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# ARTICLE 1: PURPOSE, AUTHORITY & APPLICABILITY

## Section 1.1: Title

This Ordinance shall be known as the Town of Warsaw Unified Development Ordinance and may also be cited or referred to as the “Warsaw UDO” or “UDO” when not being cited as the Town of Warsaw Unified Development Ordinance.

## Section 1.2: Authority

The regulations and standards that are included within this UDO have been set forth by Chapter 160D of the North Carolina General Statutes which is the statutory language for Local Planning and Development Regulations.

Zoning provisions enacted herein are under the authority of NCGS 160D, Article 7 Zoning, which extends to cities the authority to enact regulations which promote the health, safety, morals, or the general welfare of the community. It authorizes cities to regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. This section further authorizes the establishment of overlay districts in which additional regulations may be imposed upon properties that lie within the boundary of the district.

Subdivision provisions enacted herein are under the authority of NCGS 160D, Article 8 Subdivision Regulations, which provide for the coordination of streets within proposed subdivisions with existing or planned street and with other public facilities, the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision, or alternatively, for the provision of funds to be used to acquire recreation areas serving residents of more than one neighborhood in the immediate area, and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding.

Minimum Housing Code provisions enacted herein are under the authority of NCGS 160D, Article 12 Minimum Housing Codes, which provides cities with the authority to exercise its police powers to repair, close, or demolish dwellings or abandoned structures.

Abandoned and Junked Motor Vehicles provisions enacted herein are under the authority of NCGS 160A 303.2.

Nuisance enforcement provisions enacted herein are under the authority of NCGS 153A-140, NCGS 153A-123, NCGS 14-4 and NCGS 153A-121.

## Section 1.3: Purpose

The purpose of the Warsaw Unified Development Ordinance is to set forth regulations for the efficient, equitable, and sustainable use of land within its jurisdiction for the purpose of ensuring the public health, safety, and welfare of its citizens. The regulations established in this UDO are designed to provide for subdivision of land, use regulation, design standards, infrastructure standards, administration, authority, and procedures for enforcement within the planning jurisdiction of the Town of Warsaw. Pursuant to NCGS 160D-103, the Town of Warsaw combines all standards for regulating development within its planning jurisdiction into a Unified Development Ordinance.

### Section 1.4: Severability

Should any article, section, subsection, or part thereof of this UDO be held void or invalid by a court of law for any reason, it shall not have the effect of invalidating the entire UDO, it shall affect only said portion to be found void or invalid.

### Section 1.5: Relationship with Other Law

Wherever the provisions of the UDO are either more restrictive or less restrictive than comparable provisions of any other law, ordinance, or regulation, the most restrictive provisions shall apply. It is not intended that this UDO interfere with or annul any easements, covenants, deed restrictions, or other private agreements between parties. The North Carolina General Statutes shall always take precedence over the contents of this UDO when applicable. Where the provisions of this UDO may be different from the contents of the *Handbook of Procedures and Design Guidelines for the Town of Warsaw Historic Preservation Commission*, the provisions of this UDO shall take precedence.

### Section 1.6: UDO Administrator

The UDO Administrator shall be the Warsaw Town Manager or his designee. The UDO Administrator shall have sole authority to enact the provisions and requirements of this UDO or delegate the power to the appropriate person who is employed by the Town of Warsaw either through direct or contract employment.

### Section 1.7: Compliance and Certificate of Occupancy or Approval Required

No building, premises, or structure shall be constructed, erected, modified, converted, occupied, placed, maintained, or moved, and no land use shall be commenced or modified except as authorized by this UDO. None of the abovementioned shall occur without the Town of Warsaw granting an official certificate of occupancy or zoning permit approval for such activity. Certain permits may be required to be issued by the Board of Commissioners as determined by this UDO.

### Section 1.8: Town of Warsaw Official Zoning Map

Per NCGS 160D-105, the official zoning map of the Town of Warsaw shall be kept in the office of the Town Manager and be reasonably maintained for public inspection. The map shall be maintained in both a digital and paper format. Copies of the zoning map may be reproduced by any method of reproduction that gives legible and permanent copies and, when certified by the Warsaw Town Clerk in accordance with NCGS 160A-79, they shall be admissible into evidence and shall have the same force and effect as would the original map. The official zoning map is incorporated as a part of this UDO.

### Section 1.9: Town of Warsaw Extraterritorial Jurisdiction

Per NCGS 160D-202, the Town of Warsaw has established and maintains an extraterritorial jurisdiction (ETJ) of one-mile beyond its primary municipal limits. The Town of Warsaw shall not exercise any powers within the ETJ that it does not exercise within its municipal limits. Where Warsaw may not exercise certain types of development regulations within its municipal limits, Duplin County may elect to exercise those within the ETJ. The areas within the Town of Warsaw ETJ are required to comply with the development standards set forth by this UDO unless it is explicitly written to not apply to areas within the ETJ. Properties within the ETJ may elect to petition for annexation to be

included and recognized as a member of the municipal limits of the Town of Warsaw. The agreement shall not affect taxation and other nonregulatory matters and the agreement shall be formally adopted by both the Town of Warsaw and Duplin County governing boards. The agreement is to be recorded with the Duplin County Register of Deeds within 14 days of the adoption of the resolution from the second governing board to complete the action. Any additions to or areas removed from the ETJ shall be done in accordance with the provisions of NCGS 160D-202.

### Section 1.10: Split Jurisdiction

Per NCGS 160D-203, for parcels that are partially within the jurisdiction of the Town of Warsaw as well as Duplin County, the Town and County shall by mutual agreement and with written consent of the property owner determine how planning and development regulations are to be applied to the parcel. This effort shall be conducted in a manner that is consistent with the requirements of Article 20 of Chapter 160A of the North Carolina General Statutes.

### Section 1.11: Parcel Split

For parcels that are entirely located within the jurisdiction of the Town of Warsaw but may be located in more than one zoning district or future land use category designation, the parcel shall be considered a member of whichever district or category occupies the majority of the land area of the parcel as determined by the UDO Administrator. The decision of the UDO Administrator is subject to appeal under the provisions of administrative appeals established by this UDO.

### Section 1.12: Authority to Enforce Zoning

Per NCGS 160D-501 as a condition of applying zoning regulations, the Town of Warsaw has adopted the Town of Warsaw Comprehensive Land Use Plan (2023) as required by the North Carolina General Statutes and is within its rights to legally enforce zoning upon areas within its planning jurisdiction. The Town of Warsaw will reasonably maintain the Comprehensive Land Use Plan to remain in compliance.

### Section 1.13: Relationship to the Comprehensive Land Use Plan

This UDO has been designed to implement the planning and land use policies that were established by the Town of Warsaw Comprehensive Land Use Plan, which was adopted by the Warsaw Board of Commissioners on November 13, 2023. In reviewing proposed text or zoning map amendments to this UDO, statements identifying the plans consistency or inconsistency with the Comprehensive Plan are required per NCGS 160D-604 & 605; these statements shall be made by the Planning Board and Board of Commissioners. Whereas the Town of Warsaw Comprehensive Land Use Plan is an advisory document, this UDO is regulatory, and the requirements set forth herein must be complied with.

### Section 1.14: Fees

- (A) Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, sign permits, special use permits, zoning amendments (map and text), variances and other administrative relief. The amount of the fees charged shall be set forth in the Town of Warsaw's budget or as established by resolution of the Board of Commissioners and filed in the offices of the Town

Manager. Fees established in accordance with this subsection shall be paid upon submission of a signed application or notice of appeal. Per NCGS 160D-402(b) & (d).

- (B) If it is discovered that the Town of Warsaw has illegally imposed a tax, fee, or monetary contribution for development or a development approval not specifically authorized by law, the Town shall return the tax, fee, or monetary contribution plus an interest of 6% per annum to the person who made the payment or as directed by a court if the person whom made the payment is deceased.

### Section 1.15: Approval of Development

Per NCGS 160D-104, approval for development must remain with the land that the development was approved upon, and property owners or applicants shall not transfer development approvals from one parcel of land to a separate parcel of land.

### Section 1.16: Conflicts of Interest

Per NCGS 160D-109, the Town of Warsaw shall handle and address conflicts of interest in the following manner.

#### *1.16.1 Board of Commissioners Member*

Elected Board of Commissioners shall not vote on any legislative decision (Rezoning, Text Amendment, Conditional Rezoning) where the potential outcome is considered reasonably likely to have a direct, substantial, and readily identifiable impact on the member. Members shall not vote on legislative decisions if the applicant for such decision is a person who has a close familial, business, or other associational relationship with the Board of Commissioners Member.

#### *1.16.2 Planning Board Member*

Appointed members of the Planning Board shall not make any final administrative decision (subdivisions and other delegated decisions required by this UDO) delegated to them nor make any recommendations upon legislative decisions (Rezoning, Text Amendment, Conditional Rezoning) where the potential outcome is considered reasonably likely to have a direct, substantial, and readily identifiable impact on the member. Members shall not vote and make recommendations on legislative decisions if the applicant for such decision is a person who has a close familial, business, or other associational relationship with the Planning Board Member.

#### *1.16.3 Town of Warsaw Staff*

- (A) Staff members shall not make administrative decisions if the outcome of such decision would have a direct, substantial, and readily identifiable impact on the staff member or if the applicant is someone who has a close familial, business, or other associational relationship. When staff conflicts of interest arise, the staff member shall delegate the responsibility of making the decision to their supervisor, in the event that the conflict of interest exists with the Town of Warsaw Town Manager, the decision shall be delegated to the employee who possess' the highest qualifications to make such decision or to a 3<sup>rd</sup> party contractor employed by the Town of Warsaw.

- (B) No staff member shall be financially interested or employed by a business that is financially interested in a development that is subject to the provisions of the UDO, unless the staff member is the owner of the land or building involved.
- (C) No staff member or member of a third party contracted to perform work for the Town of Warsaw to provide staff support shall engage in any work that is inconsistent with his duties or the general interest of the Town of Warsaw.

#### *1.16.4 Board of Adjustment*

The Board of Adjustment or any other appointed or elected board that is required to act in the capacity of the Board of Adjustment per this UDO shall not participate in or vote upon any quasi-judicial matter (Special Use or Variance) that would affect their ability to be an impartial decision maker. Violations include but are not limited to a member having a fixed opinion prior to hearing the matter that is unsusceptible to change, undisclosed ex parte communication, or a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

#### *1.16.5 Formal Objections*

If the issue of a member's participation is made either at or prior to the hearing or vote on the matter, and that member does not formally recuse himself, the remaining members of the board shall vote to determine whether the member may be allowed to participate in the vote.

#### *1.16.6 Familial Relationship*

For the purpose of this UDO, familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term is inclusive of step, half, and in-law relationships.

### Section 1.17: Bona Fide Farms

For property located within the ETJ and that are used for bona fide farm purposes, they shall be exempt from zoning regulations enforced by the UDO. For the purposes of this section, property means a single tract of property or an identifiable portion of a single tract. Property located in the ETJ that ceases to be used for bona fide farm purposes becomes subject to the regulations of the UDO. Bona fide farm purposes include uses that produce or have activities related to the incidental production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in NCGS 106-581.1. In order to verify that the property is being used for a bona fide farm purpose, one of the following must be provided to the Town of Warsaw:

- A farm sales tax exemption certificate issued by the Department of Revenue.
- A copy of the property tax listing showing that the property is eligible for participation in the present-use value program pursuant to NCGS 105-277.3.
- A copy of the owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- A forest management plan.

### Section 1.18: Official Declaration of the Elimination of Conditional Use Permits and Conditional Use District Zoning

Per NCGS 160D, any legally existing “Conditional Use Permits” that have been issued by the Town of Warsaw Board of Adjustment shall be converted to and known as Special Use Permits. Any legally existing “Conditional Use Zoning District” that has been approved by the Warsaw Board of Commissioners shall be converted to and known as a Conditional Zoning District. Any illegal existence of the aforementioned types is not granted this conversion.

### Section 1.19: Repeal of Subdivision Regulations and Zoning Ordinance

The adoption of the Town of Warsaw Unified Development Ordinance repeals and replaces the Warsaw Subdivision Regulations adopted in November of 1970 and the Zoning Ordinance adopted April 1990. Where there may be some language that has been reenacted in this UDO, the former regulatory documents for the Town of Warsaw shall no longer have any legal effect upon land use within the Town upon the adoption and effective date of the Town of Warsaw Unified Development Ordinance.

### Section 1.20: Effective Date

The Town of Warsaw Unified Development Ordinance shall take full force and effect on \_\_\_\_\_, 2024, as adopted by the Town of Warsaw Board of Commissioners.

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A. J. Conners, Mayor

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Vickie Deaver, Town Clerk

## ARTICLE 2: DEFINITIONS

Definition section to be completed.

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## ARTICLE 3: APPLICATIONS AND REVIEW

### Section 3.1: Permit Required

A permit shall be required for all development that is allowed by this UDO unless otherwise stated in this UDO. In order to obtain a permit, an application must be submitted to the UDO Administrator.

### Section 3.2: Permit Not Required

In certain scenarios such as the remodeling of the interior of a residential home or the attachment of a roof mounted solar panel, a permit may not be required dependent upon the review conducted by the UDO Administrator. All development proposals and land use proposals shall be reviewed by the UDO Administrator to definitively determine if a permit is not required.

### Section 3.3: Exempt from Zoning Permit Requirements

Bona Fide Farms per NCGS 160D-903, not exempt from NC Building Code requirements.

### Section 3.4: Application Required

Prior to the commencement of use or development of land, or structures located upon land, within the Town of Warsaw, an application for development must be submitted to the UDO Administrator. The submission of the application does not authorize the applicant to commence the use. The UDO Administrator shall determine, based on the nature of the application, who the responsible party for granting development approval shall be and will take the necessary steps to begin the application review process.

### Section 3.5: Applications that Require Mailed Notice

For all applications which include an advertised public hearing for the application to be approved, the applicant is required to submit legal sized stamped envelopes for all adjacent properties that require a notice to be mailed. The UDO Administrator will provide the number of envelopes that are required to the applicant prior to submittal so that the applicant is able to prepare the envelopes. These types of applications include (Special Use, Variance, Rezoning [General and Conditional], Certificate of Appropriateness).

