

Town of Atkinson, North Carolina

# Unified Development Ordinance

Adopted June 25th, 2026



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# ARTICLE 1. PURPOSE AND APPLICABILITY

## SECTION 1.1 TITLE

This Ordinance is officially titled the Unified Development Ordinance of Atkinson, North Carolina, and shall be known as the Unified Development Ordinance (UDO). The official map designating the various zoning districts shall be titled, Town of Atkinson Zoning Map, and shall be known as the Zoning Map.

## SECTION 1.2 AUTHORITY

- (A) The Unified Development Ordinance and Zoning Map are made in accordance with the Comprehensive Plan and are designed to lessen congestion in the streets; to secure public safety; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, parks, open space, and other public requirements; to control development of flood prone areas and regulate stormwater runoff/discharge; to regulate signs; and to establish proceedings for the subdivision of land. The regulations have been made with reasonable consideration, among other things, as to the character of the jurisdiction and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdiction.
- (B) Zoning provisions enacted herein are under the authority of NCGS 160D, which extends to towns/cities the authority to enact regulations which promote the health, safety, and the general welfare of the community. It is further authorized under NCGS 160D-703 which authorizes cities to regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. This section further authorizes the establishment of overlay districts in which additional regulations may be imposed upon properties that lie within the boundary of the district. The statutes also require that all such regulations should be uniform for each class or type of building throughout each district, but that the regulations in one district may differ from those in other districts.
- (C) Subdivision provisions enacted herein are under the authority of NCGS 160D804 which provide for the coordination of streets within proposed subdivisions with existing or planned streets and with other public facilities, the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision, or alternatively, for the provision of funds to be used to acquire recreation areas serving residents of more than one neighborhood in the immediate area, and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding.
- (D) This UDO, which combines zoning and subdivision authority, is further enacted under NCGS 160D-103.
- (E) North Carolina Building Code Adopted by Reference. The most current edition of the “North Carolina State Building Code all Volumes” found therein is hereby adopted as the official building

code of the town.

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

## SECTION 1.3 PURPOSE

For the purpose of promoting the health, safety, morals, and general welfare, this Ordinance is adopted by the Town of Atkinson Town Council to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of units that may be occupied; the size of yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures and land for trade, industry, residence, or other purposes. This Ordinance is further designed to support and guide the proper subdivision of land within the jurisdiction of Atkinson. This Ordinance is designed to minimize the presence of abandoned structures and dwellings within the jurisdiction of Atkinson.

This Unified Development Ordinance is intended to coordinate with a comprehensive plan and is designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to control development of flood prone areas and regulate stormwater runoff/discharge; to regulate signs; and to establish proceedings for the subdivision of land. The regulations have been made with reasonable consideration, among other things, as to the character of the jurisdiction and its areas and their peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdiction.

## SECTION 1.4 APPLICABILITY

### *1.4.1 Jurisdiction*

- (A) The regulations set forth in this Ordinance shall apply to all property within the Town of Atkinson planning and development regulation jurisdiction and within the various zoning districts as designated on the Town of Atkinson Zoning Map.
- (B) 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.

### *1.4.2 Exemptions*

- (A) 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. 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.

- (B) The provisions of this Ordinance shall not apply to a bona fide farm within the Town's extraterritorial jurisdiction, as defined by NCGS 160d-903.
- (C) No land owned by the State of North Carolina may be included within an overlay district or a conditional zoning district without approval by the Council of State as required by GS 160D-913.

## SECTION 1.5 RELATIONSHIP TO EXISTING DEVELOPMENT REGULATIONS

To the extent that the provisions of this Ordinance are the same in substance as the Town's previously adopted development regulations, they shall be considered as continuations thereof and not as new enactments unless otherwise specifically provided. In particular, a situation that did not constitute a lawful nonconforming situation under the previously adopted development regulations do not achieve lawful nonconforming status under this Ordinance merely by the repeal of the former development regulations.

## SECTION 1.6 RELATIONSHIP TO COMPREHENSIVE PLAN

It is the intention of the Town Council that this Ordinance implement the planning policies adopted by the Town Council for the Town and its jurisdiction, as reflected in the Town's comprehensive plan. While the Town Council reaffirms its commitment that this Ordinance and any amendment to it be in conformity with adopted planning policies, the Town Council hereby expresses its intent that neither this Ordinance nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document.

## SECTION 1.7 SEVERABILITY

It is hereby declared to be the intention of the Town Board of Commissioners that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any such section, paragraph, sentence, clause, or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentence, clauses, or phrases of this ordinance since the same would have been enacted without the incorporation into this ordinance of such unconstitutional or invalid section, paragraph, sentence, clause, or phrase.

## SECTION 1.8 INTERPRETATION AND CONFLICT

- (A) In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity, and general welfare. It is not intended by this Ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by easements, the provisions of this ordinance shall govern.
- (B) When the requirements of this UDO, made under the authority of NCGS 160D, require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under authority of NCGS 160D shall govern. When the provisions of any other statute or local ordinance

or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of NCGS 160D the provisions of that statute or local ordinance or regulation shall govern.

- (C) Where one (1) or more articles of this UDO are in conflict with one another, the most restrictive requirements shall apply.

## SECTION 1.9 OFFICIAL ZONING MAP IDENTIFICATION

- (A) The Zoning Map shall be identified by the signature of the Mayor or Mayor Pro Tempore attested by the Town Clerk and bearing the seal of the Town under the following words: "This is to certify that this is the Official Zoning Map of the Unified Development Ordinance, Atkinson, North Carolina," together with the date of the adoption of this Ordinance.
- (B) If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other matter portrayed on the Zoning Map, such changes shall be entered on the Zoning Map promptly after the amendment has been approved by the Town Council, with an entry on the Zoning Map denoting the date of amendment, description of amendment, and signed by the Town Clerk. No amendment to this Ordinance which involves matters portrayed on the Zoning Map shall become effective until after such change and entry has been made on said map.
- (C) When the Zoning Map is officially replaced, unless the prior map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining, shall be preserved together with all available records pertaining to its adoption or amendment.
- (D) Duly adopted zoning district maps shall be maintained for public inspection in the office of the Town Clerk. Current and prior zoning maps may be maintained in paper or a digital format approved by the Town.
- (E) This Ordinance may reference or incorporate by reference flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by state and federal agencies. Where zoning district boundaries are based on these maps, said boundaries are automatically amended to remain consistent with changes in the officially promulgated state or federal maps. A copy of the currently effective version of any incorporated maps shall be maintained for public inspection as provided in subsection (D).

## SECTION 1.10 OFFICIAL ZONING MAP INTERPRETATION

Where uncertainty exists as to the boundaries of any district shown on the Official Zoning Map, the Administrator shall employ the following rules of interpretation.

- (A) Centerline - Where a boundary line lies within and follows a street or alley right-of-way, a railroad right-of-way, or utility easement, the boundary shall be construed to be in the center of such street or alley right-of-way, railroad right-of-way, or utility easement. If such a street or alley right-of-way, railroad right-of-way, or utility easement forming the boundary between two separate zoning districts is abandoned or removed from dedication, the district boundaries shall be construed as following the centerline of the abandoned or vacated roadbed or utility easement.
- (B) Edge Line - Where a boundary line follows the edge of a street or alley right-of-way, a railroad right-of-way, or utility easement, the boundary shall be construed to be on the edge of such street

or alley right-of-way, railroad right-of-way, or utility easement. If such a street or alley right-of-way, railroad right-of-way, or utility easement forming the boundary between two separate zoning districts is abandoned or removed from dedication, the district boundaries shall be construed as following the edge of the abandoned or vacated roadbed or utility easement.

- (C) Lot Line - Boundaries indicated as approximately following lot lines shall be construed as following such lot lines. In the event that a district boundary line divides a lot or tract, each part of the lot or tract so divided shall be used in conformity with the regulations established by this ordinance for the district in which said part is located. A change in lot line shall not be construed to have modified a zoning district boundary.
- (D) Town Limits - Boundaries indicated as approximately following Town limits shall be construed as following the Town limits.
- (E) Watercourses - Boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerlines.
- (F) Extensions - Boundaries indicated as parallel to or extensions of street or alley rights-of-way, utility easements, lot lines, town limits, county lines, or extraterritorial boundaries shall be so construed.

## SECTION 1.12 AUTHORITY TO ISSUE PERMITS

The Administrator has the authority to interpret this Ordinance and issue zoning permits for uses permitted by right in the Table of Uses Section of this Ordinance. The Administrator may elect to have the Town of Atkinson Planning Board serve as the administrative review and determination to approve the issuance of uses permitted by right.

## SECTION 1.13 INTERPRETING PERMITTED USES

If a use is not specifically listed in any of the districts listed in this Ordinance, then the use generally should not be permitted. In instances where the use may not specifically be identified by name but in nature, character, and intensity is similar to a specifically listed permitted use, the Administrator may permit the use. The Administrator may also refer the use to the Planning Board for interpretation and require that the Board of Adjustment perform quasi-judicial review and Special Use Permit approval for the issuance of the permit.

## SECTION 1.14 DEVELOPMENT APPROVALS RUN WITH THE LAND

Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this Ordinance attach to and run with the land (per NCGS 160D-104).

## SECTION 1.15 REFUND OF ILLEGAL FEES

If the Town of Atkinson is found to have illegally imposed a tax, fee, or monetary contribution for development or a development approval not specifically authorized by law, the Town shall return the tax, fee, or monetary contribution plus interest of six percent (6%) per annum to the person who made the

payment or as directed by a court if the person making the payment is no longer in existence.

## SECTION 1.16 EFFECTIVE DATE

These regulations shall become effective on \_\_\_\_\_, 2026. Upon such date, these regulations shall supersede, repeal, and replace the Town of Atkinson Zoning Ordinance, Town of Atkinson Subdivision Regulations, Town of Atkinson Flood Damage Prevention Ordinance, and the previous Town of Atkinson Unified Development Ordinance..

## ARTICLE 2. GENERAL REGULATIONS

### SECTION 2.1 GENERAL REGULATIONS APPLICABILITY

The following general regulations of this Article shall apply in all situations unless otherwise indicated.

### SECTION 2.2 PREREQUISITE TO FINAL SUBDIVISION PLAT RECORDATION

No subdivision within the Town of Atkinson's planning and development jurisdiction shall be recorded with the Pender County Register of Deeds until it has been approved by the Town of Atkinson Town Council or approved administratively by town staff or the Town of Atkinson Planning Board, as described in Article 10 Subdivisions.

Any final plat, either major, minor, or exemption shall be recorded with the Pender County Register of Deeds within one (1) year from the date of the issuance of a development approval by the town as specified in this ordinance. If the final plat is not recorded within this period, it shall expire. The plat may be resubmitted for review, and it shall be reviewed against the Ordinance in effect at that time.

Final plats that have been officially approved by the Town of Atkinson Town Council prior to adoption of this Ordinance, but not recorded in the Pender County Register of Deeds Office, shall be protected under the provisions outlined in NCGS 160D-108.

### SECTION 2.3 RELATIONSHIP OF BUILDINGS AND USES TO LOT

Every building hereafter erected, moved, or placed shall be located on a lot, and in no case shall there be more than one principal residential building on a lot except as specifically allowed by this Ordinance. No building, land, or portion thereof shall be erected, used, moved, or altered except in conformity with the regulations specified for the district in which it is located.

### SECTION 2.4 REDUCTION OF LOT AND YARD AREAS PROHIBITED

No yard or lot existing at the time of passage of this Ordinance shall be reduced in size or area below the minimum requirements set forth in this Ordinance. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

### SECTION 2.5 ACCESS TO PROPERTY

- (A) No building, structure, or use of land shall be established on a lot, nor shall any lot be created (recorded on a final plat) that does not abut upon a public or private street to which it has legal access. The public access requirement shall not apply to land exempt from public/private street access by this Ordinance.
- (B) Lots which are pre-existing non-conforming (recorded on a legal plat of record with the Pender County Register of Deeds prior to the adoption of this UDO) are allowed to be developed so long as they have a dedicated easement to a public road. Development of these lots shall be limited to

single-family uses. These dedicated easements shall be recorded with the Pender County Register of Deeds and shall be a minimum width of 20 feet and contain an improved noncompacting gravel or ABC stone surface to provide access for emergency services.

## SECTION 2.6 ONE PRINCIPAL BUILDING

- (A) Only one principal building per lot shall be allowed unless otherwise is specifically approved by this Ordinance. More than one principal structure devoted to a non-residential use may be located on a lot, provided that access is available from a public street, or a 20-foot easement is maintained from a public street to each parcel for use by service or emergency vehicles. Easements serving non-residential uses shall be improved with an asphalt surface of sufficient material to support the weight of emergency apparatus as determined and certified by a North Carolina Licensed Professional Engineer.
- (B) No more than one principal building devoted to a residential use shall be allowed on a lot.

## SECTION 2.7 REQUIRED YARDS NOT TO BE USED BY BUILDINGS

The minimum yards or other open spaces required by this Ordinance for each and every building shall not be encroached upon by a building or considered as meeting the yard and open space requirements of any other building, except as specifically enabled under the provisions of Section 2.11 Building Setback Exceptions.

## SECTION 2.8 NO USE OR SALE OF LAND OR BUILDINGS EXCEPT IN CONFORMITY WITH ORDINANCE PROVISIONS

- (A) Subject to Article 5 of this Ordinance, no person may use, occupy, or sell any land or buildings or authorize or permit the use, occupancy, or sale of land or buildings under his control except in accordance with all of the applicable provisions of this Ordinance.
- (B) For purposes of this section, the “use” or “occupancy” of a building or land relates to anything and everything that is done to, on, or in that building or land.

## SECTION 2.9 HEIGHT LIMIT EXCEPTIONS

Except as may otherwise be prohibited by the FAA regulations, the height limitations of this Ordinance shall not apply to public buildings, church spires, belfries, cupolas, and domes not intended for residential purposes, or to monuments, water towers, observation towers, power transmission towers, telecommunication towers, silos, grain elevators, chimneys, smokestacks, derricks, conveyors, flag poles, radio, masts, aerials, and similar structures, provided the structures meet the required State Building Code.

## SECTION 2.10 CORNER VISIBILITY

No planting, fence, sign, or other obstruction to visibility of vehicles shall be erected, planted, maintained, or allowed to exist in any district within the range of three (3) feet to ten (10) feet above the centerline grades of the intersecting streets in the triangular area bounded by the street right-of-way lines of such

corner lots and a line joining points along these street lines twenty-five (25) feet from the point of intersection. Stricter requirements may be applicable depending upon any NCDOT required site triangles.

## SECTION 2.11 BUILDING SETBACK EXCEPTIONS

Setback distances shall be measured from the property line or edge of street right-of-way line to the nearest portion of any building or structure foundation/footprint, excluding:

- (A) Porches covered/uncovered, canopies/awnings, seating areas (commercial), HVAC pads/enclosures and similar type accessory features that are expected to extend from the primary structure may encroach up to 4 feet into any required setback area.
- (B) A deck or patio if no portion of the same extends more than 12 inches off the ground.
- (C) Any structure that is a mere appendage to a building, such as a flagpole or fountain.
- (D) Fences four feet in height or less.

## SECTION 2.12 NORTH CAROLINA STATE BUILDING CODE

The North Carolina State Building Code with appendices are incorporated herein by reference and serve as the basis for Building Inspector authority to regulate building construction. This Ordinance is not intended to conflict with or supersede the North Carolina State Building Code regulations. NOTE: Any sign referenced in the code book does not constitute acceptance in this UDO.

All building inspections shall be conducted by an agent specifically designated by the Town of Atkinson.

## SECTION 2.13 LOT REQUIREMENTS & DIMENSIONS

- (A) Side lot lines shall be at right angles to straight street lines or radial to curved street lines.
- (B) Every lot shall have sufficient area, dimensions, and street access to permit a principal building to be erected thereon in compliance with all lot size and dimensions, yard space, setback, and other requirements of this Ordinance.
- (C) The location of required front, side, and rear yards on irregularly shaped lots shall be determined by the location of the front lot line. The front lot line shall always be the lot line upon which the lot receives access. Meaning this will be the lot line that fronts on a recorded and legally existing public or private right-of-way, or the lot line that fronts on an recorded and legally existing easement (the line which the easement meets the lot). The rear lot line shall be the line opposite the front lot line, or closest to resembling a line opposite. All other lines shall be treated as side lot lines. For lots with only three lot lines, the lines that are not considered to be the front lot line will be treated as rear lot lines (double-rear lot lines).

- (D) All structures shall have access available from a public street via street frontage, access easement, alley, or other useable access for use by service or emergency vehicles.
- (E) All buildings shall front directly upon a street and shall be of sufficient design to allow for the provision of emergency services.
- (F) Flag lots shall not be allowed in subdivisions except to provide access to a body of water..

## SECTION 2.14 EASEMENTS

- (A) Easements for underground or aboveground utilities shall be provided, where necessary, across lots or centered on rear or side lot lines as required by the companies involved for telephone, gas, power lines, cable TV, and/or other customary utilities.
- (B) Where a subdivision is traversed by a stream or drainage way, an easement shall be provided conforming with the lines of the stream and of sufficient width as will be adequate for the purpose. All easements, including width, shall conform with all state and federal requirements.

## SECTION 2.15 DRIVEWAYS

No portion of any residential driveway intersection with a Town public street shall be closer than twenty (20) feet to the corner of any intersection, measured along the right-of-way line. In commercial and industrial zones, this distance shall be thirty (30) feet. The width of any driveway intersection with the public street shall not exceed thirty (30) feet at its intersection with curb and street line. Driveway connections to the State of North Carolina Department of Transportation controlled streets must be requested from and approved by DOT on its standard form.

## SECTION 2.16 EXISTING BUILDING AND/OR ZONING PERMITS

The provisions contained herein shall not affect buildings, structures, and uses for which building and/or development approvals were issued prior to the passage of this Ordinance, provided that the approval is not revoked and the activities for which the outstanding approvals were issued are begun within one (1) year of the date this Ordinance is adopted. Outstanding development approvals not used within one (1) year shall be null and void.

## SECTION 2.17 COMPUTATION OF TIME

- (A) Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday, or legal holiday, that day shall be excluded. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded.
- (B) Unless otherwise specifically provided, whenever a person has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served by mail, three days shall be added to the prescribed period.

## SECTION 2.18 FEES

- (A) Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, sign permits, special use permits, subdivision plat approval, site plan approval, zoning amendments (map or text), appeals, variances, comprehensive plan amendments, flood permits, or other fees as determined necessary by the Town of Atkinson Town Council. The amount of the fees charged shall be as set forth in the Town's fee schedule as established by the Town Council annually and filed in the office of the Town Clerk.
- (B) Fees established in accordance with Subsection (A) shall be paid upon submission of a signed application or notice of appeal and shall be a necessary component of a complete application.

## SECTION 2.19 CERTIFICATES OF OCCUPANCY

- (A) No new building or part thereof shall be occupied, and no addition or enlargement of any existing building shall be occupied, and no existing building after being altered or moved shall be occupied, and no change of occupancy shall be made in any existing building or part thereof, until the Building Inspector has issued a Certificate of Occupancy.
- (B) A Temporary Certificate of Occupancy may be issued for a portion or portions of a building which may safely be occupied prior to final completion and occupancy of the entire building or for other temporary uses.
- (C) Application for a Certificate of Occupancy may be made by the owner or his agent at the same time as submitting an application for a building permit, if needed. The Certificate of Occupancy shall be issued by the Building Inspector after all final inspections have been made and the Administrator has issued a Certificate of Zoning of Compliance.
- (D) In the case of existing buildings or other uses not requiring a building permit, after providing the information and data necessary to determine compliance with this Ordinance and appropriate regulatory codes of the Town for the occupancy intended, the Building Inspector shall issue a Certificate of Occupancy when, after examination and inspection, it is found that the building or use in all respects conforms to the provisions of this Ordinance and appropriate regulatory codes of the Town for the occupancy intended.
- (E) No Certificate of Occupancy shall be issued until the Administrator has determined that Zoning Compliance has been achieved.

## SECTION 2.20 SPLIT JURISDICTION

If a parcel of land lies within the planning and development regulation jurisdiction of more than one local government, the local governments may by mutual agreement and with the written consent of the landowner assign exclusive planning and development regulation jurisdiction for the entire land, including all development phases on the land to any of the local governments with jurisdiction in accordance with NCGS 160D-203. Such a mutual agreement shall only be applicable to development regulations and shall not affect taxation or other non-regulatory matters. The mutual agreement shall be evidenced by a resolution formally adopted by each governing board and recorded with the Pender County Register of Deeds within 14 days of the adoption of the last required resolution (per NCGS 160D-203).

## SECTION 2.21 PENDING JURISDICTION

After consideration of a change in local government jurisdiction has been formally proposed, the local government that is potentially receiving jurisdiction may receive and process proposals to adopt development regulations and any application for development approvals that would be required in that local government if the jurisdiction is changed. No final decisions shall be made on any development approval prior to the actual transfer of jurisdiction. Acceptance of jurisdiction, adoption of development regulations, and decisions on development approvals may be made concurrently and may have a common effective date (per NCGS 160D-204).

## ARTICLE 3. ADMINISTRATION METHODS AND PRACTICE

### SECTION 3.1 PLANNING BOARD

#### *3.1.1 Membership and Vacancies*

The Planning Board shall consist of five (5) members. Members shall be residents of the Town of Atkinson and appointed by the Town of Atkinson Town Council. Members shall take an oath of office before entering their duties as a member of the Planning Board per NCGS 160D-309. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term. Faithful attendance at the meetings of the board is considered a pre-requisite for the maintenance of membership on the Board. A vacancy shall exist on the Board if a member is absent from ten (10) percent or more of the Board's meetings within a twelve (12) month period of time and said vacancy may be declared and filled by the Town Council.

#### *3.1.2 Rules of Procedure*

Members of the Board may be removed for cause, including violation of any rule of procedure stated below per NCGS 160D-308:

- (A) Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite of continuing membership on the Board.
- (B) Members shall serve at the pleasure of the Town of Atkinson Town Council.

#### *3.1.3 Meetings*

- (A) The Town of Atkinson shall establish a meeting schedule for the Planning Board annually. The Board shall have a meeting at a minimum once a quarter. These meeting dates will be the regular scheduled meetings of the Town of Atkinson Planning Board and shall be open to the public. A quorum shall consist of three (3) members of the Board.
- (B) All members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section 3.5 Conflicts of Interest. A vote of a majority of the members present and voting shall decide issues before the Board.

- (C) Special meetings may be called by the Chairperson. It shall be the duty of the Chairperson to call such a meeting upon a recommendation of the Board. During a special meeting, no other business may be considered except that which was specified by advanced notice. The Town Clerk shall notify all members of the Board in writing not less than five (5) days in advance of such special meeting. Notice of time, place, and subject of such meeting shall be in accordance with NCGS 143-138.12(b).
- (D) The Planning Board shall keep minutes of its meetings per NCGS 160D-308.

### **3.1.4 Basic Studies**

As background for its comprehensive plan and any ordinances it may prepare, the Planning Board may gather maps and aerial photographs of manmade and natural physical features of the area, statistics on past trends and present conditions with respect to population, property values, the economic base of the community, land use, and such other information as is important or likely to be important in determining the amount, direction, and kind of development to be expected in the area and its various parts. The Planning Board may make studies as to the community's social, economic, as well as its physical needs. In addition, the Planning Board may make, cause to be made, or obtain special studies on the location, condition, and adequacy of specific facilities, which may include, but are not limited to, studies of housing; commercial and industrial facilities; parks, playgrounds, and recreational facilities; public and private utilities; and traffic, transportation, and parking facilities. All town officials shall, upon request, furnish the Planning Board such available records or information as it may require in its work. The Board or its agents may, in the performance of its official duties, enter upon lands and make examinations or surveys and maintain necessary monuments thereon.

### **3.1.5 Comprehensive Plan**

- (A) The Comprehensive Plan, with the accompanying maps, charts, and descriptive matter, shall be and show the Planning Board's recommendations to the Town of Atkinson Town Council for the development of the town's planning jurisdiction. The comprehensive plan is intended to guide coordinated, efficient, and orderly development within this Ordinance's jurisdiction based on an analysis of present and future needs. Planning analysis may address inventories of existing conditions and assess future trends regarding demographics and economic, environmental, and cultural factors. The planning process shall include opportunities for citizen engagement in plan preparation and adoption. In addition to a comprehensive plan, the Town may prepare and adopt such other plans as deemed appropriate. These plans may include, but are not limited to, land use plans, small area plans, neighborhood plans, hazard mitigation plans, transportation plans, housing plans, and recreation and open space plans. If adopted pursuant to the process set forth in this section, such plans shall be considered in review of proposed zoning amendments. The comprehensive plan may, among other topics, address any of the following as determined by the town:
- (1) Issues and opportunities facing the town, including consideration of trends, values expressed by citizens, community vision, and guiding principles for growth and development.
  - (2) The pattern of desired growth and development and civic design, including the location, distribution, and characteristics of future land uses, urban form, utilities, and transportation networks.

- (3) Employment opportunities, economic development, and community development.
  - (4) Acceptable levels of public services and infrastructure to support development, including water, waste disposal, utilities, emergency services, transportation, education, recreation, community facilities, and other public services, including plans and policies for provision of and financing for public infrastructure.
  - (5) Housing with a range of types and affordability to accommodate persons and households of all types and income levels.
  - (6) Recreation and open spaces.
  - (7) Mitigation of natural hazards such as flooding, winds, wildfires, and unstable lands.
  - (8) Protection of the environment and natural resources, including agricultural resources, mineral resources, and water and air quality.
  - (9) Protection of significant architectural, scenic, cultural, historical, or archaeological resources.
  - (10) Analysis and evaluation of implementation measures, including regulations, public investments, and educational programs.
- (B) The plan and any ordinances or other measures to effectuate it shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the town and its vicinity which will, in accordance with present and future needs, best promote health, safety, morals, and the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provisions for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities, services, and other public requirements and the improvement of the community social and economic attributes.

### ***3.1.6 Powers and Duties***

- (A) Prepare, review, maintain, monitor, and periodically update and recommend to the Town Council a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.
- (B) Facilitate and coordinate citizen engagement and participation in the planning process.
- (C) Develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
- (D) Advise the Town of Atkinson Town Council concerning implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by Section 4.1 Process for Adoption of Development Regulations.

- (E) Exercise any functions in the administrative and enforcement of various means for carrying out plans that the Town of Atkinson Town Council may direct.
- (F) Perform any other related duties that the Town of Atkinson Town Council may direct.

## SECTION 3.2 BOARD OF ADJUSTMENT

### *3.2.1 Creation*

Under the authority of NCGS 160D-302, the Town of Atkinson Town Council serves as and performs any and all duties of the Board of Adjustment in addition to its other duties.

