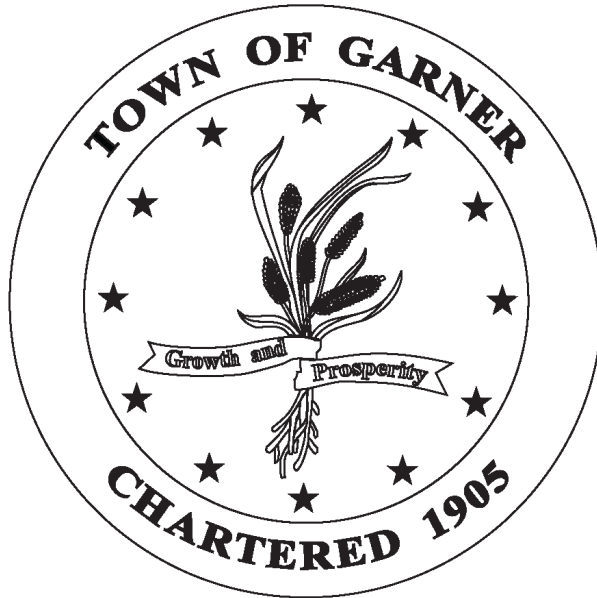


# TOWN OF GARNER



## Town Council Work Session

August 25, 2020  
6:00 p.m.

Garner Town Hall  
900 7th Avenue  
Garner, NC 27529

**Town of Garner  
Work Session Agenda  
August 25, 2020**

The Council will meet in a Work Session at 6:00 p.m. in the Council Chambers located at 900 7<sup>th</sup> Avenue.

A. CALL MEETING TO ORDER/ROLL CALL: Mayor Ken Marshburn

B. ADOPTION OF AGENDA

C. PRESENTATIONS

D. DISCUSSION/REPORTS

1. UDO-20-02, Chapter 160D Implementation  
Presenter: Jeff Triezenberg, Planning Director

Text amendment submitted by the Town of Garner to amend the Garner Unified Development Ordinance in accordance with the directives contained within Session Law 2019-111 and subsequently amended by Session Law 2020-25.

Action: Consider setting Public Hearing for October 20, 2020 to receive public input

2. Update on Parks Fee in Lieu Calculation  
Presenter: Mike Franks, Budget & Special Projects Manager

In response to Council feedback during the FY 2021 budget process, staff has updated the fee in lieu calculation for park land. Staff will discuss a draft version of the fee calculation and propose a process for adoption of the new fee.

Action: Discussion and feedback from Council

3. 2021 Holiday Schedule  
Presenter: Rodney Dickerson, Town Manager

The Town offers employee holidays on the same schedule as the State of North Carolina and this Resolution sets those dates.

Action: Discussion and feedback from Council

4. Review Agenda Preparation Process  
Presenter: Rodney Dickerson, Town Manager

In response to questions and comments from Council members, staff has prepared an overview of the Town's agenda preparation process. Understanding the current process will be helpful when discussing potential changes to the process.

Action: Discussion and feedback from Council

E. MANAGER REPORTS

F. COUNCIL REPORTS

G. ADJOURNMENT

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: August 25, 2020		
Subject: UDO-20-02, Chapter 160D Implementation		
Location on Agenda: Discussion		
Department: Planning		
Contact: Jeff Triezenberg, AICP, GISP; Planning Director		
Presenter: Jeff Triezenberg, AICP, GISP; Planning Director		
<b>Brief Summary:</b>  Text amendment submitted by the Town of Garner to amend the Garner Unified Development Ordinance in accordance with the directives contained within Session Law 2019-111 and subsequently amended by Session Law 2020-25.		
<b>Recommended Motion and/or Requested Action:</b> Set Public Hearing for October 20, 2020 to receive public input		
<b>Detailed Notes:</b> Significant required changes for the Town of Garner include: elimination of the conditional use district zoning/conditional use permit review process and amendment of topics tied to it, clarifications related to vested rights and permit choice, and various procedural updates - many related to code enforcement.  Remaining required steps include public hearing, referral to Planning Commission and final appearance before Council to consider adoption.		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations:		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	JST	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

## Planning Department Memorandum

---

**TO:** Mayor, Town Council, and Planning Commission

**FROM:** Jeff Triezenberg, AICP, GISP; Planning Director

**SUBJECT:** *Garner Forward UDO Update*

**DATE:** August 17, 2020

---

In late 2019, the Town of Garner contracted with a planning services consultant, Stewart, to undertake an update of the Town's Unified Development Ordinance (UDO). The project is scoped to last two years and consists of several parts, including an initial update necessitated by recent changes in the state zoning enabling legislation (**Chapter 160D**) and a **Garner Forward** update (to implement and update standards based on the recent comprehensive plan update). The state has mandated that the Chapter 160D revisions be adopted and implemented by July 1, 2021, which was initially established at January 1, 2021 prior to the pandemic. The revisions presented in this packet are intended to keep the UDO project on the schedule established at the time the project kicked off.

Recent state legislative updates to North Carolina's General Statutes (Chapter 160D) have consolidated, reorganized, and clarified municipal zoning and development regulation procedures. The intent of the new statutes is to provide uniform authority, definitions, and procedures for cities and counties while still allowing appropriate policy discretion for ordinances adopted by individual jurisdictions.

The content of Garner's UDO may be divided into two major divisions: the administrative/procedural component (Articles 1, 2, 3, 9, and 10) and the development standards component (Articles 4, 5, 6, 7, 8, and 11). The proposed UDO revisions included in this agenda packet contain all the updates required to bring the entire UDO into Chapter 160D compliance as well as the Garner Forward updates to the administrative half of the UDO.

The Garner Forward updates (for Articles 1, 2, 3, 9, and 10) incorporate the newer formatting style. The remaining articles (4, 5, 6, 7, 8, and 11) remain in the existing formatting style and are scheduled to receive Garner Forward revisions later in the year and will be brought back to Planning Commission, Town Council, and the general public for review and decision at that time.

The UDO presented in this packet is intended to fully replace the current UDO (fully strike-and-replace) and the revisions are arranged accordingly:

- Garner Forward updates (Articles 1, 2, 3, 9, and 10) - which include revisions based on recommendations from the comprehensive plan, stakeholder, staff, and technical feedback, and best practices recommendations. These revisions also include Chapter 160D revisions.
- Chapter 160D updates only (Articles 4, 5, 6, 7, 8, and 11) - the existing ordinance language and formatting is shown with changes marked to achieve Chapter 160D compliance only.

**1.1. SHORT TITLE**

This ordinance shall be known as the “Garner Unified Development Ordinance,” “this Ordinance,” or “UDO.”

**1.2. AUTHORITY AND PURPOSE**

**1.2.1. Authority**

The Town Council, pursuant to the authority conferred by the State of North Carolina General Assembly in General Statute Chapter 160D (G.S. § 160D), does hereby ordain and enact into law the articles and sections of this UDO.

**1.2.2. Purpose**

It is the intent of the Town Council that this UDO promote the health, safety, and general welfare of existing and future residents, businesses, and visitors of the Town by:

- A. Providing for adequate light, air, and open space;
- B. Creating a convenient, attractive, and harmonious community;
- C. Creating a convenient, attractive, and harmonious community;
- D. Protecting and preserving scenic, historic, or ecologically sensitive areas;
- E. Regulating population density and distribution;
- F. Regulating the uses of buildings, structures, and land;
- G. Facilitating economic growth and commerce;
- H. Ensuring adequacy and availability of public services including transportation, emergency response services, utilities, parks and recreational amenities, and affordable housing;
- I. Securing safety from fire, flood, and other dangers;
- J. Regulating the location and distribution of uses of land and buildings;
- K. Regulating the subdivision of land; ~~and~~  
—Furthering the public interest by additional means determined by the Town Council. \_\_\_\_\_

**1.1. SHORT TITLE**

This ordinance shall be known as the “Garner Unified Development Ordinance,” “this Ordinance,” or “UDO.”

**1.2. AUTHORITY AND PURPOSE**

**1.2.1. Authority**

The Town Council, pursuant to the authority conferred by the State of North Carolina General Assembly in General Statute Chapter 160D (G.S. § 160D), does hereby ordain and enact into law the articles and sections of this UDO.

**1.2.2. Purpose**

It is the intent of the Town Council that this UDO promote the health, safety, and general welfare of existing and future residents, businesses, and visitors of the Town by:

- A. Providing for adequate light, air, and open space.
- B. Creating a convenient, attractive, and harmonious community.
- C. Creating a convenient, attractive, and harmonious community.
- D. Protecting and preserving scenic, historic, or ecologically sensitive areas.
- E. Regulating population density and distribution.
- F. Regulating the uses of buildings, structures, and land.
- G. Facilitating economic growth and commerce.
- H. Ensuring adequacy and availability of public services including transportation, emergency response services, utilities, parks and recreational amenities, and affordable housing.
- I. Securing safety from fire, flood, and other dangers.
- J. Regulating the location and distribution of uses of land and buildings.
- K. Regulating the subdivision of land.
- L. Furthering the public interest by additional means determined by the Town Council.



### **1.3. JURISDICTION**

This UDO shall apply to all land within Town of Garner and its planning jurisdiction. All structures and land uses constructed or commenced after the effective date of this UDO and all enlargements of, additions to, changes in and relocations of existing structures and uses occurring after the effective date of this UDO shall be subject to this UDO. This UDO shall be effective throughout the Town's planning jurisdiction. The Town's planning jurisdiction comprises the entire area within the boundary described in Appendix A.

### **1.4. EFFECTIVE DATE**

This UDO, as amended from time to time, was originally adopted and became effective on October 1, 2003. Amendments to this ordinance will and have occurred from time to time. The most recent major reorganization and update of this UDO occurred on <insert date of adoption>.

### **1.5. ADMINISTRATION**

The Planning Director is appointed to serve as administrator of this UDO. Should this position at any time become vacant, the Town Manager shall designate another official to act as administrator until the office is filled. The Planning Director may designate any staff member to represent the Planning Director in any function assigned by this UDO but shall remain responsible for any final action.

### **1.6. INTERPRETATION**

The Planning Director is responsible for ultimate interpretation of this UDO and any dispute with any interpretation or administrative decision may be appealed per the standards of this Ordinance.

### **1.7. CONFORMITY WITH ARTICLE PROVISIONS**

#### **1.7.1. Compliance Required**

The purpose of this Ordinance is to ensure compliance with the zoning, subdivision, and other design and dimensional standards of the Town. No structure or land shall hereafter be used, occupied, or modified, and no structure or part thereof shall be erected, moved onto, or structurally altered, except in compliance with the regulations of this Chapter, for the district in which it is located. No building, sign, structure, or land-disturbing activities, or any part thereof shall be erected, structurally altered, moved, or changed in use until a zoning permit has been issued by the Planning Director.

#### **1.7.2. Minimum Requirements**

For purposes of interpretation and application, the provisions of this UDO shall be the minimum requirements for the protection and promotion of public health, safety, and general welfare.

## **1.8. RELATIONSHIP TO OTHER ORDINANCES AND STATUTES**

### **1.8.1. Conflicting Provisions**

Whenever the requirements of this UDO are inconsistent with the requirements of any other lawfully adopted governmental rules, regulations, or ordinances, the most restrictive requirement imposing the highest standards, as determined by the Planning Director, shall govern. However, the Town shall not be responsible for enforcing other agencies' regulations.

### **1.8.2. Minimization**

Where multiple ways to implement, administer, or construe a provision exist, the provision shall be implemented, administered, or construed to eliminate and minimize conflict with other provisions of the UDO.

### **1.8.3. Town Ordinances**

If substantially similar provisions existed in previous Town ordinances, the provisions of this UDO shall not be considered new enactments but as continuations of existing rule. Unlawful nonconformities do not achieve legal conforming status by virtue of the adoption of this Ordinance alone.

### **1.8.4. Amendments to State Statutes**

Whenever a North Carolina General Statute (a.k.a. "G.S.") section cited or referenced by any of these ordinance provisions is later amended or superseded, the ordinance provision shall be deemed to refer to the amended section or the section that most closely corresponds to the superseded section.

### **1.8.5. Validity**

If, for any reason, any condition imposed pursuant to these regulations is found to be illegal or invalid, such condition shall be null and void and of no effect.

Commentary: For instance, if this UDO references G.S. § 160D-702, which grants the regulation of zoning to local governments from the state, and the state should subsequently reorganize the statutes, then the reference in this Ordinance shall be understood to reference the most current statute. This shall be honored even if this Ordinance fails to modify references immediately at the time that the state statutes should be reorganized.

---

## **1.9. CONSISTENCY WITH ADOPTED PLANS**

### **1.9.1. General**

The Town Council intends that this UDO shall guide the administration of the Town's adopted planning policies within the Town and its extraterritorial jurisdiction.

### **1.9.2. Comprehensive Plan**

The most current Comprehensive Plan is hereby incorporated by reference.

### **1.9.3. Zoning**

The zoning regulations in this UDO are in accordance with the Comprehensive Plan and the Town of Garner Official Zoning Map (also known as "zoning map") which is hereby incorporated by reference.

### **1.9.4. Other Plans and Policies**

All other Town-adopted plans, maps, policies, and documents and all other outside agency maps, plans, policies, and documents referenced herein or necessary to enforce the provisions of this UDO are hereby incorporated by reference.

### **1.9.5. Conformity**

Subject to Article 9, Nonconformities, no person may use, occupy, or sell any land or buildings, or authorize or permit the use, occupancy under their control, except in accordance with all applicable provisions of this UDO.

## 1.10. TRANSITIONAL PROVISIONS

### 1.10.1. Vested Rights

- A. Any building or development for which a permit was issued before the effective date of this UDO may be completed in conformance with the issued permit and other applicable permits and conditions, even if such building or development does not fully comply with provisions of this UDO.
- B. Nothing in this UDO shall require a change to a phasing plan approved prior to the adoption of this UDO, provided construction is consistent with the terms and conditions of the phasing plan and proceeds to completion in a timely manner. Pursuant to G.S. § 160D-108(d)(4), the developer shall continue construction activities, as evidenced by an active building permit or other vested right, in order to continue a project under a previous phasing plan.
- C. If construction is not completed according to the applicable permit terms, the Town Council may, for good cause shown, grant an extension of up to one year for such construction.

### 1.10.2. Permit Choice

- A. Pursuant to G.S. § 160D-108, any complete application submitted before the effective date of an amendment to this UDO may be evaluated and decided, at the applicant’s discretion, in conformance with applicable permits and regulations in effect at the time of submission of the application.
- B. If construction is not commenced or completed according to the applicable terms of the application, the Town Council may, for good cause shown, grant an extension of up to one year for such construction.

### 1.10.3. District Conversion

The zoning districts in effect prior to the effective date of this UDO are hereby converted, as shown on the following table:

Figure 1.10-A: District Conversions

PREVIOUS DISTRICT		NEW DISTRICT	
<b>OVERLAY ZONING DISTRICTS</b>			
--	Conservation Buffer Area	CBA	Conservation Buffer Area

--	Lake Benson Conservation	LBC	Lake Benson Conservation
--	Timber Drive Overlay	O-TD	Timber Drive Overlay
--	U.S. 70/401 Overlay	O-70	U.S. 70/401 Overlay
--	I-40/US 70 Special Highway Overlay	O-40	I-40 Overlay
--	New	GR-OD	Garner Road Overlay District
<b>OBSOLETE DISTRICTS</b>			
MR-1	Multi-Residential 1	MR-1	Multi-Residential 1
RCD	Residential Cluster District	RCD	Residential Cluster District
R-12 PR	R-12 Planned Residential District	R-12 PR	Planned Residential District
MXD-1	Mixed Use Development District	MXD-1	Mixed Use Development District
<b>RESIDENTIAL ZONING DISTRICTS</b>			
R-40	Single-Family Residential	R-40	Single-Family Residential
R-20	Single-Family Residential	R-20	Single-Family Residential
R-15	Single-Family Residential	R-15	Single-Family Residential
R-12	Single-Family Residential	R-12	Single-Family Residential
R-9	Single-Family Residential	R-9	Single-Family Residential
MF-1	Multi-Family 1	MF-1	Multifamily Residential
MF-2	Multi-Family 2	MF-2	Multifamily Residential
R-5	Manufactured Home Park/Subdivision	RMH	Manufactured Home Park/Subdivision
-MH	Mobile Home Floating District	-MH	Manufactured Home Floating Zone
<b>COMMERCIAL ZONING DISTRICTS</b>			

---	New	NO	Neighborhood Office
NB	Neighborhood Business	NC	Neighborhood Commercial
CBD	Central Business District	CBD	Central Business District
OI	Office and Institutional	OI	Office and Institutional
CB	Community Business	CR	Community Retail

#### 1.10.4. Conditional Use District Conversion

On the earlier of either the adoption of this ordinance or January 1, 2021, any existing and legal Conditional Use zoning districts Planned Unit Development (PUD) zoning districts that are valid and in effect shall be deemed a Conditional Zoning (CZ) district subject to the same conditions of approval or conditions of operation of the existing entitlement.

#### 1.11. SEVERABILITY

The sections, paragraphs, sentences, clauses, phrases, requirements, and criteria of this UDO are severable to the least extent necessary to carry out the purpose and intent of this Ordinance.

**2.1. ADMINISTRATION**

**2.1.1. Procedure**

A. Rules of Procedure

Boards and Commissions set out in this article may adopt rules and regulations governing their procedures in consistency with the provisions of this UDO.

B. Minutes

Each Board shall maintain accurate minutes of each meeting set out in this Article, showing the vote of each member on each decision, or if absent or failing to vote, indicating such fact.

C. Meetings

All meetings of Boards and Commissions shall be open to the public, and an agenda shall be made public according to administrative procedures.

**2.1.2. Maintenance of the Public Trust**

A. Oath of Office

Pursuant to G.S. § 160D-309, all members appointed to boards shall take the oath of office as required.

B. Conflict of Interest

Pursuant to G.S. § 160D-109, no elected or appointed board member or administrative staff shall make a final decision as required by this Ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on themselves 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 associated relationship.

## **2.2. TOWN COUNCIL**

### **2.2.1. Powers and Duties**

The Town Council shall have the power to appoint members of the Planning Commission and the Board of Adjustment (BOA) as well as those responsibilities enumerated in Article 3, Review Procedures. The Council may also appoint temporary advisory commissions or committees from time to time.



## **2.3. PLANNING COMMISSION**

### **2.3.1. Creation**

Pursuant to G.S. § 160D-301, there shall be a permanent Planning Commission (occasionally referred to herein as “Planning Board”) established to advise the Town Council on land use matters. The Planning Director shall oversee and facilitate the operations of the Planning Commission.

### **2.3.2. Membership and Terms**

#### **A. Number**

Per G.S. § 160D-307, Planning Commission shall consist of seven members. The number of Planning Commission members representing in-Town members and extra-territorial jurisdiction (ETJ) area members shall be distributed proportionally using the most recent decennial Census.

#### **B. Appointment**

In-Town members shall be appointed by the Town Council and shall reside within the Town of Garner’s corporate limits. The Wake County Board of Commissioners shall appoint the remainder of the Planning Commission, all of whom shall reside within the Town's ETJ. If the Wake County Commissioners fail to make these appointments within ninety (90) days after receiving a written request from the Town Council, the Council shall make the appointments.

#### **C. Terms**

Members shall be appointed for two-year staggered terms. Members shall continue to serve until their successors have been appointed.

#### **D. Term Limits**

Planning Board members may be appointed for three consecutive 2-year terms.

#### **E. Current Members**

Members of the Planning Commission on the effective date of this UDO shall continue to serve until their respective terms expire.

#### **F. Vacancies**

A vacancy shall be filled for the unexpired term.

#### **G. Removal**

Members may be removed by the Town Council for failure to attend three consecutive meetings without having been excused, for failure to

attend thirty (30) percent of the meetings within any twelve-month period, or for other good cause related to performance of duties.

### **2.3.3. Rules of Procedure**

- A. The Planning Board shall elect officers and may set rules of procedure (consistent with G.S. § 160D-308), which are recorded in a separate document, maintained by the Planning Director.
- B. A Secretary to the Planning Commission shall be designated by the Planning Director.
- C. The Chairperson and Vice-Chairperson shall take part in all deliberations and vote on all issues, unless absent or excused.
- D. The Planning Commission shall establish a regular meeting schedule and shall meet at least monthly. The Planning Commission is encouraged to attend joint public hearings with the Town Council when zoning petitions and UDO amendments are presented.

### **2.3.4. Powers and Duties**

The Planning Commission shall have the powers and duties outlined below, in addition to those enumerated in Article 3, Review Procedures.

#### **A. Growth Recommendations**

The Planning Commission shall make recommendations to the Town Council concerning plans, goals, and objectives relating to growth, regarding development and redevelopment within the planning jurisdiction;

#### **B. Comprehensive Growth Plan Administration**

When directed by the Town Council, the Planning Commission shall be responsible for the preparation of a Comprehensive Growth Plan and make recommendation on it to the Town Council on issues related to policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner;

#### **C. Other Responsibilities**

The Planning Commission shall have any other duties assigned by the Town Council.

## 2.4. BOARD OF ADJUSTMENT

### 2.4.1. Creation

Pursuant to North Carolina G.S. § 160D-302, the Board of Adjustment (BOA) is hereby established. The Planning Director shall oversee and facilitate the operations of the Board of Adjustment.

### 2.4.2. Membership and Terms

#### A. Number

The Board of Adjustment shall consist of five regular members and three alternate members. The number of both regular and alternate BOA members representing in-Town members and extra-territorial jurisdiction (ETJ) area members shall be distributed proportionally using the most recent decennial Census.

#### B. Appointment

In-Town members shall be appointed by the Town Council and shall reside within the Town of Garner's corporate limits. The Wake County Board of Commissioners shall appoint the remainder of the Planning Commission, all of whom shall reside within the Town's ETJ. If the Wake County Commissioners fail to make these appointments within ninety (90) days after receiving a written request from the Town Council, the Council shall make the appointments.

#### C. Terms

Members shall be appointed for three-year staggered terms, but members may continue to serve until their successors have been appointed.

#### D. Current Members

Members of the Board of Adjustment on the effective date of this UDO shall continue to serve until their respective terms expire.

#### E. Vacancies

Vacancies may be filled for the unexpired terms only.

#### F. Removal

1. Regular members may be removed by the Town Council at any time for two consecutive unexcused absences from a Board of Adjustment meeting or for a 30% unexcused absence rate in a twelve-month period. An unexcused absence is one without reasonably adequate notice to an appropriate alternate member, Chairperson of the Board of Adjustment, or the

Planning Director.

2. Alternate members may be removed by the Town Council for failure to respond on two consecutive occasions or, within any twelve-month period, on thirty (30) percent or more of the occasions when a timely request is made to such member to serve as an alternate.
3. Regular or alternate members may also be removed by the Town Council for other good cause related to performance of duties.

#### **2.4.3. Rules of Procedure**

- A. The Board of Adjustment shall elect officers and may set rules of procedure (consistent with G.S. § 160D-308), which are recorded in a separate document, maintained by the Planning Director.
- B. The Chairperson and Vice-Chairperson shall take part in all deliberations and vote on all issues, unless absent or excused.
- C. Meetings
  1. The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently so as to allow for expeditious processing of applications. The Board of Adjustment may provide in its by-laws for the calling of special meetings.
  2. Pursuant to G.S. § 160D-406(g), the Board of Adjustment may issue subpoenas.

#### **2.4.4. Quasi-judicial Decisions and Judicial Review**

- A. The Board of Adjustment shall make and report decisions pursuant to G.S. § 160D-406(j).
- B. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. § 160D-1402. A petition for review shall be filed with the superior court by the later of thirty (30) days after the decision is effective or after a written copy thereof is delivered. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

#### **2.4.5. Powers and Duties**

The Board of Adjustment shall have the powers and duties outlined below, in addition to those enumerated in Article 3, Review Procedures.

##### **A. Watershed Review Board**

The Board of Adjustment shall act as the Watershed Review Board.

##### **B. Other Responsibilities**

The Board of Adjustment shall have any other matter the Board of

Adjustment is required to act upon by any Town ordinance.

## **2.5. PLANNING DIRECTOR**

### **2.5.1. Designation**

The Town Manager shall designate the Planning Director for the Town of Garner.

### **2.5.2. Responsibility**

Except as otherwise specifically provided, primary responsibility for administering and enforcing this UDO is the responsibility of the Planning Director. Where this UDO assigns a responsibility, power, or duty to the Planning Director, the Planning Director may delegate that responsibility, although the Planning Director shall be ultimately responsible for any decisions or actions made through that delegation of responsibility. The person or persons to whom these functions are assigned shall be referred to in this UDO as the "Planning Director".

### **2.5.3. Powers and Duties**

The Planning Director shall have the powers and duties outlined below, in addition to those enumerated in Article 3, Review Procedures.

#### **A. Administration and Enforcement**

The Planning Director shall administer and enforce the provisions of this UDO.

#### **B. Interpretation**

The Planning Director shall make written interpretations of this UDO setting forth the reasons and explanation therefore, and shall forward same to the Town Attorney.

#### **C. Technical Review Committee**

The Planning Director shall serve as the chairperson for and be responsible for all final decisions of the Technical Review Committee.

#### **D. Other Duties**

The Planning Director shall perform other duties imposed under the provisions of the Garner UDO, as amended from time to time.

## **2.6. OTHER OFFICIALS**

### **2.6.1. Town Engineer**

#### **A. Designation**

The Town Manager shall designate the Town Engineer for the Town of Garner.

#### **B. Powers and Duties**

In addition to those powers and duties enumerated in Article 3, Review Procedures, the Town Engineer shall monitor land use activities within the watershed areas to the extent reasonably practicable, identify situations that may pose a threat to water quality, and report all significant findings to the Watershed Review Board.

### **2.6.2. Building Official**

#### **A. Designation**

The Town Manager shall designate the Building Official for the Town of Garner.

#### **B. Powers and Duties**

The Building Official shall have those powers and duties enumerated in Article 3, Review Procedures.

### **2.6.3. Technical Review Committee**

#### **A. Designation**

The Planning Director shall designate a Technical Review Committee (TRC) consisting of the Planning Director (acting as chairperson), the Town Engineer, the Building Official, and any other Town professional or outside agency representative the Planning Director deems necessary for the professional review of land use and development proposals.

#### **B. Powers and Duties**

The Technical Review Committee shall have those powers and duties enumerated in Article 3, Review Procedures.

## ARTICLE 3 REVIEW PROCEDURES

---

### Table of Contents

3.1. Purpose .....	3
3.2. General.....	4
3.2.1. Interpretation.....	4
3.2.2. Effects on Successors .....	4
3.2.3. Revocation .....	4
3.2.4. Development Moratoria .....	4
3.2.5. Types of Decisions.....	4
3.2.6. Vested Rights and Expiration .....	5
3.3. Review Authority Table .....	7
3.4. Common Review Procedures .....	9
3.4.1. Preapplication Conference.....	9
3.4.2. Application Requirements.....	9
3.4.3. Withdrawal .....	10
3.4.4. Resubmission .....	11
3.4.5. Permit Choice.....	4
3.4.6. Neighborhood Meetings .....	11
3.4.7. Public Notice Requirements.....	12
3.4.8. Hearings .....	13
3.4.9. Written Decision .....	14
3.4.10. Extensions .....	14
3.4.11. Completing developments in phases.....	15
3.5. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - Subdivisions .....	16
3.5.1. Subdivision in General.....	16
3.5.2. Minor Subdivision .....	18
3.5.3. Major Subdivision .....	18
3.5.4. Final Plat.....	19
3.6. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – Map and text Amendments .....	21

---

3.6.1.	Rezoning / Map Amendment .....	21
3.6.2.	Conditional Zoning .....	23
3.6.3.	Text Amendment .....	24
<b>3.7.</b>	<b>SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS -</b>	
	<b>Permits .....</b>	<b>27</b>
3.7.1.	Zoning Compliance Permit .....	27
3.7.2.	Sign Permit .....	28
<b>3.8.</b>	<b>SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS -</b>	
	<b>Site Plans and Administrative Review .....</b>	<b>29</b>
3.8.1.	Site Plan .....	29
3.8.2.	Administrative Modifications .....	29
3.8.3.	Administrative Appeals .....	32
3.8.4.	Written Interpretation .....	30
<b>3.9.</b>	<b>SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS –</b>	
	<b>Miscellaneous .....</b>	<b>32</b>
3.9.1.	Special Use Permit .....	32
3.9.2.	Traffic Impact Analysis .....	35
3.9.3.	Variance .....	38
3.9.4.	Temporary Use Permit .....	40
<b>3.10.</b>	<b>SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS -</b>	
	<b>Environmental .....</b>	<b>42</b>
3.10.1.	Stormwater Permit .....	42
3.10.2.	Watershed Protection Occupancy Permit .....	42
3.10.3.	Flood Mitigation .....	42
3.10.4.	Subdivision Containing Floodplains, Floodways, or Buffer Areas .....	43



### **3.1. PURPOSE**

This Article establishes review procedures for land use and land development proposals within the Town's planning jurisdiction in order to enhance transparency, provide a standard and consistent development review and approval process, and ensure consistency with adopted Town plans, standards, and policies.

## **3.2. GENERAL**

### **3.2.1. Interpretation**

- A. When used throughout this Article, the words “request,” “application,” and “proposal” are equivalent.
- B. References to “permits” throughout this UDO do not necessarily include building permits. A development approval alone does not grant the holder rights to commence construction or development.

### **3.2.2. Effects on Successors**

Permits and development approvals are transferable. So long as there is an active or completed permit, no person shall make use of the land or structure except in accordance with the terms and requirements of the permit.

### **3.2.3. Permit Choice**

Pursuant to G.S. § 160D-108(b), if development regulations change between application submittal and the time of decision or project completion, the applicant may choose whether the Town will evaluate the application based on the previous or current version of the regulations.

### **3.2.4. Revocation**

- A. A permit or development approval described in this article may be revoked if the holder fails to maintain the property in accordance with the approved plans, the UDO, or other legal requirements.
- B. Revocation of a permit or development approval shall undergo the same process as was followed for the initial approval.

### **3.2.5. Development Moratoria**

Pursuant to G.S. § 160D-107, the Town may adopt a moratorium on development approval(s).

### **3.2.6. Types of Decisions**

Pursuant to G.S. § 160D-102, all applicable definitions and regulations from that chapter apply, in particular the following:

#### **A. Administrative**

Administrative decisions involve implementation, administration, or enforcement of development regulations. These decisions are made based on facts and objective standards.

#### **B. Legislative**

Legislative decisions include the adoption, amendment, or repeal of a regulation. A legislative hearing with public comment is required.

#### C. Quasi-judicial

Quasi-judicial decisions require evidentiary hearings involving findings of fact and competent, substantial, and material evidence, and are carried out according to G.S. 160D-406 and all other specifications herein. Quasi-judicial cases are unique and as such require high-level scrutiny, subjective decision-making, and discretion.

### 3.2.7. Vested Rights and Expiration

Pursuant to G.S. § 160D, a vested right is the right to undertake and complete the development and use of a property.

#### A. Building Permits

1. As provided in G.S. § 160D-108(d)(1), building permits expire six months after issuance, if the permit work has not commenced.
2. Discontinuance of work for a period of twelve months or more shall render the permit expired.

#### B. Zoning Compliance Permits

1. Pursuant to G.S. §160D-108(d)(2), zoning compliance permits shall expire within one year from date of issuance if unless work has substantially commenced.
2. For these purposes, “substantially commenced” includes but is not limited to application for and timely pursuit of a building permit, grading permit, or other permit necessary to commence installation of infrastructure or establishment of the intended use.

#### C. Site Specific Vesting Plans, per G.S. § 160D-108

1. The appropriate decision-making body’s approval of a site specific vesting plan establishes a vested right that runs with the land and authorizes the recipient to complete development as authorized by the issued permit.
2. Site specific vesting plans shall remain vested for two years, unless, upon applicant request, the Town Council grants a longer period up to no more than five years total.
3. The right shall terminate at the end of the vesting period if the next requisite permits have not been procured for the project.
4. Deviation from the site specific vesting plan shall result in forfeiture of the vested right.

Commentary (01/01/2021): Site specific vesting plans include planned developments, preliminary subdivision plats, site plans, preliminary or general development plans, special use permits, and conditional zoning districts.

5. Pursuant to G.S. §160D-108(d)(4), multi-phase developments shall be vested in their entirety with the regulations and ordinances in place at the time of site plan approval for the initial development phase. The vesting period for multi-phase developments shall be seven years.

### 3.3. REVIEW AUTHORITY TABLE

The Review Authority Table displays decision types, the participants in the review process, and their respective roles.

Figure 3.3-A Review Authority Table

Process	Type	Review	Final Action	Appeal Process	Public Notice Level (See Public Notice Requirements 3.4.6.)	Section
<b>3.5 Subdivision</b>						
<b>Major Subdivision</b>	Admin.	TRC	Planning Director	BOA	N/A	3.5.3
<b>Minor Subdivision/ Final Plat</b>	Admin.	TRC	Planning Director	BOA	N/A	3.5.2 3.5.4
<b>3.6 Map and Text Amendments</b>						
<b>Rezoning (Map Amendment)</b>	Leg.	Planning Commission	Town Council	Superior Court	A, B, C	3.6.1
<b>Conditional Zoning District/ Conditional Rezoning</b>	Leg.	Planning Commission	Town Council	Superior Court	A, B, C	3.6.2
<b>Text Amendment</b>	Leg.	Planning Director/ Planning Commission	Town Council	Superior Court	A, B, C	3.6.3
<b>3.7 Permits</b>						
<b>Zoning Compliance Permit</b>	Admin.	Planning Director	Planning Director	BOA	N/A	3.7.1
<b>Sign Permit</b>	Admin.	Planning Director	Planning Director	BOA	N/A	3.7.2
<b>3.8 Site Plans and Administrative Review</b>						
<b>Site Plan</b>	Admin.	TRC	Planning Director	BOA	N/A	3.8.1
<b>Administrative Modification</b>	Admin.	Planning Director	Planning Director	BOA	N/A	3.8.2
<b>Determination of Vested Right</b>	See Written Interpretation					
<b>Written Interpretation</b>	Admin.	Planning Director	Planning Director	BOA	N/A	3.8.3

3.3: Review Authority Table

Process	Type	Review	Final Action	Appeal Process	Public Notice Level (See Public Notice Requirements 3.4.6.)	Section
<b>3.9 Miscellaneous</b>						
<b>Administrative Appeal</b>	QJ	Planning Director	BOA	Superior Court	A, B	3.9.1
<b>Special Use Permit</b>	QJ	TRC	Town Council	Superior Court	A, B, C	3.9.2
<b>Traffic Impact Analysis</b>	Admin.	TRC	Per primary development permit	Per primary development permit	Per primary development permit	3.9.3
<b>Variance</b>	QJ	TRC	BOA	Superior Court	A, B, C	3.9.4
<b>Temporary Use Permit</b>	Admin.	TRC	Planning Director	BOA	N/A	3.9.5
<b>3.10 Environmental</b>						
<b>Flood Mitigation Permit</b>	QJ	Town Engineer (Floodplain Administrator)	BOA (acting as WRB)	Superior Court	Per Variance	3.10.1
<p><b>Notes:</b>            Admin. = Administrative            Leg. = Legislative            QJ = Quasi-judicial            TRC = Technical Review Committee, which also includes Planning Director            BOA = Board of Adjustment            WRB = Watershed Review Board</p>						

## **3.4. COMMON REVIEW PROCEDURES**

### **3.4.1. Preapplication Conference**

- A. The purpose of a preapplication conference is to provide the applicant information on the appropriate application procedure for their desired action, background information, necessary materials, and other relevant information applicable to their proposed request.
- B. Preapplication conferences are encouraged for all development applications, but are mandatory for the following:
  - 1. Rezoning.
  - 2. Conditional zoning.
  - 3. Minor subdivision.
  - 4. Major subdivision.
  - 5. Variance, including Flood Mitigation Permit.
- C. Applicants shall provide a sketch or drawing to aid in the understanding of the proposal. At minimum, the sketch plan should include:
  - 1. Property location or parcel number.
  - 2. Approximate location of existing structures.
  - 3. A description or drawing of the desired action or use and where it will occur.

### **3.4.2. Application Requirements**

- A. Applicant Eligibility
  - 1. The property owner or the property owner's authorized agent may submit the applications described in this Article. Agents must produce notarized documentation of permission from the property owner.
  - 2. Pursuant to G.S. § 160D-702, the Town Council may initiate rezonings through direction to the Planning Director.
- B. Application Completeness
  - 1. The Planning Director will determine the completeness of each application.
  - 2. Incomplete applications will not be accepted. Incomplete applications do not have the sufficient information or materials necessary for review and processing.

3. If an application is found to be incomplete or insufficient, the Planning Director shall notify the applicant and provide a list of deficiencies or missing materials that need correcting.

C. Content

1. A complete application contains all materials and requirements set forth on each application form as provided by the Planning Director.
2. Under unique circumstances, the Planning Director may find that additional information is necessary to determine the sufficiency of a submitted application. The Planning Director is authorized to require the applicant to present this information for inclusion in the consideration of the application.

3. Permits and Approvals from Outside Agencies

No plan, permit, or Certificate of Occupancy shall be issued without proof of receipt of necessary permits from outside agencies.

D. Fees as Outlined in the Town of Garner Adopted Fee Schedule

1. No application will be considered complete without rendering of appropriate fees at submittal.
2. The Town may fully refund application fees for withdrawn applications, provided review of the application has not begun.

E. Deadline

All applications shall be completed and submitted to the Planning Director in accordance with the published calendar on file in the Planning Department.

**3.4.3. Withdrawal**

- A. An applicant may withdraw a rezoning application at any time, by filing a signed, written statement of withdrawal with the Planning Director.
- B. The statement of withdrawal shall be signed by all persons who signed the application, or in the event of death or incompetence by the estate's lawful personal representative.
- C. Any application that has not provided any requested revisions or materials within 120 days of the request shall be administratively withdrawn by the Planning Director, with no refund of fees. The applicant shall be notified of the pending withdrawal in writing or by email 30 days prior to the withdrawal.

Commentary (01/01/2021):  
Examples include permits issued by outside agencies such as USACE, CORPUD, etc. for approvals such as wetland mitigation (404/401), CLOMAR, utility tap approval, etc.



#### 3.4.4. Resubmission

- A. An incomplete application may be resubmitted at the next application intake date according to the standard application submission procedure described herein.
- B. Upon the denial or disapproval of an application (except for a rezoning application), an identical application may not be submitted.
- C. Any resubmittal must meet at least one of the following criteria:
  - 1. New or additional information has become available that may impact the application of review standards.
  - 2. The new application incorporates different standards, e.g., new uses or changes in density.
  - 3. A finding, by the approving body, that the final decision on the application was based on a material mistake of fact.