### Section 3.6: Applications

The UDO Administrator shall maintain and update the applications for development on a regular basis. This effort will ensure that they are consistent with the requirements of this UDO and that they set forth clear expectations of application requirements so that thorough reviews may be performed. Application types include but are not limited to the following:

- Zoning Permit Application
- Zoning Verification Application
- Sign Permit Application
- Special Use Permit Application
- Subdivision Application
- Zoning Map Amendment Application (General Rezoning & Conditional Rezoning)

- Variance
- Certificate of Appropriateness Application
- UDO Amendment Application (Text Amendment)
- Appeal Application
- Stormwater Application

### Section 3.7: Application Requirements

Each individual application shall outline the required documents to be submitted with the application. This UDO also specifies specific application requirements dependent upon the proposed use and type of application. At a minimum each application shall be accompanied by a site plan unless explicitly not required by the UDO Administrator. Required site plans will vary in requirement based on the nature of the application. Site plans submitted with Conditional Rezoning Applications, Special Use Applications, and Variance Applications will have more stringent requirements than a Zoning Permit Application Site Plan. Requirements for these site plans can be found in **SECTION OF UDO**.

#### *3.7.1 Zoning Permit Application Site Plan Requirements (Residential)*

- (A) Plans must be legible.
- (B) Boundary of property shall be shown with distance in feet for all property lines.
- (C) Proposed and existing structures shall be shown including their distance in feet from the closest property line.
- (D) Locations of rights-of-way shall be shown.
- (E) The zoning district, parcel number, and address shall be noted upon the site plan.
- (F) Flood zones shall be shown upon the site plan.

#### *3.7.2 Zoning Permit Application Site Plan Requirements (Non-Residential & Multi-Family Development that does not undergo subdivision review)*

- (A) Plans must be legible and prepared by an NC Licensed Land Surveyor. Scale shall be at 1" equals no more than 100'.
- (B) Boundary of the property shall be shown including the distance in feet of all property lines.
- (C) Proposed and existing structures shall be shown including their distance in feet from the closest property line.
- (D) Locations, widths, and detail of rights-of-way, cul-de-sacs shall be shown.
- (E) Floodplains and wetlands shall be delineated.
- (F) Existing and proposed topography of tract.
- (G) Acreage of parcel.
- (H) Number of buildings/units.
- (I) Sidewalk detail.

- (J) Locations and dimensions of easements including easement type.
- (K) Locations of utilities including sizes and proposed connections.
- (L) Fire hydrant locations.
- (M) Landscaping detail.
- (N) Buffer location and width of buffer, including type and description of proposed buffer.
- (O) Lighting detail.
- (P) Parking detail, including an inset of a parking space and its dimensions and parking calculations based off of what is required by the UDO and what is proposed.
- (Q) Designated loading/unloading areas (deliveries).
- (R) Trash collection area.
- (S) Open space including its acreage.
- (T) Stormwater management areas, calculations, and data.
- (U) Stormwater network including swales, culverts, inlet and outlet structures with grades, elevations, dimensions, and hydraulic calculations.
- (V) Locations of proposed signage.
- (W) Sketch vicinity map
- (X) Full engineered drawings and detail
- (Y) Other requirements as requested by the UDO Administrator.

\*The requirements listed above are applicable in their entirety. Where development is proposed to occupy existing structures, all requirements listed below are not necessary to be shown on the site plan. However, all elements of the proposed site must be shown so that the UDO Administrator may verify that the proposed use is in compliance with this UDO and any subsequent conditions that may have been imposed by a Board. Site plan submission shall include applicable state permits if they have been issued, as they will be required prior to site plan approval.

### *3.7.3 Zoning Map Amendment (Conditional Rezoning) and Special Use Permit Site Plan Requirements*

When the entire parcel is not proposed to be conditionally rezoned, a survey shall be provided that indicates the boundary of the area of the parcel that is proposed to be rezoned. These are the site plan requirements so that the UDO Administrator, Planning Board, and Board of Commissioners can review the concept of the proposed use and determine its general operation and any conditions that may be necessary. A full site plan as described in Zoning Permit Application Site Plan Requirements (Non-Residential & Multi-Family Development that does not undergo subdivision review) will be required if the Conditional Rezoning application receives approval. All requirements may not be applicable.

- (A) Plan must be at a scale of at least 1" equals 100'.

- (B) Property owner information (name, phone, email, and address) to be noted on the site plan.
- (C) Location of the property lines (boundary of the property or portion of).
- (D) Property acreage/square feet.
- (E) Tax Parcel Number.
- (F) Location of existing and proposed R/W and easements.
- (G) Zoning district (existing and proposed).
- (H) Adjacent property uses.
- (I) Locations of existing and proposed structures including their setback from the property lines.
- (J) Proposed hours of operation.
- (K) Proposed number of employees.
- (L) Parking detail including number of spaces and number of required spaces.
- (M) Buffer location and width of buffer, including type and description of proposed buffer.
- (N) Landscaping detail including location and type proposed.
- (O) Trash collection areas.
- (P) Designated loading/unloading areas (deliveries).
- (Q) Number of dwelling units.
- (R) Floodplains and wetlands.
- (S) Other requirements as requested by the UDO Administrator.

### Section 3.8: Pre-Application Meeting

Prior to the submission of an application, applicants are encouraged to have a pre-application meeting with the UDO Administrator prior to the formal submission of the application. This pre-application meeting is not required but it may lead to a more efficient review of the proposal.

### Section 3.9: Conditional Rezoning Approval and Special Use Approval

Approval by the Board of Adjustment or Board of Commissioners as applicable for Conditional Rezoning and Special Use Permit requests does not exempt approvals from undergoing the Zoning Permit Application process in which full site plan review will be conducted.

### Section 3.10: Concurrent Plan Review

To expedite this process, some projects may require that multiple applications receive approval prior to the commencement of development activity. The applicant has the option to submit multiple applications at once and have projects undergo concurrent review by different approval Boards or the Administrator. In these instances, the applicant is required to sign an affidavit that they acknowledge approval by one Board, or the Administrator does not constitute approval of their entire project or any other outstanding submitted applications that have yet to be approved. Examples

where this may be applicable are for Conditional Rezoning Requests or Special Use Permit requests where the proposed use is already known, and the applicant may wish to submit the full site plan to begin review of it while it undergoes the separate review for Board approval. A fee shall be required for both plan submittals.

### Section 3.11: Submission

Applications shall follow the procedures for submission outlined below. Failure to submit an application that complies with the requirements of this UDO, or the specific requirements listed on the application itself shall result in the UDO Administrator not accepting the application. Applications may only be submitted by the owner of the property or the authorized agent of such owner to the UDO Administrator. The UDO Administrator may require reasonable proof of agency from any person applying as an agent. An application for any permit under this UDO shall be submitted in such form, number of copies and format as required by this UDO and the specifics outlined on the application itself, together with such fees as required. Applications that require approval from other state agencies such as NCDOT or NCDEQ but not limited to these agencies shall include copies of approval from such agency or documentation that verifies the applicant is actively seeking approval from the respective agency as it applies to their permit application.

#### *3.11.1 Administrative Approval Submission (UDO Administrator or Planning Board Approval)*

Applications that require administrative approval may be submitted at any time. If deemed to be a complete application, the UDO Administrator shall have 30 days (45 days when Stormwater review is required) to review the application and associated plans and either approve, deny, or request revisions to the application. The UDO Administrator will make efforts to complete this review as expeditiously as possible. For subdivision applications that require Planning Board approval, they shall be submitted at least 25 days prior to the Planning Board meeting at which they are to be reviewed. Failure to act within this 30-day period or provide notice to the applicant of a status update results in approval of the application. Applications must be deemed as submitted and accepted by the Administrator for this 30-day period to begin. Acceptance of the application submittal may be recorded in a submittal log, email, or notation correspondence between the applicant and the Administrator. When the Administrator receives an incomplete application, he shall not process the application. He shall contact the applicant and inform the applicant of what is required to be a complete application. Types of applications that are administratively approved by the UDO Administrator include Zoning Permit Applications (Residential & Non-Residential or Multi-Family), Zoning Verification Applications, Minor Certificates of Appropriateness, Exempt Subdivisions and Sign Permit Applications. The Planning Board shall approve Minor and Major Subdivisions administratively.

#### *3.11.2 Legislative Approval Submission (Planning Board Review/BOC Approval)*

Applications that require legislative approval shall be submitted at least 25 days prior to the Planning Board meeting at which the applicant wishes for the application to be reviewed. The UDO Administrator will place the application on the agenda of the Board of Commissioners at a subsequent meeting that follows the Planning Board meeting at which the application is reviewed. Types of applications that must receive legislative approval include Zoning Map Amendment Applications and UDO or Land Use Plan Amendment Applications.

### 3.11.3 Quasi-Judicial Approval Submission (Board of Adjustment/Historic Preservation Commission)

Applications that require quasi-judicial approval shall be submitted at least 30 days prior to the Board of Adjustment or Historic Preservation Commission meeting at which the applicant wishes for the application to be reviewed. Types of applications that must receive quasi-judicial approval include Special Use Permit Applications, Variance Applications, Major Certificate of Appropriateness and Administrative Appeal Applications, (Administrative Appeals of Minor COA decisions will be made to the Historic Preservation Commission but will be submitted in the same manner as all other appeals).

## Section 3.12: Review

Once applications have been officially submitted and accepted by the UDO Administrator, he shall prepare them for review in accordance with the requirements of this UDO. The UDO Administrator shall also perform review of all submittals to determine if the proposal complies with the UDO.

## Section 3.13: Technical Review Committee

The UDO Administrator shall submit Conditional Rezoning and Special Use applications to the Technical Review Committee (TRC) for review. The UDO Administrator may elect to send other types of applications not specifically required by this UDO to be reviewed on a case-by-case basis based on the nature of the application and proposal. The Town of Warsaw TRC is comprised, but not limited to, the following agencies. The UDO Administrator may elect to include other groups and organizations within the review committee as necessary.

- North Carolina Department of Transportation
- Duplin County Board of Education
- Town of Warsaw Fire & Police Department
- Duplin County Emergency Services
- Town of Warsaw Public Works
- Other agencies deemed necessary by the UDO Administrator.

The UDO Administrator may establish a regular meeting schedule for the TRC or may call meetings as necessary.

## Section 3.14: Review and Revision

The review of proposed applications may include multiple rounds of review, depending upon the number of deficiencies that exist within the site plan or proposal. This fact is why a pre-application meeting can be beneficial. Once the TRC or respective Board has had the opportunity to review the application proposal, they may direct the UDO Administrator to provide the applicant with a formal document outlining existing deficiencies and requested changes. This document shall give clear instructions to the applicant that review of the application will commence once all the requested revisions have been addressed and revised plans/documents have been provided back to the UDO Administrator so that he may redistribute them for review.

## Section 3.15: Approval

The UDO Administrator shall issue permit approval only when he is able to verify that all requirements of this UDO have been met and that all permits from other organizations such as but not limited to a

NCDOT Driveway Permit or a NCDEQ Sediment and Erosion Control Permit have been issued to the applicant for the proposed project. This approval also includes ensuring that any necessary guarantees for incomplete infrastructure, buffering, etc., have been provided to the Town of Warsaw in an acceptable format.

For applications that require approval from the Planning Board, Board of Adjustment, or Board of Commissioners, the UDO Administrator shall have the authority to issue the written development approval and physical permit upon instruction from the respective Board, after they have made the decision in the required manner.

Conditional Approval – Where in the opinion of the respective Board, only minor modifications are needed to the proposed plan to achieve compliance, the Board may grant conditional approval which allows the UDO Administrator to issue approval provided that the applicant delivers revised plans that address the minor requested changes.

### Section 3.15: Authorization to Commence Construction or Development

Once applications for permits have been approved and issued as provided within this Article, the applicant may proceed to commence work and development of the site, provided the necessary building permits have been issued by Duplin County Building Inspections. All work performed and completed must be done in accordance with approved site plans and any conditions that were placed upon the approval. Deviation from the approved site plan will require the applicant or developer to provide the UDO Administrator with a revised site plan.

### Section 3.16: Site Plan Deviation

In the event that the applicant or developer is required to provide the UDO Administrator with a revised site plan, the UDO Administrator shall determine the nature of the deviation and if the plan shall be required to undergo full review or if the proposed change is meeting all requirements of this UDO and is not a change that intensifies the nature of the use. The UDO Administrator shall determine if the change can be classified as a minor modification as defined in this UDO.

### Section 3.17: Authorization for Occupancy and Commencement of Use

Prior to Duplin County Building Inspections issuing a Certificate of Occupancy, the UDO Administrator shall conduct an inspection to determine that all elements of the approved site plan have been addressed and that the use is being commenced in the original manner intended and as approved by the Board or the UDO Administrator when the proposal was reviewed and approved. The Certificate of Occupancy shall only be issued when the Administrator can verify in either electronic or print format to the Duplin County Building Inspections Department that compliance with the UDO and approved plans has been achieved. Any outstanding issues with other agencies or representatives from the State of North Carolina related to the specific proposed use will result in the Administrator withholding the issuance of a statement of compliance until such issues have been resolved.

### Section 3.18: No Withholding Permits or Plats

The UDO Administrator shall not withhold a permit or refuse to sign a plat, when all requirements have been met, based on deficiencies existing upon a separate piece of property owned by or associated with the applicant or developer.



## Section 3.19: Permit Expiration

### *3.19.1 Failure to Act*

In the event that the recipient of the permit fails to act upon the permit issued and construct, improve, or commence the permitted use upon the property, the issued permit is subject to expire. This does not apply to permits that are protected by Vested Rights. Permits are valid for a period of one year. Once the use is officially in operation, the permit at that point is valid for the life of the operation of such business with certain time extensions at the time the use ceases as provided elsewhere in this UDO. The terms for expiration include:

- (A) The failure to commence by no evidence of substantial construction, erection, alteration, excavation, demolition, or other similar work within a period of one-year that is necessary prior to the commencement of such use.
- (B) The discontinuance of substantial construction, erection, alteration, excavation, demolition, or other similar work for a period of one year after the initial commencement.

### *3.19.2 Expiration Timeline*

- (A) Zoning Permit & Sign Permit – valid for a period of one-year, the UDO Administrator may grant one 6-month extension of the permit when the permit holder can show good cause with supporting evidence.
- (B) Special Use Permit & Variance – permit is valid for a period of 180, failure to begin substantial construction, erection, alteration, excavation, demolition, or other similar work as applicable to the permit shall result in the permit approval being revoked. In instances where Special Use Permits begin operation and cease operation for a period of 180 days, the Special Use Permit shall no longer be valid. The fact that such structures housing the use may still have operable utilities and have continued payment of such utilities does not apply to the use being continued. The use itself must be actively in operation. An example of this is the use goes out of business for more than 180 days but the structure housing the use is maintained and in good condition does not allow the use to re-establish itself without a Special Use Permit being issued.

