

ORDINANCE NO. (2021) 21-01UDO

City Council
City of Northwest, North Carolina
Date: July 27, 2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NORTHWEST TO AMEND THE NORTHWEST UNIFIED
DEVELOPMENT ORDINANCE

WHEREAS, the Northwest Unified Development Ordinance needs to be updated to meet requirements of North Carolina General Statutes Chapter 160D; and

WHEREAS, the Northwest Unified Development Ordinance needs to establish clear standards in residential areas for model homes, real estate sales centers, and neighborhood sales homes; and

WHEREAS, the Planning Board recommended the amendments of the Northwest Unified Development Ordinance at the June 8, 2021 meeting.

NOW, THEREFORE, the City Council of the City of Northwest, North Carolina, doth ordain:

1. That the Northwest Unified Development Ordinance is hereby amended consistent with the items recommended by the Planning Board and consistent with the amendments presented to and approved by the City Council.
2. All Ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict;
3. This Ordinance is adopted in the interest of public health, safety, and general welfare of the inhabitants of the City of Northwest, North Carolina, and shall be in effect on July 28th, 2021.

This Ordinance adopted this 27th day of July 2021.

ATTEST:

Donna Strickland
City Clerk

James A. Kay
Mayor

(SEAL)



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NCGS 160D References Update

2021 Northwest UDO Refinements

160D References Update

The following amendments update references to general statutes in compliance with Chapter 160D. This includes updates to outdated references to special exception permits (now special use permits).

1.2 Authority

These regulations are adopted pursuant to the authority granted to the City of Northwest by ~~Chapter 160A~~, Chapter 160D of the General Statutes of North Carolina.

Zoning authorities are granted to cities by Sections ~~160A-381 to 160A-392~~ 160D-107; 109; 406; 702; 704; 705; 903; and 908 of the North Carolina General Statutes. These authorities are granted for the purpose of promoting health, safety, morals, or the general welfare of the community. Furthermore, Section ~~160A-382~~ 160D-702 grants cities the authority to regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. In addition, this section authorizes the establishment of overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

Subdivision provisions are enacted under the authority of Section ~~160A-372~~ 160D-804 of the North Carolina General Statutes for the orderly growth, coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets with other public facilities, for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within a subdivision or, alternatively, for the provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that promote public health, safety, and the general welfare.

These authorities are combined within this Unified Development Ordinance under the ~~Part D of Section 160A-363~~ Chapter 160D of the North Carolina General Statutes.

1.11.2. Approvals Granted Before Effective Date

Building permits, variances, special ~~exception use~~ permits, subdivision plans, site plan approvals, and other similar development approvals that are valid on April 30, 2007 will remain valid until their expiration date. Development may be completed in accordance with such approvals even if such building, development or structure does not fully comply with provisions of this Ordinance. If building is not commenced and diligently pursued in the time allowed

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under the original approval or any extension granted, then the building, development or structure must meet the standards of this Ordinance in effect at the time of re-application.

1.11.3. Applications in Progress before Effective Date

Applications for building permits, variances, special exception use permits and other similar development approvals that were submitted in complete form and are pending approval on April 30, 2007 must be reviewed wholly under the terms of the ordinance in effect on April 30, 2007. Any reapplication for an expired approval must meet the standards of this Ordinance in effect at the time of re-application.

2.3.1. Establishment, Membership and Procedure

The Planning Board is established by Article II, Unified Development Ordinance, City of Northwest, N.C. As stated in that Article and hereby reaffirmed, the Planning Board is that planning agency designated by Chapter 160A Article 19-160D-604 of the N.C.G.S. In addition, the Planning Board shall have the specific powers and duties provided within this Ordinance.

2.4.1.C.2. Rules of Procedure

2. A quorum is not obtained unless four voting members are present. In the event there is abstention for reason declared into the record by a voting member, then a particular matter cannot proceed unless and until four other voting members are present and vote. As required by N.C.G.S. 153A-345.1 160D-406, a four-fifths vote is required to grant a variance, but only a simple majority is required for special exception use permits and ordinance interpretations.

3. The Year of the Zoning Board of Adjustment is August 1–July 31.

4. As early as possible in each new year of the Board, the voting members shall elect a chairman and vice-chairman. Either such party when in the chair shall have the authority to administer oaths to witnesses.

5. All decisions of the Board of Adjustment run with the land, never the person or corporation. Special Exceptions use permits may have time limits imposed on their validity.

...

8. The Board of Adjustment shall have the authority to subpoena witnesses and compel the production of evidence as specified in N.C.G.S. 153A-345.1 160D-406.

3.4.1.H.5.

5. Failure of any person to comply with the provisions of Paragraph H.3 above shall be in violation of this Ordinance, and all of the remedies available in G.S. 153A-334 N.C.G.S. 160D-804 shall apply.

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3.4.1.L.3.

3. 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 as specified in ~~G.S. 153A-335~~ **N.C.G.S. 160D-802**.

3.4.2. No Subdivision without Plat Approval

Pursuant to ~~S. 160A-371~~ **N.C.G.S. 160D-801**, a final plat shall be prepared, approved, and recorded pursuant to the provisions of this Ordinance whenever any subdivision of land takes place in the City of Northwest.

3.4.3. Unlawful to Record Plat without Plat Approval

Pursuant to ~~S. 160A-372~~ **N.C.G.S. 160D-803**, no final plat of a subdivision within the jurisdiction of the City of Northwest shall be recorded by the Register of Deeds of Brunswick County until it has been approved by the Planning Director or designee or by the County Planning Board pursuant to the procedures established in this Section.

3.4.4. Subdivision Required

As of March, 2015, any person who, being the owner or agent of the owner of land located within the territorial jurisdiction of this Ordinance, thereafter subdivides his land in violation of this Ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this Ordinance shall be guilty of a misdemeanor. The description of metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The County, through its attorney or other official designated by the Board of Commissioners, may enjoin illegal subdivision, transfer, or sale of land by action for injunction. Further, the violation of any provision of this Ordinance shall subject the offender to the penalties prescribed by ~~G.S. 153A-334~~ **N.C.G.S. 160D-807**.

3.4.13. Development Agreements

Development Agreements may be considered as specified in N.C.G.S. ~~160A-456~~ **160D-1001** in accordance with the following minimum criteria:

- A. The property must have at least 25 developable acres (excluding wetlands, unbuildable slopes, etc.).
- B. The Development Agreements shall be limited to a term not exceeding 20 years.
- C. Development Agreements are subject to public hearing procedures set forth in N.C.G.S. ~~160A-364~~ **160D-601** and must be adopted by the City Council.

3.5 Special Use Permit

As specified in N.C.G.S. ~~153A-345.1~~ 160D-705, the Zoning Board of Adjustment may grant permits for special ~~use permits exceptions~~ for uses indicated as permissible with approval of a Special Use Permit.

3.5.9.B.12.

12. Impacts on Military Installations

In cases of a Special Use permit that would change or affect the list of permitted uses within five miles of a military base, comments and analysis of the base commander shall be included in the consideration before making a final determination (~~NCGS 160A-323~~) (N.C.G.S. 160D-601).

3.5.12. Coordination with Rezoning Applications

An application for a special ~~exception use~~ permit may be reviewed concurrently with a Rezoning application.

3.5.14. Amendments

Alterations or revisions to approved special ~~exception use permits~~ may be approved by the Zoning Administrator if the Special Use still meets the intent of the standards established with the original approval. Significant modifications to approved special uses, as determined by the Zoning Administrator, shall require submittal of a new application.