#### 3.4.5. Neighborhood Meetings

- A. The purpose of a neighborhood meeting to inform neighbors of the development proposal, receive their comments, and potentially resolve any conflicts or concerns prior to the official hearing.

- 1. Applicability

- At least one neighborhood meeting is required for

- a. Rezoning / Map Amendments
    - b. Conditional Zonings
    - c. Special Use Permits
  - 2. The meeting shall be held prior to review by the Planning Commission and/or the Town Council.
  - 3. The applicant shall hold the neighborhood meeting within the town's ETJ in an accessible location that is proximate to the site or at a location that is centrally located within the town.

- 4. Notification

- See requirements for mailed notice, Section 3.4.6.

- 5. The applicant shall submit a meeting summary identifying all issues raised and any resolution or explanation, a list of attendees, a list of addresses where notices were mailed, and a list of returned mail notices no later than ten (10) calendar days prior to the first reading or meeting of Planning Commission or

Town Council.

### 3.4.6. Public Notice Requirements

#### A. Published

The Planning Director shall place an advertisement on the Town's official webpage once a week for two successive weeks. The first notice shall be published no less than ten (10) days and no more than 25 days prior to the hearing. The contents of the published notice shall include:

1. The general location (including a map).
2. The parcel number and/or street address.
3. A description of the action requested.
4. Current and proposed zoning districts (rezonings only).
5. The time and location of the anticipated public hearing.
6. Phone number and email of the appropriate applicant's contact.
7. Phone number and email of the appropriate Town contact.
8. A statement that interested parties may appear at the hearing.
9. A statement that substantial changes to the proposed action may occur following the hearing.

#### B. Posted

The Planning Director shall post a notice of application at a visible location on subject property no less than fourteen (14) days prior to the hearing. The contents of the posted notice shall include the Town's general contact information and that a land use decision is under consideration.

#### C. Mailed

The owner of the affected parcels and the owners of parcels within 300 feet shall be notified of the hearing by first class mail. For zoning map amendments, properties shall be considered abutting even if separated by a street, railroad, or other transportation corridor. Mailed notices shall contain the same content as published notices outlined subsection A.

1. Pursuant to G.S. § 160D-602(b), if a mailed notice for a zoning map amendment hearing includes at least fifty individual owners of at least fifty individual properties, the Town may instead elect to publish notice of the hearing as specified in

Section 3.4.5. In this case, each advertisement shall be at ½ of a newspaper page in size. Property owners outside of the newspaper’s circulation area shall still be notified of the hearing via first class mail.

2. If a notice contains errors regarding the time, date, or location of the hearing or the location of the subject property, the notice shall be rendered inadequate. However, if a bona fide attempt resulted in any other minor or clerical defect in the notice, the notice shall remain valid. If questions of validity arise, the decision-making body shall make a formal finding of substantial compliance or lack thereof. If the decision-making body finds there is substantial compliance, it may then begin the proceedings for the case.

### 3.4.7. Hearings

#### A. Modification of Application

1. The applicant may agree to application modifications in response to questions or comments by persons appearing at the public hearing or to recommendations by the Town Council, Planning Commission or Board of Adjustment.
2. Unless such modifications are so substantial 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 Department.
3. The decision-making body may refer the case back to the recommending body for review, prior to further consideration. The decision-making body shall choose one of the following options:
  - a. Continue the hearing to a new date and time certain within 45 days in accordance with the provisions below.
  - b. Close the hearing and re-publish notice of any future hearing in accordance with this paragraph.

#### B. Continuation

The decision-making body may continue hearings without further notification so long as the motion to continue the hearing, made in open session, specifies the date and time of the hearing continuation.

#### C. Evidentiary Hearings

Pursuant to G.S. § 160D-406, evidentiary hearings shall be required as specified in Section 3.3.

1. Oaths

The acting chair of the decision-making body and the clerk to the board are authorized to administer oaths to all witnesses in evidentiary hearings.

2. Parties

Pursuant to G.S. § 160D-1402(d), the applicant, local government, and other appropriate parties shall have the right to participate at the hearing. Additional witnesses may present competent evidence pertaining to the case.

3. Evidence

- a. All findings and conclusions shall be based on substantial, competent, and material evidence. All competent evidence must be admissible in a court of law.
- b. Competent evidence does not include the opinions of lay witnesses attesting to property value implications, traffic impacts, or other matters about which expert testimony would generally be admissible.

4. Meeting Record

- a. Kept pursuant to state public record retention laws.

**3.4.8. Written Decision**

Within thirty calendar days after a final decision is made by the Town Council, Planning Commission, Board of Adjustment, Planning Director, or other review body under the requirements of this UDO, a copy of the written decision shall be sent to the applicant or appellant.

- A. A copy of the notice shall be filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.
- B. The written decision shall state the review body's findings, conclusions, and supporting reasons or facts whenever this UDO requires these as a prerequisite to acting.

**3.4.9. Extensions**

The Planning Director shall grant time extensions to approved and unexpired special use permits and administrative development approvals according to

the provisions of this subsection.

- A. To receive an extension, the permit holder must file a written request with the Planning Director. One extension is permitted per parcel per development approval.
- B. Permit time extensions shall be limited to a period not to exceed 24 months from the date of the original permit expiration.

**3.4.10. Completing Developments in Phases**

- A. Developers shall submit a phasing plan for developments that will be completed in phases. The phasing plan shall include drawings of each phase and schedule of any associated improvements to be completed during the phase. Any development approval or permit shall be contingent on the drawings and the approved schedule.
- B. Each phase of a proposed development shall include the infrastructure and other required elements of this Ordinance for each phase to stand alone.
- C. The provisions of this Ordinance shall apply to each phase of development as if it stood alone.

### 3.5. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - SUBDIVISIONS

#### 3.5.1. Subdivision in General

##### A. Applicability

1. Pursuant to G.S. § 160D Article 8, subdivision approval shall be required before the division of land into two or more parcels.
2. In accordance with G.S. § 160D-802, the following types of subdivisions proceed directly to Final Plat (per Section 3.5.4):
  - a. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resulting lots are equal to or exceed the standards of this UDO.
  - b. The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.
  - c. The public acquisition of land for water or sewer infrastructure or the widening or opening of streets or public transportation corridors.
  - d. The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this UDO.
  - e. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession, per G.S. § 29.
  - f. The division of a tract into plots or lots used as a cemetery.

Commentary (1/1/2021):  
These types of subdivisions were previously referred to as "exempt" subdivisions.

##### B. No subdivision without plat approval

1. As provided in G.S. § 160D-807, no person may subdivide land except in accordance with all the provisions of this UDO. No subdivision may occur unless and until a final plat of the subdivision has been approved in accordance with the provisions of this Section and recorded in the Wake County Registry. The provisions of this section 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 approved or recorded in Wake County

Registry. Such arrangements shall strictly follow the provisions of G.S. § 160D-807.

2. As provided in G.S. § 160D-807, the Wake Register of Deeds shall not record a plat of any subdivision within the Town's planning jurisdiction unless the plat has been approved in accordance with the provisions of this UDO.
  3. As provided in G.S. § 160D-802, not all divisions of land constitute subdivisions that are subject to all regulations under this UDO. However, to ensure that such divisions are exempt from the requirements of this UDO, all plats creating a division of land shall be presented to the Planning Department before recordation in the Wake County Registry, and the planning staff shall indicate on the face of the plat that the division is exempt from the provisions of this UDO.
  4. All stormwater management provisions must be met prior to the subdivision of land.
  5. It shall be unlawful to offer and cause to be recorded any major or minor subdivision plan, plat, or replat of land within Garner's jurisdiction with the Wake County Register of Deeds unless the same bears the endorsement and approval of the Planning Director or Town Clerk.
- C. No occupancy, use, or sale of lots until requirements fulfilled
1. Where the subdivision process applies, the development or sale of lots prior to approval of a final plat is prohibited.
  2. For development on existing lots, no occupancy or use shall be permitted prior to the approval of at least one of the following permits:
    - a. Site Plan
    - b. Special Use Permit
    - c. Temporary Use Permit
    - d. Certificate of Zoning Compliance
  3. Issuance of a final plat or any of the permits listed above authorizes the holder to commence the approved activity; however, excepting phased developments, structures with temporary certificates of occupancy, and subdivisions with improvement guarantees, no intended use may commence, no building be occupied, nor any lot be sold until all of the UDO requirements have been met.

### 3.5.2. Minor Subdivision

- A. A minor subdivision is any subdivision that does not involve any of the following:
  - 1. Creation of a total of not more than five lots.
  - 2. Creation of any new public streets.
  - 3. Extension of the water or sewer system operated by the City of Raleigh.
  - 4. Installation of drainage improvements through one or more lots to serve one or more other lots.
- B. A preapplication conference with CORPUD is required prior to submission of an application to the Town.
- C. After a preapplication conference and sketch plan review and approval by the TRC, the applicant may apply for final plat approval.
- D. See 3.5.4 for approval criteria for minor subdivision final plats.

Commentary (1/1/2021):  
Approval of utility tap locations by CORPUD is required prior to final plat review by the Town.

### 3.5.3. Major Subdivision

- A. All other subdivisions of land not listed in Section 3.5.2 shall be considered major subdivisions.
- B. Review
  - 1. A major subdivision requires submission and review of a preliminary plat.
  - 2. The Town shall forward the preliminary plat to the Wake County Health Department, and any other affected agencies potentially including NCDOT and the Wake County Board of Education.
  - 3. Within 15 days of submittal of the application, the TRC shall review the preliminary plat and application for consistency with the UDO. For preliminary plats that do not meet the standards of this Ordinance, a list of deficiencies shall be provided to the applicant, which may also include a list of potential options for bringing the preliminary plat into compliance.
- C. Upon a determination by the TRC that the preliminary plat meets the standards of this Ordinance, it shall be approved by the Planning Director.
- D. Action following Preliminary Plat Approval.
  - 1. Following preliminary plat approval, the applicant may proceed to comply with other requirements of this UDO including construction plans, preparation of the final plat, and other



approvals and permits.

2. The preliminary plat approval does not guarantee the approval of the final subdivision plat.

#### 3.5.4. Final Plat

##### A. Applicability

Final plats are required for all subdivision of land in Garner's planning jurisdiction.

- B. The Final Plat shall only constitute the portion of the approved preliminary plat that the subdivider proposes to record and develop at the time of submission. Approval shall be subject to the installation of subdivision improvements described in this UDO.

##### C. Application

1. The final subdivision plat shall be submitted in accordance with G.S. § 47-30 and with the requirements maintained by the Planning Director.
2. Endorsements Required See appendix of certificates.
  - a. Certificate of ownership
  - b. Certificate of survey and accuracy
  - c. Certificate of dedication, if applicable
  - d. Certificate of approval by the Planning Director
  - e. Certificate of approval by City of Raleigh Utilities, if applicable
  - f. Wake County Plat Review Officer's certificate
3. All major subdivision final plats located outside the corporate limits of the Town, but within the planning jurisdiction, shall contain the following additional certificates:
  - a. NCDOT Division 5 of Highways District 1 Engineer certificate.
  - b. Wake County Environmental Health certificate of approval of non-municipal water supply and sewage disposal systems.
4. When required by the federal government, all final plats shall contain a certificate for a federally funded project.

##### D. Approval

1. After TRC certification that the final plat meets all applicable

- requirements of this Ordinance, the Planning Director shall approve a final subdivision plat.
2. When sufficient financial security in the amount of 125% of the required, uninstalled improvements is furnished to guarantee the completion of the improvements, the Planning Director shall approve a final subdivision plat prior to the full installation of all improvements.
  3. Additional approval criteria for minor subdivision final plats
    - a. The plat complies with the standards of Article 8, Subdivision, design/improvements, and any other applicable requirements of this UDO.
    - b. The plat is consistent with the approved preliminary plat, if applicable.
    - c. The plat indicates that all subject lots will have frontage on existing, approved streets or such provision will be made.
    - d. New or residual parcels will conform to the requirements of this UDO and other applicable regulations.
    - e. No new streets (not including widenings of existing roads) or road extensions are required or are likely to be required for access to interior property, or they have been provided.
    - f. No drainage or utility easements will be required to serve interior property, or they have been provided.
    - g. No extension of public sewerage or water lines will be required, or they have been provided.
    - h. All necessary right-of-way has been offered for reservation or dedication.
    - i. The proposed subdivision will not adversely affect permissible development of the remainder of the parcel or of adjoining property.
- E. Notice of Decision. Written decision as described in Section 3.4.8, Written Decision shall be provided to the applicant and filed in the Planning Department.

### **3.6. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – MAP AND TEXT AMENDMENTS**

#### **3.6.1. Rezoning / Map Amendment**

##### **A. Applicability**

Any owner of land, their authorized representative, or the Town Council may request that land be rezoned.

B. A rezoning request shall be filed with the Planning Director and shall include, at a minimum:

1. The name, address, and phone number of the applicant.
2. A description of the affected property and the proposed zoning change.

##### **C. Receipt of Application**

Upon receipt of a petition for a zoning map amendment of any type, the Town Clerk shall establish a date for a public hearing and schedule and advertise a public hearing.

D. The Planning Director shall prepare a report that reviews the request and its compliance with the Comprehensive Plan and other adopted Town plans. The report shall include an analysis of the reasonableness of the proposed zoning. It shall be transmitted to the Planning Commission, Town Council, and the applicant.

##### **E. Planning Commission**

1. After the initial meeting, the Council shall refer the case to the Planning Commission for review and recommendation.
2. The Commission shall examine the request and forward a written recommendation to Town Council remarking on consistency with all adopted plans within sixty (60) days. After sixty days have passed, the Town Council can proceed towards a decision without the Commission's report.

##### **F. Approval Criteria**

In making recommendations regarding amendments to the official zoning map, the following approval criteria shall be considered:

1. Consistency (or lack thereof) with the Comprehensive Growth Plan and other adopted plans.
2. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood.

### 3.6: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – MAP AND TEXT AMENDMENTS

---

3. Suitability of the subject property for uses permitted by the current versus the proposed district.
4. Whether the proposed change tends to improve the balance of uses or meets a specific demand in the Town.
5. Availability of sewer, water, transportation infrastructure, stormwater facilities, and other necessary infrastructure generally suitable and adequate for the proposed use.

#### G. Public Hearing

In addition to comments provided in person at the public hearing, any resident or property owner in the Town may submit a written statement regarding the proposal to the Town Clerk at least two business days prior to the proposed vote on such change. If submitted according to the preceding condition, the Town Clerk shall submit said written statement(s) at any time prior to the Town Council vote.

#### H. Modification of Application

1. An applicant in a zoning matter may reduce the geographic scope or propose a different district or combination thereof from that requested in the application by filing a statement of the same with the Planning Director.
2. If the application is limited by excluding certain enumerated land uses, either in the original application or in any amendment thereto, the application shall be resubmitted as a conditional zoning request.

#### I. Time Lapse Between Similar Applications

1. In the event of a withdrawal of an application prior to action by the Town Council on the merits, no application may be filed requesting the rezoning of any parcel contained in the withdrawn application prior to the expiration of a minimum period of six months from the withdrawal of the application.
2. When the Town Council has voted on a zoning application and the proposed rezoning has either been denied or has failed to be adopted, then the application shall be deemed to have expired.
3. No subsequent application requesting a zoning change for any parcel contained in an application which has expired may be made prior to the expiration of a minimum period of six months from the date of expiration.
4. No subsequent application requesting the same zoning category for any parcel contained in an application which has

Commentary (1/1/2021):  
Requesting to limit uses must be a condition on a conditional zoning or conditional rezoning application.

expired may be filed prior to the expiration of a minimum period of one year from the expiration.

5. The Town Council, by a  $\frac{3}{4}$ -majority vote, may waive the time-lapse requirements of this section if the Council deems it to be in the public interest to do so.

J. Town Council

1. The Town Council may not take final action on request until it has received the Planning Commission recommendation or sixty (60) days have passed since the map amendment was first heard by the Planning Board.
2. Pursuant to G.S. § 160D-605, the Council shall prepare a consistency statement and describe the reasonableness of the proposal and show that the proposal is in the public interest.

### 3.6.2. Conditional Zoning

A. Applicability

Conditional zoning shall follow the same review and approval process as Section 3.6.1, with additional standards as described in this subsection. Where conflict occurs, these standards shall apply.

B. Underlying General Zoning District

All conditional zoning districts shall be based on an underlying (base) general use zoning district.

C. Tiers

There are two tiers of conditional zoning districts.

1. Tier 1

Tier 1 conditional zoning requests identify a base district(s) and any uses in that base district's permitted uses which are excluded in the conditional zoning district. Dimensional standards of the base district remain intact and unchanged. Tier 1 conditional zoning requests do not require a bubble master plan.

2. Tier 2

Tier 2 conditional zoning requests identify a base district(s), any uses in that base district's permitted uses which are excluded in the conditional zoning district, dimensional standards for each use permitted (either by-right or by other criteria such as Special Use Permit), and a bubble master plan. Tier 2 specifications shall also apply to any uses requiring conditional zoning approval as

Commentary (01/01/2021):  
Conditions may neither circumvent the intent of the established general district nor alleviate the regulations without providing a method of alternative compliance. Conditions may impose stricter regulations.

outlined in Article 5, Use Regulations.

a. Bubble Master Plan

Tier 2 conditional zoning requests shall be accompanied by a bubble master plan which shall be reviewed and approved in concert with the conditional zoning request. The bubble master plan shall show the following:

- i. The correct number of external, cross-access, and adjacent property stub-out access points, although the exact location may be modified through subsequent review.
- ii. The uses desired and their general location and intensity or density. Tier 2 conditional zoning requests shall include a table of permitted uses for the proposed district. It shall include all uses listed in the table of permitted uses in Article 5, and whether they are permitted or excluded
- iii. The appropriate setbacks, dimensional standards, and other regulations for each zoning district, use, or area. Tier 2 conditional zoning requests shall include a table of dimensional standards. This shall be based on the general zoning district and updated to reflect altered dimensional standards. Any other information necessary to ensure that the master plan can meet the standards required by this Ordinance to execute a logical development plan.

D. If the Town Council modifies any conditions or imposes new ones, the property owner or authorized agent must provide (or decline) written consent prior to any decision of approval.

E. Addition of property to a conditional zoning district

Entitlement, recordation, or construction of any or all portions of a conditional zoning district master plan shall not constitute any precedent or vesting of rights, design, development standards, uses, or otherwise, on any property that might be proposed for addition to a conditional zoning master plan in the future. The standards of this Ordinance in effect at the time of formal application of the property addition to a conditional zoning district master plan shall prevail.

Commentary (01/01/2021):  
The uses should be of similar intensity and complement each other to avoid creating conflicts or nuisances.

Commentary (01/01/2021):  
Conditions may neither circumvent the intent of the established general district nor alleviate the regulations without providing a

**3.6.3. Text Amendment (aka Ordinance Amendment)**

A. Initiation

Text amendments to this Ordinance may be initiated by any citizen, by the Town Council, or proposed to Council by staff.

B. Process

1. Petition forms are available at Town Hall and shall be filed with the Planning Director. Upon receipt of the form, any supporting materials, and associated review fees, the Planning Director shall review the application and determine if the proposed amendment should be treated as if it were initiated by the Town.
2. The Planning Director shall prepare a written report to be provided to the applicant, the Town Council, and the Planning Commission prior to the legislative hearing.

3. Citizen Comments

In addition to comments provided at the public hearing, any resident or property owner in the Town may submit a written statement regarding a proposed text amendment to the Town Clerk at least two business days prior to the proposed vote on the amendment. The Town Clerk shall submit the written statement(s) to the Town Council at any time prior to the vote.

4. The Town Council shall refer the text amendment to the Planning Commission at the end of the hearing.
5. The Planning Commission shall review the proposed amendment and forward a recommendation to the Town Council for consideration. If the Planning Commission is not prepared to issue a recommendation, it may request the Town Council delay or continue final action on the amendment until the Planning Commission is prepared to give a recommendation.
6. The Town Council may not take final action on the proposed amendment until it receives the recommendation from the Planning Commission or until sixty (60) days have passed since the proposal referral.

C. Approval Criteria

1. The extent to which the proposed text amendment is consistent with the remainder of the UDO, including, specifically, any purpose and intent statements.
2. The extent to which the proposed text amendment represents a new idea not considered in the existing UDO, or represents a revision necessitated by changing circumstances over time.

### 3.6: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – MAP AND TEXT AMENDMENTS

---

3. Whether or not the proposed text amendment corrects an error in the UDO.
4. Whether or not the proposed text amendment revises the UDO to comply with state or federal statutes or case law.



## 3.7. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - PERMITS

### 3.7.1. Zoning Compliance Permit

#### A. Applicability

Zoning compliance permits are required for all activities that do not require special use permits (Section 3.9.1) or site plans (Section 3.8.1).

#### B. Effect

It shall be unlawful to construct, grade, alter, excavate, or move, any land or building, including accessory structures, or to establish or change any use other, without a valid Zoning Compliance Permit issued by the Planning Director.

#### C. Application

1. Submittal. The application for a Zoning Compliance Permit shall be submitted to the Planning Director at the time of building permit application. Where a building permit is not required, the application shall be made prior to initiating any activity described herein.

2. Contents

The application form shall be accompanied by a written statement and scaled plans or plat drawings showing the following detail:

- a. Lot shape(s), location(s), and dimensions.
- b. Building shape(s), size(s), and location(s).
- c. Existing and intended use of lot and structures.
- d. Additional information as requested by the Planning Director, including, parking, landscaping, screening, buffers, signage, flood hazards, and floor areas.

#### D. Review

1. Approval. If the Planning Director determines that the application conforms to the requirements of this UDO, the Planning Director shall issue the Zoning Compliance Permit.
2. Denial. If the Planning Director determines that the application does not conform to the requirements of this UDO, the Planning Director shall deny the Zoning Compliance Permit and provide written notice to the applicant.

#### E. Expiration

Failure to begin activities outlined in the Zoning Compliance Permit within one year shall render the permit of no further force and effect.

### 3.7.2. Sign Permit

#### A. Purpose

It is the purpose of this subsection to permit and regulate signs and their placement in such a way as to support and complement the land use objectives set forth in this UDO and in other Town Council declarations of policy; to avoid endangering the public safety, and not confuse or mislead a driver or obstruct the vision necessary for traffic safety; and to advance the economic stability, preservation and enhancement of property values, and the visual impact and image of the Town.

B. A sign permit is a type of Zoning Compliance Permit, with additional standards as described herein. Where conflict occurs, these standards shall apply. Where a standard is not referenced or modified, the existing standard shall apply.

C. For standards related to signs and sign permits, see Article 7, General Development Standards.

#### D. Applicability

1. Except as otherwise provided in this UDO, no sign may be erected, moved, enlarged, or altered except in accordance with and pursuant to a sign permit.
2. No sign permit shall be issued unless the plans and information submitted demonstrate that the sign will conform to all applicable requirements of this UDO.

#### E. Application

A sign permit application shall be submitted in accordance with the requirements maintained by the Planning Department.

F. The Planning Director shall review each sign permit application and act to approve, approve with conditions, or deny the permit. The Planning Director may grant approval with conditions only to the extent that such conditions specify the actions necessary to bring the application into complete compliance with this UDO.

G. A sign may also require separate building and electrical permits from the Town.

H. Sign permits expire as a Zoning Compliance Permit would.

## **3.8. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - SITE PLANS AND ADMINISTRATIVE REVIEW**

### **3.8.1. Site Plan**

#### **A. Applicability**

A valid site plan approval is required prior to issuance of a Zoning Compliance Permit or building permit for:

1. Any new nonresidential, mixed use, and residential development, excluding single family detached homes and duplex (aka two-family homes).
2. Any change of use from residential to nonresidential.
3. Any amenity, facility, parking area, developed common area, or accessory area, excluding discrete areas of signage permitted through the sign permit process.

#### **B. Review**

Upon certification by the TRC that the site plan meets (or will meet) all applicable standards of this Ordinance and other Town ordinances, the Planning Director shall approve the site plan with or without conditions. Approval with conditions is only permitted to the extent that such conditions specify the actions necessary to bring the application into complete compliance with this UDO. Should the TRC determine that all such requirements and provisions have not been satisfied, the Planning Director shall deny the application.

### **3.8.2. Administrative Modifications**

#### **A. Applicability**

An administrative modification may be requested for any valid development approval or site specific vesting plan, including conditional zoning districts and special use permits.

- B. The Planning Director shall make administrative design modifications to approved plans, permits, or development approvals according to the following standards.
- C. Any design modifications not identified as “major” shall be considered minor design modifications.
- D. Minor Design Modifications
  1. Minor design modifications to approved permits are permissible with the approval of the Planning Director.

2. Cumulative minor modifications that together would result in a major modification or deviation from the original entitlement shall trigger review as a major modification and shall be subject to the appropriate review process.
  3. The Planning Director and TRC shall review the modifications for consistency with this UDO and adopted Town plans and specifications and approve or deny the modification.
  4. If review of a minor modification requires the application of subjective review criteria or standards, it shall be considered a major design modification.
- E. Major Design Modifications
1. Major design modifications require review according to the appropriate review procedure per the Review Authority Table (3.3).
  2. Major design modifications include:
    - a. Removal of a new vehicular access point to an existing street, road, or thoroughfare.
    - b. Modification of special performance criteria, design standards, or other conditions or requirements specified in the original entitlement.
    - c. An increase or decrease in the total number of residential dwelling units by ten percent or greater.
    - d. An increase in total floor area by ten percent or greater or a decrease in total floor area by twenty percent or greater.
    - e. Any increase in number of parking spaces of greater than ten percent.
    - f. Any increase greater than twenty percent or decrease of greater than ten percent in open space.
    - g. Any increase greater than ten percent in the amount of public right-of-way or utilities, provided that any change in location or reduction in amount must also be reviewed and approved by TRC else it shall be determined a major modification.

### 3.8.3. Written Interpretation

#### A. Applicability

When uncertainty exists and unless otherwise specified, the Planning

Director shall be authorized to make all interpretations concerning the provisions of this Ordinance, review of administrative decisions taken in accordance with this Ordinance, including determination of existing vested rights of property in accordance with Section 3.8.3.

B. Application Requirements

An application for a written interpretation shall be submitted in accordance with this Section. Such application shall provide a request of sufficient detail for the rendering of an interpretation.

C. Action

1. The Planning Director shall review and evaluate the request in light of the text of this Ordinance, the Zoning Map, all adopted plans, policies, or land use documents, and any other relevant information.
2. Following completion of any technical reviews by staff, the Planning Director shall render an opinion.
3. The interpretation shall be provided to the applicant in writing.

D. Official Record

The Administrator shall maintain an official record of all interpretations. The record of interpretations shall be available for public inspection during normal business hours. The rendering of an interpretation on a specific piece of land does not necessarily constitute a precedent.

## 3.9. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – MISCELLANEOUS

### 3.9.1. Administrative Appeals

#### A. Applicability

Any person possessing standing under G.S. § 160D-1402(c) may appeal a final order, interpretation, or administrative decision of the Planning Director to the Board of Adjustment.

Commentary  
(01/01/2021): In general, only an aggrieved party may bring an appeal.

#### B. Effect of Appeal

Pursuant G.S. § 160D-405(f), an appeal does not stop action lawfully approved by the Town but stays actions presumed in violation of this UDO.

#### C. Enforcement and Fines

Pursuant G.S. § 160D-405, enforcement action and accrual of fees and fines shall be stayed from the filing of the appeal until the time of decision.

#### D. Process

##### 1. Application

The aggrieved party must file a petition with the Town Clerk within thirty days of the written decision described in Section 3.4.8. Any other party with standing must file a petition with the Town Clerk within thirty days of actual or constructive notice of the disputed decision.

##### 2. Record of Administrative Decision

The Planning Director shall transmit all materials constituting the record of the contested action to the Board of Adjustment, the appellant and/or the owner.

##### 3. Public Notice

Public notice is required in accordance with Section 3.4.6 Public Notice Requirements.

##### 4. Witnesses

The official who made the decision, or his or her successor, shall appear at the hearing as a witness.

##### 5. Decision

The Board of Adjustment may make a motion to reverse, affirm (wholly or partly), or modify the order. A majority shall be required to decide the case. For the purposes of this Section, vacant positions on the Board and members who are disqualified from voting shall not be included in the calculation of the requisite majority if there are no qualified alternates available.

6. Notice of Decision

See Section 3.4.8.

7. Appeals

Appeals of decisions of the Board of Adjustment shall be directed to the superior court.

**3.9.2. Special Use Permit**

A. Special use permits, as defined in G.S. § 160D-102(30) and described in G.S. § 160D-705(c), are required for uses which in an unmitigated state may create negative impacts to neighboring properties or uses. This process allows each proposed use to be evaluated by its merits and conditions specific to each site.

B. Applicability

In addition to the other special uses listed in the use table in Article 5, General Development Standards, the following development types have significant city-wide impacts and require special use permits:

1. Any nonresidential or mixed-use development encompassing 100,000 or more square feet of gross floor area.
2. Any single-family residential subdivision of 200 or more lots.
3. Any multifamily residential development of 100 or more units.

C. Staff Review

Upon receipt of the application and determination of completeness, the Planning Director shall create a report for the Town Council.

D. Special Use Review Criteria

Special use applications may be approved by the Town Council if it finds that all the following findings of fact have been met:

1. The proposed use will not endanger the public health or safety.
2. The proposed use will not substantially injure the value of adjoining or abutting property.

3. If completed as proposed, the development will comply with all requirements of this Ordinance.
  4. The proposed use is consistent with the Town's adopted transportation plan(s), other relevant adopted plans and policies, and the stated purpose and intent of this UDO (the fact that the use is permitted under certain circumstances in the zoning district creates a rebuttable presumption that the proposed use is in harmony with the intent of the UDO as relates to the general zoning plan).
  5. The proposed use is compatible with adjacent uses and proximate neighborhood in terms of building scale, site design, buffering and screening, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts).
  6. Any significant adverse impacts resulting from the use will be mitigated or offset, including impacts on the natural environment.
  7. The public safety, transportation and utility facilities and services will be available to serve the subject property while maintaining sufficient levels of service for existing development.
  8. Adequate assurances of continuing maintenance have been provided.
- E. Conditions of Approval
1. Without limiting the foregoing, the permit-issuing authority may attach a condition limiting the permit to a specified duration or may otherwise impose such reasonable conditions as necessary to address the impacts of the proposed developments on:
    - a. Adjoining property.
    - b. The existing natural and man-made features of the site.
    - c. Off-site and on-site traffic flow.
    - d. Public utilities, infrastructure, and services.
    - e. Such other public services or goals of the Comprehensive Growth Plan, adopted plans, or the Transportation Plan that may be negatively impacted by the proposed development.
  2. All additional conditions or requirements shall be recorded on the permit and shall be affirmed (or declined) in writing by the applicant prior to a decision on the proposal.



3. All additional conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirements of this UDO.
4. A vote may be taken on additional conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth above. The applicant must give written consent to any conditions for the permit to be valid.

### 3.9.3. Traffic Impact Analysis

#### A. Applicability

1. A Traffic Impact Analysis (TIA) shall be required for projects that are anticipated to generate 100 or more peak hour vehicle trips, based on the latest edition of the Institute of Transportation Engineers (ITE) Traffic Generation Manual.
2. A Traffic Impact Analysis shall be required for projects that are anticipated to generate 1,000 or more average daily trips (ADT), based on the latest edition of the ITE Traffic General Manual.

#### B. Scope

1. When a traffic impact analysis is required, the Planning Director and the Town Engineer shall determine the type and scope of the study jointly during a meeting with the applicant. The Planning Director may also involve representatives of other agencies or departments. The elements to be determined during the scoping session shall include:

##### a. Type of Study

A letter report, full traffic impact analysis report, or special report (such as a sight distance survey) may be required.

##### b. Definition of Impact Area

The points of access and key streets and intersections that may be affected by development of the subject tract constitute the impact area. Traffic recorder and turning movement assessment locations shall also be determined.

##### c. Period of Analysis

The period of analysis shall be for both the morning and afternoon peak hour.

##### d. Analysis Scenarios

Scenarios for analysis shall include existing conditions, and

Commentary  
(01/01/2021): The application of these provisions should match the type of development proposed so that excessive study scope requirements are not unreasonably imposed.

opening year with and without development, and shall include increments of five years after opening until the expected completion of the project, with or without development.

e. Assumptions

Trip generation and distribution assumptions including trip generation categories, diversion assumptions and distribution assumptions. Assumed rate of growth in background traffic, and developments in the area that have been approved or are under review shall also be included.

f. Duration of Study

The duration of traffic studies (the time period for which they are considered a valid basis for approvals) for large projects, particularly Planned Developments, will be evaluated on a case-by-case basis as part of the application review process.

2. Study Elements

a. The following details shall be required as determined in the scoping meeting

i. Existing Conditions Survey

(a) Street System Description

The street system shall be described, including geometric features, lane usage, traffic control, signage, sight distances, and adjacent uses and curb cuts.

(b) Traffic Volumes

Existing traffic volumes shall be provided for the impact area, including both average annual daily traffic (AADT) and peak hour volumes. AADT may be derived from current counts of the North Carolina Department of Transportation (NCDOT), where available, and peak hour volumes shall be provided from field counts. Data shall be adjusted for daily and seasonal variations. Turning movement counts for peak hour shall be provided for critical intersections.

(c) Capacity Analysis

Existing capacity of signalized and unsignalized intersections.

(d) Other Details

Other details may be required at the discretion of the Town Engineer or Planning Director depending upon the type and scale of the project. These may include, but are not limited to, queue length analysis, pedestrian counts, accident data, traffic speeds (both 50th and 85th percentile), and stopping distances.

ii. Future without Development

Capacity analysis shall be based on the Highway Capacity Manual or other methodology approved in advance by the Town Engineer.

iii. Future with Development

(a) Projections of peak hour traffic generation shall be made using the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual, unless the Town Engineer determines that locally derived data will provide more accurate forecasts. Data from similar facilities may be used where the information is not available from ITE.

(b) Special analysis may be required to determine the need for signalization, minimum safe sight distances, gap analysis, turning radius requirements, queue length analysis, turning lane length analysis, curb cut locations or similar requirements.

iv. Mitigation Plan

Where the analysis indicates that the project will create deficiencies in the impact area, improvements shall be recommended, along with projected cost estimates. The design of improvements shall be in accordance with the Town of Garner or the North Carolina Department of Transportation (NCDOT), as appropriate. Where a mitigation plan is not adequate to address the traffic impacts of the project, it may serve as a basis for denial of the rezoning, preliminary plat, site plan or Planned Development request.

v. Consultants

The Planning Director or the Town Engineer shall require that an independent consultant be hired by the Town to perform the required studies, or to review all or part of a study prepared by the applicant's consultant. The Planning

Director or Town Engineer are authorized to administer the contract for any such consultant.

- (a) The Town shall determine the scope of services to be performed by the independent consultant and receive a cost estimate of such services.
- (b) The applicant shall provide an amount equal to the estimate to the Town, who shall deposit the amount in an escrow or other special account set up for this purpose. Any funds not used shall be returned to the applicant in a timely manner, without interest.
- (c) The Town may require additional funds for independent review where a decision-making body expands the scope of the required review; the applicant substantially amends the application; additional meetings involving the consultant are requested by the applicant; or the consultant's appearance is requested at public or affected agency meetings beyond those anticipated in the original scope of services.

#### **3.9.4. Variance**

##### **A. Applicability**

- 1. Where, owing to special conditions, a strict enforcement of the provisions of this UDO would result in unnecessary hardship to the property owner, the Board of Adjustment is authorized to grant variances from standards of this UDO in accordance with the public interest or the spirit of this UDO.
- 2. Variances proposed within a floodway or regulatory floodplain must also meet the criteria of Flood Mitigation (per Section 3.10.1).

##### **B. Burden of Proof**

The applicant seeking the variance shall have the burden of presenting sufficient evidence to warrant Board approval.

##### **C. Process**

- 1. Variance applications shall be submitted to the Planning Director for review and determination of completeness. The Planning Director shall prepare a written report to be provided to the applicant prior the Board of Adjustment meeting.
- 2. Public notice shall be provided in accordance with Section 3.4.6.

3. The Board of Adjustment shall hold a public hearing to review the matter. Pursuant to G.S. § 160D-705(d), the Board may grant variances which meet the following findings of fact:
  - a. 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.
  - b. That 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 public, may not be a basis for granting a variance.
  - c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
  - d. 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. A variance shall be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
4. Upon Board review and the public hearing, the Board of Adjustment shall make one of the following determinations:
  - a. Approval
  - b. Approval with Conditions or Modifications  

The Board of Adjustment may impose reasonable conditions to ensure compatibility with surrounding property. Such conditions shall be consented to in writing (or declined) by the applicant prior to the vote for approval.
  - c. Denial
5. Written Decision

The written decision shall be provided to the applicant.

### 3.9.5. Temporary Use Permit

#### A. Applicability

Temporary uses operating for up to ninety days within a one-year period shall obtain a temporary use permit from the Planning Director that outlines conditions of operations to protect the public, health, safety, and welfare.

#### B. Types

Temporary uses shall include short-term or seasonal uses that are not otherwise permanently allowed in the zoning district regulations.

#### C. Application

Applications shall include a description of the proposed use, the duration, the hours of operation, anticipated attendance, associated structures or signs, written permission from the property owner, and additional information deemed necessary by the Planning Director.

#### D. Review by Technical Review Committee

1. The application should be submitted at least thirty (30) days prior to the requested start date.
2. The Planning Director shall request additional materials or revisions to the application, approve, approve with conditions, or deny the permit at least ten business days in advance of the requested start date.
3. The Planning Director shall provide written decisions for all denials.

#### E. Approval Criteria

The Technical Review Committee shall evaluate temporary uses based on the following standards:

##### 1. Land Use Compatibility

The temporary use must be compatible with the purpose and intent of this UDO and the associated zoning district. The temporary use shall not impair the primary use of the same site.

##### 2. Review by Building Official

Any temporary structures shall require building permits or approvals by the Building Official and Fire Code Inspector. If necessary, the applicant must obtain approvals from the State of North Carolina and Wake County Health Department.

Commentary (1/1/2021):  
The term “variance” as used in this subsection only applies to variance relief from the stormwater provisions.

3. Hours of Operation and Duration

Hours of operation and duration shall be approved by the Planning Director at the time of permit issuance.

4. Traffic Circulation

The Town Engineer shall determine that the temporary use will not disturb traffic patterns or cause undue congestion.

5. Off-street Parking

Adequate off-street parking must be provided for the use without creating greater than a 25% shortage of parking for permanent uses.

6. Appearance and Nuisances

The temporary use shall be compatible in intensity, appearance, and operation with surrounding land uses. It shall not impair the usefulness, enjoyment, or value of the surrounding properties by introducing nuisances.