## Section 3.20: Revocation

The permit may be revoked in instances where the UDO Administrator finds that the permit is not being complied with. Revocations shall be issued when it is found that there has been a substantial departure from the approved application, plans, specifications; for refusal or failure to comply with the requirements of these Regulations or any State requirements or laws that have been delegated to the Town of Warsaw for enforcement. The revocation shall state the reasoning for its issuance and include supporting evidence and documentation as applicable. The same review process that is followed for the initial issuance of the development approval shall be followed for the issuance of the development approval revocation. When evidence is found that false statements or misrepresentations have been made by the applicant to obtain development approval a revocation shall be issued. In the event that it is discovered a development approval has been issued in error by the UDO Administrator, Town of Warsaw, or one of its respective Boards, a revocation may be issued.



### Section 3.21: Effect of Permit on Successors and Assigns

Approvals for development, in the form of permits approved and issued authorizing development as required by this UDO shall remain with the land and are non-transferrable. Persons who purchase property with existing valid permits issued upon it are required to comply with the permit requirements and the standards within this UDO in the same manner that the original property owner or permit holder was expected to. The permits are transferrable to new owners of the property, but they shall not be transferred to separate parcels of land. For example, the holder of a Special Use Permit upon one property or an owner permitted to construct a single-family dwelling upon a piece of property shall not construct or conduct such use upon a separate piece of property.

### Section 3.22: Maintenance & Compliance

The recipient of any permit, or his successor, shall be responsible for maintaining all common areas, improvements, or facilities as applicable to the permit required by this UDO or any permit issued in accordance with its provisions, except those areas, improvements or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. Until such acceptance is made by the public and verification is provided to the UDO Administrator, the property owner and permit holder or other responsible party are required to ensure maintenance and compliance. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and that required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed. The recipient and holder of the permit shall actively work to ensure compliance with this UDO is always being achieved.

### Section 3.23: Certificates of Appropriateness

For properties that are located within the Town of Warsaw's Historic District, a Certificate of Appropriateness is required prior to any alteration, modification, demolition, construction, or expansion to the exterior of a structure. This requirement also applies to newly constructed structures. This Certificate of Appropriateness is required to be issued by the Town of Warsaw Historic Preservation Commission prior to the application of any other permit for development. Certificates of Appropriateness are also required for masonry walls, fences, light fixtures, steps and pavement or other appurtenant features. Above ground utility structures or outdoor advertising signs should not be erected, altered, restored, moved, or demolished without obtaining a Certificate of Appropriateness. A Certificate of Appropriateness is required regardless of a building permit being required. A Certificate of Appropriateness is not required for any interior modifications. The Historic Preservation Commission shall find applications for a Certificate of Appropriateness to be congruous with the adopted historic principles and standards in order to approve a Certificate of Appropriateness application.

The UDO Administrator shall have the authority to approve "minor works" for Certificate of Appropriateness Applications. The Historic Preservation Commission shall perform quasi-judicial review per NCGS 160D-406 for "major works".

Ordinary maintenance or repair that does not involve a change in design, material, or appearance thereof shall be allowed. There shall be no prevention of construction, reconstruction, alteration, restoration, moving, or demolition of any feature that the building inspector certifies is required for

public safety reasons due to unsafe and dangerous conditions. This should be verified by the UDO Administrator and building inspector prior to such activity occurring.

Applications for a Certificate of Appropriateness authorizing the relocation, demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the Nation Register of Historic Places may be denied except when the Historic Preservation Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

### *3.23.1 Site Plans & COA Application Requirements*

- (A) A legible site plan shall be required showing the boundary of the property including existing and proposed structures.
- (B) Setbacks in feet shall be shown from the structure to the property line.
- (C) Elevations shall be provided showing graphic depictions of the proposed exterior.
- (D) Detailed information and design documents shall be provided that include technical information regarding the proposed materials to be used.
- (E) Paint colors should be provided.
- (F) Examples of existing structures should be provided so that the Historic Preservation Commission and UDO Administrator can understand what the finished product will resemble.

### *3.23.2 Minor COA*

Minor works that are able to be approved by the UDO Administrator include exterior changes which do not involve substantial alterations, additions, or removals that could impair the integrity of the property and/or districts as a whole. Furthermore, minor works are described as being those in which the visual character of the structure is not changed. Minor works include the following, for items not listed they are considered major works, or the applicant may request that the Historic Preservation Commission review and make a determination as to if the proposal requires a Minor COA or a Major COA.

- (A) Installation of storm doors, windows, shutters, or blinds.
- (B) Construction of fences 4 feet or less in the rear or side yards.
- (C) Installation of mechanical equipment.
- (D) Installation of handicap accessibility modifications.
- (E) Replacement of the roof or shingles with identical materials and construction, or those that match as closely as possible the original material.
- (F) Installation of awnings, exterior light fixtures, historical identification signs.
- (G) Minor landscaping changes.
- (H) Rear yard decks, porches, paths, walkways, and driveways (all in the rear yard of parcel).
- (I) Replacement of exterior stairs, landings, etc.

### 3.23.3 Major COA

Any proposal that does not qualify as a Minor COA or as routine maintenance and repair.

### Section 3.24: Standards for Decisions and Review

The following standards shall be used by the Historic Preservation Commission in conjunction with identified requirements in the Handbook of Procedures and Design Guidelines for the Town of Warsaw Historic Preservation Commission.

- (A) Properties and structures may remain in use for their historical purpose or be placed in a new use that requires minimal change to the characteristics of historic nature, style, or architecture that define the structure.
- (B) The removal of historic materials or alterations of features and spaces that characterize a property shall be avoided.
- (C) Changes that create a false sense of historical development shall be avoided.
- (D) Deteriorated historic features are encouraged to be repaired rather than replaced and efforts to repair shall be demonstrated prior to replacement taking place. Where the severity of deterioration requires replacement of a distinctive feature, the new one shall match in all elements where possible.
- (E) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The cleaning of surfaces shall be done using gentle means.
- (F) Significant resources affected by a project shall be protected and preserved.
- (G) New additions, exterior alterations or related new construction shall not destroy historical materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with massing, size, and architectural features to protect the historic integrity of the property and its environment.
- (H) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

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## ARTICLE 4: ADMINISTRATION

### Section 4.1: Purpose

This Article establishes the manner in which the provisions of this UDO are to be administered. The duties and processes set forth herein are to be followed to ensure that the integrity and intent of the UDO are always being upheld.

### Section 4.2: Unified Development Ordinance Administrator

The Warsaw Unified Development Ordinance Administrator or UDO Administrator shall be the Warsaw Town Manager or his designee. The UDO Administrator shall make interpretations, modifications, and administrative decisions involving the contents and requirements of this UDO. All decisions, interpretations, and modifications granted by the UDO Administrator shall be done with the sole intent of upholding the spirit and intent of the UDO. The UDO Administrator will be the primary Town employee to prepare documents and reports for the Board of Commissioners, Planning Board, and Board of Adjustment as they require and request such reports.

#### 4.2.1 Duties

The UDO Administrator is expected at a minimum to perform the following duties related to the execution of this UDO.

- (A) Maintain the Town of Warsaw Comprehensive Land Use Plan and implement the plan when necessary. This task includes continuously ensuring that the town's plan is in compliance with NCGS 160D-501.
- (B) Perform an annual evaluation of the Warsaw UDO and applications for development approval to ensure that their contents are considered a best management planning practice and that its regulations are equitable and designed to protect public health, safety, and welfare.
- (C) Review applications in accordance with the provisions of Article 3 of this UDO.
- (D) Ensure that the notice requirements for public hearings are being met as required by NCGS 160D-406 and NCGS 160D-602 as well as any additional requirements for notice that may be incorporated as part of this UDO or adopted and established by the Warsaw Board of Commissioners as town policy.
- (E) Communicate the requirements of this UDO to the public and interested parties.
- (F) Enforce the provisions and requirements of this UDO when violations are discovered and confirmed to be valid.
- (G) Perform periodic inspections of properties within Warsaw to ensure compliance with the UDO is being met.
- (H) Ensure that compliance with this UDO is achieved, and also verify that requirements from the State of North Carolina are being met by requiring documentation.
- (I) Maintain a database of all permits and documents relative to activities and development permitted by this UDO.

- (J) Provide staff recommendations on applications for UDO text amendments, rezonings, and conditional rezoning requests.
- (K) Provide general recommendations on development and future use of land to the Board of Commissioners when requested by the Board.
- (L) Actively work to ensure that all members of Warsaw are involved in the planning process when plans are being developed.
- (M) Work to ensure equity in development proposals and plan design through recommendations provided to the applicant, owner, or developer.
- (N) Provide assistance and guidance to the Planning Board, Board of Commissioners, and Board of Adjustment through staff reports and presentations outlining the contents and nature of applications and development proposals and how they relate to the requirements of this UDO.
- (O) Serve as the executive secretary to the Planning Board and Board of Adjustment.
- (P) Issue Administrative Modifications when necessary and appropriate as outlined in **SECTION REFERENCE**.
- (Q) Serve as the Floodplain Administrator and ensure compliance within the SFHA is being achieved.
- (R) Perform other necessary tasks that may not be specifically identified for the purpose of upholding the standards of this UDO.

#### *4.2.2 Development Approval*

When approving applications where the UDO Administrator has been authorized to issue approval, he shall issue the development approval in writing and provide an electronic copy of the approval to the applicant. The electronic copy shall be protected from further editing, this may commonly be referred to as the permit or permit approval that is issued after all requirements of Article 3 have been met. The approval shall include language that all applicable State and Local laws must be complied with. No person(s) shall commence or proceed with development activity until this required development approval has been issued.

#### *4.2.3 Development Revocation*

The UDO Administrator reserves the right to issue revocations of development approvals in accordance with the provisions set forth in Article 3.

#### *4.2.4 Determinations & Decisions*

Once the Administrator has made a determination or a final decision on a matter such as a zoning or subdivision decision, he shall give written notice to the owner of the property that the determination is being made upon and to the party who has requested that an Administrative Determination be made if different from the owner. Permits for development approval are also considered to be the decision of the UDO Administrator. Written notices shall be delivered in the form of first-class mail, email, or personal delivery. The notice shall be sent to the tax listed address for the property owner as well as the address that has been listed on the application for development.

#### 4.2.5 Staff Report Preparation & Recommendation

The Administrator shall review and prepare staff reports for all applications for Subdivision, Variances, Special-Use Permits, Rezoning, Conditional Rezoning, and Text Amendments to the Town of Warsaw Land Use Plan and the Town of Warsaw Unified Development Ordinance. The UDO Administrator shall provide the respective Board with a staff report that outlines findings that includes the nature of the proposal, consistency with the Land Use Plan and other applicable plans as well as any specific requirements or conditions required by the UDO for the proposal. Staff reports shall examine existing conditions and infrastructure as well as adjacent land uses. The UDO Administrator shall make a recommendation to the Planning Board and Board of Commissioners for applications for Subdivisions, Rezoning, Conditional Rezoning and Text Amendments.

#### 4.2.6 Administrative Modifications

The UDO Administrator may elect to issue modifications to approved permits, including zoning permits, special use permits, approved preliminary subdivisions, site plans, and conditional rezoning site plans. Modifications must still be in compliance with the UDO. A modification is not in any way a variance from the requirements of the UDO. Modifications include the following, unless expressly written differently in a separate Article of this UDO. The procedure for such modification located in that particular Article shall take precedent over the language below.

- (A) Minor design changes that have no substantial impact on neighboring properties. For example, the relocation of a lot (not an increase in lots) or an element of a site plan that does not constitute the alteration of proposed roadways, improved surfaces, or access points.
- (B) Any reduction in scale of any element from the original proposal.
- (C) An increase that would constitute no more than a 10% addition to any parking area while still not exceeding the parking requirements of the UDO.
- (D) The addition of one lot, provided that an additional acre of open space be provided. Cannot exceed one lot addition.

All other requests for changes in approved site plans will be processed as a modification to the original application as described in Article 3.

A property owner or permit holder requesting approval of changes shall submit a written request for such approval to the UDO Administrator. The request shall identify the changes and be accompanied by a site plan that displays the proposed changes. Approval of all changes must be provided to the property owner or permit holder in writing.

The Administrator may waive their ability to issue an Administrative Modification and require the proposed modification to undergo the full process as described in Article 3 for new application submittals. The Administrator may also elect to distribute the proposed changes to the TRC group to ensure compliance is being met.

#### 4.2.7 Inspections

The UDO Administrator shall make periodic inspections of properties within Warsaw at any reasonable hour for the purpose of inspection, determination of UDO compliance and other enforcement action. The Administrator may only enter onto properties for the purpose of inspection for enforcement action when the violation is visible from a public right-of-way or common public

access area or with the authorization of an administrative search warrant. Property owners in the Town's jurisdiction are fully entitled to a reasonable expectation of privacy and the UDO Administrator shall not infringe upon that by conducting illegal observations or inspections.

The UDO Administrator shall also perform site visits to properties that have applied for approval from either the Planning Board, Board of Commissioners, or Board of Adjustment. These site visits are necessary to develop a background and sense of knowledge of the proposal and the existing environment.

The Board of Commissioners or its agent shall also have the power to require written statements, certificates, and certifications or the filing of reports under oath, with respect to pertinent questions relating to complaints or alleged violations of the UDO and inspections conducted by the UDO Administrator.

The UDO Administrator shall not conduct inspections from adjacent properties to discover violations if they are not visible from a public right-of-way. For example, the UDO Administrator may not conduct inspections from adjacent backyards or other areas.

### Section 4.3: Alternative Administration Arrangements

The Town of Warsaw may enter into contracts with another town, Duplin County, individual, company, Council of Government, Rural Planning Organization, or other planning organization to work under the supervision of the Town of Warsaw and execute the administrative duties outlined in this Article and the UDO (per NCGS 160D-402).



## ARTICLE 5: BOARD CONSTRUCTION & RESPONSIBILITIES

### Section 5.1: Purpose

This Article establishes and describes the appointed and elected Boards and Commissions within the Town of Warsaw who are responsible for review and development approval for their respective applications. These Boards are essential to the orderly growth of Warsaw and the enforcement of this UDO as well as the recommendation and encouragement of developers to incorporate identified elements listed within the Town of Warsaw Land Use Plan and Town of Warsaw Comprehensive Transportation Plan, when possible.

### Section 5.2: General Regulations

#### *5.2.1 Appointment to Board*

Members of the Boards described within this Article shall be appointed by the Warsaw Board of Commissioners in accordance with the adopted rules of procedure for the respective board. All members of the Boards described herein are to be compensated for their membership, compensation will be provided on an attendance basis.

#### *5.2.2 Extraterritorial Representation*

The Planning Board, Board of Adjustment, and Historic Preservation Commission shall have at least one member from the Warsaw ETJ. This member shall be considered a full member with equal voting rights and privileges (per NCGS 160D-307).

