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**ARTICLE 3.
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PART I. UDO ADMINISTRATOR

Section 3.1 Powers and Duties

- (A) The UDO Administrator, to be designated by the City Manager, is hereby authorized and it shall be his/her duty to enforce the provisions of this Ordinance. This official, or his/her designee, shall have the right to enter upon the premises at any reasonable time necessary to carry out his/her duties. It is the intention of this Ordinance that all questions arising in connection with enforcement and interpretation shall be presented first to the UDO Administrator and/or designated agent. Appeal from his/her decision may be made to the Board of Adjustment.
- (B) In administering the provisions of this Ordinance, the UDO Administrator and/or designated agent shall:
- (1) Make and maintain records of all applications for permits and requests listed herein, and records of all permits issued or denied, with notations of all special conditions or modifications involved.
 - (2) File and safely keep copies of all plans submitted in accordance with the City's record retention policy.
 - (3) Transmit to the Planning Board, Board of Commissioners, and/or the Board of Adjustment all applications and plans for which their review and approval is required as specified in this ordinance.
 - (4) Conduct inspections of premises and, upon finding that any of the provisions of this Ordinance are being violated, notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it in accordance with Section 1.15 of the City Code of Ordinances.
 - (5) Provide technical support and advice for the preparation and implementation of the Comprehensive Plan and the Unified Development Ordinance and perform such other functions as requested by the City.
 - (6) Coordinate TRC review and prepare a report of any recommendations to the Planning Board or Board of Commissioners.
 - (7) Provide administrative interpretations of the UDO.
 - (8) Provide nonconformity determinations, including expansions of nonconforming uses and structures.

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- (9) Review and approve applications for zoning permits and compliance certifications.
- (10) Review and approve applications for temporary uses and special events.
- (11) Conduct concept meetings with applicants for development approval as necessary or appropriate.
- (12) Maintain the official zoning map and the public records of the Planning Department.
- (13) Review and consider applications eligible for administrative approval.
- (14) Serve as the "Floodplain Administrator" to administer and implement floodplain provisions.
- (15) Develop application forms required by this Ordinance or beneficial for compliance with this Ordinance.
- (16) Modify typographical errors, spelling changes, numerical reference errors, errors in section or page numbering or other purely non-substantive editorial changes without formal adoption by the Board of Commissioners provided that such corrections do not change the meaning of the Ordinance and any correction made pursuant to this section shall be reported in writing to the Board of Commissioners and made a part of the Board's regular meeting minutes.

PART II. TECHNICAL REVIEW COMMITTEE

Section 3.2 Purpose

The purpose of the Technical Review Committee (TRC) is to facilitate communication and coordination among City departments and between the City and outside agencies responsible for development review.

Section 3.3 Powers and Duties

The UDO Administrator or designee may convene the TRC to review and provide recommendations on applications for site-specific development approval including, but not limited to, conditional use permits, subdivision plats, variances, development agreements, and rezonings. When TRC review is required in accordance with development approval, such review shall be mandatory and the responsibility of the UDO Administrator.

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Section 3.4 Composition: Staff and Chair

- (A) The TRC may include, but not necessarily be limited to, the following governmental agencies and officials:

UDO Administrator
City Manager
Building Inspector
Public Works Director
Fire Department
Police Department
City Engineer
City Attorney
Utilities Providers
Brunswick County Health Department
Brunswick County Board of Education
Cape Fear Area Rural Planning Organization
NC Department of Transportation
NC Department of Environmental Quality US Fish and Wildlife Service
US Army Corps of Engineers

- (B) The UDO Administrator may request other staff members or outside agencies to participate on the TRC as necessary or desirable to carry out its duties and responsibilities.
- (C) The UDO Administrator shall serve as the Chair of the TRC to preside over its meetings, document the proceedings, and may request the participation of professional experts or a representative from an adjacent municipality, county, regional or state agency if the UDO Administrator determines that such entities can provide expertise concerning the proposed development.

Section 3.5 Meetings and Procedures

- (A) The TRC shall meet as needed. Meetings may be formal or informal and may be conducted by telephone, email, or any other means.
- (B) The UDO Administrator shall prepare written summaries that include the date, the members present or providing comment, and the recommendations, if any, of the committee members. Such written summary shall include a description of the personnel/expertise involved.
- (C) The applicant and representatives shall be invited by the UDO Administrator to attend meetings, if formal meetings are convened.