3.5.15. Expiration

A special ~~exception use~~ permit shall become null and void in any of the following cases:

- A. If a final site plan is not approved within 24 months of the date of permit approval.
- B. If an approved final site plan expires.
- C. If a substantial violation of the conditions of the permit, as determined by the Zoning Administrator occurs. The addition of language to the special ~~exception use~~ permit regarding such voiding shall not be required.

3.7.5.C. Approval Criteria

C. In cases of a text amendment that would change or affect the list of permitted uses within five miles of a military base, comments and analysis of the base commander shall be included in the consideration before making a final determination (~~NCGS 160A-323~~) (N.C.G.S. 160D-601).

4.7.2.C.1. Notification Required

1. Notification Required

Notification Required

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When an ordinance amendment or modification would result in a rezoning or change or affect the list of permitted uses within five miles of a military base, comments and analysis of the base commander shall be included in the consideration before making a final determination (~~NCGS 160A-323~~) (N.C.G.S. 160D-601). Mailed notification shall be provided prior to any such action as specified in Section 9.1.B.3.iv.

4.8.6.C.1. Transitional Office Permitted Uses

1. Any use permitted by right, subject to limitations, or through special ~~exception use~~ permit in the underlying base districts shall be allowed in the overlay.

4.9.1. Authority

The standards and provisions of this Voluntary Agricultural District Program are established pursuant to the authority conferred by N.C.G.S. 106-735 through 106-743 and Chapter ~~153A~~ 160D.

4.13.2.C.3.ii.c. Flags and Flagpoles Requirements

(c) In residential districts, flagpoles shall not exceed 25 feet in height unless a special ~~exception use~~ permit (see Section 3.5) is granted by the Board of Adjustment. A fee shall not be charged for a use permit request for a flag in a residential district.

4.13.2.C.3.ii.f. Flags and Flagpoles Requirements

(f) Each property shall be allowed a maximum of three flagpoles unless a special ~~exception use~~ permit (see Section 3.5) is granted by the Board of Adjustment.

5.2.1. Uses Not Specifically Listed

A. Any use not specifically listed in this chapter is expressly prohibited, unless the Planning Director determines in accordance with Section 9.7, Written Interpretation, that the use is similar to a permitted individual use or permitted group of uses as listed in this Article. Where such similar permitted individual use or permitted group of uses is subject to a limited use standard contained in this Article or special ~~exception use permit~~ review, the proposed use shall also be subject to such standard or approval. The Planning Director shall not amend this chapter by adding to or eliminating any use standard for the proposed use.

5.2.2. Developments with Multiple Principal Uses

C. A development comprised of uses regulated by separate rows on the Permitted Use Table shall be reviewed using the most restrictive process from among the proposed uses.

Commentary: If a proposed development includes a gas station, library and a restaurant, including outparcels, and one of those uses is only permitted ~~as with~~ a special ~~exception use permit~~ in the district, then the entire development requires special ~~exception use permit~~ review.

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D. Where a use requiring approval as a limited use or a special **exception use** lies on a separate legal parcel, only the building containing the use and its separate parcel shall be subject to review, not the entire project. However, where the separate legal parcel is an outparcel, the application shall describe the relationship of the outparcel to the remaining site.

Commentary: For example, where a vehicle repair shop in a C-LD District (subject to special **exception use** review) is an outparcel within a larger retail development, the special **exception use** shall review the outparcel only – not the entire development. However, where a special **exception use** is proposed in a building that contains a variety of other uses, the entire building and its associated parcel(s) of land shall require special **exception use** review.

5.3.2.B.4. Agricultural Tourism

4. Property that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect may receive up to twenty-five percent (25%) of its gross sales from the sale of non-farm products and still qualify as a bona fide farm that is exempt from zoning regulations under ~~G.S. 153A-340(b)~~ **N.C.G.S. 160D-903**. The Planning Director or his/her designee may periodically request documentation to establish that property's sale of non-farm products does not exceed twenty-five percent (25%) of its gross sale.

5.3.4.C.2.iii. Additional Standards for Adult Facilities

iii. Programs meeting any of the following criteria shall be exempted from these requirements and may be permitted in accordance with the use tables in Section 5.1 without the issuance of a ~~Special Exception Permit~~ **special use permit**.

5.3.4.O.3.iii.a. Wireless Telecommunication Facility (WTF) Standards, Dimensions

(3) Freestanding WTF in Residential Districts: In the RR District, the maximum height shall be 250 feet. In the R-7500, R-6000, and SBR-6000 Districts, the maximum height shall be 200 feet. However, increases in height of up to 20% may be allowed by Board of Adjustment as part of the special **exception use** permit approval with a certification by a registered engineer that the setbacks provide adequate fall area in case of a tower collapse.

(4) Freestanding WTF in Nonresidential Districts: In the N-C District, the C-I and C-LD, and all other nonresidential districts the maximum height shall be 300 feet. However, increases in height of up to 20% may be allowed by Board of Adjustment as part of the ~~Special Exception Permit~~ **special use permit** approval with a certification by a registered engineer that the setbacks provide adequate fall area in case of a tower collapse.

5.3.4.O.3.iii.b.3

(3) Freestanding Nonconcealed WTF: Setbacks for WTFs shall be determined according to the underlying zoning district, plus an additional six inches of setback (on each side) for every one-foot of tower height. The Board of Adjustment may approve reductions to this setback requirement as a part of the special **exception use** permit approval with a certification by a

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registered engineer that the resulting setbacks provide adequate fall area in case of a tower collapse.

5.3.5.A.1. Adult & Sexually Oriented Businesses Authority

1. Authority

The provisions of these regulations are adopted by the Northwest City Council under authority granted by the General Assembly of the State of North Carolina, in N.C.G.S. ~~160A-181.1.~~ **160D-902**. From and after the effective date and hereof, these regulations shall apply to every building, lot, tract, or parcel of land within the City of Northwest.

5.3.8.C.11.i.a. RV Resort Operations

(a) The entity to which a ~~Special Exception~~ **special use permit** is issued for an Outdoor RV Resort shall operate the Outdoor RV Resort in compliance with this Ordinance and shall provide adequate supervision to maintain the Outdoor RV Resort, its facilities and equipment in good repair and in a clean and sanitary condition.

(b) The Outdoor RV Resort Owner(s) shall notify Resort visitors of all applicable provisions of this Ordinance and inform them of their responsibilities under this Ordinance.

(c) The Outdoor RV Resort Owner(s) shall be responsible for refuse collection. Storage, collection, and disposal of refuse shall be so managed as not to create health hazards, rodent harborage, insect-breeding areas, accident, fire hazards, or air pollution. The method of garbage disposal shall be noted on the plan and approved as part of the ~~Special Exception~~ **special use permit**.

6.1.4.D.2. Clear-Cutting Prior to Development

2. Prior to Development

Properties shall not be clear-cut prior to undertaking development activities. Along public rights-of-way, a buffer consisting of all existing vegetation located in a required street yard shall be maintained, exclusive of areas required for access to the site. Applications proposing development of properties that failed to maintain such a buffer prior to development may be denied for a period of up to five years from the date of clearing in conformance with N.C.G.S. Section ~~153A-452(e)~~ **160D-921(c)**.

6.22.1.B. Outdoor Display and Storage Applicability

B. The requirements of this Section do not supersede or replace any previously issued **special exception** for outdoor display or storage.