#### *5.2.3 Oath of Office*

All members of Boards described within this Article shall take an oath of office before entering their duties, per NCGS 160D-309.

#### *5.2.4 Rules of Procedures & Minutes of Proceedings*

All Boards described within this Article are authorized to adopt rules of procedure that are consistent with the requirements of NCGS 160D. Each Board shall keep minutes of its meetings and have their rules maintained and made available by the UDO Administrator. The Board of Commissioners shall also approve the adoption of such rules of procedure.

### Section 5.3: Planning Board

The Warsaw Planning Board is established pursuant to NCGS 160D-301, to be known as the Warsaw Planning Board and referred to herein as the Planning Board. As an appointed advisory body, the Planning Board makes recommendations to the Board of Commissioners as generally authorized by NCGS 160D-604.

### 5.3.1 Duties and Responsibilities

The Warsaw Board of Commissioners has assigned the following duties to the Planning Board:

- (A) Prepare, review, maintain, monitor, and periodically update and make recommendations to the Board of Commissioners regarding the Town of Warsaw Land Use Plan, Town of Warsaw Comprehensive Transportation Plan, Town of Warsaw Historic District Guidelines, and other plans including but not limited to Downtown Plans, Small-Area Plans, and Parks & Recreation Plans.
- (B) Conduct ongoing research related to data collection, mapping and analysis of Warsaw's existing and projected physical environment.
- (C) Develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in an efficient and coordinated manner.
- (D) Advise the Board of Commissioners on its implementation of adopted plans such as but not limited to Town of Warsaw Land Use Plan and Town of Warsaw Comprehensive Transportation Plan. As other official plans are adopted, they shall be included for consideration.
- (E) Provide review, recommendation, and comment on proposed zoning map and text amendments in accordance with the requirements of NCGS 160D-604, specifically a statement that addresses the proposal's consistency with adopted and applicable plans.
- (F) Exercise any functions in the administration and enforcement of various means for carrying out plans that the Board of Commissioners may direct them to perform.
- (G) Perform other related duties that the Board of Commissioners may direct.

### 5.3.2 Recommendation and Statement

After hearing a request for a zoning map amendment, land use plan map amendment, or text amendment, the Planning Board shall prepare a statement which includes its recommendation for the Town of Warsaw Board of Commissioners. The statement and recommendation shall address the Planning Board's findings regarding consistency with the Town of Warsaw Land Use Plan, Town of Warsaw Comprehensive Transportation Plan, and any other officially adopted applicable plan per NCGS 160D-605. The Planning Board must provide this recommendation to the Board of Commissioners within 30 days of the Planning Board meeting at which they reviewed the proposal and made their analysis and recommendation. Failure of the Planning Board to submit its recommendation within the 30-day time period shall constitute a favorable recommendation.

### 5.3.3 Administrative Review of Subdivisions

The Planning Board shall serve as the administrative review party for Subdivisions within the Town of Warsaw's jurisdiction. The Planning Board shall require the UDO Administrator to facilitate the review of the proposed Minor or Major Subdivision and provide a recommendation. When the Planning Board finds that the proposed Minor or Major Subdivision complies with all requirements of this UDO, it shall approve the plat. The Planning Board should diligently work to encourage the inclusion of elements identified within the Land Use Plan as well as other inclusions that would benefit the overall health, safety, and welfare of the public in proposed subdivisions. This includes but is not limited to

the promotion of open space, interconnectivity, multi-modal travel and the promotion of designated lots to serve for affordable housing.

#### *5.3.4 Membership and Terms*

**MORE INFORMATION NEEDED FROM TOWN OF WARSAW.** No more than one member may serve on other Boards within the Town of Warsaw.

#### *5.3.5 Meetings*

**MORE INFORMATION NEEDED FROM TOWN OF WARSAW**

#### *5.3.6 Voting Procedure*

A quorum shall be established for the Planning Board to vote upon any matter that comes before them. A quorum is defined as being a majority of the members of the board excluding vacant seats. All votes shall be counted as approved or denied based on the majority of the votes. All members present are required to vote unless exempted by a provision located within NCGS 160D-109 which prevents them from taking such action.

### Section 5.4: Board of Adjustment

Per NCGS 160D-302, the Town of Warsaw shall appoint a 5-member Board of Adjustment with 2 appointed alternate members. The alternate members shall only participate in voting matters when a regular member is absent or is temporarily disqualified from voting. The Board of Adjustment shall be responsible for hearing Special Use Permits, Variances, and Appeals of Administrative Decisions.

#### *5.4.1 Duties and Responsibilities*

It is the duty of the Board of Adjustment to serve as the quasi-judicial review board for decisions that are required to undergo the quasi-judicial procedure set forth by NCGS 160D-406.

- (A) It is the responsibility of the Board of Adjustment members to remain impartial and unbiased when making decisions and performing quasi-judicial review.
- (B) Board of Adjustment members shall not participate in ex-parte communication and shall disclaim all such forms of communication at the public hearing prior to the commencement of the hearing.
- (C) Board of Adjustment members are required to make their decisions based on factual evidence and expert opinion alone and to not consider hearsay.
- (D) Board of Adjustment members shall never enter into a “closed session”.
- (E) Board of Adjustment members are expected to actively improve upon their education and understanding of quasi-judicial procedure and request for the UDO Administrator to provide training annually.
- (F) Impose conditions upon request as necessary.

#### *5.4.2 Conditions*

The Board of Adjustment is authorized by NCGS 160D-705 to impose conditions upon quasi-judicial decisions when they deem that the conditions are appropriate and reasonable to safeguard the

public and their interests, safety, health, and well-being and also when the conditions are a necessary tool to mitigate against potential impacts. Conditions shall not include requirements for which the Town of Warsaw does not have authority under statute to regulate or requirements which courts have held unenforceable if imposed directly by a local government, including without limitation, taxes, impact fees, building design elements within the scope of NCGS 160D-702(B), driveway-related improvements in excess of those allowed in NCGS 136-18(29) and NCGS 160A-307.

#### *5.4.3 Membership and Terms*

Members of the Board of Adjustment shall be appointed for 3-year terms. Appointments shall be done in a staggered manner. When filling vacancies, the Board of Commissioners may appoint certain members for periods of time of less than 3 years so that the terms of all members do not expire at the same time. No more than two members may serve on other Boards within the Town of Warsaw.

Regular members of the Board of Adjustment are expected to attend all meetings and are only permitted one unexcused absence per calendar year. All other absences by regular members must be reported to the UDO Administrator and be approved by the Board of Commissioners. Multiple unapproved absences may result in the Board of Commissioners removing the member from the Board of Adjustment or not compensating the member. Absences that should be approved are ones related to personal or family circumstances involving death or sickness or acts of God beyond the member's control. Alternate members are expected to attend a minimum of 50% of the regular scheduled meetings within a calendar year. In the event that a regular member knows they are going to be unable to attend, they should inform the UDO Administrator so that he may contact an alternate member and request they be in attendance.

Membership shall be terminated when a regular or alternate member no longer resides within the planning jurisdiction of the Town of Warsaw. The Board of Adjustment shall, by majority vote of its membership (excluding vacant seats), elect one of its members to serve as chair and preside over the Board's meetings and one member to serve as vice-chair. The persons so designated shall serve in these capacities for terms of one year. Officer vacancies may be filled for the unexpired terms only by a majority vote of the Board membership (excluding vacant seats). The chair or any member temporarily acting as chair may administer oaths to witnesses coming before the Board. The chairman and vice-chair of the Board of Adjustment may take part in all deliberations and may vote on all issues. The UDO Administrator or his designee shall serve as the recording secretary to the Board of Adjustment.

#### *5.4.4 Rules of Procedure*

The Board of Adjustment shall adopt rules of procedure that are consistent with the requirements of NCGS 160D. The Board of Adjustment shall keep minutes of its meetings and have their rules maintained and made available by the UDO Administrator. The Board of Adjustment shall request that the Board of Commissioners approve the adoption of such rules of procedure and have the UDO Administrator place the rules of procedure upon their agenda.

#### *5.4.5 Meetings*

All Board of Adjustment meetings shall be advertised in accordance with the requirements of NCGS 160D-406 and be open to the public as the purpose of these meetings are to conduct a quasi-judicial public hearing.

## Section 5.5: Historic Preservation Commission

The Town of Warsaw Historic District was established in 1996 and is bounded by the former Atlantic Coastline railroad right-of-way, North and South Front Street, Pollock Street, Frisco Street, Plank Street and Railroad Street. Development within this district is governed by the Town of Warsaw Historic Preservation Commission per NCGS 160D-303 which requires the Board of Commissioners to establish a Historic Preservation Commission to review applications for development within the designated historic district.

Specific Description of the District: Beginning at the Y branch of the railroad mainline and the western spur towards Clinton, proceed south along the west (rear) lot lines of the properties on the west side of Railroad Street to College Street, then north along the east (rear) lot lines of the properties on the east side of Front Street to Pollock Street, then east along the north (rear) lot lines on the north side of Hill Street to Frisco Street, then west along the south (rear) lot lines on the south side of Hill Street to Front Street.

### *5.5.1 Duties and Responsibilities*

The Historic Preservation Commission is expected to execute the following duties during their term of appointment:

- (A) Undertake an inventory of properties of historical, prehistorical, architectural and/or cultural significance.
- (B) Recommend to the Board of Commissioners areas that should be designated as “historic districts” and individual structures, buildings, sites, areas, or objects to be designated by ordinance as a “landmark”.
- (C) Acquire by any lawful means the fee or lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks to hold, manage, preserve, restore, and improve such properties, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions that will secure appropriate rights of public access and promote the preservation of the property.
- (D) Restore, preserve, and operate historic properties.
- (E) Recommend to the Board of Commissioners that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause.
- (F) Conduct an educational program regarding historic properties and districts within its jurisdiction.
- (G) Cooperate with State, federal, and local governments in pursuance of the purposes of the historic district. The Board of Commissioners, or Historic Preservation Commission, if authorized by the Board of Commissioners, may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or Federal law.

- (H) Enter solely in performance of its official duties and only at reasonable times, upon private lands for examination of survey thereof. However, no member, employee, or agent of the Commission may enter any private building or structure without the express consent of the owner or occupant thereof.
- (I) Prepare and recommend adoption of a preservation element as part of the Town of Warsaw Land Use Plan.
- (J) Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks.
- (K) Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.

#### 5.5.2 Membership and Terms

The Historic Preservation Commission shall be composed of 4 members to serve terms of four years, the terms are to be staggered so that all members terms do not expire at the same time. After serving two consecutive terms, a member shall be ineligible for reappointment until one calendar year has passed. The members must reside within the municipal limits of Warsaw and shall be able to demonstrate special interest, experience, or an educational background in history, architecture, archaeology, or a related field. The Board of Commissioners shall ensure appointed members display this knowledge and possess these qualities prior to appointing them to serve on the Historic Preservation Commission.

#### 5.5.3 Rules of Procedure

The Historic Preservation Commission shall adopt rules of procedure that are consistent with the requirements of NCGS 160D. The Historic Preservation Commission shall keep minutes of its meetings and have their rules maintained and made available by the UDO Administrator. The Historic Preservation Commission shall request that the Board of Commissioners approve the adoption of such rules of procedure and have the UDO Administrator place the rules of procedure upon their agenda.

#### 5.5.4 Meetings

All Historic Preservation Commission meetings shall be advertised in accordance with the requirements of NCGS 160D-406 and be open to the public as the purpose of these meetings is to conduct a quasi-judicial public hearing.

### Section 5.6: Board of Commissioners

The Town of Warsaw Board of Commissioners is the elected governing board for Warsaw and responsible for final decisions regarding amendments to this UDO, the Town of Warsaw Land Use Plan, other officially adopted plans, and the official zoning map of Warsaw.

#### 5.6.1 Duties

The following is a description of the Board of Commissioners duties as it relates to the implementation and enforcement of this UDO. The duties listed below are not all encompassing of the many other duties carried out by the Board of Commissioners.

- (A) Appoint members to the Planning Board, Board of Adjustment, and Historic Preservation Commission.
- (B) Impose conditions on Conditional Rezoning Requests.
- (C) Adopt, amend, and reasonably maintain the Town of Warsaw Land Use Plan, Town of Warsaw Comprehensive Transportation Plan, Town of Warsaw Historic District Guidelines, and other plans including but not limited to Downtown Plans, Small-Area Plans and Parks & Recreation Plans., and other in conjunction with the Planning Board.
- (D) Adopt, amend, and implement policies related to land use issues.
- (E) Adopt, amend, and implement plans, programs, and policies for transportation, open space, and capital improvements.
- (F) By ordinance, adopt, amend, and repeal regulations of this UDO related to land use regulated by NCGS 160D, NCGS 160A, and other sections of the NCGS related to municipalities and its legally allowed action.
- (G) Establish rules and procedures for the enforcement and administration of this UDO.
- (H) Provide statements addressing consistency and reasonableness in accordance with NCGS 160D-605.
- (I) Actively pursue execution of the policies contained in the Town of Warsaw Land Use Plan.

#### *5.6.2 Conditional Rezoning Conditions*

Conditions imposed by the Board of Commissioners upon rezonings should be done in a manner that is for the protection of the public health, safety, and welfare and that mitigates the potential impacts of the proposed use within the district. The applicant must agree in writing to conditions imposed by the Board of Commissioners. Conditions and site-specific standards should be limited to those that address the conformance of the development and use of the site to the Warsaw UDO, the Town of Warsaw Land Use Plan, or the impacts that are reasonably expected to be generated by the use.

#### *5.6.3 UDO Amendment Required Consistency Statement*

Per NCGS 160D-605, the Board of Commissioners shall make a statement that addresses consistency with the Town of Warsaw Land Use Plan as well as a statement that addresses the reasonableness of the amendment. The statement of reasonableness may consider the following as factors:

- (A) The size, physical conditions, and other attributes of the area proposed to be rezoned.
- (B) The benefits and detriments to the landowners, the neighbors, and the surrounding community.
- (C) The relationship between the current and actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment.
- (D) Why the action taken is in the public interest.
- (E) Any changed conditions warranting the amendment.

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## ARTICLE 6: MAP AND TEXT AMENDMENTS

### Section 6.1: Purpose

The purpose of this Article is to set forth the method for adopting, amending, or repealing the text of the Town of Warsaw UDO, Town of Warsaw Land Use Plan, and the Town of Warsaw Zoning Map, which are legislative decisions. From time to time, amendments to such documents, ordinances, or plans or adoption of new documents, ordinances, or plans may be necessary for the continued growth and development as well as ensuring the benefit of the public of Warsaw. The Board of Commissioners may also find it necessary to repeal documents, plans, or ordinances in their entirety or in part.