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PART III. PLANNING BOARD

Section 3.6 Establishment of Planning Board

- (A) The Planning Board shall consist of five (5) members appointed by the Board of Commissioners for a term of two (2) years. Members shall be eligible for reappointment and shall be a resident of the City of Boiling Spring Lakes.
- (B) The Board of Commissioners may appoint two (2) additional members, who shall be characterized as alternate members. The alternate member with the most seniority shall be considered the first alternate and the other member shall be considered the second alternate. Alternate members are required to attend all meetings, however they may only vote when a regular Planning Board member is absent, based on seniority. A quorum shall be determined based upon the membership number of five (5). The alternate members shall be appointed for terms of two (2) years and are eligible for reappointment.
- (C) The members of the Planning Board shall be appointed at a regular meeting of the Board of Commissioners. Such appointment shall be terminated by resignation by letter of such member or by replacement by the Board of Commissioners upon completion of the term. Members may be terminated for missing three (3) consecutive meetings without legitimate reason and without having notified the Planning Board chairman. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term. If a regular Planning Board member should tender a letter of resignation or be removed for missing meetings without legitimate reason, the vacant position shall be filled by an alternate based on seniority and shall be appointed by the Board of Commissioners to fill the vacancy and a new alternate shall be appointed in his place. Vacancies occurring due to the expiration of term shall be filled by either the reappointment of the current board member or by the appointment of an alternate board member based on seniority.

Section 3.7 Organization and Meetings

The Planning Board shall elect a chairperson from within their membership at the first meeting of each calendar year. Within thirty (30) days after election of the chairman, the Planning Board shall meet and fill such offices as it may determine necessary. The City Manager shall appoint a secretary to assist the board. The term of the chairman shall be one (1) year, with eligibility for reelection and/or reappointment. The Planning Board shall adopt rules for the transaction of its' business and shall keep a record of its members attendance and of its resolutions, discussion, findings and recommendations, which it shall record and which shall be public record. The Planning Board shall hold at least one (1) meeting monthly and all of its meetings shall be open to the public.

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Section 3.8 General Powers and Duties

It shall be the duty of the Planning Board, in general:

- (A) To acquire and maintain in current form such basic information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in those conditions.
- (B) To prepare and, from time to time, amend and revise a comprehensive and coordinated plan for the physical development of the area.
- (C) To establish principles and policies for guiding action in the development of the area
- (D) To prepare and recommend to the Board of Commissioners ordinances providing orderly development along the lines indicated in the comprehensive plan.
- (E) To determine whether specific proposed developments conform to the principles and requirements of the comprehensive plan for the growth and improvement of the area.
- (F) To keep the Board of Commissioners and the general public informed and advised as to these matters.
- (G) To conduct such public hearings as may be required to gather information necessary for the drafting, establishment and maintenance of a comprehensive plan, zoning ordinance, subdivision regulation or other studies the Planning Board or Board of Commissioners deems necessary.
- (H) To perform any other duties authorized by NCGS §160A Art. 19 which may lawfully be assigned to it by the Board of Commissioners.

Section 3.9 Basic Studies

- (A) As background for its comprehensive plan and any ordinances it may prepare, the Planning Board may gather maps and aerial photographs of manmade and natural physical features of the area, statistics on past trends and present conditions with respect to population, property values, the economic base of the community, land use, and such other information as is important or likely to be important in determining the amount, direction, and kind of development to be expected in the area and its various parts.
- (B) In addition, the Planning Board may make, cause to be made, or obtain special studies on the location, condition and adequacy of specific facilities, which may include, but are not limited to, studies of housing; commercial and industrial

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facilities, parks, playgrounds, and recreational facilities, public and private utilities, and traffic, transportation and parking facilities. Where a fee is required for a particular study, authorization for such must be granted by the Board of Commissioners.

- (C) All officials of the City shall, upon request, furnish to the Planning Board such available records or information as it may require in its work. The board or its agents may, in the performance of its official duties, enter upon the lands and make examination or surveys and maintain necessary survey monuments thereon.

Section 3.10 Comprehensive Plan

- (A) The comprehensive plan (Coastal Area Management Act (CAMA) Land Use Plan), with the accompanying maps, plats, charts, and descriptive matter, shall be and show the Planning Board's recommendations to the Board of Commissioners for the development of the area, including, among other things, the general location, character, and extent of streets, bridges, boulevards, parkways, playgrounds, squares, parks, aviation fields, and other public ways, grounds, and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, power, gas, sanitation, transportation, communication, and other purposes; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of any of the foregoing ways, buildings, grounds, open spaces, properties, utilities or terminals.
- (B) The comprehensive plan and any ordinances or other measures to effectuate it shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, best promote health, safety, morals, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, the wise and efficient expenditure of public funds, and the adequate provision of public utilities, services and other public requirements.