### *3.2.2 Meetings*

The Mayor shall serve as Chairperson and Mayor Pro Tempore as Vice-Chairperson. The Administrator shall serve as secretary to the Board of Adjustment. The Board shall draw up and adopt the rules of procedures under which it will operate, adopted rules of procedure shall not create any conflict with quasi-judicial hearing requirements as set forth in NCGS 160D-406. All meetings of the Board shall be held at a regular place and time and shall be open to the public. The Chairperson shall have the authority to call a special meeting if he/she deems such a meeting to be necessary. The Chairperson, or in his absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses in accordance with Section 4.6.7 Subpoenas. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or his absence or failure to vote, indicating such fact, and also keep records of its examination and any other official action. The Town of Atkinson shall establish a meeting schedule for the Board of Adjustment annually. These meeting dates will be the regular scheduled meetings of the Town of Atkinson Board of Adjustment and shall be open to the public. There must be a minimum of three (3) members present for hearings involving Special Use Permit requests and Appeals, and four (4) members present when hearing Variance requests.

### *3.2.3 Powers and Duties*

- (A) The Board of Adjustment shall hear and decide requests for variances and appeals of decisions of administrative officials charged with enforcement of this Ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances. The Board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development. If any board other than the Board of Adjustment is assigned decision-making authority for any quasi-judicial matter, that board shall comply with all of the procedures and the process applicable to a Board of Adjustment in making quasi-judicial decisions.
- (B) To make interpretations of the Official Zoning Map and to pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the Unified Development Ordinance.
- (C) The concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an

appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are not qualified alternates available to take the place of such members.

- (D) The Board of Adjustment shall also serve as the Housing Appeals Board per NCGS 160D-305, housing appeals, which are specific to Article 11 Substandard Dwellings & Abandoned Structures shall follow procedures set forth in NCGS 160D-1208.

## SECTION 3.3 ADMINISTRATIVE STAFF

### *3.3.1 Authorization*

In accordance with NCGS 160D-402, the Town may appoint administrators, inspectors, enforcement officers, planners, technicians, and other staff to develop, administer, and enforce this Ordinance. The person or persons to whom these functions are assigned shall be referred to in this Ordinance as the UDO Administrator or Administrator.

### *3.3.2 Duties*

Duties assigned to staff may include, but are not limited to, drafting and implementing plans and development regulations to be adopted pursuant to NCGS Chapter 160D; determining whether applications for development approvals are complete; receiving and processing applications for development approvals; providing notices of applications and hearings; making decisions and determinations regarding development regulation implementation; determining whether applications for development approvals meet applicable standards as established by law and local ordinance; conducting inspections; issuing or denying certificates of compliance or occupancy; enforcing development regulations, including issuing notices of violation, orders to correct violations, and recommending bringing judicial actions against actual or threatened violations; keeping adequate records; and any other actions that may be required in order to adequately enforce the laws and development regulations under the Town's jurisdiction. A development regulation may require that designated staff members take an oath of office. The Town of Atkinson shall have the authority to enact ordinances, procedures, and fee schedules relating to the administration and the enforcement of this UDO. The administrative and enforcement provisions related to building permits set forth in Article 11 of NCGS Chapter 160D shall be followed for those permits.

### *3.3.3 Alternative Staff Arrangements*

The Town of Atkinson may contract with other units of local government, councils of government, regional planning organizations, metropolitan or rural planning organizations, individuals, or private companies, but limited to these types of service for the purpose of exercising the functions of this Ordinance. Any Alternative Staff Arrangement made by the town shall be in compliance with NCGS 160D-402.

## SECTION 3.4 TOWN COUNCIL

### *3.4.1 Powers and Duties*

The Town Council shall have the following powers and duties to be carried out in accordance with these regulations which include, but are not limited to, the following:

- (A) To initiate and make amendments to the text of these regulations and to the Zoning Map and CAMA Land Use Plan.
- (B) To hear, review, and adopt or reject amendments to the text of these regulations and to the Zoning Map and CAMA Land Use Plan.
- (C) To take such other action not delegated to the Planning Board or Board of Adjustment as the Town Council may deem desirable and necessary to implement the provisions of this Ordinance.
- (D) To adopt temporary moratoria on any Town development approval required by law, except for the purpose of developing and adopting new or amended plans or development regulations governing residential uses. 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.

### *3.4.2 Rules of Conduct*

- (A) The Town Council, in considering special use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Section 4.6 Quasi-Judicial Procedures of this Ordinance.
- (B) In considering proposed changes in the text of this Ordinance or in the zoning map, the Town Council acts in its legislative capacity and must proceed in accordance with the requirements of Section 4.1 Process for Adoption of Development Regulations.
- (C) In considering subdivisions of land, the Town Council acts in an administrative capacity and must proceed in accordance with the requirements of Section 10.4 Subdivision Review Procedures.
- (D) Unless otherwise specifically provided in this Ordinance, in acting upon special use zoning permit requests or in considering amendments to this Ordinance or the zoning map, the Town Council shall follow the regular voting and other requirements as set forth in other provisions of the town code.

## SECTION 3.5 CONFLICTS OF INTEREST

### *3.5.1 Governing Board*

A Town of Atkinson Town Council member shall not vote on any legislative decision regarding a development regulation adopted pursuant to NCGS 160D 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 Town Council 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.

### ***3.5.2 Advisory Board***

Members of the Planning Board shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Ordinance 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.

### ***3.5.3 Administrative Staff***

No staff member or Board member appointed to make Administrative decisions pursuant to this Ordinance shall make a final decision on an administrative decision required by this Ordinance 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 this Ordinance 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 Town of Atkinson to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the Town of Atkinson, as determined by the Town Council.

### ***3.5.4 Quasi-Judicial Review Board***

A member of the Board of Adjustment exercising quasi-judicial functions pursuant to this Ordinance 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.

### ***3.5.5 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.

### ***3.5.6 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.

## ARTICLE 4. ADMINISTRATIVE REVIEW PROCEDURES

### SECTION 4.1 PROCESS FOR ADOPTION OF DEVELOPMENT REGULATIONS

#### *4.1.1 Procedure for Adopting, Amending, or Repealing This Ordinance*

- (A) *Hearing with Published Notice.* Before adopting, amending, or repealing any ordinance or development regulation authorized by NCGS Chapter 160D, the Town of Atkinson Town Council shall hold a legislative hearing. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.
- (B) A development regulation adopted pursuant to NCGS Chapter 160D shall be adopted by ordinance.
- (C) In Accordance with NCGS 160D-601(d), no amendment to zoning regulations or a zoning map that down-zones property shall be initiated, nor shall it be enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment. For the purposes of this section, "down-zoning" means a zoning ordinance that affects an area in one of the following ways:
- By decreasing the development density of the land to be less dense than was allowed under its previous usage.
  - By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.
  - By creating any type of nonconformity on land not in a residential zoning district, including a nonconforming use, nonconforming lot, nonconforming structure, nonconforming improvement, or nonconforming site element.
- (D) No amendment to this UDO shall be adopted without first receiving review and comment from the Town of Atkinson Planning Board.
- (E) When a zoning map amendment is approved and the zoning designation is inconsistent with the Town of Atkinson CAMA Land Use Plan future land use map, the future land use map is amended to reflect the new zoning district. These amendments shall comply with NCGS 160D-501.

#### *4.1.2. Notice of Hearing on Proposed Zoning Map Amendments*

- (A) *Mailed Notice.* This Ordinance provides for the manner in which zoning regulations and the boundaries of zoning districts are determined, established, and enforced, and from time to time may be amended, or changed, in accordance with the requirements of this article. The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be

mailed a notice of the hearing on a proposed zoning map amendment by first-class mail at the last addressed listed for such owners on the county tax abstracts. For the purpose of this section, properties are “abutting” even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least 10 days but not more than 25 days prior to the date of the hearing.

- (B) *Optional Notice for Large-Scale Zoning Map Amendments.* The first-class mail notice required under subsection (A) of this section shall not be required if the zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the Town elects to use the expanded published notice provided for in this subsection. In this instance, the Town may elect to make the mailed notice provided for in subsection (A) of this section or, as an alternative, elect to publish notice of the hearing as required by Section 4.1.1, provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (A) of this section.
- (C) *Posted Notice.* When a zoning map amendment is proposed, the Town shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing (10-25 days). When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the Town shall post sufficient notices to provide reasonable notice to interested persons.
- (D) *Actual Notice.* Except for Town-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the landowner or authorized agent, the applicant shall certify to the Town that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of the hearing. Actual notice shall be provided in any manner permitted under NCGS 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, certified mail, or by a designated delivery authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with NCGS 1A-1, Rule 4(j1). The person or persons required to provide notice shall certify to the Town that actual notice has been provided, and such certificate shall be deemed conclusive in the absence of fraud.

### 4.1.3 Citizen Comments

Subject to the limitations of this Ordinance, zoning regulations may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the Town submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment, to the Town Clerk at least two business days prior to the proposed vote on such change, the Town Clerk shall deliver such written statement to the Town Council. If the proposed change is the subject of a quasi-judicial proceeding under NCGS Chapter 160D-705 or any other statute, the Town Clerk shall provide only the names and addresses of the individuals providing written

comment, and the provision of such names and addresses to all members of the Board shall not disqualify any member of the Board from voting.

#### 4.1.4 Planning Board Review & Comment

- (A) *Zoning Amendments.* Subsequent to initial adoption of a zoning regulation, all proposed amendments to the zoning regulations or zoning map shall be submitted to the Planning Board for review and comment. If no written report is received from the Planning Board within 30 days of referral of the amendment to that Board, the Town Council may act on the amendment without the Planning Board report. The Town Council is not bound by the recommendations, if any, of the Planning Board.
- (B) *Review of Other Ordinances and Actions.* Any development regulations other than a zoning regulation that is proposed to be adopted pursuant to NCGS Chapter 160D may be referred to the Planning Board for review and comment. Any development regulation other than a zoning regulation may provide that future proposed amendments of that ordinance be submitted to the Planning Board for review and comment. Any other action proposed to be taken pursuant to NCGS Chapter 160D may be referred to the Planning Board for review and comment.
- (C) *Plan Consistency.* When conducting a review of proposed zoning text or map amendments pursuant to this section, 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 Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Council. If a zoning map amendment qualifies as a “large-scale rezoning” under NCGS 160D-602(b), the Planning Board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendations made.
- (D) *Separate Board Required.* Notwithstanding the authority to assign duties of the Planning Board to the Town Council as provided by this Ordinance, the review and comment required by this section shall not be assigned to the Town Council and must be performed by a separate board.

#### 4.1.5 Town Council Statement

- (A) *Plan Consistency.* When adopting or rejecting any zoning text or map amendment, the Town Council shall approve a brief statement describing whether its action is consistent or inconsistent with the Town of Atkinson Land Use Plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Town Council that at the time of action on the amendment the Board was aware of and considered the Planning Board’s recommendations and any relevant portions of an adopted comprehensive plan. If a zoning map 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 application or fee for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency amendment is not subject to judicial review. If a zoning map amendment qualifies as a “large scale rezoning” under

Section 4.1.2(B), the Town Council statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

- (B) *Additional Reasonableness Statement for Rezoning.* When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Town Council. This statement of reasonableness may consider, among other factors, (i) the size, physical condition, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) 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, (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a “large-scale rezoning” under subsection 4.1.2, the Town Council statement on reasonableness may address the overall rezoning.
- (C) *Single Statement Permissible.* The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

## SECTION 4.2 MORATORIA

### *4.2.1 Authority*

In accordance with NCGS 160D-107, the Town of Atkinson may adopt temporary moratoria on any development approval required by law, except for the purpose of developing and adopting new or amended plans or development regulations governing residential uses. 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.

## SECTION 4.3 VESTED RIGHTS

### *4.3.1 Findings*

Town approval of development typically follows significant investment in site evaluation, planning, development costs, consultant fees, and related expenses. Therefore, it is necessary and desirable to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the development regulation process, secure reasonable expectations of landowners, and foster cooperation between the public and private sectors in land-use planning and development regulation.

### *4.3.2 Permit Choice*

If an application made in accordance with this UDO is submitted for a development approval required pursuant to this Ordinance and a development regulation changes between the time the application was submitted and a decision is made, the applicant may choose which version of the development regulation will apply to the application. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the

development permit. This section applies to all development approvals issued by the State and by local governments. The duration of vested rights created by development approvals are as set forth in subsection 4.3.4, Types and Duration of Statutory Vested Rights.

### 4.3.3 Process to Claim Vested Right

A person claiming a statutory or common law vested right may submit information to substantiate that claim to the Administrator, who shall make an initial determination as to the existence of the vested right. The Administrator's determination may be appealed under NCGS 160D-405. On appeal, the existence of a vested right shall be reviewed *de novo*. In lieu of seeking such a determination, a person claiming a vested right may bring an original civil action as provided in NCGS 160D-405(c).

### 4.3.4 Types and Duration of Statutory Vested Rights

Except as provided by this section and subject to subsection 4.3.2 Permit Choice, amendments to this Ordinance shall not be applicable or enforceable with regard to development that has been permitted or approved pursuant to this Ordinance so long as one of the approvals listed in this subsection remains valid and unexpired. Each type of vested right listed below is defined by and is subject to the limitations provided in this section and the cited statutes. Vested rights established under this section are not mutually exclusive. The establishment of vested rights under one subsection does not preclude vesting under one or more other subsections or by common law principles.

- (A) *Six Months - Building Permits.* Pursuant to NCGS 160D-1111, a building permit expires six (6) months after issuance unless work under the permit has commenced. Building permits also expire if work is discontinued for a period of twelve (12) months after work has commenced.
- (B) *One Year - Other Local Development Approvals.* Pursuant to NCGS 160D-403(c), unless otherwise specified by this section, statute, or local ordinance, all other local development approvals expire one year after issuance unless work has substantially commenced. Expiration of a local development approval does not affect the duration of a vested right established as a site-specific vesting plan, a multi-phase development plan, a development agreement, or vested rights established under common law.
- (C) *Two to Five Years - Site Specific Vesting Plans.*
  - (1) *Duration.* A vested right for a site-specific vesting plan shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the Town. The Town may provide those rights regarding a site-specific vesting plan shall be vested for a period exceeding two years, but not exceeding 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. This determination shall be made in the discretion of the Town and shall be made following the process specified by subsection (3) below for the particular form of a site-specific vesting plan involved.
  - (2) *Relationship to Building Permits.* A right vested as provided in this subsection shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed. Upon issuance of building

permit, the provisions of NCGS 160D-1110 and 160D-1113 shall apply, except that the permit shall not expire or be revoked because of the running of time while a vested rights under this section exists.

- (3) *Requirements for Site Specific Vesting Plans.* For the purposes of this section, a “site-specific vesting plan” means a plan submitted to the Town 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 the Town. At a minimum, the plan shall include all the following items, in addition to any site plan requirements for the specific type identified elsewhere in this UDO: the approximate boundaries of the site; significant topographical and other natural features effecting 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. The Town of Atkinson uses existing development approvals, such as a sketch or preliminary plat, a special use permit, or a conditional zoning, to approve 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.
- (4) *Process for Approval and Amendment of Site-Specific Vesting Plans.* If a site-specific vesting plan is based on an approval required by a local development regulation, the Town shall provide whatever notice and hearing is required for that underlying approval. If the duration of the underlying approval is less than two years, that shall not affect the duration of the site-specific vesting established by this subsection. If the site-specific vesting plan is not based on such an approval, a legislative hearing with notice as required by NCGS 160D-602 shall be held. The Town may approve a site-specific vesting plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. The Town shall not require a landowner to waive vested rights as a condition of developmental approval. A site-specific vesting plan shall be deemed approved upon the effective date of the Town’s decision approving the plan or such other date as determined by the Town Council upon approval. An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the Town as follows: Any substantial modification must be reviewed and approved in the same manner as the original approval.
- (D) *Seven Years - Multi-phase Developments.* A multi-phased development shall be vested for the entire development with the Unified Development Ordinance in place at the time a site plan

approval is granted for the initial phase of the multi-phased 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 multi-phased development. For the purposes of this subsection, “multi-phased 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 showing the type and intensity of use of each phase.

- (E) *Indefinite - Development Agreements.* A vested right of reasonable duration may be specified in a development agreement approved under Section 4.4 Development Agreements of this Article.

#### 4.3.5 Continuing Review

Following approval or conditional approval of a statutory vested right, the Town may make subsequent reviews and require approvals by the Town 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. The Town may revoke the original approval for failure to comply with applicable terms and conditions of the original approval or the applicable local development regulations.

#### 4.3.6 Exceptions

- (A) A vested right, once established, precludes any zoning action by a local government that would change, alter, impair prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved vested right, except:
- (1) With the written consent of the affected landowner;
  - (2) Upon findings, after notice and 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, and safety, and welfare if the project were to proceed as contemplated in the approved vested right;
  - (3) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant’s fees incurred after approved by the Town, together with interest as is provided in Section 1.15. Compensation shall not include any diminution in the value of the property that is caused by such action;
  - (4) Upon findings, after notice and an evidentiary hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the Town of the vested right; or
  - (5) 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 Town 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.
- (B) The establishment of a vested right under subsection 4.3.4 (C) or (D), shall not preclude the

application of overlay zoning or other development regulation 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 development regulation by the Town including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise, applicable new regulations shall become effective with respect to property that is subject to a vested right established under this section upon the expiration or termination of the vested rights period provided for in this section. A vested right obtained by permit or other local government approval shall not preclude the use or extinguish the existence of any other vested right or use by right attached to the property.

- (C) Notwithstanding any provision of this section, the establishment of a vested right under this section shall not preclude, change, or impair the authority of the Town to adopt and enforce development regulation provisions governing nonconforming situations or uses.

#### *4.3.7 Miscellaneous Provisions*

- (A) A vested right obtained under this section is not a personal right but shall attach to and run with the applicable property. After approval of a vested right under this section, all successors to the original landowner shall be entitled to exercise such rights.
- (B) Nothing in this section shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

## **SECTION 4.4 DEVELOPMENT AGREEMENTS**

### *4.4.1 Statutory Authorization for Development Agreements*

- (A) In accordance with NCGS 160D-1002, the Town of Atkinson finds:
- (1) Development projects often occur in multiple phases over several years, requiring a long-term commitment of both public and private resources.
  - (2) Such developments often create community impacts and opportunities that are difficult to accommodate within traditional zoning processes.
  - (3) Because of their scale and duration, such projects often require careful coordination of public capital facilities planning, financing, and construction schedules and phasing of the private development.
  - (4) Such projects involve substantial commitments of private capital which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.
  - (5) Such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.

- (6) To better structure and manage development approvals for such developments and ensure their proper integration into local capital facilities programs, the Town needs flexibility to negotiate such developments.
- (B) The Town may enter into development agreements with developers, subject to the procedures of this Part. In entering into such agreements, the Town may 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.
- (C) This Part is supplemental to the powers conferred upon the Town and does not preclude or supersede rights and obligations established pursuant to other law regarding development approvals, site-specific vesting plans, phased vesting plans, or other provisions of law. A development agreement shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the Town's development regulations. When the Town Council approves the rezoning of any property associated with a development agreement executed and recorded pursuant to this Part, the provisions of Section 4.1.5 Town Council Statement apply.
- (D) 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.

#### 4.4.2 Definitions

The following definitions apply in this section:

- (A) *Development.* The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. When appropriate to the context, "development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.
- (B) *Public Facilities.* Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, education, parks and recreation, and health systems and facilities.

#### 4.4.3 Approval of Town Council Required

- (A) The Town of Atkinson may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the Town Council following the procedures specified in Section 4.4.5 Public Hearing.
- (B) The development agreement may, by ordinance, be incorporated, in whole or in part, into any development regulation adopted by the Town. A development agreement may be considered concurrently with a zoning map or text amendment affecting the property and development

subject to the development agreement. A development agreement may be concurrently considered with and incorporated by reference with a sketch plan or preliminary plan required under a subdivision regulation or a site plan or other development approval required under a zoning regulation. If incorporated into a conditional district, the provisions of the development agreement shall be treated as a development regulation in the event of the developer's bankruptcy.

#### **4.4.4 Size and Duration**

The Town of Atkinson may enter into a development agreement with a developer for the development of property as provided in this Part for developable property of any size. Development agreements shall be of a reasonable term specified in the agreement.

#### **4.4.5 Public Hearing**

Before entering into a development agreement, the Town shall conduct a legislative hearing on the proposed agreement. The notice provisions applicable to zoning map amendments shall be followed for this hearing. The notice for the public hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained.

#### **4.4.6 Content and Modification**

- (A) A development agreement shall, at a minimum, include all the following:
- (1) A description of the property subject to the agreement and the names of its legal and equitable property owners.
  - (2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.
  - (3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.
  - (4) A description of public facilities that will serve the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development. In the event that the development agreement provides that the Town shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards.
  - (5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions agreed to by the developer that exceed existing laws related to protection of environmentally sensitive property.
  - (6) A description, where appropriate, of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare. A description, where

appropriate, of any provisions for the preservation and restoration of national registered historic structures.

- (B) A development agreement may also provide that the entire development or any phase of it be commenced or completed within a specified period of time. If required by ordinance or in the agreement, the development agreement shall provide a development schedule, including commencement dates and interim completion dates at no greater than five year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to Section 4.4.8 but must be judged based upon the totality of the circumstances. The developer may request a modification in the dates as set forth in the agreement.
- (C) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement. A local or regional utility authority may also be made a party to the development agreement.
- (D) The development agreement also may cover any other matter, including defined performance standards, not inconsistent with this Ordinance. 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 local government pursuant to NCGS 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.
- (E) Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement. What changes constitute a major modification may be determined by ordinance adopted pursuant to Section 4.1.1 or as provided for in the development agreement.
- (F) Any performance guarantees under the development agreement shall comply with Section 10.4.4 Guarantees.

#### **4.4.7 Vesting**

- (A) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.
- (B) Except for grounds specified in Section 4.4.8 (E), the Town may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.
- (C) In the event State or Federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the Town may modify the affected provisions, upon a finding that the change in State or Federal law has a fundamental effect on the development agreement. This

section does not abrogate any vested rights otherwise preserved by law.

#### **4.4.8 Breach and Cure**

- (A) Procedures established pursuant to Section 4.4.3, Approval of Town Council Required, may require periodic review by the UDO Administrator or other appropriate officer of the Town, at which time the developer shall demonstrate good faith compliance with the terms of the development agreement.
- (B) If the Town finds and determines that the developer has committed a material breach of the agreement, the Town shall notify the developer in writing setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination and providing the developer a reasonable time in which to cure the material breach.
- (C) If the developer fails to cure the material breach within the time given, then the Town unilaterally may terminate or modify the development agreement, provided the notice of termination or modification may be appealed to the Board of Adjustment in the manner provided by Section 4.5.1 Appeals.
- (D) An ordinance adopted pursuant to Section 4.1.5 or the development agreement may specify other penalties for breach in lieu of termination, including, but not limited to, penalties allowed for violation of a development regulation. Nothing in this Article shall be construed to abrogate or impair the power of the Town to enforce applicable law.
- (E) A development agreement shall be enforceable by any party to the agreement notwithstanding any changes in the development regulations made subsequent to the effective date of the development agreement. Any party to the agreement may file an action for injunctive relief to enforce the terms of a development agreement.

#### **4.4.9 Amendment or Termination**

Subject to the provisions of Section 4.4.6 (E), a development agreement may be amended or terminated by mutual consent of the parties.

#### **4.4.10 Change of Jurisdiction**

- (A) Except as otherwise provided by this Article, any development agreement entered into by the Town before the effective date of a change of jurisdiction shall be valid for the duration of the agreement or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the Town assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.
- (B) The Town, in assuming jurisdiction, may modify or suspend the provisions of the development agreement if the Town determines that the failure of the Town to do so would place the residents of the territory subject to the development agreement or the residents of the Town, or both, in a condition dangerous to their health or safety, or both.

#### 4.4.11 Recordation

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

#### 4.4.12 Applicability of Procedures to Approve Debt

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

### SECTION 4.5 APPEALS, VARIANCES, AND INTERPRETATIONS

#### 4.5.1 Appeals

- (A) *Standing.* Any person who has standing may appeal an administrative decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal. A notice of appeal shall be considered filed with the Town Clerk when delivered to the Town Hall, and the date and time of filing shall be entered on the notice by the town staff.
- (B) *Judicial Challenge.* A person with standing may bring a separate and original civil action to challenge the constitutionality of the Ordinance or that it is ultra vires, preempted, or otherwise in excess of statutory authority without filing an appeal under subsection (A).
- (C) *Notice of Decision.* The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (D) *Time to Appeal.* The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice pursuant to NCGS 160D-403(b) given by first class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.
- (E) *Record of Decision.* The official who made the decision shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (F) *Stays.* An appeal of a notice of violation or other enforcement order stays enforcement of the

action appealed from and accrual of any fines assessed, unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for development approvals to use such property; in these situations, the appellant or town may request and the Board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

- (G) Alternative Dispute Resolution. The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution.

#### 4.5.2 Variances

- (A) An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Town Clerk in the Town Hall. Applications shall be handled in the same manner as applications for development approvals.
- (B) When unnecessary hardships would result from carrying out the strict letter of the Ordinance, the Board of Adjustment shall vary any of the provisions of the Ordinance upon a showing of all the following:
- (1) Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability. The Board shall adopt separate standards when hearing reasonable accommodations request.
  - (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
  - (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.
- (C) No change in permitted uses may be authorized by variance. Appropriate conditions may be

imposed on any variance, provided that the conditions are reasonably related to the variance. Any other development regulation that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this subsection.

- (D) A variance may be issued for an indefinite duration or for a specified duration only.
- (E) The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

#### **4.5.3 Interpretations**

- (A) The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Administrator, they shall be handled as provided in the Section 4.5.1 Appeals.
- (B) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator in the Town Hall. The application shall contain sufficient information to enable the board to make the necessary interpretation.
- (C) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the map boundary rules as established in this UDO shall apply. Where uncertainties continue to exist after application of the above rules, appeal may be taken to the Board of Adjustment as provided in this Article.
- (D) Interpretations of the location of floodway and floodplain boundary lines may be made by the Floodplain Administrator as provided in the Flood Damage Prevention Ordinance section of this UDO.

#### **4.5.4 Requests to be Heard Expediently**

The Board shall hear and decide all applications, appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with the Quasi-Judicial Procedure section of this Article, and obtain the necessary information to make sound decisions.

#### **4.5.5 Burden of Proof in Appeals and Variances**

- (A) When an appeal is taken to the Board of Adjustment in accordance with Section 4.5.1 Appeals, the Administrator shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.
- (B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the

conclusions set forth in the Section 4.5.2 Variances as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

## SECTION 4.6 QUASI-JUDICIAL PROCEDURES

### *4.6.1 Hearing Required on Appeals And Applications*

- (A) Before making a decision on an appeal or an application for a variance or special use permit, or a petition from the planning staff to revoke a special use permit, the Town Council acting as the Board of Adjustment, shall hold a hearing on the appeal or application.
- (B) Subject to Subsection (C), the hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify. All persons presenting evidence or arguments shall be sworn in by the Chairperson prior to the presentation of any evidence or arguments Section 4.6.6 Oaths.
- (C) The Town Council acting as the Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.
- (D) Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, variances, or any other quasi-judicial decision.