7.1.1. Statutory Authorization

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; ~~Parts 3 and 4 of Article 18 of Chapter 153A; and Part 121,~~ Article 6 of Chapter 153A of the North Carolina General Statutes ~~and Article 7 of Chapter 160D,~~ delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

7.1.3.H. General Provisions Penalties for Violation

Violation of the provisions of the Flood Damage Prevention Ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special ~~exceptions use permits,~~ shall constitute a Class 1 misdemeanor pursuant to N.C.G.S. §143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$200.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Northwest from taking such other lawful action as is necessary to prevent or remedy any violation.

9.1.B.3.iv. Mailed Notice

iv. If the action would result in changes to the zoning map, text amendment, or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, written notice of the proposed changes shall be provided to the commander of the military base by certified mail, return receipt requested. Notice shall be provided at least 10 days, but not more than 25 days prior to the date of the public hearing ~~(NCGS 160A-323)~~ (N.C.G.S. 160D-601(b)).

9.5.1.A.2. With Site Specific Development Plan (See Vested Rights Amendment)

2. Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan established a zoning vested right under N.C.G.S. ~~Section 153A-344.1~~ 160D-108. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

9.5.1.B. With Special Use Permit (See Vested Rights Amendment)

1. Pursuant to N.C.G.S. ~~Section 153A-344.1~~ 160D-108, Vesting Rights, as of May 1, 2007, a vested right to undertake and complete the development and use of property under the terms and conditions as approved pursuant to this Ordinance shall be established with respect to any property upon the approval of a ~~Special Exception Permit~~ special use permit for a site specific development plan or a phased development plan.

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2. The approved plans and conditions for a ~~Special Exception Permit~~ special use permit constitute, for purposes of N.C.G.S. ~~Section 153A-344.1~~ 160D-108, site specific development plans.

9.5.3.B. Application Requirements (See Vested Rights Amendment)

B. Landowners seeking zoning vested rights on plats, special exception use permit applications, or other plans that would not normally receive site plan approval, may apply for vested rights protection through submittal of an application which contains the identical information, fee, and plans required for a complete site plan application and an additional fee for a vested rights public hearing.

9.5.5.B. Action by the Approving Authority (See Vested Rights Amendment)

B. Approval by the approving authority shall confer upon the owner of the property a zoning "vested right" as defined in ~~NCGS §153A-344.1~~ N.C.G.S. 160D-108, effective on the date of approval. The approving authority may condition the approval upon terms and conditions reasonably necessary to protect the public health, safety, and welfare.

9.5.7.C. Effect of Zoning Vested Rights (See Vested Rights Amendment)

C. The establishment of a zoning vested right shall not preclude the application of new laws or regulations as is allowed under ~~NCGS §160A-385.1~~ N.C.G.S. 160D-108. In addition, it shall not preclude overlay zoning that imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this section.

9.8.1. Applicability

As specified in N.C.G.S. ~~153A-345.1~~ 160D-405, an appeal by any person aggrieved by a final order, interpretation or decision of the Zoning Administrator, Planning Director or other administrator in regard to the provisions of this Ordinance may be taken to the Board of Adjustment.

9.11.9.A. Permit Revocation

In accordance with the provisions of Section 9.10.2 of this Ordinance and the provisions of N.C.G.S. ~~153A-362~~ 160D-403(f) and 160D-1115, the Zoning Administrator or Building Inspector may revoke any permit or other authorization granted under this Ordinance for failure to comply with the provisions of this Ordinance or the terms and conditions of a permit or authorization granted under this Ordinance.

10.3.3.B. Change of Use

B. The Board of Adjustment is authorized to approve a ~~Special Exception Permit~~ special use permit to allow a change from one nonconforming use to another nonconforming use that is in the same use category (see Section 5.1, Use Interpretation) or to another functionally similar use, provided that the Board of Adjustment determines that the proposed use will have no greater adverse impacts on the surrounding area. To make a determination, the Board of Adjustment shall consider all of the following:

160D Update Draft Changes

1. Add Conflicts of Interest Section to Article 2 Decision-Making and Administrative Bodies

Add Conflicts of Interest Section to 2.1 General consistent with Chapter 160D.

2.1.2. Temporary Disqualification

A board, commission, or committee member may not participate in any vote on a matter that would violate an applicant's right to an impartial decision maker. Common conflicts include, but are 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 of the board, commission, or committee shall by majority vote rule on the objection.

2.1.2. Conflicts of Interest

A. Governing Board

A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to Chapter 160D-109 where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

B. Appointed Boards

Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to Chapter 160D-109 where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

C. Administrative Staff

No staff member shall make a final decision on an administrative decision required by Chapter 160D-109 if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other

associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under Chapter 160D-109 unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the City to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the City, as determined by the City.

D. Quasi-judicial decisions

A member of any board exercising quasi-judicial functions pursuant to Chapter 160D-109 shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are 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.

E. Resolution of Objection

If an objection is raised to a board member's participation at or prior to the hearing or vote on that matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

F. Familial Relationship

For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

2. Oath of Office Language for Elected and Appointed Boards Update

Required oath language for elected and appointed board members. Add Section 2.1.3.

2.1.3. Oath of Office for Elected and Appointed Boards

Every member of an Elected or Appointed Board shall before taking office or entering upon the execution of the office, take and subscribe to the following oath:

"I, _____, do solemnly and sincerely swear that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God."

3. Ordinance definitions must be consistent with North Carolina Definitions. Amendment to make the following definitions consistent with definitions provided in state statutes.

State Definitions provided in 160D Guidance:

BUILDING. Any structure used or intended for supporting or sheltering any use or occupancy.

DWELLING. A building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

DWELLING UNIT. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

SLEEPING UNIT. A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Proposed Changes to UDO Definitions:

~~Building: A temporary or permanent structure having a roof supported by columns or walls and which can be used for the shelter, housing, or enclosure of person, animals, or goods. Mobile homes and modular homes are buildings.~~

Building: Any structure used or intended for supporting or sheltering any use or occupancy.

Dwelling: A building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

~~Dwelling Unit: Rooms used for human habitation containing independent cooking, sleeping, and toilet facilities; excluded are boarding houses, hotels, and dormitories.~~

Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Sleeping Unit: A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

4. Enforcement Procedures: Notice of Violation

Clarification for recipients of notice of violation. Followed by Permit Revocation process change.

9.11.2. Initial Notice of Violation

A. On determining that a violation exists, the Zoning Administrator shall give the responsible person(s) issue a written notice of the violation in conformance with statutory procedures to both the violator and landowner if different by personal delivery, email, or by certified or registered mail, return receipt requested. The notice shall describe the nature of the violation,

state the actions necessary to correct the violation, and invite the alleged violator to meet with the Zoning Administrator within ten (10) days to discuss the violation and how it may be corrected. The Zoning Administrator must certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. The Zoning Administrator may provide the alleged violator additional written notices of violation.

B. If reasonable attempts have been made to effect service of the written notice upon the responsible person(s) by personal delivery, email, or by certified or registered mail have been unsuccessful, then notice may be provided by posting the written notice upon the property in a conspicuous place for a period of not less than ten (10) days.

~~C. Before revoking a permit or other authorization, the Zoning Administrator shall give the holder of the permit or authorization ten days notice of intent to revoke the permit or authorization. The notice shall state the reasons for the intended revocation and state that the holder may have an informal hearing on the intended revocation before the Zoning Administrator. On revoking a permit or authorization, the Zoning Administrator shall give the holder of the permit or authorization a written notice of the revocation and the reasons for it.~~

5. Enforcement Procedures: Permit Revocation Process

Permit revocation must follow the same process as the original approval.