7. Signs

The Planning Director shall review and approve all signage prior to issuing the permit.

F. Other Conditions

The applicant must adhere to conditions specified by the Technical Review Committee. These conditions may but are not limited to screening and buffering, site restoration, and clean-up provisions, in addition to any of the criteria described above.

G. Expiration

If the temporary use has not commenced within ninety days of the requested event start date, the permit shall expire.

---

## 3.10. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - ENVIRONMENTAL

### 3.10.1. Flood Mitigation

- A. No variance shall be issued within any designated floodway or regulatory floodplain unless the Board of Adjustment finds the following:
  - 1. The proposed use is not likely to cause any increase in flood levels during the base flood discharge; and
  - 2. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- B. In evaluating a variance application, the Board of Adjustment shall consider all technical evaluations and all relevant standards specified in other sections of this UDO. Additionally, the Board shall assess:
  - 1. The danger that materials may be swept onto other lands to the injury of others
  - 2. The danger of 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 waterfront location, where applicable
  - 6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed uses
  - 7. The compatibility of the proposed use with existing and anticipated development
  - 8. The relationship of the proposed use to the Comprehensive Growth 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 flood waters 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.

**4.1. Establishment of districts.**

For the purpose of this Unified Development Ordinance (UDO), portions of the Town, as specified on the Town's official zoning map are hereby divided into the following zoning districts:

PREVIOUS DISTRICT		NEW DISTRICT	
<b>RESIDENTIAL ZONING DISTRICTS</b>			
R-40	Single-Family Residential	R-40	Single-Family Residential
R-20	Single-Family Residential	R-20	Single-Family Residential
R-15	Single-Family Residential	R-15	Single-Family Residential
R-12	Single-Family Residential	R-12	Single-Family Residential
R-9	Single-Family Residential	R-9	Single-Family Residential
MF-1	Multi-Family 1	MF-1	Multifamily Residential
MF-2	Multi-Family 2	MF-2	Multifamily Residential
R-5	Manufactured Home Park/Subdivision	RMH	Manufactured Home Park/Subdivision
-MH	Mobile Home Floating District	-MH	Manufactured Home Floating Zone
<b>COMMERCIAL ZONING DISTRICTS</b>			
---	New	NO	Neighborhood Office
NB	Neighborhood Business	NC	Neighborhood Commercial
CBD	Central Business District	CBD	Central Business District
OI	Office and Institutional	OI	Office and Institutional
CB	Community Business	CR	Community Retail
SB	Service Business	SB	Service Business
<b>INDUSTRIAL ZONING DISTRICTS</b>			
I-1	Industrial 1	I-1	Light Industrial
I-2	Industrial 2	I-2	Heavy Industrial
<b>PLANNED DEVELOPMENT DISTRICTS</b>			
---	New	PUD	Planned Unit Development
R-12-PR	Planned Residential 12	PRD	Planned Residential Development
---	New	TND	Traditional Neighborhood Development
MXD-1	Mixed Use District 1	MXD	Mixed Use Development
<b>OVERLAY ZONING DISTRICTS</b>			
---	Conservation Buffer Area	CBA	Conservation Buffer Area
---	Lake Benson Conservation	LBC	Lake Benson Conservation
-----	Timber Drive Overlay	O-TD	Timber Drive Overlay
-----	U.S. 70/401 Overlay	O-70	U.S. 70/401 Overlay
-----	I-40/US 70 Special Highway Overlay	O-40	I-40 Overlay
-----	Garner Road Overlay District	GR-OD	Garner Road Overlay District

PREVIOUS DISTRICT		NEW DISTRICT	
<b>OBSOLETE DISTRICTS</b>			
MR-1	Multi-Residential 1	MR-1	Multi-Residential 1
RCD	Residential Cluster District	RCD	Residential Cluster District
R-12 PR	R-12 Planned Residential District	R-12 PR	Planned Residential District
MXD-1	Mixed Use Development District	MXD-1	Mixed Use Development District

**Note: The MXD General Use District has been replaced by the MXD Planned Development Floating District. Existing MXD General Use Districts remained mapped on the official zoning map and can be developed according to the provisions of Section 4.14 Obsolete Districts.**

1. **General use districts.** Also known as base zoning districts, these represent the traditional residential, commercial, and industrial districts established above. They set uniform standards for uses in their district and are the governing standards unless overlaid with more restrictive standards as in the case of an overlay district.
2. **Conditional zoning districts.**
  - a. The Town Council may establish by ordinance various conditional zoning districts upon request by the owner.
  - b. Any conditional zoning district shall be designated by the letters “CZ” followed by a unique number identifying the ordinance that created the district and followed by adding a numerical subscript to indicate the order in which such districts are created or revised. Thus, the first such district created might be designated CZ1-4997-1. These designations shall be applied to the official zoning map as in the case of other amendments. All ordinances establishing a conditional district shall be referenced in Appendix B to this UDO. Ordinances are on file in the Planning Department.
  - c. On January 1, 2021, any existing and legal Conditional Use zoning districts, Special Use zoning districts or Planned Unit Development (PUD) zoning districts that are valid and in effect shall be deemed a Conditional Zoning (CZ) district subject to the same conditions of approval or operation of the existing entitlement.
3. **Floating districts.** Floating districts are set forth in the ordinance text but not on the initial official zoning map. A floating district may be employed when the local government recognizes that a particular type of activity is desired for a general area but the specific site has not been located in advance. Property intended to be used for that activity may be rezoned upon application if the owner can meet the conditions in the ordinance. Uses typically designated in floating districts include Planned Developments such as the PUD, PRD, TND and MXD districts.
4. **Overlay districts.** Overlay districts are established to define certain sub-areas within which development is subject to restrictions over and above those applicable to the underlying district. Within these overlay districts; any development that occurs must be in compliance not only with the regulations applicable to the underlying district but also with the additional requirements of the overlay district. The Conservation Buffer, Lake Benson Conservation, Swift Creek Conservation, I-40 Special Highway, Timber Drive, and the U.S. 70/401 Thoroughfare are seven such overlay districts. Overlay zones are not required to be mapped on the official zoning map if the description of such zones in this UDO is sufficient to define their extent

and application to specific properties.

5. **Obsolete districts.** Obsolete districts have been mapped on the official zoning map of the Town of Garner, but are no longer part of the zoning district hierarchy applied to the Town. These districts have been retained from the previous version of the land use ordinance and land that is zoned with any of the obsolete district designations will continue to be developable under those use and dimensional regulations applicable to the districts immediately prior to the effective date of this UDO. See Section 4.1 entitled establishment of districts for list of obsolete districts.

(Ord. No. 3558, § 2, 7-7-09)

#### 4.2. Official zoning map.

- A. There shall be a map known as the official zoning map, which shall show the boundaries of all zoning districts within the Town's planning jurisdiction. This map shall be drawn on a durable material or generated in a digital format from which prints or digital copies can be made, shall be dated, and shall be kept in the Town Hall. Both the current and prior zoning maps are maintained and available for public inspection in the Planning Department.
- B. The official zoning map is adopted and incorporated herein by reference. Amendments to this map shall be made and posted in accordance with Article 3.
- C. Should the official zoning map be lost, destroyed, or damaged, it can be redrawn on a durable material or generated in a digital format from which prints can be made, so long as no district boundaries are changed in this process.

#### 4.3. Rules for interpretation of district boundaries.

##### A. Interpretations.

1. The Board of Adjustment is authorized to interpret the official 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 Planning Director, they shall be handled as provided in Article 3.
2. An application for an official zoning map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Planning Director. The application shall contain sufficient information to enable the Board of Adjustment to make the necessary interpretation.
3. Where uncertainty exists as to the boundaries of districts as shown on the official zoning map, the following rules shall apply:
  - a. Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerlines;
  - b. Boundaries indicated as approximately following lot lines, city limits or extraterritorial boundary lines, shall be construed as following such lines, limits or boundaries; and
  - c. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following such changed shorelines.
4. Where a district boundary divides a lot or where distances are not specifically indicated on the official zoning map, the boundary shall be determined by measurement, using the scale of the official zoning map.
5. Where any street or alley is hereafter officially vacated or abandoned, the regulation applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

#### 4.4. Residential district purpose statements.

- A. **Single-family residential districts (R-40, R-20, R-15, R-12, R-9).** These districts are designed to create and maintain residential neighborhoods composed primarily

of single-family residences and, as special uses, such institutional, public, and other compatible uses that are designed, constructed and maintained so as not to detract from the quality of each district as a place for healthful, quiet, and aesthetically pleasing residential living.

- B. **Multifamily residential districts (MF-1, MF-2).** These districts are designed to create and maintain higher density residential neighborhoods composed primarily of multifamily residences and, as special uses, those service, institutional, public and other compatible uses that are so designed, constructed and maintained that they do not detract from the quality of the neighborhood as a place for healthful, quiet and aesthetically-pleasing residential living. When evaluating an application for the MF-1 or MF-2 zoning district, emphasis shall be given to the location of the proposed district to adjoining developed property to ensure that such district is carefully located and achieves a satisfactory relationship with the surrounding properties.
- C. **Manufactured home park/subdivision (RMH).** The RMH manufactured home park/subdivision district is hereby established to provide for the development of manufactured home parks or manufactured home subdivisions in which class A, class B or class C manufactured homes may be located.
- D. **Manufactured home floating zone (-MH).**
  1. **District established.** The manufactured home floating zone hereby established is provided for the designation of areas within selected residential zones other than RMH within which class A manufactured homes may be located. When the regulations and standards of this section are met, the suffix -MH is attached to a base residential zone on the Town's official zoning map. Without an -MH designation, a manufactured home cannot be placed in any residential zone except RMH. Such -MH designated districts may not consist of an individual lot or scattered lots, but shall consist of a defined area of not less than two acres, and must conform to the requirements for conventional residential subdivisions as set forth in Article 8, as well as those contained herein.
  2. **Purpose and intent.** This section is established to provide alternative, affordable housing opportunities for Garner and its planning jurisdiction by permitting the use of manufactured homes in selected single-family residential zoning districts, subject to the requirements set forth herein.
  3. **Rezoning procedures.** The Town shall process manufactured home district rezoning requests in the same manner as set forth by Article 3 for all other rezoning requests, except that they shall be reviewed by the Garner Planning Commission.
  4. **Development standards.** The development standards applicable to manufactured homes are located in Article 6.
  5. **Additional requirements.** Structures within a district suffixed as a manufactured home district (-MH), must conform to the applicable dimensional, parking and setback requirements of Articles 6 and 7, and specifically those applicable to the zoning district to which they are suffixed. Developed subdivisions containing other than manufactured homes when rezoned with the -MH suffix may infill with either class A manufactured, stick built, or modular homes. Class B or C manufactured homes units are not permitted.

#### 4.5. Commercial district purpose statements.

- A. **Neighborhood Office (NO).** The purpose of this district is to accommodate modest-scale professional and service occupations, along with single-family residential units, to serve as a neighborhood activity center and as a transition between residential and more intense commercial uses.
- B. **Office and Institutional (OI).** The purpose of this district is to accommodate more

intense professional and service occupations than permitted in the neighborhood office (NO) district and to insure that the environmental effects (including noise, odor, glare, heat, vibration and air pollution) resulting from the conduct of such operations shall not interfere with the quality of any surrounding district. This district is also intended to accommodate, as special uses, certain other compatible uses that are so designed, constructed and maintained that they do not interfere with the conduct of permitted professional and service occupations. When used as part of a rezoning, this district serves as a transition between residential districts and more intense districts, including commercial districts.

- C. **Neighborhood Commercial (NC).** This district is intended to accommodate low intensity commercial enterprises that provide goods or services primarily to residents of the surrounding neighborhood so that such residents can have convenient access to such goods and services without the necessity for making cross-town trips. The uses permitted are of such a nature and on such a scale that incompatibility with or disruption to nearby residences is minimized, and uses that by their very nature depend for a majority of their business upon traffic from the whole community rather than the immediate neighborhood are not permitted.
- D. **Community Retail (CR).** This district is designed to accommodate commercial activities that serve the entire community, especially retail businesses conducted within a building.
- E. **Central Business District (CBD).** This district is intended to provide for and maintain the Main Street business district.
- F. **Service Business (SB).** This district to accommodate commercial activities that are more intense in nature than those permitted in neighborhood or community business districts. This district allows merchandise or equipment to be stored and operations to be conducted outside a building.

#### 4.6. Industrial district purpose statements.

The following districts are established primarily to accommodate enterprises engaged in the manufacturing, processing, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise or equipment. These districts serve the entire community and are subject to the industrial performance standards of Article 6.

- A. **Light Industrial District (I-1).** The Light Industrial District is intended to provide for a limited range of low-intensity industrial uses that are not noxious or offensive due to odors, smoke, dust, noise, fumes or vibration and conducted. Operations are restricted to inside a building (outdoor storage prohibited).
- B. **Heavy Industrial District (I-2).** The Heavy Industrial District is intended to provide for industrial uses that are may be noxious or offensive due to odors, smoke, dust, noise, fumes or vibration. Operations may be inside or outside of a building.

#### 4.7. Planned Development Districts (PUD, PRD, TND, MXD).

See Section 1.10.4, relating to the transition of these districts to Conditional Zoning Districts. The remainder of this section is kept for reference. There shall be a Planned Development District which shall consist of any of the following types: Planned Unit Development (PUD), Planned Residential Development (PRD), Traditional Neighborhood Development (TND), or Mixed Use District (MXD). Each district is a floating district and additional standards are located in Article 6.

- A. **Planned Unit Development (PUD) purpose and intent.** The PUD district is intended to provide for a mix of uses, including commercial and residential uses. PUD provisions are intended to encourage creativity in the design and planning of parcels by allowing greater design flexibility than the underlying base districts to protect natural features and concentrate development in more suitable or less environmentally sensitive areas. The end result is creativity in design, additional open space and an appropriate

mix of uses. PUD development is permissible on tracts of land of five acres or greater.

- B. **Planned Residential Development (PRD) purpose and intent.** The PRD district is intended to provide for master-planned residential communities containing a mix of housing types, including associated amenities. This district is primarily intended for large-scale residential projects that require either additional flexibility not available in the base residential districts, or greater scrutiny by the Town due to their scale. PRD development is permissible on tracts of land of 15 acres or greater.
- C. **Traditional Neighborhood Development (TND) purpose and intent.** TND is a development option allowing new standards for development focused on mixed residential development with a pedestrian orientation, and a centralized commercial or mixed use node serving as the focal point for the development. TND development must also incorporate a network of open space, a network of internal streets, and connections to the surrounding area. TND development is permissible on tracts of land of 40 acres or greater.
- D. **Mixed Use District (MXD) purpose and intent.** Mixed Use Districts are intended to produce higher levels of urban land use intensity at or near community focus nodes or regional focus nodes, consistent with the Town's long-range land use plan map. MXD zoning districts permit various combinations of usually separated uses, primarily promoting the development of business parks. It is not intended to be applied in a limited way to only inner city development or to mixed uses within one structure (high-rise), but rather, may be used to support either infill or new development on relatively large tracts. MXD development is permissible on tracts of land of 75 acres or greater.
- E. **Rezoning criteria for all Planned Development (PUD, PRD, TND, MXD).** In approving a rezoning for a Planned Development, the Town Council shall find the district designation and Planned Development master plan comply with the general standards for all Planned Development in this paragraph and the specific standards for the proposed Planned Development listed in Article 6.
1. **Planned Development master plan.** The development proposed in the master plan is compatible with the character of surrounding land uses and maintains and enhances the value of surrounding properties. The master plan also illustrates:
    - a. A continuous pedestrian circulation system;
    - b. A network of open space serving the entire development and providing internal connections within the project;
    - c. Perimeter landscape areas to connect or buffer land uses both inside and outside the perimeter of the Planned Development; and
    - d. Preservation of the natural environment.
  2. **Design guidelines and dimensional standards.** Each Planned Development shall provide a comprehensive set of design guidelines that demonstrate the project will be appropriate within the context of the surrounding properties and the larger community. The dimensional standards identified in Article 6 may be varied in the development proposed in the master plan. The Town Council is not obligated to accept or approve any variation if it deems such variation to be inappropriate. Where such standards vary by more than 20 percent from the otherwise applicable numeric standard, a specific finding in the Council approval as to the acceptability of such a variation shall be required.

3. **Off-street parking and loading.** Off-street parking and loading shall comply with Article 7, except that variations from these standards may be permitted if a comprehensive parking and loading plan for the Planned Development is submitted, and determined to be suitable and generally consistent with the intent and purpose of the off-street parking and loading regulations.
4. **Signs.** Signs shall comply with Article 7, except that signs within the Planned Development may be constructed to alternate, but equivalent standards if a comprehensive sign plan for the Planned Development is submitted with the rezoning and master plan applications that is determined to be suitable for the Planned Development and generally consistent with the intent and purpose of the sign regulations.
5. **Public facilities.**
  - a. The Planned Development master plan shall demonstrate a safe and adequate on-site transportation circulation system. The on-site transportation circulation system shall be integrated with the off-site transportation circulation system of the Town.
  - b. The Planned Development master plan shall establish public places that connect uses.
  - c. The Planned Development master plan shall demonstrate a safe and adequate on-site system of potable water and wastewater service that can accommodate the proposed development, and is efficiently integrated into off-site potable water and wastewater public improvement plans.
  - d. Adequate off-site facilities for potable water supply, sewage disposal, solid waste disposal, electrical supply, fire protection and roads shall be planned and programmed for the Planned Development, and the development shall be conveniently located in relation to schools and police protection services.
  - e. The improvement standards applicable to the public facilities that will serve the site shall comply with the provisions of Article 8, Subdivision, design/improvements. However, the development may deviate from the city's road width standards in order to achieve greater efficiency of infrastructure design.
6. **Common recreation and open space.** The development proposed in the Planned Development master plan complies with the following common recreation and open space standards:
  - a. Water bodies, lands within wildlife habitat areas, riparian ecosystems and 100-year floodplains that are preserved as open space may be counted toward this minimum standard, even when they are not usable by or accessible to the residents of the Planned Development. A maximum of 50 percent of the required open space in a Planned Development may be comprised of water bodies. No water bodies may be counted towards the requirements for common recreation area.
  - b. All common open space and recreational facilities shall be shown in the master plan and shall be constructed and fully improved according to the development schedule established for each phase of the Planned Development.



- c. All privately-owned common open space shall continue to conform to its intended use, as specified in the Planned Development master plan. To ensure that all the common open space identified in the master plan will be used as common open space, restrictions or covenants shall be placed in each deed to ensure their maintenance and to prohibit the partition of any common open space.
- d. If common open space is proposed to be maintained through an association or nonprofit corporation, such organization shall manage all common open space and recreational facilities that are not dedicated to the public, and shall provide for the maintenance, administration and operation of such land and any other land within the Planned Development not publicly owned, and secure adequate liability insurance on the land. The organization shall also conform to the following standards:
  - e. The association or nonprofit corporation shall be established prior to the sale of any lots or units within the Planned Development.
  - f. Membership in the association or nonprofit corporation shall be mandatory for all landowners within the Planned Development.
7. **Stormwater management.** The Planned Development master plan meets or exceeds the standards of Article 7.
8. **Phasing.** The Planned Development master plan includes a phasing plan for the development, if appropriate, with specific build-out dates. If development is proposed to occur in phases, then guarantees shall be provided that project improvements and amenities that are necessary and desirable for residents of the project, or that are of benefit to the Town, are constructed with the first phase of the project, or, if this is not possible, then as early in the project as is technically feasible.
9. **Consistent with Comprehensive Growth Plan.** The Planned Development master plan shall be consistent with the Comprehensive Growth Plan.
10. **Complies with this Code.** The Planned Development master plan shall comply with all other relevant portions of this UDO.

(Ord. No. 3558, § 2, 7-7-09)

#### 4.8. Conservation Buffer Areas (CBA).

- A. **Purpose and intent.** The Conservation Buffer Areas are designated for the following purposes:
  1. Soil and pollutants carried overland, primarily from roads, construction and development, can be effectively trapped by leaving a relatively undisturbed strip of vegetation parallel and adjacent to the watercourse.
  2. Properly managed overland water flow can be directed into this buffer area in a manner that will reduce velocity and cause dispersion of the water.
  3. Sediments and associated pollutants carried by the water will settle out as a result of this slowing and dispersion process.
  4. These are highly desirable effects of stream and watershed protection in that non-point pollution, erosion and sedimentation, and the resulting property damage and devaluation, are so reduced.
- B. **Areas designated.** The Conservation Buffer Areas located within the Town of Garner are not expressly mapped on the official zoning map. Each buffer area can be determined by reviewing the text of Article 7. These provisions do not create a

new zoning district; rather, they overlay whatever zoning is in place.

#### 4.9. Lake Benson Conservation District (LBC).

- A. **Purpose and intent.** The Council finds that Lake Benson, as a water supply for the Raleigh water service area, which includes Garner, is sensitive to and quickly impacted by pollutants set into the system by development. Protection of the lake from non-point pollution sources is the intent of the provisions of this section.
- B. **Lake Benson Conservation District Boundary.** That portion of the watershed which was made subject to watershed protection regulations known as the Lake Benson Conservation District effective March 1, 1987, as shown on maps previously adopted and reflecting approximately that area within 2,000 feet of the northern shore line of Lake Benson, shall constitute the Lake Benson Conservation District for purposes of this UDO. The boundary is shown on the official zoning map maintained in both the Planning and Engineering Departments of the Town.
- C. **Exemptions.** All lots platted prior to March 1984 are exempt from the requirements of this Lake Benson Conservation District Overlay.
- D. **Limitations on use in Lake Benson Conservation District.**
  - 1. **Permitted uses.** Within the Lake Benson Conservation District only the following uses are permitted:
    - a. Agriculture;
    - b. Residential (meaning only the following uses as listed in Article 3;
    - c. Single-family residences; other than manufactured home parks or manufactured home subdivisions;
    - d. Duplex and triplex;
    - e. Multifamily residences;
    - f. Townhouses and townhouse developments;
    - g. Churches;
    - h. Cemeteries;
    - i. Public parks including ancillary concessions;
    - j. Community centers;
    - k. Indoor and outdoor recreation;
    - l. Home occupations;
    - m. Planned Residential Developments;
    - n. Zero-lot-line developments;
    - o. Necessary municipally owned and operated utilities; and
    - p. Individual residential wastewater holding tanks (septic tanks) and conventional septic tanks, subject to the other provisions.
  - 2. **Density.**
    - a. Within the Lake Benson Conservation District, density shall not exceed two and one-half residential units per acre where the development is served by municipal water and sewer.
    - b. Within the Lake Benson Conservation District, density shall not exceed one-half unit per acre where there is no municipal water and sewer.
- E. **Master plan required.** A master plan detailing the distribution of units and improvements across the total development, shall be presented as part of application for land use permits. Where possible, developers shall use innovative site planning techniques to keep units away from the lakefront, streams, and other sensitive areas. Such techniques include but are not limited to cluster development patterns, mixtures of zoning categories, strategic location of densities so that larger and less densely developed lots are closer to the lakefront and creative use of greenways and open space.
- F. **Performance standards.** The Lake Benson Conservation District performance standards are set forth in Article 7.
- G. **Impervious surface limits.**

1. Within the Lake Benson Conservation District, in order to reduce stormwater pollution through natural infiltration on undisturbed vegetated land, the impervious surface area may not exceed six percent regardless of lot size or density, except where the stormwater runoff from a one-inch rainfall event is retained by retention ponds or other approved devices.
2. Impervious surface area within the Lake Benson Conservation District may be a maximum of 35 percent under the high density development option where the stormwater runoff from a one-inch rainfall event is retained by retention ponds or other approved devices.
3. Stormwater retention may be accomplished by paying a fee-in-lieu of pond construction if the proposed development is within the Regional Retention Pond Service District and meets the requirements of the table in Article 7.
4. The calculation of the impervious surface ratio contained in subdivisions or other developments required to apply for major subdivision approval, conditional or special use permits shall include impervious areas from all newly proposed collector and sub-collector streets, parking lots and tennis courts as well as buildings, driveways, patios, decks and other impervious surfaces.
5. The calculation of impervious surface ratios shall not include roads that were publicly maintained prior to March 1984.
6. The calculation of impervious surface ratios may be based on the land area of the lots and any common areas, rights-of-way and easements dedicated pursuant to the development of the tract.
7. Where the project is developed in phases, with separately recorded survey plats, the area to which the calculation is applied shall consist of that area within the recorded plat. Such phases shall be based upon natural or proposed drainage where practicable. The designation of a phase shall have as its objective the principle of not overloading one drainage way with run-off from high impervious surface ratios while under utilizing the capacity of other drainage ways. Approval of the Town Engineer is required for designation of each phase used in this calculation to ensure that the loading of drainage ways is balanced.

H. **Standards for stormwater drainage system.** Standard 90-degree curb and gutter construction is not allowed in the Lake Benson Conservation District. Streets with properly maintained grass swales or roll type curb and gutter construction may be allowed in the Lake Benson Conservation District as an option by the Town Council if it concludes that regardless of street design used, surface run-off is diverted to permanent retention ponds constructed in accordance with the requirements of this UDO and the proposed design protects the water quality of Lake Benson.

(Ord. No. 3558, § 2, 7-7-09)

#### 4.10. Timber Drive Overlay District.

A. **Purpose and intent.** The Town Council finds that vehicular and pedestrian mobility should be maximized along the Timber Drive Corridor. The Council believes that Timber Drive is a place where residential neighborhoods should be preserved and quality commercial uses should be located only in areas recommended by the comprehensive growth plan, which together results in a pleasing and harmonious environment of trees, natural and landscaped areas, and building development. Therefore, the Council adopts the Timber Drive Overlay District as a means to direct commercial development at recommended focus areas along Timber Drive consistent with the standards established herein in order to protect the general appearance of the Timber Drive Corridor, while sustaining the livability of the surrounding residential neighborhoods and the natural beauty of the area.

- B. **Overlay zone.** The Timber Drive Overlay District is an overlay zone. The land use regulations applicable to the underlying zone remain in full force and effect except where superseded herein. Where there is a provision not expressed in the underlying zone, or where a provision hereof is in conflict with the underlying zone, the provision of the overlay ordinance shall be controlling.
- C. **Location.** The Timber Drive Overlay District shall apply to the entire length of Timber Drive from U.S. 70 to N.C. 50 for a depth of 250 feet from the right-of-way line, on either side, and shall include all of the property within the focus areas that has frontage on Timber Drive from N.C. 50 to U.S. 70. The Town of Garner Official Zoning Map shall clearly indicate the boundaries of the adopted Timber Drive Overlay District. In cases where any portion of a building or parking area falls within the boundaries of the overlay district, these provisions shall apply to all of the building(s) and parking areas.
- D. **Permissible and prohibited uses.** Unless otherwise restricted below, all uses allowed by the underlying zoning district are permissible in the Timber Drive Overlay District provided all requirements and permits as required by this UDO are satisfied.
1. **Restricted uses.** The following uses are permissible in the Timber Drive Overlay District provided the use complies with special standards listed below.
    - a. Temporary school classroom units are permissible provided they are screened from all public street views. Any landscaping required to achieve this standard shall be installed at an initial height of six feet.
    - b. Open storage and operations are restricted to only those activities associated with a garden center use operated in conjunction with a home improvement center or a large retail store provided the location of outside storage is sufficiently screened from public street views as determined by the Planning Department. The amount of outside storage areas is limited to 25 percent of the gross floor area of principal use served.
    - c. Fast food restaurants with drive-in window operations are permissible only when such drive-in window service area(s) are not visible from Timber Drive street views.
    - d. Convenience store or gas sales operations that meet the following design criteria:
      - (1) Operation limited to between 5:00 a.m. and 11:00 p.m.;
      - (2) The number of pump dispensing units shall be limited to a maximum of four units with no more than eight fueling positions;
      - (3) Principal building shall have a pitched roof with shingle roof material;
      - (4) Canopy structure(s) shall be detached;
      - (5) Canopy structures shall have a roof style and be constructed of a building material to match the principal building and shall not exceed the height of the principal building, but in no case shall the canopy height exceed 20 feet (large canopy super structures are prohibited);
      - (6) Site lighting shall be designed to have a zero foot-candle measurement at property lines adjoining residential uses;
      - (7) Canopy/gas island operational areas shall be screened from adjoining residential uses to provide a 100 percent visual screen throughout the year to a minimum height of eight feet using any combination of landscaping, earthen berms or

- fencing; and
- (8) Canopy/gas island operational vehicular areas shall be screened from all public streets to a minimum height of three feet.
- e. Gas sales operations, which may include a small kiosk or enclosed structure not exceeding 300 square feet in size that is not designed for walk-in traffic, are allowed in the Timber Drive Overlay District pursuant to the requirements listed in subsection d. above have been satisfied with the exception of [Subsection] d.(2), and that the following requirements have been met.
    - (1) The site does not front directly on Timber Drive and the building/canopy is located a minimum of 200 feet from Timber Drive.
    - (2) Up to a total of six gas dispensing units with no more than a total of 12 fueling positions allowed.
    - (3) The overall appearance and design of the building and/or canopy, including site landscaping, is consistent with surrounding development in terms of scale, building materials and colors.
  - f. Automobile service centers that meet the following design criteria:
    - (1) Automobile service centers are permissible on parcels located within the Timber Drive Overlay District that directly front along U.S. 70 or N.C. 50 only;
    - (2) All service bay(s) associated with uses shall be oriented so as not to directly face U.S. 70, N.C. 50, or adjoining residential use;
    - (3) All service bays shall have 100 percent screen to a minimum full height of two and one-half feet at time of plant installation, and shall be maintained at a minimum height of three and one-half feet; and
    - (4) A type-A buffer with a 100 percent screen to a minimum height of eight feet shall be required where the property directly adjoins a residential use.
2. **Prohibited uses.** The following uses are prohibited in the Timber Drive Overlay District.
- a. Hotel and motels;
  - b. Sales and rental of goods, merchandise and equipment with storage operations and display of goods outside fully enclosed building;
  - c. Office, clerical, research and services not primarily related to goods or merchandise where operations are conducted outside a fully enclosed building;
  - d. Manufacturing, processing, creating, repairing, renovation, painting, cleaning, assembling of goods, merchandise and equipment;
  - e. Pool halls;
  - f. Golf driving ranges (not accessory to golf courses), miniature golf courses, skateboard parks, water slides and similar uses;
  - g. Drive-in movie theaters;
  - h. Bars, nightclubs, ABC permitted private clubs;
  - i. Adult cabarets and establishments;
  - j. Motor vehicle sales or rental or sales and service;
  - k. Auto service stations;
  - l. Automobile repair shop;

- m. Car wash;
- n. Storage and parking;
- o. Scrap materials, salvage yards, junkyards, automobile graveyards;
- p. Service and enterprises related to animals with outside facilities for keeping animals;
- q. Mining or quarrying operations; including on-site sales of products; coal or aggregate sales and/or storage; concrete mixing plant;
- r. Reclamation landfill;
- s. Towers and antennas greater than 35 feet tall;
- t. Open air markets;
- u. Bus stations;
- v. Taxi base operations;
- w. Commercial greenhouse operations;
- x. Recyclable material collection centers;
- y. Solar farms.

**E. Land disturbing activities.**

1. All development plans submitted under this UDO shall show a construction limit line delineating protected buffer areas and any tree save areas intended for the property. Protective orange fencing, surrounding all protective buffer areas plus ten feet and around tree save areas at the drip line, shall be installed prior to construction. Any cutting or clearance within an approved protected buffer or tree save areas shall be subject to a fine of \$5.00 per square yard of area in the protected buffer or tree save area that has been prematurely denuded.
2. No minor clearance of the existing vegetation within an approved protected buffer area or tree save area to be retained on the property shall be allowed until after construction on the parcel is completed and upon approval by the Planning Department.
3. Logging or timbering activities on properties within the corridor are strongly encouraged to be limited to the interior portions of the lot exclusive of required buffer areas unless specifically approved by the Town of Garner.
4. Land development activities such as, but not limited to, site grading, buildings, parking and vehicular areas, shall be excluded from the perimeter area of lots in order to protect existing trees and vegetation in required buffer areas.
5. Any grading or clearing (including removal of stumps) on land within the overlay district, not part of a development proposal, requires site plan approval by the Town of Garner prior to any such activity on the site. All such activities shall be consistent with the standards of this UDO.

**F. Street access.** The existing access location standards set forth in this UDO shall govern driveway locations on Timber Drive. Deviations from these standards may be allowed via a Variance if, based upon a traffic impact study submitted by a professional traffic engineer, the requested deviations do not pose any traffic safety impacts to the public and that such deviations have been recommended by the Town Engineer and the North Carolina Department of Transportation.

**G. Design standards.** The following design standards shall apply to all new development within the Timber Drive Overlay District:

1. **Building height.** The maximum building height for development located in neighborhood or convenience focus areas is 35 feet unless the building setback from all property lines increases one foot for every foot the building exceeds 35 feet in height. For all other locations on the corridor the applicable building height limits are controlled by the existing requirements of Article 6. The building height limitation for neighborhood or convenience

focus areas may be waived by the Board of Adjustment via a Variance for the building build to line option based upon findings that such an arrangement is in harmony with surrounding development.

2. **Building setback from Timber Drive right-of-way.** Building setback shall be 35 feet from the Timber Drive right-of-way line. Alternatively, a build to line of 20 feet is permitted provided there are no vehicle surface areas in front of the building. For all other building yard setbacks the applicable underlying zoning standards shall apply.
3. **Building design guidelines.** All shopping center development or business complexes, as defined in Article 11, Definitions, shall provide design guidelines consistent with the following standards which must be approved by the Town of Garner as part of the overall development plan submittal. An individual nonresidential building not part of a larger shopping center or business complex shall be subject to the following provisions:
  - a. No metal or vinyl siding on nonresidential buildings shall be permitted;
  - b. Seventy-five percent of the primary building materials shall consist of brick or decorative/scored concrete masonry units in styles and colors approved by the Town of Garner. Such building materials shall be applied on all building facades visible from Timber Drive;
  - c. All dumpster enclosures and accessory/storage buildings for new development shall be of materials and colors that match the principal building served and shall be sited on the property to minimize view from all public streets;
  - d. All building awnings used must be appropriately designed as part of the buildings architecture and unified with the buildings colors and style. Such awnings shall not be internally illuminated;
  - e. Buildings shall be limited to a maximum of three types of materials and colors. If a building is part of a shopping center or business complex, the materials and colors used must be consistent with the approved design guidelines for the larger development;
  - f. Design guidelines required by this UDO shall include provisions that address building height, scale and setback distances, unifying site elements such as building materials and colors, landscaping, site lighting elements, and pedestrian circulation; and
  - g. Chain link fences in commercial zoning districts shall have vinyl covering or some other similar material in a color that is compatible with the principal building materials and colors.

#### H. **Vegetation and landscaping standards.**

##### 1. **General street buffer requirements.**

- a. An undisturbed street buffer along Timber Drive shall be required. Minor underbrush clearing is permissible only by obtaining pre-approval from the Planning Department. Such approval may not be unreasonably withheld without just cause.
- b. The street buffer shall extend 50 feet along corner side streets and 40 feet along all entrances to new development.
- c. The use of native or locally adaptable species is required.
- d. Construction limit lines shall be shown on all site development plans. Approved undisturbed areas shall be protected on the ground with orange fencing and shall be installed prior to the issuance of a building permit. Such fencing shall be maintained during the entire time of construction.
- e. The suitability of existing vegetation to meet the planting requirements for a required street buffer must be approved by the Planning Department. Otherwise, the applicant shall be required to

provide a new landscape planting plan which meets the standards of this UDO as well all other applicable requirements of Article 7. Such plans must be approved by the Town of Garner Planning Department.

2. **Residential street buffer.** Residential subdivisions and unsubdivided developments with frontage along the right-of-way of Timber Drive shall maintain a 25-foot undisturbed buffer. No fencing shall be allowed within the 25-foot buffer area. Fences shall not be allowed along property frontages with Timber Drive unless they are of uniform height and design according plans that have been approved by the permitting authority. Required landscape planting within the residential street buffer shall consist of one street tree (ten-feet tall with a two-inch caliper at installation) for every 40 feet of street frontage, with a combination of vegetation and/or earthen berms to achieve a 100 percent screen to a height of four feet.

3. **Nonresidential street buffer.**

- a. **Undisturbed street buffer.** A 20-foot undisturbed street buffer along Timber Drive shall be required. Minor underbrush clearing of an undisturbed street buffer is permissible only with pre-approval from the Planning Department. Where existing trees and vegetation are retained that qualify according to the terms of this UDO regarding types, sizes, locations, and are healthy species as determined by the Planning Department, additional landscaping may not be required. In cases where additional planting is required when existing vegetation is not present in the street buffer area, a street buffer planting plan must be approved by the Town of Garner. One street tree shall be provided for every 40 feet of frontage. Such tree shall be a minimum of 12 feet tall with a 2.5-inch caliper at installation. All vehicular surface areas visible from Timber Drive must provide additional landscape screening to achieve a 100-percent screen of the vehicular surface area to a minimum height of three feet at installation.
- b. **Street buffer for 20 foot build-to line option.** A build-to line option shall be approved when there is no vehicular surface area between the building and the right-of- way of Timber Drive, a 20-foot street buffer with only a lawn area and one street tree (12-feet tall with a 2.5-inch caliper at installation) for every 40 feet of frontage is permissible. Under this option, vehicular surface areas shall be located in the rear of the building.

I. **Site lighting.** See Article 7, Special standards in the Timber Drive Overlay District.

J. **Signage.** Article 7 of the Unified Development Ordinance governs the sign requirements for property located in the Timber Drive Overlay District. In cases where a property is located in the Timber Drive Overlay District and such property has frontage directly on U.S. 70, the freestanding sign requirements of the U.S. 70/401 Overlay District may apply provided the following is met:

- a. The freestanding sign must be located directly on U.S. 70 and be on a lot that meets the minimum lot width requirements of the controlling zoning district; and
- b. Any freestanding sign located directly on Timber Drive shall be subject to the sign requirements of the Timber Drive Overlay District.

(Ord. No. 3487, §§ 1--3, 10-1-07; Ord. No. 3529, § 1, 10-6-08; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3780, § 1, 7-7-15)

**4.11. U.S. 70/401 Thoroughfare Overlay District.**

A. **Purpose and intent.** The Town Council finds that both the U.S. 70 and 401 highway corridors play a vital role in shaping the communities future, relative to



transportation, economic development opportunities and the appearance of the community that is portrayed to the traveling public. Presently these highway corridors are characterized by large freestanding signs, large expanses of unscreened surface parking areas with little or no landscaping, poorly spaced driveway/access points in some locations, and a generally uncoordinated approach to visual appearance matters. The Town Council believes it is important for the community to improve these conditions in order for U.S. 70 and U.S. 401 to function efficiently as transportation corridors, to provide opportunities for new business locations and promote a strong commitment to quality community appearance. Therefore, the Town Council adopts these regulations as a means to address these aforementioned issues.