### *4.6.2 Notice of Hearing*

The Administrator shall give notice of any hearing required by Section 4.6.1 as follows:

- (A) Notice of evidentiary hearings conducted pursuant to this Article shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by this Ordinance. In the absence of evidence to the contrary, the town must rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

The Board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the Board is not then present, the hearing shall be continued until the next regular Board meeting without further advertisement.

- (B) In the case of special use permits, notice may be given to other potentially interested persons by publishing a notice in a newspaper having general circulation in the area one (1) time not less than 10 nor more than 25 days prior to the hearing.

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

#### **4.6.3 Administrative Materials**

The UDO Administrator shall transmit to the Board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the Board prior to the hearing if at the same time they are distributed to the Board, a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board at the hearing.

#### **4.6.4 Presentation of Evidence**

The applicant, the Town, and any person who would have standing to appeal the decision shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the Board. Objections regarding jurisdictional and evidentiary hearing issues, including but not limited to, the timeliness of an appeal or the standing of a party, may be made to the Board. The Board Chair shall rule on any objections and the Chair's ruling may be appealed to the full Board. These rulings are also subject to judicial review pursuant to NCGS 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

#### **4.6.5 Appearance of Official, New Issues**

The official who made the decision or the person currently occupying that position if the decision-maker is no longer employed by the Town, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.

#### **4.6.6 Oaths**

All persons who intend to present evidence to the permit-issuing board, rather than arguments only, shall be sworn in. The Chairperson of the Board or any member acting as Chairperson and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

#### **4.6.7 Subpoenas**

The Board making a quasi-judicial decision under this Article, through the Chairperson, or in the Chairperson's absence anyone acting as Chairperson, may subpoena witnesses and compel the production

of evidence. To request issuance of a subpoena, the applicant, the Town, and any person with standing may make a written request to the Chairperson explaining why it is necessary for certain witnesses or evidence to be compelled. The Chairperson shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chairperson shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chairperson may be immediately appealed to the full Board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

#### ***4.6.8 Modification of Application at Hearing***

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

#### ***4.6.9 Record***

- (A) Accurate minutes shall be kept of all hearings required by Section 3.2.2, and such minutes shall be kept for at least two years. A transcript is not required.
- (B) Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the Town for at least two years.

#### ***4.6.10 Appeals in Nature of Certiorari***

When hearing an appeal pursuant to NCGS 160D-947 or any other appeal in the nature of certiorari, the hearing shall be based on the record and the scope of review shall be as provided in GS 160D-1402(k).

#### ***4.6.11 Voting***

The concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

#### ***4.6.12 Decisions***

The Board shall determine contested facts and make its decisions within a reasonable time. When hearing an appeal, the Board may reverse or affirm (wholly or partly) or may modify the decision appealed from

and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the Board's determination of contested facts and their application to the applicable standards, and be approved by the Board and signed by the Chairperson or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board or such other office or official as this Ordinance specifies. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify to the Town that proper notice has been made and the certificate shall be deemed conclusive in the absence of fraud.

#### ***4.6.13 Judicial Review***

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

## **SECTION 4.7 ENFORCEMENT**

### ***4.7.1 Complaints, Investigation, Inspection***

Upon receipt of a complaint, report, or observance that a violation of this UDO exists, the UDO Administrator shall investigate the complaint to make a determination upon its validity. Complaints shall be submitted as a written complaint signed and dated by the complainant.

The UDO Administrator may periodically make inspections and investigations of premises at a reasonable hour per NCGS 160D-403(e) to ensure that the premises is still in compliance with the UDO. As a result of the inspection, if the UDO Administrator finds a violation, he may take appropriate action to bring the property into compliance with the issuance of a Notice of Violation.

### ***4.7.2 Notice of Violation***

- (A) When the UDO Administrator determines work or activity has been undertaken in violation of the Unified Development Ordinance or other local development regulations or any State law delegated to the Town for enforcement purposes in lieu of the State or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation shall be posted on the property. The UDO Administrator shall certify to the Town that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by NCGS 160D-1123 or NCGS 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the Board of Adjustment pursuant to NCGS 160D-405.

- (B) Notices of Violation shall include the following:
- (1) Identify the date on which the violation was observed, and the enforcement officer who observed the violation.
  - (2) Identify which section of the UDO has been violated and what the specific violation is.
  - (3) State what must take place for the violation to be brought into compliance.
  - (4) Include the date on which compliance shall be achieved and any date of scheduled re-inspection.
  - (5) Inform the violator of their right to appeal.
  - (6) State the Town's intent to pursue civil penalties in the event that compliance has not been achieved and disclaim that civil penalties are accruing.
  - (7) Include pictures of the violation.

#### ***4.7.3 Stop Work Orders (Building Inspections)***

Whenever any work or activity subject to regulation pursuant to this Ordinance or other applicable local development regulation or any State law delegated to the Town for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefore, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the Town that the order was delivered, and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by NCGS 160D-1112 and 160D-1208, a stop work order may be appealed pursuant to NCGS 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor. The Town of Atkinson Building Inspector or authorized representative of the Building Inspections Department shall issue Stop Work Orders.

#### ***4.7.4 Remedies and Civil Penalties***

Any development regulation adopted pursuant to NC General Statutes Chapter 160D may be enforced as provided in NCGS 160A-175 & NCGS 14-4. Violations of this Ordinance subject the offender to a civil penalty of \$100 per day that the violation exists. Specifically, violations may be enforced in any manner established in NCGS 160A-175 (c), (d), (e), or (f), but not limited to these methods, as determined by the UDO Administrator. The UDO Administrator is encouraged to have discussions pertaining to Civil Penalties with the Town of Atkinson Attorney prior to the issuance of a NOV and the commencement of enforcement. The Town of Atkinson may bring a civil action within the courts of Pender County to recover penalties as a debt. The Town of Atkinson may apply to the appropriate division of the General Court of Justice for an Injunction or Order of Abatement.

## ARTICLE 5. NONCONFORMITIES

### SECTION 5.1 CONTINUATION OF NONCONFORMING SITUATIONS AND USES

Nonconforming situations and uses that were otherwise lawful on the effective date of this Ordinance may be continued, subject to the restrictions and qualifications set forth in this Article.

### SECTION 5.2 NONCONFORMING LOTS

- (A) When a nonconforming lot can be used in conformity with all of the regulations (other than the area or width requirements) applicable to the district in which the lot is located, such a use may be made a use by right. Otherwise, the nonconforming lot may be used only in accordance with a variance.

### SECTION 5.3 EXTENSION OR ENLARGEMENT OF NONCONFORMING SITUATIONS

- (A) Except as specifically provided in this subsection, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.
- (B) Subject to paragraph (D) & (E) of this Section, a nonconforming use may be extended throughout any portion of an existing completed building, that, when the use was made nonconforming by this Ordinance, was manifestly designed, or arranged to accommodate such use. However, nonconforming uses may not be extended to additional buildings or to land outside the original building, regardless of if the building is already in existence on the property.
- (C) A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., quarry) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming, if 10 percent or more of the earth products had already been removed at the effective date of this Ordinance. The combination/recombination of lots does not extend the nonconformity to the boundary of any newly created lot lines, the nonconformity only exists within the boundary of the pre-existing lot lines.
- (D) Physical alteration of structures (additions), the occupancy of existing but unused structures, or the placement of new structures on open land require a special use permit from the Board of Adjustment. The Board of Adjustment must find in their quasi-judicial hearing that the addition of any new structures is necessary to allow for the use to continue and with the absence of such structure, the use would be at significantly more jeopardy of ceasing to exist with the absence of the proposed structure. Additional structures must fully require with the UDO.
- (E) Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovation i.e., work estimated to cost more than 50 percent of the appraised value of the structure to be renovated (and not required by the partial or total destruction of a structure [see paragraph H]) may be done pursuant to a special use permit issued

by the Board of Adjustment. The Board of Adjustment shall issue such a permit if it finds that the work will not result in a violation of any other paragraphs of this section or make the property more incompatible with the surrounding neighborhood.

- (F) Notwithstanding paragraph (D), any structure used for single-family residential purposes and maintained as a nonconforming use may be replaced with a similar structure of a larger size, so long as the replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to yard size and setback requirements. In particular, a manufactured home may be replaced with a larger manufactured home, and a "single wide" manufactured home may be replaced with a "double wide." This paragraph is subject to the limitations stated in Section 5.5, Abandonment or Discontinuance of Nonconforming Situations.
- (G) A structure that is nonconforming in any respect or a structure that is used in a nonconforming manner may be reconstructed or replaced if partially or totally destroyed, subject to the following restrictions:
- (1) The total amount of space devoted to a nonconforming use may not be increased, except that a larger, single family residential structure may be constructed in place of a smaller one and a larger manufactured home intended for residential use may replace a smaller one;
  - (2) The reconstructed building may not be more nonconforming with respect to dimensional restrictions such as yard requirements, height limitations, or density requirements, and such dimensional nonconformities must be eliminated if that can reasonably be accomplished without unduly burdening the reconstruction process or limiting the right to continue the nonconforming use of such building;
  - (3) The reconstructed building may not enclose areas that were previously unenclosed, even though those areas were used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent or more of the perimeter of the area is marked by a permanently constructed wall or fence.
- (H) Except for single-family residential, any other reconstruction or replacement that goes beyond but is not limited to the pre-existing building footprint, use, or intensity shall require a special use permit from the Board of Adjustment.

## SECTION 5.4 CHANGE IN KIND OF NONCONFORMING USE

A nonconforming use may be changed to a conforming use. Thereafter, the property may not revert to a nonconforming use. A nonconforming use that changes to a conforming use on a nonconforming lot, does not change the nonconforming lot to be a conforming lot.

## SECTION 5.5 ABANDONMENT OR DISCONTINUANCE OF NONCONFORMING SITUATIONS

- (A) When a nonconforming use is discontinued for a consecutive period of 180 days the property involved may thereafter be used only for conforming purposes, except as provided in paragraph

- (B) of this subsection. The fact that services or utilities may have never been removed or ceased existence on the property and payment for such services has not ceased, does not qualify as the continuance of the use.
- (B) The Board of Adjustment may issue a special use permit to allow a nonconforming use that has been discontinued for more than 180 consecutive days to be reinstated if it finds that discontinuance resulted from factors that, for all practical purposes, were beyond the control of the person maintaining the nonconforming use. Qualifying factors include global pandemics, natural disasters, fires, and floods, but is not limited to such. In the event that the use is affected by disaster, fire or flood, proper documentation needs to be provided as well as evidence supporting a good faith effort to reestablish the use prior to the expiration of the 180-day period. Proper documentation includes but is not limited to insurance claims, reports, photos, statements.
- (C) If the principal activity on a property where a nonconforming situation other than a nonconforming use exists is discontinued for a consecutive period of 180 days that property may thereafter be used only in conformity with all of the regulations applicable to the district in which the property is located.
- (D) For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this subsection, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building or one space in a nonconforming manufactured home park for 180 days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building or manufactured home park as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter. And so, if a manufactured home is used as a nonconforming use on a residential lot where a conforming residential structure also is located, removal of that manufactured home for 180 days terminates the right to replace it.
- (E) When a structure or operation made nonconforming by this Ordinance is vacant or discontinued at the effective date of this Ordinance, the 180-day period for purposes of this subsection begins to run at the effective date of this Ordinance.

# ARTICLE 6. DEVELOPMENT APPLICATION APPROVAL & SPECIAL USE PERMIT PROCEDURES

## SECTION 6.1 ADMINISTRATIVE APPROVALS AND DETERMINATIONS

(A) *Development Approvals.* To the extent consistent with the scope of regulatory authority granted by NCGS Chapter 160D, no person shall commence or proceed with development without first securing any required development approval from the Town of Atkinson. A development approval shall be in writing and contain a provision that the development shall comply with all applicable State and local laws. The Town may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued. 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. An easement holder may also apply for development approval for such development as is authorized by the easement.

(B) *Determinations and Notice of Determinations.* The UDO Administrator or his designee is designated as the staff member charged with making determinations under this Unified Development Ordinance. The UDO Administrator shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the determination from the date a sign providing notice that a determination has been made is prominently posted on the property that is the subject of the determination, providing the sign remains on the property for at least ten days. The sign shall contain the words "Zoning Decision" or "Subdivision Decision" or similar language for other determinations in letters at least six (6) inches high and shall identify the means to contact an official for information about the determination. Posting signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner, applicant, or person who sought the determination. Verification of the posting shall be provided to the staff member responsible for the determination.

(C) *Duration of Development Approval.* A development approval issued pursuant to this Ordinance shall expire one year after the date of issuance if the work authorized by the development approval has not been substantially commenced. If after commencement, the work or activity is discontinued for a period of 12 months after commencement, the development approval shall immediately expire. The time periods set out in this subsection shall be tolled during the pendency of any appeal. No work or activity authorized by any development approval that has expired shall

- thereafter be performed until a new development approval has been secured. Nothing in this subsection shall be deemed to limit any vested rights.
- (D) *Changes.* After a development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval of proposed changes or deviations has been obtained. The Town shall follow the same development review and approval process required for issuance of the development approval in the review and approval of any modification of that approval.
- (E) *Inspections.* The UDO Administrator may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the Town at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.
- (F) *Revocation of Development Approvals.* In addition to initiation of enforcement of enforcement actions under Section 4.7, development approvals may be revoked by the Town issuing the development approval by notifying the holder in writing stating the reasons for the revocation. The Town 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. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable Town of Atkinson development regulation or any State law delegated to the Town for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to Section 4.5.1. If an appeal is filed regarding a development regulation adopted by the Town pursuant to NCGS Chapter 160D, the provisions of Section 4.5.1 (F) regarding stays shall be applicable.
- (G) *Certificate of Occupancy.* The Town of Atkinson may, upon completion of work or activity undertaken pursuant to a development approval, make final inspections and issue a certificate of compliance or occupancy if staff finds that the completed work complies with all applicable State and local laws and with the terms of the approval. No building, structure, or use of land that is subject to a building permit required by Article 11 of Chapter 160D shall be occupied or used until a certificate of occupancy or temporary certificate pursuant to NCGS 160D-1116 has been issued.

## SECTION 6.2 NO OCCUPANCY, USE, OR SALE OF LOTS UNTIL REQUIREMENTS FULFILLED

Issuance of a development permit authorizes the recipient to commence the activity resulting in a change in use of the land or (subject to obtaining a building permit) to commence work designed to construct, erect, move, or substantially alter building or other substantial structures or to make necessary improvements to a subdivision. However, the intended use may not be commenced, no building may be occupied, and in the case of subdivisions, no lots may be sold until all of the requirements of this

Ordinance and all additional requirements imposed pursuant to the issuance of a special use permit have been complied with.

## SECTION 6.3 APPLICATIONS TO BE COMPLETE

- (A) All applications for development approvals must be completed before the Town of Atkinson is required to consider the application.
- (B) An application is complete when it contains all of the information that is necessary for the Town of Atkinson to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this Ordinance. Additionally, an application shall not be complete without payment for any accompanying fees required by the Town.
- (C) The Administrator shall make every effort to develop application forms, instructional sheets, checklists, or other techniques or devices to assist applicants in understanding the application requirements and the form and type of information that must be submitted. In cases where a minimal amount of information is necessary to enable the Administrator to determine compliance with this Ordinance, such as applications for zoning permits, development approvals to construct single-family or two-family houses, or applications for sign permits, the Administrator shall develop standard forms that will expedite the submission of the necessary plans and other required information. These forms may be reviewed and updated as deemed necessary by the Administrator.

## SECTION 6.4 PRE-APPLICATION STAFF CONSULTATION

In an effort to provide applicants with an efficient level of service, prior to application submittal, applicants are encouraged but not required to have a pre-application meeting with the Administrator to discuss the project and how this Ordinance applies to it. This meeting will also provide an opportunity to answer any questions related to the application itself including specifics of the submittal requirements and what makes an application complete.

## SECTION 6.5 STAFF CONSULTATION AFTER APPLICATION SUBMITTED

- (A) Upon receipt of a formal application for a development approval, the Administrator shall review the application and confer with the applicant to ensure that he understands the Administrator's interpretation of the applicable requirements of this Ordinance, that he has submitted all the information that he intends to submit, and that the application represents precisely and completely what he proposes to do.
- (B) If an application is for a special use permit or subdivision plat approval, the Administrator shall place the application on the agenda of the appropriate board when the Administrator has certified that it is a complete application. The Administrator will not place the application until he has certified that it is complete. Incomplete applications will not be placed on the agenda of the appropriate board.
- (C) The applicant's submission of an incomplete application does not constitute acceptance of the application by the Town of Atkinson. An application is accepted for review once the Administrator

has made such a determination. The Administrator may provide confirmation of acceptance to the applicant or keep records showing when the application is deemed to be accepted.

## SECTION 6.6 APPLICATIONS TO BE PROCESSED EXPEDITIOUSLY

Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary costs on the appellant or applicant, the Town shall make every reasonable effort to process appeals and permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this Ordinance.

## SECTION 6.7 AUTHORIZING USE OR OCCUPANCY BEFORE COMPLETION OF DEVELOPMENT UNDER DEVELOPMENT APPROVAL

- (A) In cases when, because of weather conditions or other factors beyond the control of the development approval recipient (exclusive of financial hardship), it would be unreasonable to require the development approval recipient to comply with the landscaping requirements of this Ordinance prior to commencing the intended use of the property or occupying any buildings, the Administrator may authorize the commencement of the intended use or the occupancy of buildings (insofar as the requirements of this Ordinance are concerned) if the permit recipient provides a performance bond or other security satisfactory to the Administrator to ensure that all of the requirements of the Ordinance will be fulfilled within a reasonable period (not to exceed 12 months) determined by the Administrator. The amount of the performance guarantee shall be one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued as determined by a cost estimate signed and sealed by a registered landscape architect licensed to practice in the State of North Carolina

## SECTION 6.8 EFFECT OF DEVELOPMENT APPROVAL ON SUCCESSORS AND ASSIGNS

Development approvals authorize the permittee to make use of land and structures in a particular way. Such approvals are transferable. However, so long as the land or structures or any portion thereof covered under an approval continues to be used for the purposes for which the permit was granted, then:

- (A) No person (including successors or assigns of the person who obtained the development approval) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit, and;
- (B) The terms and requirements of the development approval apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the development approval is obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property.

## SECTION 6.9 MAINTENANCE OF COMMON AREAS, PROPERTY, IMPROVEMENTS AND FACILITIES

The recipient of any development approval, or his successor, shall be responsible for maintaining all common areas, property, improvements, or facilities required by this Ordinance or any development

approval issued in accordance with its provisions, except those areas, improvements, or facilities with respect to which an offer of dedication to the public has been made and accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

## SECTION 6.10 SPECIAL USE PERMIT OBJECTIVE AND PURPOSE

Special Uses add flexibility to the UDO. Subject to high standards of planning and design, certain property uses are allowed in the several districts where those uses would not otherwise be applicable. By means of controls exercised through the special use permit procedures, property uses which would otherwise be undesirable in certain districts can be developed to minimize any negative effects they might have on surrounding properties. Approval of a special use permit is made the duty of the Town Board of Commissioners, acting as the Board of Adjustment.

## SECTION 6.11 SPECIAL USE PERMIT PROCEDURE

- (A) Special use permits shall be voted on and decided using the quasi-judicial procedures by the Board of Adjustment outlined in Section 4.6. If the Board of Adjustment votes to approve the Special Use Permit, then a development approval and any applicable permits shall be issued by the Administrator. The petition for a special use permit and the accompanying plans shall be submitted to the Administrator based on the Town of Atkinson annually adopted submittal schedule for Board of Adjustment meetings. Such application shall include all the requirements pertaining to it as specified in this section. The Administrator shall ensure that a public hearing by the Board of Adjustment is advertised for and required mailed notices have been sent, as well as posting of the property, in accordance with Section 4.6.2.
- (B) The special use permit, if approved, shall include approval of plans as may be required and any additional conditions imposed by the Board of Adjustment. In approving the permit, the Board of Adjustment shall find as a specific finding of fact and reflect in their minutes that the use will comply with the following four facts:
  - (1) That the use will not materially endanger the public health, safety, or general welfare if located where proposed and developed according to the plan as submitted and approved;
  - (2) That the use meets all required conditions and specifications;
  - (3) That the use will not adversely affect the use or any physical attribute of adjoining or abutting property, or that the use is a public necessity; and
  - (4) That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located. The special use shall demonstrate conformance to the Town of Atkinson Land Use Plan or other plan in effect at the time and address impacts of the project as required by GS 160D- 703(b).
- (C) In approving the special use permit, the Board of Adjustment may impose reasonable and appropriate conditions in addition and in connection therewith as will, in its opinion, assure that

the use in its proposed location will be harmonious with the area in which it is proposed to be located and with the spirit of this Ordinance. Conditions imposed must be consented to by the applicant or landowner in writing as applicable and recorded with the Pender County Register of Deeds. Conditions and safeguards imposed under this subsection shall not include requirements for which the town does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the town, including without limitation, taxes, impact fees, building design elements within the scope of NCGS 160D-702(b), driveway related improvements in excess of those allowed in NCGS 136-18(29) and NCGS 160A-307, or other authorized limitations on the development or use of land. All such additional conditions shall be entered in the minutes of the meeting at which the special use is granted and also on the special use permit approval, and on the approved plans submitted therewith. All specific conditions shall run with the land. To ensure that such conditions and requirements for each special use will be fulfilled, the Administrator shall ensure that all conditions and requirements have been met prior to issuing any final zoning approval or the issuance of a certificate of occupancy or any type of operation. A performance bond may be posted to obtain final approval if approved by the Administrator.

- (D) Approval shall be reduced to writing to reflect the Board of Adjustments determination of contested facts and their application to the applicable standards. The decision shall be signed by the Chairperson and other duly authorized members of the Board. If the Board of Adjustment denies the special use permit, the Board shall enter the reason for its action in the minutes of the meeting at which the action is taken. Denied special use permits shall be appealed pursuant to NCGS 160D-1402. Appeals shall be filed within the later of 30 days after the decision is effective or after a written copy of it is given in accordance with G.S. 160D-406(j), as specified in NCGS 160D-1405(d). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.
- (E) In addition to the conditions specifically imposed by the Board of Adjustment, special uses shall comply with the height, area, and parking regulations of the zone in which they are located as well as any other use specific requirements that may be listed in this Ordinance.
- (F) In the event of failure to comply with the plans approved by the Board of Adjustment or with any other conditions imposed upon the special use, the development approval shall thereupon immediately become void and of no effect. No building permits for further construction nor a certificate of compliance under this special use shall be issued, and the use of all completed structures shall immediately cease, and such completed structures not thereafter be used for any purpose other than a use-by-right as permitted by the zone in which the property is located.
- (G) Where plans are required to be submitted and approved as part of the application for a special use, modifications of the original plans may be authorized by the Board of Adjustment through the original special use process.
- (H) A special use permit shall become null and void if construction, occupancy, or commencement of the use does not take place 2 years from the date of issuance. The date of issuance is considered as the date that the Board of Adjustment votes to approve the permit.

## SECTION 6.12 SPECIAL USE PERMIT PLAN REQUIREMENTS

The following are required to be shown on all special use permit plans submitted with a special use permit application. Unless deemed to be not required by the Administrator due to the nature of the use, all listed items are required, and special use permit plans/applications shall not be accepted until all items have been addressed. Plans shall be submitted with graphic scales and in sufficient detail to enable the Administrator to ascertain the necessary details of the application.

- (A) Name, address, and phone number of the property owner or his or her agent, and the tax parcel number of the property. The property owner or his or her authorized agent are the only two parties who may initiate a request for a special use permit.
- (B) Hours of business operation, number of employees, business specific rules, summary statement of operation.
- (C) A boundary survey and vicinity map, showing the property's total acreage, zoning classification(s), general location in relation to adjoining streets, railroads and/or waterways, date and north arrow.
- (D) The owner's names and addresses, tax parcel numbers and existing land use(s) of all adjoining properties.
- (E) Proposed use of all land and structures including the number of residential units, if applicable.
- (F) Proposed phasing, if any, and appropriate completion time for each phase and the complete project.
- (G) Proposed number and location of all structures, their approximate area and their approximate exterior dimensions, including building height, including any buffering/landscaped areas.
- (H) All existing easements, reservations, and rights-of-way.
- (I) Delineation of areas located within a regulatory floodplain, as shown on the official Federal Emergency Management Act (FEMA) flood hazard boundary maps for the county.
- (J) Traffic, parking, and circulation plans, showing the proposed location and arrangement of parking spaces and ingress and egress to adjacent streets.
- (K) The location and description of all proposed signage.
- (L) Description/definition of how the property is classified on the Town of Atkinson CAMA Land Use Plan Future Land Use Map.
- (M) Provide complete sentence written responses to how the proposed use relates to the four findings of fact as listed below.
  - (1) That the use will not materially endanger the public health, safety, or general welfare if located where proposed and developed according to the plan as submitted and approved;
  - (2) That the use meets all required conditions and specifications;
  - (3) That the use will not adversely affect the use or any physical attribute of adjoining or

abutting property, or that the use is a public necessity; and

- (4) That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located. The special use shall demonstrate conformance to the Town of Atkinson Land Use Plan or other plan in effect at the time and address impacts of the project as required by GS 160D- 703(b).
- (N) Stormwater drainage plan.
- (O) Existing and proposed topography at five-foot contour intervals or less.
- (P) The existing and proposed location of all water and sewer lines and fire hydrants intended to serve the proposed development.
- (Q) Proposed design/exterior appearance of structures to ensure general consistency with adjacent properties/structures.
- (R) Lighting plan, inclusive of watage and illumination.
- (S) Other requirements as deemed necessary by the Administrator based off the proposed use.

The Board of Adjustment may provide additional requirements as it deems necessary in order to make the proposed project more compatible with adjacent areas and existing or proposed traffic patterns.

# ARTICLE 7 ZONING DISTRICTS

## SECTION 7.1 PURPOSE STATEMENT

In accordance with the requirements of NCGS 160D-703 that zoning regulation be by districts, the Town, as shown on the Zoning Map, is hereby divided into the following districts which shall be governed by all the uniform use and dimensional requirements of this Ordinance.

The purposes of establishing the zoning districts are:

- To implement adopted plans;
- To promote public health, safety, and general welfare;
- To provide for orderly growth and development;
- To provide for the efficient use of resources;
- To facilitate the adequate provision of services.

## SECTION 7.2 INTERPRETATION

Uses in the following districts are either permitted by right or through a special use permit.

- (A) Permitted by Right. Reviewed and approved administratively provided all applicable requirements of the Ordinance have been met.
- (B) *Special Use Permit*. Approved by the Board of Adjustment provided all applicable requirements of the Ordinance have been met and the Board votes to approve such use.

## SECTION 7.3 PRIMARY ZONING DISTRICTS

For the purposes of this Ordinance, the Town of Atkinson is hereby divided into the following primary zoning districts:

- (A) B-1 Central Business District. The B-1 district is intended to provide for development of appropriate uses within the central portion of Atkinson with emphasis on stores, specialized shops, and residential living. Any use which would hinder the pedestrian orientation of the area is prohibited.
- (B) R-12 Residential District. The R-12 district is established as a district in which the principal use of land is for single-family residential purposes and to ensure that residential development served by community/public water and by either private or a community wide sewer system. This should occur at sufficiently low density to maintain a healthy environment.

