2) All businesses operating under a ***special use permit*** are subject to annual inspection by the ***UDO Administrator***. Inspections will be carried out to ensure that the terms and conditions of the permit are being followed.

SECTION 4.6 REHEARINGS

When an application involving a quasi-judicial procedure/petition is denied by the Board of Adjustment, reapplication involving the same property, or portions of the same property, may not be submitted unless the petitioner can demonstrate a substantial change in the proposed use, conditions governing the use of the property, or conditions surrounding the property itself. The Board of Adjustment shall make the determination as to whether a rehearing is warranted in instances where a revised application is submitted.

SECTION 4.7 APPEALS OF QUASI-JUDICIAL DECISIONS

Any person or persons, jointly or severally, aggrieved by any quasi-judicial decision of the Board of Adjustment, any taxpayer, or any officer, department, board or bureau of the jurisdiction of this Ordinance may, within thirty (30) days after the filing of the decision in the office of said Board, but not thereafter, present to a court of competent jurisdiction a petition duly verified setting forth that

such decision is illegal, in whole or in part, specifying the ground of illegality, whereupon such decision of said Board shall be subject to review by certiorari as provided by law.