

## **ARTICLE 5. DEVELOPMENT REVIEW PROCESS**

### **SECTION 5.7 SUBDIVISION PROCEDURES.**

**5.7.4.6.** Performance Guarantees. In lieu of requiring the completion, installation, and dedication of all improvements prior to final plat approval, the Town of Oak Island may enter into an agreement with the subdivider whereby the subdivider shall agree to complete any remaining required improvements as specified by the approved preliminary plat for that portion of the subdivision to be shown on the final plat within a mutually agreed upon specified time period not to exceed one (1) year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration.

Once agreed upon by both parties and the security required herein is provided, the final plat may be approved by the UDO Administrator, if all other requirements of this Ordinance are met. The Town, at its discretion, may require the performance guarantee to be posted either at the time the plat is recorded or at a time subsequent to plat recordation. The Town shall require a certified cost estimate from a licensed contractor or engineer for the cost of completion of such improvements. ~~The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.~~ A zoning regulation may include requirements that street and utility rights-of-way be dedicated to the public, that provisions be made for recreational space and facilities, and that performance guarantees be provided, all to the same extent and with the same limitations as provided for in G.S. 160D-702 and 160D-804. All performance guarantees shall be done in accordance with S.L. 2019-79.

**7.4.6.1.** The subdivider shall provide one of the following Performance Guarantees, elected at the subdivider's discretion, in lieu of installation:

**5.7.4.6.1.1.** Surety bond issued by any company authorized to do business in this State.

**5.7.4.6.1.2.** Letter of credit issued by any financial institution licensed to do business in this State.

**5.7.4.6.1.3.** Other form of guarantee that provides equivalent security to a surety bond or letter of credit.

**5.7.4.6.2.** The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgment by the Town that the improvements for which the performance guarantee is being required are complete. If the improvements

are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the improvements are not completed to the specifications of the Town of Oak Island or the applicable agency, and the current performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period; provided, however, that the extension shall only be for a duration necessary to complete the required improvements. The Town shall return letters of credit or escrowed funds upon completion of the required improvements to the specifications of the Town or applicable agency, or upon acceptance of the required improvements, if the required improvements are subject to Town acceptance. When required improvements that are secured by a bond are completed to the specifications applicable agency, or are accepted by the Town, upon request by the developer, the Town shall timely provide written acknowledgement that the required improvements have been completed.

**5.7.4.6.3.** The amount of the performance guarantee shall not exceed one hundred twenty five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. Any extension of the performance guarantee necessary to complete required improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained. The Town may determine the amount of the performance guarantee or use a cost estimate determined by the developer. The reasonably estimated cost of completion shall include one hundred percent (100%) of the costs for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing. The additional twenty-five percent (25%) allowed under this subdivision includes inflation and all costs of administration regardless of how such fees or charges are denominated. The amount of any extension of any performance guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

**5.7.4.6.4.** The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.

**5.7.4.6.5.** For subdivisions which are underwritten or constructed with federal funds and for which the specifications for facilities or improvements are equal to or of a higher standard than those required by the Town, the bond-posting requirement may be waived and the final plat approved prior to completion of facilities or improvements.

**5.7.4.6.6.** The developer shall have the option to post one type of a performance guarantee as provided for under 7.4.6.1 of this section, in lieu of multiple bonds, letters of credit, or other equivalent security, for all development matters related to the same project requiring performance guarantees. Performance guarantees associated with erosion control and stormwater control measures are not subject to the provisions of this section.

## **ARTICLE 1. PURPOSE AND APPLICABILITY**

### **SECTION 1.3 JURISDICTION AND EXEMPTIONS.**

**1.3.1.** This Ordinance shall be effective throughout the town's planning jurisdiction. The town's planning jurisdiction comprises the area within the corporate boundaries of the town as well as the area described in that ordinance adopted by the Town Council which establishes the town's extraterritorial jurisdiction. Such planning jurisdiction may be modified from time to time in accordance with NCGS 160A-360.

**1.3.2.** In addition to other locations required by law, a copy of a map showing the boundaries of the town's planning jurisdiction shall be available for public inspection in the planning department.

**1.3.3.** Except as hereinafter provided, no building or structure shall be erected, moved, altered, or extended, and no land, building, or structure or part thereof shall be occupied or used unless in conformity with the regulations specified for the district in which it is located.

#### ***1.3.4. Exemptions.***

**1.3.4.1.** These regulations shall not apply to any land or structure for which, prior to the effective date hereof, there is a properly approved site specific plan as required by the requirements previously adopted or previously approved vested rights in accordance with NCGS 160A-385.1. Any preliminary or final subdivision plat approvals required for such approved or exempted site specific plans shall be conducted in accordance with the requirements of the previous Zoning Ordinance or Subdivision Ordinance.

**1.3.4.2.** In accordance with NCGS 160A-392, the Town of Oak Island UDO applies to state-owned lands only when a building is involved.

**1.3.4.3.** The following are not subject to the Subdivision Regulations of this Ordinance (Article 10, Part VI):

- < The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant

lots are equal to or exceed the standards of the municipality as shown on its subdivision regulations.