- (C) GS Green Space. The GS district is established to preserve undeveloped land, conservation areas, environmentally sensitive areas, and conservation of prime agricultural land.

## SECTION 7.4 CONDITIONAL ZONING DISTRICT

A Conditional Zoning District (CZD) allows a site to be developed for a specific land use or for only certain types of uses in the primary zoning district instead of all permitted uses. The CZD allows for greater flexibility in dimensional standards (such as lot sizes and setbacks) upon approval of an overall master plan for the entire development. The district does not require a rigid separation of different land uses. Uses are limited to the uses identified in Table of Permitted/Special Uses. All the site-specific standards and conditions, including a site plan, are incorporated into the zoning district regulations for the CZD. Approval of the site plan will establish all zoning requirements for the subject property.

This negotiated approach to a legislative decision allows maximum flexibility to tailor regulations to a particular site and project. But it also has great potential for abuse both in terms of impacts on individual landowners seeking approval and their neighbors and on the public interests zoning is supposed to promote. Thus, special restrictions have been placed on conditional zoning. Conditional Zoning Districts may only occur at the owner's request and cannot be imposed without the owner's agreement. The individual conditions and site-specific standards that can be imposed are limited to those that are needed to bring a project into compliance with town ordinances and adopted plans and to those addressing the impacts reasonably expected to be generated by use of the site. The town must assure that all of the factors defining reasonable spot zoning are fully considered and that the public hearing record reflects that consideration.

Conditional zoning provides important opportunities to carefully tailor regulations to address the interest of the landowner, the neighbors, and the public. The town may use conditional zoning when it concludes that a particular project should be approved but that the standards in the comparable conventional zoning district(s) are insufficient to protect neighbors or public interests (perhaps because the conventional zoning allows other uses not suitable for the site or dimensional standards inadequate to preserve the neighborhood). Conditional zoning often allows a developer to proceed with a project in a way that addresses site specific concerns of neighbors and the Town of Atkinson. The petitioner must consent in writing to all conditions imposed by the conditional zoning. Failure on the part of any required party to consent to conditions of approval in writing shall make a conditional zoning district approval null and void, and the district shall remain zoned as it was prior to the approval.

## SECTION 7.5 TABLE OF USES

X – Permitted Use      XS – Permitted with Supplemental Regulations  
 S – Special Use      SS – Special Use with Supplemental Regulations  
 Districts in which particular uses are prohibited are indicated by a blank.

Use	R-12	B-1	GS	Supplemental Regulations
ANIMAL SLAUGHTERING AND PROCESSING				
ACCESSORY APARTMENT	X	X		
ACCESSORY BUILDING	X	X		
ACCESSORY USES Incidental to any permitted use	XS	XS		Section 8.2
ADDRESSING SERVICE		X		
ADULT BUSINESSES				
ANIMAL PRODUCTION	S			
CROP PRODUCTION	X			
ALCOHOLIC BEVERAGES, PACKAGED, RETAIL SALE		S		
AMBULANCE SERVICE/RESCUE SQUAD		X		
ANIMAL MEDICAL CARE (incl. kennel operations)	X	X		
APPAREL & ACCESSORY SALES		X		
ASSEMBLIES (Assembly Hall, Armory, Stadium, Coliseum)	S	S		
ASSISTED LIVING FACILITIES		X		
AUCTION SALES (excl. livestock auctioning)		S		
AUTOMATIC TELLER MACHINE		XS		Section 8.3
AUTOMOBILE PARTS & ACCESSORY SALES		X		
AUTOMOBILE AND TRUCK RENTAL		X		
AUTOMOBILE REPAIR AND/OR BODY WORK (excl. commercial wrecking, dismantling or storage of junked vehicles)		S		
AUTOMOBILE SALES, NEW AND USED		S		
AUTOMOBILE SERVICE STATION OPERATIONS AND/OR FUEL SALES		SS		Section 8.4
AUTOMOBILE LAUNDRY/CAR WASH		X		
BAKED GOODS STORES, (on-premises and retail only)		X		
BANK, SAVINGS & LOAN COMPANY AND OTHER FINANCIAL ACTIVITIES		X		

Use	R-12	B-1	GS	Supplemental Regulations
BARBERING & HAIRDRESSING SERVICES		X		
BED AND BREAKFAST INN (includes Boarding House and Tourist Homes)	X	X		
BICYCLE SALES & REPAIR		X		
BOWLING ALLEY		S		
BUILDING SUPPLY (no outside storage)		X		
BUILDING SUPPLY (with outside storage)		XS		Section 8.5
BUS STATION ACTIVITIES		S		
CHILD CARE HOME OR INSTITUTION	X	X		
CHURCH	X	X		
CLINIC SERVICES, MEDICAL & DENTAL		X		
CLUB OR LODGE, fraternal or civic		S		
CONTINUING CARE RETIREMENT COMMUNITITES	S	S		
CONTRACTOR, GENERAL (excl. outside storage of equipment or supplies)				
CONTRACTOR, GENERAL				Section 8.6
CONVENIENCE STORE		X		
CURIO AND SOUVENIR SALES		X		
DAIRY PRODUCTS SALES, ON-PREMISES, RETAIL SALES ONLY		X		
DAY CARE CENTER (kindergarten)	S	X		
DELICATESSEN OPERATION (incl. catering)		X		
DRUG & ALCOHOL TREATMENT CENTER				
DRY CLEANING & LAUNDRY, COMMERCIAL		XS		Section 8.7
DWELLING, SINGLE-FAMILY	X	X		
DWELLING, TWO-FAMILY	X	X		
DWELLING, MULTI-FAMILY		S		
EATING OR DRINKING FACILITIES		X		
EXTERMINATING SERVICE		X		
FAIRGROUND ACTIVITIES		X	X	
FAMILY CARE HOME	XS	XS		Section 8,8
FARM MACHINERY SALES AND SERVICING		X		
FIRE STATION OPERATIONS	X	X		
FLEA MARKET		S		

Use	R-12	B-1	GS	Supplemental Regulations
FLOWER SHOP		X		
FOOD SALES		X		
FORESTRY AND OUTDOOR PLANT NURSERIES		X		
FUNERAL HOME		X		
FUR & LEATHER APPAREL SALES, incl		X		
GAME FARM				
GOLF COURSE	X			
HARDWARE, PAINT & GARDEN SUPPLY SALES		X		
HEALTH CLUB/GYMNASIUM		X		
HISTORICAL PRESERVATION, COMMERCIAL USE		S		
HOME FURNISHING & APPLIANCE SALES		X		
HOME OCCUPATION	X	XS		Section 8.9
HOSPITAL OR SANITARIUM CARE		X		
JANITORIAL SERVICE		X		
KENNEL OPERATIONS, CARE	S	X		
LABORATORY OPERATIONS, MEDICAL OR DENTAL		X		
LABORATORY RESEARCH		X		
LARGE ANIMAL MEDICAL SERVICES	S	X		
LIBRARY	X	X		
LIVESTOCK SALES & AUCTIONING				
LOCKSMITH, GUNSMITH	S	X		
MACHINE TOOL MANUFACTURING OR WELDING		X		
MANUFACTURED HOME, CLASS A, Individual, For Residential Occupancy	S	SS		Section 8.10
MANUFACTURED HOME, CLASS B, Individual, For Residential Occupancy	SS	SS		Section 8.10
MANUFACTURED HOME, Individual, For Office and Exhibition	SS	SS		Section 8.10
MANUFACTURED HOME SALES but excl. any residential occupancy				
MOBILE VENDING		SS		Section 8.11
MOTEL, HOTEL, OR MOTOR COURT OPERATIONS		S		
MONUMENT SALES		X		
MUSEUM (non-public)		S		

Use	R-12	B-1	GS	Supplemental Regulations
NEWSSTAND SALES		X		
NURSERY OPERATIONS (plant)		X		
NURSING HOME (including Home for the Aged and Family Care Unit)				
OFFICE USE of a doctor, dentist, osteopath, chiropractor, optometrist, physiotherapist, or other medically oriented profession		X		
OFFICE USE		X		
OFFICE SUPPLIES & EQUIPMENT SALES AND SERVICE		X		
OPTICIAN SERVICES		X		
OUTDOOR THEATER AND TEMPORARY FACILITIES SUCH AS AMUSEMENTS			S	
PAWN SHOP		X		
PET SALES, excl. kennel activities or outside storage of animals		X		
PHARMACEUTICAL SALES		X		
PLANNED UNIT DEVELOPMENT (PUD)	S			
PHOTOGRAPHY, COMMERCIAL		X		
PLATING				
POST OFFICE		X		
PRIVATE RECREATION CLUB OR SWIMMING CLUB ACTIVITIES NOT OPERATED AS A BUSINESS FOR PROFIT	S	S		
PRINTING & REPRODUCTION		X		
PUBLIC RECREATION (such as community center buildings, parks, playgrounds, and similar facilities operated on a nonprofit basis)	X	X		
PUBLIC OR PRIVATE ELECTRICAL UTILITY STATIONS OR SUBSTATIONS	S	S		
PUBLIC UTILITY WORKS, SHOPS, OR STORAGE YARDS				
QUARRY AND/OR RENDERING OPERATION				
RADIO OR TELEVISION STUDIO ACTIVITIES ONLY		S		
RAILROAD STATION OPERATIONS		X		
RAILROAD YARD OPERATIONS				
RECREATION ACTIVITIES conducted outdoors, private, non-profit		X		

Use	R-12	B-1	GS	Supplemental Regulations
RECREATION OR AMUSEMENT ENTERPRISE conducted outside a building and for profit, and not otherwise listed herein		S		
RECREATION OR AMUSEMENT ENTERPRISE conducted inside a building and for profit, and not otherwise listed herein		S		
RECREATIONAL VEHICLES for temporary use	XS	XS		Section 8.12
RECREATIONAL VEHICLE PARK				
REHABILITATION FACILITY				
RESOURCE EXTRACTION, such as sand pits				
RETAILING OR SERVICING with operations conducted and merchandise stored inside and/or outside a building and not otherwise listed below		X		Section 8.2
RETAILING OR SERVICING with operations conducted and merchandise stored entirely within a building and not otherwise listed herein		X		
RIDING ACADEMY ACTIVITY	X	X		
SALVAGE OPERATION				
SAWMILL OR PLANING ACTIVITIES				
SECOND-HAND & SWAP SHOP SALES		X		
SCHOOL, BUSINESS & COMMERCIAL		X		
SCHOOL, ELEMENTARY, JUNIOR HIGH, AND HIGH SCHOOL		X		
SCHOOL, TRADE OR VOCATIONAL		X		
SHEET METAL FABRICATION				
SPORTING GOODS SHOP		X		
STORAGE, FLAMMABLE IN FIRE DISTRICT				Section 8.13
STORAGE, SELF-SERVICE				
STORAGE, WAREHOUSE				
TAILORING (Dressmaking)		X		
TAXICAB OPERATIONS		S		
TEACHING of Art, Music, Dance, Dramatics, or Other Fine Arts		X		
TELECOMMUNICATION TOWERS		S		
TELEPHONE EXCHANGE OPERATIONS	S	X		

Use	R-12	B-1	GS	Supplemental Regulations
TEMPORARY CONSTRUCTION BUILDING	X			
TEMPORARY HEALTHCARE STRUCTURE			XS	Section 8.14
THEATER PRODUCTIONS, Indoor		X		
THEATER PRODUCTIONS, Outdoor				
TIRE RECAPPING				
TOBACCO SALES WAREHOUSING				
TOBACCO PROCESSING				
TRAILER RENTALS				
TRAVEL AGENCY		X		
TRUCK TERMINAL ACTIVITIES, Repair &Hauling and/or Storage				
UPHOLSTERING OR FURNITURE REFINISHING		X		
VARIETY, GIFT, &HOBBY SUPPLY SALES (new products only)		X		
VENDING MACHINE RENTAL		X		
VETERINARIAN	X	X		
WATER RETENTION PONDS	X	X		
WHOLESALE SALES with operations conducted and merchandise stored entirely within a building and not otherwise listed herein		X		
WILDLIFE REFUGE				
YARD SALES	XS	XS		Section 8.15

## SECTION 7.6 AREA AND HEIGHT REQUIREMENTS

Zoning District	Minimum Lot Size (sq ft)	Minimum Lot Width (ft)	Minimum Front Setback (ft)	Minimum Side Setback (ft)	Minimum Rear Setback (ft)	Maximum Height (ft)
B-1 (Central Business)	15,000	75	20	10	30	35
R-12 (Residential)	12,000	70	25	8	30	35
GS (Green Space)	40,000	200	50	50	50	25

*Note 1: Exceptions to Height Regulations.* The height limitations contained in this section do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys and other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

*Note 2: Corner Visibility.* On a corner lot, within the arc formed by the center lines of the intersecting streets and a line joining

points on such center lines at a distance at eighty (80) feet from their intersection, there shall be no obstruction to vision between a height of three (3) feet and a height of ten (10) feet above the average center line grade of each street.

*Note 3: Fences.* Fences not exceeding a height of four (4) feet shall be exempt from the yard and building setback line requirements of this Ordinance. Fences not exceeding a height of six (6) feet to be erected only in side or rear yards shall be exempt from the yard and building setback line requirements of this Ordinance, provided that no fence exceeding a height of four (4) feet will be constructed within fifteen (15) feet of any street. In all cases, the corner visibility provisions of this Ordinance shall be observed.

*Note5: Visibility at intersections in R-12.* On a corner lot in any residential district, nothing shall be erected, placed, planted, or allowed to grow in such a manner as materially to impede vision between a height of two and a half (2-1/2 ) and ten (10) feet above the centerline grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersection.

# ARTICLE 8. BUFFERS, GENERAL ZONING DISTRICT REGULATIONS, & SPECIFIC SPECIAL USE REQUIREMENTS

## SECTION 8.1 BUFFERS REQUIRED

Required buffer areas shall always be maintained and in good condition. In the event that plantings have died, the developer is responsible for replacement. In the event that the buffer fence is deteriorating, the fence shall be repaired. The Administrator may determine when a required buffer is not being maintained in a satisfactory manner.

## SECTION 8.2 ACCESSORY USES

In B-1, there shall be no open storage as an accessory use. Swimming pools as an accessory use in R-12, districts shall be enclosed by protective fencing not less than four (4) feet in height and should be setback at least five (5) feet from the existing property line.

## SECTION 8.3 AUTOMATIC TELLER MACHINES

Any Automatic teller machine that incorporates or utilizes a drive-in lane must have its site design plan and proposed traffic circulation and parking plan approved by the Town Board. The plans must be approved prior to construction of the drive-in facility. Automatic teller machines shall be allowed as an accessory use.

## SECTION 8.4 AUTOMOBILE SERVICE STATION AND/OR FUEL SALES

Automobile service stations and fuel sales shall be a special use in the B-1 district provided the following conditions, along with any additional conditions required by the Board of Aldermen, are met:

- (A) The service station is limited in function to dispensing gasoline, oil, grease, antifreeze, tires, batteries, and automobile accessories directly related to motor vehicles; to washing, polishing and servicing motor vehicles, only to the extent of installation of the above-mentioned items; and to selling at retail the items customarily sold by service stations including propane.
- (B) The service station shall provide a screen planting and/or fence along the property lines that abut residential properties. Lighting facilities shall be arranged and of such nature that nearby residential properties are not disturbed.
- (C) Proper ingress and egress shall be provided both internally and at all proposed driveways.

Automobile service stations located within the town shall have no fuel pump or tank located within twelve (12) feet of any street right-of-way or property line.

## SECTION 8.5 BUILDING SUPPLIES

Building supplies in open storage shall be permitted, provided it is enclosed by a fence not less than six (6) feet in height.

## SECTION 8.6 CONTRACTOR, GENERAL (WITH OUTSIDE STORAGE OF EQUIPMENT AND SUPPLIES)

Building supplies and equipment shall be permitted, provided it is enclosed by a fence not less than six (6) feet in height.

## SECTION 8.7 DRY CLEANING AND COMMERCIAL LAUNDRY

Such establishments shall be permitted when only oil, gas, or electricity is used for heat. Screening and filtering devices shall be used to prevent the emission of smoke, dust, fumes, odors, or steam into the atmosphere.

## SECTION 8.8 FAMILY CARE HOMES

In accordance with NCGS 160D-907, Persons with disabilities shall have the opportunity to live in a normal residential environment. Homes with support and supervisory personnel that provide room and board, personal care, and habilitation services in a family environment for no more than 6 resident persons with disabilities shall be permitted. Family care homes shall not be located within ½ mile of another existing family care home. Family care homes with more than 6 persons require a special use permit and are still required to meet the ½ mile distance requirement.

## SECTION 8.9 HOME OCCUPATION.

Shall be permitted only as a use that is clearly a customary, incidental, and secondary use of a residential dwelling unit and shall be permitted subject to the following limitations:

- (A) A home occupation may display a sign of no more than 12 square feet. Printing on both sides of the sign is allowed.
- (B) No mechanical equipment shall be installed or used except such that is normally used for domestic or professional purposes and which does not cause noises or other interference in radio and television reception;
- (C) Not over thirty-five (35) percent of the total floor area or five hundred (700) square feet, whichever is less, shall be used for a home occupation;
- (D) On-street parking shall not be allowed.

## SECTION 8.10 MANUFACTURED HOMES (CLASS A AND B)

All single-wide and double-wide manufactured homes to be placed within Atkinson's planning and zoning

jurisdiction shall have a curtain wall. All manufactured homes within Atkinson's planning and zoning district shall have 180 days from the date the home was placed on the lot to construct a curtain wall. All existing manufactured homes within Atkinson's planning and zoning jurisdiction prior to the effective date of this provision not having a curtain wall shall be considered nonconforming, and will be exempt from the specific requirements of this note. A curtain wall constructed after the effective date of this amendment will be done in accordance with section 47.7 of the State of North Carolina Regulations for Manufactured/Mobile Homes 1995 edition. All manufactured homes to be placed within Atkinson's planning and zoning jurisdiction shall have electrical service within 90 days from the date the home is placed on a lot.

## SECTION 8.11 MOBILE VENDING MACHINES

Mobile vending operations are allowed for a period not to exceed fifteen (15) operating days in a four (4) month period, and shall require Town Board approval.

## SECTION 8.12 RECREATIONAL VEHICLES, FOR TEMPORARY USE

Recreational vehicles occupied for human habitation and intended for permanent residential use must be placed in an approved recreational vehicle park. However, temporary residential use of a recreational vehicle may occur in cases where it serves as a secondary residence while the primary residence is under construction or repair. Four general restrictions for temporary residential use shall apply, as well as specific restrictions and limitations for each. The general restrictions and limitations are as follows:

- (A) R-12 zoning is required
- (B) Location of the recreational vehicle shall be in the rear yard, unless evidence can be provided to Zoning administrator that size constraints or other factors prevent rear yard location.
- (C) The recreational vehicle must be hooked up to residential power, water, and sewer.
- (D) The recreational vehicle can be used as a residence for no more than six (6) months without approval of the Atkinson Board of Aldermen. The Board of Aldermen may grant one (1) additional six (6) month extension if the owner can prove that through no fault of his own, the construction, revocation, or repair of the primary residence will extend beyond the original six (6) month period.

## SECTION 8.13 STORAGE, FLAMMABLE IN FIRE DISTRICT

The permitted use of bulk storage of bottled gas (distribution) or storage of flammables in the Town of Atkinson and shall be regulated by the Pender County Fire Code.

## SECTION 8.14 TEMPORARY HEALTH CARE STRUCTURES

Temporary Health Care Structures are permitted under the authority of NCGS 160D-915. Temporary health care structures are permitted as an accessory use subject to the following standards:

- (A) Placing a temporary family health care structure on a permanent foundation shall not be required or permitted.

- (B) The Town shall consider a temporary family health structure used by a caregiver in providing care for a mentally or physically impaired person on property owned or occupied by the caregiver as the caregiver's residence as a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings.
- (C) The Town shall consider a temporary family health care structure used by an individual who is the named legal guardian of the mentally or physically impaired person a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings in accordance with this section if the temporary family health care structure is placed on the property of the residence of the individual and is used to provide care for the mentally or physically impaired person.
- (D) Only one temporary family health care structure shall be allowed on a lot or parcel of land. The temporary family health care structures under subsections (B) and (C) of this section shall not require a special use permit or be subjected to any other local zoning requirements beyond those imposed upon other authorized accessory use structures, except otherwise provided in this section. Such temporary family health care structures shall comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure.
- (E) Any person proposing to install a temporary family health care structure shall first obtain a permit from the Town. The Town may charge a fee in accordance with the Town's fee schedule. The Town may not withhold a permit if the applicant provides sufficient proof of compliance with this section. The Town may require that the applicant provide evidence of compliance with this section on an annual basis as long as the temporary family health care structure remains on the property. The evidence may involve the inspection by the Town of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation and annual renewal of the doctor's certification.
- (F) Notwithstanding subsection (I) of this section, any temporary family health care structure installed under this section may be required to connect to any water, sewer, and electric utilities serving the property and shall comply with all applicable State law, local ordinances, and other requirements, including Article 11 of the NCGS, as if the temporary family health care structure were permanent real property.
- (G) No signage advertising or otherwise promoting the existence of the temporary health care structure shall be permitted either on the exterior of the temporary family health care structure or elsewhere on the property.
- (H) Any temporary family health care structure installed pursuant to this section shall be removed within 60 days in which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance provided for in this section. If the temporary family health care structure is needed for another mentally or physically impaired person, the temporary family health care structure may continue to be used or may be reinstated on the property within 60 days of its removal, as applicable.
- (I) The Town may revoke the permit granted pursuant to subsection (E) of this section if the permit

holder violates any provision of this section or NCGS 160A-202. The local government may seek injunctive relief or other appropriate actions or proceedings to ensure compliance with this section or NCGS 160A-202.

- (J) Temporary family health care structures shall be treated as tangible personal property for purposes of taxation.

## SECTION 8.15 YARD SALES

Yard sales shall be permitted in B-1 and R-12 districts. Yard sales are limited to a frequency of 12 days per calendar year for any one family unit, location, lot, or premises and may not exceed three consecutive days. Any yard sales which exceed this level of frequency shall be considered a flea market.

## ARTICLE 9. SIGN REGULATIONS

### SECTION 9.1 INTENT

The intent of this Article is to regulate the erection, number, area, height, location, type, and maintenance of signs to promote the health, safety and general welfare of the public and the orderly development of the Town by protecting property values, and providing adequate signage for businesses and motorists, protecting and enhancing the image, appearance and economic vitality of the Town. Any type of sign not currently listed in this Article shall be prohibited.

### SECTION 9.2 SIGN APPLICATION AND APPROVAL PROCEDURE

Signs shall be reviewed and approved administratively by the Planning Board. The following items are required to be submitted to the UDO Administrator when applying for sign permit approval.

- (A) Graphic detail showing the surface area of the sign.
- (B) Size, character, general layout and designs proposed for painted display.
- (C) The method and type of illumination, if any.
- (D) The location proposed for such signs in relation to property lines, zoning district boundaries, if applicable, right-of-way lines, and existing signs.
- (E) If conditions warrant it, the Planning Board or its agent may require such additional information that will enable it to determine if such sign is to be erected in conformance with the requirements of this ordinance.

### SECTION 9.3 PROHIBITED SIGNS

Signs that interfere with the general safety of persons shall not be erected or constructed. These signs include the following:

- (A) Signs determined by the Administrator that obstructs the sight distance at intersections (sight distance triangles and required open areas at intersections).
- (B) Signs that would, by its location, color, or nature, tend to be confused with or obstruct the view of traffic signs or signals, or would be confused with a flashing light of an emergency vehicle; or which might be confused with traffic directional signals and signs.
- (C) Any sign, which interferes with free passage from or obstructs any fire escape, downspout, door, stairway, ladder, or opening intended as a means of ingress or egress or providing light or air.
- (D) Any sign located in such a way as to intentionally deny an adjoining property owner visual access to an existing sign.

- (E) Any sign placed on any curb, sidewalk, post, pole, hydrant, bridge, tree, or other surface located on, over, or across any public street or right-of-way unless authorized by the Town of Atkinson Town Board of Commissioners or the North Carolina Department of Transportation.
- (F) Flashing, fluttering, swinging, rotating signs (except governmental signs and signs, which give time and temperature and other commercial public information message).
- (G) Roof signs, or signs above the parapet of a building.
- (H) Electronic message boards in all Residential districts.
- (I) Portable signs.
- (J) Signs at a use that has ceased to exist shall be removed after 180 days.
- (K) No sign shall be attached to or painted on any telephone pole, light pole, street sign, or other manmade objects not intended to support a sign or any tree, rock, or other natural objects.
- (L) Outdoor Advertising Signs (Billboards).
- (M) Obscene signs are prohibited. No sign shall be erected or maintained which bears or contains statements, words, or pictures of an obscene, offensive character or offensive nature.

## SECTION 9.4 EXEMPT SIGNS & PERMITTED WITHOUT A PERMIT SIGNS

The following signs are exempt from the regulations of this Article. Except for political campaign signs, these signs shall be setback five (5) feet from the edge of the right-of-way and any adjoining property line.

- (A) Signs without lighting, not exceeding two (2) square feet in area and bearing only property numbers, mailbox numbers, post office numbers, and the name of the owner or occupant of the premises.
- (B) Flags and insignia of any government.
- (C) Integral decorative or architectural features of buildings, including signs which denote only the building name, date of erection, or street number.
- (D) Signs directing and guiding traffic and parking on private property.
- (E) Signs which cannot be seen from public roads or right-of-way.
- (F) State required signs, i.e., inspections at service stations, etc.
- (G) Temporary Real Estate Sign. One (1) temporary real estate sign not exceeding ten (10) square feet in area shall be allowed per residential lot. One (1) temporary real estate sign not exceeding thirty-two (32) square feet in area shall be allowed, for commercial or industrial property, and/or for tracts of land five (5) acres or more in area.
- (H) Directional Signs. Directional signs or signs advertising a public/private event located on or off

premises may be displayed on private property not more than one (1) week in advance of the event and not more than two (2) days after the completion of the event. No such sign shall exceed six (6) square feet in area.

- (I) Political Campaign Sign. During election times, signs may be posted during the period beginning on the 30th day before the beginning date of "one-stop" early voting under NCGS 163-227.2 and ending on the 10th day after the primary or election day, persons may place political signs in the right-of-way of the State highway system. They must be removed within the 30-day period after the election. Signs shall not exceed 6 square feet in area. Signs shall not be taller than 3.5 feet. Signs shall be set back a minimum of 3 feet from the edge of the pavement of the road.
- (J) Home Occupation Sign. One (1) sign for each home occupation is allowed but shall not be closer than ten (10) feet to any property line, or road right-of-way, whichever is greater. Such signs shall not project higher than four (4) feet above ground level and shall not exceed four (4) square feet in area. If more than one home occupation exists on the premises, total signage shall be combined into one sign location, the total sign area not to exceed eight (8) square feet in area.