- B. **Overlay zone.** The U.S. 70/401 Thoroughfare District is an overlay zone. The land use regulations applicable to the underlying zone remain in full force and effect except where superseded herein. Where there is a provision not expressed in the underlying zone, or where a provision hereof is in conflict with the underlying zone, the provision of the overlay ordinance shall be controlling.
- C. **Location.** The U.S. 70/401 Thoroughfare Overlay District applies to the entire length of U.S. 70 and U.S. 401 located within Garners zoning jurisdiction. The overlay district shall be designated on each side of the thoroughfare to a depth of 450 feet measured from the center line of the applicable right-of-way line. The district shall include all of the property in mapped focus areas with frontage on U.S. 70 and U.S. 401 as depicted on the adopted Comprehensive Growth Plan's Future Land Use Intensities Map. The Town of Garner Official Zoning Map shall clearly indicate the boundaries of the adopted U.S. 70/401 Overlay Thoroughfare District. In cases where any portion of a building or parking area falls within the boundaries of the overlay district, these provisions shall apply to all of the building(s) and parking areas.
- D. **Prohibited and restricted uses.** Unless otherwise prohibited or restricted below, all uses allowed by the underlying zoning district are permissible in the U.S. 70/401 Thoroughfare Overlay District, provided all requirements and permits as required by this UDO are satisfied.
1. **Prohibited uses.** The following uses are prohibited in the U.S. 70/401 Thoroughfare District.
    - a. Drive-in movie theaters;
    - b. Adult cabarets and establishments;
    - c. Outside storage of goods not related to sale or use on premises;
    - d. Scrap materials, salvage yards, junkyards, automobile graveyards;
    - e. Mining or quarrying operations; including on-site sales of products; coal or aggregate sale and or storage; concrete mixing plant;
    - f. Reclamation landfill;
    - g. Commercial greenhouse operations;
    - h. Recyclable material collection centers; and
    - i. Solar farms.
  2. **Prohibited uses adjacent to existing residential uses.** The following uses are prohibited when directly adjacent to, or within 150 feet of residential uses. This restriction applies to all of U.S. 401 within the overlay district and to only the portion of U.S. 70 from New Rand Road west to the Town limits at the intersection of U.S. 70 and Mechanical Boulevard in the overlay district.
    - a. Hotel/motels;
    - b. Pool halls/bowling alleys only; and
    - c. Bars/night clubs/ABC-permitted private clubs.
  3. **Restricted uses.** The following uses are permissible provided the

performance standards listed below are met. These standards shall apply only to new development.

- a. **Retail sales, offices and other permissible uses with outside display or storage of goods for sale:**
  - (1) Outside display of goods for sale and/or outside storage areas with direct frontage along street rights-of-way must be screened to a minimum height of two and one-half feet planted every five feet on center at installation;
  - (2) For new development; a maximum of 50 percent of the total property frontage along U.S. 70/401 may be devoted to outside display or storage of goods when vehicular parking areas (excludes vehicular loading/service areas) are located in the street yard area. A maximum of 66 percent of the total property frontage may be devoted to outside display or storage areas when vehicular parking/service areas are located in side or rear yards; and
  - (3) For new development; all outside displays of goods for sale or outdoor storage areas shall have a minimum setback distance of 15 feet from the street right-of-way.
- b. **Manufactured home sales lots:**
  - (1) Model display units only are allowed in front areas (measured 100 feet from the r/w line) directly visible to U.S. 70 or U.S. 401;
  - (2) All display model units must have foundation planting and underskirting material matching the unit; and
  - (3) All storage units must be located in the rear of display model area and have appropriate screening if visible from the thoroughfare.
- c. **Motor vehicle sale lots:**
  - (1) All vehicle display areas with frontage along U.S. 70 or U.S. 401 rights-of-way shall be screened to a minimum height of two and one-half feet; and
  - (2) The two elevated display racks permitted per motor vehicle sales lot; not to exceed five feet in height.
- d. **Automobile service centers:**
  - (1) All service bay areas shall be oriented so as not to directly face U.S. 70 or U.S. 401; and
  - (2) All service bay areas shall have a 100 percent screen to a minimum height of three and one-half feet if such areas are visible from public street views. Such screening height must be achieved within two years.
- e. **Automobile repair and body shops:**
  - (1) All service bay areas shall be located at the rear of the building or be oriented in such a manner so as not to be directly visible from U.S. 70 or U.S. 401; and
  - (2) All overnight vehicle storage areas shall be located in the rear of the building. Such storage areas shall be 100 percent screened from public street rights-of-way to a minimum height of 6 feet by the use of fencing, landscaping, berms, or a combination thereof.
- f. **Veterinarians or kennels:** Veterinarians or kennels with outside facilities for keeping animals are permissible provided such operations are not located within 500 feet of an existing residential use.

g. **Truck terminals:** Truck terminals are permissible provided all operational and loading areas are located to the rear of the building and are not directly visible from U.S. 70 or U.S. 401. Parking lots for employees/ visitors are permissible in front of the building.

h. **Car washes:** Car washes are permissible, provided the buildings are oriented in such a manner that the wash bays do not directly face U.S. 70 or U.S. 401. .

**4. Amortization of nonconforming uses.**

a. When a nonconforming use is abandoned or discontinued for a period of 180 consecutive days, any subsequent use of the property thereafter must comply with the applicable regulations of the Garner UDO regarding the use of the property.

b. Any change of use as defined by this UDO requires full compliance with the sign requirements of the Garner UDO.

**E. Land disturbing activities.**

1. All development plans submitted under this UDO shall show a construction limit line delineating protected buffer areas and any tree save areas intended for the property. Protective orange fencing, surrounding all protective buffer areas plus ten feet, and around tree save areas at the drip line, shall be installed prior to building and/or grading permit issuance. Any cutting or clearance within an approved protected buffer or tree save area shall be subject to a fine of \$5.00 per square yard of area in the protected buffer or tree save area that has been prematurely denuded and must be replaced with equivalent vegetation as determined by the Town of Garner.

2. No minor clearing of the existing vegetation within an approved protected buffer area or tree save area to be retained on the property shall not be allowed until after construction on the parcel is completed and upon approval by the Planning Department.

3. Logging or timbering activities on properties within the corridor are strongly encouraged to be limited to the interior portions of the lot exclusive of required buffer areas unless specifically approved by the Town of Garner.

4. Land development activities such as, but not limited to, site grading, buildings, parking and vehicular use areas, shall be excluded from the perimeter area of lots in order to protect existing trees and vegetation in required buffer areas.

5. Any grading or clearing (including removal of stumps) on land within the overlay district, not part of a development proposal, requires site plan approval by the Town of Garner prior to any such activity on the site. All such activities shall be consistent with the standards of this UDO.

**F. Access.** The existing access location standards under Article 8 of this UDO shall govern driveway locations on U.S. 70 and U.S. 401. Deviations from these access location spacing standards may be approved by Variance if the BOA concludes, based upon a traffic impact study submitted by a professional traffic engineer, the requested deviations do not pose any traffic safety impacts to the public and that such deviations have been recommended by the Town Engineer and the North Carolina Department of Transportation.

**G. Design standards.**

1. Building height standards identified below relate to areas depicted on the Town of Garner's Comprehensive Growth Plan's Land Use Intensities Map.

a. **Focus area.** Building height is limited to 70 feet within the first 100 feet; beyond the first 100 feet, height may be increased above 70 feet, provided for every additional foot of height the building setback is increased one foot. Building height is limited to 85 feet within the first 100 feet in **Regional Centers**; beyond the first 100 feet, height

may be increased above 85 feet, provided for every additional foot of height the building setback is increased one foot.

- b. **Support area.** Building height is limited to 48 feet in first 100 feet; beyond first 100 feet height may be increased above 48 feet provided for every additional foot of height the building setback is increased one foot.
- 2. When a nonresidential use directly adjoins an existing residential use, the building height is limited to 24 feet. When increased building height is authorized, an additional setback distance of one foot must be provided for every additional foot of building height over 24 feet measured from the property line adjoining the existing residential use. This requirement does not apply to the property within the overlay district located east of New Rand Road along U.S. 70.
- 3. Building setback standards identified below relate to areas depicted on the Town of Garner's Comprehensive Growth Plan's Land Use Intensities Map.

	Focus Area	Support Area
Front	20 foot minimum (no vehicular/parking area permissible in setback); otherwise 35 feet	30 foot minimum (no vehicular/parking area permissible in setback); otherwise 50 feet
Side	10 feet	10 feet
Rear	15 feet	15 feet

H. **Building design guidelines.** All shopping center developments, business complexes or commercial subdivisions, as defined in this UDO, shall be required to obtain Town approval of building design guidelines that are consistent with the following standards. An individual nonresidential building, not part of a larger shopping center, business complex, or commercial subdivision, shall also be subject to these provisions. All new development must comply with the following standards.

- 1. The use of prefabricated metal buildings shall not be permitted unless all building facades visible from street views are treated with brick, decorative/scored concrete masonry units (CMU), exterior insulated finishing systems (EIFS), or other materials in styles and colors. The use of vinyl siding on nonresidential buildings is not permitted.
- 2. All dumpster enclosures and accessory/storage buildings for new development shall be constructed of materials and colors that match the principal building served and shall be sited on the property in such a manner to minimize view from all public streets.
- 3. All building awnings must be appropriately designed as part of the buildings architecture and be unified with the buildings colors and style.
- 4. Design guidelines shall be required for all shopping centers, business complexes and commercial subdivisions located within the overlay district. Such guidelines must be included as part of the initial overall development plan submittal. All development that is subject to design guidelines approved by the Town must be constructed in accordance with the applicable standards for that specific development.
- 5. All design guidelines shall include, but not be limited to, provisions that address building height, mass and scale, setback distances and unifying site elements such as building materials and colors, landscaping, site lighting elements, and pedestrian circulation systems.
- 6. Vehicular parking surface areas with direct frontage on U.S. 70 or U.S. 401 shall have curb and gutter and be paved with a permanent surface

consisting of a minimum six inches of base stone and two inches of 1-2 asphalt from the edge of the front vehicular/parking surface area to the front building line. An equivalent permanent surface material may be used as an alternative if approved by the Town Engineer. Truck loading and/or vehicular service areas are strongly encouraged to be oriented on the property so as to be out of public street views consistent with the requirements herein.

7. Full lane widening with curb and gutter construction shall be required for all new development with property frontage on U.S. 70 or U.S. 401. This standard does not apply to new development where no direct driveway or street access to U.S. 70 or U.S. 401 is proposed. For new development where access to U.S. 70 or U.S. 401 is proposed and the total peak hour trip generation according to the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual does not exceed a total of 50 trips, a deceleration lane without curb and gutter construction may be installed in lieu of full lane widening.

I. **General thoroughfare buffer requirements.** In addition to complying with all of the general landscape standards in the Garner UDO, new development must meet the standards listed below.

1. The buffer shall extend 50 feet along corner side streets and 40 feet along all entrances to new development.
2. The use of native or locally adaptable species is required.
3. Construction limit lines shall be shown on all site development plans. Approved undisturbed buffer areas shall be protected on the ground with orange fencing and shall be installed prior to the issuance of a building and/or grading permit. Such fencing shall be maintained during the entire time of construction.
4. The suitability of existing vegetation to meet the planting requirements for required buffer areas must be approved by the Planning Department. If approved, it will be credited towards the projects landscaping requirements. Otherwise, the applicant shall be required to provide a new landscape planting plan which meets the standards of this UDO as well as all other applicable requirements of Article XIX entitled landscape and appearance. Such plans must be approved by the Town of Garner the Planning Department.
5. Thoroughfare buffer design standards.
  - a. A seven and one-half-foot wide thoroughfare buffer shall be required on property lines along U.S. 70 or U.S. 401 for all development. One street tree shall be provided for every 40 feet of property frontage along U.S. 70 or U.S. 401. Such tree shall be a minimum of ten feet tall with a two-inch caliper at installation. All vehicular parking areas visible from U.S. 70 or U.S. 401 must provide additional landscape screening to achieve a 100 percent screen of the vehicular surface area to a minimum height of two and one-half feet and planted every five feet on center at installation.
  - b. Where existing trees and vegetation can be retained that qualify according to the terms of this UDO regarding types, sizes, and locations, and are healthy species as determined by the Planning Department, additional landscaping may not be required. In cases where additional planting is required, a street buffer planting plan must be approved by the Town of Garner.
6. Additional screening, buffering and landscaping requirements in street yards for high intensity uses (new development only). The objective of this requirement is to provide denser screening, landscaping or a combination thereof for more intense uses of land between U.S. 70/401 and the principal

improvements on the property which are identified as high intensity uses. High intensity uses include outdoor operations (loading or assembly areas), operation utility service areas, and similar uses. All such high intensity uses not screened by an intervening building shall be screened 100 percent from public street views by a continuous screen of evergreen plant material and/or berm that reaches six feet in height.

7. Screening and landscape buffers adjoining residential uses.
  - a. The nonresidential uses listed below shall be required to provide a 40-foot wide undisturbed buffer area with screening to a height of eight feet, or to a buffer width and screening height provided by a professional engineer and based upon results of a sight line study, when directly adjacent to residential uses. Required screening may be achieved by using vegetation, earthen berms, solid fences, or a combination thereof.
    - (1) Golf driving range;
    - (2) Veterinarian/kennel with outside operations;
    - (3) Auto service/auto repair; or
    - (4) Any other permissible use with outdoor display/storage that directly adjoins existing residential property.
  - b. The permitting authority may approve deviations from these presumptive standards if it concludes that the objectives underlying these standards can be met without strict adherence to them, and that there are no excessive measurable impacts to adjoining properties, and it finds that such deviations are more likely to satisfy the above noted standards.

**J. Parking lot landscape planting for existing uses.**

1. All existing nonresidential uses of property with direct frontage on U.S. 70 or U.S. 401 shall comply with the following requirements within three years from the date the overlay district is adopted.
2. All affected properties shall comply with the street tree requirements of the overlay district and screen all outside display/storage areas or vehicular surface areas directly fronting along U.S. 70/401 to a minimum height of two and one-half feet at installation and planted five feet on center at installation.
3. Each property owner or designee shall be responsible for obtaining landscape plan approval from the Planning Department which complies with these standards and install the planting material prior to the three year deadline.
4. In cases where the existing property does not have sufficient land area available to accommodate the required landscaping on site without severely impacting business operations, the Planning Department may allow deviations from these standards provided the following is accomplished.
5. An appropriate combination of street trees and shrubs is provided in locations that effectively improve the appearance of the property and special highway corridor as determined by the Planning Department (the use of r/w area is permissible with an N.C. DOT encroachment agreement; maintenance by property owner shall be required).
6. A maximum deviation of up to 50 percent of required landscaping may be authorized by the Planning Department if it finds there is not sufficient space available on private property and/or public right-of-way areas (merely having to relocate storage areas when sufficient space elsewhere on site is available does not qualify for this type of relief).

7. The decision of the Planning Department may be appealed to the Planning Commission for review and recommendation with the final decision by the Town Council.
- K. **Site lighting standards.** See Article 7, Special standards in the U.S. 70/401 Thoroughfare Overlay District.
- L. **Sign regulations.**
  1. The provisions set forth in Article 7 specific to U.S. 70 or U.S. 401 shall govern all signage for individual building development that is located within the U.S. 70/401 Thoroughfare Overlay District and is not defined as a shopping center, business complex or commercial subdivision. Shopping centers, business complexes or commercial subdivisions are subject to uniform sign plan standards contained in Section 7.5.N., unless otherwise noted in said section.
  2. When a new business occupies an existing building, the new business shall fully comply with the applicable sign regulations in Article 7.

(Ord. No. 3558, § 2, 7-7-09; Ord. 3714, § 2, 10-22-13; Ord. No. 3780, § 2, 7-7-15)

#### 4.12. I-40 Overlay District.

- A. **Purpose and intent.**
  1. The Town Council finds that Garner is rich in natural scenic beauty along I-40 within its planning jurisdiction. The Town Council finds that the general welfare will be served by orderly development within the I-40 Overlay District in a fashion which would preserve natural scenic beauty and aesthetic character; promote design quality; and enhance trade, tourism, capital investment, and the general welfare along the thoroughfare. The Town Council therefore establishes these regulations in areas adjacent to I-40 to further those objectives while encouraging the orderly development of land within these corridors.
  2. It is the intent of this section that as great a part of the tracts within the corridor as possible be left in an undisturbed or enhanced state of vegetation, and that sufficient areas of natural transitional buffer between uses remain so that the proposed use will be visually in harmony with the natural wooded character of the area. Removing or denuding natural forest vegetation along I-40 is prohibited except as provided in this section.
  3. The I-40 Overlay District (O-40) is an overlay zone. The land use regulations applicable to the underlying zone remain in full force and effect except where superseded herein. Where there is a provision not expressed in the underlying zone, or where a provision hereof is in conflict with the underlying zone, the provision of the overlay ordinance shall be controlling.
- B. **Location of I-40 Overlay District.** The district is located on either side of I-40 within the Garner zoning jurisdiction. The district shall extend from the right-of-way of the highway, on either side, and measured from the outside right-of-way line of the roadway at its farthest point, including access ramps and interchanges, a distance of 1,250 feet, as shown on the official zoning map maintained in the Planning Department. In cases where any portion of a building or parking area falls within the boundaries of the overlay district, these provisions shall apply to all of the building(s) and parking areas.
- C. **Permits required.** Within the I-40 Overlay District, all developments for which a site plan or subdivision plat approval is required pursuant to other provisions of this UDO are required to receive a special use permit issued by the Town Council prior to issuance of building permits.
- D. **Lot dimensional requirements.** All dimensional requirements, including minimum lot area and minimum lot width requirements, are established in the underlying zones.
- E. **Maximum building height.** No building shall exceed 150 feet above grade; other

building height restrictions are governed by the setback from the right-of-way as set forth below.

- F. **Minimum building setback requirements.** The required setback for yards not adjacent to the right-of-way of I-40 shall be as set forth in the underlying zone. The minimum building setbacks measured from the scenic corridor right-of-way, including access ramps and interchanges, shall be as follows:
1. For buildings up to 35 feet above grade, there shall be a minimum setback of 50 feet from the right-of-way.
  2. For buildings extending up to 60 feet above grade, there shall be a minimum setback of 100 feet.
  3. For buildings exceeding 60 feet above grade, there shall be an additional setback, measured beyond the initial 100 foot setback, consisting of two feet for each additional one foot in height up to the maximum height of 150 feet.
- G. **Buffering and screening.** Buffering and screening are required. For purposes of this section, the term buffer means a horizontal distance measured perpendicular to the right-of-way. The term screen pertains to vertical distance (height) of plantings, fences, berms and other landscape features. Screens provide visual obstruction; buffers only provide the space in which screens are used.
1. **Yards not adjacent to the right-of-way of I-40.** Those portions of front, rear, side or corner side yards that are not adjacent to the I-40 50-foot buffer and are not devoted to the uses, buildings and structures that are permitted within this section shall provide screening and buffering consistent with this UDO while emphasizing their natural wooded state, and where required, shall provide landscaping, provided, however, a minimum of 50 feet of natural transitional buffer area or its planted equivalent shall be preserved on corner side lot lines within 200 feet from the intersection of the side road with I-40. Provided, further, however, that this subsection shall not apply to single-family residential uses.
  2. **Yards adjacent to the right-of-way of I-40.**
    - a. **Development options within the 50-foot buffer.** The 50-foot buffer adjacent to the right-of-way of I-40 shall be preserved or constructed in accordance with the following development options:
      - (1) A natural screen or its newly planted equivalent providing the percentage of visual obstruction required by this section, established and maintained by the owner. A landscape architect licensed in the state of NC shall determine the vegetative composition of the equivalent planting. Provided, however, that this subsection shall not apply to agricultural uses where the 50 feet adjacent to I-40 has been cleared prior to December 7, 1987.
      - (2) A natural water body or one specifically designed as a landscape feature adjacent to a low intensity use as defined herein.
      - (3) Other landscaping adjacent to a low intensity use as defined herein.
      - (4) Other improvements which themselves provide no visual obstruction, such as access roads, which meet the standards of paragraph P below and for which the Board of Adjustment grants a variance if the Board finds the proposed use will not result in a deviation from the letter of this section to any greater extent than is necessary to allow for reasonable development of the tract, provided that the site plan presented for the permit shall contain a condition



that the developer install and maintain compensatory landscaping, screening or a combination thereof to meet the percentage of visual obstruction otherwise required in the 50-foot buffer area.

**b. Development options in the front yard beyond the 50-foot buffer.**

- (1) The front yard is defined as that area between the special scenic corridor right-of-way and the area at which the principal building or buildings are constructed. The front yard includes the buffer and any additional area beyond the buffer as so defined.
- (2) Development options within the front yard area beyond the buffer, provided the screening requirements in the buffer are met first, or that these options, combined with the screening provided in the buffer, satisfy the intent of this section, are as follows:
  - (a) Additional natural screening, water bodies and other landscaping as set forth in paragraph G.2.a., above, provided the same are adjacent to medium intensity uses or adjacent to low intensity uses.
  - (b) Other improvements, as set forth hereinafter which have significant impact on the visual quality of the corridor, but which reduce that impact to meet the intent of this section through the use of interior landscaping and screening consistent with this section as follows:
    - (i) Landscaped vehicular surface (parking) areas;
    - (ii) Access roads with street yards;
    - (iii) Accessory buildings;
    - (iv) Outdoor storage and/or display;
    - (v) Loading areas;
    - (vi) Utility service areas;
    - (vii) Boundary fences, gates and security stations.

**c. Additional screening,** buffering and landscaping requirements, by intensity of use, in any front yard. Generally, the objective of these regulations is to provide a denser screening, landscaping or a combination thereof for more intense uses of land between the special highway and the principal improvements consistent with the purposes of this section and as described herein be high intensity, medium intensity, and low intensity uses.

**3. High intensity uses.** For purposes of this section, high intensity uses include outdoor operation (loading or assembly areas), outdoor storage, and operation utility service areas, and similar uses. All such high intensity uses not screened by an intervening building shall be completely screened (100 percent visual obstruction) from view from the right-of-way of I-40 except for necessary access in the following manner:

- a. A continuous screen of evergreen plant material and/or berm that reaches at least ten to 12 feet high within three years is required. This screen may be placed on either side of a public access road, provided the screen blocks visual penetration throughout all seasons of the year.
- b. Beyond the initial three year height requirement, all required trees

newly planted in the buffer must have an expected mature height of at least 35 feet or greater, unless subject to an overhead power line in which case the mature height may be within a range of 8 to 15 feet.

- c. Alternative screening for utility service areas may be accomplished by locally adapted planting (evergreen or deciduous) which are a minimum of 18 inches tall when planted and are expected to reach height and width equal to or greater than the utility service structures which are required to be screened. Screening for utility service areas in the right-of-way are to be installed by the utility company or person who installed the service; in all other instances, the property owner shall install the plantings.
4. **Medium intensity uses.** For purposes of this section, medium intensity uses include vehicular surface parking areas in the front yard space adjacent to the right-of-way of I-40. Where such uses are proposed, the screening standards set forth herein apply and are designed to modify and reduce the deleterious visual, environmental and aesthetic effects of existing and proposed vehicular surface areas. Among other purposes, they are designed to modify the appearance of parking areas and vehicular surface areas, to encourage the construction of such necessary areas in a manner that more closely follows the existing natural contours of the land; to distribute planting areas around and within the parking area; and to break the visual blight created by large expanses of vehicular surface areas. The screening requirements are as follows:
- a. An intermittent screen of mixed deciduous and/or evergreen plant material in the buffer at least ten to 12 feet high within three years, so as to achieve a 50 percent visual obstruction of the development, plus internal vehicular surface area landscaping according to the standards of paragraph P below.
  - b. Within the intermittent screen, beyond the initial three year height requirement, all required trees newly planted in the buffer or in the surface parking area must have an expected mature height of at least 35 feet or greater. For deciduous trees, a mature crown spread of at least 30 feet or greater is required unless subject to an overhead power line in which case the mature height may be within a range of 8 to 15 feet.
5. **Low intensity uses.** For purposes of this section, low intensity uses refer to instances where there is only grass or landscaping (including a water body designed as a landscape feature) in the front yard space between the building and the right-of-way of I-40. The screening requirement is an intermittent screen of mixed deciduous and/or evergreen plant material in the buffer at least ten to 12 feet high within three years, or landscaping provided according to an approved plan, which achieves up to 25 percent visual obstruction of the development.

#### H. Land disturbing activities.

1. Unless qualifying under development options set forth in subsection G.2.a.(1) through (3) above, no clearing of vegetation shall be allowed for any purpose, including agriculture and timber harvesting, within the 50-foot buffer adjacent to the right-of-way of I-40 regardless of whether land use permits are required under this UDO. Limited underbrush thinning is permitted for purposes of maintaining or enhancing public safety.
2. Subject only to Article 9, Nonconformities, any expansion of existing land uses involving frontage on the special highway shall comply with this section.
  - a. Site plans submitted under this section shall show a construction

limit line delineating the buffer area existing prior to commencing construction.

- b. No construction, and only selective thinning of underbrush are permitted in the buffer. No clearance of the existing vegetation within the delineated buffer area is allowed until after construction on the parcel is completed. Any cutting or clearance before completion of construction shall be subject to a fine of \$5.00 per square yard of area in the protected buffer that has been prematurely denuded.
- c. Upon completion of construction, if an approved screening/landscaping plan has not already been approved, such plan shall be submitted at that time indicating how the screening/landscaping objectives of this section are to be achieved, with particular regard to the delineated buffer.
- d. Any screening/landscaping plan submitted after construction is completed shall be consistent with this UDO, be complete, and receive the approval of the Town Council.

I. **Sign regulations.** See Article 7.

J. **Restricted uses.**

- 1. The following uses are permitted only if site plans are approved which assure (i.e. condition) that these uses will have no visible outdoor storage or operations adjacent to the special highway:
  - a. Truck service centers (truck stops);
  - b. Car and truck dealerships;
  - c. Uses with storage for retail such as lumber yards, heavy equipment dealers, and similar uses.
- 2. Such site plans shall indicate that all outdoor storage and operation will be located in the yard space farthest away from the special highway and on the far side of the principal buildings.
- 3. Outdoor display (as differentiated from outdoor storage) shall consist of only a sampling of wares sufficient to convey what is sold and is permitted in SB and I-2 zones on a limited basis in accordance with the approved site plan.

K. **Prohibited uses.** The following uses are prohibited:

- 1. Truck terminals mobile home parks and subdivisions;
- 2. Mobile home sales lots;
- 3. Scrap material salvage yards, junkyards, automobile graveyards;
- 4. Sanitary (reclamation) landfill;
- 5. Body shops;
- 6. Storage of radioactive or otherwise hazardous wastes;
- 7. Outside kennels;
- 8. Drive-in theaters;
- 9. Golf driving ranges;
- 10. Water slides;
- 11. Self-serve car washes;
- 12. Solar farms; and

L. **Access points.**

- 1. For lots having more than 500 feet of frontage on an access or frontage road, points of ingress and egress shall be no closer than 500 linear feet.
- 2. For lots having less than 500 feet of frontage onto an access or frontage road, only one point of ingress or egress shall be allowed. Whenever possible, a minimum distance of 200 feet must be maintained between points of ingress and egress.
- 3. Ingress to and egress from a lot shall be prohibited within 200 feet of the

intersection of a special highway.

- M. **Parking.** See underlying zone (land use category). Also, parking areas shall be paved with dust-free, all-weather surface, and shall be properly drained and landscaped. The number of spaces required may be reduced in order to accommodate landscaping required by this section.
- N. **Industrial performance standards.** All outdoor lighting shall be shielded in such a manner that no direct glare from the light source can be seen from the special highway.
- O. **Regulations for screening, buffering, and landscaping in special districts.** The regulations set forth herein apply within the I-40 Overlay District and elsewhere as specifically enacted now or hereafter by the Town Council.
  - 1. **Street yard width and planting requirements.**
    - a. Any nonresidential use of land (including vehicular surface areas) established after the effective date of this section shall provide a street yard along any existing or proposed public street right-of-way adjacent to or adjoining the property except for those portions of the lot used for driveways or buffers planted in accordance with this UDO. The street yard shall be contiguous with the right-of-way.
    - b. The total square feet area of the street yard shall be at least equal to five times the length in feet of frontage adjoining the public right-of-way (i.e., have a minimum of five feet in width).
    - c. The minimum dimension of any street yard used to satisfy this section shall be measured perpendicular to the recorded public street right-of-way.
    - d. The street yard shall contain at least one natural tree for every 50 linear feet of street yard or fraction thereof as measured from the corners of the property, and shall be located so that at least one natural tree is within every 75 linear feet of street yard or fraction thereof and shall be planted at least ten feet from any tree on the right-of-way; but along street yards for display areas, the spacing of trees may be one natural tree every 150 linear feet of the street yard or fraction thereof.
    - e. The street yard shall contain natural trees, either existing or planted, of at least eight feet in height and six and one-quarter inches in circumference (two inches in diameter) measured at one-half foot above grade.
    - f. All required trees in the street yard must be a locally adapted species with an expected mature height of 35 feet or greater and an expected mature crown spread of at least 30 feet or greater, unless subject to an overhead power line in which case the mature height may be within a range of 8 to 15 feet.
    - g. This yard shall be landscaped and be properly maintained by the owner and shall have live vegetation, groundcover, grass, trees, shrubs, and may, unless otherwise prohibited, include fences or walls, screening for loading, utility, and display areas, and plantings for vehicular surface areas. All fences must conform to the requirements of this UDO. No more than 15 percent of this required protective yard shall be covered with an impervious surface which may be used without limitation for walkways, fountains or walls, but not vehicular surface, storage, utility service, display, or loading areas.
  - 2. **Interior screening and landscaping standards.**
    - a. These regulations shall apply to any vehicular surface area or portions thereof built after the adoption of this section, and to pre-

---

existing vehicular surface area when there are additions or expansions which singularly or collectively exceed 25 percent of the land area or gross building floor areas existing at the time this section becomes applicable to the property. These requirements are for all vehicular surface areas, required or otherwise, regardless of the zoning district where they are located.

- b. Landscaped planting areas shall be provided and maintained within the interior of the vehicular surface area and adjacent thereto.
- c. Each planting area shall contain a minimum of 300 square feet in area with minimum dimensions of seven feet and, except for vehicular display areas for which trees are not required, shall contain at least one naturally locally adapted shade tree a minimum of six and one-quarter inches in circumference (two inches in diameter) measured one-half foot above grade with a minimum height of eight feet.
- d. Trees shall be required at the minimum rate of one natural shade tree for every 2,000 square feet of total vehicular surface. All vehicular areas located serving one or more businesses or uses of land or share unified ingress and egress shall be considered as a single vehicular surface area for the purpose of computing the required rate of trees, notwithstanding ownership.
- e. Shade trees as used herein means any tree, evergreen or deciduous, whose mature height of its species can be expected to exceed 35 feet and which has an expected crown spread of 30 feet or more, or is considered a shade tree in accordance with American Standards of Nursery Stock, set forth by the American Association of Nurserymen. The shade tree, existing or planted, shall be at least eight feet in height and six and one-quarter inches in circumference (two inches in diameter) measured at one-half foot above grade for new planted trees and measured at four and one-half feet above grade for existing trees.
- f. Landscaped planting areas are to be located within or adjacent to the parking area as tree islands, at the end of parking bays, inside seven-foot wide or greater medians, or between rows of cars or as part of continuous street or transitional protective yards. The number, size and shape of landscaped planting area shall be at the discretion of the owner; however, no vehicular parking space shall be separated from a shade tree by an intervening building and be located farther than 50 feet from the tree trunk of a shade tree planting area with one tree, or 75 feet from the tree trunk of a planting area with two or more shade trees (existing or planted) provided that any landscaped planting area has a minimum of 300 square feet of continuous growing area for each tree therein.
- g. Landscaped planting areas shall be distributed in a manner which fulfills the purposes of this section.
- h. For vehicular display areas which are not required to have trees, measurements shall be made from the edge of the landscaped planting areas, and no stored vehicle shall be farther than 50 feet from the edge of any landscaped planting area without a tree.
- i. The number of off-street parking spaces required in this UDO may be reduced by the following ratio: The square footage of required landscaped planting area divided by 150, but no fraction thereof, provided that no reduction in the number of off-street parking spaces authorized by this section in excess of ten percent shall occur without the prior approval of the Town Council which shall first

determine if further reductions will cause on-street parking congestion.

- j. Any vehicular surface area shall be provided with landscape areas containing shrubs. Shrubs shall attain a minimum size of 30 inches high within three years of planting. All shrubs shall be a minimum of 18 inches tall when planted and there shall be no gaps between required shrubs greater than ten feet. No more than 40 of the required shrubs may be deciduous. Shrubs shall be required at a rate of one shrub per 500 total feet of vehicular surface area.
- k. Earthen berms may be provided or the ground sloped. Any berms used to comply with this section shall have a minimum height of one and one-half feet and a minimum crown width of two feet and a total minimum width of seven feet and shall be planted with a locally adapted species of shrubs which conform to the first paragraph herein. However, shrubs planted on berms may have a lesser height provided that the combined height of the berm and the plantings after three years is at least 30 inches high.

(Ord. No. 3558, § 2, 7-7-09; Ord. No. 3780, § 3, 7-7-15)

#### 4.13. Swift Creek Conservation District.

- A. **Purpose and intent.** The purpose of these regulations is to protect and preserve the water quality of the Swift Creek Watershed below Lake Benson while allowing the orderly development of land in this environmentally sensitive area. It has been determined by federal and state agencies that this watershed area provides significant wildlife, aquatic, or plant life habitats; that possess characteristics unique to the Town of Garner. It is the intent of these regulations to protect the water quality in this watershed by requiring limits on the amount of impervious surface areas permissible for new residential and non-residential development.
- B. **Swift Creek Conservation District Boundaries.** The portion of the Swift Creek Watershed that is subject to these protection standards is located below Lake Benson in the Town of Garner's zoning jurisdiction generally bounded by Garner Road, N.C. 50, New Rand Road, White Oak Road and the southern Garner ETJ boundary. The exact boundaries are shown on the Official Town of Garner Zoning Map which constitute the official boundaries of the Swift Creek Conservation District where these provisions shall apply for purposes of this UDO.
- C. **Use regulations.** The uses permitted or prohibited in the Swift Creek Conservation District shall be those uses permitted or prohibited in the underlying zoning district that apply to a particular parcel of land.
- D. **Exempt from regulations.** All parcels of land that fall within the boundaries of the Swift Creek Conservation District which are identified on the Town of Garner Official Zoning Map as being exempt properties, shall not be subject to provisions of this overlay district.
- E. **Existing development, redevelopment, and expansions.** Existing development (residential or non-residential) is not subject to the requirements of this section; existing development shall be considered to be any existing impervious surfaces, or for which plan or permit approval has been officially granted; or where a vested right has been established, as of May 31, 2005. Redevelopment or expansion of any existing non-residential development shall be subject to the requirements of this section; however, the impervious surface coverage of the existing development is not required to be included when applying the impervious surface coverage limits of this section.
- F. **Development standards.** The following standards shall apply for new residential and non-residential development in Swift Creek Conservation District.

1. The standards of both the Swift Creek Conservation District and the underlying zoning district shall apply to each parcel. Where the standards of the overlay district and the underlying district differ, the more restrictive standards shall control development in new projects created after effective date of the Swift Creek Conservation District which is May 31, 2005.
2. The maximum impervious surface coverage of the new residential development projects and new non-residential development projects, which are defined as those projects approved or permitted after the above noted effective date of the Swift Creek Conservation District are as follows:
  - a. New single family detached residential subdivision development projects shall be limited to a maximum of 30 percent total impervious surface area.
  - b. New multi-family residential development projects defined to include townhomes, condominiums, or apartments shall be limited to a maximum of 50 percent total impervious surface area.
  - c. New non-residential development projects shall be limited to a maximum of 70 percent of total of impervious surface area.

#### 4.14. Obsolete districts.

**Commentary: These existing districts were applied to land in Garner prior to the adoption of the UDO and remain mapped on the official zoning map, but are no longer available for zoning future land.**

##### A. Residential cluster district (RCD).

1. **Purpose and intent.** The purpose of cluster development regulations is to provide an optional land development procedure which results in the preservation of open space; protection of streams, floodplain areas and significant existing tree cover; promotion of more efficient subdivision street and infrastructure networks; and encouragement of a variety of styles or types of residential dwellings. Cluster development should provide a total living environment for residential purposes that is in compliance with the land use plan and other applicable local, state or federal laws or regulations.  
There shall be three residential cluster districts (RCD). Each residential cluster district is a special purpose zoning district and is designed to have similar density characteristics of the various residential zoning districts of the ordinance (excluding the R-5 district) according to one of the following three elements:
  - a. RCD-1 shall be the low density cluster development district and shall have a permitted overall average tract density range of up to one dwelling unit per acre. All development within the RCD-1 district shall be in accordance with the provisions of Article 6 and the all other applicable requirements of this UDO.
  - b. RCD-2 shall be the medium density cluster development district and shall have a permitted overall average tract density range in excess of one dwelling unit up to five dwelling units per acre. All development within the RCD-2 district shall be in accordance with the provisions of Section 6.1 and all other applicable requirements of the UDO.
  - c. RCD-3 shall be the high-density cluster development district and shall have a permitted overall average tract density range in excess of five dwelling units up to 12 dwelling units per acre. All development within the RCD-3 district shall be in accordance with Section 6.1 and all applicable requirements of the UDO.
2. **Permitted uses.** Residential cluster developments may have as permissible uses single-family detached dwelling units, duplexes,

residential townhouse dwelling units, and residential condominium dwelling units or any combination thereof so long as the permitted density of the selected residential cluster district is not exceeded.