9.10.2. Applicability

The Zoning Administrator may revoke any permit or other authorization granted under this Ordinance for failure to comply with the provisions of this Ordinance or the terms and conditions of the permit or authorization, or for false statements or misrepresentations made in securing the permit or authorization, or if the permit or authorization was mistakenly granted in violation of applicable State or local law. If the Zoning Administrator determines an imminent hazard exists, he may summarily revoke this permit.

9.11.9. Remedies and Penalties

The Zoning Administrator may pursue one or more of the following remedies and penalties to prevent, correct, or abate a violation of this Ordinance. Use of one of the authorized remedies and penalties does not preclude the Zoning Administrator from using any other authorized remedies penalties, nor does it relieve any party to the imposition of one (remedy or penalty from imposition of any other authorized remedies or penalties.

A. Permit Revocation

In accordance with the provisions of Section 9.10.2 of this Ordinance and the provisions of N.C.G.S. 153A-362 160D-403(f), the Zoning Administrator or Building Inspector may revoke any permit or other authorization granted under this Ordinance for failure to comply with the provisions of this Ordinance or the terms and conditions of a permit or authorization granted under this Ordinance development approvals may be revoked. The Zoning Administrator may

revoke any permit by the City by notifying the permit holder in writing stating the reason for revocation. The City shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. The revocation of an administrative development approval may be appealed pursuant to G.S. 160D-4-5.

Before revoking a permit or other authorization, the Zoning Administrator shall give the holder of the permit or authorization ten days notice of intent to revoke the permit or authorization. The notice shall state the reasons for the intended revocation and state that the holder may have an informal hearing on the intended revocation before the Zoning Administrator. On revoking a permit or authorization, the Zoning Administrator shall give the holder of the permit or authorization a written notice of the revocation and the reasons for it.

6. Written consent to conditions for Special Use Permit

Must obtain applicant's/landowner's written consent to conditions related to a special use permit to ensure enforceability.

3.5.8. Approval of a Special Use Permit

C. The approving authority Board of Adjustment may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the Special Use permit approval. Verbal consent to the conditions associated with the Special Use Permit must be agreed to by the applicant at the meeting once the Board discusses and decides on the case. Written consent is required from the applicant following the meeting as part of the draft Special Use Permit that is sent to the applicant once the Special Use Permit is approved. Written consent to conditions related to a Special Use Permit must be obtained to ensure enforceability. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

7. Public Notice Requirement to include properties separated by transportation corridor.

9.1.B.3.i. Mailed Notice

3. Mailed Notice

i. Where any mailed notice is required, the City shall notify by both first class mail all property owners on the subject property and adjoining properties. Adjoining properties shall include properties separated from the subject parcel(s) by street, railroad or other transportation corridor. In rezoning cases where properties have been added to a rezoning application by the City (in addition to properties in the original application), owners of the added properties must be notified by both certified mail and first class mail.

8. Development Approval Applications

Chapter 160D clarifies who can apply for a development permit.

3.1.1. Development Permit Required

No land shall be used or occupied and no building hereafter constructed, structurally altered, erected, or moved shall be used or its use changed until a Development Permit is issued by the Planning Director. The purpose of the Development Permit is to guide the applicant in carrying out their improvement plans and avoid potential pitfalls by ensuring that the appropriate approvals are obtained in the most efficient and effective manner possible. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. Additional administrative provisions pertaining to Development Permits are outlined in Section 9.3 of Article 9, Administration and Enforcement, of this ordinance.

9. Voting Legislative Decision for development regulation on first reading by simple majority

This item isn't necessarily something that needs to go into the ordinance. However, it is important to clarify this with staff dealing with Legislative Boards.

10. Development Approval In Writing

Must provide development approval in writing; may provide in print or electronic form; if electronic form is used, then it must be protected from further editing(pdf). This is something that is part of the ongoing BCMS updates. This update needs to be in effect by January 1st, 2021. We can also add a statement to Section 3.1.1. Development Permit Required stating that approval can be provided in electronic form or in written form.

3.1.1. Development Permit Required

No land shall be used or occupied and no building hereafter constructed, structurally altered, erected, or moved shall be used or its use changed until a Development Permit is issued by the Planning Director. The purpose of the Development Permit is to guide the applicant in carrying out their improvement plans and avoid potential pitfalls by ensuring that the appropriate approvals are obtained in the most efficient and effective manner possible. Development permits shall be provided in writing in by the City in print or electronic form. Additional administrative provisions pertaining to Development Permits are outlined in Section 9.3 of Article 9, Administration and Enforcement, of this ordinance.

3.1.6. Site Plan Approval Required

Approval of the site plan is required for all proposed development activity including, but not limited to, single family lots, individual businesses, non-residential developments, multifamily units, subdivisions, planned developments, special use permits, conditional zoning, change of use, or modification of a previously approved site plan.

9.3 DEVELOPMENT PERMIT REQUIREMENTS

A. Applicability

1. No excavation shall be commenced, no wall, structure, premises, or land used, building or part thereof shall be built, constructed or altered, nor shall any building be moved, nor shall any sign be erected or structurally altered (unless exempted), until application has been made and the property permit has been obtained. When the Zoning Administrator, with the technical assistance of the City or upon direction by the Northwest Planning Board or Board of Adjustment, has determined that the proposed land use may be permitted under the provisions of this Code, a permit for the proposed use shall be issued in print or electronic form.

11. Development Approvals run with the land - 160D-104.

Language to clarify that development approvals run with the land.

ARTICLE 3. Common Review and Approval Procedures

Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to Chapter 160D attach to and run with the land. This article outlines the most common types of review and approval of development activity. Less frequently used approvals, such as temporary use permits, vested rights, etc., are outlined in ~~8.3~~ Article 9, Administration and Enforcement.

3.2.10. Duration of Validity

An approved site plan shall remain valid for a period of three years from the date of approval and shall run with the land. After the initial three-year period, construction or development activity must be actively pursued to maintain validity. If construction or development activity is discontinued for a period of greater than 180 calendar days, the site plan shall expire and a new application must be submitted.

12. Flood Damage Prevention Ordinance Update

Amend language to bring Flood Damage Prevention Ordinance into compliance with the 160D update. This amendment clarifies that flood map changes are automatically adopted.

7.1.3.B. Basis for Establishing the Special Flood Hazard Areas

~~The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated December 6, 2019 for Brunswick County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of the Flood Damage Prevention Ordinance, and all revisions thereto after January 1, 2021. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of the City of Northwest are also adopted by reference and declared a part of the Flood Damage Prevention Ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 3 months.~~

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The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated December 6, 2019 for the City of Northwest and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto.

Conditional Rezoning, Rezoning Process Change Clarification & Consistency Statement Update

The following amendments provide clarification for the Conditional Rezoning Process as well as establish ordinance language for rezoning and text amendments that is consistent with the consistency statement requirement. Proposed amendment also addresses 160D clarification for the initiation of down-zonings. Proposed amendment also changes Zoning Administrator responsibility to the Planning Director to better reflect current practices.

3.2.4. Action by the City Council

A. Before taking action on a site plan in conjunction with a Conditional Rezoning request, the Board of Commissioners **City Council** shall consider the recommendations of the Planning Director and the Planning Board.

3.7.3. Action by the Planning Board

A. Before making any recommendation on a text amendment, the Planning Board shall consider any recommendations from the Zoning Administrator and shall conduct a public hearing where interested parties may be heard.

B. Notice and public hearing requirements shall be in accordance with Section 9.1.

C. The Planning Board shall make a recommendation **following the required public hearing** based on the approval criteria in Section 3.7.5, as appropriate.