### Section 6.2: Ordinance Required

The Board of Commissioners are required to adopt an ordinance when there are any amendments made or any new documents, ordinances, or plans are approved per NCGS 160D-601.

### Section 6.3: Records of Amendments

Records of amendments shall be kept and incorporated into the text of this UDO for the purpose of establishing effective dates and determining legal nonconforming situations.

### Section 6.4: Down Zoning

No amendment to the official zoning map or this UDO that down-zones property shall be initiated nor is it enforceable without written consent of all property owners whose property is the subject of the down-zoning amendment unless the down-zoning amendment is initiated by the Town of Warsaw. Down-zoning is defined as the following:

- (A) Decreasing the development density of the land to be less dense than was allowed under its previous usage.
- (B) Reducing the permitted uses of the land that are specified in this UDO to fewer uses that were previously allowed.

### Section 6.5: Voting Requirements

When voting upon the following types of legislative decisions, members of their respective Board shall not be excused from voting unless the matters being considered are a conflict of interest per NCGS 160D-109 or if the Board members have their own financial interest involved in the decision or matters which prohibit members from voting as defined in NCGS 14-234. In all other cases, a failure to vote by a member who is physically present at the public hearing shall be recorded as an affirmative vote. An affirmative vote, or a vote that grants approval is a vote in which the majority of members have voted in the same manner.

### Section 6.6: Public Hearing (Rezoning, Conditional Rezoning, Text Amendment)

Prior to adopting, amending, or repealing the text of the Town of Warsaw UDO, Town of Warsaw Land Use Plan, Town of Warsaw Zoning Map, or the adoption of any new ordinances or plans, the Warsaw Board of Commissioners shall hold a public hearing. The UDO Administrator shall keep detailed

records of advertisement for the public hearing so that he may verify that the requirements have been met. The following steps shall be taken prior to the public hearing to satisfy the requirements of NCGS 160D-601.

#### 6.6.1 Newspaper Notice

Notice shall be given once a week for two successive weeks prior to the public hearing in a newspaper having general circulation in the area. The first publication of the notice shall occur no less than 10 days but no more than 25 days prior to the date scheduled for the public hearing. Both notices must be included in the paper prior to the hearing to satisfy this time requirement. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

- (A) Language Requirements. The language that is advertised in the paper shall include a brief but comprehensive description of what is being proposed.
- (B) Rezoning Example. A public hearing will be held on DATE at TIME in the Board Room of the Warsaw Town Hall, 121 S. Front Street, Warsaw, NC, 28398 (or whichever location the public hearing is scheduled to be held) for the purpose of hearing a Rezoning request submitted by APPLICANT NAME from the Residential 20 District to the Residential 10 District.
- (C) Conditional Rezoning Example. A public hearing will be held on DATE at TIME in the Board Room of the Warsaw Town Hall, 121 S. Front Street, Warsaw, NC, 28398 (or whichever location the public hearing is scheduled to be held) for the purpose of hearing a Conditional Rezoning request submitted by APPLICANT NAME from the Residential 20 District to a Conditional Residential 10 District for the purpose of establishing a 14-unit multi-family development.
- (D) Text Amendment Example. A public hearing will be held on DATE at TIME in the Board Room of the Warsaw Town Hall, 121 S. Front Street, Warsaw, NC, 28398 (or whichever location the public hearing is scheduled to be held) for the purpose of hearing a Text Amendment submitted by APPLICANT NAME. The proposed text amendment is to include language that would require additional buffering and landscaping standards for multi-family developments.

#### 6.6.2 Mailed Notice

The owners of the affected parcels of land and the owners of all adjacent parcels shall be mailed a notice of the public hearing for the proposed amendment. The notice shall be sent via first-class mail to each property owner at the mailing address that is listed in the Duplin County Tax Office. Properties are considered to be adjacent even if separated by a street, railroad, or other transportation corridor. The mailed notice shall be deposited in the mail no less than 10 days but no more than 25 days prior to the date scheduled for the public hearing. This notice does not apply to text amendments.

- (A) Language Requirements. The mailed notice shall include a letter prepared by the UDO Administrator that outlines the nature of the request, informs the property owners of the dates and location of the Public Hearing held by the Board of Commissioners as well as the date and location at which the Planning Board will review the request. The mailed notice should inform the recipient of the proposal and any specific elements of the proposal as it relates to Conditional Rezonings and Text Amendments. Mailed notices for General Rezonings will just include the existing district and the proposed district.

### 6.6.3 Posted Notice

The UDO Administrator shall post a notice of the public hearing upon the parcel that is subject to rezoning or conditional rezoning. When it is not physically possible to post the notice upon the parcel or if the notice is not easily visible from the public right-of-way, the notice shall be posted on an adjacent street or public right-of-way as close as possible to the parcel that is proposed to be rezoned. The notice shall be posted no less than 10 days but no more than 25 days prior to the date scheduled for the public hearing. This does not apply to text amendments.

- (A) Language Requirements. The posted notice should include language that indicates the date, time, and location of the public hearing and is encouraged to identify the type of hearing that is being held (General or Conditional Rezoning).

### 6.6.4 Large-Scale Zoning Map Amendments

The first-class mail notice requirement is not required if the proposed rezoning or conditional rezoning involves 50 or more parcels, owned by at least 50 different parcel owners. The Town of Warsaw may post an advertisement in the newspaper that is at least one-half of a newspaper page in size. This type of advertisement only applies to people who live within the area of the general circulation of the newspaper that is used. Parcel owners whose tax listed address indicates that they live outside of the circulation area must be mailed a notice in accordance with standard newspaper notice requirements.

### 6.6.5 Optional Meeting

The applicant is encouraged to host a neighborhood meeting prior to the Board of Commissioners conducting a public hearing for any proposal, but it is not required by this UDO to conduct such meeting. The Town of Warsaw will make its facilities available for such an optional meeting, but it will be made explicitly clear that the meeting is not orchestrated or funded by the Town of Warsaw. The applicant is not required to host optional meetings at Town of Warsaw facilities.

### 6.6.6 Continuation of Hearing

In certain situations, the public hearing may not reach its conclusion at the Board of Commissioners meeting in which it is heard. The Board of Commissioners may leave the public hearing open and continue the meeting to a certain date, time, and location. The Board must specify this in its motion to continue. The Board also has the option to close the public hearing and conduct its deliberation and decision at a separate meeting.

## Section 6.7: Rezoning (General or Conventional)

A Rezoning (which may commonly be referred to as a general rezoning or conventional rezoning) is one in which the parcel is changed from an existing zoning district to a new zoning district in which all uses listed within this UDO apply to the property. For example, if a property is rezoned from Highway Business to Residential 20, all uses for Residential 20 listed in **SECTION** would apply to the parcel if rezoned, and the property would be required to comply with all standards of the new district.

### 6.7.1 Rezoning Review: Planning Board and Board of Commissioners

When reviewing a request for a rezoning, the Planning Board and Board of Commissioners are to review the request and take into consideration all the uses that could potentially occur within the

district based on the proposal. Specific uses of the property or proposed uses shall not be considered. In the event the applicant alludes to specific uses for the property, the Board of Commissioners may require that the applicant undergo the Conditional Rezoning process. The UDO Administrator shall prepare the staff report in a fashion that informs the Planning Board and Board of Commissioners of all potential uses that may occur upon the property.

#### *6.7.2 Recommendation and Consistency Statement*

The Planning Board and Board of Commissioners shall develop their respective statements and conclusions as described in Article 5 and required by NCGS 160D-604 (Planning Board) and NCGS 160D-605 (Board of Commissioners). The UDO Administrator may assist the Boards in the creation of this statement through the information contained within the staff report.

#### *6.7.3 Rezoning Review: How to Review a Rezoning Proposal*

When reviewing proposals for rezoning request, the Planning Board and the Board of Commissioners should be evaluating the requests for the following:

- (A) The permitted uses in the proposed zoning district and how they relate to the adjacent zoning districts.
- (B) The adjacent zoning districts to the parcel proposed for rezoning.
- (C) The adjacent future land use designations.
- (D) The overall public interest and its wellbeing.
- (E) Infrastructure/utilities and their ability to serve the property.
- (F) The Town of Warsaw Land Use Plan, Future Land Use Map designation for the parcel.
- (G) The proposal and how it relates to the contents of the Town of Warsaw Land Use Plan.

#### *6.7.4 Denied Rezoning Request and Reapplication*

In the event that a rezoning request is denied, the parcel shall not be proposed for a rezoning again for a period of 12 months, regardless of who is proposing the rezoning. The exceptions to this rule include the following:

- (A) A rezoning request to a separate district than was originally applied for.
- (B) A decision by the Planning Board that there is new evidence or elements of the land use plan that were not analyzed in the initial consideration of the rezoning proposal. The Planning Board may only make this determination after 6 months have elapsed from the date of the initial denial.
- (C) The Planning Board must make these determinations by majority vote. If the determination is made, a public hearing by the Board of Commissioners can then be advertised.

### Section 6.8: Conditional Rezoning

A Conditional Rezoning is one in which the specific proposed use for the parcel is known. All standards for the general zoning district apply to the conditional zoning district with respect to lot size, setbacks, and other requirements indicated within this UDO. The Planning Board and Board of

Commissioners are to consider the specific proposed use of the property. For example, if the proposal is a rezoning from the Highway Business District to a Conditional Residential 10 District for the purpose of establishing a 20-unit multi-family development, the proposal is to be reviewed for this specific use and its relation and impact.

#### *6.8.1 UDO Administrator: Recommended Conditions*

When reviewing proposals for conditional rezoning requests, the UDO Administrator may make recommendations to the Planning Board and Board of Commissioners for conditions to impose upon the request. The recommended conditions may include but are not limited to those that are related to implementation or conformity with the land use plan or those that address infrastructure needs, safety concerns, or conditions designed to improve the quality of life of all citizens.

#### *6.8.2 Conditional Rezoning Review: Planning Board and Board of Commissioners*

When performing review upon a conditional rezoning request, the Planning Board and Board of Commissioners are to consider the proposed use for the property and how it relates to the adjacent land uses, potential uses of adjacent lands, and the future land use designation for the property. They should also consider any conditions that may be necessary to impose upon the proposed use.

#### *6.8.3 Recommendation and Consistency Statement*

The Planning Board and Board of Commissioners shall develop their respective statements and conclusions as described in Article 5 and required by NCGS 160D-604 (Planning Board) and NCGS 160D-605 (Board of Commissioners). The UDO Administrator may assist the Boards in the creation of this statement through the information contained within the staff report.

#### *6.8.4 Rezoning Review: How to Review a Conditional Rezoning Proposal*

When reviewing proposals for conditional rezoning request, the Planning Board and the Board of Commissioners should be evaluating the requests for the following:

- (A) The proposed use in the proposed conditional zoning district and how it relates to the adjacent zoning districts.
- (B) The proposed use and how it relates to existing and future potential uses upon adjacent properties.
- (C) The adjacent zoning districts to the parcel proposed for conditional rezoning.
- (D) The adjacent future land use designations.
- (E) The overall public interest and its wellbeing.
- (F) Infrastructure/utilities and their ability to serve the proposed use and the impact of the use upon the existing infrastructure.
- (G) The Town of Warsaw Land Use Plan, Future Land Use Map designation for the parcel.
- (H) The proposal and how it relates to the contents of the Town of Warsaw Land Use Plan.

### 6.8.5 Conditional Rezoning: Conditions

The Board of Commissioners may require conditions to be placed upon the approval of conditional rezoning requests in accordance with the provisions established by ARTICLE 5. The imposed conditions shall be agreed upon in writing by the applicant. The UDO Administrator shall prepare a document including the conditions and provide it to both the applicant and the Board of Commissioners for their signature. A development agreement may also be required as part of the conditions when imposed conditions warrant infrastructure installation and extensions.

### 6.8.6 Denied Conditional Rezoning Request and Reapplication

In the event that a conditional rezoning request is denied, the parcel shall not be proposed for a conditional rezoning again for a period of 12 months, regardless of who is proposing the conditional rezoning. The exceptions to this rule include the following:

- (A) A rezoning request to a separate district than was originally applied for.
- (B) A substantial change from the initial proposed use in the conditional rezoning request. Substantial changes are a 30% reduction in the proposed number of units or lots, or a 30% addition in common open space or the addition of public amenities and infrastructure that the Planning Board deems substantial. The Planning Board may only make this determination after 6 months have elapsed from the date of the initial denial.
- (C) A decision by the Planning Board that there is new evidence or elements of the land use plan that were not analyzed in the initial consideration of the conditional rezoning proposal. The Planning Board may only make this determination after 6 months have elapsed from the date of the initial denial.
- (D) The Planning Board must make these determinations by majority vote. If the determination is made, a public hearing by the Board of Commissioners can then be advertised.

## Section 6.9: Rezoning and Conditional Rezoning: Amendment to the Land Use Map

When rezonings or conditional rezonings that are proposed do not align with the designation given by the future land use map, the approval of such zoning map amendment has the effect of also amending the future land use map included in the Town of Warsaw Land Use Plan. The zoning map amendment does not amend the text of the plan; however, it does amend the future land use map. There may be situations where the proposed zoning map amendment aligns with the text and intent of the plan but does not align with the map. Per NCGS 160D-605(a). Amendments that are inconsistent with the map or plan shall be noted within the plan per NCGS 160D-501.

## Section 6.10: Text Amendment

A Text Amendment is a proposal to either amend the text of this UDO or the Town of Warsaw Land Use Plan. Regardless of which text is proposed to be amended, both are required to undergo the same process. A text amendment involves the amendment of the text to introduce new requirements, standards, or uses or to remove certain language from the text that the Board of Commissioners has determine to no longer be necessary or relevant for advisory or regulatory purposes.

#### *6.10.1 Text Amendment: Pre-Application Meeting Required*

Applicants who wish to propose text amendments are required to have a pre-application meeting with the UDO Administrator to discuss the reasoning for the amendment request and discuss what the best proposed language should be for the amendment.

#### *6.10.2 Text Amendment Review: Planning Board and Board of Commissioners*

When reviewing a proposed text amendment, the Planning Board and Board of Commissioners should examine both the short-term and long-term effects of the proposed amendment as well as examine the amendments relation and effect on the document in which the proposed amendment is located in. The respective Boards should take into consideration that the proposed amendment benefits the overall public health, safety, and welfare of Warsaw as a whole and not one person or a select group or community.

#### *6.10.3 Recommendation and Consistency Statement*

The Planning Board and Board of Commissioners shall develop their respective statements and conclusions as described in Article 5 and required by NCGS 160D-604 (Planning Board) and NCGS 160D-605 (Board of Commissioners). The UDO Administrator may assist the Boards in the creation of this statement through the information contained in the staff report.