**3. General requirements.**

- a. Public sanitary sewer and water connections shall be required for every lot or dwelling unit in a cluster development.
- b. A master plan shall be required to be submitted if the cluster development is to be the initial phase of a larger project. Conditional zoning approval procedures and final plat approval procedures according to the requirements of the land use ordinance shall apply to all cluster developments in designated cluster development districts.
- c. Each individual cluster development lot containing single family detached or attached units public shall have street access according to the criteria listed in applicable sections of the land use ordinance.
- d. Residential condominiums and townhouses shall meet the access standards, as well as other applicable sections of the land use ordinance.
- e. Design of cluster developments will be reviewed by the Planning Commission based upon accepted general design principles, and special design criteria developed by the Commission and appropriate requirements of the ordinance. Where possible, appropriate information on floor plans, building areas, building elevations (materials colors) and landscape provisions should be furnished along with all required information with the CUP application. Restrictive covenants may be submitted to address the above related matters with the CUP application.
- f. A homeowner's association shall be established to own and maintain all property or facilities held in common private ownership. Documents regarding the homeowner's association shall be submitted to the Town for approval with the final plat and shall be duly recorded with the final plat in the Wake County Register of Deeds Office by the applicant.
- g. A pre-application conference between the developer or agent and the staff of the Town of Garner shall be required. The meeting should address procedures and requirements of the land use ordinance, conformance with the long range plan, availability of utilities, and general design related matters associated with the project. The developer shall furnish three copies of a conceptual plan which outlines the proposed development of the entire tract of lands. Such plan shall include the following:
  - (1) Structures, location and arrangement.
  - (2) Circulations patterns, vehicular (streets), pedestrian and parking.
  - (3) Existing site conditions, topography, vegetation cover, soil conditions, flood prone areas and streams, and other significant environmental conditions.
  - (4) Tentative provisions for all utilities.
  - (5) Recreational and open space locations.
  - (6) Boundaries of the development including acreage.
  - (7) The conceptual plan should be at a scale of one inch equals 100 feet, or larger.
- h. Dimensional standards.



- (1) A cluster development lot shall not have a minimum lot area requirement. The overall density or number of dwelling units in a cluster development shall not exceed the allowable density provisions of the cluster district.
  - (2) Front yards may be staggered to provide a variety in the size of such yards. The minimum average of all front yards in a cluster development shall be 20 feet; however, no front yard of any lot shall be less than 15 feet. Side yards shall be a minimum of eight feet each; corner side yards shall be a minimum of 15 feet. Rear yards shall be a minimum of 15 feet. Zero lot line building orientations may be allowed in a cluster development subject to the provisions of Section 6.5.A of the land use ordinance. Individual detached single family units in a cluster development shall have a minimum lot width of 20 feet measured at the street line. The provisions of Article 6 regarding minimum lot widths shall apply to residential townhouse and condominium units.
  - (3) A peripheral yard of at least 25 feet in width, shall be provided along the entire perimeter of a cluster development.
  - (4) Each dwelling unit in a cluster development shall have two off-street parking spaces. In addition, there shall be one space for every two dwelling units set aside in an auxiliary off-street parking area in a cluster development.
- i. Open space standards. Open space in cluster development shall be no less than 35 percent of the gross area of the cluster development tract. All open space provided in a cluster development shall meet the following criteria in addition to the requirements of Article XIII of the land use ordinance:
- (1) Open space shall abut 75 percent of the lots within the subdivision and shall be well distributed throughout the development so as to achieve the requirement herein.
  - (2) All open space areas shall be at least 40 feet in width, except the open space that is provided around the perimeter of a cluster development. The 40-foot width minimum may be achieved through a combination of common open space and private land disturbing activities.
  - (3) All open space shall be linked, either directly or across street rights-of-way.

**B. Multi-residential district (MR-1).**

1. **Purpose and intent.** The MR-1 district must contain a minimum of five acres and is designed to accommodate single family detached units, duplexes, and triplexes as well as zero-lot-line attached units. This district is designed to create and maintain higher density residential neighborhoods and, as special uses, those service, institutional, public and other compatible uses that are so designed, constructed and maintained that they do not detract from the quality of the neighborhood as a place for healthful, quiet and aesthetically-pleasing residential living. When evaluating an application for the MR-1 zoning district, emphasis shall be given to the location of the proposed district to adjoining developed property to ensure that such district is carefully located and achieves a satisfactory relationship with the surrounding properties.
2. **Permitted uses.** The MR-1 district shall permit the following uses:
  - a. Site-built and modular homes.

- b. Duplexes and triplexes following approval of a special use permit.
- c. Nursing and intermediate care homes; group care homes, child care homes, family care homes.
- d. Zero lot line development following approval of a special use permit.
- e. Elementary and secondary schools following approval of a special use permit.
- f. Churches, synagogues and temples following approval of a special use permit.
- g. Libraries, museums, art galleries, art centers and similar uses located within a building designed and previously occupied as a residence or within a building having a gross floor area not in excess of 3,500 square feet.
- h. Community centers following approval of a special use permit.
- i. Publicly or privately owned outdoor lower intensity and lower commercial recreational facilities such as golf and country clubs, swimming or tennis clubs, parks, etc. following approval of a special use permit.
- j. Police stations, fire stations, rescue squad or ambulance service following approval of a special use permit.
- k. Reclamation landfill following approval of a special use permit.
- l. Cemetery following approval of a special use permit.

**3. Density and dimensional regulations.**

- a. **Minimum lot size:** 7,000 square feet for single-family residences. Every lot developed for multifamily residential purposes shall have at least 6,000 square feet for each dwelling unit. Commentary: Single-family detached setbacks follow the same setbacks as the R-9 district.
- b. **Minimum lot width: 60 feet.**
- c. **Minimum side setbacks:**
  - (1) Fifteen feet from side lot boundary line for attached units.  
Ten feet from side lot boundary line for detached units.
  - (2) Twenty-five feet from street right-of-way along side of corner lot for attached units.  
Twenty feet from street right-of-way along side of corner lot for detached units.
- d. **Minimum front and rear setbacks:** Minimum front and rear setbacks 25 feet for both attached and detached units.
- e. **Maximum building height:** 35 feet for residential buildings. Nonresidential buildings may exceed the height of 35 feet provided the following occurs:
  - (1) The depth of the required front, rear and both side yards shall be increased one foot for each foot or fraction thereof of building height in excess of 35 feet; and
  - (2) The building is otherwise designed or equipped to provide protection against the dangers of fire.
- f. **Zero lot line development:** Zero-lot-line developments consisting of groups of two or three attached units may be allowed in accordance with Article 6. Such developments shall be reviewed only through a special use permit, site plan and subdivision plat concurrently submitted. In addition, a master plan shall be submitted if a zero-lot-line development is to be an initial phase of a larger development.

**C. Mixed Use Development (MXD-1).**

**1. Applicability.**

- a. There shall be a Mixed Use District-1 established.
  - b. No area of less than 75 contiguous acres in single ownership or control may be zoned as a MXD-1 zoning district. Section 157 of the land use ordinance provides further guidance regarding MXD-1 regulations.
2. **Purpose.** MXD-1 is intended to produce higher levels of urban land use intensity at or near Community Level Nodes or Metro-focus Nodes, consistent with the Town's long-range plan. MXD-1 zoning permits various combinations of usually separated uses, primarily promoting the development of "business parks". It is not intended to be applied in a limited way to only inner-city development or to mixed uses within one structure (high-rise), but rather, may be used to support either infill or new development on relatively large tracts.
3. **Permitted uses.** Land shall be used and buildings erected, altered, enlarged, or used only for a combination of the uses listed below:
- a. Residential.
    - (1) Apartments and condominiums;
    - (2) Townhomes;
    - (3) Hotels and motels.
  - b. Sales and rental of goods, merchandise and equipment.
    - (1) No storage or display of goods outside fully enclosed building;
    - (2) Storage and display of goods outside fully enclosed building if properly screened;
    - (3) Wholesale sales.
  - c. Office, clerical, research and services not primarily related to goods or merchandise.
    - (1) Operations designed to attract and serve customers or clients on the premises, such as attorneys, physicians, other professionals, insurance and stock brokers, travel agents, government office buildings, banks, etc.;
    - (2) Operations designed to attract little or no client traffic other than employees of the entity operating the principal use;
    - (3) Offices or clinics of physicians or dentists;
    - (4) Operations conducted within a fully enclosed building.
  - d. Manufacturing, processing, creating, repairing, renovating, painting, cleaning, assembling of goods, merchandise and equipment.
    - (1) Service, repair of goods, etc. sold or rented on-premises;
    - (2) Other fully-enclosed operations;
    - (3) Operations conducted outside fully enclosed building if properly screened.
  - e. Educational, cultural, religious, philanthropic, social, fraternal uses.
    - (1) Business or vocational schools;
    - (2) Churches, synagogues and temples, including associated residential structures for religious personnel and associated buildings, but not including elementary or secondary school buildings;
    - (3) Libraries, museums, art galleries, art centers and similar uses (including associated educational and instructional activities);
    - (4) Social, civic, service, fraternal clubs and lodges, union halls, and similar uses.
  - f. Recreation, amusement and entertainment.

- 
- (1) Indoor tennis, racquetball courts, indoor athletic and exercise facilities and similar uses;
  - (2) Playhouse theaters, movie theaters, bowling, pool halls or similar uses.
  - g. Institutional residence of care or confinement facilities.
    - (1) Hospitals, clinics, other medical including mental health, treatment facilities in excess of 10,000 square feet of gross floor area;
    - (2) Nursing care institutions, intermediate care institutions, handicapped or infirm institutions;
    - (3) Group care institution;
    - (4) Continuing care retirement communities consistent with UDO provisions.
  - h. Restaurants, bars, night clubs.
    - (1) Restaurants without drive-in service (ancillary drive-thru window service allowed);
    - (2) Bars, nightclubs, ABC permitted private clubs.
  - i. Motor vehicle related sales and service operations.
    - (1) Motor vehicle sales or rental or sales and service;
    - (2) Automobile service stations;
    - (3) Gas sales operations.
  - j. Storage and parking.
    - (1) Automobile parking garages or parking lots (not provided to meet parking requirements for a principal use);
    - (2) Storage of goods not related to sale or use of these goods on the same lot where they are stored.
  - k. Services and enterprises related to animals.
    - (1) Veterinarian (inside facilities only).
  - l. Emergency services.
    - (1) Police stations;
    - (2) Fire stations;
    - (3) Rescue squad, ambulance service.
  - m. Miscellaneous public and semi-public utilities.
    - (1) Post office;
    - (2) Military reserve, national guard centers.
  - n. Dry cleaner, laundromat.
  - o. Towers and antennas greater than 35 feet tall.
  - p. Nursery schools, day care centers.
  - q. Temporary structures.
  - r. Public transportation facilities.
    - (1) Bus station.
  - s. Non-residential subdivisions.
  - t. Combination uses planned.
  - u. In addition, the MXD-1 district shall allow the use of "flex-space" defined as follows: the sale, lease, or rental of space within a structure or multiple structures that will allow a combination of uses permitted in the MXD-1 district. The following parameters apply to the use of flex-space.
    - (1) Changes in products, services, and square footage of the permitted uses within a flex-space structure do not require approval of the Town.
    - (2) Any portion of the gross floor area in each flex-space structure may be commercial space.
    - (3) One parking space shall be provided for each 400 square feet of

floor area used as flex space.

4. **Minimum standards for development plan.** The MXD-1 district shall be established through regular zoning procedures, except submission of a conceptual plan, while not required, is strongly encouraged at the time of submission of the zoning application.
- a. Conceptual plan. "Conceptual" means that the developer intends to develop the site in the general manner indicated and that he is not to be literally held to specific configuration of the plan. If satisfactory, the Planning Commission and Town Council may elect to "receive" or "accept" the plan. If a conceptual plan is submitted, it should provide the following:
    - (1) Proposed use and general location with acres identified.
    - (2) Planned primary and secondary traffic circulation patterns with proposed ingress and egress to the district. Identify and locate existing roads, easements and proposed road improvements.
    - (3) Planned open space buffers and parks to be provided and preserved, stating proposals for ownership, maintenance and preservation of open space.
    - (4) Existing contours at vertical intervals of not more than five feet. Floodplains (100-year) areas are to be delineated.
    - (5) Optional details may be required to provide the Town with a better understanding of the proposed MXD-1.
  - b. MXD-1 district shall be a minimum of 75 contiguous acres in single ownership or control at the time a rezoning application is submitted.
  - c. In addition to buffering and screening within the MXD-1, perimeter buffer and screen which is also consistent with Section 307 of the land use ordinance shall be provided around the development. A maintenance agreement for all buffer areas shall be developed by the owner/developer, with copies provided with the rezoning application.
  - d. Where applicable, the MXD-1 district shall be consistent with the Town's parks and greenway plan, special highway overlay district (SHOD) and other adopted Town policies.
  - e. A minimum of five percent of the total acreage in the overall development zoned MXD-1 shall be designated as common open space in accordance with the following guidelines:
    - (1) Floodplains, natural areas, buffers, landscaped areas, seeded areas and lakes may be included in open space.
    - (2) Roadways and parking areas may not be included in open space.
    - (3) Whether or not dedication/reservation of land is involved, outdoor recreation facilities shall otherwise meet the standards of Section 202.
    - (4) The acreage provided as open space shall not count toward satisfaction of the impervious surface requirements directed at controlling run-off from individual lots set forth in this section.
  - f. The major entrance (ingress and egress) to a MXD-1 shall have direct access to an existing thoroughfare or a thoroughfare proposed by the developer. The purpose of this requirement is that roads of sufficient capacity to support the proposed development either in place or provided.
  - g. A minimum of three of the use categories listed below shall be included in any MXD-1 District and specified at the submission of

subdivision and/or site plans:

- (1) Flex space;
  - (2) Office/institutional;
  - (3) Research, technology, and industrial;
  - (4) Commercial;
  - (5) Hotel/motel;
  - (6) Cultural;
  - (7) Residential (maximum of 50 percent of MXD-1, and then, at no more density than that permitted in Section 181 for MF-2. No detached single family residential is permitted).
  - (8) Impervious surface area of individual non-residential lots or parcels in a MXD-1 district shall not exceed 80 percent. Residential uses shall not exceed 70 percent impervious surface ratio.
  - (9) While loading areas and display areas are addressed elsewhere in this section, other outdoor storage/operations shall be buffered and screened so as to provide 100 percent visual obstruction, consisting of fencing or berming and plantings, and otherwise consistent with Section 317 A(2).
5. **Site development criteria.** The development shall be implemented through the site plan conditional zoning approval process, and shall meet the following minimum standards:
- a. **Setbacks.** Building setbacks shall not conflict with required buffers from existing rights-of-way, and otherwise, shall meet the following:
    - (1) Setbacks for permissible residential uses:
      - (a) **Front yard:** 35 feet.
      - (b) **Side yard:** Ten feet.
      - (c) **Rear yard:** 25 feet.
      - (d) **Corner side yard:** 25 feet.
    - (2) Non-residential setbacks: There are no side and rear setbacks between structures and interior property lines; however, if a separation is proposed, the minimum distance between structures is 20 feet. Unless otherwise identified below, and regardless of yard type, the minimum setback for non-residential structures from any interior street right-of-way is 30 feet. From exterior street right-of-way, the setback shall vary by classification of said street as follows:
      - (a) **Local and collector street:** 60 feet.
      - (b) **Major and minor thoroughfare:** 75 feet.
  - b. **Building height.** Building height shall be in conformance with Article 6, District development standards.
  - c. **Landscaping.**
    - (1) Each tract of land submitted for site plan review shall provide a minimum of 20 percent of the site as landscaped areas. Landscaped is defined as either natural areas or prepared planting areas containing trees, shrubs, and ground covers and seeded areas, and unroofed plazas or common areas, whether pervious or impervious, for pedestrian movement only.
    - (2) Necessary easements or fee for greenways, in accordance with the Town's greenway plan, shall be dedicated with the approval of the site plan.
  - d. **Off-street parking,** landscaping and loading requirements.
    - (1) Off-street parking shall be provided for each use permitted

within the MXD-1 district based on the Town of Garner's requirements. No on-street parking shall be permitted on thoroughfare or collector streets within nonresidential portions of the district. However, on-street parking is allowed in the residential portions, but then, only on local streets.

- (2) Except for work areas used for active loading/unloading and temporary parking of transport vehicles, parking areas shall be landscaped in accordance with Section 317(A)(2) of the Land Use Ordinance (although part of the MXD-1 district may lie outside the SHOD referenced in paragraph (A) of this section.
  - (3) Loading areas are allowed in any yard of industrial buildings. Otherwise, loading areas shall be located at the rear of buildings. In any case, such areas shall be screened from roads and adjacent property at the perimeter of the MXD-1 district consistent with Section 317(A)(2).
  - (4) Refuse areas and dumpster locations shall be fully screened from adjacent property and rights-of-way.
- e. **Signs.** It is not the intent of this section to require uniform signage throughout the entirety of acreage zoned MXD-1. However, any developments meeting the definition of "shopping center", "business complex" or "commercial subdivision" in Section 7.5 shall comply with the master sign plan requirements of that article. All others signs shall comply with the remainder of said article.

**D. Planned Residential Development.**

- 1. Planned Residential Developments are permissible only in the R-12 PR zoning district. Planned Residential Development is an option provided to encourage a mix of housing options within a comprehensively Planned Development, allowing a density bonus in return for provision of substantial landscaping, screening and buffering.
- 2. Planned Residential Developments are permissible only on tracts of at least five contiguous acres.
- 3. A Planned Residential Development may be developed up to but not exceeding a density of 7,500 square feet per dwelling unit. However, at least 25 percent of the total number of dwelling units constructed must be single family residences (other than mobile homes); of the 25 percent, 60 percent of the single family residences must be on lots of at least 12,000 square feet, and 40 percent must be on lots of at least 9,000 square feet. Setbacks standard to R-12 must be observed for these units.
- 4. The R-12 PR district also allows the construction of small detached patio home lots with the option to have zero lot line orientation as provided for in this ordinance. The maximum number of lots allowed under this option shall not exceed 25 percent of the total number of dwelling units constructed in an R-12 PR district.
- 5. Each patio or zero lot line dwelling unit in R-12 PR developments shall meet one of the following parking standards:
  - a. A minimum of four off-street parking spaces on each lot;
  - b. A minimum of three off-street parking spaces on each lot plus one parking space for each dwelling unit set aside in auxiliary off-street parking areas.  
Such parking areas shall be designed and constructed in accordance with all other applicable parking provisions of the land use ordinance.
  - c. The BOA may approve an alternative parking design if it finds that

the alternative achieves a parking standard of four off street parking spaces for each lot. setback along the entire development perimeter is required, except where 12,000 square foot lots abut similar development. Any required screening and buffering (see Article 7) shall be within this perimeter setback. Parking and access drives may be permitted within the ten feet farthest from the development perimeter, provided any required buffer is not intruded upon.

6. The screening requirements that would normally apply where a multifamily development adjoins a single family development shall not apply within the Planned Residential Development, but all screening requirements shall apply between the development and adjacent lots. Preservation of significant natural features shall be documented in the required permit application materials, along with landscaping appropriate to the site, uses and building locations. The provisions for recreation and open space shall be met within the development tract.
7. A minimum separation between single-family and multifamily buildings of 60 feet is required. The building to building separation between multifamily buildings is specified in Article 6.
8. The minimum dimensional standards for the R-12 PR district are as follows:
  - a. **Lot size:** 7,500 square feet for overall project density.
  - b. **Lot width:** 70 feet for detached unit, 50 feet for patio unit or zero lot line.
  - c. **Front setback:** Patio or zero lot line 15 feet or 20 feet with garage (other units must meet setbacks according to lot size).  
**Side setback:** Patio or zero lot line aggregate of 15 feet minimum seven feet.  
**Corner side setback:** Patio or zero lot line is 15 feet or 20 feet with garage.  
**Rear setback:** Patio or zero lot line is 20 feet.

(Ord. No. 3396, § 3, 4-3-06; Ord. No. 3523, § 2, 8-4-08; Ord. No. 3558, § 2, 7-7-09)

#### 4.15. Timber Drive East Overlay District.

- A. **Purpose and intent.** The Town Council finds that vehicular and pedestrian mobility should be maximized along the Timber Drive East Corridor. The Council believes that Timber Drive East Extension is a place where residential neighborhoods should be preserved and quality commercial uses should be located only in areas recommended by the comprehensive growth plan, which together results in a pleasing and harmonious environment of trees, natural and landscaped areas, and building development. Therefore, the Council adopts the Timber Drive East Overlay District as a means to direct commercial development at recommended core areas along Timber Drive consistent with the standards established herein in order to protect the general appearance of the Timber Drive East Corridor, while sustaining the livability of the surrounding residential neighborhoods and the natural beauty of the area.
- B. **Overlay zone.** The Timber Drive East Overlay District is an overlay zone. The land use regulations applicable to the underlying zone remain in full force and effect except where superseded herein. Where there is a provision not expressed in the underlying zone, or where a provision hereof is in conflict with the underlying zone or other requirement, the stricter provision shall be controlling.
- C. **Location.** The Timber Drive East Overlay District shall apply to the segment of Timber Drive from N.C. 50 to White Oak Road and shall include all of the property with frontage on Timber Drive from N.C. 50 to White Oak Road as defined by the Official Timber Drive East Overlay Map. The Town of Garner Official Zoning Map shall be amended to clearly indicate the boundaries of the adopted Timber Drive East Overlay District. In cases where any portion of a building or parking area falls



within the boundaries of the overlay district, these provisions shall apply to all of the building(s) and parking areas.

**D. Conditional zoning districts authorized.**

1. The Town Council may establish conditional zoning districts upon request by or on behalf of the property owner as provided herein only for properties located within the Timber Drive East Overlay District.

**E. Permissible and Prohibited uses.** Unless otherwise restricted below, all uses allowed by the underlying zoning district are permissible in the Timber Drive East Overlay District provided all requirements and permits as required by this UDO are satisfied.

1. **Restricted uses.** The following uses are permissible in the Timber Drive East Overlay District provided the use complies with special standards listed below.

- a. Temporary school classroom units are permissible provided they are screened from all public street views. Any landscaping required to achieve this standard shall be installed at an initial height of six feet.
- b. Open storage and operations are restricted to only those activities associated with a garden center use operated in conjunction with a home improvement center or a large retail store provided the location of outside storage is 100 percent screened from public street views as determined by the Planning Department. The amount of outside storage areas is limited to 25 percent of the gross floor area of principal use served.
- c. Fast food restaurants with drive-in window operations are permissible only when such drive-in window service area(s) are not visible from Timber Drive street views.
- d. Convenience store or gas sales operations that meet the following design criteria:
  - (1) Operation limited to between 5:00 a.m. and 11:00 p.m.;
  - (2) The number of pump dispensing units shall be limited to a maximum of four units with no more than eight fueling positions;
  - (3) Principal building shall have a pitched roof with shingle roof material;
  - (4) Canopy structure(s) shall be detached;
  - (5) Canopy structures shall have a roof style and be constructed of a building material to match the principal building and shall not exceed the height of the principal building, but in no case shall the canopy height exceed 20 feet (large canopy superstructures are prohibited);
  - (6) Site lighting shall be designed to have a zero foot-candle measurement at property lines adjoining residential uses;
  - (7) Canopy/gas island operational areas shall be screened from adjoining residential uses to provide a 100 percent visual screen throughout the year to a minimum height of eight feet using any combination of landscaping, earthen berms or fencing; and
  - (8) Canopy/gas island operational vehicular areas shall be screened from all public streets to a minimum height of three feet.
- e. Gas sales operations, which may include a small kiosk or enclosed structure not exceeding 300 square feet in size that is not designed for walk-in traffic may be allowed in the Timber Drive East Overlay

District provided that the requirements listed in Subsection d. above have been satisfied with the exception of Subsection d.(2), and that the following requirements have been met.

- (1) The site does not front directly on Timber Drive and the building/canopy is located a minimum of 200 feet from Timber Drive.
  - (2) Up to a total of six gas dispensing units with no more than a total of 12 fueling positions allowed.
  - (3) The overall appearance and design of the building and/or canopy, including site landscaping, is consistent with surrounding development in terms of scale, building materials and colors.
- f. Hotel and motels are allowed uses provided such uses are not located closer than 300 feet to the boundary line of a single-family residential zoning district.
- g. Limited vehicle services are permitted/allowed provided the following design criteria are met:
- (1) Limited vehicle service centers are permissible on parcels located within the Timber Drive East Overlay District that directly front along U.S. 70 or N.C. 50 only;
  - (2) All service bay(s) associated with uses shall be oriented so as not to directly face U.S. 70, N.C. 50, or an adjoining residential use;
  - (3) All service bays shall have 100 percent screen to a minimum full height of two and one-half feet at time of plant installation, and shall be maintained at a minimum height of three and one-half feet; and
  - (4) A 100 percent screen to a minimum height of eight feet shall be required where the property directly adjoins a residential use.
2. **Prohibited uses.** The following uses are prohibited in the Timber Drive East Overlay District:
- a. Sales and rental of goods, merchandise and equipment with storage operations and display of goods outside a fully enclosed building.
  - b. Office, clerical, research and services not primarily related to goods or merchandise where operations are conducted outside a fully enclosed building.
  - c. Manufacturing, processing, creating, repairing, renovation, painting, cleaning, assembling of goods, merchandise and equipment.
  - d. Pool halls.
  - e. Golf driving ranges (not accessory to golf courses), miniature golf courses, skateboard parks, water slides and similar uses.
  - f. Drive-in movie theaters.
  - g. Bars, nightclubs, ABC permitted private clubs.
  - h. Adults cabarets and establishments.
  - i. Vehicle sales or rentals.
  - j. Auto service stations.
  - k. General vehicle repair.
  - l. Vehicle towing and/or storage.
  - m. Car wash.
  - n. Storage and parking.

- o. Scrap materials, salvage yards, junkyards, and automobile graveyards.
- p. Service and enterprises related to animals with outside facilities for keeping animals.
- q. Mining or quarrying operations; including on-site sales of products; coal or aggregate sales and/or storage; and concrete mixing plants.
- r. Reclamation landfills.
- s. Towers and antennas greater than 35 feet tall.
- t. Open air markets.
- u. Bus stations.
- v. Taxi base operations.
- w. Commercial greenhouse operations.
- x. Recyclable material collection centers.
- y. Flex space.
- z. Outdoor entertainment facility.
- aa. Jail/detention facility.
- bb. Self-storage facility.
- cc. Solar farms.

**F. Land disturbing activities.**

1. All development plans submitted under this UDO shall show a construction limit line delineating protected buffer areas and any tree save areas intended for the property. Protective orange fencing surrounding all protective buffer areas, plus ten feet, and around tree save areas at the drip line shall be installed prior to construction. Any cutting or clearance within an approved protected buffer or tree save area shall be subject to a fine of \$5.00 per square yard of area in the protected buffer or tree save area that has been prematurely denuded.
2. No minor clearance of the existing vegetation within an approved protected buffer area or tree save area to be retained on the property shall be allowed until after construction on the parcel is completed and upon approval by the Planning Department.
3. Logging or timbering activities on properties within the corridor are strongly encouraged to be limited to the interior portions of the lot exclusive of required buffer areas unless specifically approved by the Town of Garner, according to the general requirements of the UDO.
4. Land development activities such as, but not limited to, site grading, buildings, parking and vehicular areas, shall be excluded from the perimeter area of lots in order to protect existing trees and vegetation in required buffer areas if allowed under the general provisions of the UDO.
5. Any grading or clearing (including removal of stumps) on land within the overlay district, not part of a development proposal, requires site plan approval by the Town of Garner prior to any such activity on the site. All such activities shall be consistent with the standards of this UDO.

**G. Street access.** The existing access location standards set forth in Article 8 of the UDO shall govern driveway locations on Timber Drive as well as North Carolina Department of Transportation requirements. The permit issuing authority may allow deviations from these standards if it concludes, based upon a traffic impact study submitted by a professional traffic engineer, the requested deviations do not pose any traffic safety impacts to the public and that such deviations have been recommended by the Town Engineer and the North Carolina Department of Transportation.

**H. Design standards.** The following design standards shall apply to all new developments within the Timber Drive Overlay District:

1. **Building height.** The maximum building height for a development located

in the Timber Drive East Overlay District is 35 feet when it directly adjoins residentially developed property, unless the building setback from all property lines increases one foot for every foot the building exceeds 35 feet in height. For all other locations on the corridor, the applicable building height limits are controlled by the existing requirements of Article 6.

2. **Building setback from Timber Drive right-of-way.** Building setback shall be 35 feet from the Timber Drive right-of-way line., A build-to line of 20 feet is permitted when no vehicle surface areas are located in front of the building. For all other building yard setbacks, the applicable underlying zoning standards shall apply.
3. **Building design guidelines.** All shopping center developments, business or office complexes shall provide design guidelines consistent with the following standards which must be approved by the Town of Garner as part of the overall development plan submittal. An individual nonresidential building not part of a larger shopping center or business or office complex shall be subject to the following provisions:
  - a. No metal or vinyl siding on nonresidential buildings shall be permitted;
  - b. Seventy-five percent of the primary building materials shall consist of brick or decorative/scored concrete masonry units in styles and colors approved by the Town of Garner. Such building materials shall be applied on all building facades visible from Timber Drive;
  - c. All dumpster enclosures and accessory/storage buildings for new development shall be of materials and colors that match the principal building served and shall be sited on the property to minimize views from all public streets.
  - d. All building awnings used must be appropriately designed as part of the building's architecture and unified with the building's colors and style. Such awnings shall not be internally illuminated;
  - e. Buildings shall be limited to a maximum of three types of materials and colors. If a building is part of a shopping center, business or office complex, the materials and colors used must be consistent with the approved design guidelines for the larger development;
  - f. Design guidelines required by this UDO shall substantially meet the applicable design recommendations of the comprehensive growth plan and shall include provisions that address building height, scale and setback distances, unifying site elements such as building materials and colors, landscaping, site lighting elements, and pedestrian circulation systems; and
  - g. Chain link fences in commercial zoning districts shall have vinyl covering or some other similar material in a color that is compatible with the principal building materials and colors.

**I. Vegetation and landscaping standards.**

1. **General street buffer requirements.**
  - a. An undisturbed street buffer along Timber Drive shall be required. Minor underbrush clearing is permissible only by obtaining preapproval from the Planning Department. Such approval may not be unreasonably withheld without just cause.
  - b. The street buffer shall extend 50 feet along corner side streets and 40 feet along all entrances to new developments.
  - c. The use of native or locally adaptable species is required.
  - d. Construction limit lines shall be shown on all site development plans. Approved undisturbed areas shall be protected on the ground with orange fencing and shall be installed prior to the

issuance of a building permit. Such fencing shall be maintained during the entire time of construction.

- e. The suitability of existing vegetation to meet the planting requirements for a required street buffer must be approved by the Planning Department. Otherwise, the applicant shall be required to provide a new landscape planting plan which meets the standards of this UDO as well all other applicable requirements of Article 7. Such plans must be approved by the Town of Garner Planning Department.

- 2. **Residential street buffer.** Residential subdivisions and unsubdivided developments with frontage along the right-of-way of Timber Drive shall maintain a 25-foot undisturbed buffer. No fencing shall be allowed within the 25-foot buffer area. Fences shall not be allowed along property frontages with Timber Drive unless they are of uniform height and design according to plans that have been approved by the permitting authority. Required landscape planting within the residential street buffer shall consist of one street tree (ten feet tall with a two-inch caliper at installation) for every 40 feet of street frontage, with a combination of vegetation and/or earthen berms to achieve a 100 percent screen to a height of four feet.

- 3. **Nonresidential street buffer.**

- a. **Undisturbed street buffer.** A 20-foot undisturbed street buffer along Timber Drive shall be required. Minor underbrush clearing of an undisturbed street buffer is permissible only with preapproval from the Planning Department. Where existing trees and vegetation are retained that qualify according to the terms of this UDO regarding types, sizes, locations, and are healthy species as determined by the Planning Department, additional landscaping may not be required. In cases where additional planting is required when existing vegetation is not present in the street buffer area, a street buffer planting plan must be approved by the Town of Garner. One street tree shall be provided for every 40 feet of frontage. Such tree shall be a minimum of 12 feet tall with a two and one-half-inch caliper at installation. All vehicular surface areas visible from Timber Drive must provide additional landscape screening to achieve a 100 percent screen of the vehicular surface area to a minimum height of three feet at installation.
- b. **Street buffer for 20-foot build-to-line option.** Where the build-to-line option is approved and there is no vehicular surface area between the building and the right-of-way of Timber Drive, a 20-foot street buffer with only a lawn area and one street tree (12 feet tall with a two and one-half-inch caliper at installation) for every 40 feet of frontage is permissible. Under this option, vehicular surface areas shall be located in the rear of the building .

- J. **Site lighting.** The provisions of Article 7, Special standards in the Timber Drive Overlay District, shall apply to properties located in the Timber Drive East Overlay District.
- K. **Signage.** The provisions of Article 7 regarding signage requirements for Timber Drive shall apply to property located in the Timber Drive East Overlay District.

(Ord. No. 3497, § 1, 12-18-07; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3780, § 4, 7-7-15)

**4.16. Garner Road Overlay District.**

- A. **Purpose and intent.** The Town Council finds that Garner Road is an important roadway corridor through the historic portion of the Town of Garner. It was the first paved road in the state and once served as a main travel route connecting central North Carolina to the

coast. As such, this roadway corridor played a very important role in the early development of Garner. Presently commercial areas along this corridor are characterized by large signs, unscreened surface parking areas with little or no landscaping and significant amounts of outdoor storage. The Council believes it is important for the community to improve these conditions in order for Garner Road to function efficiently as a transportation facility, provide opportunities for new business locations and promote a strong commitment to quality community appearance.

- B. **Overlay zone.** The Garner Road Overlay District is an overlay zone. The land use regulations applicable to the underlying zone remain in full force and effect except where superseded herein. Where there is a provision not expressed in the underlying zone, or where a provision hereof is in conflict with the underlying zone or other requirement, the stricter provision shall be controlling.
- C. **Location.** The Garner Road Overlay District shall apply to the segment of Garner Road located generally from Northview Street east to the limits of the Town's jurisdiction near the intersection of Garner Road and Auburn-Knightdale Road as illustrated on the attached map which is herein incorporated as part of this ordinance. The Town of Garner Official Zoning Map shall be amended to clearly indicate the boundaries of the adopted Garner Road Overlay District. In cases where any portion of a building or parking area falls within the boundaries of the overlay district, these provisions shall apply to all of the building(s) and parking areas.
- D. **Permissible and prohibited uses.** Unless otherwise restricted below, all uses allowed by the underlying zoning district are permissible in the Garner Road Overlay District provided all requirements and permits as required by this UDO are satisfied.
1. **Prohibited Uses.**  
The following uses are prohibited in the Overlay District.
    - a. Drive-in movie theaters;
    - b. Adult cabarets and establishments;
    - c. Outside Storage of Goods not related to Sale or Use on Premises;
    - d. Junkyards, automobile graveyards;
    - e. Commercial Greenhouse Operations; and
    - f. Solar farms.
  2. **Prohibited uses adjacent to or within 150 feet of existing residential uses.**  
The following uses are prohibited adjacent to or within 150 feet of an existing residential use:
    - a. Pool halls/bowling alleys only; and
    - b. Bars/night clubs/ABC-permitted private clubs..
  3. **Restricted uses.** The following uses are permissible in the Garner Road Overlay District provided the use complies with special standards listed below:
    - a. **Motor vehicle sale lots.** All vehicle display areas with frontage along Garner Road shall be screened to a minimum height of 2½ feet. Such screening height must be achieved within 1 year.
    - b. **Automobile service centers.** All service bay door areas shall be oriented so as not to directly face Garner Road. All service bay doors areas shall have a 100 percent screen to a minimum height of 3 ½ feet if such areas are visible from public street views. Such screening height must be achieved within 1 year.
    - c. **Automobile repair and body shops.** All service bay areas shall be located at the rear of the building or be oriented in such a manner so as not to be directly visible from Garner Road. All overnight vehicle storage areas shall be located in the rear of the building. Such storage areas shall be 100 percent screened from public street rights-of-way to a minimum height of 6 feet by the use of fencing, landscaping, berms, or a combination thereof.
    - d. **Car washes.** Car washes are permissible, provided the buildings

are oriented in such a manner that the wash bays do not directly face Garner Road.

4. **Nonconforming uses.** The provisions of Article 9 regarding nonconformities shall apply properties located in the Garner Road Overlay District.
5. **Street and driveway access.** The existing access location standards set forth in Section 8.2 of the UDO shall govern driveway locations on Garner Road as well as North Carolina Department of Transportation requirements. Deviations from these standards may be allowed via Variance, based upon a Traffic Impact Study submitted by a professional traffic engineer, the requested deviations do not pose any traffic safety impacts to the public and that such deviations have been recommended by the Town Engineer and the North Carolina Department of Transportation.
6. **Site lighting.** The provisions of Article 7 shall apply to properties Located in the Garner Road Overlay District.
7. **Signage.** The provisions of Article 7 shall apply to property located in the Garner Road Overlay District.
8. **Nonconforming sign requirements.** Existing non-conforming signs located in the Garner Road Overlay District as of the date of the adoption of this ordinance shall be required to come into compliance when a change in business operations occurs or a change in use occurs.
9. **Building design standards.** All retail or office complexes or commercial subdivisions, as defined in this UDO, shall be required to obtain Town approval of Building Design Guidelines that are consistent with the following standards. An individual nonresidential building, not part of a Larger retail center, office complex, or commercial subdivision, shall also be subject to these provisions. All new development must comply with the following standards:
  - a. The use of pre-fabricated metal buildings shall not be permitted unless all building facades visible from street views are treated with brick, decorative/scored concrete masonry units (CMU). Exterior insulated finishing systems (EIFS), or similar materials may be used only as minor accents (less than 25% of a visible building façade).
  - b. Design guidelines shall be required for all shopping centers, business or offices complexes and commercial subdivisions located within the overlay district. Such guidelines must be included as part of the initial overall development plan submittal. All development that is subject to Design Guidelines approved by the Town must be constructed in accordance with the applicable standards for that specific development.
  - c. All design guidelines shall include, but not be limited to, provisions that address building height, mass and scale, setback distances and unifying site elements such as building materials and colors, Landscaping, site Lighting elements, and pedestrian circulation systems.
  - d. Vehicular parking surface areas with direct frontage on Garner Road shall have curb and gutter and be paved with a permanent surface consisting of a minimum six inches of base stone and two inches of 1-2 asphalt from the edge of the front vehicular/parking surface area to the front building line. An equivalent permanent surface material may be used as an alternative. Truck Loading and/or vehicular service areas shall be oriented on the property so as to be out of public street views unless consistent with the requirements herein.