Section 3.11 Miscellaneous Powers and Duties

- (A) The Planning Board may conduct such public hearings as it deems necessary related to any matters coming before it for review and recommendation.
- (B) The Planning Board shall have power to promote public interest in and an understanding of its recommendations, and to that end it may publish and distribute copies of its recommendations and may employ such other means of publicity and

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education as it may determine.

Section 3.12 Amendments

The Planning Board may initiate, from time to time, proposals for amendment to the regulations of this Ordinance or the zoning map in accordance with the provisions outlined in Section 4.1. In addition, it shall review and make written recommendations to the Board of Commissioners concerning all proposed amendments to the zoning ordinance and map and shall recommend whether such proposed amendments are consistent with the comprehensive plan or any other applicable, officially-adopted plan.

PART IV. BOARD OF COMMISSIONERS

Section 3.13 Powers and Duties

- (A) Refer to Chapter 2, Article II, Mayor and Board of Commissioners, of the City of Boiling Spring Lakes Code of Ordinances.
- (B) In considering proposed changes in the text of this Ordinance or in the zoning map, the Board of Commissioners acts in its legislative capacity and must proceed in accordance with the requirements of Article 4.
- (C) Unless otherwise specifically provided in this Ordinance, in considering amendments to this Ordinance or the zoning map, the Board of Commissioners shall follow the regular voting and other requirements as set forth in other provisions of the City code.
- (D) A Commissioner shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.
- (E) The Board of Commissioners may adopt temporary moratoria pursuant to Section 4.3.

PART V. BOARD OF ADJUSTMENT

Section 3.14 Establishment of Board of Adjustment

A Board of Adjustment is hereby established. Said board shall consist of five (5) members who shall be appointed by the Board of Commissioners and shall be residents of the City of Boiling Spring Lakes. Members shall be appointed for overlapping terms of three (3) years. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. In addition to the regular members, the Board of Commissioners may appoint two (2) alternate members, who shall be residents of the City of Boiling Spring Lakes, each for three (3) year terms. The Chairman of the Board of Adjustment, or in his absence the acting Chairman, may appoint the alternates to sit for any regular members in case of the absence or disqualification of any regular members. In such case the alternate members shall have the same powers and duties of the regular members they are replacing

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during such time. In no case, however, shall more than five (5) regular members or combination of regular members and the alternate members be empowered to vote on any matter that comes before the Board.

The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other matter. Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

Section 3.15 Rules of Conduct for Meetings

Members of the Board may be removed by the Board of Commissioners for cause, including violation of the rules stated below.

- (A) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board. A Board member who misses three (3) or more meetings without legitimate reason and without having notified the Chair shall not be deemed to have met the requirements for faithful attendance.
- (B) No Board member shall take part in the hearing, consideration or determination of any case in a manner that would violate an affected persons' constitutional rights to an impartial decision maker. including, but not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.
- (C) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided however, that members may receive and/or seek information pertaining to the case from the UDO Administrator or the Board secretary prior to the hearing.
- (D) Members of the Board shall not express individual opinions on the proper judgement of any case prior to its determination on that case.
- (E) Members of the Board shall give notice to the Chairman forty-eight (48) hours prior to the hearing of any potential conflict of interest which he/she has in a particular case before the Board.

Section 3.16 Powers and Duties of the Board of Adjustment

The Board of Adjustment shall have the following powers and duties and shall follow quasi-judicial procedures in their approval or denial:

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- (A) *Appeals and Interpretation.* To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the UDO Administrator in the enforcement of this Ordinance, in accordance with Article 4 of this Ordinance.
- (B) *Vested Rights.* To hear and decide vested rights claims in accordance with Article 4 of this Ordinance.
- (C) *Variations.* To authorize upon appeal in specific cases such variances from the terms of the Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship in accordance with Article 4 of this Ordinance.
- (D) *Conditional Use Permits.* To hear and decide conditional use permits, including petitions to revoke conditional-use permits, in accordance with Article 9 of this Ordinance.

Section 3.17 Proceedings of the Zoning Board of Adjustment

The Board of Adjustment shall elect a Chairman and a Vice-Chairman from its members who shall serve for one (1) year or until re-elected or until their successors are elected. The City Manager shall appoint a secretary or clerk to the Board of Adjustment. The Board shall adopt rules and by-laws in accordance with the provisions of this Ordinance and NCGS §160A-388. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his absence the Vice-Chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the Board shall be open to the public.