#### *6.10.4 Denied Text Amendments*

In the event that a text amendment request is denied, the same text amendment or one of similar nature shall not be proposed for a text amendment again for a period of 12 months, regardless of who is proposing the amendment.

### Section 6.11: Appeals of Legislative Decisions

Appeals of the legislative decisions outlined within this Article shall be made in the manner outlined by NCGS 160D-1401.

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## ARTICLE 7: QUASI-JUDICIAL PROCEDURE & DECISIONS

### Section 7.1: Purpose

Certain uses, due to their nature, may not be permitted by right within certain zoning districts. Such uses may be permitted with special requirements or conditions placed upon them to mitigate potential impacts of the use upon the adjacent properties. These uses shall require quasi-judicial review from the Board of Adjustment and the issuance of a Special Use Permit in order to establish themselves and operate. There are other situations that may exist which require a variance, or the lessening of the standards outlined in this UDO in certain circumstances and unique situations. This Article also sets forth the manner in which appeals of administrative decisions are to be dealt with.

### Section 7.2: Appeals of Quasi-Judicial Decisions, Subject to Judicial Review

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

### Section 7.3: Ex-Parte Communication Forbidden

There shall be no ex-parte communication between any parties involved in a quasi-judicial hearing prior to the hearing, including communication beyond the general scope of what has been applied for. Parties include the Board of Adjustment, persons with standing, and the UDO Administrator but is not limited to such. If ex-parte communication occurs, it shall be disclosed at the hearing.

### Section 7.4: Hearsay Prohibited

The Board of Adjustment shall not consider hearsay or general opinion in quasi-judicial hearings. The Board shall only consider expert opinion, witness, evidence, and testimony when making quasi-judicial decisions.

### Section 7.5: Presentation of Evidence

For all quasi-judicial matters, all items submitted by the applicant including the application itself and any other associated document shall be provided to the Board of Adjustment at the hearing as evidence to be part of the record. This documentation includes the staff report and any other document of analysis produced by the UDO Administrator. The Administrator shall submit all documents, staff reports, and correspondence to the Board of Adjustment at the hearing as well so that it is a part of the official record.

All items, materials, and evidence shall also be provided to the Board of Adjustment and the applicant and landowner, if the landowner is different from the applicant. The materials shall be provided at the same time they are provided to the Board of Adjustment, in the same manner as it is provided to the Board of Adjustment, whether that be standard mail, email, or hand delivery. These items shall be provided at least one week prior to the hearing so that all parties involved may begin to familiarize themselves with and gain an understanding of the proposal. Objections to the inclusion or exclusion of materials may be made before or during the hearing.

## Section 7.6: Burden of Evidence and Duties

### 7.6.1 Special Use

The initial duty in a quasi-judicial hearing falls upon the UDO Administrator to present all his findings, reports, and evidence to the Board so that they may have access to the materials to understand the proposal and any applicable specific requirements. The burden of evidence then shifts to the applicant, who shall produce factual and substantial evidence to the Board of Adjustment so that they may be able to vote upon the four required findings. The applicant may have expert witnesses and professionals testify at the hearing as part of their burden of the presentation of evidence. The applicant may also be represented by a NC licensed attorney. Adjacent owners and other citizens who can prove they are legitimately affected by the proposed use may also provide expert witness and testimony and present evidence that supports such, as well as have a NC licensed attorney represent their interest and concern at the hearing.

### 7.6.2 Variance

The burden of producing factual evidence and the burden of persuasion to the Board to prove all four Variance findings have been met are the sole duty of the applicant. The duty of the UDO Administrator is to produce a professional staff report and evaluation of the facts and existing conditions.

### 7.6.3 Appeal

The UDO Administrator has the initial burden of presenting evidence to justify why such a decision was made. This burden shifts to the aggrieved person at the conclusion of the UDO Administrator's testimony. Likewise, the aggrieved person or party shall present to the Board a detailed analysis of their grievance with the decision and what they believe the correct interpretation of this UDO is.

## Section 7.7: Public Hearing (Special Use, Variance, Appeals of Administrative Decisions)

Prior to voting and making a decision upon a special use, variance, or administrative appeal, the Board of Adjustment shall conduct a quasi-judicial public hearing. The UDO Administrator shall keep detailed records of advertisement for the public hearing so that he may verify that the requirements have been met. The following steps shall be taken prior to the public hearing to satisfy the requirements of NCGS 160D-406.

### 7.7.1 Mailed Notice

Notices shall be mailed to the person or entity whose application is the subject of quasi-judicial review as well as the property owner, when different from the applicant. Notice shall also be mailed to the owners of all parcels of land that are abutting the parcel that is the subject of the quasi-judicial hearing. The notice shall be sent via first-class mail to everyone who is required to receive a mailed notice at the mailing address that is listed in the Duplin County Tax Office. Properties are considered to be adjacent or abutting even if separated by a street, railroad, or other transportation corridor. The mailed notice shall be mailed no less than 10 days but no more than 25 days prior to the date scheduled for the public hearing.

- (A) Language Requirements. The mailed notice shall include a letter prepared by the UDO Administrator that outlines the nature of the request, informs the letter recipient of the date

and location that the Board of Adjustment will conduct a public hearing to perform quasi-judicial review. The letter shall also include language that describes what the quasi-judicial process is, identifies the voting requirements for the type of hearing, as well as informs of the burden of evidence as described by this Article. The letter shall include explicit language of how ex parte communication is prohibited.

#### 7.7.2 Posted Notice

The UDO Administrator shall post a notice of the public hearing upon the parcel that is subject to quasi-judicial review. When it is not physically possible to post the notice upon the parcel or if the notice is not easily visible from the public right-of-way, the notice shall be posted on an adjacent street or public right-of-way as close as possible to the parcel that is under quasi-judicial review. The notice shall be posted no less than 10 days but no more than 25 days prior to the date scheduled for the public hearing.

- (A) Language Requirements. The posted notice should include language that indicates the date, time, and location of the public hearing and is encouraged to identify the type of hearing that is being held (Special Use, Variance, Appeal).

### Section 7.8: Continuation of Hearing

In certain situations, the public hearing may not reach its conclusion at the Board of Adjustment meeting in which it is heard. The Board of Adjustment may leave the public hearing open and continue the meeting to a certain date, time, and location. The Board must specify this in its motion to continue. The Board shall not have any communication to be considered ex-parte communication once the hearing has been continued. There also may be instances where a quorum cannot be obtained to conduct a quasi-judicial hearing. In these instances, the hearing will be continued to the next regular scheduled meeting of the Board of Adjustment.

### Section 7.9: Special Use Permits

#### 7.9.1 Voting Requirements

At the conclusion of the public hearing, the Board shall close the hearing and enter its discussion, deliberation, and voting upon the special use permit request. In its voting procedure, the Board may place conditions upon their findings in accordance with this Article if the conditions are warranted. To approve a special use permit request, the Board must approve by majority vote all four findings listed below. If one of the four does not receive a majority vote for approval, the special use permit shall not be issued. The Board is encouraged to vote on each of these findings individually so that the record is definitively accurate. For purposes of this Section, vacant positions on the Board of Adjustment and members who have been disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority.

#### 7.9.2 Findings

In approving the permit, the Board of Adjustment shall find as a specific finding of fact and reflect in their minutes that the permit will comply with the following four facts:

- (A) The use will not materially endanger the public health or safety if approved.
- (B) The use will not substantially injure the value of adjoining or abutting property.

- (C) The use will be in harmony with the area in which it is to be located.
- (D) The use will be in general conformity with the Town of Warsaw Land Use Plan or other plans and policies adopted by the Board of Commissioners.

If the Board determines that factual evidence has not been produced in an adequate manner to make these findings, the Board may deny the special use permit request based on the lack of substantial and factual evidence.

### *7.9.3 Written Decision*

At the conclusion of voting, the Board shall provide a written decision to the Applicant that reflects the record of the public hearing including testimony given and how the Board voted on the four findings. The written decision shall reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be produced within a reasonable amount of time and signed by the Chair of the Board of Adjustment. The decision is effective upon its filing with the clerk to the Board of Adjustment.

In addition to providing a copy of the decision either in electronic form or first-class mail to the applicant, the decision shall be provided to the landowner if different from the applicant and any other person who has submitted a written request for a copy of the decision. Copies of decisions shall be filed and kept in the office of the UDO Administrator.

### *7.9.4 Denied Special Use Permit Request & Reapplication*

If the Board of Adjustment denies a special use permit request, such special use permit proposal may not be reapplied for upon the same parcel of land for a period of 12 months. The exceptions to this requirement are as follows:

- (A) New information is available that could not with reasonable diligence have been presented at the previous hearing. A request to be reheard under this provision must be made within 30 days of the denial.
- (B) A new application upon the same in which the proposal is substantially different from or is incorporating a substantial number of amenities to benefit the public. The decision of what is substantial is at the sole discretion of the Board of Adjustment.
- (C) The Board of Adjustment must by majority vote approve requests prior to scheduling and advertising for a quasi-judicial hearing.

## Section 7.10: Variance

### *7.10.1 Variance Requirements*

There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of this UDO. In granting the variance, the project will ensure equal or better protection of waters of the State than the requirements of 15A NCAC 02B .0711, and that the public safety and welfare have been assured and substantial justice has been done.

### *7.10.2 Voting Requirements*

At the conclusion of the public hearing, the Board shall close the hearing and enter its discussion, deliberation, and voting upon the variance request. In its voting procedure, the Board may place

conditions upon their findings in accordance with this Article if the conditions are warranted. Warranted conditions are those that ensure the use of the property will be compatible as practicable with surrounding properties. To approve a variance request, the Board must approve by 4/5ths vote of the Board's membership all four findings listed below. If one of the four does not receive a 4/5ths vote for approval, the variance shall not be issued. The Board is encouraged to vote on each of these findings individually so that the record is definitively accurate. For purposes of this Section, vacant positions on the permit-issuing board and members who have been disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority.

If the Board determines that factual evidence has not been produced in an adequate manner to make these findings, the Board may deny the variance request based on the lack of substantial evidence.

Four Fifths Explained – The Board of Adjustment is a 7-member Board. For variances, there must be 6 affirmative votes on each of the findings. In the event that a member is absent or is unable to vote and is not exempted due to a conflict of interest, the 6 votes are still required due to the 4/5ths rule. For members exempted due to a conflict of interest, the 4/5ths will be calculated based on the members that are able to vote on the matter.

#### *7.10.3 Findings*

- (A) Unnecessary hardship would result from the strict application of this UDO. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (B) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (C) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
- (D) The requested variance is consistent with the spirit, purpose, and intent of this UDO, such that public safety is secured, and substantial justice is achieved.

#### *7.10.4 Written Decision*

At the conclusion of voting, the Board shall provide a written decision to the Applicant that reflects the record of the public hearing including testimony given and how the Board voted on the four findings. The written decision shall reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be produced within a reasonable amount of time and signed by the Chair of the Board of Adjustment. The decision is effective upon its filing with the clerk to the Board of Adjustment.

In addition to providing a copy of the decision either in electronic form or first-class mail to the applicant, the decision shall be provided to the landowner if different from the applicant and any

other person who has submitted a written request for a copy of the decision. Copies of decisions shall be filed and kept in the office of the UDO Administrator.

## Section 7.11: Appeals of Administrative Decisions

### 7.11.1 Requirements

Except as provided in NCGS 160D-1403.1, appeals of Administrative Decisions shall be made to the Board of Adjustment per NCGS 160D-405. Appeals of Administrative Decisions on Subdivision Plats shall be made in accordance with NCGS 160D-1403. If the subdivision decision is made by the UDO Administrator, it shall be in accordance with NCGS 160D-405.

Any person who has standing per NCGS 160D-1402(c) may appeal an administrative decision to the Board of Adjustment. Appeals shall be filed with the UDO Administrator and submitted in the form of an "Appeals Application". The time in which the person with standing has to appeal is 30 days from the receipt of the administrative decision or determination. Notices given by first-class mail are deemed to be received on the third business day following deposit of the notice for mailing with the United States Postal Service.

An appeal of an Administrative Decision, Notice of Violation, interpretation of this UDO or any other subsequent appeal in accordance with NCGS 160D-1402 stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal or during the pendency of any civil proceeding authorized by law or related appeal. If, however, the UDO Administrator certifies to the Board of Adjustment after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property, or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this UDO, then enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after the request is filed. Notwithstanding any other provision of this section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with this UDO does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or the Town of Warsaw may request, and the Board of Adjustment may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

### 7.11.2 Hearing

When conducting a hearing for an appeal, the Board of Adjustment must examine the language of this UDO, and the decision made by the UDO Administrator and determine if the UDO Administrator has correctly interpreted and applied this UDO. The presentation of evidence and factual information is an important aspect of the hearing and should be closely reviewed and considered by the Board of Adjustment. All persons presenting to the Board in an appeal hearing must provide sworn testimony. Any person who willfully swears falsely is guilty of a class 1 misdemeanor. The Board of Adjustment may subpoena witnesses.

The UDO Administrator shall appear as a witness at the hearing, or the person who currently occupies that position if the decision-making UDO Administrator is no longer employed by the Town of Warsaw. At the hearing, the UDO Administrator shall present their determination with a detailed analysis of why such decision was made.

### *7.11.3 Voting Requirements*

The vote shall be a simple majority, and the Board shall vote to uphold the UDO Administrator's decision, overturn, or modify the decision. The Board may make any order, requirement, decision, or determination they deem necessary to be made. The Board must make its decision based on competent, material, and substantial evidence in the record produced at the hearing. For purposes of this Section, vacant positions on the permit-issuing board and members who have been disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority.

### *7.11.4 Written Decision*

At the conclusion of voting, the Board shall provide a written decision to the Applicant that reflects the record of the public hearing including testimony given and how the Board voted on the appeal and decision made by the UDO Administrator. The written decision shall reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be produced within a reasonable amount of time and signed by the Chair of the Board of Adjustment. The decision is effective upon its filing with the clerk to the Board of Adjustment. In addition to providing a copy of the decision either in electronic form or first-class mail to the applicant, the decision shall be provided to the landowner if different from the applicant and any other person who has submitted a written request for a copy of the decision. Copies of decisions shall be filed and kept in the office of the UDO Administrator.

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## ARTICLE 8: VESTED RIGHTS, PERMIT CHOICE, SITE SPECIFIC VESTING PLANS

### Section 8.1: Purpose

The purpose of this Article is to provide for the protection of time, expense, and investment of persons into legal land use and development within the Town of Warsaw.