10. **Requirements for existing uses.** All existing nonresidential uses of property with direct frontage on Garner Road shall comply with the following requirements by December 31, 2010:
- a. **Parking lot landscape planting for existing uses.**
    - i. All affected properties shall comply with the street tree requirements of the UDO and screen all outside display/storage areas or vehicular surface areas directly fronting along Garner Road to a minimum height of 2'2 feet at installation and planted five feet on center at installation. All landscape areas shall be edged with curb and gutter construction in a manner and location approved by the Town of Garner.
    - iii. Each property owner or designee shall be responsible for obtaining landscape plan approval from the Planning Department which complies with these standards and install the planting material prior to the December 31, 2010 deadline date.
    - iv. In cases where the existing property does not have sufficient land area available to accommodate the required landscaping on site without severely impacting business operations, the Planning Department may allow deviations from these standards provided the following is accomplished:
      - An appropriate combination of street trees and shrubs is provided in Locations that effectively improve the appearance of the property and special highway corridor as determined by the Planning Department (the use of nw area is permissible with an NC DOT encroachment agreement; maintenance by property owner shall be required).
      - A maximum deviation of up to 50 percent of required Landscaping may be authorized by the Planning Department if it finds there is not sufficient space available on private property and/or public right-of-way areas (merely having to relocate storage areas when sufficient space elsewhere on site is available does not qualify for this type of relief).
      - The decision of the Planning Department may be appealed to the Planning Commission for review and recommendation with the final decision by the Board of Aldermen
  - b. **Existing Businesses with outdoor storage.**
    - i. All outdoor storage of unlicensed vehicles, equipment or other materials as identified by the town of Garner Located between the front of the building and the right-of-way of Garner Road shall be removed by December 31, 2010. This restriction includes the prohibition of overnight storage of vehicles in the above defined area that are associated with automobile repair shops. The provision is not intended to prohibit or restrict overnight parking of licensed commercial vehicles associated with the conduct of the business.
    - ii. All outdoor storage of items described above shall be allowed only if such storage is located in an area behind the front building line of a building with 100% screening is provided up to a height of 6 feet from all street views in a manner acceptable to the Town.
    - iii. Each property owner or designee shall be responsible for obtaining plan approval from the Planning Department which



- complies with these standards and install the required improvements prior to the December 31, 2010 deadline.
- iv. Some minor deviation of the standards identified (b) (i) above may be authorized by the Planning Department if it finds it is in the public interest to grant some minor relief from these requirements.
  - v. The decision of the Planning Department may be appealed to the Planning Commission for review and recommendation with the final decision by the Town Council.

(Ord. No. 3528, § 1, 10-21-08; Ord. No. 3558, §§ 2, 3, 7-7-09; Ord. No. 3780, § 5, 7-7-15)

**Editor's note:** The map referred to in subsection C. is not set out herein but is on file and available for inspection in the offices of the Town.

5.1. Use tables.

- A. **Types of use.** All of the use categories listed in the use table are defined and described in Section 5.2 immediately following the use table.
  1. **Uses permitted by right.** A "P" indicates that a use is allowed by right in the respective district. Such uses are subject to all other applicable regulations of this UDO.
  2. **Permitted uses subject to supplemental standards.** A "P\*" indicates a use that will be permitted, provided that the use meets additional standards contained in Section 5.3, Specific use standards. Such uses are subject to all other applicable regulations of this UDO.
  3. **Special uses.** An "S" indicates that a use is allowed only if reviewed and approved as a special use permit in accordance with Section 3.14. Special uses are subject to all other applicable regulations of this UDO.
  4. **Conditional uses.** A "CZ" indicates that a use may only be established through a Conditional Zoning approval. The term conditional uses applies only to those uses permitted as part of a conditional zoning adopted in accordance with Article 3 or for existing, legally-established and operated, conditional zoning districts.
- B. **Uses not allowed.** A blank cell in the use table indicates that a use or use category is not allowed in the respective district.
- C. **Uses not listed.** The Planning Director shall determine whether or not an unlisted use is part of an existing use category defined in or is substantially similar to an already defined use, using the criteria in Section 5.2, Use categories.

USE		RESIDENTIAL DISTRICTS								NONRESIDENTIAL DISTRICTS									
P = Permitted by right		P* = Permitted subject to standards								S = Special use permit required									
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes	
<b>RESIDENTIAL</b>																			
Household Living (see 5.2D.1)	Single-Family Detached	P*	P*	P*	P*	P*	P*			P*								6.1 & 6.8	
	Residential Cluster	P*	P*	P*	P*	P*		P*	P*									6.3	
	Two-Family Dwelling							P*	P*									6.2	
	Townhouse							P*	P*		P*	P*	P*	P*				6.5	
	Condominium							P*	P*		P*	P*	P*	P*				6.5	
	Multifamily (triplex and higher, including Apartment)								P*	P*									6.2
	Upper-Story Residential										P*	P*	P*		P				5.3A.5
USE		RESIDENTIAL DISTRICTS								NONRESIDENTIAL DISTRICTS									
P = Permitted by right		P* = Permitted subject to standards								S = Special use permit required									
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes	
	Manufactured Home (Class A Unit Only)	P*																6.7.B	
	Manufactured Home Park or Subdivision						P*											6.6	

Article 5. Use Regulations

	Single-Family Residential Subdivision	P*	P*	P*	P*	P*													
	Modular Home	P*	P*	P*	P*	P*	P*			P*									6.8
	Security or Caretaker's Quarters														P	P	P		
Group Living (see 5.2D.2)	Family Care Home	P	P*	P*	P*	P*		P*	P*	P*									5.3A.1
	Group Care Home	P*	P*	P*	P*	P*		P*	P*	P*									5.3A.1
	Intermediate Care Home	P*	P*	P*	P*	P*		P*	P*	P*									5.3A.1
<b>PUBLIC, CIVIC AND INSTITUTIONAL</b>																			
Community Service (see 5.2E.1)	Community Center	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ		CZ	CZ	CZ	CZ	CZ				
	Library, Museum, Art Gallery, Art Center										P	P	P	P	P				
	Other Community Service							CZ	CZ		CZ	CZ	CZ	CZ	CZ				
	Civil, Service Fraternal Clubs, Lodges and Similar Uses	CZ									CZ	CZ	CZ	CZ	CZ				
Day Care (see 5.2E.2)	Adult Day Care									P*	P*		P*	P*	P*				5.3B.3
	Child Day Care (up to 3 as home occupation)	P*	P*	P*	P*	P*	P*	P*	P*	P*									5.3B.3
	Family Child Day Care (up to 8 in-home)	P*	P*	P*	P*	P*	P*												5.3B.3
	Day Care Center									P*	P*		P*	P*	P*				5.3B.3
Educational Facilities and Services (see 5.2E.3)	Business School, College or University Satellite in Single Building										P*	P*	P	P	P				5.3B.1
<b>USE</b>		<b>RESIDENTIAL DISTRICTS</b>								<b>NONRESIDENTIAL DISTRICTS</b>									
P = Permitted by right		P* = Permitted subject to standards								S = Special use permit required									
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	CBD	OI	CR	SB	I-1	I-2	Notes	
	College / University												P	P	P				
	School, Public or Private	CZ	CZ	CZ	CZ	CZ		CZ	CZ				CZ					5.3B.7	
	Trade/Vocational										CZ	CZ	CZ	CZ	CZ	CZ	CZ	5.3B.9	
	Music / Dance / Art Instruction										P	P	P	P	P				
Funeral Home and Crematorium									P		P	P	P	P				5.3F	

Article 5. Use Regulations

Government Facilities (see 5.2E.4)	Ambulance Service, Rescue Squad, Police or Fire Station	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	P	P	P	P		
	Government, Utility Facility with Outdoor Storage														CZ		CZ		
	Government Office										CZ	CZ	CZ	CZ	CZ				
	Prison, Jail, Detention Facility															S	S		
Health Care (see 5.2E.5)	Continuing Care, Retirement Facility							CZ	CZ				CZ					5.3B.10	
	Hospice							P	P				P	P					
	Hospital											S	S	S				5.3B.11	
	Ambulatory Health & Emergency Care Facility												S	S				5.3B.11	
	Medical Clinic												P	P	P	P			
	Mental Health Facility													P	P				
Institutions (see 5.2E.6)	Group Care Facility													P	P				
	Handicapped Institution													P	P				
	Intermediate Care Institution													P	P				
	Nursing Care Institution													P	P	P			
<b>USE</b>		<b>RESIDENTIAL DISTRICTS</b>									<b>NONRESIDENTIAL DISTRICTS</b>								
<b>P = Permitted by right</b>		<b>P* = Permitted subject to standards</b>									<b>S = Special use permit required</b>								
<b>Use Category</b>	<b>Specific Use</b>	<b>R-40</b>	<b>R-20</b>	<b>R-15</b>	<b>R-12</b>	<b>R-9</b>	<b>RMH</b>	<b>MF-1</b>	<b>MF-2</b>	<b>NO</b>	<b>NC</b>	<b>C B D</b>	<b>OI</b>	<b>CR</b>	<b>SB</b>	<b>I-1</b>	<b>I-2</b>	<b>Notes</b>	
Parks and Open Space (see 5.2E.7)	Cemetery	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*			5.3B.2	
	Public Park, Swimming Pool, Tennis Court, Golf Course	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ		
Passenger Terminal (see 5.2E.8)	Bus Passenger Terminal														S	CZ	CZ		
	Taxicab or Limousine Operations or Facility														S	CZ	P		
Religious Institution (see 5.2E.9)		P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*			5.3B.6	
	Broadcast Tower															S	S		
	Minor Utility, Elevated Water Storage Tank	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	5.3B4	

Article 5. Use Regulations

Utilities (see 5.2E.10)	Solar Farms	S													S	S	S	5.3B.5	
	Telecommunication Facility	S												S	S	P*	P*	5.3B.8	
	Other Major Utility	S													S	S	S		
<b>COMMERCIAL, OFFICE, RETAIL</b>																			
Entertainment (see 5.2F.1)	Bar, Nightclub, Tavern												CZ		CZ	CZ	P*	P*	5.3C.2
	Golf Course or Country Club, Private	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ				
	Gym, Spa, Indoor Tennis Court or Pool, Private												P*	P*	P	P	P	P	5.3C.6
	Horse Stables and Related Facilities	CZ															P	P	
	Indoor Entertainment Facility														P*	P*	P*	P*	5.3C.6
	Electronic Gaming Centers														P*	P*	P*	P*	5.3C.17
<b>USE</b>		<b>RESIDENTIAL DISTRICTS</b>									<b>NONRESIDENTIAL DISTRICTS</b>								
P = Permitted by right		P* = Permitted subject to standards									S = Special use permit required								
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes	
	Outdoor Athletic or Entertainment Facility, Private											CZ			CZ	CZ			
	Sexually Oriented Business														S			5.3C.10	
	Theater											CZ		P	P				
	Theater, Drive-In														S	S	S		
	Water Slide, Golf Driving Range, Miniature Golf, Batting Cage or Similar Use														CZ	CZ			
	Medical Office, Individual									P	P	P	P	P	P	P	P		
	Other Office									P	P	P	P	P	P	P	P		
Overnight Accommodation (see 5.2F.3)	Bed and Breakfast	S	S	S	S	S	CZ	CZ	CZ	CZ	CZ	CZ	CZ	CZ					
	Extended Stay Facility														CZ	CZ	CZ	5.3C.5	
	Hotel/Motel													CZ	CZ	CZ			
Parking, Commercial (see 5.2F.4)												CZ	CZ	CZ	CZ	CZ	CZ		
	Restaurant, Drive-In or Outdoor Curb Service														P	P	P		

Article 5. Use Regulations

Restaurants (see 5.2F.5)	Restaurant, Indoor with Seating Only											P*	P		P	P	P	P	5.3C.8				
	Restaurant with Seating and Drive-Through Window														P	P	P	P					
	Restaurant, Take-Out Only (Drive-Through or Walk Up)												P*	P		P	P	P	P	5.3C.9			
Retail Sales and Service (see 5.2F.6)	Convenience Store without Fuel Sales												P*	P*		P	P	P	P	5.3C.4			
	Convenience Store with Fuel Sales														P	P	P	P					
	Open Air Market													CZ		P	P	P					
<b>USE</b>		<b>RESIDENTIAL DISTRICTS</b>										<b>NONRESIDENTIAL DISTRICTS</b>											
<b>P = Permitted by right</b>		<b>P* = Permitted subject to standards</b>										<b>S = Special use permit required</b>											
<b>Use Category</b>	<b>Specific Use</b>	<b>R-40</b>	<b>R-20</b>	<b>R-15</b>	<b>R-12</b>	<b>R-9</b>	<b>RMH</b>	<b>MF-1</b>	<b>MF-2</b>	<b>NO</b>	<b>NC</b>	<b>C B D</b>	<b>OI</b>	<b>CR</b>	<b>SB</b>	<b>I-1</b>	<b>I-2</b>	<b>Notes</b>					
	Personal Service-Oriented Use (excludes commercial greenhouses or any use with outdoor operations)														P*	P*		P*	P*	P	P		
	Hair Salons Barbershops Beauty Shops										S	P	P	P	P	P	P	P					
	Banks or Financial Institution										P*	P*	P	P	P	P	P	P				5.3C.1	
	Repair Oriented Use (no outdoor operations)											P*	P	P*	P	P	P	P				5.3C.7	
	Sales Oriented Use (no outdoor operations)											P	P		P	P	P	P					
	Sales Oriented Use with Outdoor Operations															P		P					
	Veterinarian / Kennel, Indoor											P*	P*	P*	P*	P	P	P	P				5.3C.15
	Veterinarian / Kennel with Outdoor Operations																P*		P*				5.3C.16
Self-Service Storage (see 5.2F.7)																CZ	P	P					
Vehicle Sales and Service	Car Wash															P*	P*	P*				5.3C.3	
	Vehicle General Repair															P*		P				5.3C.11	
	Vehicle Sales, Rental															P*		P				5.3C.12	

Article 5. Use Regulations

(see 5.2F.8)	Vehicle Service, Limited															P*	P*	P*	P	5.3C.13
	Vehicle Towing, Storage																P*		P*	5.3C.14
<b>INDUSTRIAL AND MANUFACTURING</b>																				
Aviation Service (see 5.2G.1)																				S
<b>USE</b>		<b>RESIDENTIAL DISTRICTS</b>										<b>NONRESIDENTIAL DISTRICTS</b>								
P = Permitted by right		P* = Permitted subject to standards										S = Special use permit required								
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes		
Light Industrial Service (see 5.2G.2)	Flex Space															P*	P*	P*	5.3D.1	
	Industrial Use, Indoor															P*	P*	P	5.3D.2	
	Industrial Use with Outdoor Operation															P		P		
Manufacturing and Production (see 5.2G.3)	Indoor or Outdoor																	P*	5.3D.3	
	Indoor Only											p*				P*	P*	P*	5.3D.3	
Resource Extraction (see 5.2G.4)																		S		
Warehouse and Freight Movement (see 5.2G.5)	Storage (including Outdoor)															P*		P*	5.3D.6	
	Truck Terminal																	P		
Waste Related Service (see 5.2G.6)	Recycling Collection (Outside)																	P*	5.3D.4	
	Recyclable Materials Collection Center															P*		P*	5.3D.5	
	Junk and or Salvage Yard																	S		
	Sanitary Landfill																	S		
	Other Waste Related Service																	S		
Wholesale Sales (see 5.2G.7)																P*	P*	P	5.3D.7	
<b>OTHER</b>																				
Agriculture (see 5.2H.1)	Agriculture or Silviculture	P*	P*																5.3.E.1	
	Greenhouse, Nursery (Commercial)															P	P	P		

(Ord. No. 3396, §§ 4, 7, 4-3-06; Ord. No. 3417, § 2, 7-5-06; Ord. No. 3423, § 1, 8-22-06; Ord. No. 3523, § 4, 8-4-08; Ord. No. 3579, § 1, 5-3-10; Ord. No. 3617; § 1, 4-4-11; Ord. No. 3656, § 1, 2-21-12; Ord. 3673, § 2, 10-1-12; Ord. No. 3749, § 1, 10-6-14; Ord. No. 3780, § 6, 7-7-15; Ord. No. 3781, § 1, 7-7-15; Ord. No.3801, § 6, 12-7-15; Ord. No. 3881, § 3, 9-5-17)

**5.2. Use categories.**

- A. **Basis for classification.** Use categories classify land uses and activities into use categories based on common functional, product or physical characteristics. Characteristics include the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered and site conditions. The use categories provide a systematic basis for assigning present and future land uses into appropriate zoning districts.
- B. **Principal uses.** Principal uses are assigned to the category that most closely describes the nature of the principal use. The "characteristics" subsection of each use category describes the common characteristics of each principal use.
1. **The developments with multiple principal uses.** When all principal uses of a development fall within one use category, the entire development is assigned to that use category. A development that contains a coffee shop, bookstore and bakery, for example, would be classified in the retail sales and service category because all of the development's principal uses are in that category. When the principal uses of a development fall within different use categories, each principal use is classified in the applicable category and each use is subject to all applicable regulations for that category. If a principal use is not listed for a given district, it may not be developed in that district, whether as part of a proposed mixed-use project or a stand-alone project.
  2. **Accessory uses.** Accessory uses are allowed by-right in conjunction with a principal use unless otherwise stated in this UDO. Also, unless otherwise stated, accessory uses are subject to the same regulations as the principal use. Common accessory uses are listed as examples in the use category descriptions.
  3. **Use of examples.** The "examples" subsection of each use category lists common examples of uses included in the respective use category. The names of these sample uses are generic. They are based on common meanings and not on what a specific use may call itself. For example, a use that calls itself "wholesale warehouse" but that sells mostly to consumers, is included in the retail sales and service category rather than the wholesale sales category. This is because the actual activity on the site matches the description of the retail sales and service category.
- C. **Similar use interpretation criteria.** The following considerations shall be used in making similar use interpretations:
1. The actual or projected characteristics of the activity in relationship to the stated characteristics of each use category;
  2. The relative amount of site area or floor space and equipment devoted to the activity;
  3. Relative amounts of sales from each activity;
  4. The customer type for each activity;
  5. The relative number of employees in each activity;
  6. Hours of operation;
  7. Building and site arrangement;
  8. Vehicles used with the activity;
  9. The relative number of vehicle trips generated by the use; and
  10. How the use advertises itself.
- D. **Residential use categories.**
1. **Household living.**
    - a. **Characteristics.** Household living is characterized by the residential occupancy of a dwelling unit by a household. Tenancy is arranged on a month-to-month or longer basis.
    - b. **Accessory uses.** Accessory uses commonly associated with household living are recreational activities, raising of pets, hobbies



and parking of the occupants' vehicles. Home occupations are accessory uses that are subject to additional regulations set forth in Section 5.4.

- c. **Examples.** Uses include living in single-family, attached; single-family detached; condominiums; townhouses on separately platted or combined lots; mixed use dwellings; zero lot line dwelling; two-family dwellings; triplexes and multifamily dwellings; retirement center apartments; some continuing care facilities; manufactured housing, modular housing and other structures with self-contained dwelling units.
- d. **Exceptions.** Lodging in a dwelling unit or where units are rented on a less than monthly basis is classified in the overnight accommodations category.

**2. Group living.**

- a. **Characteristics.** Group living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of household living. The size of the group may be larger than the average size of a household. Tenancy is arranged on a monthly or longer basis. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see overnight accommodations and community service categories). Generally, group living structures have a common eating area for residents. The residents may receive care, training or treatment, as long as the care givers also reside at the site.
- b. **Accessory uses.** Accessory uses commonly associated with group living are recreational facilities, dining facilities and parking of vehicles for occupants and staff.
- c. **Examples.** Examples of group living include boarding house or rooming house; family care home; group care home; immediate care home; dormitories; and monasteries and convents.
- d. **Exceptions.**
  - (1) Lodging where tenancy may be arranged for periods of less than 30 days is classified in the overnight accommodations category.
  - (2) Lodging where the residents meet the definition of household and where tenancy is arranged on a month-to-month basis, or for a longer period is classified as household living.
  - (3) Continuing care facilities where individual units meet the definition of a dwelling unit in Article 11, Definitions, are classified as household living.
  - (4) Prisons, jails and other incarceration facilities are classified as government facilities.
  - (5) Post-incarceration facilities are classified as institutions.

**E. Public, civic and institutional use categories.**

**1. Community service.**

- a. **Characteristics.** Community Services are uses of a public, nonprofit or charitable nature generally providing a local service to people of the community. Generally, they provide the service on-site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join at any time, (for instance, any senior citizen could join a senior center). The use may provide special counseling, education, or training of a public, nonprofit or charitable nature.

- b. **Accessory uses.** Accessory uses may include offices; meeting areas; food preparation areas; parking, health and therapy areas and athletic facilities.
  - c. **Examples.** Examples include libraries, museums, art galleries, art centers, senior centers; community centers, youth club facilities, social service facilities, civil, service, fraternal clubs, lodges and similar uses.
- 2. Day care.**
- a. **Characteristics.** Day care uses provide care, protection and supervision for children or adults on a regular basis away from their primary residence for less than 24 hours per day.
  - b. **Accessory uses.** Accessory uses include offices, recreation areas and parking.
  - c. **Examples.** Examples include preschools, child care centers (outside home), nursery schools, latch-key programs and adult day care programs.
  - d. **Exceptions.** Day care does not include public or private schools or facilities operated in connection with an employment use, shopping center, religious institution or other principal use, where children are cared for while parents or guardians are occupied on the premises or in the immediate vicinity.
- 3. Educational facilities.**
- a. **Characteristics.** This category includes public and private schools at the primary, elementary, middle, junior high or high school level that provide state-mandated basic education. This category also includes colleges and other institutions of higher learning that offer courses of general or specialized study leading to a degree. Colleges tend to be in campus-like settings or on multiple blocks. This category also includes instruction in the fine arts such as music, dance, art etc.
  - b. **Accessory uses.** Accessory Uses at schools include play areas, cafeterias, recreational and sport facilities, auditoriums and before- or after-school day care. Accessory Uses at colleges include offices, housing for students, food service, laboratories, health and sports facilities, theaters, meeting areas, parking, maintenance facilities and support commercial.
  - c. **Examples.** Examples include public, private and charter daytime schools; business, trade and vocational schools; universities; liberal arts colleges; community colleges; and instruction in music, dance, art and similar fine arts.
  - d. **Exceptions.** Preschools are classified as Day Care uses.
- 4. Government facilities.**
- a. **Characteristics.** Government facilities includes offices, storage, maintenance and other facilities for the operation of federal, state or local government.
  - b. **Accessory uses.** Accessory uses include storage, maintenance and fueling facilities, satellite offices and parking areas.
  - c. **Examples.** Examples include Town hall; public/community buildings; government offices; municipal service facilities; maintenance and utility facilities; fire stations, police stations and emergency medical and ambulance stations; prisons and jails; post offices and federal, state or local offices.
  - d. **Exceptions.**
    - (1) Passenger terminals for airports and regional bus service are classified as passenger terminals.

- 
- (2) State, county or city parks are classified as parks and open space.
  - (3) Water and wastewater facilities, gas, electric and other infrastructure services, whether public or private, are classified as utilities.
  - (4) Waste and recycling services are classified as waste related services.
- 5. Health care facilities.**
- a. **Characteristics.** Health care facilities include uses providing medical or surgical care to patients and offering overnight care.
  - b. **Accessory uses.** Accessory uses include out-patient clinics, offices, laboratories, teaching facilities, meeting areas, cafeterias, parking, maintenance facilities and housing facilities for staff or trainees.
  - c. **Examples.** Examples include medical centers, hospices, continuing care facilities, mental health facilities, ambulatory health and emergency care facilities without overnight care, and hospitals.
  - d. **Exceptions.**
    - (1) Uses that provide exclusive care and planned treatment or training for psychiatric, alcohol, or drug problems, where patients are residents of the program, are classified in the institutional category.
    - (2) Medical clinics that provide care where patients are not kept overnight are classified as office.
- 6. Institutions.**
- a. **Characteristics.** Institutions provide a variety of facilities including housing and care for the disabled, care and medical supervision at a lower level than a hospital in nursing care institutions for more than nine people and housing related to treatment programs.
  - b. **Accessory uses.** Accessory uses include school facilities, meeting rooms, parking and staff residences (household living).
  - c. **Examples.** Examples include; some group homes for the physically disabled, mentally retarded, or emotionally disturbed; nursing care institutions and some residential programs for drug and alcohol treatment.
  - d. **Exceptions.**
    - (1) Continuing care facilities where individual units meet the definition of a dwelling unit in Article 11, Definitions, are classified as household living.
    - (2) Continuing care facilities where individual units do not meet the definition of a dwelling unit are classified as health care.
- 7. Parks and open areas.**
- a. **Characteristics.** Parks and open areas are uses of land focusing on natural areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, or public squares. Lands tend to have few structures.
  - b. **Accessory uses.** Accessory uses may include clubhouses, maintenance facilities, concessions, caretaker's quarters and parking.
  - c. **Examples.** Examples include public parks; publicly-owned golf courses; cemeteries; public squares; plazas; public swimming pools; public tennis courts; recreational trails, botanical gardens and nature preserves.
  - d. **Exceptions.** Privately-owned golf courses are classified as

entertainment uses.

**8. Passenger terminal.**

- a. **Characteristics.** Passenger terminal includes facilities for the landing and takeoff of airplanes and helicopters, including loading and unloading areas. Aviation facilities may be improved or unimproved. Passenger terminal also includes passenger terminals for bus service and taxicab or limousine operations or facilities.
- b. **Accessory uses.** Accessory uses include freight handling areas, concessions, offices, parking and maintenance and fueling facilities.
- c. **Examples.** Examples include airports, bus passenger terminals, taxicab and limousine operations and facilities and helicopter landing facilities.
- d. **Exceptions.**
  - (1) Bus passenger stations for local service such as mass transit stops and park-and-ride facilities are classified as minor utilities.
  - (2) Private helicopter landing facilities that are accessory to another use.

**9. Religious institutions.**

- a. **Characteristics.** Religious institutions primarily provide meeting areas for religious activities.
- b. **Accessory uses.** Accessory uses include Sunday school facilities, day care during services where parents are on the premises, parking, caretaker's housing and group living facilities such as convents.
- c. **Examples.** Examples include churches, temples, synagogues and mosques.
- d. **Exceptions.**
  - (1) Preschools are classified as day care uses.
  - (2) Day care provided when parents are not on the premises is classified as day care.
  - (3) Schools providing a K--12 curriculum similar to public schools are classified as schools.

**10. Utilities.**

- a. **Characteristics.** Major utilities are infrastructure services providing Town-wide service. Minor utilities are infrastructure services that need to be located in or near the area where the service is provided. Utility uses generally do not regularly have employees at the site. Services may be publicly or privately provided.
- b. **Accessory uses.** Accessory uses may include parking and control, monitoring, data or transmission equipment.
- c. **Examples.**
  - (1) Examples of major utilities include water towers; radio and television broadcast towers; telecommunication towers; solar farms; water plants; wastewater plants; and electrical substations.
  - (2) Examples of minor utilities include water and sewage pump stations; stormwater retention and detention facilities; public transportation facilities and telephone exchanges.
- d. **Exceptions.**
  - (1) Maintenance yards and buildings, or other facilities with outdoor storage are classified as government.
  - (2) Utility offices are classified as offices.

**F. Commercial use categories.**

1. **Entertainment.**
  - a. **Characteristics.** Entertainment uses are generally commercial uses, varying in size, providing daily or regularly scheduled entertainment-oriented activities.
  - b. **Accessory uses.** Accessory uses may include restaurants, bars, concessions, parking and maintenance facilities.
  - c. **Examples.** Examples include athletic facilities; commercial amusements; private entertainment facilities; horse stables; privately-owned golf courses, golf driving ranges; miniature golf facilities; private country club; privately-owned tennis facilities; skateboard park; water slide; privately-owned active sports facilities such as ballfields and basketball courts; bar, night club and tavern; indoor entertainment activities such as bowling alleys, game arcades, pool halls, dance halls, indoor firing ranges, theaters; membership clubs.
  - d. **Exceptions.**
    - (1) Banquet halls that are part of hotels or restaurants are accessory to those uses.
    - (2) Publicly-owned golf courses are classified as parks and open areas.
    - (3) Civic, service, fraternal clubs, lodges and similar uses are considered public, civil, and institutional use categories.
2. **Office.**
  - a. **Characteristics.** Office uses are characterized by activities conducted in an office setting and generally focusing on business, government, professional, medical or financial services. No wholesale or external retail sales activity is included.
  - b. **Accessory uses.** Accessory uses may include cafeterias, health facilities, parking, or other amenities primarily for the use of employees in the firm or building.
  - c. **Examples.** Examples include professional services such as lawyers, accountants, engineers or architects; banks; financial institutions such as lenders or brokerage houses; insurance agents or real estate agents; administrative offices; data processing; sales offices; radio and television stations/studios; and individual medical and dental offices.
  - d. **Exceptions.**
    - (1) Offices that are part of and located with a principal use in another category are considered accessory to the firm's primary activity. Headquarters offices, when in conjunction with or adjacent to a principal use in another category, are considered part of the other category.
    - (2) Contractors and others who perform services off-site are included in the office category if equipment and materials are not stored outside and fabrication, services or similar work is not carried on at the site.
    - (3) Medical and dental clinics and labs are classified as health care.
3. **Overnight accommodations.**
  - a. **Characteristics.** Dwelling units arranged for short term stays of less than 30 days for rent or lease.
  - b. **Accessory uses.** Accessory uses may include pools and other recreational facilities, limited storage, food preparation and dining facilities, laundry facilities, meeting rooms, off-street parking and

- offices.
- c. **Examples.** Examples include bed and breakfast establishments; hotels, motels, inns, and extended stay facilities.
4. **Parking, commercial.**
- a. **Characteristics.** Commercial parking facilities provide parking that is not accessory to a specific use. A fee may or may not be charged. A facility that provides both accessory parking for a specific use and regular fee parking for people not connected to the use is also classified as a commercial parking facility.
- b. **Accessory uses.** Small structures intended to shield parking attendants from the weather.
- c. **Examples.** Examples include short- and long-term fee parking facilities and mixed parking lots (partially accessory to a specific use, partially for rent to others).
- d. **Exceptions.**
- (1) Parking facilities that are accessory to a principal use, but that charge the public to park for occasional events nearby, are not considered commercial parking facilities.
  - (2) Parking facilities that are accessory to a principal use are not considered commercial parking uses, even if the operator leases the facility to the principal use or charges a fee to the individuals who park in the facility.
  - (3) Public transit park-and-ride facilities are classified as utilities.
  - (4) Sales or servicing of vehicles is classified as vehicle sales and service.
5. **Restaurants.**
- a. **Characteristics.** Establishments that sell food for on- or off-premise consumption.
- b. **Accessory uses.** Accessory uses may include decks and patios for outdoor seating, drive-thru facilities, customer and employee parking areas, and valet parking facilities.
- c. **Examples.** Includes restaurants, drive-ins, drive-throughs, fast food establishments, yogurt or ice cream shops and pizza delivery facilities.
- d. **Exceptions.** Nightclubs, taverns and bars are classified as entertainment uses.
6. **Retail Sales and Service.**
- a. **Characteristics.** Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services, or provide product repair or services for consumer and business goods.
- b. **Accessory uses.** Accessory Uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale and parking.
- c. **Examples.** Examples include uses from the three following groups:
- (1) **Sales-Oriented.** Stores selling, leasing or renting, consumer, home and business goods including alcohol, appliances, art, art supplies, bicycles, books, building/lumber sales, clothing, dry goods, electronic equipment, fabric, farm supplies, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, manufactured home sales, marine and fishing equipment, monument, optical, pets, pet food, pharmaceuticals, plants, printed

material, stationary and medical and dental supply stores, trailer equipment, videos; and food sales.

- (2) **Personal Service-Oriented.** Banks; commercial greenhouse; drive-in sales; dry cleaner/laundry; emergency medical care offices; funeral home; household equipment rental; photographic studios; photocopy and blueprint services; hair, tanning and personal care services; health clubs and gyms; office equipment rental; personal service shops, travel agencies; animal hospital/care facility, and animal grooming.
- (3) **Repair-Oriented.** Repair of TV's, bicycles, clocks, watches, shoes, guns, canvas products, appliances and office equipment: photo or laundry drop-off; tailor; locksmith and upholsterer.

**d. Exceptions.**

- (1) Restaurants are classified as restaurants.
- (2) Laundry and dry-cleaning plants are considered light industrial services.
- (3) Lumber yards and other building material sales that sell primarily to contractors and do not have a retail orientation are classified as wholesale sales.
- (4) Rental, repair and service of consumer motor vehicles, motorcycles and light and medium trucks is classified as vehicle sales and service.
- (5) Taxicab and limousine operations or facilities are classified as passenger terminals.
- (6) Hair salons, barbershops and beauty shops are classified as a separate land use category. Refer to the Use Table under Section 5.1 for zoning districts where this use is permitted.

**7. Self-service storage.**

a. **Characteristics.** Self-service storage uses provide separate storage areas for individual or business uses. The storage areas are designed to allow private access by the tenant for storing or removing personal property.

**b. Accessory uses.**

- (1) Accessory uses may include living quarters for a resident Manager or security and leasing offices and outside storage of boats and campers.
- (2) Use of the storage areas for sales, service and repair operations, or manufacturing is not considered accessory to the self-service storage use.
- (3) The rental of trucks or equipment is also not considered accessory to a self-service storage use.

c. **Examples.** Examples include facilities that provide individual storage areas for rent. These uses are also called mini-warehouses.

d. **Exceptions.** A transfer and storage business where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred is in the warehouse and freight movement category.

**8. Vehicle sales and service.**

a. **Characteristics.** Vehicle sales and service uses provide direct services to motor vehicles. They also may include firms that rent or service passenger vehicles, light and medium trucks and other

consumer motor vehicles such as motorcycles.

- b. **Accessory uses.** Accessory uses may include offices, sales of parts and vehicle storage.
- c. **Examples.** Examples include automobile rental; automobile sales; car washes; quick lubrication services; vehicle repair, transmission or muffler shop; towing service; auto body shop; alignment shop; auto upholstery shop; auto detailing; and tire sales and mounting.
- d. **Exceptions.**
  - (1) Refueling facilities for vehicles that belong to a specific use (fleet vehicles) are considered accessory uses if they are located on the site of the principal use.
  - (2) Convenience stores with fuel sales are classified as retail sales and service.

## G. Industrial use categories.

### 1. Aviation service.

- a. **Characteristics.** Aviation service firms are engaged in storage, repair or servicing of airplanes, helicopters and related aviation equipment, charter aviation services, flying-related education, and warehousing related to air shipping.
- b. **Accessory uses.** Accessory activities may include offices, parking, warehousing and storage.
- c. **Examples.** Examples include airplane landing strips, sales, service and repair, fixed base operators, flying schools and air shipment warehouses.
- d. **Exceptions.**
  - (1) Car rental agencies associated with commercial air travel are classified as passenger terminals.
  - (2) Warehousing not associated with air shipping is classified as warehousing and freight movement.

### 2. Light industrial service.

- a. **Characteristics.** Light industrial service firms are engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site. The uses may have indoor or outdoor operations.
- b. **Accessory uses.** Accessory activities may include offices, parking and storage.
- c. **Examples.** Examples include welding shops; sheet metal fabrication shop; machine shops; tool repair; electric motor repair; farm equipment repair and storage; repair of scientific or professional instruments; building, heating, plumbing or electrical contractors; printing, publishing and lithography; exterminators; janitorial and building maintenance services; fuel oil distributors; research and development; testing and development laboratories; sign shop; laundry, dry-cleaning and carpet cleaning plants and photo-finishing laboratories.
- d. **Exceptions.** Contractors and others who perform services off-site are included in the office category, if major equipment and materials are not stored on-site and fabrication or similar work is not carried on at the site.

### 3. Manufacturing and production.



- a. **Characteristics.** Manufacturing and production firms are involved in the manufacturing, processing, fabrication, packaging or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site.
  - b. **Accessory uses.** Accessory activities may include offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, repair facilities, truck fleets and caretaker's quarters.
  - c. **Examples.** Examples include processing of food and related products, including apparel; catering establishments; concrete batching and products and asphalt mixing; electric machines; food processing plants; instruments and components; light manufacturing; woodworking, including cabinet makers; production of chemical, rubber, leather, clay, bone, plastic, stone, or glass materials or products; movie production facilities; production or fabrication of metals or metal products including enameling and galvanizing; office equipment and supplies; manufacture or assembly of equipment, instruments, including musical instruments, appliances, precision items and other electrical items; production of artwork and toys and sign making.
  - d. **Exceptions.**
    - (1) Manufacturing of goods to be sold primarily on-site and to the general public are classified as retail sales and service.
    - (2) Manufacture and production of goods from composting organic material is classified as waste related service.
- 4. Resource extraction.**
- a. **Characteristics.** Resource extraction uses include those uses that rely on mining, quarrying or other similar activity to extract resources from the ground.
  - b. **Accessory uses.** Accessory uses include offices for mining personnel, parking and storage.
  - c. **Examples.** Examples include mines, borrow pits, and quarries.
- 5. Warehouse and freight movement.**
- a. **Characteristics.** Warehouse and freight movement firms are involved in the storage, or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present.
  - b. **Accessory uses.** Accessory uses may include offices, truck fleet parking and maintenance areas.
  - c. **Examples.** Examples include separate warehouses used by retail stores such as building and lumber materials; storage furniture and appliance stores; household moving and general freight storage; cold storage plants; truck terminals; storage garage warehouses, indoor only, including frozen food lockers; storage tanks; parcel services; and the stockpiling of gravel or other aggregate materials.
  - d. **Exceptions.**
    - (1) Uses that involve the transfer or storage of solid or liquid wastes are classified as waste related service.
    - (2) Mini-warehouses are classified as self-service storage uses.
    - (3) Flex space is classified as light industrial service.
- 6. Waste related service.**

- a. **Characteristics.** Waste related services are characterized by uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the composting of organic material
- b. **Accessory uses.** Accessory uses may include recycling of materials, offices and repackaging and transshipment of by-products.
- c. **Examples.** Examples include waste transfer or composting and large recycling facilities and salvage/junk yards; reclamation landfill; and sanitary landfill.
- d. **Exceptions.** Disposal of dirt, concrete, asphalt and similar non-decomposable materials is considered fill.

7. **Wholesale sales.**

- a. **Characteristics.** Wholesale sales firms are involved in the sale, lease, or rent of products primarily intended for industrial, institutional or commercial businesses. The uses emphasize on-site sales or order taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited. Products may be picked up on-site or delivered to the customer.
- b. **Accessory uses.** Accessory uses may include offices, product repair, warehouses, parking, minor fabrication services and repackaging of goods.
- c. **Examples.** Examples include sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment and store fixtures; mail order houses; and wholesalers of food, clothing, auto parts, building hardware.
- d. **Exceptions.**
  - (1) Firms that engage primarily in sales to the general public or on a membership basis are classified as retail sales and service.
  - (2) Firms that are primarily storing goods with little on-site business activity are classified as warehouse and freight movement.

H. **Other use categories.**

1. **Agriculture.**

- a. **Characteristics.** Agriculture includes activities that primarily involve raising, producing or keeping plants or animals. Also includes direct sales of such products at wholesale.
- b. **Accessory uses.** Accessory uses include dwellings for proprietors and employees of the use and animal training.
- c. **Examples.** Examples include breeding or raising of fowl or other animals; barn/ stable for private animal livestock; catfish farm; riding academies; crop production; farming; pasturage; truck gardening and wholesale plant nurseries or greenhouses.
- d. **Exceptions.**
  - (1) Processing of animal or plant products are classified as manufacturing and production.
  - (2) Plant nurseries or greenhouses that are oriented to retail sales are classified as retail sales and service.