## SECTION 9.5 SIGN COMPUTATION AND MEASUREMENT

### 9.5.1 Surface Area

The surface area of a sign shall be computed as including the entire area within a regular geometric form or combination of regular geometric forms comprising all the display area of the sign and including all of the elements of the mater displayed. Frames and structural members not bearing advertising mater shall not be included in computation of surface area. Freestanding signs shall be computed on the basis of one surface only, provided the opposite surface is identical size and shape, not necessarily in copy or advertisement. The allowable sign area computed by applying the square feet/linear feet multiplier shall cover all signs on the building or structure and freestanding signs, except where high-rise signs are specifically added to the allowable signs.

### 9.5.2 Height

The height of a sign shall be computed as the distance to the highest point of the sign or sign structure, measured from the base of the sign at normal grade. Normal grade shall be considered to be existing grade prior to construction; or newly established grade after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of locating the sign. In cases where normal grade cannot reasonably be determined, sign height shall be computed on the assumption that the elevation of the normal grade is equal to the elevation of the nearest point of the crown of a public street.

## SECTION 9.6 ILLUMINATION STANDARDS

Any illuminated sign shall bear the seal of approval of an electric testing laboratory that is nationally recognized and requires proper installation in accordance with the National Electric Code. All wiring to freestanding signs or to lighting equipment erected after the effective date of this Ordinance must be underground. External lighting directed toward a sign shall be shielded so that it illuminates only the face of the sign and does not shine directly into or cause glare onto a public right of way or any adjacent properties. In addition, such lighting shall be shielded to prevent the direct view of the light source from

any residence, residential district, or public right of way.

## SECTION 9.7 MAINTENANCE STANDARDS

All signs of any nature shall be maintained in a state of good repair. No sign shall be allowed to remain which becomes structurally unsafe, hazardous, or endangers the safety of the public or property. Upon determining that a sign is structurally unsafe, hazardous, or endangers the safety of the public or property, the Administrator or his designated agent shall order the sign to be made safe or removed subject to the enforcement procedures set forth in this Ordinance.

## SECTION 9.8 B-1 BUSINESS DISTRICT SIGNS REQUIRING A PERMIT

### 9.8.1 Freestanding Signs

One (1) freestanding sign is allowed for each principal use. The area of the sign shall not exceed eighty (80) square feet in area and shall not project more than twenty-five (25) feet above ground level. Businesses fronting on more than one (1) public road shall be allowed one (1) freestanding sign for each frontage; provided, however, the combined area of all such signs shall not exceed the allowable sign area of eighty (80) square feet.

### 9.8.2 Wall Signs

Permanent wall signs are allowed for each business provided they do not project higher than the parapet of the building. The location of wall signs is at the option of the owner or tenant. The total allowable sign area for wall signs shall not be more than one (1) square foot per lineal foot of building wall facing a public road. In cases of corner lots, two wall signs may be allowed but the signage must not exceed the lineal square feet requirement of 1 square foot of sign per linear building wall facing a public road.

### 9.8.3 Canopy/Marquee Signs

Signs may be suspended from or attached to the underside of a canopy marquee, provided that the total sign area of such signs does not exceed six (6) square feet in area and a clear distance of at least seven and one-half (7-1/2) feet between the sidewalk and the bottom of such signs is maintained.

### 9.8.4 Off-Premises Advertising Signs

One (1) off-premises advertising sign may be allowed. In which case the sign shall be setback from any road right-of-way or property line by at least fifty (50) feet, shall not be closer than one hundred (100) feet to any residential property line, shall not project higher than twenty-five (25) feet above ground level, shall not exceed two hundred (200) square feet in area and not closer than 1,000 feet to another off-premises advertising sign. The owner's consent must be obtained for the placement of such sign and verified in writing by the Administrator. Off-Premises signs shall not be located in Residential Zoning Districts, regardless of consent.

## SECTION 9.11 RESIDENTIAL SIGNS

Residential developments including single-family and multi-family are permitted to have one freestanding sign per single-family preliminary plat or multi-family site plan at each entrance not to exceed eight (8) feet in height or forty (40) square feet in total area.

# ARTICLE 10. SUBDIVISIONS

## SECTION 10.1 INTRODUCTION

### 10.1.1 General

The contents of this Article shall apply to all types of subdivisions within the municipal limits of the Town of Atkinson except for those types of subdivision that are identified as being exempt from the regulations of this Article.

### 10.1.2 Lot Transfer in Unapproved Subdivisions

Any person who, being the owner or agent of the owner of any land located within the planning and development regulation jurisdiction of the Town of Atkinson, thereafter, subdivides his land in violation of this Article 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 requirements of this Article and recorded in the office of the Pender County Register of Deeds, shall be guilty of a Class 1 misdemeanor. The description by 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 Town of Atkinson may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this Article. Building permits required pursuant to NCGS 160D-1108 may be denied for lots that have been illegally subdivided. In addition to other remedies, the Town of Atkinson may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

The provisions of this Article shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision regulation or recorded with the Pender County Register of Deeds, provided the contract does all of the following:

- (A) Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.
- (B) Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that the Town of Atkinson will not incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.
- (C) Provides that if the approved and recorded final plat does differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.

- (D) Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision regulation or recorded with the Pender County Register of Deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision regulation and recorded with the Pender County Register of Deeds.

### **10.1.3 Dimensional Requirements**

With the exception of Exemptions as identified within this Article or unless explicitly stated within a separate Article of this Ordinance or in a certain section of this Article, all lots created through subdivision and resultant parcels shall comply with the minimum lot size and dimensional requirements for the zoning district in which the subdivision is taking place.

### **10.1.4 Effect of Plat Approval on Dedications**

Per NCGS 160D-806, the approval of a plat does not constitute acceptance by the Town of Atkinson of any street, utilities, or other improvements shown on the plat. However, the Town of Atkinson may by resolution accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes, when the lands or facilities are located within the municipal limits of the Town of Atkinson.

### **10.1.5 State Transportation Improvement Program (STIP)**

If any proposed subdivision includes portions of a project that is identified in the STIP, the developer is encouraged to complete the infrastructure construction of that portion of such project that falls within the boundary of the area to be subdivided and shall plan its transportation network in coordination with NCDOT so that it complies with the proposed STIP project. The Administrator shall consult with the Cape Fear Rural Planning Organization to determine what may applicable be for proposed subdivisions.

### **10.1.6 Subdivision Plan Submittals**

All plans (sketch, preliminary) and final plats shall be prepared by a Professional Land Surveyor currently licensed by the State of North Carolina State Licensing Board for Professional Engineers and Professional Land Surveyors.

### **10.1.7 Subdivision Fees**

Certain types of subdivisions are subject to review fees. These fees are listed in the Town of Atkinson annual Budget Ordinance and can be found on the Town of Atkinson Fee Schedule.

### **10.1.8 Name Duplication**

The name of the subdivision or any streets created within the subdivision shall not duplicate nor closely approximate the name of an existing subdivision or street within the incorporated or unincorporated areas of Pender County.

### **10.1.9 Prohibition of Reserve Strips**

There shall be no reserved strips, spite strips, or isolated pieces of land of minimal non-usable width and area for the purpose of preventing access between properties.

## **SECTION 10.2 PLAT APPROVAL PROCESS**

### **10.2.1 General Procedure for Plat Approval**

No subdivision plat of land with the Town of Atkinson jurisdiction shall be recorded until it has undergone the procedures outlined in this Article. Plats must be reviewed by either the Administrator, Planning Board and Town Board of Commissioners, or combination of all or parts of prior to approval. The Clerk of Superior Court may not order or direct the recording of a plat if the recording would be in conflict with this Article. The Pender County Register of Deeds shall not file or record a plat of a subdivision of land within the jurisdiction of the Town of Atkinson that has not met the requirements of this Article.

### **10.2.2 Final Plat Required for Subdivision & Exempt Subdivisions of Land**

A final plat shall be prepared, approved, and recorded in accordance with the provisions of this Article whenever any subdivision of land takes place, per NCGS 160D-804. Exemptions shall be reviewed by the Administrator to verify that the plat qualifies as an exemption allowed by NCGS 160D-802.

### **10.2.3 Town of Atkinson Approval Required**

No final plat shall be recorded by the Pender County Register of Deeds unless it contains the required signature for the type of division as indicated by this Article.

## **SECTION 10.3 SUBDIVISION TYPES**

### **10.3.1 Exemptions**

The following types of division shall not be subject to the regulations authorized by this Article and shall only be subject to what is specifically required by the individual exemption type. These exemptions shall be approved administratively by the UDO Administrator.

(A) Combination/Recombination Exemption. 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 dimensional standards of the respective zoning district in which the division is taking place as described this UDO.

- (B) 10-Acre Exemption. The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.
- (C) Public Acquisition Exemption. The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
- (D) Single Ownership (2 to 3 Exemption). The division of a tract in single ownership whose entire area is no greater than 2 acres into not more than 3 lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the dimensional standards of the respective zoning district in which the division is taking place as described this UDO.
- (E) *Probated Will Exemption*. 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 NCGS.

### 10.3.2 Expedited Minor Subdivision

Per NCGS 160D-802, the Town of Atkinson will allow for expedited review for Expedited Minor Subdivisions if all requirements are met. Only a plat for recordation is required for these types of minor subdivisions if all criteria listed below is met. These types of divisions are reviewed administratively and approved by the UDO Administrator.

- (A) The tract or parcel to be divided is not considered to be one of the 5 identified exemptions in these regulations.
- (B) No part of the tract or parcel to be divided has been divided under this subsection in the past 10 years.
- (C) The entire area of the tract or parcel to be divided is greater than 5 acres.
- (D) After division, no more than three lots result.
- (E) After division, all resultant lots comply with all the following:
  - (1) Lots must meet the lot size requirements and all other applicable dimensional requirements set forth in this UDO.
  - (2) A permanent means of ingress and egress is recorded for each lot. An Easement Maintenance agreement must be recorded with the Pender County Register of Deeds.

### 10.3.3 Minor Subdivision

Minor Subdivisions shall not include any new streets or road or utility extensions. The intent is to allow for administrative review with Planning Board approval for subdivisions that meet all of the following requirements:

- (A) The proposed division shall abut a state-maintained road.

- (B) The proposed division shall create only five new parcels.
- (C) The minimum dimensions, frontage, and access of all resulting parcels shall comply with standards set forth in this UDO.

### **10.3.4 Major Subdivisions**

A subdivision that does not meet the requirements to be an exemption or any type of identified minor subdivision included in this Article. Major Subdivisions require Sketch, Preliminary and Final approval from the Town of Atkinson Planning Board and Town Board of Commissioners.

## **SECTION 10.4 SUBDIVISION REVIEW PROCEDURES**

### **10.4.1 Exemptions & Expedited Minor Subdivisions**

Digital or paper copies of plans shall be submitted to the UDO Administrator for review to confirm compliance with this UDO. Once the Administrator has made the determination that the plan is in compliance, he shall notify the applicant and instruct them to provide a mylar for signature.

### **10.4.2 Minor Subdivisions**

Six paper copies of the plan shall be submitted to the Administrator at least 30 days prior to the Planning Board meeting at which it will be reviewed. The Administrator shall distribute the plans to the Pender County Environmental Health Department and NCDOT for review to ensure there are no outstanding issues and so that the driveway permit process and improvement permit process may begin. The applicant is strongly encouraged to have valid permits from both NCDOT and Pender County Environmental Health prior to plat approval and the Planning Board may elect to not approve the plat until such permits have been produced in order to ensure that lots being created are sufficient to support a septic system and that have legal access to a NCDOT right-of-way.

The Administrator shall contact the applicant prior to the Planning Board meeting to provide comment and requested revisions to the plan. The applicant shall make the requested revisions and bring a mylar for signature to the Planning Board meeting. If the Planning Board can confirm that the requirements of this UDO have been met it shall sign the final minor subdivision plat.

### **10.4.3 Major Subdivisions**

- (A) *Sketch Plan (Major Subdivision).*
  - (1) Sketch Plan Requirements. Sketch Plan submissions shall be made to the Administrator at least 30 days prior to the Planning Board meeting at which it will be reviewed. The Administrator shall distribute the plans to the Pender County Environmental Health Department and NCDOT for review to ensure there are not any outstanding issues. Sketch Plan submissions shall contain (3) copies of the proposed subdivision containing the following information:
    - (a) Sketch vicinity map showing the location of the subdivision in relation to neighboring tracts, subdivisions, roads, and waterways.

- (b) The boundaries of the tract and the portion of the tract to be subdivided.
  - (c) The total acreage to be subdivided.
  - (d) The existing and proposed uses of the land within the subdivision and the existing uses of land adjoining it.
  - (e) The proposed street layout with approximate pavement and right-of-way width, lot layout and size of lots.
  - (f) The name, address, and telephone number of the owner.
  - (g) The name, if any, of the proposed subdivision.
  - (h) Streets and lots of adjacent developed or platted properties.
  - (i) A zoning classification of the tract and of adjacent properties, to include notation of any adjacent zoning districts in Pender County.
  - (j) Topographic information with contours on at least 2' interval showing existing and proposed surface and subsurface drainage, ditches, ponds, wooded areas, wetlands, etc.
  - (k) Area of 100-year flood and areas of environmental concern.
- (2) Sketch Plan Review Procedure. The Planning Board shall review the sketch plan for general compliance with the requirements of this Article and any other applicable portions of this UDO. The Planning Board shall advise the applicant of the regulations pertaining to the proposed subdivision and the procedures to be followed in the preparation and submission of the preliminary and final plats. One copy of the sketch plan shall be retained as a part of the minutes of the Planning Board and another copy shall be provided to the applicant. Sketch plan approval is valid for a period of 12-months. If approved, the Administrator shall provide the applicant with a written determination stating approval has been given. If disapproved, the Administrator shall provide a written determination that reflects such and the applicant shall undergo the process again if they wish to subdivide.

(B) *Preliminary Plan (Major Subdivision).*

- (1) Preliminary Plan Requirements. Six copies of the preliminary plan (as well as any additional copies which the Administrator determines are needed to be sent to other agencies) shall be submitted to the Administrator at least 45 days prior to the Planning Board meeting. After the preliminary plans have been distributed to the review agencies and comments are received, the Administrator shall place the plan on the Planning Board meeting agenda and schedule for Planning Board to review the preliminary plan. Review agencies will have a time specified by the Administrator to review and comment upon preliminary plans. Preliminary plan approval and any applicable state/federal permits are required to be obtained by the applicant prior to any construction or installation of

improvements may begin. Preliminary plans shall contain the following information.

- (2) *Title Block Requirements.*
  - (a) Property designation.
  - (b) Name of owner.
  - (c) Location (including county township and state).
  - (d) Date or dates survey was conducted and plat prepared.
  - (e) Scale drawing in feet per inch in words or figures and a bar graph.
  - (f) Name, address, registration number and seal of the registered land surveyor who prepared the plat.
  - (g) Sketch vicinity map showing the relationship between the proposed subdivision and surrounding area.
- (3) *General Requirements Shown on Plan.*
  - (a) Corporate limits, township boundaries, county lines if applicable to subdivision tract.
  - (b) The names, addresses, and telephone numbers of all owners, registered land surveyors, land planner, architects, landscape architects, and professional engineers responsible for the subdivision.
  - (c) The registration numbers and seals of the professional engineers.
  - (d) North arrow and orientation.
  - (e) The boundaries of the tract or portion thereof to be subdivided distinctly and accurately represented with all bearings and distances shown.
  - (f) Names of adjoining property owners.
  - (g) The name of any adjoining subdivision of record or those under review.
  - (h) Minimum building setback lines.
  - (i) The zoning classifications of the tract to be subdivided and adjoining properties.
  - (j) Existing property lines on the tract to be subdivided.
  - (k) Existing buildings or other structures, watercourses, railroads, bridges.
  - (l) Proposed lot lines, lot and block numbers and approximate dimensions.

- (m) Lots numbered consecutively throughout the subdivision.
  - (n) Wooded areas, marshes, swamps, out-crops, ponds or lakes, streams or stream beds, and other natural features affecting the site.
  - (o) The exact location of SFHA from FEMA maps.
  - (p) Base flood elevations.
  - (q) 404 Wetlands delineated.
- (4) *Street Requirements Shown on Plan.*
- (a) Proposed streets with names.
  - (b) Existing and platted streets on adjoining properties.
  - (c) Right-of-way locations and dimensions.
  - (d) Pavement widths.
  - (e) Approximate grades.
  - (f) Design engineering data for all corners and curves.
  - (g) Typical Street cross sections.
  - (h) Utility and other types of easements.
  - (i) Trails, if applicable.
  - (j) Natural buffers.
  - (k) Bike/pedestrian pathways.
  - (l) Open space areas.
  - (m) Reserved by owner areas.
- (5) *Utility Plans.*
- (a) Sanitary sewer.
  - (b) Storm sewer.
  - (c) Other drainage facilities, if any.
  - (d) Water distribution lines.
  - (e) Natural gas lines.
  - (f) Telephone lines.

- (g) Electric lines.
  - (h) Illustration of connections to existing systems, showing line sizes, the location of fire hydrants, blowoffs, manholes, force mains, and gate valves.
  - (i) Profiles based upon mean sea level datum for sanitary sewers and storm sewers.
- (6) *Site Calculations.*
- (a) Acreage in total tract to be subdivided.
  - (b) Acreage in parks and recreation areas and other nonresidential uses.
  - (c) Size of the smallest lot in the subdivision.
  - (d) Linear feet in streets.
  - (e) The name or location of any buildings within the proposed subdivision or within any contiguous property that is located on the US Department of Interior National Register of Historic Places.
  - (f) Topographic map with contour intervals if required by the Administrator.
  - (g) Building envelopes if required by the Administrator.
- (7) Preliminary Plan Review Procedures. The Planning Board shall review the preliminary plan at its regularly scheduled meeting, which follows the receipt of comments from the appropriate agencies as provided to the Administrator. The Planning Board shall, in writing, approve or disapprove the preliminary plan within 60 days of its consideration of the plan. If the Planning Board approves the preliminary plan, it shall retain one (1) copy of the plan for its minutes and transmit one (1) copy of the plan to the owner with its determination. The Administrator shall assist the Planning Board in issuing this determination in accordance with the Development Approval standards set forth in NCGS 160D-403(a). An approval for the preliminary plan runs with the land show on the plan per NCGS 160D-104. Preliminary plans are approved for a time period of 12-months, the Planning Board may grant one 12-month extension.

If the preliminary plan is disapproved, the subdivider may make the recommended changes and submit a revised preliminary plan or appeal in the manner established by NCGS 160D-1403 to the Town Board of Commissioners.

If the Planning Board does not make a written recommendation within 60 days after its first consideration of the plan, the plan shall be reviewed and the decision for approval or denial shall be made by the Administrator. If the decision is made by the Administrator, he has the same privilege as the Planning Board to grant a one-time 12-month extension.

Preliminary Plan approval authorizes the subdivider to begin making necessary improvements upon the land for subdivision including the installation of streets and

infrastructure provided that all required State or Federal permits have been obtained by the subdivider.

- (8) Required Preliminary Certifications. Preliminary plans shall be accompanied by the following certification letters in order to be approved by the Planning Board. Certification of proposed utilities from the Pender County Health Director or from the North Carolina Department of Environmental Quality, NCDOT approval of right-of-way design (not a Built to Standards Letter or Acceptance Letter).

(C) *Final Plat.*

- (1) Final Plat Requirements. Upon approval of the preliminary plan by the Planning Board, the subdivider may proceed with the preparation of the final plat, and the installation of or arrangements for required improvements in accordance with the approved preliminary plan and the requirements of this Article. Prior to approval of a final plat, the subdivider shall have installed the improvements specified in this Article or guarantee their installation as provided in this Article herein. Neither the Planning Board nor Town Board of Commissioners will accept a final plat for review unless accompanied by written notice from the Administrator acknowledging compliance with the performance guarantee standards of this Article.

The final plat shall constitute only that portion of the preliminary plat, which the subdivider proposes to record, and develop at that time; such portion shall conform to all requirements of this Article. The subdivider shall submit the final plat, so marked, to the Administrator at least 30 days prior to the Planning Board meeting at which it will be reviewed. The final plat for the first stage of the subdivision shall be submitted not more than 12 months after the date on which the preliminary plat was approved, unless an extension has been granted then it shall be 12 months from the date of the extension; otherwise, such approval shall be null and void.

The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in G.S. 47-30 and the Standards of Practice for Land Surveying in North Carolina.

Six (6) paper copies of the final plat shall be submitted, once reviewed by the Planning Board, the applicant shall prepare the mylar copy for the Town Board of Commissioners meeting. The Planning Board shall review the plat and either recommend approval or disapproval of the final plat. If the Planning Board recommends approval, the Administrator shall inform the applicant and instruct them to provide a mylar copy of the final plat and place the proposed final plat upon the next agenda of the Town of Atkinson Town Board of Commissioners meeting.

During its review of the final plat, the Planning Board may appoint an appropriate consultant to confirm the accuracy of the final plat (if permitted by the Town of Atkinson Town Board of Commissioners). If substantial errors are found, the consultant fees incurred shall be charges to the subdivider and the plat shall not be recommended for approval until such errors have been corrected and the Town of Atkinson can confirm that

the consultant has received payment. Failure of the Planning Board to act on a subdivision application within sixty (60) days after its first review of the final plat shall constitute grounds for the plat to be placed upon the agenda of the Town Board of Commissioners.

If the final plat is approved, the Mayor shall sign the final plat so that it may be recorded in the Pender County Register of Deeds. The Mayor may allow the Administrator to sign the final plat as well.

If the final plat is disapproved by the Town Board of Commissioners, disapproval shall be stated in writing, specifying the provision of this Article with which the final plat does not comply. The Administrator may prepare this written decision. If the final plat is disapproved, the subdivider may make such changes as will bring the final plat into compliance and resubmit same for reconsideration by the Planning Board and Town Board of Commissioners. Appeal of the disapproval may be made in the manner set forth by NCGS 160D-1403.

If the final plat is approved by the Town Board of Commissioners, a paper copy shall be kept by the Administrator and the applicant shall record the mylar copy. The subdivider shall file the approved final plat with the Register of Deeds of Pender County within 90 days of approval, otherwise such approval shall be null and void.

The final plat shall be of size suitable for recording with the Pender County Register of Deeds and shall be at a scale of not less than one (1) inch equals two hundred (200) feet. Maps may be placed on more than one (1) sheet with appropriate match lines.

- (2) *Title Block Requirements.*
  - (a) Property designation.
  - (b) Name of owner.
  - (c) Location.
  - (d) Date or dates survey was conducted and plat prepared.
  - (e) Scale drawing in feet per inch in words or figures and a bar graph.
  - (f) Name, address, registration number and seal of the registered land surveyor who prepared the plat.
  - (g) Sketch vicinity map showing the relationship between the proposed subdivision and surrounding area.
- (3) *General Requirements Shown on Plat.*
  - (a) Corporate limits, township boundaries, county lines if applicable to subdivision tract.

- (b) The names, addresses, and telephone numbers of all owners, registered land surveyors, land planner, architects, landscape architects, and professional engineers responsible for the subdivision.
  - (c) The registration numbers and seals of the professional engineers.
  - (d) North arrow and orientation.
  - (e) The boundaries of the tract or portion thereof to be subdivided distinctly and accurately represented with all bearings and distances shown.
  - (f) The exact boundary lines of the tract to be subdivided, full dimensioned by lengths and bearings, and the location of existing boundary lines of adjoining parcels.
  - (g) Names of adjoining property owners.
  - (h) The name of any adjoining subdivision of record or those under review.
  - (i) Minimum building setback lines.
  - (j) The zoning classifications of the tract to be subdivided and adjoining properties.
  - (k) Existing property lines on the tract to be subdivided.
  - (l) Lots numbered consecutively throughout the subdivision.
  - (m) The exact location of SFHA from FEMA maps.
  - (n) Base flood elevations.
  - (o) 404 Wetlands delineated.
- (4) *Street Requirements Shown on Plat.*
- (a) Proposed streets with names.
  - (b) Existing and platted streets on adjoining properties.
  - (c) Right-of-way locations and dimensions.
  - (d) Pavement widths.
  - (e) Design engineering data for all corners and curves.
  - (f) Street names.
  - (g) Street maintenance agreements.
  - (h) Evidence of NCDOT or Town of Atkinson approval of proposed streets.
  - (i) Utility and other types of easements.

- (j) Trails, if applicable.
  - (k) Natural buffers.
  - (l) Bike/pedestrian pathways.
  - (m) Open space areas.
  - (n) Reserved by owner areas.
- (5) *Site Calculations.*
- (a) Acreage in total tract to be subdivided.
  - (b) Acreage in parks and recreation areas and other nonresidential uses.
  - (c) Size of the smallest lot in the subdivision.
  - (d) Linear feet in streets.
  - (e) The name or location of any buildings within the proposed subdivision or within any contiguous property that is located on the US Department of Interior National Register of Historic Places.
  - (f) Topographic map with contour intervals if required by the Administrator.
  - (g) Building envelopes if required by the Administrator.
- (6) Required Final Plat Documents. The following documents are required to be presented at the time of recording of the final plat. Certification documents related to infrastructure may be satisfied with the posting of a Performance Guarantee.
- Improvement Permits from Pender County Environmental Health.
  - NCDOT Built to Standards Letter or Basic Letter.
  - NCDEQ Erosion and Sediment Control Permit.
  - NCDEQ Stormwater Permit.
  - Homeowners Association Documentation, as applicable.
  - Certification for the installation and testing of water lines.
- (7) Final Plat Street Disclosure Statement. All streets shown on the final plat shall be designated in accordance with NCGS 136-102.6 and designation as public shall be conclusively presumed an offer of dedication to the public. Where streets are dedicated to the public but not accepted into the State System, a statement explaining the status of the street shall be included on the final plat.

#### **10.4.4 Guarantees**

- (A) The completion, installation, and dedication of all improvements shall be required prior to final plat approval by the Town of Atkinson.

(B) *Required Improvements.*

- (1) *Permanent Survey Reference Markers.* Permanent survey reference markers shall be installed in all subdivisions in accordance with North Carolina General Statutes 160D and the following requirements.
- (2) *Permanent Concrete Monuments.* Permanent concrete monuments four (4) inches in diameter or square, three (3) feet long, shall be placed at not less than two (2) corners of the subdivision, provided that additional monuments shall be placed where necessary so that no point within the subdivision lies more than five hundred (500) feet from a monument. Two or more of the required monuments shall be designated as control corners. The top of each monument shall have an indented cross metal pin, or metal plate to identify the location of the point. All monuments shall be shown on the final plat.
- (3) *Steel or Iron Markers.* Steel or iron markers shall be set at all lot and property corners and at all other survey points not marked by monuments. Such markers shall be set at points of curve, points of tangency, reference points, and points of intersection. Survey markers shall be at least three-fourths (3/4) inches in diameter, and shall be sunk vertically into the ground until the top is approximately four (4) inches above the finished grade, except in sidewalks, streets, and other similar surfaces where the markers shall be flush with such surface.