D. When conducting a review of proposed zoning text amendment, the Planning Board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the City Council.

3.7.4. Action by City Council

A. Before taking action on a text amendment, the City Council shall consider the recommendations of the Planning Board and Zoning Administrator and shall conduct a public hearing.

B. If the Planning Board fails to make a recommendation within 75 days following the date of the first hearing on the text amendment, the City Council may process the proposed amendment without a recommendation.

C. Notice and public hearing requirements shall be in accordance with Section 9.1.

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D. The City Council shall make a decision based on the approval criteria in Section 3.7.5, as appropriate.

E. Following the public hearing, the City Council may approve the text amendment, deny the amendment, or send the amendment back to the Planning Board or a committee of the City Council for additional consideration.

F. When adopting or rejecting any zoning text amendment, the City Council shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the meeting that at the time of action on the amendment the City Council was aware of and considered the Planning Board's recommendations and any relevant portions of an adopted comprehensive plan.

3.8.1. Purpose & Applicability

A. Purpose

1. Conventional Rezoning

A conventional rezoning or zoning map amendment is a legislative zoning map amendment to change the zoning district of a specified property or properties. Refer to Article 4, Zoning Districts, for a list of zoning districts. The permitted uses associated with these districts are found in Article 5, Permitted Uses.

2. Conditional Rezoning

A conditional rezoning is a legislative zoning map amendment that incorporates site-specific conditions designed to mitigate impacts on adjacent properties and offers flexibility to meet project needs that are not accommodated by conventional zoning districts. Elements of conventional zoning classifications may be incorporated into the conditional rezoning.

B. Applicability

1A. Amendments to the Zoning Map shall be made, including by Conventional Rezoning and Conditional Zoning. (see Section 3.1.7. for additional information), The two types of rezoning follow the same legislative process in accordance with the provisions of this section.

2B. The City Council shall consider amendments to the Zoning Map of the City of Northwest, as may be required from time to time.

3C. Rezoning should correspond with the boundary lines of existing platted lots or tracts. Where the boundaries of a rezoning request stop short of an exterior property line, it must be possible to subdivide and develop that portion of the property outside the proposed rezoning boundary in accordance with the existing zoning, required conditions, and other requirements of this Ordinance.

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4D. All zoning requirements shall be met within the boundaries of the area being rezoned. If all of the requirements cannot be met on the site being rezoned, the rezoning shall be expanded to include all property necessary to meet zoning requirements.

5. Any land use may be approved, subject to agreed-upon conditions in a Conditional Rezoning. Uses allowed as a Special Use Permit included with the Conditional Rezoning shall not require separate approval.

6. For conditional rezoning, a site plan, a list of proposed uses, and a list of conditions shall be included with the approval.

7. The conditions shall relate to the list of uses, development standards, site features, improvements, etc. and be agreed upon in writing by the current property owner to ensure enforceability.

3.8.2. Initiation of Amendment

A. A request for a conventional rezoning may be initiated by the City Council, the Board of Adjustment, the Planning Board, the Zoning Administrator, or the property owner or their agent or any other party. A request for a conditional rezoning may be initiated by the property owner or their agent. However, the property owner must agree to the conditions in writing to ensure enforceability.

B. Amendments to zoning regulations or the zoning map that down-zone property shall not be initiated or enforced without the written consent of all property owners unless initiated by the City. For purposes of this section, “down-zoning” means a zoning change that affects a parcel or area of land in one of the following ways:

1. By decreasing density to allow less development than previously allowed.

2. By reducing permitted uses that are specified within this ordinance to less than were allowed previously.

3.8.3. Project Planning Session

All applicants petitioning for a rezoning shall schedule a project planning session with the Zoning Administrator, Planning Director or designee in accordance with Section 3.1.7.

3.8.4. Neighborhood Meeting

All applicants petitioning for a Conventional Rezoning are encouraged to hold a neighborhood meeting in accordance with Section 9.2. A neighborhood meeting is required for Conditional Zoning requests.

3.8.5. Application Requirements

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All applications for a rezoning shall be submitted in accordance with Section 3.1.8., Application Requirements.

3.8.6. Notice and Public Hearings

The City shall hold all required public hearings and give notice in accordance with Section 9.1, Notice and Public Hearings.

3.8.7. Action by Zoning Administrator

3.8.7. Action by ~~Zoning Administrator~~ Planning Director

A. The ~~Zoning Administrator~~ Planning Director or designee shall prepare a staff report that reviews the rezoning request in light of any applicable plans and the general requirements of this Ordinance. ~~The staff report shall consider the entire range of permitted uses in the requested classification regardless of any representations made that the use will be limited, unless a development plan is submitted that restricts the permitted range of uses to specific uses.~~ For conventional rezonings, the staff report shall consider the entire range of permitted uses allowed within the requested zoning district regardless of a proposed site plan or representations made that a specific use will be limited. For conditional rezonings, the staff report shall consider proposed uses, site plan, and conditions.

B. Following completion of technical review by staff, the ~~Zoning Administrator~~ Planning Director or designee shall forward the completed request, staff recommendation report, and any related materials to the Planning Board for a hearing and recommendation.

3.8.8. Action by Planning Board

A. Before making any recommendation on a rezoning request, the Planning Board shall consider any recommendations from the ~~Zoning Administrator~~ Planning Director or designee and shall conduct a public hearing where interested parties may be heard.

B. Notice and public hearing requirements shall be in accordance with Section 9.1.

C. The Planning Board shall make a recommendation based on the approval criteria in Section 3.8.10, as appropriate.

D. When making a recommendation to adopt or reject any zoning amendment, the Planning Board shall include a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan.

E. When making a recommendation to adopt or reject any petition for a zoning amendment, a statement analyzing the reasonableness of the proposed rezoning shall be included by the Planning Board. This statement of reasonableness may consider factors including but not limited to the following:

1. the size, physical conditions, and other attributes of the area proposed to be rezoned,

2. the benefits and detriments to the landowners, the neighbors, and the surrounding community,

3. the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;

4. why the action taken is in the public interest; and

FD. Following Planning Board review and recommendation, the completed request, Planning Board recommendation, staff recommendation and any related materials shall be forwarded to the City Council.

GE. If the Planning Board fails to make a recommendation within 75 days following the date of the first hearing on the request, the City Council may process the request without a recommendation.

3.8.9. Action by City Council

A. Before making any recommendation on a rezoning request, the City Council shall consider any recommendations from the Planning Board and Zoning Administrator and shall conduct a public hearing where interested parties may be heard.

B. Notice and public hearing requirements shall be in accordance with Section 9.1.

C. The City Council shall take action on a rezoning request based on the approval criteria in Section 3.8.10, as appropriate.

D. The City Council may approve the rezoning, deny the rezoning, or send the rezoning back to the Zoning Administrator for additional consideration.

E. When adopting or rejecting any zoning amendment, the City Council shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. If a zoning amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required.

F. When adopting or rejecting any petition for a zoning amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the City Council. This statement of reasonableness may consider factors including but not limited to the following:

1. the size, physical conditions, and other attributes of the area proposed to be rezoned,

2. the benefits and detriments to the landowners, the neighbors, and the surrounding community,

3. the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; and

4. why the action taken is in the public interest.