### Section 8.2: Definition Applicability

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

- (A) Landowner. Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site-specific development plan.
- (B) Property. All real property subject to the regulations and restrictions of this UDO as well as the zoning district boundaries established by this UDO and depicted on the official zoning map.
- (C) Site Specific Development Plan. A plan which has been submitted to the Town of Warsaw by a landowner describing in detail the type and intensity of use for a specific parcel or parcels of property. Such a plan shall be in the form of a site plan required by Article 3, with all additional required information as provided for by Article 3 and having received approval from either the Planning Board, Board of Adjustment, Board of Commissioners, or UDO Administrator as required by this UDO, as applicable to the specific type of development applied for.
- (D) Vested Right. The right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan.

### Section 8.3: Vested Right

Vested Rights are established with respect to any property upon the valid approval, or conditional approval, of a site-specific vesting plan. Vested Rights allow for the landowner to undertake and complete the development and use of property under the terms of their site-specific vesting plan. Vested Rights may also be established by receiving approval from the Board of Commissioners or Board of Adjustment for a specific use through the conditional rezoning or special use process.

#### *8.3.1 Establishment of Vested Right*

A vested right is established once valid approval or conditional approval has been issued for a site-specific vesting plan. These valid approvals shall only be given by either the Planning Board, Board of Adjustment, Board of Commissioners, or UDO Administrator as required by this UDO, as applicable to the specific type of development applied for.

### *8.3.2 Claiming Vested Rights*

A person claiming a statutory or common law vested right may submit information to substantiate that claim to the UDO Administrator, who shall make an initial determination as to the existence of the vested right. The decision of the UDO Administrator may be appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination or pursuing an appeal under G.S. 160D-405, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.

### *8.3.3 Duration of Vested Rights*

The duration for vested rights for a site-specific vesting plan is for a period of 24-months from the date of the UDO Administrator's approval. A vested right shall not be extended by any amendments or modifications to an approved site-specific development plan unless expressly provided for by the Board of Commissioners. A vested right shall expire at the end of 24-months if no building permit applications have been filed with the Town of Warsaw to construct the use or uses proposed in the approved site-specific development plan. If building permits are issued, the provisions of NCGS 160D-1111 and NCGS 160D-1115 shall apply, except that a building permit shall not expire or be revoked because of the lack of progress during the 24-month vesting period. A vested right terminates at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

### *8.3.4 Vested Phased Development*

A multi-phased development (development containing 25 acres or more) is vested for the entire development with the regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this Article remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.

### *8.3.5 Vested Rights Protections*

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

- (A) With the written consent of the affected landowner;
- (B) Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific development plan;
- (C) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property, which is caused by such action;

- (D) Upon findings, by ordinance after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Town of the site-specific development plan; or
- (E) Upon the enactment or promulgation of a state or federal law or regulation which precludes development as contemplated in the site-specific development plan, in which case the Town may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a public hearing.

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

Notwithstanding any provisions of this Section, the establishment of a vested right shall not preclude, change, or impair the authority of the Town to enforce provisions of this UDO governing nonconforming situations or uses. A vested right obtained under this section is not a personal right but shall attach to and run with the applicable property. After approval of a site-specific development plan, all successors to the original landowner shall be entitled to exercise such vested rights. The Town shall not require a landowner to waive his vested rights as a condition of developmental approval.

#### Section 8.4: Permit Choice

If this UDO is amended between the time a development permit application was submitted (including all types of development permit applications listed in this UDO) and a decision is made upon the application, the applicant of the development permit has the right to choose which version of this UDO shall apply to their development permit. If the development permit applicant chooses the version of the rule of this UDO applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or UDO prior to acting on the development permit. If an applicable portion of this UDO is amended after the development permit is wrongfully denied or after an illegal condition is imposed, as determined in a proceeding challenging the permit denial or the condition imposed, the development permit applicant may choose which adopted version of the UDO will apply to the permit and use of the building, structure, or land indicated on the permit application. Provided, however, any provision of the development permit applicant's chosen version of the UDO that is determined to be illegal for any reason shall not be enforced upon the applicant without the written consent of the applicant.

#### Section 8.5: Multiple Permits for Development Project

Subject to the Duration of Vested Rights section of this Article, where multiple development permits are required to complete a development project, meaning permits from the Town of Warsaw and other local or state governmental agencies, the development permit applicant may choose the version of each of the regulations applicable to the project upon submittal of the application for the initial development permit. This subsection is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. This subsection does not limit or affect the duration of any vested right established under the Duration of

Vested Rights section of this Article. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

### Section 8.6: Site Specific Vesting Plan

A site-specific vesting plan consists of a plan submitted to the UDO Administrator in which the applicant requests vesting pursuant to this section, describing with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property. The plan shall be in compliance with the applicable requirements outlined in Article 3 for the plan type required for the certain proposed development. What constitutes a site-specific vesting plan under this section that would trigger a vested right shall be finally determined by the UDO Administrator pursuant to this UDO, and the document that triggers the vesting shall be so identified at the time of its approval. Generally, plans associated with applications in Article 3 will be considered as a site-specific vesting plan unless the UDO Administrator determines they have not met the minimum site-specific vesting plan requirements, or the approved plan left significant relevant information out of its contents. At a minimum, a site-specific vesting plan shall contain the following information:

- (A) Boundaries of the site.
- (B) Significant topographical and other natural features affecting the development of the site.
- (C) The approximate location on the site of the proposed buildings, structures, and other improvements.
- (D) The approximate dimensions, including height, of the proposed buildings and other structures.
- (E) The approximate location of all existing and proposed infrastructure on the site including water, sewer, roads, and pedestrian walkways.

A variance does not constitute a site-specific vesting plan. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site-specific vesting plan.

## ARTICLE 9: DEVELOPMENT AGREEMENTS & PERFORMANCE GUARANTEES

### Section 9.1: Authorization for Development Agreements

There are certain projects that due to their type will occur in multiple phases over several years which will require a long-term commitment from both the Town of Warsaw and the developer to see the project completed. These projects, due to their complexities, may not be handled most efficiently using traditional practices for zoning approval. These projects require careful planning and commitment to ensure that the necessary facilities and infrastructure are in place to allow for the project to continue meeting its phases and milestones as it works towards completion. For projects of this type, developers need assurances from the Town of Warsaw prior to committing to executing the project.

Development that is authorized by a development agreement shall comply with all State and Federal laws including the provisions of this UDO. The Town of Warsaw shall not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law.

Development Agreements must be approved by the Board of Commissioners in accordance with procedures set forth in NCGS 160D-1005. A legislative hearing shall be held for the proposed Development Agreement and shall follow the procedure set forth in Article 6. The hearing notice shall specify the location of the property subject to the Development Agreement, the development uses proposed on the property and specify a place where the copy of the proposed agreement can be obtained.

### Section 9.2: Applicability of Development Agreements used in Concurrence

Development agreements may, by an Ordinance to Approve, be incorporated, in whole or in part, into any development regulation adopted by the Town of Warsaw. A development agreement may be considered concurrently with a zoning map or text amendment affecting the property and development subject to the development agreement. A development agreement may be concurrently considered with and incorporated by reference with a sketch plan or preliminary plan required under a subdivision regulation, or a site plan or other development approval required under a zoning regulation. If incorporated into a conditional district, the provisions of the development agreement shall be treated as a development regulation in the event of the developer's bankruptcy.

### Section 9.3: Parcel Size and Time Restrictions

There is no minimum parcel size requirement for a Development Agreement and the Board of Commissioners shall determine a reasonable time for the agreement based upon the scope of the project.

### Section 9.4: Contents of Agreement

The following are the minimum requirements of components that must be incorporated into the Development Agreement.

- (A) A description of the property subject to the agreement and the names of its legal and equitable property owners.
- (B) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.
- (C) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.
- (D) A description of public facilities that will serve the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development. In the event that the development agreement provides that the Town of Warsaw shall solely provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards.
- (E) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions agreed to by the developer that exceeds existing laws related to the protection of environmentally sensitive property.
- (F) A description, where appropriate, of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare.
- (G) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.
- (H) A description of the penalties for breach in lieu of termination.

The Development Agreement may also include language that stipulates when certain aspects or phases of the development must be commenced or completed by. The Development Agreement shall include a development schedule timeline, and no portion of the timeline shall have greater than 5-year increments in between phases. Failure to meet a commencement or completion date does not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160D-1008 but must be judged based upon the totality of the circumstances. The developer may request a modification in the dates as required to be set forth in the agreement. Modifications must be approved by the Board of Commissioners.

If the Town of Warsaw is not the sole unit of local government in the agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement. A local or regional utility authority may also be made a party to the development agreement.

The development agreement may include mutually acceptable terms regarding provision of public facilities and other amenities and the allocation of financial responsibility for their provision, provided any impact mitigation measures offered by the developer beyond those that could be required by the Town of Warsaw shall be expressly enumerated within the agreement, and provided the agreement may not include a tax or impact fee not otherwise authorized by law.

Major modifications to Development Agreements shall follow the same procedures as required for initial approval of a development agreement.

### Section 9.5: Vesting for Development Agreements

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

Except for grounds specified in NCGS-160D-108(c) or (d), the Town of Warsaw may not apply subsequently adopted ordinances or policies to a development that is subject to the agreement. In the event State or Federal law undergoes change after a development agreement has been entered into, and the change prevents or precludes compliance with one or more provisions of the agreement, the Town of Warsaw may modify the affected provisions, upon a finding that the change in State or Federal law has a fundamental effect on the development agreement.

### Section 9.6: Breach and Cure

The UDO Administrator shall periodically review the project and contents of the Development Agreement to ensure that the developer is demonstrating good faith compliance with the terms of the agreement. If the UDO Administrator finds and determines that the developer has committed a material breach of the agreement, the UDO Administrator shall notify the developer in writing setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination and providing the developer a reasonable time in which to cure the material breach consistent with the Violations and Enforcement provisions established by this UDO.

If the developer fails to cure the material breach within the time given, then the Town of Warsaw unilaterally may terminate or modify the development agreement, provided the notice of termination or modification may be appealed to the Board of Adjustment in the manner provided by G.S. 160D-405. An ordinance adopted pursuant to G.S. 160D-1003 or the development agreement may specify other penalties for breach in lieu of termination, including, but not limited to, penalties allowed for violation of a development regulation.

Nothing in this Article shall be construed to abrogate or impair the power of the Town of Warsaw to enforce applicable law. A development agreement shall be enforceable by any party to the agreement notwithstanding any changes in the development regulations made subsequent to the effective date of the development agreement. Any party to the agreement may file an action for injunctive relief to enforce the terms of the development agreement.

### Section 9.7: Amendment & Termination and Change of Jurisdiction

Subject to the provisions of G.S. 160D-1006(e), a development agreement may be amended or terminated by mutual consent of the parties.

Any development agreement entered into by the Town of Warsaw before the effective date of a change of jurisdiction shall be valid for the duration of the agreement or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction. A local government assuming jurisdiction may modify or



suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement or the residents of the local government, or both, in a condition dangerous to their health or safety, or both.

### Section 9.8: Recordation

The developer shall record the agreement with the Duplin County Register of Deeds within 14 days after the local government and developer execute an approved development agreement. No development approvals may be issued until the development agreement has been recorded. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

### Section 9.9: Applicability of Procedures to Approve Debt

In the event that any of the obligations of the Town of Warsaw in the development agreement constitute debt, the Town of Warsaw shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the Town of Warsaw with any applicable constitutional and statutory procedures for the approval of this debt.

### Section 9.10: Performance Guarantees

There may be instances where the developers desire to receive approval for a final subdivision plat to be signed and recorded prior to the installation of required infrastructure or items shown to be installed on a site plan. These instances may also include but are not limited to the installation of a buffer in non-planting months, the provision of required site amenities such as multi-use paths, open space structures or amenities, etc.

When these situations exist, the applicant or developer may provide a detailed cost estimate for a Performance Guarantee to the UDO Administrator for review. Developers and applicants should make good faith efforts for all improvements to be installed and in working order and good condition prior to their attempt at obtaining a final permit or plat approval.

When the Administrator determines that a Performance Guarantee and the associated detailed cost estimate is valid, the UDO Administrator shall accept the guarantee to ensure that any outstanding requirements are completed prior to the release of the Performance Guarantee back to the applicant or developer.

Incomplete improvements that have been assured by a Performance Guarantee are expected to be completed within a one-year period.

Performance Guarantees shall be provided and approved prior to any issuance of permit, or the UDO Administrators signature is signed upon the final plat.

Prior to the issuance of the first associated building permit within the subdivision, the developer shall provide a status update on the completion of infrastructure. There shall be no certificate of occupancy issued until the outstanding items and the terms of the Performance Guarantee have been satisfied.



### *9.10.1 Types*

The following types of guarantees may be accepted by the Town of Warsaw. The UDO Administrator may consult the Town attorney to determine if the type of proposed guarantee is sufficient and in an acceptable format.

- (A) Surety bond issued by any company authorized to do business in North Carolina.
- (B) Letter of credit issued by any financial institution licensed to do business in North Carolina.
- (C) Cash or Check.

### *9.10.2 Amount*

The amount required to be posted for the Performance Guarantee shall be 125% of the cost estimated to complete the incomplete infrastructure or outstanding site requirements. This projected cost is to be provided by the developer or applicant. The cost estimate will be reviewed by the UDO Administrator and other Town of Warsaw employees as deemed necessary by the UDO Administrator to accurately determine validity of the proposed cost. The cost estimate shall contain a detailed description of cost, materials, activities, and anticipated completion dates for the proposed infrastructure within the estimate. A lump sum estimate without any detailed explanation is not to be accepted by the UDO Administrator.

Specifically, the estimate is to include the cost of labor and material necessary for the completion of the required improvements. Cost shall be based upon unit pricing where applicable.

### *9.10.3 One-Year Administrative Meeting*

One year from the date of the posting of the guarantee, the Developer or Applicant is required to have a meeting with the UDO Administrator to provide updates on installation and give a progress report with estimated dates for completion. Failure to have this meeting within 30 days of the one-year date of the initial acceptance of the guarantee may result in the Town of Warsaw executing the guarantee for the purpose of completing the incomplete required improvements.

### *9.10.4 Duration*

The initial guarantee shall be valid for a period of one year unless the Board of Commissioners determines that the type of required improvement necessitates a period longer than one year. The Developer or Applicant shall not independently decide the scope of work necessitates a longer time than one-year. In the event the developer or applicant feels a period of one-year is not sufficient, they shall request that the UDO Administrator place their request upon the agenda of the Board of Commissioners.

Bonds and Letters of Credit shall include language for automatic renewal in the event that the required improvements have not been completed by the designated expiration date.