(Ord. No. 3396, § 5, 4-3-06; Ord. No. 3423, §§ 2, 3, 8-22-06; Ord. No. 3523, § 6, 8-4-08; Ord. No. 3579, §§ 2, 3, 5-3-10; Ord. No. 3656, § 2, 2-21-12; Ord. No. 3749, § 2, 10-6-14; Ord. No.

3780, § 7, 7-7-15)

Specific use standards.

**I. Residential uses.**

1. **Group Living.** Family care, group care and intermediate care homes - or another form of group living permitted through a special exception - are permitted in accordance with the use table in Section 5.1 and the following standards:
  - a. No more than one family care home may be located within one-half mile of another family care home, a group care home, an intermediate care home or another form of group living permitted through a special exception; measured by a straight line from the nearest property line. A family care home shall be certified as a licensed family care home by the North Carolina Department of Health and Human Services.
  - b. Group care homes shall not be located closer than one-half mile to any other existing group care home, family care home, an intermediate care home or another form of group living permitted through a special exception; measured by a straight line from the nearest property lines.
  - c. Intermediate care homes shall not be located closer than one-half mile to any other existing intermediate care home, family care home or group care home; measured by a straight line from the nearest property lines.
  - d. Family or group care homes shall be separated by a 15-foot wide buffer with 50 percent screening to height of six feet from any abutting property located in a residential district.
  - e. One off street parking space shall be provided for every two beds in a group care home or facility plus one space for each staff person per shift. Parking improvements shall be constructed in accordance with all applicable parking standards of Article 7.
  - f. A residence used for a family or group care home shall maintain a residential appearance which is compatible with the surrounding neighborhood and no exterior alterations are permissible without prior approval from the Town of Garner.
  - g. No family care, group care or intermediate care home - or another form of group living permitted through a special exception - shall be established, constructed or expanded except in accordance with applicable sections of this UDO and North Carolina State Building Code.
  - h. Group care homes with a significant juvenile population shall be required to have the rear yard area enclosed by a fence at least six feet in height.
  - i. No family or group care home shall be established or maintained without trained supervisory personnel on site.
2. **Manufactured home.** An individual manufactured home may be allowed in the R-40 districts. In the R-40, and the home must be a class A manufactured home, as defined in Article 6. A manufactured home located on an individual lot outside the RMH or R-40 districts shall only be sited following approval of a manufactured home floating zone (-MH) through the rezoning procedures in Article 3.
3. **Residential uses in the CBD.** Residential uses located within the Central Business District shall conform to the following standards:
  - a. New single residential development is not allowed;
  - b. Duplex, triplex and multifamily developments is not allowed within the CBD;

- c. Multifamily development of the downtown structures between Purvis Street and Griffin Street shall be limited to the occupancy of the second floor and shall require conformance to the North Carolina State Building Code for all units prior to occupancy;
    - d. Townhouse or condominium uses are allowed within the CBD and shall meet the development standards of Article 6.
  - 4. **Upper-story residential.** Upper-story residential development is permitted provided it is part of a larger project, the residential component does not exceed 50 percent of the land area of the project, and a site plan for the project is reviewed in accordance with Article 3
- J. **Public, civic and institutional uses.**
  - 1. **Business school, college or university.** Business schools, colleges or universities in the NC, NO or CBD district are permitted, provided that:
    - a. Only a single building is used for the school, college or university; and
    - b. All activities are conducted in a completely enclosed building.
  - 2. **Cemetery.** Cemeteries are permitted in accordance with the use table in Section 5.1 and the following standards:
    - a. When a cemetery abuts or is across a street, alley, or easement from private property zoned in a residential district classification, a 20-foot buffer shall be provided and the following conditions shall be observed:
      - (1) No burials shall be permitted in the buffer;
      - (2) The buffer shall be landscaped with grass and trees, shrubs, or other ornamental horticultural materials; and
      - (3) The buffer shall be maintained in a neat and orderly condition at all times.
    - b. Warehouses, storage or maintenance buildings, mausoleums, crematories, or columbaria shall be located not less than 150 feet from the nearest private residential property line.
  - 3. **Day care.** Day care (up to three children as a home occupation) is permitted in accordance with the use table in Section 5.1. The following standards apply to child day care and adult day care uses:
    - a. **Adult day care.** Commercial adult day care is licensed by the North Carolina Department of Health and Human Services.
    - b. **Child day care.** Up to three children cared for in a residence, and subject to the requirements for a home occupation.  
 Commentary: The State of North Carolina requires a license for the care of three or more children.
    - c. **Family child day care.** Up to eight children in a residence, and subject to a license from the North Carolina Department of Health and Human Services.
      - (1) At least 100 square feet of outdoor play area shall be provided for each child. The outdoor play area shall be enclosed by a fence having a minimum height of four feet, which shall be maintained in good condition.
      - (2) An off-street drop-off and loading area shall be provided.
      - (3) Family child day care shall only be permitted to operate between the hours of 6:00 a.m. and 10:00 p.m.
      - (4) A 15-foot landscape buffer with a 50 percent screen to a height of six feet adjacent to any property zoned or used residentially shall be provided.
    - d. **Day care center.** Any day care not defined in paragraphs a through c above.

- (1) At least 100 square feet of outdoor play area shall be provided for each child. The outdoor play area shall be located at least 50 feet from the lot line of any residential property, and enclosed by a fence having a minimum height of four feet, which shall be maintained in good condition.
- (2) An off-street drop-off and loading area shall be provided.

**4. Minor utilities.**

- a. Utilities are permitted in accordance with the use table in Section 5.1 and the following standards:
- b. Electric power, telephone, cable televisions, gas, water, and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right-of-way.
- c. Neighborhood utility facilities located within a public right-of-way with the permission of the owner (state or Town) of the right-of-way.
- d. Wells, pumping stations, or other similar facilities that are owned or operated by the City of Raleigh as part of the public water and sewer system.
- e. However, uses listed in paragraphs a and b above shall be subject to any notification, review and plan submission requirements approved by the Town Council.
- f. On-site water or wastewater treatment facilities that are authorized pursuant to an approved permit for a development project; provided such facilities are designed and constructed to primarily serve said development.

**5. Solar Farms.**

- a. The maximum height for all solar panels, mounts and related equipment or structures shall not exceed 15 feet. This includes solar panels at maximum tilt.
- b. The solar farm area shall be enclosed with a minimum 6-foot tall security fence along its entire perimeter. Gates shall be locked and secured.
- c. The minimum front and corner-side setback is 30 feet from the right-of-way of a public or private road, or private road easement. In the case of a public road that is designated by the current Town of Garner transportation plan as a minor or major thoroughfare, freeway or interstate, the minimum setback from the right-of-way of said designated road shall be 50 feet.
- d. The minimum interior side and rear setbacks shall be equal to the applicable buffer width specified in Article 7.
- e. With the exception of the perimeter security fence required in subsection (b), all other solar farm structures; including but not limited to: mechanical equipment, panels and mounts; and materials shall be set back a minimum of 100 feet from footprint of any existing residential dwelling.
- f. Solar farms shall meet the screening of objectionable views requirements of Article 7
- g. Solar farms shall meet the industrial performance standards of Article 6.
- h. Solar panels shall not create a traffic or safety hazard; solar panels shall be arranged, angled or sited to minimize glare or reflection onto adjoining properties and rights-of-way. Panels shall have a textured or anti-reflective surface or coating. Mirrors or mirrored panels are prohibited.
- i. **Decommissioning Plan:** A Decommissioning Plan shall be approved and recorded as a condition of the Special Use Permit. At

a minimum, the Decommissioning Plan shall address the following requirements:

- (1) Responsible parties.
- (2) Timeline for the completion of all decommissioning plan activities within 6 months of power ceasing to be provided to the recipient client.
- (3) Removal and disposal of all equipment and materials; including but not limited to: panels, mounts, structures, pads, foundations, underground wiring and fencing.
- (4) Site reclamation and surface restoration; including but not limited to: retention of installed landscaping, putting down new topsoil, re-grading, and re-seeding.
- (5) An “Estimated Net Cost of Decommissioning” prepared by a licensed engineer, inclusive of salvage proceeds; and a mechanism to annually report to the Town of Garner Planning Department a “Revised Estimate of the Net Cost of Decommissioning” that accounts for items such as - but not limited to - inflation, deflation and depreciation.

- j. **Decommissioning Surety:** Prior to the issuance of any building permits, a surety acceptable to the Town Attorney of the Town of Garner naming the Town of Garner as beneficiary shall be posted for 125% of the Estimated Net Cost of Decommissioning established within the approved Decommissioning Plan or \$25,000, whichever is greater.

If at any time, the Revised Estimate of the Net Cost of Decommissioning exceeds 90% of the value of the posted surety, a new or amended surety shall be posted in the amount of 125% of the newly Revised Net Cost of Decommissioning.

**6. Religious institutions.**

- a. **[Religious institutions in residential districts.]** Religious institutions are permitted in residential districts in accordance with the use table in Section 5.1 and the following standards:

- (1) A minimum setback of 40 feet from all exterior lot lines is required; and
- (2) The minimum distance between any exterior lot lines and the perimeter of a parking area shall be 25 feet where such boundaries adjoin a residential zoning district.
- (3) A religious institution in or adjacent to any residential district shall have its principal vehicular entrance and exit on an arterial street, or on a collector street within 150 feet of its intersection with an arterial.
- (4) The principal building and accessory uses must be on a contiguous site or sites separated only by a public street.
- (5) After the effective date of this UDO, a religious institution shall not be established in a residential structure in any residential district.

- b. **Religious institutions in the CBD.**

- (1) Religious institutions shall not be a permissible use within existing commercial buildings in downtown Garner located along Main Street between Purvis Street and Griffin Street and zoned CBD.
- (2) Existing religious institutions located in commercial buildings within the area defined above shall be permitted to continue after the effective date of this ordinance; however, once an existing religious institution located in a commercial building

in the area defined above ceases operation, a new or different religious institution shall not be permitted to occupy the vacated location.

7. **Schools in residential districts.**
  - a. Public or private schools are permitted in accordance with the use table in Section 5.1 and the following standards:
  - b. A minimum setback of 40 feet from all exterior lot lines is required; and
  - c. The minimum distance between any exterior lot lines and the perimeter of a parking area shall be 25 feet where such boundaries adjoin a residential zoning district.
  - d. A school in or adjacent to any residential district shall have its principal vehicular entrance and exit on an arterial street, or on a collector street within 150 feet of its intersection with an arterial.
  - e. The principal building and accessory uses must be on a contiguous site.
8. **Telecommunication facility.** Towers and antennas greater than 35 feet in height are permitted in accordance with the use table in Section 5.1 and the following standards:
  - a. The Town Council encourages the co-location of antennas on existing towers in the Towns planning jurisdiction where possible in order to reduce the amount of visual clutter that new towers create in the community.
  - b. The applicant shall attend a pre-application meeting with the Planning Department. The applicant shall provide information regarding the proposed facility's service area requirements, co-location opportunities and review a checklist of information required for the formal application. Additional information necessary to review the impact of the proposed facility on surrounding properties may be required by the Planning Director at the time of pre-application meeting.
  - c. The application shall comply with the criteria of Article 3 where applicable of the ordinance and meet the following standards.
    - (1) Reserved.
    - (2) The applicant shall provide competent evidence to the Town Council that all reasonable efforts have been made to co-locate on an existing tower, building, or structure or that no existing tower, building or structure will technically satisfy the applicant's needs.
    - (3) The applicant shall certify to the Town Council that a new tower location will be constructed for co-location of future users and that radio, television or similar reception for adjoining properties will not be disturbed or diminished.
    - (4) Advertising copy or any logo which constitutes a sign is prohibited on any tower and antenna or satellite dish antenna in any zoning district.
    - (5) The proposed tower location must be in conformity with the Comprehensive Growth Plan, the Transportation Plan and other plans officially adopted by the Town Council and applicable zoning overlay districts (I-40, U.S. 70/401, and Timber Drive). Towers shall not be allowed in the Lake Benson Conservation Overlay District.
    - (6) To assure that the proposed tower will be in conformity with

the adopted plans and policies of the Town, the Town Council may require a specific type of tower construction. Monopole towers shall be required for sites that fall within the I-40, U.S. 70/401 and Timber Drive Overlay Districts. The Council may require specific tower construction types in other areas of the Town, based on site specific needs and characteristics of the surrounding neighborhood.

- (7) A setback radius (a circle whose center is the tower base) shall be required as follows for all towers that are permissible in districts except where stricter standards are required in the R-40 district (see subsection (15) below).
  - (a) From all sides of a tower there shall be a minimum setback of 500 feet measured in straight line to any portion of a property line of a residentially developed lot.
  - (b) Where any side of a tower site adjoins undeveloped property zoned residential, the required setback distance from the tower to any property line shall be equal to at least 100 percent of the tower height. The Town Council may allow this setback requirement to be reduced to a minimum of 60 percent of the tower height based on competent evidence provided by the applicant clearly showing that the structural integrity of the tower is designed to collapse within the reduced setback distance and that affected owners of record adjacent to the reduced setback distance provide written documentation that they do not object to such setback reduction.
  - (c) Where any side of a tower site adjoins property zoned nonresidential, the required setback distance from the tower to any property line shall be equal to at least 60 percent of the tower height.
  - (d) The Town Council may require that a tower setback radius area not contain any buildings, structures or land uses if the Council concludes that such buildings, structures or land uses could be impacted by the structural failure of the tower.
- (8) Landscape screening and buffering. A landscape buffer shall be required between a tower and all adjacent land uses with the exception of manufacturing, airport, armory and crematorium uses. See Article 7 for specific buffer and screening standards. In addition, the following standards shall apply:
  - (a) The required landscape buffer shall be required between the base of a tower and any street right-of-way from which the tower is visible.
  - (b) The Planning Director has the discretion to require that the landscape buffer be provided adjacent to the fencing surrounding the tower base rather than at the property line, when the site conditions are such that tower base location will create a more effective visual screen from the adjacent property line or street right-of-way.
- (9) The Town Council may require the applicant to apply to the



- 
- Federal Aviation Administration (FAA) for compliance with FAA standards for a dual lighting system rather than the red and white marking pattern, when such marking pattern is determined to be aesthetically blighting due to the location of surrounding land uses or the visibility of the tower.
- (10) When tower lighting is proposed, the applicant shall certify to the permitting authority, as part of the conditional or special use permit application, that the lighting planned for the tower does not exceed the minimum standards of the Federal Aviation Administration (FAA), as amended.
  - (11) The exterior appearance of all buildings associated with a telecommunications tower located adjacent to any residential zoning district may be required by the Town Council to resemble a residential dwelling, including a pitched roof(s), and frame or brick veneer construction.
  - (12) The exterior appearance of all buildings associated with a telecommunications tower located in a residential or non residential zoning district, which is visible from a public right-of-way, may be required by the Town Council to have architectural enhancements, such as, siding, split face block or brick veneer on all facades visible from the public right-of-way.
  - (13) A tower that has been abandoned or has not been actively used for a period of six consecutive months shall be removed by the tower user that currently owns or leases the facility upon notice from the Town of Garner, unless the Town Council grants a time extension at the owner's request, for a period not to exceed one year from the date of official notice.
  - (14) The tower shall be a tapered monopole construction unless otherwise approved by the Town Council. The tower shall not exceed a height of 200 feet (measured from the finish grade elevation to the top of the tower). However, the Town Council may require a tower be of a certain height, not to exceed the maximum permitted, if it finds that such a requirement is necessary to support the design for co-location of additional users or is needed to address the impact of the tower on adjacent properties and uses.
  - (15) In addition to meeting the standards listed above towers located in R-40 zoning districts shall comply with the requirements outlined below.
    - (a) There shall be a minimum setback from all sides of a tower equal to 2.5 times the tower height measured in a straight line to an existing residence, excluding the applicant's residence.
    - (b) Towers located in R-40 districts greater than 75 feet in height shall not be located closer than 2,500 feet to another tower greater than 75 feet in height. This separation provision applies only to communication towers which transmit or receive telephone, telecommunication, radio or TV signals and does not include amateur or ham radio towers and antennas.
    - (c) Associated buildings used in connection with a tower located in R-40 districts may not be used as an employment center for any worker. This provision

does not prohibit periodic maintenance and monitoring of equipment and instruments.

- (d) The applicant shall apply stealth technologies for towers located in R-40 districts where practical. However, all antennas on towers in R-40 districts shall employ a type of stealth application that visually screens antennas from any off-site location in a manner approved by the Town Council.
- (e) Tower locations in R-40 districts are subject to applicable standards of the Town's landscape ordinance and shall comply with the following specific landscaping/buffer standards:
  - i. The base of the tower, including associated structures, fences, etc. shall be surrounded by a forested area 75 feet wide buffer with planted vegetation necessary to achieve a 100 percent screen at eight feet in height. Existing mature forest areas may be used to reduce the buffer width requirement if the screening standard can be met.
  - ii. Landscape berms may be allowed in lieu of the required landscaped forest area provided the landscape berm is appropriate for the tower location and it achieves the required screening standards outlined above.
  - iii. The Planning Director has the discretion to require that the required Buffer be provided adjacent to the fencing surrounding the tower base rather than at the property line, when the site conditions are such that tower base location will create a more effective visual screen from the adjacent property line or street right-of-way.

9. **Trade/vocational educational facilities.** Trade/vocational educational facilities are permitted, provided that all activities are conducted in a completely enclosed building.

10. **Continuing care retirement facilities.** Continuing care retirement facilities shall meet the following provisions:

- a. The number of persons who may housed in non-independent rooms or apartments (not including hospital or clinic beds) does not exceed the number of persons housed in independent dwelling units by a ratio of 3:1.
- b. The continuing care retirement facility do not exceed a density of ten units per acre, not including the number of persons occupying hospital or clinic beds.
- c. The number of hospital or clinic beds shall not be more than 50 percent of the total number of permitted dwelling units.
- d. Retail stores and personal service establishments located within the continuing care retirement facility are permissible only when:
  - (1) Such uses exclusively serve the residents of the facility;
  - (2) There is no exterior evidence of such uses outside of the building they are located in and have no outdoor entrance for customers separate from the main entrance of the activity or administrative building; and
  - (3) The floor area devoted to such uses shall not exceed 50

percent of the floor area of the building where the uses area located.

- e. The facility is located on a minor or major thoroughfare.
- f. The total number of persons residing in the continuing care retirement facility does not exceed 500.
- g. A minimum of 25 percent of the tract must be retained on site as permanent open space.

**11. Hospitals or Ambulatory Health/Emergency Care with heliport operations in the O&I and CR Districts.**

These provisions shall only apply to Hospitals or Ambulatory Health/Emergency Care Facilities with heliport operations.

- a. Structures shall be designed and placed in a manner that is not to be detrimental to adjoining properties within a 1,000 feet radius of the heliport site measured from the center of final approach and take off area.
- b. Proof of airspace clearance from the Federal Aviation Agency must be provided prior to the issuance of a certificate of occupancy.
- c. Evidence of applicable approvals required by the North Carolina Department of Transportation for helicopter flight operations must be provided prior to the issuance of a certificate of occupancy.
- d. The Town Council may require the applicant to implement noise reduction measures or flight operational restrictions deemed reasonable in order to protect the public health, safety and welfare of surrounding residents and businesses.
- e. A 6-foot tall, opaque, year round landscape buffers and/or plantings is required in order to mitigate visual impacts to surrounding ground-floor residential properties.

**K. Commercial, office and retail uses.**

**1. Bank, financial institution.** A bank, credit union, or other financial institution located in the NO or NC districts shall provide only indoor transactions, which shall be further limited to the hours between 6:00 a.m. and 10:00 p.m. No external automated teller machine, drive-through windows, or night drop windows shall be permitted.

**2. Bar, nightclub, tavern.**

- a. In the CR, SB, I-1 and I-2 districts, a bar, nightclub or tavern shall not be permitted within 500 feet of any residential use or residential district.
- b. In the CBD district, a bar, nightclub or tavern may only be located on parcels with frontage on Main Street between Montague and Griffin streets or along Rand Mill Rd.
- c. In the CBD district, a bar, nightclub or tavern shall have a minimum of 250 square feet devoted to food preparation (kitchen, food refrigeration/freezers, etc.)
- d. In the CBD district, a bar, nightclub or tavern shall be open no later than 1:00am.

**3. Car wash.** A car wash shall be permitted in accordance with the use table in Section 5.1 and the following standards:

- a. No outdoor storage is permitted;
- b. Any bay doors shall not be oriented toward the public right-of-way unless appropriately screened as determined by the permit-issuing authority;
- c. All washing operations shall be conducted within a completely enclosed building; and
- d. No car wash facility, including any areas for vehicular use, shall be located within 500 feet of any existing residential zoning district.
- e. No vehicles shall be stored overnight.

**4. Convenience store without fuel sales.** A convenience store in the NC and CBD districts may not exceed 5,000 square feet in gross floor area.

- 
5. **Extended stay facility.** Extended stay facilities are permitted in accordance with the use table in Section 5.1 and the following standards:
    - a. All guest rooms shall take access from an interior hallway. No guest rooms shall be accessible without passing through a secured area.
    - b. Staff or management shall be on duty 24-hours per day, seven days per week;
    - c. Each guest room shall have a minimum of 280 square feet;
    - d. No outside storage or permanent parking of equipment or vehicles shall be permitted; and
    - e. No buildings constructed under this section may be converted to or used as apartments or condominiums.
    - f. No extended stay facility shall be located on a site within 500 feet of any residential district or use.
  6. **Gym, spa, indoor tennis court or pool, private.** A private gym, spa, indoor tennis court or pool in the NC and NO districts may not exceed 5,000 square feet in gross floor area.
  7. **Repair oriented use.** A repair-oriented use in the NC district may not exceed 5,000 square feet in gross floor area. No outdoor storage at a repair-oriented use shall be permitted.
  8. **Restaurant, indoor with seating only.** An indoor restaurant in the NC district may not exceed 5,000 square feet in gross floor area.
  9. **Restaurant, take-out only.** A take-out restaurant in the NC district may not exceed 5,000 square feet in gross floor area.
  10. **Sexually oriented business (adult uses).** Adult uses are permitted in accordance with the use table in Section 5.1 and the following standards:
    - a. No adult cabaret or adult establishment shall be located closer than a distance of 1,000 feet from a church, school, park, residential zoning district or other adult cabaret or adult establishment. The 1,000 foot distance shall be measured from the closest point on the perimeter of the lot on which the described establishment is located to the nearest point on the lot on which the church, school, park, residentially zoned district, adult cabaret or adult establishment is located.
    - b. Except as permitted in Section 7.5, Sign regulations, no signs, logos, promotional materials or other distinctive decorations or markings shall be placed on the exterior of the establishment or shall be visible to the public from streets or highways, pedestrian sidewalks or walkways.
  11. **Vehicle general repair.** Outdoor storage is restricted to the rear of a building and must be 100 percent screened from all street views. No vehicles shall be stored for more than 30 days.
  12. **Vehicle sales, rental.** Outdoor storage is restricted to the rear of a building and must be 100 percent screened from all street views. Sales areas where vehicles for sale are parked may be permitted, subject to any restrictions for parking area in the SB district.
  13. **Vehicle service, limited.** No outdoor storage is permitted in the CR and I-1 districts and no vehicles shall be stored overnight. Outdoor storage in the SB district is limited to the rear of the building with 100 percent screening from all views.
  14. **Vehicle towing, storage.**
    - a. No vehicle towing or storage facility shall be located within 500 feet of any residential use or district.
    - b. All overnight storage of vehicles shall be completely screened from view from the public right-of-way and adjacent properties by a six-foot fence or other methods that achieve the screening objective.

15. **Veterinarian/kennel, indoor.**
  - a. No veterinarian or kennel in the NC, NO or CBD districts shall exceed 5,000 square feet.
  - b. All activity associated with the operation shall take place within a completely enclosed building.
16. **Veterinarian/kennel with outdoor operations.** No veterinarian or kennel with outdoor operations shall be located within 500 feet of any residential use or district.
17. **Electronic gaming center.** No electronic gaming center shall be located within ¼ mile of another electronic gaming center. The distance shall be measured from the closest point on the perimeter of the parcel on which the described establishments are located.

**L. Industrial and manufacturing uses.**

1. **Flex space.** Flex space is permitted in accordance with the use table in Section 5.1 and the following standards:
  - a. Changes in products, services, and square footage of the permitted uses within a flex-space structure do not require approval of the Town.
  - b. Any portion of the gross floor area in each flex space structure may be commercial space provided sufficient off-street parking is available on-site.
  - c. One parking space shall be provided for each 400 square feet of floor area used as flex space.
2. **Industrial use, indoor.** No outdoor storage is permitted in the I-1 district. Outdoor storage in the SB district is limited to the rear of the building with 100 percent screening from all views.
3. **Manufacturing and production.** Manufacturing and production facilities are permitted in accordance with the use table in Section 5.3 and the following standards:
  - a. No vibration shall be produced which is transmitted through the ground (and is discernible without the aid of instruments) at or at any point beyond the lot line.
  - b. All noise shall be muffled so as to not be objectionable due to intermittence, beat frequency or shrillness.
  - c. Visible emissions of air pollutants of any kind at ground level, past the lot line of the lot on which the source of emissions is located, are prohibited.
  - d. No person shall cause or permit any materials to be handled, transported or stored in such a manner which allows or may allow particulate matter to become airborne.
  - e. No direct glare from high temperature processes such as combustion or welding, which is visible at the lot line, shall be permitted.
  - f. There shall be no emission or transmission of heat or heated air so as to be discernible from the lot line.
  - g. Any condition or operation which results in the creation of odors of such intensity or character as to unreasonably interfere with the comfort of the public shall be removed, stopped or modified so as to remove the odor.
  - h. Manufacturing and production uses shall not be a permissible use within existing commercial buildings in downtown Garner located along Main Street between Montague Street and Griffin Street, and zoned CBD.
4. **Recycling collection (outside).** Recycling collection points are permitted in accordance with the use table in Section 5.1 and the following standards:

- a. Recycling collection points shall be limited to one operation per principle use (i.e., one per shopping center, or office complex or building).
  - b. Recycling collection points shall present an appropriate appearance in the community. This objective may be accomplished by the use of containers which are uniform in size, color and shape, or by the use of sufficient measures to screen recycling collection points from external views.
  - c. Materials collected at recycling collection points shall be limited to aluminum, plastic, glass, or paper materials which may be recycled for re-manufacture or reuse.
  - d. Recyclable materials shall be stored within a weather-tight container or a durable material container. An individual container shall not exceed a height of eight feet. The use of containers with self-closing doors is strongly encouraged.
  - e. Outside recycling collection points should be located on a site so as to avoid direct street view such as side or rear areas of existing building. The location of a recycling collection point shall be situated on a site so as not to create unsafe or hazardous traffic movements on or off the site.
  - f. Processing equipment shall not be a part of a recycling collection point.
  - g. The area immediately surrounding recycling collection points shall be kept clean and in a good state of repair at all times. The Planning Director shall have the authority to order, at the owner's expense, painting, repair, alteration, screening or removal of containers or receptacles and the cleaning of recycling collection point areas which constitute by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, a public nuisance or hazard to public health, safety or welfare. Failure to comply with the provisions of this section shall result in enforcement action according to the requirements of Article 10, Enforcement.
  - h. The setback requirements that apply to the principal use of property where a recycling collection point is located shall also apply to individual recycling collection containers.
  - i. Signage for recycling collection points shall be subject to the sign regulations set forth in Article 7. The use of the recycling symbol as the only signage for recycling collections points is required.
  - j. A minimum of five parking spaces per recycling collection point or one parking space for each receptacle, whichever is greater, shall be required.
  - k. In order to establish a recycling collection point, an applicant shall submit information to the Planning Director outlining the general operation of the use and a site plan depicting the location of all containers on the site. The submitted information must be of sufficient detail; to enable the Planning Director to determine if the standards of this UDO and other applicable requirements have been met. A recycling collection point shall not be established and operated until the Planning Director has issued written approval of the request.
5. **Recyclable material collection centers.** Recyclable material collection centers are permitted in accordance with the use table in Section 5.1 and the following standards:
- a. Collectible recyclable materials shall be limited to aluminum,

- copper, plastic, glass or paper.
- b. Storage of collectible recyclable materials may be located inside or outside of an enclosed building. If located outside of an enclosed building, recyclable materials shall be stored within a trailer that is drawn by motor power and bears a valid and current state license. Or, such material located outside an enclosed building may be stored within weather tight metal containers which do not exceed a height of eight feet.
- c. Recyclable material collection centers outside of an enclosed building should be located on a site to avoid direct street view, such as but not limited to being located in the rear of existing building(s). Direct street view of outside collection centers is permissible only when a 100 percent screen on all sides of the receptacle is completed by the developer according to the standards outlined below prior to the start of collection operations. Plans detailing how an outside collection center is to be screened shall be submitted as part of the site plan application.
- d. Where an outside collection receptacle is a trailer, screening shall be accomplished by solid fencing sufficient to screen tires of all trailer wheels and shall be located a maximum of six feet from the designated trailer location closest to street view. A minimum of 50 percent of the solid fence shall be softened with vegetation consisting of a combination of shrubs and trees and shall extend 15 feet on either end of said fencing.
- e. Where an outside collection receptacle is a weather tight metal container, a 100 percent solid screen shall be provided on all sides with a direct street view. Screening shall be accomplished by solid fencing to a minimum height of eight feet; located a maximum of four feet from the container. A minimum of 50 percent of the fence shall be softened with vegetation consisting of a combination of shrubs and trees.
- f. Processing equipment, such as but not limited to crushers, sorting equipment shall not be part of an outside collection operation.
- g. Collection containers shall be located a minimum of 50 feet from any property line adjoining a residence or residential district. A type A buffer/screen shall be required along such property lines.
- h. Recyclable material collection center sites shall be kept clean and free of materials, rubbish or debris. The exterior of outside collection containers shall be kept clean and kept in a good state of repair at all times. The Planning Director shall have the authority to order painting, repair, alteration, or removal of receptacles and the cleaning of collection sites which constitutes by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, a public nuisance or hazard to public health, safety or welfare.
- i. All applicable setback requirements of Article 6 shall apply to situations where all collection and storage operations are conducted inside a completely enclosed building.
- j. In situations where collection and storage operations occur outside of an enclosed building the following setbacks shall apply:

<b>Standard</b>	
Front setback	50 feet
Interior side	25 feet
Corner side	50 feet

Rear side	25 feet (50 feet if site abuts a street)
-----------	--

**Note: Greater setback may be required if site adjoins a residence or residential district.**

- k. A minimum of five parking spaces per recyclable material collection center site or two parking spaces for each receptacle, whichever is greater, shall be required.
- l. Signage for collection centers shall be subject to the sign regulations set forth in Section 7.5.
- m. A recyclable material collection center with outside operations shall be located on a lot which abuts U.S. 401, U.S. 70, N.C. 50, or Mechanical Boulevard.

**6. Storage.**

- a. All outdoor storage areas shall be screened from view from any public right-of-way or adjacent property with a six-foot opaque fence, wall; or other methods that achieve the screening objective.

**7. Wholesale sales.** No outdoor storage is permitted in the I-1 district. Outdoor storage in the SB district is limited to the rear of the building with 100 percent screening from all views.

**M. Other uses.**

**1. Agriculture and silviculture.**

- a. Agriculture. Structures for keeping and raising of livestock and poultry shall be separated from residentially-zoned property by 500 feet.
- b. Silviculture. Forest management, tree farm and timber areas are permitted subject to the following standards:
  - (1) No clearing of timber, trees or understory vegetation will be permitted in the perimeter and street buffers as established in Article 7, except for any road/driveway necessary to serve the property;
  - (2) No site plan approval shall be issued within two years of the harvesting of timber; and
  - (3) No clearing of timbers, trees or understory vegetation will occur within 20 feet of the property line of an adjoining property devoted to a residential use.

**N. Funeral home and crematorium.**

- 1. Crematoriums are allowed only as an accessory use to a funeral home.
- 2. All crematoriums must meet the requirements of the North Carolina Crematory Act.
- 3. All crematorium operations must be conducted entirely within a structure; outdoor storage is prohibited.
- 4. All crematorium operations must provide certification from the N.C. Division of Air Quality that a permit is or is not required.

(Ord. No. 3396, §§ 6--10, 4-3-06; Ord. No. 3502, §§ 1, 2, 3-3-08; Ord. No. 3523, § 5, 8-4-08; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3656, § 3, 2-21-12; Ord. No. 3673, § 3, 10-1-12; Ord. No. 3780, § 8, 7-7-15; Ord. No. 3881, § 4, 9-5-17; Ord. No. 3963, §XXXXX, 04-16-19; Ord. No. 18-01, §XXXXX, 09-04-18)

**5.3. Accessory uses and structures.**

**A. General.**

- 1. Whenever a use is conducted in conjunction with another principal use, and the first use:
  - a. Constitutes only an incidental or insubstantial part of the total activity on a lot; or
  - b. Is commonly associated with the principal use and integrally related to it,



2. Then the first use may be regarded as accessory and may be carried on under the umbrella of the permit issued for the principal use.

**B. Accessory buildings and uses in residential districts.**

1. The following standards shall apply to all accessory buildings in residential districts:
  - a. The maximum height of a garage shall not exceed the height of the principal structure.
  - b. The maximum height of an accessory building other than a garage shall be 20 feet.
  - c. The minimum setback from a side lot line is ten feet;
  - d. The minimum setback from a rear lot line is five feet;
  - e. If an easement exists along such a lot line, the minimum setback will be coincident with the easement line if it is greater than the applicable minimum stated above;
  - f. The floor area of the total number of accessory buildings shall not exceed one-half of the heated square footage of the principal building served, except in the R-40 district;

***Commentary: Floor area for accessory building cannot exceed one-half of the heated space of the principle building, plus any existing accessory building(s).***

- g. Residential accessory buildings, on lots of record prior to March 1984, may encroach into designated conservation buffers provided that: (1) such buildings not exceed one-quarter of the area of the principal building served; (2) such accessory building shall not be located in any designated floodway; (3) placement of an accessory building in a flood fringe area shall meet all applicable construction requirements; and (4) including the accessory building, the area of the lot covered by impervious surfaces shall not exceed 25 percent.
2. The following are specifically regarded as accessory to residential principal uses so long as they satisfy the general criteria set forth in paragraph 1., above:
  - a. Offices or studios within an enclosed building and used by an occupant of a residence located on the same lot to carry on administrative or artistic activities, so long as such activities do not fall within the definition of a home occupation.
  - b. Hobbies or recreational activities of a noncommercial nature.
  - c. The renting out of one or two rooms within a single-family residence (which one or two rooms do not themselves constitute a separate dwelling unit) to persons who are not part of the family that resides in the single-family residence.
3. The following activities shall not be regarded as accessory to a residential principal use and are prohibited in residential districts:
  - a. Storage or parking of any vehicle or trailer overnight or for a longer period of time, if said vehicle or trailer is licensed or regularly used for commercial or industrial purposes, and meets any of the following criteria:
    - (1) A vehicle for which a commercial driver's license is required by state law; or
    - (2) A vehicle or trailer having in excess of two axles; or
    - (3) Any trailer bearing commercial signage, logo, or actually carrying commercial or industrial equipment or materials, or
    - (4) A vehicle or trailer having a height in excess of 90 inches stored or parked in any required front yard.
  - b. However, nothing in the UDO shall prohibit the overnight parking or storage of pickup trucks or of trailers used exclusively for

- noncommercial or non-industrial purposes.
- c. Automotive repair, including engine, body or other repair or repainting of any vehicle owned by a person not residing at that address, notwithstanding whether compensation was paid for said service.
  - d. Skateboard ramps, except as follows:
    - (1) Ramps that do not exceed four feet in height off a horizontal plane at the highest point of ground where the structure is immediately erected; and
    - (2) That meet all side and rear yard setback requirements.
- C. **Junked or abandoned vehicles.** The following activities shall not be regarded as accessory to any principal use and are prohibited in all districts, except as a principal use expressly allowed in the use table in Section 5.1:
- 1. Storage outside a substantially enclosed building of any junked or abandoned motor vehicle that also constitutes a nuisance for more than 30 days. (A building is substantially enclosed if the length of the additional wall necessary to fully enclose it would not exceed 25 percent of the length of the existing walls.) Abandoned and junked motor vehicles are defined as follows:
    - a. An abandoned motor vehicle is a self-propelled, land operated vehicle (e.g., truck, car, tractor, etc.) that:
      - (1) Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or
      - (2) Is left on property owned or operated by the Town for longer than 24 hours; or
      - (3) Is left on private property without the consent of the owner, occupant or lessee thereof for longer than two hours; or
      - (4) Is left on any public street or highway for longer than seven days.
    - b. A junked motor vehicle is an abandoned motor vehicle that also:
      - (1) Is partially dismantled or wrecked; or
      - (2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
      - (3) Is more than five years old and worth less than \$100.00; or
      - (4) Does not display a current license plate.
- D. **Automatic one bay (non-wand) car wash facility.** A one bay automatic (non-wand) car wash facility that is completely enclosed except for openings necessary to allow entry and exit of vehicles is permissible in CR and SB districts only, provided:
- 1. The facility serves as an accessory use to the principal use of a convenience store only.
  - 2. The car wash building or structure cannot exceed a height of 20 feet or exceed an overall building dimension of 25 feet in width and 50 feet in length.
  - 3. The car wash accessory building shall have the same architectural character as the onsite principal building and shall house car wash related storage and/or rest rooms only. The doors of the car wash building shall be architecturally compatible with the car wash building. The doors of the car wash accessory building shall be closed when the facility is not in operation.
  - 4. The car wash building and storage of auxiliary equipment related to the car wash facility shall be located behind the rear building line of the principle use building.
  - 5. The orientation of a one bay automatic car wash structure shall be sited so

as to discourage direct street view of the facility. Direct street access of a one bay automatic car wash structure and related auxiliary equipment is permissible only when appropriate landscaped areas such as, but not limited to, planter islands or other landscaped features are used to provide a 50 percent screen of the facility and related equipment from street view.

6. All one bay (non-wand) automatic car wash structures shall meet the applicable setback standards of Article 6. The use shall be subject to the noise standards.
7. In addition to meeting the screening standards outlined above, the provisions of Article 7, regarding buffer/screen requirements shall apply to a one bay automatic car wash facility .
8. The property on which an accessory automatic non-wand car wash is located shall abut the major thoroughfares, U.S. 401 and U.S. 70 and N.C. 50, as designated on the adopted greater Capital Area Metropolitan Planning Organization Transportation Plan.
9. All car wash facilities shall be equipped with a water recycling system that meets all applicable standards and regulations of the Town, City of Raleigh, Wake County and state or connect to the Town of Garner Sewer System upon the approval of the Town Engineer.