3.8.10. Review Criteria

The reviewing entity shall consider the following matters:

- A. Whether the range of uses permitted by the proposed change would be appropriate to the area concerned;
- B. Whether adequate public school facilities and other public facilities/services (i.e., water, wastewater, roads) exist, are planned, or can be reasonably provided to serve the needs of any permitted uses likely to be constructed as a result of such change;
- C. Whether the proposed change is consistent with the CAMA Land Use Plan or any other adopted land use document.
- D. Whether the proposed amendment is reasonable as it relates to the public interest.

3.8.11. Withdrawal of Rezoning Application

- A. An applicant may withdraw a rezoning application at any time, by filing a statement of withdrawal with the Zoning Administrator.
- B. The statement of withdrawal shall be signed by all persons who signed the application, or in the event of death or incompetence, by the estate's lawful personal representative.

3.8.12. Resubmission of Application

Upon final action to deny or approve an application for the rezoning of a piece of property, the Planning Board shall not review any applications for changes affecting the same property or any portion thereof until the expiration of one year from the date of such previous action except as provided as follows:

- A. The ~~Zoning Administrator~~ Planning Director may allow re-submission of such petition within one year period if it is determined that, since the date of action on the prior petition:
 - 1. There has been a significant change in the zoning district classification of an adjoining piece of property.
 - 2. The City Council has adopted a plan that changes public policy regarding how the property affected by the amendment should be developed.

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3. Construction or expansion of a road, water line, sewer line, or other such facilities has occurred to serve the property and can comfortably accommodate the intensity of development allowed under the proposed classification.

4. There has been some other extraordinary change in conditions or circumstances, outside the control of the petitioner, which justifies waiver of the one year restriction on a new position; this, however, shall not include a change in the ownership of the subject property.

3.8.13. Period of Validity

A. An approved rezoning shall run with the property and shall be valid until the Official Zoning Map is subsequently amended.

4.8 General Overlay Districts (existing section to be removed)

4.8.2. CZ: Conditional Zoning

A. Purpose

The Conditional Zoning Overlay is established to offer flexibility to meet project needs that are not accommodated by conventional zoning districts. These overlay districts are approved with individualized development standards adopted as part of the rezoning. Property is rezoned to these districts in response to and consistent with a petition filed by the property's owner. The petition includes a site plan, a specification of the actual use planned, and any rules, regulations, or conditions that would govern development of the site. The petitioner must conduct at least one community meeting on the proposal prior to the official hearing on the rezoning. These districts are potentially available in conjunction with any of the conventional zoning classifications.

B. Designation of Conditional Zoning Overlay

1. A Conditional Zoning Overlay may only be established as a zoning map change in accordance with the requirements of Section 3.8, Rezoning.

2. A Conditional Zoning Overlay may be established in conjunction with any conventional zoning base district.

C. Permitted Uses and Development Standards

1. Any use permitted by right, subject to limitations, or through special use permit in the underlying base districts may be approved in the overlay. Uses allowed as a special use permit included with the Conditional Zoning Overlay shall not require separate approval.

2. Conditions pertaining to the uses, development standards, site features, improvements, etc. may be included with the approval; provided however, the petitioner must be agreeable to such conditions.

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Vested Rights

Section 9.5, Determination of Zoning Vested Right, provides that site specific development plans are vested for a period of three years. The definition for this term in the ordinance is not comprehensive and needs to be updated. In addition, Chapter 160D changes the term of site specific development plan to site specific vesting plan as well as changes references to N.C.G.S.

Section 3.2.10. states that approved minor and major site plans are good for three years. This is not reflected in Section 9.5 Determination of Vested Rights or in the UDO's definition of Site Specific Development Plan.

The following Vested rights periods are clarified in the 160D Update:

Building Permit – 6 Months

Development Approval Default – 12 Months

Site Specific Plans – 2 to 5 Years

Multi-Phase Developments – 7 Years (25 Acres)

160D-108 Section d.3.b. (For Reference)

c. Requirements for site-specific vesting plans. – For the purposes of this section, a "site-specific vesting plan" means a plan submitted to a local government pursuant to this section describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a site plan, a preliminary or general development plan, a special use permit, a conditional zoning, or any other development approval as may be used by a local government. Unless otherwise expressly provided by the local government, the plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site-specific vesting plan shall be defined by the relevant development regulation, and the development approval that triggers vesting shall be so identified at the time of its approval. At a minimum, the regulation shall designate a vesting point earlier than the issuance of a building permit. In the event a local government fails to adopt a regulation setting forth what constitutes a site-specific vesting plan, any development approval shall be considered to be a site-specific vesting plan. A variance shall not constitute a site-specific vesting plan and approval of a site-specific vesting plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. 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.

The following proposed changes will help clarify vested rights periods for the appropriate development types as well as bring the ordinance into compliance with 160D.

Relevant Northwest UDO Sections:

3.2.10. Duration of Validity

An approved site plan shall remain valid for a period of three years from the date of approval. After the initial three-year period, construction or development activity must be actively pursued to maintain validity. If construction or development activity is discontinued for a period of greater than 180 calendar days, the site plan shall expire and a new application must be submitted. Consistent with Chapter 160, Section 108.D.3., the City of Northwest may provide that rights regarding a site-specific vesting plan shall be vested for a period exceeding three years, but not exceeding five years, where if warranted by the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations.

9.5 DETERMINATION OF ZONING VESTED RIGHT

9.5.1. Establishment

A. With Site-Specific Development Vesting Plan

1. In order for a zoning vested right to be established upon approval of a site-specific development plan, the applicant must indicate at the time of application, on a form to be provided by the City, that a zoning vested right is being sought. Upon approval by the appropriate approval authority, site plans constituting a Site-Specific Vesting Plan shall be automatically vested for a period of three years unless a greater period is requested.

2. Each map, plat, site plan or other document evidencing a site-specific development vesting plan shall contain the following notation: "Approval of this plan established a zoning vested right under N.C.G.S. Section 153A-344.1 160D-108. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

B. With Special Use Permit

1. Pursuant to N.C.G.S. Section 153A-344.1 160D-108, Vesting Rights and Permit Choice, as of May 1, 2007, a vested right to undertake and complete the development and use of property under the terms and conditions as approved pursuant to this Ordinance shall be established with respect to any property upon the approval of a Special Exception Use Permit for a site specific development vesting plan or a phased development plan.

2. The approved plans and conditions for a Special Exception Use Permit constitute, for purposes of N.C.G.S. Section 153A-344.1 160D-108, site-specific development vesting plans.

C. Multiphase Development

1. A multiphase development shall be vested for the entire development with the zoning regulations, subdivision regulations, and unified development ordinances in place at the time a

site plan approval is granted for the initial phase of the multiphase development. This right shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multiphase development. For purposes of this section, "multiphase development" means a development containing 25 acres or more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

D. All Other Development Approvals

Consistent with the issuance of a development permit, all other development approvals shall be automatically vested for a period of 1 year.

9.5.2. Approving Authority

Commentary: In order to determine the approving authority, refer to the table of permitted uses in Section 5.2.

In order to determine the approving authority, refer to the Summary of Review Authority in Section 2.14.

9.5.3. Application Requirements

A. An application for vested rights determination in excess of three years shall be submitted in accordance with Section ~~3.1.7.~~ 3.1.8, Application Requirements. Applications shall include, at a minimum, the following information in addition to the standard information required:

1. Information on the proposed uses of the property that the applicant wishes to vest;
2. The length of time for which vesting is requested;
3. A listing of those provisions of this Ordinance from which vesting is requested;
4. Identification of the portions of the development plan for which vesting is requested;
5. Indication of the impact on the ability of the project to proceed as originally approved if vesting is not granted; and,
6. The proposed timetable for the construction of the phases of the project for which vesting is requested.
7. If the owner considers prior expenditures and economic impact to be relevant to the governing body's determination, then any economic information regarding expenditures shall be accompanied by information regarding benefits or profits realized resulting from phases of the development previously built.