## SECTION 10.5 TOWNHOUSE SUBDIVISIONS

### **10.5.1 General Requirements**

Townhouse subdivisions are those in which the party wall serves as the property line. The townhouse may be subdivided out as the townhouse itself serving as the subdivided piece of real property with all remaining area being common open space or the townhouse subdivision may be done in a manner in which the townhouse dwelling with a small portion of land in front of the home, behind the home, or a

combination of both being part of the piece of real property. Townhouses that are subdivided and include portions of land in front of the home, behind the home or a combination of both shall be on a lot a minimum of 2,000 square feet.

Townhomes shall be setback a minimum of 20 feet from all parking areas and rights-of-way.

Common open space for townhouse developments shall be deeded to a homeowners association. Open space areas shall include but are not limited to parking, buffers, neighborhood amenities, cluster box mail units, and off-site septic areas. Easements shall be shown within the common open space for the aforementioned components of the open space that serve the townhome development.

The Homeowners Association Documents shall be presented to the Town Council at the time of final plat review.

### **10.5.2 Homeowners/Property Owners Associations**

A homeowners/property owners association shall be established for each subdivision containing private infrastructure such as roads, common areas, or open space. The covenants, conditions, and restrictions shall specify lot owner's responsibilities for maintenance of common facilities and shall provide for assessments to finance all maintenance activities. Final plats for subdivisions containing common areas or open space will not be approved until the subdivider's homeowner's association documents have been submitted and approved by the Planning Board.

### **10.5.3 Open Space**

Open space shall be composed of usable area and shall be accessible to all residents of the neighborhood. Open space areas shall not be fragmented into small parcels that do not allow for use, enjoyment, or recreation activities and should be laid out in large parcels.

All major subdivisions shall provide a minimum of 30% of the total land area as open space. No more than half of required open space shall be comprised of 404 wetlands, Special Flood Hazard Areas, or other areas of environmental concern.

### **10.5.4 Land Suitability**

- (A) Land which has been determined by the Planning Board on the basis of engineering or other expert surveys to pose an ascertainable danger to life or property by reason of its unsuitability for the use proposed shall not be platted for that purpose, unless and until the subdivider has taken the necessary measures to correct said conditions and to eliminate said dangers.
- (B) Areas that have been used for disposal of solid waste shall not be subdivided unless tests by the Pender County Health Department, a structural engineer and a soils expert determine that the land is suitable for the purpose proposed.
- (C) All subdivision proposals shall be consistent with the need to minimize flood damage and shall conform with the Town of Atkinson Flood Damage Prevention Ordinance.
- (D) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and

water systems located and constructed to minimize flood damage.

## SECTION 10.6 MINIMUM DESIGN STANDARDS

### 10.6.1 Minimum Required Improvements

Each subdivision shall provide the following improvements at a minimum.

- (A) Graded and paved streets.
- (B) Adequate drainage systems.
- (C) Paved sidewalks.
- (D) Installation of water and sewer/septic infrastructure. Infrastructure is to be connected to either a Pender County service provider or the Town of Atkinson as applicable and feasible.
- (E) Street signs indicating the name of the street for emergency services purposes.

### 10.6.2 Design Standards

- (A) **Public and Private Streets.** All proposed streets shall be designed and constructed to meet the minimum construction and design requirements as established by the North Carolina Department of Transportation for subdivision streets.
  - (1) When determined by the Planning Board that it is necessary for street access to be provided to adjacent property, proposed streets shall be extended by dedication to the boundary of such property and a temporary cul-de-sac shall be constructed.
  - (2) The dedication of half streets of less than the NC Department of Transportation requirements at the perimeter of a new subdivision shall be prohibited. If circumstances render this impractical, adequate provision for the concurrent dedication of the remaining half of the street shall be furnished by the subdivider. Where there exists a half-street in an adjoining subdivision, the remaining half shall be provided by the proposed subdivision.
  - (3) Signs shall be provided for streets and certificates of occupancy will not be issued until such signage has been verified.
  - (4) A tangent of at least 100 feet shall be provided between reverse curves on all subdivision streets.
- (B) **Cul-De-Sacs.**
  - (1) Permanent dead-end streets shall not exceed 500 feet in length unless necessitated by topography and shall be provided with a turnaround having a minimum right-of-way radius of fifty (50) feet, a minimum stabilized surface radius of thirty-five (35) feet. In the event NCDOT requires cul-de-sacs to meet more stringent requirements, the cul-de-sacs shall comply with what is required by NCDOT. Cul-de-sacs should not be used to avoid access and interconnectivity with existing streets.

- (2) Temporary cul-de-sacs shall be provided and constructed as necessary for stub streets or when phases of subdivisions are being platted and the temporary cul-de-sac shall be located upon the street that extends into the next phase and shall be removed at the time the subsequent phase receives preliminary approval. Temporary cul-de-sacs shall be constructed with a minimum of 6" ABC stone and their design shall receive approval from the Pender County Fire Marshall.
- (C) Alleys. Alleys may be utilized in Planned Unit Developments to provide creative planned access to lots. Alleys may also be utilized for commercial or industrial purposes. Alleys shall be a minimum of 25' in width with a 16' paved travel lane, the pavement shall be constructed to the same standards that NCDOT requires for a street. Alleys do not satisfy frontage requirements.
- (D) Intersections. Streets shall be designed to intersect at right angles when possible. No intersection shall be less than 60 degrees.
- (1) Property lines at intersections should be set to allow for appropriate sight distance for the vehicles on either side of the street.
  - (2) Offset intersections are to be avoided unless an exception is granted by NCDOT. A minimum length of 200 feet should separate intersections that cannot be aligned between survey centerlines.
  - (3) Intersections with arterials, collectors, and thoroughfares shall be at least one thousand (1,000) feet from centerline to centerline, or more if required by NCDOT.
- (E) Sidewalks. Sidewalks shall be required on one side of the street and may be required by the Planning Board to be located on both sides of the street. Sidewalks shall be a minimum of 5 feet in width and have a minimum of 4 inches thickness of concrete. The sidewalk may be located within the right-of-way if permitted by NCDOT. Sidewalks shall be designed in accordance with the standards of the Americans with Disabilities Act. Sidewalks shall be a minimum of 6 inches thickness at driveway crossings. Sidewalks shall be maintained by the homeowner's association.
- (F) Blocks. The lengths, width, and shapes of blocks shall be determined with due regard to: provision of adequate building sites suitable to the special needs of the type of use contemplated; zoning requirements as to lot sizes and dimensions; needs for vehicular and pedestrian circulation, control and safety of street traffic; limitations and opportunities of topography; and convenient access to water areas.
- (1) Blocks shall not be less than 400 feet nor more than 1,320 feet in length.
  - (2) Blocks shall have sufficient width to allow two tiers of lots minimum depth except where single-tier lots are required to separate residential development from through vehicular traffic or another type of use, or when abutting a water area.
- (G) Lots. All lots shall have frontage on an existing NCDOT right-of-way or private right-of-way that meets the requirements of this UDO and belong to a homeowner's association or are part of the

NCDOT maintenance system. Lots permitted for creation under certain subdivision exemptions of this UDO may be exempt from this requirement.

- (1) Flag lots shall be prohibited.
  - (2) Side lot lines shall be substantially at right angles.
  - (3) Lots that have access from internal subdivision streets shall have no direct access onto the existing right-of-way that serves the subdivision.
  - (4) Lots shall be located outside of the SFHA whenever possible, the Planning Board may determine when lots shall be relocated to meet this requirement.
- (H) *Access.* Subdivisions in excess of 30 lots shall provide a secondary point of access.
- (I) *Stormwater.* Adequate drainage systems shall be provided and shall be certified by the North Carolina Department of Environmental Quality and by the Pender County Health Department. The subdivider shall also satisfy the requirements of NCDOT.
- (J) *Wheelchair Ramps.* In accordance with Chapter 136, Article 2A, Section 136-44.14, all street curbs in North Carolina being constructed or reconstructed for maintenance procedures, traffic operations, repairs, correction of utilities, or altered for any reason shall provide wheelchair ramps for the physically handicapped at all intersections where both curb and gutter and sidewalks are provided and at other major points of pedestrian flow.
- (K) *Utilities.* Each lot shall be provided with an approved water supply in accordance with 15A NCAC 18A.1700. Each lot shall be provided with an approved sewage disposal system whether that be a septic tank on-site or off-site or sewer service. When existing sewer service is within 1,000 feet of the development, the subdivider shall be required to make the extension and connect to the existing sewer in place of providing septic tanks.

### 10.6.3 Easements

Easements shall be provided as follows:

- (A) *Utility Easements.* Easements for underground or above ground utilities shall be provided, where necessary, across lots or centered on rear or side lot lines and shall be at least 20 feet wide for water and sanitary sewer lines and as required by the companies involved, for telephone, gas, and power lines. The Planning Board will determine whether one (1) easement is sufficient or whether several easements are necessary to accommodate the various facilities and the subdivider shall provide the required easements.
- (B) *Drainage Easements.* Where a subdivision is traversed by a stream or drainage way, an easement shall be provided conforming with the lines of such stream and of sufficient width as will be adequate for the purpose.

### 10.6.4 Private Driveways

Interior lots may be accessed by a driveway platted and recorded as such with provisions for maintenance appearing on the final plat. No driveway may serve more than two (2) lots and driveways shall not be used to circumvent good design practices of the requirement for a street built according to the provisions of this ordinance. Shared driveway easements shall be show on the plat in instances where they are utilized, and it shall be noted that it is the responsibility of the developer for the installation of the shared driveway and responsibility of the property owners for the maintenance of the shared driveway.

## SECTION 10.7 REQUIRED PLAT SIGNATURE BLOCKS & NOTES

### 10.7.1 Minor Subdivision (Type A, Type B), Private Easement Exemption, Exemptions

- (A) Certificate of Ownership and Dedication. I hereby certify that I am the owner of the property shown and described hereon, which is located in the subdivision jurisdiction of the Town of Atkinson and that I hereby adopt this plan of subdivision with my free consent and install and construct all improvements in this subdivision in compliance with the minimum design requirements as established by the Town of Atkinson Unified Development Ordinance. I also accept responsibility for maintenance, ownership, or dedication of any easements created by this plat unless responsibility of such is deeded to a new party. INSERT OWNER SIGNATURE LINE
- (B) Certificate of Survey and Accuracy. I, INSERT LINE, certify that this map was drawn under my direction (or by me) and supervision (or by my supervision) from an actual survey of land (deed description in book, page, etc.), that the error of closure as calculated by latitudes and departures is 1: INSERT LINE; that the boundaries not surveyed are shown as broken lines plotted from information found in Book INSERT LINE Page INSERT LINE; that this plat was prepared in accordance with GS 47-30 as amended. Witness my hand and seal this DATE AND YEAR. INSERT SURVEYOR SIGNATURE LINE
- (C) Certificate of Approval for Recording. I hereby certify that the subdivision plat shown hereon has been found to comply with INSERT APPLICABLE SECTION OF REFERENCE TO UDO (DETERMINED BY ADMINISTRATOR) and is hereby approved for recording in the Office of the Register of Deeds of Pender County. INSERT ADMINISTRATOR SIGNATURE LINE
- (D) Certificate of Approval for Recording (Exemptions). I hereby certify that the subdivision plat shown hereon has been found to be exempt from the Town of Atkinson Unified Development Ordinance per section INSERT APPLICABLE SECTION OF REFERENCE TO UDO (DETERMINED BY ADMINISTRATOR) and is hereby approved for recording in the Office of the Register of Deeds of Pender County. INSERT ADMINISTRATOR SIGNATURE LINE
- (E) Recombination Note. In order for this recombination to be complete, a deed of recombination must be recorded with the Pender County Register of Deeds.
- (F) *Easement Note.* Property owners are responsible for maintenance and upkeep of any easements created by this plat, the Town of Atkinson is not responsible or liable for any easements show upon this plat unless expressly accepted by the Town of Atkinson.

- (G) *Approval Notes.* Note dates of approval from Planning Board, Town Council as applicable to the plat.

### 10.7.2 Major Subdivision Final Plat

- (A) Certificate of Ownership and Dedication. I hereby certify that I am the owner of the property shown and described hereon, which is located in the subdivision jurisdiction of the Town of Atkinson and that I hereby adopt this plan of subdivision with my free consent and install and construct all improvements in this subdivision in compliance with the minimum design requirements as established by the Town of Atkinson Unified Development Ordinance. I also accept responsibility for maintenance, ownership, or dedication of any easements created by this plat unless responsibility of such is deeded to a new party. INSERT OWNER SIGNATURE LINE
- (B) Certificate of Survey and Accuracy. I, INSERT LINE, certify that this map was drawn under my direction (or by me) and supervision (or by my supervision) from an actual survey of land (deed description in book, page, etc.), that the error of closure as calculated by latitudes and departures is 1: INSERT LINE; that the boundaries not surveyed are shown as broken lines plotted from information found in Book INSERT LINE Page INSERT LINE; that this plat was prepared in accordance with GS 47-30 as amended. Witness my hand and seal this DATE AND YEAR. INSERT SURVEYOR SIGNATURE LINE
- (C) NCDOT Street Disclosure Statement. All streets depicted in this subdivision have been offered to the State of North Carolina for dedication to public use, but these streets have not been accepted into the NCDOT road maintenance system. The streets in this subdivision must meet NCDOT residency requirements to be included in the NCDOT road maintenance system. Following the construction of the streets shown in this subdivision, the developer is responsible for petitioning NCDOT for the addition and acceptance of streets shown upon this plat. I certify the streets shown upon this plat have been designed in an acceptable manner according to the current NCDOT Minimum Construction Standards for Subdivision Roads. INSERT NCDOT DISTRICT ENGINEER SIGNATURE LINE.
- (D) Private Street Statement. All streets shown hereon are intended for private use and have been identified for conveyance to a homeowners or property owners association for the subdivision. The developer shall be responsible for maintenance until such streets are conveyed to the homeowners or property owners association in a recorded deed. In the event that the homeowners or property owners association becomes inactive or dissolves, the Town of Atkinson nor NCDOT assumes no responsibility or ownership of the private streets shown in this subdivision. INSERT OWNER/DEVELOPER SIGNATURE LINE
- (E) Drainage Facility Certification. Artificial drainage has been installed in this subdivision according to plans and specifications prepared by INSERT NAME and based upon the requirements of the Pender County Health Department to keep the seasonal high-water table a minimum of 12 inches below the septic tank nitrification lines. Proper landscaping and maintenance of these drainage facilities are the responsibility of the property owners to ensure that septic tank malfunctions do not occur. The Pender County Health Department assumes no responsibility for the design, maintenance, or the guaranteed performance of the artificial drainage measures and their effects.

INSERT DRAINAGE FACILITY CERTIFIER SIGNATURE LINE AND HEALTH DEPARTMENT SIGNATURE LINE.

- (F) Soil Scientist Certification. I, INSERT LINE, certify that I am a licensed Soil Scientist in the State of North Carolina and that the land upon which lots have been created in this subdivision are suitable for supporting a septic system that meets the requirements of the Pender County Health Department. INSERT SOIL SCIENTIST SIGNATURE LINE
  
- (G) Certificate of Approval for Recording. I hereby certify that this subdivision plat shown hereon has been found to comply with the Town of Atkinson Unified Development Ordinance (REFERENCE SECTION OF UDO) and that this plat has been approved by the Town of Atkinson Planning Board (INSERT APPROVAL DATE) for recording in the Office of the Register of Deeds of Pender County. INSERT ADMINISTRATOR SIGNATURE LINE

(H)

## ARTICLE 11. SUBSTANDARD DWELLINGS, ABANDONED STRUCTURES, AND NUISANCE VEHICLES

### SECTION 11.1 PURPOSE

This Article is designed to promote a safe and healthy environment for the citizens of the Town, as well as preserving and protecting properties in violation and the adjacent properties. This Article sets forth standards that citizens and property owners must abide by to achieve a safe and healthy environment. All dwellings, structures, and parcels of land within the jurisdiction of the Town of Atkinson shall comply with this Article.

### SECTION 11.2 AUTHORIZATION

Whenever the Town of Atkinson finds that dwellings or structures are unfit for human habitation or are a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities, the Town may order such dwelling or structure to be repaired, closed or demolished per NCGS 160D-1201.

The enforcement of nuisance, abandoned & junk motor vehicles is authorized by NCGS 160A-303.

### SECTION 11.3 GENERAL STANDARDS

Structures are expected to meet a general level of standards. These standards are measured by examination of defective conditions. Defective conditions are those that render the structure dangerous or injurious to the health, safety, and welfare of the occupants of the structure or neighboring properties or structures, or residents of the Town of Atkinson. Defective conditions include defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; or uncleanliness.

### SECTION 11.4 STRUCTURAL STANDARDS

The following are the minimum structural standards for both dwellings and any other type of structure within the jurisdiction of the Town of Atkinson.

- (A) Walls, floors, roofs, and any other structural member shall not have any portion of, or all of, in a rotted, deteriorated, or damaged (visible or non-visible) state that would compromise the structural integrity.
- (B) Foundations, foundation walls, piers, or other foundation supports shall not be deteriorated or damaged to a point that compromises their supporting strength.

- (C) Stairs, porches, and any appurtenance thereto shall be safe to use and capable of supporting a normal load.
- (D) Adequate and unobstructed entrances for ingress and egress shall be provided for each structure and be of sound condition.
- (E) All components of the structure that are exposed to the weather (all exterior features) shall be designed and maintained to be reasonably weatherproof and watertight.
- (F) There shall be no appurtenances to the structure such as but not limited to a chimney, that is structurally deficient and constitutes a hazard.
- (G) There shall be no exposed earth serving as a floor. No flooring material shall be directly in contact with exposed earth.

## SECTION 11.5 EQUIPMENT AND FACILITIES STANDARDS

Each occupied dwelling and any other type of structure within the jurisdiction of the Town of Atkinson shall provide adequate plumbing, heating, and electrical systems for its occupants and inhabitants. Adequate facilities include plumbing, heating and electrical systems operating in a normal fashion as intended by the design manufacturer. Adequate facilities also include all equipment and facilities required to be present and in good working order within a structure to receive a Certificate of Occupancy and meet NC Building Code.

## SECTION 11.6 HEAT SOURCE REQUIREMENTS

Every dwelling unit leased as rental property shall have, at a minimum, a central or electric heating system or sufficient chimneys, flues, or gas vents, with heating appliances connected, so as to heat at least one habitable room, excluding the kitchen, to a minimum temperature of 68 degrees Fahrenheit measured 3 feet above the floor with an outside temperature of 20 degrees Fahrenheit.

## SECTION 11.7 SOLID WASTE & INFESTATIONS STANDARDS

Both dwellings and structures, and the parcel of land which they occupy shall be maintained to prevent the accumulation of solid waste and the creation of a situation that is conducive to insects, rodents, or other pests. Solid waste includes but is not limited to trash, indoor furniture, household appliances, junk, rubbish, household trash, commercial trash, junk/inoperable boats, golf carts, ATV's, etc. Dwellings and structures shall be provided with an adequate trash receptacle or container to house such items until they may be properly disposed of.

## SECTION 11.8 MOLD

Mold is not addressed or enforced upon by this Article or any other portion of the Town of Atkinson UDO. Mold should be addressed as a civil matter between property owners, inhabitants, occupants, and third parties.

## SECTION 11.9 ALTERNATIVE COMPLIANCE: ABANDONED AND UNOCCUPIED STRUCTURES

In certain circumstances, where minimal deterioration exists, which is less than 20% of the tax value of the structure, the Administrator may allow for alternative methods of compliance for these types of structures. If this alternative method is allowed, the following methods shall be followed. There may be structures within the jurisdiction of the Town of Atkinson that are designed for use or occupancy as a dwelling or non-dwelling, but they may currently be abandoned, unoccupied, or out of service. In these instances, the structure is required to meet all structural standards of this article and to maintain the property to prevent solid waste & infestation from taking place upon the property. When the structure is found to be minimally deteriorated, these structures shall be secured from any type of access from citizens, vagrants, insects, rodents, and pests. Securement may be achieved by the boarding of windows, doors, etc. Prior to the occupancy of this structure, all NC building code requirements shall be met as well as all structural, equipment and facilities, and solid waste and infestations standards must be met.

## SECTION 11.10 INVESTIGATION, COMPLAINT, HEARING

Whenever a petition is filed with the Administrator by observance of a violation by the Administrator or the Town of Atkinson, or by at least five residents of the Town of Atkinson at least 18 years of age that there appears to be a substandard dwelling, structure, or abandoned structure, the Administrator shall investigate the petition to determine the validity of the complaint.

If upon investigation, the Administrator determines the complaint is valid, he shall serve upon the owner and parties in interest a Notice of an Administrative Hearing. The Administrative Hearing shall be not less than 10 days nor more than 30 days after the serving of the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in a hearing before the Public Officer.

### 11.10.1 Notice of An Administrative Hearing: Notice Requirements

- (A) Indicate the violation and the date the violation was observed.
- (B) Include pictures of the violation.
- (C) Include language on how compliance may be reached.
- (D) Include the date, location, and time of when the Administrative Hearing will be held.
- (E) Inform the owner and parties of interest of their right to file an answer to the complaint and appear in person and give testimony at the Administrative Hearing.
- (F) Inform the owner and parties of interest of their right to come into compliance prior to the Administrative Hearing, which would eliminate the need to have the hearing.

### 11.10.2 Methods of Service

Complaints or orders issued by the Administrator under this Article shall be served upon persons either personally or by certified mail. When service is made by certified mail, a copy of the complaint or order may

also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by certified mail, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the jurisdiction at least once no later than the time at which personal service would be required under the provisions of this Article. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

### 11.10.3 Orders

If, after notice and an Administrative Hearing, the Administrator determines that the substandard dwelling, structure, or abandoned structure under consideration is unfit for human habitation or occupancy, the Administrator shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner one of the following orders, as appropriate:

- (A) *Deterioration Order.* If the repair, alteration, or improvement of the substandard dwelling, structure, or abandoned structure can be made at a reasonable cost, less than 50% in relation to the tax value of the structure, the owner, within 90 days, shall repair, alter, or improve the structure to comply with the standards set forth in this Article. The property may be required to be vacated and closed if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the structure subject to be closed and considered unfit for habitation or occupation.
- (B) *Dilapidation Order.* If the repair, alteration, or improvement of the substandard dwelling, structure, or abandoned structure cost more than 50% of the tax value of the structure, and the owner does not intend to repair structure, an order shall be issued instructing the owner to remove or demolish the structure within 90 days. The property shall be vacated and closed once this order has been issued.

### 11.10.4 Appeals of Orders

Appeals shall be made in accordance with the provisions of NCGS 160D-1208.

## SECTION 11.11 FAILURE TO COMPLY

In the event that the owner fails to comply with a Deterioration Order or Dilapidation Order from the Administrator, the following steps shall take place.

### **11.11.1 Exercise Duties and Effectuating the Article**

If the owner fails to repair, alter, improve, remove, or demolish substandard dwellings, structures or abandoned structures that have been given an order and instruction to comply, then the Administrator shall petition to the Town of Atkinson Town Board of Commissioners to adopt an Ordinance instructing the Administrator to effectuate the purpose of this Article. No Ordinance shall be adopted to require demolition until the owner has first been given a reasonable opportunity to bring the structure into conformity. This Ordinance shall be recorded in the Pender County Register of Deeds and shall be indexed in the name of the property owner. Per NCGS 160D-1203.

### **11.11.2 Ordinance for Repair or Closing (Initial Ordinance)**

Upon adoption of the Ordinance by the Town of Atkinson Town Board of Commissioners, the Administrator shall cause the substandard dwelling, structure, or abandoned structure to be repaired, altered, improved, or vacated and closed, depending on the specific language of the Ordinance. The Administrator may determine it necessary to post the structure with a placard that reads "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful. Occupation of this building is a Class 1 misdemeanor." The duty to repair the structure is the responsibility of the property owner. The only action the Administrator will take is posting the structure to be closed.

### **11.11.3 Ordinance for Demolition (Initial Ordinance)**

Upon adoption of the Ordinance by the Town of Atkinson Town Board of Commissioners, the Administrator shall cause the substandard dwelling, structure, or abandoned structure to be demolished or removed, depending on the specific language of the Ordinance. The Administrator shall determine it necessary to post the structure with a placard that reads "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful. Occupation of this building is a Class 1 misdemeanor." The duty to remove or demolish the structure is the responsibility of the property owner. The Administrator may only demolish or remove the structure upon adoption of a Final Ordinance pursuant to the Abandonment of Intent to Repair section of this Article.

### **11.11.4 Abandonment of Intent to Repair (Final Ordinance)**

If the substandard dwelling, structure, or abandoned structure has been vacated and closed for a period of one year pursuant to an Ordinance adopted by the Town of Atkinson Town Board of Commissioners, or after a public officer issues an order or proceedings have commenced under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed as provided in this Article, then the Town Board of Commissioners may find that the owner has abandoned the intent and purpose to repair, alter, or improve the substandard dwelling, structure, or abandoned structure in order to render it fit for human habitation or occupation and that the continuation of the substandard dwelling, structure, or abandoned structure in its vacated and closed status would be inimical to the health, safety, and welfare of the local government in that the substandard dwelling, structure, or abandoned structure would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling that

might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the Town Board of Commissioners may, after the expiration of such one-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- (A) If it is determined that the repair of the structure to render it fit for human habitation or occupancy can be made at a cost not exceeding fifty percent (50%) of the tax value of the structure, the ordinance shall require that the owner either repair or demolish and remove the structure within 90 days.
- (B) If it is determined that the repair of the structure to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the structure, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This Ordinance shall be recorded in the Pender County Register of Deeds and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this Ordinance, the public officer shall effectuate the purpose of the Ordinance.

#### **11.11.5 Failure to Vacate**

If any occupant fails to comply with a posted placard and order to vacate a structure, the Administrator may file a civil action in the name of the Town of Atkinson to remove such occupant as authorized by NCGS 160D-1203(8).

#### **11.11.6 Liens**

- (A) The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of the General Statutes.
- (B) The amount of the cost is also a lien on any other real property of the owner located within the jurisdiction of the Town of Atkinson or within one mile thereof except for the owner's primary residence. The additional lien provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.
- (C) If the structure is removed or demolished by the Administrator, the Town of Atkinson shall sell the materials of the structure, and any personal property, fixtures, or appurtenances found in or attached to the structure, and shall credit the proceeds of the sale against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the Administrator, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the Town of Atkinson to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

## SECTION 11.12 ADDITIONAL NOTICE TO AFFORDABLE HOUSING ORGANIZATIONS

Whenever a determination is made pursuant to this Article that a substandard dwelling, structure, or abandoned structure must be vacated and closed, or removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The public officer or clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition.

## SECTION 11.13 NUISANCE, ABANDONED & JUNK MOTOR VEHICLES

### 11.13.1 Purpose

The Town of Atkinson does not permit the abandonment of motor vehicles on public rights-of-way, public property, or private property within its planning jurisdiction. When the Town of Atkinson finds violations of this section, it may take measures to have such violations removed if necessary. This section does not apply to vehicles in enclosed structures, or vehicles in existence at a lawfully operating establishment, permitted as a use by this Ordinance or approved to operate as a Special Use by the Board of Adjustment, that has these types of vehicles directly associated with such use. For example, abandoned & junked motor vehicles are not directly associated with a retail or office type of use and would not be permitted to exist.