### *9.10.5 Extension*

The Developer or Applicant shall put forth a good faith effort and actively work to have all required improvements completed prior to the initial expiration date. The Town of Warsaw does acknowledge that certain situations may necessitate the need for an extension. In the event that the posted Performance Guarantee is going to expire and there is no longer language that automatically extends the guarantee in either the bond or letter of credit, the Developer or Applicant is required to request

an extension. An extension request must be made to the Town of Warsaw Board of Commissioners. These requests must be made in advance of the expiration of the guarantee. If the applicant has failed to request an extension within 30 days of the defined expiration date, the Town of Warsaw shall call upon the bond or letter of credit and begin the necessary process to obtain the guaranteed funds for the purpose of completing the required improvements.

The UDO Administrator shall notify the applicant or developer 6 months prior to the expiration date and inform them of their responsibility to either complete the improvements or petition to the Board of Commissioners for an extension. The notification shall include the language of the Town of Warsaw's intention to obtain the guaranteed funds in the event the applicant or developer fails to comply with the notice. The notification shall be provided in certified mail, first-class mail, and email. The UDO Administrator shall also keep records of the date the notice was provided. The UDO Administrator may also elect to post the property(s) with a notice sign. \

#### **9.10.6 Release**

Once the required improvements have been made, the Developer or Applicant shall notify the UDO Administrator so that he may inspect to verify that the improvements have been completed and are adequate. The Developer or Applicant shall provide all documentation relevant to the improvements when notifying the UDO Administrator including but not limited to certification letters, testing results, invoices, and notarized statements from the parties contracted for improvement installation as determined necessary by the UDO Administrator.

The Administrator shall prepare a report for the Board of Commissioners outlining all improvements that have been made with documentation and evidence of their completion. The Board of Commissioners shall determine if the improvements have met the requirements of this UDO and authorize the return of Bonds, Letters of Credit, or escrowed funds upon completion of the improvement back to the Developer or Applicant. The UDO Administrator shall include written acknowledgement with return of the Performance Guarantee.

Cash or check guarantees will be deposited into the Town of Warsaw's finances for the purpose of being used to complete the required improvements in the event the Developer or Applicant fails to do so. If the Developer or Applicant completes the required improvements, the Administrator shall petition to the Town of Warsaw Finance Office for release of the funds back to the Developer or Applicant. The funds shall not be spent on anything other than for the completion of the identified improvements that have been guaranteed. The Town of Warsaw Finance Department is responsible for ensuring that the funds remain unused until such time to refund the developer or applicant or to complete the required infrastructure.

The Developer or Applicant may request a partial refund if more than 50% of the required improvements have been completed, this 50% is based on the initial Cost Estimate provided to determine the guaranteed amount. A partial refund request must be accompanied by detailed cost estimates outlining the work that has been completed with the inclusion of any applicable invoices and acceptance documents as deemed necessary by the UDO Administrator. The UDO Administrator shall report to the Board of Commissioners when partial requests have been made and provide evidence so that the Board of Commissioners may determine if the partial release is necessary.

## ARTICLE 10: NONCONFORMING SITUATIONS

### Section 10.1: General

A nonconforming situation occurs when, on the effective date of this UDO, an existing lot or structure, or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matter as density and setback requirement) is not in conformity with this UDO, because signs do not meet the requirements of this UDO or because land or buildings are being utilized for uses that are not permitted within the zoning district in which they occur.

Unless otherwise specifically provided for in this UDO, and subject to the restrictions and qualifications set forth in the remaining sections of this Article, nonconforming situations that were otherwise lawful on the effective date of this UDO may be continued, the fact that situations exist but do not have proof of valid permits from the Town of Warsaw does not authorize them to allow to legally be considered as a nonconforming situation. Whenever this UDO refers to the effective date of adoption, the reference shall be deemed to include the effective date of any amendments to this UDO if the amendment, rather than this UDO as originally adopted, creates a nonconforming situation.

To be considered legally existing, permits issued by the Town of Warsaw must be presented to the UDO Administrator for verification of such existence. The UDO Administrator shall make all efforts to find documentation of the existing permit within the Town of Warsaw records. If the applicant, owner, or developer is unable to produce a copy of the initial permit and the UDO Administrator is unable to find a copy of the original permit, the Board of Commissioners shall review and determine if legal nonconforming status should be granted. This determination shall be based on upholding the intent and integrity of this UDO.

### Section 10.2: Cost of Improvement and Tax Value

When determining cost of improvements based upon tax value to determine if 50% or more damage has occurred, property owner or applicants on their behalf are required to provide a detailed cost estimate including labor cost of the repairs necessary to restore the structure. If this cost exceeds 50% of the tax value of the structure, then it shall be considered as having incurred substantial damage, or damage greater than 50%. The tax value for the structure shall be the value assigned by the Duplin County Tax Office.

### Section 10.3: Nonconforming Lots

#### 10.3.1 Single Lot of Record with Lot Area and/or Lot Width Nonconformity

- (A) When a vacant lot has an area or width which does not conform to the dimensional requirements of the district where located, but such lot was legally approved and of record at the time of adoption of this UDO or any subsequent amendment which renders such lot nonconforming, then such lot may be used for a use permitted in the district where located, provided that the setback dimensions and other requirements, except area or width, are complied with.

- (B) In residential zones, only permitted residential uses shall be permitted on the nonconforming lot.

#### *10.3.2 Lots with Contiguous Frontage in One Ownership*

When two or more adjoining and vacant lots of record with contiguous frontage are in one ownership or in common ownership, meaning that the adjacent owner is of familial relation or the owner is a member of group ownership of the adjacent parcel at the time of the adoption of this UDO or subsequent to adoption and said lots individually have a lot area or lot width which does not conform to the dimensional requirements of the district where located, such lots shall be combined to create one or more lots that meet the standards of the district where located, prior to the issuance of any development permit for either lot.

#### *10.3.3 Reduction of a Lot of Record*

A lot of record reduced to less than the required area, width, or setback dimensions as the result of a condemnation or purchase by a local or state government agency shall become a nonconforming lot of record.

### Section 10.4: Nonconforming Use of Land

#### *10.4.1 Continuance of Nonconforming Use of Land*

Any nonconforming use legally existing at the time of adoption or amendment of this UDO may be continued so long as it remains otherwise lawful subject to conditions provided in this Section.

#### *10.4.2 Conditions for Continuance*

Such nonconforming use of land shall be subject to the following conditions:

- (A) The number of dwelling units in nonconforming residential uses shall not be increased.
- (B) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this UDO.
- (C) No nonconforming use shall be expanded to a portion of the structure housing it that was not previously utilized for the use, unless permitted otherwise by this Article.
- (D) If any nonconforming use of land ceases for any reason for a continuous period of more than 180 days, any subsequent use of such land shall be required to comply with the provisions of this UDO. The 180-day period shall begin either on the date a given use is removed from the property, or on the date a given use suffers substantial damage, the fact that the structure housing the use may have been maintained and water, sewer, electric service, etc., was still in active status at the property does not prevent the 180-day period from being effective. Substantial damage for the purposes of this section is defined as any structure that has incurred damage exceeding 50% of the structure's fair market value. Restoration of any nonconforming use must be with the clear intent of being continuous and permanent.
- (E) The resumption of a nonconforming use of land shall not be permitted if such nonconforming use is superseded by a permitted use for any period of time.

- (F) No additional structure(s) not conforming to the requirements of this UDO shall be erected in connection with such nonconforming use of land.

#### *10.4.3 Extension, Enlargement, or Replacement of a Nonconforming Use*

- (A) Except as provided for in subsection (B) through (F), no nonconforming use shall be extended, enlarged, or replaced.
- (B) Any single-family residential nonconforming use (which may be a manufactured home) may be enlarged or replaced with a similar single-family residential structure of the same size or of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to setback requirements. Replacement manufactured homes must be built after June 15, 1976, and comply with HUD requirements.
- (C) A nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this UDO was manifestly designed or arranged to accommodate such use, meaning the building was already “upfit” to accommodate for such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.
- (D) A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.
- (E) The volume, intensity, or frequency of use of property where a nonconforming use exists may be increased and the equipment or processes used at a location where a nonconforming use exists may be changed if the Board of Adjustment can determine in a quasi-judicial hearing that the intensification will have no adverse impact on adjacent property and that no violations of other Articles of this UDO occurs, and that the Board of Adjustment can definitively determine that the use and nature of the original use does not change.
- (F) In issuing a Special Use Permit, the Board of Adjustment may affix other reasonable and appropriate conditions such as, but not limited to, landscaping and buffering to separate dissimilar uses or to screen parking and loading areas. When issuing a Special Use Permit, the Board of Adjustment shall follow the same procedures and process as outlined in Article 7.

### Section 10.5: Nonconforming Structures

#### *10.5.1 Continuance of Nonconforming Structure*

Any nonconforming structure legally existing at the time of adoption or amendment of this UDO may be continued so long as it remains otherwise lawful.

#### *10.5.2 Conditions for Continuance*

Such nonconforming structures shall be subject to the following conditions:

- (A) No nonconforming structure may be enlarged or altered in any way which increases its nonconforming status in relation to setbacks or square footage requirements.

- (B) In the event of damage by fire or other causes to the extent exceeding 50 percent of its tax value prior to such damage as established by the UDO Administrator, reconstruction of a nonconforming structure shall be permitted to occur within the same footprint as the previously existing nonconforming structure or to comply with the requirements of this UDO. The time period for application for reconstruction due to fire, disasters, or acts of God must take place within 180 days of the disaster. The time period for the actual commencement of construction must occur within a one-year period from the date of building permit issuance. For example, a home that burned down in 2006 is not eligible to apply for reconstruction within the same footprint of the home as it stood in 2006 in 2024.
- (C) In the event of damage by fire or other causes to the extent causing less than 50 percent of its tax value prior to such damage as established by the UDO Administrator, reconstruction of a nonconforming structure shall be permitted provided it is constructed in the same way it originally existed subject to compliance with the requirements of the NC State Building Code or in compliance with the requirements of this UDO.
- (D) No nonconforming structure shall be moved or relocated unless it is made to comply with the setback, square footage, and use requirements of the district in which it is relocated and with the requirements of the NC State Building Code.

#### *10.5.3 Preservation of Safe or Lawful Conditions*

Nothing in this UDO shall prevent the strengthening or restoration to a safe or lawful condition any part of any building declared unsafe or unlawful by the County Building Inspector or other duly authorized official.

### Section 10.6: Miscellaneous Nonconforming Situations

#### *10.6.1 Nonconforming Situation Resulting from Governmental Acquisition*

Any lot reduced in size by the Town of Warsaw, Duplin County, or North Carolina condemnation or purchase of land shall obtain nonconforming lot or building status to the extent that said condemnation or purchase causes noncompliance with any provisions of this UDO.

#### *10.6.2 nonconforming Parking Created by Change of Use*

Whenever a change of use that does not involve the enlargement of an existing structure is proposed for a lot on which the parking requirements of this UDO for the proposed new use cannot be met due to insufficient lot area, the proposed change of use shall not be regarded as an impermissible extension or enlargement of a nonconforming situation. However, the permit-issuing authority shall require that the parking requirements be satisfied to the extent possible utilizing the lot area that is available and may require that satellite parking space be obtained. The UDO Administrator may also make the determination that the existing spaces are not adequate to accommodate for the proposed use.

### Section 10.7: Nonconforming Projects

All nonconforming projects on which construction was begun at least 180 calendar days before the effective date of this UDO as well as all nonconforming projects that are at least ten percent completed in terms of the total expected cost of the project on the effective date of this UDO may be completed in accordance with the terms of their permits, so long as these permits were validly issued

and remain unrevoked and unexpired. If a development is designed to be completed in stages, this Section shall apply only to the particular phase under construction. In addition, neither this UDO nor any amendment to it shall, without the consent of the property owner, affect any lot with respect to which a building permit has been issued pursuant to NCGS 160D-403 prior to the enactment of the Article making the change so long as the building permit remains valid, unexpired, and unrevoked.

## **Section 10.8: Nonconforming Signs**

### ***10.8.1 Continuance of Nonconforming Signs***

- (A) Signs in existence on the effective date of this UDO which do not conform to the provisions of this UDO, but which were constructed, erected, affixed, or maintained in compliance with all previous regulations, shall be regarded as nonconforming signs. Although it is not the intent of this UDO to encourage the continued use of nonconforming signs, nonconforming signs shall be allowed to continue and a decision as to the continued existence and use or removal of such signs shall be controlled as follows:
- (1) No nonconforming sign shall be changed to another nonconforming sign.
  - (2) No nonconforming sign shall have any changes made in the words or symbols used or the message displayed on the sign unless the sign is specifically designed for periodic change of message.
  - (3) No nonconforming sign shall be structurally altered so as to change the shape, size, type or design of the sign other than to make the sign a conforming sign.
  - (4) No nonconforming sign shall be re-established after the activity, business, or use to which it relates has been discontinued and such sign shall be removed.
  - (5) No nonconforming sign shall be re-established, and all remains of the sign must be removed after damage or destruction, if the estimated expense of repairs exceeds 50 percent of the estimated total value of the sign at the time of destruction, as determined by the UDO Administrator. If damaged by less than 50 percent, but repairs are not made within 180 days of the time such damage occurred, the nonconforming sign shall not be allowed to continue and must be removed.
  - (6) No nonconforming sign shall be relocated unless it is brought into conformance with the requirements of this UDO.
  - (7) Normal maintenance and repair of a nonconforming sign is permitted providing the shape, size, type, or design of the sign is not altered.
  - (8) In the event the use that the nonconforming sign is associated with ceases operation for 180 days, future occupants of the structure are required to remove the nonconforming sign or to make modifications to the existing sign so that it complies with the requirements of this UDO.
- (B) Any nonconforming sign that is structurally altered, relocated, or replaced shall immediately be brought into compliance with all the provisions of this UDO.
- (C) Any nonconforming sign which (i) is a safety hazard, (ii) has been abandoned, (iii) displays language, images, or text that in the opinion of the Town Attorney are offensive and not



protected under the First Amendment of the US Constitution, or (iv) which has not been properly maintained, including cleaning and painting of painted surface areas and replacement of damaged parts, shall be removed after due notice has been given by the UDO Administrator.

#### *10.8.2 Violations of Nonconforming Sign Provisions*

The UDO Administrator shall order the removal of any sign maintained in violation of the provisions of this Section for which removal procedures are herein prescribed, accordingly: the UDO Administrator shall give ninety days written notice to the owner or lessee to remove the sign or to bring it into compliance with this UDO. If the owner or lessee fails to remove the sign within ninety days after the ninety-day written notice has been given, the UDO Administrator or his duly authorized representative may institute removal proceedings according to the procedures specified in NCGS 153A-123.