B. Landowners seeking zoning vested rights on plats, special exception permit applications, or other plans that would not normally receive site plan approval, may apply for vested rights

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~~protection through submittal of an application which contains the identical information, fee, and plans required for a complete site plan application and an additional fee for a vested rights public hearing.~~

B. Pursuant to G.S. 160D-403(c), unless otherwise specified in this section, all other local development approvals expire one year after issuance unless work has substantially commenced.

C. An extension of vested rights not to exceed five years may be sought. The applicant must submit an application which contains the identical information, fee, and plans required for a complete site plan application and any required fee for a vested rights evidentiary hearing.

9.5.4. Action by the Zoning Administrator

Once the application has been determined complete, the Zoning Administrator shall schedule a public hearing before the appropriate body, give public notice as set forth in Section 9.1, and forward a copy of the application with all related materials to the approving authority.

9.5.5. Action by the Approving Authority

Commentary: In order to determine the approving authority, refer to the table of permitted uses in Section 5.2.

A. Upon receipt of a complete application the Zoning Administrator shall schedule an evidentiary hearing before the appropriate body, give public notice as set forth in Section 9.1, and forward a copy of the application with all related materials to the approving authority.

BA. The approving authority ~~may~~ shall hold the vested rights public hearing at the same time that the site plan is considered for approval.

CB. Approval by the approving authority shall confer upon the owner of the property a zoning "vested right" as defined in N.C.G.S. 160D-108 ~~NCGS §153A-344.1~~, effective on the date of approval. The approving authority may condition the approval upon terms and conditions reasonably necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by its terms and conditions will result in a forfeiture of vested rights.

9.5.6. Duration

A. A right which has been vested as provided for in this section shall remain vested for a period of three years, unless a longer period, not to exceed five years, is granted by the approval authority. Modifications or amendments to an approved plan do not extend the period of vesting unless specifically so provided by the Board of Adjustment or the Planning Board upon approval of the modification and or amendment.

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B. The Board of Adjustment or the Planning Board may approve an extension of a zoning vested right for a period of two years resulting in a total vesting period of five years if warranted by the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions, or other considerations. Applications to extend a vesting period shall be considered by the same authority that approved the original vested right determination.

C. A multiphase development shall be vested for the entire development at the time a site plan approval is granted for the initial phase of the multiphase development. This right shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multiphase development. For purposes of this section, "multiphase development" means a development containing 100 acres or more that is submitted for site plan approval for construction to occur in more than one phase and is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

9.5.7. Effect of Zoning Vested Rights

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

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

C. The establishment of a zoning vested right shall not preclude the application of new laws or regulations as is allowed under NCCS §160A-385.1 N.C.G.S. 160D-108. In addition, it shall not preclude overlay zoning that imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site-specific development vesting plan upon the expiration or termination of the vested right in accordance with this section.

D. A vested right obtained under this section is not a personal right, but shall attach to and run with the subject property. After approval of a site-specific development vesting plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

9.5.8. Termination

A vested right as provided in this section shall terminate when any one of the following circumstances apply:

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

B. With the written consent of the affected landowner;

C. Upon findings by the Board of Adjustment or the Planning Board by ordinance and after notice and public an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific development vesting plan;

D. Upon payment of compensation to the affected owner for all costs, expenses, and other losses incurred by the landowner together with interest; The extent to which 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 consulting fees incurred after approval by the local government, together with interest as is provided in N.C.G.S. 160D-106. Compensation shall not include any diminution in the value of the property that is caused by such action;

E. Upon findings by the Board of Adjustment or the Planning Board by ordinance and after notice and public an evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approving authority of the site-specific development vesting plan; or

F. Upon the enactment of a State or Federal law or regulation or local ordinances enacted in compliance with such laws or regulations that preclude development as contemplated in the site specific development plan. Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the approved vested right, in which case the Board of Adjustment or the Planning Board may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, after notice and an evidentiary hearing.

UDO Definitions Section:

Site Specific Development Plan: A plan of land development submitted to the appropriate approval authority for the purpose of obtaining one of the following approvals/permissions pursuant to N.C.G.S. 153A334.1:

(a) A major site plan prepared for a Special Exception to this Ordinance based upon such required and official site plan;

(b) A Planned Unit Development Plan jointly receiving permissions/authority under the terms of this Ordinance and the Subdivision Ordinance, thus a combined Zoning Special Exception and preliminary plat.

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~~(c) Or such other combination of approvals and permissions under both this Ordinance and the Subdivision Ordinance as from time to time may be developed in accordance with the intent of this General Statute.~~

Site-Specific Vesting Plan: A plan which has been submitted to the City by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals:

(a) A planned unit development plan,

(b) a subdivision plat,

(c) minor and major site plans,

(d) a special use permit,

(e) a conditional zoning and an associated site plan,

(f) or any other land-use approval designation as may be utilized by the City.

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BYLAWS FOR THE OPERATION OF THE CITY OF NORTHWEST PLANNING BOARD

I. General Rules:

The City of Northwest Planning Board created by a Local Ordinance dated May 3, 1993, shall be governed by that Ordinance, Chapter ~~160A~~ **160D**, Article ~~19~~ **3, Boards and Organizational Arrangements**, of the General Statutes of North Carolina, and these Bylaws.

II. Members and Terms of Office:

The Planning Board shall consist of five members. All five members shall be citizens and residents of the City of Northwest for a period no less than one year and shall be appointed by the City Council. Two of the initial members shall be appointed for a term of one year; two, for two years; and one for three years. Their successors shall be appointed for terms of three years. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period for the unexpired term. Members may be removed for cause by the Northwest City Council.

III. Officers and Duties:

A. Election of Officers: The Planning Board shall organize and elect a chairman, vice-chairman, and secretary at the regular meeting in July. All officers may succeed themselves.

B. The Chairman: The chairman shall preside at all meetings and public hearings of the Planning Board; shall decide on all matters of order and procedure; shall appoint any committees necessary to study specific matters; shall develop a meeting agenda with the assistance of the City Clerk; and shall provide the Northwest City Council with an annual report of Planning Board activities by May 30th of each year.

C. The Vice-Chairman: In the absence of the chairman, the vice-chairman shall perform all duties assigned to the chairman.

D. The Clerk: The City Clerk or his/her designee shall serve as the Clerk to the Planning Board. The clerk is charged with keeping the minutes of all regular meetings, special meetings, and public hearings called by the Planning Board. The secretary, after conferring with the chairman, shall send notices of all regular meetings, special meetings and public hearings at least four (4) days in advance of the meeting and shall notify members by phone at least twenty-four (24) hours in advance of special or emergency meetings. In addition, the clerk shall carry on routine correspondence and maintain the Planning Board's records and files.

E. The Building Inspector: Inspections will be provided by Brunswick County.

IV. Meetings:

A. Regular Meetings: Regular meetings of the Planning Board shall be held on the second Monday of each month. Unless special notice is given by the chairman all meetings will begin at 7: 00 p. m. and will be conducted at the City Hall.

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B. Special Meetings: Special meetings of the Planning Board may be called at any time by the chairman or the vice chairman acting in the absence of the chairman, provided that a minimum of twenty-four (24) hours notice is given to members.