### 11.13.2 Investigation, Determination, Notification

Upon investigation of a complaint or the observation of the presence of abandoned, junked, or nuisance motor vehicles, the Administrator shall take the necessary steps to inform the owner of the parcel or vehicle so that compliance may be reached. When investigating, the Administrator must make the determination that the following factors exist to order its removal.

- (A) The removal of the vehicle would result in the protection of property values.
- (B) The removal of the vehicle is in the interest of the protection of public health and safety.
- (C) Preservation of the character of the community and neighborhood.
- (D) Promotion of the comfort, health, happiness, and emotional stability of area residents.
- (E) The vehicle meets the description as written in the “Definitions” Article of this UDO of either a Abandoned, Junked, or Nuisance Vehicle.

After investigation, if it is determined that the vehicle should be removed, the Administrator shall provide

a written Notice of Violation to the Owner. Notifying the timeline to comply and that failure to comply will result in removal.

### **11.13.3 Removal of Abandoned & Junked Motor Vehicles**

Vehicles that are found to meet the description of either an abandoned, junked or nuisance vehicle may be removed to a storage garage or other area. Vehicles shall not be removed from private property without written consent of the owner, lessee, or occupant of the premises unless the Town of Atkinson Town Board of Commissioners or UDO Administrator deems the motor vehicle to be a nuisance constituting a health and safety hazard.

Any person who requests the Town of Atkinson to remove a motor vehicle from their private property shall sign a document acknowledging that they indemnify the Town against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the Town of Atkinson shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

### **11.13.4 Hearing Procedure**

Regardless of whether the Town of Atkinson tows the vehicle or the Town contracts with another person to remove the vehicle, a hearing procedure shall be provided to the owner. Definitions found in NCGS 20-219.9 apply to these procedures.

- (A) If a person or party is contracted to tow the vehicle and is responsible for the collection of fees, all provisions of Article 7A, Chapter 20 apply.
- (B) If the Town of Atkinson elects to be responsible for the collection of towing fees, it shall do the following.
  - (1) Provide by contract or ordinance for a schedule of reasonable towing fees.
  - (2) Provide a procedure for a prompt fair hearing to contest the towing.
  - (3) Provide for an appeal to district court for that hearing.
  - (4) Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due.
  - (5) Provide a sale procedure similar to that provided in NCGS 44A-4, 44A-5, 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the Town of Atkinson may destroy it.

# ARTICLE 12. FLOOD DAMAGE PREVENTION ORDINANCE

## SECTION 12.1 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND OBJECTIVES

### 12.1.1 Statutory Authorization

Municipal: The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Town Board of Commissioners of the Town of Atkinson, North Carolina, does ordain as follows:

### 12.1.2 Findings of Fact

- (A) The flood prone areas within the jurisdiction of the Town of Atkinson are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (B) These flood losses are caused by the cumulative effect of obstructions, both inside and outside the identified Special Flood Hazard Areas, causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards. These obstructions and occupancy by uses vulnerable to floods may be hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

### 12.1.3 Statement of Purpose

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (C) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that results in damaging increases in erosion, flood heights or velocities;
- (D) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (E) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (F) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and

- (G) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

#### 12.1.4 Objectives

The objectives of this ordinance are to:

- (A) Protect human life, safety, and health;
- (B) Minimize expenditure of public money for costly flood control projects;
- (C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D) Minimize prolonged business losses and interruptions;
- (E) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (F) Minimize damage to private and public property due to flooding;
- (G) Make flood insurance available to the community through the National Flood Insurance Program;
- (H) Maintain the natural and beneficial functions of floodplains;
- (I) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (J) Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

## SECTION 12.2 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“A Zone” is the Special Flood Hazard Area subject to inundation by the 1% annual chance flood where base flood elevations have NOT been determined.

“AE Zone” is the Special Flood Hazard Area subject to inundation by the 1% annual chance flood where base flood elevations have been determined by detailed or limited detailed methods.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports, and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“AH Zone” is the Special Flood Hazard Area with a 1% annual chance of shallow flooding (usually areas of ponding), where average depths are between one (1) and three (3) feet. Base flood elevations derived from detailed hydraulic analyses are shown in this zone.

“Alteration of a watercourse” means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard, or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

“AO Zone” is the Special Flood Hazard Area with a 1% annual chance of shallow flooding (usually sheet flow on sloping terrain) where average depths are between one (1) and three (3) feet. Average flood depths derived from detailed hydraulic analyses are shown in this zone.

“Appeal” means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

“Area of Shallow Flooding” means a designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“Area of Future-Conditions Flood Hazard” means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood based on future-conditions hydrology.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a “Special Flood Hazard Area”, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Community” means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

“Community Rating System (CRS)” means a program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum

floodplain management requirements to develop extra measures to provide protection from flooding.

“Critical facility (also called critical action)” means facilities for which the effects of even a slight chance of flooding would be too great. The minimum floodplain of concern for critical facilities is the 0.2 percent chance flood level. Critical facilities include, but are not limited to facilities critical to the health and safety of the public such as: emergency operations centers, designated public shelters, schools, nursing homes, hospitals, police, fire, and emergency response installations, vital data storage centers, power generation and water and other utilities (including related infrastructure such as principal points of utility systems) and installations which produce, use, or store hazardous materials or hazardous waste.

“Design Flood” See “Regulatory Flood Protection Elevation.”

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Development Activity” means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

“Digital Flood Insurance Rate Map (DFIRM)” means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“Disposal” means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Dry Floodproofing” means a combination of measures that make a building and attendant utilities and equipment watertight and substantially impermeable to floodwater, with structural components having the capacity to resist flood loads. Please refer to Technical Bulletin 3, Requirements for the Design and Certification of Dry Floodproofed Non-Residential and Mixed-Use Buildings, and available from the FEMA.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a special flood hazard area, which may impede or alter the flow capacity of a floodplain.

“Existing building and existing structure” means any building and/or structure for which the “start of construction” commenced before the community entered the NFIP, dated September 22, 2010.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the

initial date of the floodplain management regulations adopted by a community, dated September 22, 2010.

“Expansion to an Existing Manufactured Home Park or Subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

“Flood” or “Flooding” means:

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - (1) The overflow of inland or tidal waters.
  - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
  - (3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

“Flood Boundary and Floodway Map (FBFM)” means an official map of a community, issued by the FEMA, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

“Flood Hazard Boundary Map (FHBM)” means an official map of a community, issued by the FEMA, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the FEMA, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated. (see also DFIRM)

“Flood Insurance Study (FIS)” means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Flood Prone Area” see “Floodplain.”

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Floodplain” means any land area susceptible to being inundated by water from any source.

“Floodplain Administrator” is the individual appointed by the community to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

“Flood-resistant material” means any building product [material, component, or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

“Floodway” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Floodway encroachment analysis” means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirements of the National Flood Insurance Program.

“Freeboard” means the height added to the BFE to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway

conditions, such as wave action, blockage of bridge or culvert openings, precipitation exceeding the base flood, and the hydrological effect of urbanization of the watershed. The BFE plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

“Hazardous Waste Management Facility” means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“Historic Structure” means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (d) Certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program.”

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

“Letter of Map Change (LOMC)” means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- (a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (b) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

- (c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (d) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

"Light Duty Truck" means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (c) Available with special features enabling off-street or off-highway operation and use.

"Lowest Adjacent Grade (LAG)" means the lowest elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

"Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Map Repository" means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products have the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website (<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

“Market Value” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

“New Manufactured Home Park or Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

“Non-Conversion Agreement” means a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk’s or recorder’s stamps and/or notations that the filing has been completed.

“Non-Encroachment Area (NEA)” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map.

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before the effective date of the initial Flood Insurance Rate Map.

“Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck;
- (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use, and

- (e) Is fully licensed and ready for highway use.
- (f) Has no attached deck, porch, or shed, and
- (g) Has quick disconnect sewage, water, and electrical connectors.

For the purpose of this ordinance, “Tiny Homes/Houses” and Park Models that do not meet the items listed above are not considered Recreational Vehicles and should meet the standards of and be permitted as Residential Structures.

“Reference Level” is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zones A, AE, AH, AO, A99. The reference level is the bottom of the lowest horizontal structural member of the lowest floor for structures within Special Flood Hazard Areas designated as Zone VE.

“Regulatory Flood Protection Elevation” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas” where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two feet of freeboard. In “Special Flood Hazard Areas” where no BFE has been established, this elevation shall be at least two feet above the highest adjacent grade.

“Remedy a Violation” means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

“Repetitive Loss” means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

“Repetitive Loss Property” means any insurable building for which two or more claims of more than \$1,000 were paid by the National Flood Insurance Program (NFIP) within any rolling 10-year period, since 1978. At least two of the claims must be more than ten days apart but, within ten years of each other. A RL property may or may not be currently insured by the NFIP.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Salvage Yard” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

“Section 1316” means that section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that FEMA finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

“Severe Repetitive Loss Structure” means any insured property that has met at least one of the following paid flood loss criteria since 1978, regardless of ownership. In either case, two of the claim payments must have occurred within ten years of each other. Multiple losses at the same location within ten days of each

other are counted as one loss, with the payment amounts added together.

1. Four or more separate claim payments of more than \$5,000 each (including building and contents payments); or
2. Two or more separate claim payments (building payments only) where the total of the payments exceeds the current market value of the property.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

“Solid Waste Disposal Site” means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Flood Hazard Area (SFHA)” means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Section 12.3.2 of this ordinance.

“Start of Construction” includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. “Substantial damage” also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement.”

“Substantial Improvement” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Section 12.4.5 of this ordinance.

“Technical Bulletin and Technical Fact Sheet” means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.

“Temperature Controlled” means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

“Variance” is a grant of relief from the requirements of this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Parts IV and V is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation (WSE)” means the height, in relation to NAVD 1988, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

“X Zones” means areas determined to be low to moderate risk flood zones and are located outside the community's delineated Special Flood Hazard Area (SFHA) and include the following:

- (a) Shaded - is the area of moderate flood hazard and can represent:
  - (1) 0.2% annual chance flood hazard area (500-year flood zone),
  - (2) Areas of 1% annual chance flood with average depth less than one (1) foot, or
  - (3) Areas of 1% annual chance flood with drainage areas of less than one (1) square mile

- (b) Unshaded - is the area of minimal flood hazard determined to be outside of the 0.2% annual chance flood (500-year flood zone).

## SECTION 12.3 GENERAL PROVISIONS

### **12.3.1 Lands to Which this Ordinance Applies**

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs), of the Town of Atkinson.

### **12.3.2 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 Pender 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 this 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 Town of Atkinson are also adopted by reference and declared a part of this ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 3 months.

### **12.3.3 Establishment of Floodplain Development Permit**

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Section 12.3.2 of this ordinance.

### **12.3.4 Compliance**

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

### **12.3.5 Abrogation and Greater Restrictions**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

### **12.3.6 Interpretation**

In the interpretation and application of this ordinance, all provisions shall be:

- (A) Considered as minimum requirements;
- (B) Liberally construed in favor of the governing body; and
- (C) Deemed neither to limit nor repeal any other powers granted under State statutes.

### 12.3.7 Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create liability on the part of the Town of Atkinson or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

### 12.3.8 Penalties for Violation

Violation of the provisions of this 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, shall constitute a Class 1 misdemeanor pursuant to NCGS § 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 \$100.00. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Atkinson from taking such other lawful action as is necessary to prevent or remedy any violation.

## SECTION 12.4 ADMINISTRATION

### 12.4.1 Designation of Floodplain Administrator

The Mayor, or his/her designee, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

### 12.4.2 Floodplain Development Application, Permit and Certification Requirements

- (A) *Application Requirements.* Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:
- (1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
    - (a) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
    - (b) The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 12.3.2 or a statement that the entire lot is within the Special Flood Hazard Area;

- (c) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 12.3.2;
  - (d) The boundary of the floodway(s) or non-encroachment area(s) as determined in Section 12.3.2;
  - (e) The Base Flood Elevation (BFE) where provided as set forth in Section 12.3.2; Section 12.4.3; or Section 12.5.4;
  - (f) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
  - (g) The certification of the plot plan by a registered land surveyor or professional engineer.
- (2) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
- (a) Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;
  - (b) Elevation in relation to NAVD 1988 to which any non-residential structure in Zones A, AE, AH, AO, A99 will be floodproofed; and
  - (c) Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.
- (3) If floodproofing, a Floodproofing Certificate (FEMA Form FF-206-FY-22-153) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- (4) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
- (a) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
  - (b) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Section 12.5.2(D)(4) when solid foundation perimeter walls are used in Zones A, AE, AH, AO, A99.
- (5) Usage details of any enclosed areas below the lowest floor.
- (6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- (7) Certification that all other Local, State and Federal permits required prior to floodplain

development permit issuance have been received.

- (8) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Section 12.5.2, subsections (F) and (G) of this ordinance are met.
  - (9) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.
- (B) *Permit Requirements.* The Floodplain Development Permit shall include, but not be limited to:
- (1) A complete description of all the development to be permitted under the floodplain development permit (e.g., house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.) including a cost estimate.
  - (2) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Section 12.3.2.
  - (3) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.
  - (4) The Regulatory Flood Protection Elevation required for the protection of all public utilities.
  - (5) All certification submittal requirements with timelines.
  - (6) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse unless the requirements of Section 12.5.6 have been met.
  - (7) The flood openings requirements, if in Zones A, AE, AH, AO, A99.
  - (8) Limitations of below BFE enclosure uses (if applicable). (i.e., parking, building access and limited storage only).
  - (9) A statement, that all materials below BFE/RFPE must be flood resistant materials.
- (C) *Certification Requirements.*
- (1) *Elevation Certificates.*
    - (a) An Elevation Certificate (FEMA Form 086-0-33) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a

floodplain development permit.

- (b) An Elevation Certificate (FEMA Form 086-0-33) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
  - (c) A final Finished Construction Elevation Certificate (FEMA Form 086-0-33) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. The Finished Construction Elevation Certificate certifier shall provide at least 2 photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least 2 additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" x 3". Digital photographs are acceptable.)
- (2) *Floodproofing Certificate.*
- (a) If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and

certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

- (b) A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/ Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.
- (3) If a manufactured home is placed within Zones A, AE, AH, AO, A99 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Section 12.5.2(C)(2).
- (4) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- (5) Certification Exemptions. The following structures, if located within Zones A, AE, AH, AO, A99, are exempt from the elevation/floodproofing certification requirements specified in items (1) and (2) of this subsection:
  - (a) Recreational Vehicles meeting requirements of Section 12.5.2(F)(1);
  - (b) Temporary Structures meeting requirements of Section 12.5.2(G); and
  - (c) Accessory Structures that are 150 square feet or less or \$4,000 or less and meeting requirements of Section 12.5.2(H).
- (D) *Determinations for Existing Buildings and Structures.* For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement,

repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

### **12.4.3 Duties and Responsibilities of the Floodplain Administrator**

The Floodplain Administrator shall perform, but not be limited to, the following duties:

- (A) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (B) Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, state, and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (C) Notify adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (D) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is maintained.
- (E) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 12.5.6 are met.
- (G) Obtain actual elevation (in relation to NAVD 1988) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Section 12.4.2(C).
- (H) Obtain actual elevation (in relation to NAVD 1988) to which all new and substantially improved

- structures and utilities have been floodproofed, in accordance with the provisions of Section 12.4.2(C).
- (I) Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with the provisions of Section 12.4.2(C).
  - (J) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Section 12.4.2(c) and Section 12.5.2(B).
  - (K) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
  - (L) When BFE data has not been provided in accordance with the provisions of Section 12.3.2, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a federal, state, or other source, including data developed pursuant to Section 12.5.4(B)(3), in order to administer the provisions of this ordinance.
  - (M) When BFE data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Section 12.3.2, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other source in order to administer the provisions of this ordinance.
  - (N) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the BFE, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
  - (O) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
  - (P) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
  - (Q) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the

work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

- (R) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (S) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (T) Follow through with corrective procedures of Section 12.4.4.
- (U) Review, provide input, and make recommendations for variance requests.
- (V) Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of Section 12.3.2 of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (W) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).
- (X) Make substantial improvement and post event damage assessments and determinations:
  - (1) Conduct damage assessments for damaged structures located within the SFHA
  - (2) Complete substantial improvement/damage determinations in accordance with the provisions of Section 12.4.2(D).

#### 12.4.4 Corrective Procedures

- (A) *Stop Work Order:* The community may issue a stop work order, which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise remedied the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to remedy such violation or violations
- (B) *Notice of Violation.* If the community determines that an owner, occupant, applicant or other responsible person has failed to comply with the terms and conditions of a permit, or the provisions of this ordinance, it shall issue a written notice of violation, by certified return receipt mail, to such applicant or other responsible person. Where the person is engaged in activity

covered by this ordinance without having first secured a permit, the notice shall be served on the owner or the responsible person in charge of the activity being conducted on the site. The notice of violation shall contain:

- (1) The name and address of the owner or the applicant or the responsible person;
  - (2) The address or other description of the site upon which the violation is occurring;
  - (3) A statement specifying the nature of the violation;
  - (4) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit or this ordinance and the date for the completion of such remedial action;
  - (5) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed, and;
  - (6) A statement that the determination of violation may be appealed to the community by filing a written notice of appeal within thirty days after the notice of violation (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24-hour notice shall be sufficient).
- (C) *Additional Enforcement Actions.* If the remedial measures described in the Notice of Violation have not been completed by the date set forth for such completion in the Notice of Violation, any one or more of the following enforcement actions may be enacted against the person to whom the Notice of Violation was directed. Before taking any of the following actions or imposing any of the following penalties, the Town of Atkinson shall first notify the owner, applicant or other responsible person in writing of its intended action. The Town of Atkinson shall provide reasonable opportunity, of not less than ten days (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24-hour notice shall be sufficient) to remedy such violation. In the event the applicant or other responsible person fails to remedy such violation after such notice and remedial period, the Town of Atkinson may take or impose any one or more of the following enforcement actions or penalties:
- (1) Termination of utility service and/or withhold or revoke Certificate of Occupancy: The community may terminate utilities and/or refuse to issue and/or revoke a certificate of occupancy for the building or other improvements and/or repairs conducted or being conducted on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise remedy the violation or violations described therein.
  - (2) Suspension, revocation, or modifications of permit: The community may suspend, revoke, or modify the permit authorizing the development project. A suspended, revoked, or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise remedy the violations described therein, provided such permit may be reinstated (upon such conditions as the community may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
  - (3) Civil penalties: Violation of the provisions of this 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 shall constitute a Class 1 misdemeanor pursuant to North Carolina General Statute § 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 \$100.00. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Atkinson from taking such other lawful actions, pursuant to North Carolina General Statute § 153A, 160A, and 160D, as is necessary to prevent or remedy any violation.
  - Enforcement by an appropriate equitable remedy issuing from a court of competent jurisdiction may be pursued if the offender fails to remedy the violation, pays assessed fines, and/or fails to file an appeal within the prescribed period of time. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate.
- (D) *Administrative appeal; judicial review.* Any person receiving a Notice of Violation may appeal the determination of the community, including but not limited to the issuance of a stop work order, the assessment of an administratively-imposed monetary penalty, the suspension, revocation, modification, or grant with condition of a permit by the community upon finding that the holder is in violation of permit conditions, or that the holder is in violation of any applicable ordinance or any of the community's rules and regulations, or the issuance of a notice of bond forfeiture.
- (1) Any person receiving a Notice of Violation may appeal the determination of the floodplain administrator to the local elected governing body. The Notice of Appeal must be in writing and be received by the floodplain administrator and the clerk within thirty (30) days of the date of the Notice of Violation. In the absence of an appeal, the determination of the floodplain administrator shall be final.
- (2) All appeals shall be heard and decided by the community's designated Appeal Board, which shall be the Town of Atkinson Board of Adjustment, or their designees. The Appeal Board shall hear an appeal within a reasonable time and shall have the power to affirm, modify, or reject the original penalty, including the right to increase or decrease the amount of any monetary penalty and the right to add or delete remedial actions required for correction of the violation and compliance with the community's flood damage prevention ordinance, and any other applicable local, state, or federal requirements. In the absence of a petition for review of a quasi-judicial decision, the decision of the Appeal Board shall be final.
- (3) A petition for review of a quasi-judicial decision can be requested by any person with standing aggrieved by a decision or order of the community, after exhausting his/her administrative remedies. The petition shall be received by the clerk of superior court within 30 days of the date of the local governing body decision.
- (E) *Section 1316 Declaration:* Section 1316 of the National Flood Insurance Act authorizes FEMA to deny flood insurance to a property declared by the State, County, or Municipal government to be in violation of the local floodplain management ordinance. A Section 1316 declaration shall be used when all other legal means to remedy a violation have been exhausted and the structure remains noncompliant. The community must coordinate a request for Section 1316 declaration to the FEMA Regional Office through the State NFIP Coordinator.

Once invoked, the property's flood insurance coverage will be terminated and no new or renewal policy can be issued; no flood insurance claim can be paid on any policy on the property, and disaster assistance will be denied. If a structure that has received a Section 1316 declaration is made compliant with the community's floodplain management ordinance, then the Section 1316 declaration can be rescinded by FEMA and flood insurance eligibility restored.

### 12.4.5 Variance Procedures

- (A) The Board of Adjustment as established by the Town of Atkinson, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.
- (B) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- (C) Variances may be issued for:
  - (1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
  - (2) Functionally dependent facilities if determined to meet the definition as stated in Section 12.2 of this ordinance, provided provisions of Section 12.4.5(1)(2), (3), and (5) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
  - (3) Any other type of development provided it meets the requirements of this Section.
- (D) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
  - (1) The danger that materials may be swept onto other lands to the injury of others;
  - (2) The danger to life and property due to flooding or erosion damage;
  - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (4) The importance of the services provided by the proposed facility to the community;
  - (5) The necessity to the facility of a waterfront location as defined under Section 12.2 of this ordinance as a functionally dependent facility, where applicable;
  - (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (7) The compatibility of the proposed use with existing and anticipated development;
  - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

- (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (E) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (F) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (G) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the BFE and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE may result in increased premium rates for flood insurance up to \$25 per \$ 100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (H) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the FEMA and the State of North Carolina upon request.
- (I) Conditions for Variances:
- (1) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
  - (2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
  - (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (4) Variances shall only be issued prior to development permit approval.
  - (5) Variances shall only be issued upon:
    - (a) A showing of good and sufficient cause;
    - (b) A determination that failure to grant the variance would result in exceptional hardship; and
    - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (J) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard

Areas provided that all of the following conditions are met.

- (1) The use serves a critical need in the community.
- (2) No feasible location exists for the use outside the Special Flood Hazard Area.
- (3) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.
- (4) The use complies with all other applicable federal, state, and local laws.
- (5) The Town of Atkinson has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance, in accordance with North Carolina General Statutes §143-215.54A(b).

## SECTION 12.5 PROVISIONS FOR FLOOD HAZARD REDUCTION

### 12.5.1 General Standards

In all Special Flood Hazard Areas, the following provisions are required:

- (A) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (B) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements.
- (C) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (D) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
  - (1) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
  - (2) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.
- (E) All new and replacement water supply systems shall be designed to minimize or eliminate

- infiltration of floodwaters into the system.
- (F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
  - (G) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
  - (H) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
  - (I) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Section 12.4.5(J). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Section 12.4.2(C).
  - (J) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
  - (K) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
  - (L) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
  - (M) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
  - (N) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
  - (O) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.
  - (P) **Structural fill shall not be used unless design and construction of the structural fill accounts for the following:**
    - (1) consolidation of the underlying soil under the weight of the fill and the structure,

- (2) differential settlement due to variations in fill composition and characteristics, and
- (3) slope stability and erosion control during conditions of the base flood.

### 12.5.2 Specific Standards

In all Special Flood Hazard Areas where BFE data has been provided, as set forth in Section 12.3.2, or Section 12.5.4, the following provisions, in addition to the provisions of Section 12.5.1, are required:

- (A) *Residential Construction.* New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section 12.2 of this ordinance.
- (B) *Non-Residential Construction.* New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section 12.2 of this ordinance. Structures located in Zones A, AE, AH, AO, A99 may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impenetrable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Section 12.5.7(B). A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 12.4.2(C), along with the operational plan and the inspection and maintenance plan.
- (C) *Manufactured Homes.*
  - (1) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Section 12.2 of this ordinance.
  - (2) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
  - (3) All enclosures or skirting below the lowest floor shall meet the requirements of Section 12.5.2(D).
  - (4) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or

subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

- (D) *Elevated Buildings.* Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
- (1) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
  - (2) Shall not be temperature-controlled or conditioned;
  - (3) Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
  - (4) Shall include, in Zones A, AE, AH, AO, A99, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
    - (a) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
    - (b) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
    - (c) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
    - (d) The bottom of all required flood openings shall be no higher than one (1) foot above the higher of the interior or exterior adjacent grade;
    - (e) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
    - (f) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.
- (E) *Additions/Improvements.*
- (1) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure

are:

- (a) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damage and must not be any more non-conforming than the existing structure.
  - (b) A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.
- (2) Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.
- (3) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
- (a) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.
  - (b) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (4) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one (1) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one (1) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:
- (a) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
  - (b) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

(F) *Recreational Vehicles.* Recreational Vehicles shall either:

- (1) Placement of a Recreational Vehicle in the Regulatory Floodway is prohibited. This includes both temporary and permanent placement.
- (2) Temporary Placement
  - (a) Be on site for fewer than 180 consecutive days; or
  - (b) Be fully licensed and ready for highway use. (A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions.)
- (3) Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.
- (G) *Temporary Non-Residential Structures.* Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:
  - (1) A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
  - (2) The name, address, and phone number of the individual responsible for the removal of the temporary structure;
  - (3) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
  - (4) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
  - (5) Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.
- (H) *Accessory Structures.* When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
  - (1) When accessory structures (sheds, detached garages, etc.) with a footprint of no more than 600 square feet are placed within A, AO, AH, AE and A99 flood zones, wet floodproofing may be permitted when the following criteria are met:
    - (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
    - (b) Accessory structures shall not be temperature-controlled;
    - (c) Accessory structures shall be designed to have low flood damage potential;
    - (d) Accessory structures shall be constructed and placed on the building site so as to

offer the minimum resistance to the flow of floodwaters;

- (e) Accessory structures shall be firmly anchored in accordance with the provisions of Section 12.5.1(A);
  - (f) All service facilities such as electrical shall be installed in accordance with the provisions of Section 12.5.1(D); and
  - (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Section 12.5.2(D)(4).
- (2) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of 12.5.2(D)(4).

An accessory structure with a footprint of 150 square feet or less in A, AO, AH, AE, and A99 zones satisfying the criteria outlined above in Section 12.5.2(H)(1) is not required to meet the elevation or floodproofing standards of Section 12.5.2(B). All other accessory structures must comply with the elevation or floodproofing certification requirements with Section 12.4.2(C).