- < The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.
- < The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
- < The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations.
- < The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

**1.3.5.** The Town may provide for expedited review of specified classes of subdivisions and may require only a plat for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

- < The tract or parcel to be divided is not exempted under 1.3.4.3 of this section.
- < No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division.
- < The entire area of the tract or parcel to be divided is greater than 5 acres.
- < After division, no more than three lots result from the division.
- < After division, all resultant lots comply with all of the following:

**1.3.5.1** All lot dimension size requirements of the applicable land-use regulations.

**1.3.5.2** The use of the lots is in conformity with the applicable zoning requirements.

**1.3.5.3** A permanent means of ingress and egress is recorded for each lot. (2019-111, s. 2.4.)

**1.3.6.** Property that is located in Oak Island's extraterritorial planning jurisdiction and that is used for bona fide farm purposes is exempt from the Town's zoning regulation. Property that ceases to be used for bona fide farm purposes shall become subject to exercise of the Town's extraterritorial planning jurisdiction pursuant to 160D-903.

#### **ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES**

##### **SECTION 4.8 MORATORIUM.**

The Town may adopt temporary moratoria on any Town development approval required by law in accordance with ~~NCGS 160A-381(E)~~ 160D-107. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions.

To adopt a temporary moratorium the Town Council shall hold a legislative hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. No moratorium may be subsequently renewed or extended for any additional period unless the town shall have taken all reasonable and feasible steps proposed to be taken in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension.

### **ARTICLE 3. ADMINISTRATIVE/LEGISLATIVE/QUASI-JUDICIAL AUTHORITY**

#### **SECTION 3.5 TOWN COUNCIL.**

3.5.1. The Town Council, in considering special use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedure requirements set forth in Section 4.4.9 through 4.4.12.

3.5.2. In considering proposed changes in the text of this Ordinance or in the zoning map, the Council acts in its legislative capacity and must proceed in accordance with the requirements of Section 4.6.

3.5.3. Unless otherwise specifically provided in this Article, in considering amendments to this Article or the zoning map, the council shall follow the regular, voting, and other requirements as set forth in other provisions of the Town code, the Town charter, or general law.

3.5.4. The Town Council, in considering the approval of a site-specific development plan (as defined in Section 4.7, Establishment of Vested Rights), shall follow the procedural requirements set forth in Section 4.9 for the issuance of a special use permit.

3.5.5. The town may enter into development agreements with developers, subject to the procedures of 160D-1001. In entering into such agreements, the town 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 authorized by a development agreement shall comply with all applicable laws, including all ordinances, resolutions, regulations, permits, policies, and laws affecting the development of property, including laws governing permitted uses of the property, density, intensity, design, and improvements. The development agreement may include defined performance standards, not inconsistent with 160D-1006. 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 pursuant to G.S. 160D-804 shall be expressly enumerated within the agreement, and provided the agreement may not include a tax or impact fee not otherwise authorized by law.

3.5.6. The Town shall process a development agreement as a legislative decision. A development agreement: must have the town as a party to a development agreement, may consider a development agreement concurrently with a rezoning, subdivision, or site plan, may mutually agree with a developer for the developer to provide public improvements beyond what could have been required, provided such conditions are included in the development agreement, may include penalties for breach of a

development agreement in the agreement or in the ordinance setting the procedures for development agreements.

**3.5.7.** A development agreement shall, at a minimum, include all of the content and topics required by 160D-1006. A development agreement may include penalties for breach of a development agreement in the agreement. Either party may bring legal action seeking an injunction to enforce a development agreement in accordance with 160D-1008.

## **APPENDIX A. DEFINITIONS**

### ***Bona fide farm***

Land that receives or is eligible to receive an agricultural use exemption from the county tax office and is used for the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market. The term does not include nonfarm activities conducted on farmland.

### ***Extraterritorial planning area***

That portion of the town's planning jurisdiction that lies outside the corporate limits of the town.

### ***Manufactured home***

A residential dwelling unit that is:

- (1) Not constructed in accordance with the standards set forth in the state building code;
- (2) Composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the lot on its own chassis; and
- (3) At least 550 square feet in size.
- (4) As defined in G.S. 143-145(7).
- (5) Shall be compliant with 160D-910.

A manufactured home may also be referred to as a "mobile home."

### ***Manufactured home, class A***

A manufactured home ~~five years old or younger~~ that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies each of the following additional criteria:

- (1) The minimum size is 550 square feet.
- (2) The pitch of the roof of the manufactured home has a minimum vertical rise of two point two feet for each 12 feet of horizontal run; the roof is finished with a type of shingle that is commonly used in standard residential construction and which does not exceed the reflectivity of gloss white paint.
- (3) The exterior siding consists of wood, hardboard, vinyl, brick or aluminum and shall be comparable in composition, appearance, and durability to the exterior siding commonly

used in standard residential construction, and which does not exceed the reflectivity of gloss white paint.

- (4) Except for units located within an approved manufactured home park, a continuous masonry foundation or masonry curtain wall, unpierced except for required ventilation and access, shall be installed upon a poured concrete footer, as set forth in the North Carolina State Building Code, after placement on the lot and before occupancy.
- (5) Except for units located within an approved manufactured home park, the tongue, axis, transporting light, and removable apparatus are removed after placement on the lot and before occupancy.
- (6) The manufactured home is set up on the site in accordance with the standards set by the state department of insurance and any other applicable state and local laws.
- (7) Stairs, porches, entrance platforms and other means of entrance and exit to the manufactured home shall be installed and constructed in accordance with the standards set by the state department of insurance and any other applicable state and local laws.
- (8) The manufactured home shall be set back in accordance with the laws spelled out within the text of this article.
- (9) Shall be compliant with 160D-910.

***Subdivision, major***

Any subdivision other than a minor subdivision.

***Subdivision, minor***

A subdivision that does not involve any of the following: (i) the creation of more than a total of five (5) lots; (ii) the creation of any new public streets; (iii) the extension of a public water or sewer system; or (iv) the installation of drainage improvements through one (1) or more lots to serve one (1) or more other lots.