C. Quorum: A quorum shall consist of three (3) members.

D. Conduct of Meetings: All meetings shall be open to the public and public comment or input shall be encouraged.

E. Change of Bylaws: No recommended change shall be made to these bylaws without the affirmative vote of two-thirds (2/3) members of the Planning Board. Three (3) votes shall constitute that requirement.

F. Vote: Except as otherwise specified herein, the vote of a majority of those members present shall be sufficient to decide matters coming before the Planning Board provided a quorum is present. Members shall be required to vote unless excused by the chairman for reasons of financial or personal interest on the subject. An abstention shall constitute an affirmative vote. Proceeding shall be conducted according to Roberts Rules of Order.

G. Cancellation of Meetings: Whenever there is no business for the Planning Board, the chairman may dispense with a regular meeting by giving notice to all members.

H. Attendance: The Planning Board will request the City Council to replace any member missing three (3) consecutive unexcused regular meetings or fifty percent (50%) or more of all meetings over a twelve (12) month period.

I. Agenda Preparation for Regular Meetings: The agenda for regular meetings shall be prepared by the Clerk for the Planning Board. Only those items requested by planning board members or those items properly filed with the City according to its ordinances shall be placed on the agenda. The public and specific interests may appear for comment or input on any matter not on the agenda at any meeting regular or special, but no formal action will be taken on non-agenda items. This rule does not preclude public comment and input on regular agenda items that will be acted upon. The agenda shall be circulated to all members of the Planning Board, the City Council, and the City Clerk by the Thursday prior to the regular meeting date.

J. Conflicts of Interest: To preserve public confidence in the integrity of the Planning Board and the City's governmental process, each Board member shall have right and duty to avoid even the appearance of a conflict of interest. A conflict of interest can be defined as participating in a matter where there is either a direct/indirect benefit to the Board member, or the perception of a benefit. The Board member shall ask the Chair to be excused from participation in any matter before the Board in which the member's impartiality might reasonably be questioned. If any other Board member questions the impartiality of a Board member before or during the Board's consideration of a matter, the Chair shall treat this as a request that the member be excused from participation. Any request that a Board member be excused from participation must disclose the basis for the request. It is the Chair's responsibility to determine if a conflict of interest does exist and to either excuse or not excuse the Board member from participation.

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V. Records:

A. Public Record: All records of the Planning Board shall be made available to the public in accordance with state statutes.

B. Retention: The clerk shall maintain a file of all studies, plans, reports, recommendations, minutes, and correspondence of the Planning Board. The file should be maintained at the City Hall. Requests for copies shall be forwarded to or addressed to the building inspector.

Date Adopted

Chairman

Secretary

AMENDMENT TO THE CITY OF NORTHWEST
UNIFIED DEVELOPMENT ORDINANCE

The following amendments add clear standards for model homes, real estate sales centers, and neighborhood sales homes. These amendments will better guide commercial development in residential areas.

- 1). Amend the Definitions Section as follows:

Model Home: *A newly constructed residential home or unit that is completed, furnished, landscaped or decorated for the purpose of marketing to prospective buyers. Prospective buyers can often attend a showing, a viewing, a tour, or an open house. The model home may display information, options, or showcase features about the home, subdivision or development inside the home. A model home may be commonly referred as an idea home, residential show home, inventory home, or display home.*

Real Estate Sales Center: Commercial office space used for real estate sales or leasing transactions for the management of homes, land, or buildings. Typically includes a combination of office spaces, conference rooms, workstations, design centers, and storage. A real estate sales center may be commonly referred as a real estate sales office, sales center, or professional office.

Neighborhood Sales Home: A newly constructed home or unit that is completed, furnished, landscaped or decorated within a development or subdivision with the purpose of displaying living spaces and providing limited commercial office space for real estate sales and transactions that include: office spaces, conference rooms, workstations, design centers, and related storage. Typically, neighborhood sales homes are located within new sections or phases of a subdivision or development. A neighborhood sales home may be commonly referred as a sales model.

- 2). Amend Article 5, Section 5.1.5.A., All Office Uses, to include the following under Principal Uses:

Real Estate Sales Center

- 3). Amend Article 5, Section 5.2.3., Use Table, to define Temporary Neighborhood Sales Homes as a permitted as follows:

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Model Homes, Real Estate Sales Centers, and Neighborhood Sales Homes.**

| Use Grouping | Use | SBR- | | | | | | | | | | Standards | |
|---|------------------------------------|------|--------|--------|------|---------|------|-----|-----|------|-----|-----------|----------|
| | | RR | R-7500 | R-6000 | 6000 | MR-3200 | C-LD | N-C | C-I | RU-I | I-G | | CP |
| KEY: Blank Cell = Not Allowed; "P" = Permitted; "L" = Limited Use Standards (Section 5.3); "SUP" = Special Use Permit | | | | | | | | | | | | | |
| Professional Offices (5.1.5.A.) | Temporary Neighborhood Sales Homes | P | P | P | P | P | P | P | P | | | | 5.5.3.H. |

4). Amend Article 5, Section 5.5.3., and add Neighborhood Sales Home as follows:

H. Neighborhood Sales Home

Neighborhood Sales Home must meet the following:

1. The residential dwelling must be completed, furnished, landscaped and/or decorated.
2. The residential character of the surrounding neighborhood must be maintained.
3. Limited commercial office space for real estate sales and transactions activity shall not exceed 30% of the gross square area of the home (heated and unheated space).
4. Modifications to the dwelling and to the site are allowed to accommodate commercial activities. Common modifications include garage conversions, office spaces, and parking lots.
5. There shall not be events or large gatherings held within the dwelling or on-site other than showings, viewings, tours, or open houses.
6. Hours shall be limited from 9:00 A.M. to 8:00 P.M. daily.
7. Placement of the Neighborhood Sales Home must meet the following criteria:
 - i. Placed within a new or undeveloped section/phase of a development.
 - ii. If locating adjacent to an established home in a different section/phase, a one (1) lot separation is required.
8. All parking shall be provided to Accommodate On-Site Personnel and Guests and constructed in accordance with the following:
 - i. Parking spaces shall be provided at the rate of 3 spaces for the first 300 sq. ft. of commercial floor area, plus 1 space per 300 sq. ft. of commercial floor area after that.
 - ii. Parking spaces that do not require vehicles to back-up into a street or alleyway are encouraged.
 - iii. Use of conventional residential driveways for parking is allowed.
 - iv. Use of a separate parking lot is allowed but not required. If opting to install a parking lot, then the area must meet the design standards outlined in Section 6.12.5. of the UDO.
 - v. All parking maybe located off-site.

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Model Homes, Real Estate Sales Centers, and Neighborhood Sales Homes.**

- vi. On-street parking is strongly discouraged to be used as overflow parking.
9. Signage shall be allowed to aid in guiding guests to the Neighborhood Sales Homes and shall be installed in accordance with the following:
 - i. The site is limited to one (1) on-premise freestanding sign and wall signage not to exceed a cumulative total of 32 sq. ft.
 - ii. Signs may not be illuminated and must be of commercial quality and design.
 - iii. Temporary Real Estate Signs (Section 8.7.10.) and On-Premise Directional Signs (Section 8.7.19) are allowed.
10. Temporary Use Permits for Neighborhood Sales Homes shall expire 10-years after the date of issuance. Upon expiration, all commercial activity must cease. The Zoning Administrator may grant two (2) extensions to the temporary use permit, on a case-by-case basis. Each permit extension may not exceed 5-years for a maximum of 10-years.
11. All residential dwelling requirements must be met per the zoning district in which it is located and constructed in conformance with all applicable North Carolina Building Codes and Environmental Health Codes.