- (I) *Tanks.* When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- (1) *Underground tank.* Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
  - (2) *Above-ground tanks, elevated.* Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse, or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;
  - (3) *Above-ground tanks, not elevated.* Above-ground tanks that do not meet the elevation requirements of Section 12.5.2(B) and subsection (I)(2) above shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.
  - (4) *Tank inlets and vents.* Tank inlets, fill openings, outlets and vents shall be:
    - (a) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the

tanks during conditions of the design flood; and

- (b) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(J) *Other Development.*

- (1) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section 12.5.6 of this ordinance.
- (2) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Section 12.5.6 of this ordinance.
- (3) Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Section 12.5.6 of this ordinance.
- (4) Commercial storage facilities are not considered “limited storage” as noted in this ordinance, and shall be protected to the Regulatory Flood Protection Elevation as required for commercial structures.

### 12.5.3 Reserved

This section is reserved for future use.

### 12.5.4 Standards for Floodplains Without Established Base Flood Elevations

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Section 12.3.2, where no BFE data has been provided by FEMA, the following provisions, in addition to the provisions of Section 12.5.1, shall apply:

- (A) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (B) The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:
  - (1) When BFE data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Section

## 12.5.1 and 12.5.2

- (2) When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Sections 12.5.2 and 12.5.6.
- (3) All subdivision, manufactured home park and other development proposals shall provide BFE data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with Section 12.3.2 and utilized in implementing this ordinance.
- (4) When BFE data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Section 12.2. All other applicable provisions of Section 12.5.2 shall also apply.

### **12.5.5 Standards for Riverine Floodplains with Base Flood Elevations But Without Established Floodways or Non-Encroachment Areas**

Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (A) Standards of Sections 12.5.1 and 12.5.2; and
- (B) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

### **12.5.6 Floodways and Non-Encroachment Areas**

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Section 12.3.2. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Sections 12.5.1 and 12.5.2 shall apply to all development within such areas:

- (A) No encroachments, including fill, new construction, substantial improvements, and other developments shall be permitted unless:
  - (1) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood discharge, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development

permit; or

- (2) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA for proposed encroachments resulting in increases in the flood levels during the occurrence of the base flood discharge. A Letter of Map Revision (LOMR) must also be obtained within six months of completion of the proposed encroachment.
  - (3) A Letter of Map Revision (LOMR) must be obtained within six months of completion of the proposed encroachment, permitted in accordance with Section 12.5.6(A)(1) if the encroachment results in changes to the floodway/non-encroachment area widths, and/or changes to the stream location
- (B) If Section 12.5.6(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (C) Manufactured homes may be permitted provided the following provisions are met:
- (1) The anchoring and the elevation standards of Section 12.5.2(C); and
  - (2) The encroachment standards of Section 12.5.6(1).
- (D) Placement of recreational vehicles in the regulatory floodway is prohibited.

### **12.5.7 Standards for Areas of Shallow Flooding (Zone AO)**

Located within the Special Flood Hazard Areas established in Section 12.3.2 are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Sections 12.5.1 and 12.5.2, all new construction and substantial improvements shall meet the following requirements:

- (A) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of two (2) feet, above the highest adjacent grade; or at least two (2) feet above the highest adjacent grade if no depth number is specified.
- (B) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Section 12.5.7(1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Section 12.4.2(C) and Section 12.5.2(B).
- (C) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

### **12.5.8 Standards for Areas of Shallow Flooding (Zone AH)**

Located within the Special Flood Hazard Areas established in Section 12.3.2 are areas designated as shallow flooding areas. These areas are subject to inundation by 1-percent-annual-chance shallow

flooding (usually areas of ponding) where average depths are one (1) to three (3) feet. Base Flood Elevations derived from detailed hydraulic analyses are shown in this zone. In addition to Section 12.5.1 and Section 12.5.2, all new construction and substantial improvements shall meet the following requirements:

- (A) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

## SECTION 12.6 LEGAL STATUS PROVISIONS

### 12.6.1 Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Ordinance

This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted July 1, 2007, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of the Town of Atkinson enacted on July 1, 2007, as amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for Pender County is September 27, 1993.

### 12.6.2 Effect Upon Outstanding Floodplain Development Permits

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

### 12.6.3 Severability

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

### 12.6.4 Effective Date

This ordinance shall become effective upon adoption.

### 12.6.5 Adoption Certification

I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the Town Board of Commissioners of the Town of Atkinson, North Carolina, on the 7<sup>th</sup> day of November, 2019.

WITNESS my hand and the official seal of \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

## ARTICLE 13. DEFINITIONS AND INTERPRETATIONS

### SECTION 13.1 PURPOSE

For the purposes of this Ordinance, certain words, concepts, and ideas are defined herein. Except as defined herein, all other words used in this Ordinance shall have their customary dictionary definition.

### SECTION 13.2 TENSE AND NUMBER

- (A) Words used in the singular in this Ordinance include the plural and words used in the plural include the singular.
- (B) Words used in the present tense include the future tense and the future tense includes the present tense.

### SECTION 13.3 INTERPRETATIONS

- (A) As used in this Ordinance, words importing the masculine gender include the feminine and neuter.
- (B) The word “person” includes a firm, association, organization, corporation, company, trust, and partnership as well as an individual.
- (C) The words “may” and “should” are permissive.  
The words “shall” and “will” are always mandatory and not merely directive.
- (D) The word “used for” shall include the meaning “designed for.”
- (E) The words “used” or “occupied” shall mean “intended, designed, and arranged to be used or occupied.”
- (F) The word “lot” shall include the words “plot,” “parcel,” “site,” and “premises.”
- (G) The word “structure” shall include the word “building.”
- (H) The word “street” includes the word “alley,” “road,” “cul-de-sac,” “highway,” or “thoroughfare.”
- (I) The word “includes” shall not limit the term to specified examples but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- (J) The word “Commissioner” shall include “Town Board of Commissioners” of the Town of Atkinson, North Carolina. The elected body of the Town of Atkinson may be referred to as the Town’s “Council” or “Board of Commissioners”.
- (K) The word “Administrator”, “UDO Administrator”, “Officer”, “Subdivision Administrator”, “Enforcement Officer”, “Floodplain Administrator” shall mean the person designated to be responsible for Planning, Zoning, Development and Flood Enforcement by the Town of Atkinson Town Board of Commissioners.
- (L) The words “Zoning Board,” “Zoning Commission,” “Planning Commission,” or “Planning Board” shall mean the “Town of Atkinson Planning Board.”

- (M) The words “town” or “city” shall mean the “Town of Atkinson” a municipal corporation of the State of North Carolina.
- (N) The words “map,” “zoning map,” and “Atkinson Zoning Map” shall mean the “Official Zoning Map for the Town of Atkinson, North Carolina.”
- (O) The words “Board of Adjustment” shall mean the “Town of Atkinson Board of Adjustment.” The Town of Atkinson Town Board of Commissioners serves as the Town of Atkinson Board of Adjustment.
- (P) The words “Register of Deeds” shall mean the “Recorder of Deeds for Pender County, North Carolina.”

## SECTION 13.4 DEFINITIONS

**Accessory Structure (Accessory Dwelling)** - a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports, accessory dwelling units and storage sheds are common urban accessory structures. Accessory structures may not be located on a parcel without a primary structure.

**Accessory Use** - a use incidental to, and on the same lot as, a principal use.

**Addition (to an existing building)** - an extension or increase in the floor area or height of a building or structure.

**Adult Arcade** - an establishment where, for any form of consideration, one (1) or more motion picture projectors, slide projectors or similar machines for viewing are used to show films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas (as defined hereinafter).

**Adult Bookstore** – a bookstore:

Which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on mater depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; or

Having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on mater depicting, describing, or relating to specified sexual activities or specified anatomical areas.

**Adult Business** – an adult bookstore, adult motion picture theatre, adult mini motion picture theatre, adult live entertainment business, or any business, activity, club, or establishment where for any form of consideration, employees, members, patrons, or guests on its premises exhibit and display any anatomical area before another person or persons. Adult businesses are prohibited.

**Adult Live Entertainment** – any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas.

**Adult Live Entertainment Business** – any establishment or business wherein adult live entertainment is shown for observation by patrons, but not limited to.

**Adult Motion Picture Theater** - an enclosed building or premises used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on mater depicting, describing, or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein. "Adult motion picture theatre" does not include any adult mini motion picture theatre.

**Adult Mini Motion Picture Theatre** - an enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on mater depicting, describing or relating to specified sexual activities or specified anatomical areas, for observations by patrons but not limited to.

**Administrative Decision** – decisions made in the implementation, administration, or enforcement of the Town of Atkinson UDO that involve the determination of facts and the application of objective standards set forth in the Town of Atkinson UDO. Administrative Decisions may come from Town of Atkinson staff, the Town of Atkinson Planning Board or the Town of Atkinson Town Board of Commissioners.

**Administrative Hearing** – a proceeding to gather facts needed to make an administrative decision.

**Administrator** – The Administrator of this UDO responsible for its enforcement and implementation.

**Appeal** – a request for a review of the Planning Director’s, Planning Boards, or Town Board of Commissioners interpretation, as applicable, of any provision of the Town of Atkinson UDO.

**Base Flood Elevation (BFE)** - a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a “Special Flood Hazard Area”, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.\

**Bed & Breakfast** - A owner-occupied or manager-occupied dwelling providing up to twelve (12) guest rooms for overnight lodging in which the frequency and volume of paying guests is incidental to the primary use of the building as a private residence. The establishment may provide food service for lodging guests but not be open to the general non-lodging public. Does not include any Sexual Orientated Business use(s).

**Block** - a piece of land bounded on one or more sides by streets or roads.

**Bona Fide Farm** - agricultural activities as set forth in NCGS 160D-903.

**Building** – any structure used or intended for supporting or sheltering any use or occupancy.

**Building, Commercial** - any building used for business purposes.

**Building, Detached** - a building having no party or common wall with another building except an accessory

building or structure.

**Building, Main** - a building in which the principal use of the lot on which the building is situated is conducted.

**Building Setback Line** – a line parallel to the property line, no structure shall be built or extend into a designated building setback area. The front setback shall be measured from the edge of the right-of-way.

**Building Inspector** - the person, officer, and his authorized representatives, whom the Town of Atkinson Town Board of Commissioners has designated as its agent for the administration and enforcement of the town building codes.

**Certificate of Occupancy/Compliance** - a statement, signed by the Administrator and Building Inspector or his authorized agents, stating that the building, structure, or use complies with the Ordinance, and that the same may be used for its intended purpose.

**Comprehensive Plan** – a comprehensive plan that has been officially adopted by the Town of Atkinson Town Board of Commissioners pursuant to NCGS 160D-501.

**Conditional Zoning** – a legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

**Childcare Home (Facilities)** - includes childcare centers, family childcare homes, and any other childcare arrangement not excluded by G.S. 110-86(2), that provides childcare, regardless of the time of day, wherever operated, and whether or not operated for profit.

- (a) A childcare center is an arrangement where, at any one time, there are three or more preschool- age children or nine or more school-age children receiving childcare.
- (b) A family childcare home is a childcare arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive childcare.

**Condominium** - A dwelling unit located in a structure containing multiple units in which the ownership of the occupancy rights to the dwelling unit is individually owned or for sale to an individual and such ownership is not inclusive of any land.

**Convenience Store** – a retail store that is designed and stocked to sell primary food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a “supermarket”). It is designed to attract and depends upon a large volume of stop-and-go traffic. Convenience Stores are designed to primarily serve the immediate surrounding community. Convenience stores do not include the sale of gasoline or a vape shop.

**Day Care Center** – a program or arrangement where three or more children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption. See NCGS 110-86.

**Decision-making Board** – The Town of Atkinson Planning Board, Town of Atkinson Town Board of Commissioners, Board of Adjustment, or any other Board that is given the power by the Town of Atkinson UDO to make quasi- judicial decisions.

**Dedication** – a gift, by the owner, or a right to use if land for a specified purpose or purposes because a transfer of property is entailed, dedication must be made by deed.

**Determination** – a written, final, and binding order, requirement, or determination regarding an administrative decision.

**Developer** – a person including a redevelopment party or government agency, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

**Development** - includes any of the following:

- (c) The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- (d) The excavation, grading, filling, clearing, or alteration of land.
- (e) The subdivision of land as defined in NCGS 160D-802.
- (f) The initiation or substantial change in the use of land or the intensity of use of land.

This definition does not change the scope of regulatory authority granted by the Town of Atkinson UDO or the North Carolina General Statutes.

**Development Approval** – an administrative or quasi-judicial approval made pursuant to NCGS 160D-102 that is written and that is required prior to the commencement of development or undertaking of a specific activity, project, or development proposal. Development approvals include all types of approval listed in NCGS 160D-102(13). Development approvals also include regulatory approvals such as plat approval, permits, issued, development agreements, and building permits issued.

**Development Regulation** – the Town of Atkinson Unified Development Ordinance, or any other regulation adopted by the Town of Atkinson Town Board of Commissioners in accordance with the provisions set forth in NCGS 160D- 102 that regulates land use or development.

**Dimensional Nonconformity** - a nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

**Disposal** - as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

**Dwelling**- any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of Article 12 of NCGS 160D, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

**Dwelling, Single-Family** – A detached residential building designed for occupancy by one family and built

to NC Building Code as a single-family dwelling.

**Dwelling, Multi-Family (Apartments, Duplex, Triplex, Quadplex)** – A form of multi-family development where attached units are built in either a single structure upon one parcel of land or multiple structures upon one parcel of land and designed for occupancy by one family per unit. Units may be built in combination of 2-unit, 3-unit, 4-unit or more, structures. Units are designed and built to be rented and as individual parcels of real property. Units are built to NC Building Code.

**Dwelling, Townhouse** – A form of single-family development in which homes are constructed with party walls serving as the property line, in a single structure comprised of two or more single-family townhouses. Townhouses are built to NC Building Code. Townhomes may be subdivided as individual pieces of property only including the structure, or as individual pieces of property including the structure and a small portion of land in front of the structure and behind the structure with the remaining land area being common open space. Townhome developments are subdivisions.

**Easement** – a grant by the property owner of a strip of land for a specified purpose and use by the public, a corporation, or persons.

**Enforcement Officer** – the Town of Atkinson Administrator or his designee responsible for enforcing violations of the Town of Atkinson UDO.

**Evidentiary Hearing** – a hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation.

**Existing Building and Existing Structure** – means any building and/or structure for which the “start of construction” commenced before the community entered the NFIP, dated September 22, 2010.

**Family** - One or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit; provided that a group of five or more persons who are not within the second degree of kinship shall not be deemed to constitute a family.

**Family Care Home** - Homes with support and supervisory personnel that provide room and board, personal care, and habilitation services in a family environment for no more than 6 resident persons with disabilities including handicapped and non-handicapped persons.

**Fence** - a continuous barrier constructed of wood, stone, steel, or wire or other similar material.

**Flag Lot** – a lot that is connected to a right-of-way or access easement by a narrow portion or strip of land (flagpole) that is a part of a larger parcel of land (flag). Flagpole portions must be a minimum of 35’ in width and flag portions must be a minimum of 2 acres. Subdivisions may only create one flag lot.

**Flea Market** – a commercial operation held on a regular periodic basis and patronized by individual entrepreneurs who transport a variety of merchandise to a common geographical area for the purpose of sale or trade to the general public. This definition does not include sporadic and infrequent yard sales held in residential areas.

**Flood or Flooding** - a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) The overflow of inland or tidal waters; and/or
- (b) The unusual and rapid accumulation or runoff of surface waters from any source.

**Flood Insurance Rate Map (FIRM)** - an official map of a community, issued by the FEMA, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated. (see also DFIRM)

**Flood Prone Area** - see Floodplain

**Floodplain** - any land area susceptible to being inundated by water from any source.

**Floodplain Administrator** - is the individual appointed to administer and enforce the floodplain management regulations.

**Floodway** - the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

**Governing Board** – the Town of Atkinson Town Board of Commissioners.

**Home Occupation** – a use that is clearly a customary, incidental and secondary use of a residential dwelling unit.

**Historic Structure** - any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (d) Certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program.”

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

**Junk** - old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, boats, buses, semi-trucks, airplanes or parts thereof, iron, steel, and

other old or scrap ferrous or nonferrous material, including dismantled and uninhabitable homes, manufactured homes, recreational vehicles or parts thereof, but not limited to.

**Landowner or Owner** - the holder of the title in fee simple. Absent evidence to the contrary, the Town of Atkinson may rely on Pender County tax records to determine who is the owner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.

**Legislative Decision** – the adoption, amendment, or repeal of a regulation under the Town of Atkinson UDO. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of NCGS Chapter 160D.

**Legislative Hearing** – a hearing to solicit public comment on a proposed legislative decision.

**Local Government** – Town of Atkinson Government.

**Lot** - Land area of defined boundaries in single ownership, set aside for separate use or occupancy, and recorded as such in the office of the Pender County Register of Deeds. A parcel of land whose boundaries have been established by some legal instrument such as a deed or a recorded map and which is recognized as a separate legal entity for purposes of transfer of title.

**Lot of Record** – a lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds of Pender County prior to the adoption of the Town of Atkinson UDO, or a lot described by metes and bounds, the description of which has been so recorded prior to the effective date of the Town of Atkinson UDO.

**Lot, Corner** – a lot located at the intersection of two or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point in the lot meet at an interior angle of less than 135 degrees.

**Lot, Double Frontage** – a lot, continuous (through) lot, which is accessible from both streets upon which it fronts.

**Lot, Interior** – a lot other than a corner lot with only one frontage on a street.

**Lot, Reversed Frontage** – a lot on which the frontage is at right angles or approximately right angles (interior angles less than 135 degrees) to the general pattern in the area. A reversed frontage lot may also be a corner lot, an interior lot or a through lot.

**Lot, Single-Tier** – a lot which backs upon a limited access highway, a railroad, and any physical barrier, or any other type of land use and to which access from the rear is usually prohibited.

**Manufactured Home** - a structure, transportable in one or more sections, which in the

traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the Act. For manufactured homes built before June 15, 1976, "manufactured home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semi-permanent foundation having a measurement of over 32 feet in length and over eight feet in width. "Manufactured home" also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. The term "manufactured home" does not include a "recreational vehicle".

**Manufactured Home Class A** – a double- or triple-wide manufactured home built, at a minimum, to the standards of the National Manufactured Housing Construction and Safety Standards Act of 1974 (effective 1976), 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:

- (a) The home has a length not exceeding four times its width;
- (b) The pitch of the home's roof has a minimum vertical rise of one foot for each five feet of horizontal run, and the roof is finished with a type of material that is commonly used in standard residential construction;
- (c) The exterior siding consists of wood, hardboard, or aluminum (vinyl covered or painted, but in no case exceeding the reflectivity of gloss white paint) comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction;
- (d) A continuous, permanent masonry foundation; and
- (e) The tongue, axles, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy.

**Manufactured Home Class B** – a single-wide manufactured home built, at a minimum, to the standards of the National Manufactured Housing Construction and Safety Standards Act of 1974 (effective 1976), 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 but that does not satisfy the criteria necessary to qualify the house as a Class A manufactured home.

**Manufactured Home (Mobile Home) Class C** – any manufactured home that does not meet the definitional criteria of a Class A or Class B manufactured home. Class C manufactured homes are not permitted within Atkinson’s planning jurisdiction.

**Manufactured Home Park** – A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Massage Business** – any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios or massage parlors. Legally operating massage businesses have absolutely no component of specified sexual activities as defined in the Town of Atkinson UDO taking place upon the premises.

**Modular Home** – a single-family dwelling unit constructed in accordance with the standards set forth in the state or local building code applicable to site-built homes and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a modular home may consist of two sections transported to the site in a manner similar to a manufactured home except that the modular home meets the state or local building code applicable to site-built homes, or a series of panels or room sections transported on a truck and erected or joined together on the site.

**More Intensive Use** - a use that will have a greater impact on the surrounding area than the previous use, including activities which generate more traffic, require more employees or service deliveries, or utilize more square footage than the previous use existing on the site.

**Nonconforming Situation or Use** - any permitted legally existing building or use, legally existing prior to the adoption of this Ordinance. which fails to comply with the provisions of this Ordinance.

**Nursing Home** - means a facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A "nursing home" is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A "nursing home" provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated, who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision. See NCGS 131E Article 6.

**Official Maps or Plans** – any map or plan officially adopted by the Planning Board or Town Board of Commissioners. Per 160D-105 current and prior maps must be maintained in either paper or digital format.

**Open Space** – a usable area (land/or water), reserved for enjoyment or conservation purposes.

**Open Storage** - unroofed storage areas, whether fenced or not.

**Parts Recycling** - the dismantling, storage, and sale of used parts usually in a warehouse like setting where the entire auto or machine is not retained.

**Person** – an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.

**Planning and Development Regulation Jurisdiction** – all areas that fall within the municipal limits of the Town of Atkinson.

**Planning Board** - any board or commission established pursuant to NCGS 160D-301. The board appointed by the Town of Atkinson Town Board of Commissioners.

**Plat** – a map or plan of a parcel of land which has been recorded as a plat in the Pender County Register of Deeds. A plan becomes a plat once it has been legally and officially recorded.

**Private Street** – a private right-of-way dedicated to a property owner or homeowners association. Private streets are to be built to the same standards as NCDOT rights-of-way.

**Property** – all real property subject to land-use regulation. The term includes any improvements or structures customarily regarded as part of real property.

**Public Park** - any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

**Public Street** – a public right-of-way dedicated and constructed to meet the requirements of the North Carolina Department of Transportation.

**Quasi-Judicial Decision** – a decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes but is not limited to, decisions involving variances, special use permits, and appeals of administrative decisions. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the finds to be made by the decision making board.

**Recreation Area or Park** – an area of land or combination of land and water resources that is developed for active or passive recreation pursuits with various man-made features that accommodate such activities.

**Recreational Vehicle (RV)** - a vehicle, which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck;
- (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use, and
- (e) Is fully licensed and ready for highway use. Able to be moved within 48 hours notice.

For the purpose of this ordinance, "Tiny Homes/Houses" and Park Models that do not meet the items listed above are not considered Recreational Vehicles and should meet the standards of and be permitted as Residential Structures.

**Retention Pond Facilities** - a permanent structure that provides for the storage of runoff and is designed to maintain a permanent pool of water.

**Right-of-Way** - the property located within and adjoining the streets, roads, and highways within the town which rights-of-way are owned by the town or state or otherwise maintained by the town or the state.

**Salvage Operation or Yard** - the reclamation, dismantling or storage of pre-used commodities, junk and similar material for the purposes of resale, processing, distribution or deposition.

**Sexually Oriented Business** - any business activity, club, or other establishment, within which the exhibition, showing, rental or sale of materials distinguished or characterized by an emphasis on material depicting, describing or exhibiting specified anatomical areas or relating to specified sexual activities is permitted. Sexually oriented businesses shall. Include, but are not limited to adult arcades, adult bookstores, adult motion picture theaters, adult theaters, and massage parlors, as defined by this article.

**Service Station** – a building or lot dedicated to the rendering of automotive services such as the sale of gasoline, oil, grease, and accessories and the minor repair of automobiles such as tune-ups, brake adjustments, overhauling, and tire changes, excluding body work and painting.

**Setback** - the minimum required distance existing between the abutting street right-of-way line (if no street right-of-way line is involved, the subject property line) and the minimum building line.

**Sign, Business Identification** – any sign which advertises an establishment, service, commodity or activity conducted upon the premises where such sign is located.

**Sign, Outdoor Advertising** - any sign which advertises an establishment, service, commodity,

goods or entertainment sold or offered on premises other than that on which such sign is located.

**Sign, Political** - a sign for the purpose of advertising a candidate regarding an issue on which there will be a public vote.

**Sign, Temporary** – a display, informational sign, banner, or other advertising device constructed of cloth, canvas, fabric, wood, or other temporary material, with or without a structural frame (including banners), and intended for a limited period of display, including decorative displays for holidays or public demonstrations.

**Sketch Plan** - a drawing showing general area conditions and containing information as required by the Town of Atkinson UDO.

**Site Plan** – a scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site specific details such as building areas, building height and floor area, setbacks from lot lines, street rights-of-way, intensities, densities, utility lines, and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgement and discretion is a quasi-judicial decision. A site plan may also be approved as part of a conditional zoning decision.

**Specified Anatomical Areas** - less than completely and opaquely covered human genitals, pubic regions, buttocks, and female breasts below a point immediately above the top of the areola. Human male genitals in a discernably turbid state, even if completely and opaquely covered.

**Special Flood Hazard Area (SFHA)** - the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Article 3, Section B of this ordinance.

**Specified Sexual Activities -**

- 1) Human genitals in a state of sexual stimulation or arousal;
- 2) Acts of human masturbation, sexual intercourse, sodomy; or
- 3) Fondling or other erotic touching of human genitals, pubic regions, buttocks, or female breasts.

**Special Use Permit** – a permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgement and discretion be exercised as well as compliance with specific standards.

**Storage, Self Service** – a building consisting of individual, small, self-contained units that are leased or owned for the storage of goods and wares.

**Subdivision** - the division of land for the purpose of sale or development as specified in NCGS 160D-802.

**Subdivider** – any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as defined by the Town of Atkinson UDO.

**Subdivision Regulation** – a subdivision regulation as authorized by Article 8 of NCGS Chapter 160D and the Town of Atkinson UDO.

**Storage** - deposition of commodities or items for the purpose of future use or safekeeping.

**Storage, Self-Service** - a building consisting of individual, small, self-contained units that are leased or owned for the storage of goods and wares.

**Structure** - a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

**Telecommunication Tower** – a tower facility, including, but not limited to, radio and television transmission towers or similar utilities, microwave towers, and mobile telephone or radio towers.

**Use** - the purpose for which land or structure thereon is designed, arranged or intended to be occupied or used, or for which it is occupied, maintained, rented or leased.

**Use-by-Right** – a use which is listed as an unconditionally permitted activity in this Ordinance. A permitted use.

**Variance** - is a grant of relief from the requirements of the Town of Atkinson UDO. Shall only be granted by the Board of Adjustment when they determine that an unnecessary hardship would result from carrying out the strict requirements of the Town of Atkinson UDO. The hardship must result from a strict application, or conditions peculiar to the property such as topography, location or size. Variances may also be granted as a reasonable accommodation under the Federal Fair Housing Act for a person with a disability. The variance must be consistent with the spirit, purpose, and intent of the Town of Atkinson UDO.

**Violation** - failure of a structure, development or use to be fully compliant with the provisions of this Ordinance.

**Visible** - capable of being seen without visual aid by a person of normal visual acuity.

**Watercourse** - a Lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

**Zoning Compliance** – a certification by the Administrator, Planning Board, Town of Atkinson Town Board of Commissioners or its authorized agent(s) that a course of action to use or occupy a tract of land or a building, or to erect, install or alter a structure, building or sign situated in the extraterritorial jurisdiction of the town, fully meets the requirements of this Ordinance. Must be issued prior to the issuance of a Certificate of Occupancy or issued in concurrence with.

**Zoning Map Amendment** – see NCGS 160D-102(34)