The Board shall hold regular monthly meetings at a specified time and place as necessary. Special meetings of the Board may be called at any time by the Chairman or by request of three (3) or more members of the Board. At least forty-eight (48) hours written notice of the time and place of meetings shall be given, by the Chairman, to each member of the Board. All Board meetings are to be held in accordance with NCGS §143, Article 33B, commonly referred to as the Open Meeting Law.

Whenever there are no appeals, applications for variances, or other business for the Board, or whenever so many members notify the secretary of inability to attend that a quorum will not be available, the Chairman may dispense with a meeting by giving written or oral notice to all members.

A quorum shall consist of a majority of members of the board; however, the Board shall not

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pass upon any questions relating to an application for a variance from the provisions of this Ordinance when there are less than four-fifths (4/5) of the members present and eligible to participate.

Section 3.18 Hearing Required on Appeals and Applications

- (A) Before making a decision on an appeal or an application for a variance or conditional-use permit, or a petition from the planning staff to revoke a conditional-use permit, the Board of Adjustment shall hold a hearing on the appeal or application within sixty (60) days of the submittal of a completed appeal or application. All comments prepared by the TRC shall be submitted to the Board of Adjustment as evidence at the hearing required by this section. This representative of the TRC shall be subject to the same scrutiny as other witnesses. Review of the conditional use application by the TRC shall not be a quasi-judicial procedure. The TRC shall include in its comments a statement as to the consistency of the application with the City of Boiling Spring Lakes Comprehensive Plan. Comments of the TRC shall be considered with other evidence submitted at the hearing.
- (B) Subject to Subsection (C), the hearing shall be open to the public and all persons with standing in accordance with NCGS 160A-393(d) and interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments. All persons presenting evidence or arguments shall be sworn in by the Chairman prior to the presentation of any evidence or arguments.
- (C) The Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.
- (D) The Board of Adjustment may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless the time and date of the subsequent meeting is not provided or a period of six weeks or more elapses between hearing dates.
- (E) Except as provided in this ordinance, the Board of Adjustment may not rehear a quasi-judicial matter previously denied.
- (F) The required application fee and all supporting materials must be received by the UDO Administrator before an application is considered complete and a hearing scheduled.

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Section 3.19 Notice of Hearing

The UDO Administrator shall give notice of any hearing required by Section 3.19 as follows:

- (A) Notice shall be given to the appellant or applicant, the owner of the property that is the subject of the hearing if the owner did not initiate the hearing, and any other person who makes a written request for such notice by mailing to such persons a written notice at least 10 (ten) days, but not more than twenty five (25) days, before the hearing.
- (B) Notice shall be given to neighboring property owners by mailing a written notice at least 10 (ten) days, but not more than twenty five (25) days, before the hearing to those persons who have listed for taxation real property any portion of which is located within 150 feet of the lot or property that is the subject of the application or appeal. Notice shall also be given by prominently posting a notice of the hearing on the site that is the subject of the proposed action or on the adjacent street or highway right-of-way. Such notice shall be posted within the same time period as the mailed notice.
- (D) The notice required by this section shall state the date, time, and place of the hearing, reasonably identify the lot or property that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

Section 3.20 Evidence/Presentation of Evidence

- (A) The provisions of this section apply to all hearings for which a notice is required by Section 3.19.
- (B) All persons who intend to present evidence to the Board of Adjustment shall be sworn in by the Chairman, any member acting as the Chairman, the clerk or secretary to the board, or any notary public. Persons with religious objections may affirm rather than swear the oath. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.
- (C) All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (necessary findings) shall be based upon reliable evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may necessary findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.

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- (D) The Board of Adjustment has the authority to limit testimony that is irrelevant.
- (E) The entirety of a quasi-judicial hearing and deliberation shall be conducted in open session.
- (F) Parties to a quasi-judicial hearing have a right to cross-examine witnesses.
- (G) Factual findings must not be based on hearsay evidence which would be inadmissible in a court of law.
- (H) If a Board of Adjustment member has prior or specialized knowledge about a case, that knowledge should be disclosed to the rest of the Board of Adjustment and parties at the beginning of the hearing.
- (I) The Board of Adjustment through the Chairman, or in the Chairman's absence anyone acting as Chairman, may subpoena witnesses and compel the production of evidence pursuant to NCGS §160A-388(g).

Section 3.21 Modification of Application at Hearing

- (A) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Adjustment, the applicant may agree to modify his application, including the plans and specifications submitted.
- (B) Unless such modifications are so substantial or extensive that the board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the UDO Administrator.

Section 3.22 Written Decision

Any quasi-judicial decision made by the Board of Adjustment shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the secretary or clerk to the board. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

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Section 3.23 Appeals from the Board of Adjustment

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with Section 3.24. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.