E. **Automatic car wash facility.** An automatic (non-wand) car wash facility that is completely enclosed except for openings necessary to allow entry and exit of vehicles is permissible as an accessory use to the principle use of an automobile service center, in the CR and SB districts provided the following standards are met:

1. The number of car wash bays shall be limited to a maximum of two, provided the number of car wash bays does not exceed more than one-third of the total number of bays contained in the entire building.
2. The car wash bays shall be architecturally integrated into the overall building to as to present a unified building design in a manner that utilizes the same building materials and colors as the other portions of the building.
3. Hours of operation for the automatic car wash shall be limited to between 6:00 a.m. and 11:00 p.m. each day.
4. Appearance and landscaping.
5. The orientation of the automatic car wash bays shall be sited so as to discourage direct street views of the facility where practical.
6. Automobile service centers with automatic car wash bays as an accessory use located within the Timber Drive or U.S. 70/401 overlay districts shall be subject to the landscape standards of those overlay districts.
7. Automobile service centers with automatic car wash bays as an accessory use not located within a special overlay district shall provide a 100 percent screen of the facility and related equipment from street views to a minimum height of four feet within two years of initial planting.
8. All car wash facilities shall be equipped with a water recycling system that meets all applicable standards and regulations of the Town, City of Raleigh, Wake County, and state or connect to the Town of Garner Sewer System upon the approval of the Town Engineer.

F. **Home occupations in residential zoning districts.**

1. **Defined.** A commercial activity in any residential district that:
  - a. Is conducted by a person on the same lot where such person resides; and
  - b. Is not so insubstantial or incidental or is not so commonly associated with the residential use as to be regarded as an accessory use, but that can be conducted without any significantly adverse impact on the surrounding neighborhood.
2. **Uses not permitted.** A use may not be regarded as having an insignificant

adverse impact on the surrounding neighborhood if:

- a. The home occupation changes the outside appearance of the dwelling;
- b. Goods, stock in trade, or other commodities are displayed;
- c. It results in the outside storage or display of anything;
- d. Any on-premises retail sales occur;
- e. More than one person not a resident on the premises is employed in connection with the occupation;
- f. It generates traffic, parking, sewerage, or water use in excess of what is normal in the residential neighborhood;
- g. It results in the off-street or on-street parking of more than two vehicles at any one time not owned by members of the occupant household;
- h. Creates a hazard to persons or property;
- i. Is a nuisance;
- j. It creates objectionable traffic, noise, fumes, odor, dust or electrical interference; or
- k. More than 25 percent of the total gross floor area of the residential building plus other buildings used for the occupation, or more than 500 square feet of gross floor area, whichever is less, is used for home occupation purposes.

**3. Home occupation standards.**

- a. The residential character of the lot and dwelling shall be maintained. Neither the interior nor the exterior of the dwelling shall be structurally altered so as to require compliance with nonresidential construction codes to accommodate the home occupation. A sign up to four square feet in area and four feet in height may be allowed as noted in Article 7, provided a sign permit is obtained.
- b. No additional buildings or structures shall be added on the property to accommodate the home occupation.
- c. No outdoor storage or separate entrance shall be permitted.
- d. Instruction in music, dancing and similar subjects shall be limited to two students at a time.
- e. Any activities involving outside visitors or clients shall be limited to the hours between 8:00 a.m. and 8:00 p.m.

**4. Exclusions to home occupations.** The following are expressly prohibited as home occupations:

- a. Animal hospitals, stables, or kennels;
- b. Barber, beauty and other personal service shops;
- c. Dance studios, schools;
- d. Mortuaries;
- e. Private clubs;
- f. Repair shops;
- g. Restaurants;
- h. Automobile paint or repair shops; or
- i. Doctor, dentist, veterinarian or other medically related office.

**G. Home occupations in the Neighborhood Office zoning district.**

**1. Defined.** A commercial activity in a single family dwelling located in the Neighborhood Office district that:

- a. Is conducted by a person on the same lot where such person resides; and
- b. Is not so insubstantial or incidental or is not so commonly associated with the residential use as to be regarded as an accessory use, but that can be conducted without any significantly

adverse impact on the surrounding neighborhood.

2. **Uses not permitted.** A home occupation use is not allowed if:
  - a. The home occupation changes the outside appearance of the dwelling;
  - b. Goods, stock in trade, or other commodities are displayed;
  - c. It results in the outside storage or display of anything;
  - d. Any on-premises retail sales occur;
  - e. More than six people not a resident on the premises are employed in connection with the occupation;
  - f. It generates traffic, parking, sewerage, or water use in excess of what is normal in the residential neighborhood;
  - g. It results in any on-street parking of vehicles;
  - h. Creates a hazard to persons or property;
  - i. Is a nuisance;
  - j. It creates objectionable traffic, noise, fumes, odor, dust or electrical interference; or
  - k. More than 50 percent of the total gross floor area of the residential building plus other buildings used for the occupation, or more than 700 square feet of gross floor area, whichever is less, is used for home occupation purposes.
3. **Home occupation standards.**
  - a. The residential character of the lot and dwelling shall be maintained. The dwelling must comply with all applicable NC Building Codes necessary to accommodate the home occupation.
  - b. A sign up to four square feet in area and four feet in height may be allowed as noted in Article 7 provided a sign permit is obtained.
  - c. No additional buildings or structures shall be added on the property to accommodate the home occupation.
  - d. No outdoor storage or separate entrance shall be permitted.
  - e. Instruction in music, dancing and similar subjects shall be limited to two students at a time.
  - f. All activities involving the home occupation limited to the hours between 7:30 a.m. and 8:00 p.m.
  - g. Off-street parking shall be provided in the amount of one parking space per employee in addition to required parking for the residential use of the dwelling. All parking must be designed to meet the requirements of Article 7 of the UDO.
  - h. Commercial vehicles as defined in Section 5.4.3(a) are prohibited as part of the home occupation.
4. **Exclusions to home occupations.** The following are expressly prohibited as home occupations:
  - a. Animal hospitals, stables, or kennels;
  - b. Dance studios, schools;
  - c. Mortuaries;
  - d. Private clubs;
  - e. Repair shops;
  - f. Restaurants;
  - g. Automobile paint or repair shops; or
  - h. Doctor, dentist, veterinarian or other medically related office.
- H. **Fences and walls.** Fences and walls are permitted in any yard or along the edge of any yard and to such heights as follows, provided the vision necessary for safe vehicular and pedestrian movement on driveways and streets is not impeded:
  1. **All residential, OI, NC and CR districts.** Open and solid fences to four feet in front and corner side yards; solid fences to six feet in side and rear

- yards; open fences to any structurally-sound height in side and rear yards; solid rear and side yard fences to eight feet as a special exception if granted by the Board of Adjustment.
2. **Service Business (SB) districts.** Solid fences to four feet in front yards; solid fences to ten feet in side and rear yards; open fences to any structurally-sound height in any yard.
  3. **Industrial districts (I-1, I-2).** Solid and open fences to any structurally-sound height.
  4. **Salvage operations.** Solid fences not less than eight feet in height must be provided to enclose any salvage, scrap or reclamation operation.
  5. **Swimming pools.** Swimming pools shall be completely isolated from adjacent properties and from streets by a fence or wall having a minimum height of four feet, and a maximum height as provided above, constructed so as to prevent the passage of small children.
  6. **Water impoundment ponds or other water feature.**
    - a. Where a water impoundment pond or other water feature is located more than 100 feet from the property line of any adjacent residential use or zoning district and provides an aquatic shelf acceptable to the Town Engineer, no fence shall be required.
    - b. Where no such shelf is proposed, or the site is located closer than 100 feet to the property line of any residential use or zoning district, the pond or water feature shall be fenced and landscaped.
    - c. As an alternative to subparagraphs a. and b. above, a pre-existing pond may be retained without fencing if the real property on which it is situated is owned by a homeowners' association which maintains a liability insurance policy, prepaid annually, with minimum limits of \$1,000,000 which lists the Town as an additional insured; the H.O.A. must submit an initial budget which provides for payment of the premium, and must assure that its agent annually certifies such coverage to the Town. A lapse in coverage shall be punishable as a misdemeanor. The homeowners' association shall notify the Town of any lapse in coverage. The declaration shall provide that any person or entity which pays the delinquent premium has a lien on the common areas and on each lot affected by the declaration. Lapse of coverage is also enforceable by any other enforcement means available to the Town, including nuisance abatement, civil penalty, injunctive relief and otherwise.
  7. **Maintenance and appearance standards.** These provisions shall apply to all fences and walls installed as part of an approved development screening requirement and to fences and walls that are an accessory structure to a residential or commercial property visible from a major or minor thoroughfare. Streets considered major and minor thoroughfares are listed under Subsection 5.4(H)(7)(h). The responsibility for maintenance of fences and walls shall be the property owner or an authorized designee.
    - a. A fence or wall shall not be disfigured [by] such as, but not limited to, graffiti, cracks, peeling paint or other material.
    - b. A fence shall not stand with bent or broken supports.
    - c. Fences shall be kept free of missing boards and gaps.
    - d. Repair of fences and walls shall be completed with the same or an acceptable similar material as the original structure. Size, width and other dimensional attributes of existing fences and walls shall be used for replacement material.
    - e. When portions of fences and walls are removed or taken down with no intention to rebuild or replace, all portions of the fence must be

removed. In cases where the fence or wall is part of the screening required for an approved development project, the fence or wall must be replaced consistent with the provisions of this section.

- f. If a nonconforming fence or wall is damaged and it is determined by the Planning Director that such damage is greater than 50 percent of the replacement value of the entire fence or wall, the entire fence or wall must be reconstructed to conform with the provisions regulating fences and walls.
- g. Fences shall be constructed such that exposed framing faces the interior yard and not visible from the street right-of-way.
- h. The provisions of this section apply to all existing or future major or minor thoroughfares listed on the Town's adopted Transportation Plan as amended.
  - (1) Major thoroughfares: Garner Road, Jones Sausage Road, Mechanical Boulevard, N.C. 50, Old Stage Road, Ten Ten Road, Timber Drive, U.S. 70, U.S. 401, Vandora Springs Road, and White Oak Road.
  - (2) Minor thoroughfares: Auburn-Knightdale Road, Auburn Church Road, Aversboro Road, Buffalo Road, Creech Road, Grovemont Road, New Bethel Church Road, New Rand Road, Rand Road, Woodland Road, and Yeargan Road South.
- i. An appeal by any person aggrieved by a final order, interpretation or decision of the Planning Director, Building Official or other administrator of the Town may be taken to the Board of Adjustment in accordance with Article 3.

**I. Towers and antennas or satellite dishes 35 feet tall or less.**

- 1. Towers and antennas or satellite dishes 35 feet tall or less, mounted on the ground are considered accessory uses and structures in all zones provided they meet the following criteria:
  - a. Towers and antennas or satellite dish antennas shall not be located in a public right-of-way or public easement.
  - b. Towers and antennas or satellite dish antennas shall be prohibited in front and corner-side street yards in all residential districts.
  - c. Towers and antennas or satellite dish antennas shall meet the applicable rear or interior side yard setback requirement in all residential zoning districts.
  - d. Satellite dish antennas in all residential zoning districts shall not exceed a height of 20 feet and 12 feet in diameter and shall be limited to one device per lot. A satellite dish that exceeds four feet in diameter shall be constructed of black mesh material.
  - e. Towers and antennas or satellite dish antennas shall meet the applicable yard setback requirement in all nonresidential districts.
  - f. In addition, the following criteria must be met:
    - (1) The owner of a tower and antenna or satellite dish shall certify that radio, television or similar reception for adjoining properties will not be disturbed or diminished.
    - (2) Advertising copy or any logo which constitutes a sign are prohibited on any tower and antenna or satellite dish antenna in any zoning district.
    - (3) A satellite dish antenna located in a residential zoning district shall be screened from all street views. The screen shall be made of plant materials enclosed fences or walls, earthen beams or any combination thereof which is immediately adjacent to the dish antenna. Such screening

shall be a height of six feet above ground elevation.

**J. Towers and antennas or satellite dishes, 20 feet tall or less.**

1. Towers and antennas or satellite dishes, 20 feet tall or less, mounted on the roof of a building or structure are considered accessory uses in all zones provided they meet the following criteria:
  - a. The applicant shall submit a site plan and roof plan showing the exact location of the satellite dish antenna and how its location and/or architectural enhancements will provide a 50 percent screen of the structure from all street views for dish antennas located in nonresidential districts and a 75 percent screen from all street views in residential districts.
  - b. The applicant shall certify that radio or television or similar reception for adjoining properties will not be disturbed or diminished by a satellite dish.
  - c. Advertising copy or logos which meets the definition of a sign shall not be permitted on any tower and antenna or satellite dish antenna in any zoning district.
  - d. A roof mounted satellite dish antenna in a residential district that exceeds four feet in diameter shall be constructed of black mesh material.
2. The Board of Adjustment may grant an exception to these requirements regarding the location, height and setback requirements provided the Board concludes the following conditions have been satisfied.
  - a. The applicant provides acceptable evidence that literal compliance with the required locational or dimensional standards will result in the obstruction of the antenna or satellite dish's reception and will not permit the normal use of the antenna or satellite dish.
  - b. The applicant provides acceptable evidence to the Board of Adjustment that the granting of the exception is the minimum necessary to operate the antenna or satellite dish in a normal manner according to the manufacturer's specifications.
  - c. In addition to the above required findings, in order to grant an exception the Board of Adjustment must find the following:
    - (1) That the request will be in general harmony with adjoining properties;
    - (2) That the request will not endanger the public safety or welfare; and
    - (3) That the request does not violate any other local, state or federal laws or regulations.

**K. Accessory solar energy systems.**

1. All zoning districts: Solar panels shall not create a traffic or safety hazard; solar panels shall be arranged, angled or sited to minimize glare or reflection onto adjoining properties and rights-of-way. Panels shall have a textured or anti-reflective surface or coating. Mirrors or mirrored panels are prohibited.
2. NO, NC, O&I, CR, SB, I-1, I-2 and MXD-1 zoning districts:
  - a. The maximum height for all ground-mounted solar panels and related equipment shall not exceed 15 feet. This includes solar panels at maximum tilt.
  - b. The area for ground-mounted panels and equipment shall be no more than 25% of the principal building's footprint.
  - c. Ground-mounted panels are restricted to the interior side and rear yards only, and shall not be located within any perimeter buffer required by Article 7.



- d. Flush-mounted roof panels are exempt from the screening of objectionable views requirements of Article 7.
  - e. Any roof panel not installed flush to the roof surface shall be 100% screened from view in accordance with the screening of objectionable views requirements of Article 7.
3. CBD and all residential zoning districts: Only flush-mounted solar roof panels or solar shingles are permitted.

(Ord. No. 3396, § 11, 4-3-06; Ord. No. 3418, §§ 1--5, 7-5-06; Ord. No. 3519, 7-7-08; Ord. No. 3523, § 1, 8-4-08; Ord. No. 3780, § 9, 7-7-15)

**5.4. Temporary uses.**

- A. **Permit required.** A temporary use or structure for one or more of the following described uses in paragraph C., below, shall be permitted in any district. All temporary uses and structures shall obtain a temporary use permit pursuant to the procedures set forth in Article 3.
- B. **General regulations.** The general regulations of this section shall apply to all allowed temporary uses unless otherwise expressly stated.
  - 1. Permanent changes prohibited. Permanent changes to the site of a temporary use are prohibited.
  - 2. Accessory signage.
    - a. Permanent signs accessory to temporary uses are prohibited;
    - b. Signs accessory to temporary uses shall be limited to the premises of the temporary use except as specifically permitted under Article 7.
    - c. Not more than one double-faced, non-illuminated sign shall be permitted;
    - d. Said sign shall not exceed 32 square feet in area nor eight feet in height and shall be set back not less than five feet from the front and/or side property line;
    - e. Signs accessory to temporary uses require a permit; and
    - f. All signs accessory to temporary uses shall be removed when the activity ends.
  - 3. Temporary uses shall not violate any applicable conditions of approval that apply to the principal use on the site.
  - 4. The operator must obtain all other required permits applicable to the activity, such as health department permits.
  - 5. All temporary structures shall be erected in a safe manner in accordance with any applicable Town codes, ordinances or standards.
    - a. No temporary use shall be placed on any public sidewalk, public street, or other public property except as provided in the Town of Garner Code of Ordinances; and
    - b. Electrical and utility connections, if applicable, shall be approved by the Town.
- C. **Temporary uses allowed.** Temporary uses shall be allowed in accordance with the standards of this section.

**1. Table of temporary uses permitted by district:**

<b>Allowable Temporary Use</b>	<b>R40</b>	<b>R-20, R-15, R-12, R-9, RMH, MF-1, MF-2</b>	<b>NO, NC, CBD</b>	<b>OI, CR, SB</b>	<b>I-1, I-2</b>
--	------------	---	--------------------	-------------------	-----------------

Carnivals, Fairs, Circuses, Concerts and Similar Uses	Permit Required	Not Allowed; except rodeos in the R-20 district, subject to all activities being located a minimum of 100 feet from any lot line zoned residential or used as a residence with Permit Required	Permit Required	Permit Required	Permit Required
Natural Disasters and Emergencies Offices	Allowed	Allowed	Allowed	Allowed	Allowed
Parking Lot Sales	Not Allowed	Not Allowed	Not Allowed	Permit Required	Permit Required
Seasonal Outdoor Sales	Not Allowed	Not Allowed	Permit Required	Permit Required	Permit Required
Temporary Construction, Security, Real Estate Sales Offices	Permit Required	Permit Required	Permit Required	Permit Required	Permit Required
Yard or Garage Sales	Allowed	Allowed	Not Allowed	Not Allowed	Not Allowed
Temporary Storage Container	Registration Required	Registration Required	Registration Required; Permit Required after 15 days	Registration Required; Permit Required after 15 days	Registration Required; Permit Required after 15 days

2. **Carnivals, fairs, circuses, concerts and other public entertainment.**  
 Such temporary, outdoor events shall be governed by the provisions of the Town of Garner Code of Ordinances. No person shall permit, maintain, promote, conduct, advertise, act as entrepreneur, undertake, organize, manage or sell or give tickets to an actual or reasonably anticipated assembly of 500 or more people which continues or can reasonably be expected to continue for 18 or more consecutive hours, whether on public or private property, unless the standards of this section are met.

**a. Exemptions.**

- (1) This section shall not apply to any regularly established, permanent place of worship, stadium, athletic field, arena, auditorium, coliseum, or other similar permanently established place of assembly for assemblies that do not exceed by more than 250 people the maximum seating capacity of the structure where the assembly is held.
- (2) This section shall not apply to government-sponsored fairs held on regularly established fairgrounds nor to assemblies required to be licensed by other ordinances and regulations

of the Town.

- b. **Required facilities.** Prior to commencement of the assembly, the organizer shall provide the following facilities to ensure the assembly causes as little disruption and inconvenience as possible to adjacent properties, neighborhoods and traffic patterns.
- (1) A fence completely enclosing the proposed location, of sufficient height and strength to prevent people in excess of the maximum permissible number from gaining access to the assembly grounds, which shall have at least four gates, at least one at or near four opposite points of the compass..
  - (2) Potable water meeting all federal and state requirements for purity, sufficient to provide drinking water for the maximum number of people to be assembled at the rate of at least one gallon per person per day.
  - (3) Separate enclosed toilets for males and females, meeting all state and local specifications, conveniently located throughout the grounds, sufficient to provide facilities for the maximum number of people to be assembled at the rate of at least one toilet for every 200 females and at least one toilet for every 300 males, together with an efficient, sanitary means of disposing of waste matter deposited, which is in compliance with all state and local laws and regulations.
  - (4) A sanitary method of disposing of solid waste in compliance with state and local laws and regulations, sufficient to dispose of the solid waste production of the maximum number of people to be assembled at the rate of at least two and one-half pounds of solid waste per person per day, together with a plan for holding and a plan for collecting all such waste at least once each day of the assembly and sufficient trash cans with V-lids and personnel to perform the task.
  - (5) EMS personnel and at least one emergency ambulance must be available for use at all times.
  - (6) If the assembly is to continue during hours of darkness, illumination sufficient to light the entire area of the assembly at the rate of at least five foot-candles, but not to shine unreasonably beyond the boundary enclosed location of the assembly.
  - (7) Security guards, either regularly employed, duly sworn, off-duty North Carolina peace officers or private guards licensed in North Carolina, sufficient to provide adequate security for the maximum number of people to be assembled at the rate of at least one security guard for every 750 people.
  - (8) Fire protection, including alarms, extinguishing devices and fire lanes and escapes, sufficient to meet all state and local standards for the location of the assembly as set forth in the North Carolina Administrative Code and ordinances of the Town, and sufficient emergency personnel to efficiently operate the required equipment.
  - (9) All reasonably necessary precautions to ensure that the sound of the assembly will not carry unreasonably beyond the enclosed boundaries of the location of the assembly.
  - (10) Traffic control plan that is acceptable to the Planning,

## Engineering and Police Departments.

3. **Natural disasters and emergencies.** Temporary uses and structures needed as the result of a natural disaster or other health and safety emergencies are allowed for the duration of the emergency, but shall be coordinated with the Town Manager's office.
4. **Parking lot sales.** Temporary outdoor retail sales on private property are permitted subject to the following:
  - a. Temporary outdoor retail sales are only allowed on property with an already operating permitted, and licensed if applicable, commercial or industrial principal use. Locating on vacant property or on property with a vacant or abandoned use is not permitted.
  - b. Temporary outdoor retail sales refers to the sale of goods or merchandise that are not generally sold as part of the principal use's inventory. Sales for the temporary outdoor retail operation shall be separate and apart from sales for the principal use.
  - c. The proposed temporary outdoor use shall not conflict with principal activities conducted on the site.
  - d. The sales and display area of the temporary outdoor retail use shall not exceed ten percent of the gross floor area of the principal building on the premises.
  - e. Only one temporary outdoor retail use is allowed per site at a time. The use shall last no longer than three consecutive days. Permits for no more than three such temporary outdoor retail sales shall be issued for a given location within a single calendar year.
  - f. A temporary retail use operator shall operate not more than three such uses anywhere in the Town within a single calendar year.
  - g. The temporary retail use shall operate only when the principal use is operating.
  - h. No sales shall be conducted from a truck or other vehicle.
  - i. It shall be unlawful to conduct business within 500 feet of the entrance of any place of business that sells the same commodity.
  - j. Items allowed for sale may include food, but may not include potentially hazardous food (such as uncooked and unprepared fish and seafood products).
  - k. Second-hand goods may not be sold under this paragraph.
5. **Seasonal outdoor sales.** Seasonal outdoor sales for Christmas trees or Halloween pumpkins are allowed at a religious institution or school regardless of zoning classification. Each seasonal sales activity is limited to a maximum of 45 consecutive days. Not more than three events are allowed per calendar year subject to the following provisions:
  - a. Permits for Christmas tree sales shall expire on December 26th. The lot, and any abutting private or public property, shall be cleaned and any remaining trees shall be disposed of by an approved method on or before December 31st of the year of issue of said permit.
  - b. The Planning Director shall require the applicant to deposit such sum as specified in the schedule of fees to guarantee the proper cleaning of the site and proper disposal of any remaining materials.
  - c. Any temporary outdoor storage shall be subject to the requirements of Article 7.
  - d. A temporary use permit shall not be required for seasonal outdoor sales when such sales are part of the inventory of an established business holding a valid building permit.
6. **Temporary construction, security, real estate sales offices.** The

applicant for a temporary use permit for such temporary office shall comply with all conditions imposed by the Planning Director, which conditions may include fencing, surfacing, setbacks, etc., as deemed necessary to ensure no undue interference with the use and enjoyment of neighboring property. Such office shall be located within a reasonable distance, as determined by the Planning Director, of the primary development or improvement.

- a. The owner of a construction project may place on the construction site and utilize a trailer coach as a temporary office for use by construction, security, and real estate sales personnel.
- b. The temporary office shall be located on the lot on which construction or development is occurring and shall not be located within 25 feet of any abutting residential use.
- c. The office shall be removed within ten days after final inspection of the permanent structure or expiration of the corresponding building permit, whichever event occurs first. In the case of residential development projects, the office must be removed within ten days of sale or lease of all dwelling units.
- d. The owner of a permitted business who requires security protection during hours of closure may maintain a travel trailer for that purpose until a permanent facility can be constructed. In no case shall the use of such security trailer be for longer than a six month period.

7. **Yard or garage sales accessory to a dwelling.** No temporary use permit is required for a yard or garage sale accessory to a residential dwelling, religious institution or school, subject to the following conditions.

- a. All yard and garage sales shall be conducted so that no goods offered for sale are located on any public street or sidewalk, and so that vehicle and pedestrian traffic on public streets and sidewalks is not obstructed.
- b. No sign advertising a yard or garage sale may be posted on any public property.
- c. Only goods of the property owner or tenant shall be sold.

8. **Other uses.** The Planning Director may approve other temporary uses and activities or special events including specific time limits, if it is determined that such uses would not jeopardize the health, safety or general welfare, or be injurious or detrimental to properties adjacent to, or in the vicinity of, the proposed location of the activity.

9. **Temporary storage container.** A transportable unit designed and used primarily for temporary storage of household goods, commodities, building materials and other items on a limited basis.

a. **Residential use or district.**

- (1) Temporary storage containers in residential zoning districts or use must be registered by the service provider or property owner with the Town of Garner Planning Department. Storage containers are permitted for a total of 60 consecutive days.
- (2) If placement of a storage container is in conjunction with an active construction permit for renovation, the container is permitted for the duration of the construction permit.
- (3) Placement of unit is restricted to the driveway or designated parking area with a minimum distance of ten feet from the existing structure. If, because of lot size or obstructions the portable storage unit cannot be located in a driveway or designated parking area, then the placement of the unit shall be contiguous to the parking area and maintain a five foot

setback from side and rear property line.

- (4) Temporary storage containers for any residential housing type other than single family detached residences shall be located in an onsite vehicular use area and shall not obstruct any drive aisle or block any required parking space.
- (5) Temporary storage containers shall not be located in the street or in such a manner to impair a motor vehicle operator, bicyclist or pedestrian's view, upon entering or exiting the street, or obstruct the flow of vehicular or pedestrian traffic.
- (6) Temporary storage containers shall be no greater than eight feet six inches in height, eight feet in width and 20 feet in length.
- (7) A maximum of two temporary storage containers may be placed on a property at any one time.
- (8) Temporary storage containers may be placed on property for a maximum of two times per year.
- (9) Temporary storage containers shall be in good condition; i.e., no rust, primer patches, etc. Signage may identify the owner or provider of the storage container only and shall not include the advertisement of any other product or service.
- (10) Temporary storage containers on property at the time of adoption of this ordinance must comply with this section.
- (11) Temporary storage containers may not be used as permanent accessory buildings.
- (12) Storage containers used for new construction shall comply with the requirements outlined in Article 5 for temporary construction offices.

**b. Nonresidential use or district.**

- (1) A temporary storage unit in nonresidential zoning districts or uses, for 15 days or less must be registered with the Town of Garner Planning Department by the storage unit provider or business owner.
- (2) A temporary use permit is required for temporary storage containers in nonresidential zoning districts or use for more than 15 days. Applications for the temporary use permits shall include a site plan, showing the proposed location of the container on the site in relation to the building, street, driveway and parking area; such other information as may be required to determine full compliance with this and other applicable ordinances of the Town; contact information for the leasing company or owner of the storage container.
- (3) [Reserved.]
- (4) Temporary storage containers may be placed on property for a maximum of 90 consecutive days. Placement for greater than 90 days shall be considered permanent and requires site plan approval and compliance with applicable ordinances of the Town.
- (5) If placement of a temporary storage container is in conjunction with an active construction permit for renovations, etc., the container is permitted for the duration of the construction permit.
- (6) Placement of temporary storage containers for nonresidential zoning districts and uses shall meet all of the following provisions:

- 
- (a) The container shall be placed to minimize visibility from adjacent properties and rights-of-way; in the rear yard when possible.
  - (b) The container shall meet building setbacks.
  - (c) Placement is limited to areas that are surfaced with asphalt, concrete, gravel or other materials equal in quality.
  - (d) Placement of the storage container in an existing parking area may not reduce the amount of available parking below the required minimum.
  - (e) The storage container must be a minimum of ten feet from the primary structure.
- (7) Temporary storage containers shall be no greater than eight feet six inches in height, eight feet in width and 40 feet in length.
  - (8) A maximum of two temporary storage containers may be placed on a property at any one time.
  - (9) Temporary storage containers shall be in good condition; i.e., no rust, primer patches, etc. Signage may identify the owner or provider of the storage container only and shall not include the advertisement of any other product or service.
  - (10) Temporary storage containers on property at the time of adoption of this ordinance must comply with this section and secure a temporary use permit for the unit.
  - (11) Storage containers used for new construction shall comply with the requirements outlined in Article 5 for temporary construction offices.

**D. Prohibited temporary uses.**

- 1. Sales of firearms.
- 2. Sales of any materials characterized by an emphasis on specified anatomical areas or specified sexual activities.

(Ord. No. 3559, §§ 1, 2, 7-7-09)

**6.1. Residential district development standards.**

A. Single-family residential dimensional standards.

Single-Family Residential Districts						
Lot Dimensions:	R-40	R-20	R-15	R-12	R-9	RMH
Minimum Lot Area	40,000 sq. ft.	20,000 sq. ft.	15,000 sq. ft.	12,000 sq. ft.	9,000 sq. ft.	5,000 sq. ft.* 70 ft. in Park
Minimum Lot Width	100 ft.	90 ft.	80 ft.	70 ft.	60 ft.	50 ft. in Subdiv.
Minimum Yards:						
Front Yard	35 ft.	35 ft.	30 ft.	30 ft.	25 ft.	25 ft.
Rear Yard	25 ft.	25 ft.	20 ft.	20 ft.	20 ft.	25 ft.
Side Yard	10 ft.	10 ft.	6' minimum 15' combined**	6' minimum 15' combined**	6' minimum 15' combined**	10 ft.
Corner Lot Side Yard	25 ft.	25 ft.	20 ft.	20 ft.	20 ft.	25 ft.
Maximum Height	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.
Maximum Gross DU/Acre (Applies to Cluster Only)	0.8	1.5	2.0	2.5	3.0	—

\* Note: 10,000 square foot minimum required for RMH lots without both public water and sewer. Wake County Health Department may require larger lot sizes.

\*\* Interior side setback distance less than 10 feet requires a five-foot property maintenance easement be provided on the adjoining lot and recorded on the final subdivision plat.

B. **Special lot area reduction adjacent to conservation or other designated buffer.** Lots adjacent to a conservation or other officially designated buffer may be reduced by up to 20 percent where the buffer itself would, in theory, make up the remaining lot size. No lots shall extend into the conservation buffer other designated buffer and such buffers shall be protected in perpetuity by a conservation easement.

(Ord. No. 3813, § 1, 4-19-16)

Town of Garner Unified Development Ordinance (UDO)

**6.2. Multifamily residential dimensional standards.**

Standards	Multifamily Districts	
	MF-1	MF-2
<b>Lot Dimensions: Lot area, minimum</b>		
Two-family lot	9,000 sq. ft.	8,000 sq. ft.
MF, first unit	6,000 sq. ft.	5,000 sq. ft.



MF, additional units	4,500 sq. ft.	3,000 sq. ft.
Lot width, minimum	60 ft.	60 ft.
<b>Minimum Yards:</b>		
Front yard	35 ft.	35 ft.
Rear yard	25 ft.	25 ft.
Side yard	15 ft.	15 ft.
Corner lot side yard	25 ft.	25 ft.
Maximum Height	See Section 6.10.F	See Section 6.10.F

**6.3. Residential cluster development.**

A. **Purpose.** The purpose of cluster development regulations is to provide an optional land development procedure which results in the preservation of open space; protection of streams, floodplain areas and significant existing tree cover; promotion of more efficient subdivision street and infrastructure networks; and encouragement of a variety of styles or types of residences. Cluster development should provide a total living environment for residential purposes that is in compliance with the Comprehensive Growth Plan and other applicable local, state or federal laws or regulations.

**B. General requirements.**

1. Cluster developments shall be developed on tracts of five acres or more.
2. Cluster developments may have as permissible uses: single-family detached, zero lot line and village houses.
3. Public sanitary sewer and water connections shall be required for every lot or dwelling unit in a cluster development, except in the R-40 district, where the Wake County Health Department may approve a shared private sanitary sewer and water system.
4. A master plan shall be required to be submitted if the cluster development is to be the initial phase of a larger project. Final plat approval procedures according to the requirements of the UDO shall apply to all cluster developments. Town of Garner Unified Development Ordinance (UDO)
5. Each individual cluster development lot containing single-family detached or attached units shall have public or private street access according to the criteria listed in applicable sections of this UDO.
6. A homeowner's association shall be established to own and maintain all property or facilities held in common private ownership. Documents regarding the homeowner's association shall be submitted to the Town for approval with the final plat and shall be duly recorded with the final plat in the Wake County Register of Deeds Office by the applicant.
7. A pre-application conference between the developer or agent and the staff of the Town of Garner shall be required.

**C. Dimensional standards.**

1. The maximum permissible gross density in a cluster development shall be that set forth for the applicable single family zoning district in the Table in Article 6. Cluster development in the MF-1 and MF-2 zoning districts shall be limited to a maximum of six dwelling units per acre. Land not required for residential lots and associated development shall be maintained as undisturbed permanent open space except for required stormwater management devices provided no more than 25 percent of open spaces areas are devoted to such uses.
2. Cluster developments containing single-family development may use the minimum dimensional standards shown in the table below.

Cluster Development	R-40, R-20	R-15, R-12, R-9	MF-1, MF-2
<b>Lot Dimensions:</b>			
Lot area, minimum	12,000 sq. ft.	6,000 sq. ft.	5,000 sq. ft.
Lot width, minimum	70 ft.	50 ft.	50 ft.
<b>Minimum Yards:</b>			
Front yard	35 ft.	20 ft.	20 ft.
Rear yard	25 ft.	20 ft.	15 ft.*
Side yard	10 ft.	10 ft.	7.5 ft.**
Corner lot side yard	25 ft.	20 ft.	15 ft.***
Maximum Height	35 ft.	35 ft.	35 ft.

\* The rear setback for lots that abut open space may be reduced to ten feet as long as the overall width still meets or exceeds the otherwise required setback width.

\*\* The interior side setback may be reduced to a minimum of five feet when individual building footprints are shown on the preliminary subdivision plat. In such cases a five-foot property maintenance easement must be provided on the adjoining property and recorded on the final subdivision plat.

\*\*\* The corner side setback may be reduced to a minimum of ten feet when individual building footprints are shown on the preliminary subdivision plat and no garage access is provided on the corner side and the Town Engineer determines there is no sight distance obstruction or public safety concern that results.

3. a. When a cluster development located in the R-40, R-20, R-15, R-12 or R-9 zoning district adjoins a single family residential zoning district or an existing single family development then one of the following shall be required:
  - i. if the perimeter row of lots in the cluster development is to be reduced in size below the minimum lot size of the adjoining single family residential zoning district, then a perimeter buffer measuring at least 50 feet in width along the affected perimeter of the said cluster development shall be required. No land disturbing are allowed within this buffer.
  - ii. if the perimeter row of lots in the cluster development is not reduced in size below the minimum lot size of the adjoining single family residential zoning district or development, then a 50 foot perimeter buffer is not required.
- b. i. Cluster development in MF-1 and MF-2 zoning districts shall provide a 30 foot perimeter buffer along the entire boundary of the development that adjoins a single family residential zoning district or a single family development. No land disturbing activities are allowed within this buffer except for required landscaping. Such perimeter buffer must have the required mix of plant material that meets 50 percent of the perimeter landscape buffer planting requirements of the Landscape Ordinance.

- ii. No buffer shall be required where the lots are the same size or larger than those on the adjacent residential parcel.
  - 4. No garage door shall be located closer than the lesser of the minimum setback or 20 feet back from the right-of-way line, or rear edge of the adjacent sidewalk, whichever is greater, in order to ensure that vehicles parked on the driveway do not hinder pedestrian access.
- D. **Open space standards.** Open space in cluster development shall be no less than 25 percent of the gross area of the cluster development tract. All open space provided in a cluster development shall meet the following criteria in addition to the requirements of this UDO:
  - 1. Open space shall about 40 percent of the lots within the subdivision and shall be well distributed throughout the development so as to achieve the requirement herein.
  - 2. All open space areas shall be at least 20 feet in width, except the open space that is provided around the perimeter of a cluster development. Such open space areas shall be undisturbed.
  - 3. All open space shall be linked, either directly or across street rights-of-way.
- E. **Parking standards.** All cluster development shall meet the parking requirements of Article 7.

(Ord. No. 3417, § 1, 7-5-06)

#### 6.4. Alternative single-family options.

The following alternative single-family residential options are allowed only in residential cluster developments.

##### A. Zero lot line.

- 1. **Description.** A zero lot line development is where houses in a development on a common street frontage are shifted to one side of their lot. This provides for greater usable yard space on each lot. These developments require that planning for all of the house locations be done at the same time. Since the exact location of each house is predetermined, greater flexibility in site development standards are possible while assuring that single-family residential character is maintained.
- 2. **Setbacks.** The side building setback may be reduced to zero on one side of the house. This reduction does not apply to the street side setback or to the interior side setback adjacent to lots that are not part of the zero lot line project. The reduced setback may be located anywhere between the lot line and the minimum setback required for the district. The remaining side yard setback shall be equal to two times the side yard setback required for the district.
- 3. **Additional standards.**
  - a. **Distance between houses.** The minimum distance between all buildings in the development must be equal to twice the required side setback required by the underlying zoning district. A deed restriction must be recorded on the deed of each applicable lot to ensure continued compliance with this setback.
  - b. **Eaves.** The eaves on the side of a house with a reduced setback may project a maximum of 18 inches over the adjacent property line. In this case, an easement for the eave projection must be recorded on the deed for the lot where the projection occurs.
  - c. **Maintenance easement.** An easement between the two

property owners to allow for maintenance or repair of the house is required when the eaves or side wall of the house are within four feet of the adjacent property line. The easement on the adjacent property must provide at least five feet of unobstructed space between the furthestmost project of the structure and the edge of the easement. The easement shall be recorded on the subdivision plat.

- d. **Privacy.** If the side wall of the house is on the property line, or within three feet of the property line, windows or other openings that allow for visibility into the side yard of the adjacent lot are not allowed. Windows that do not allow visibility into the side yard of the adjacent lot, such as a clerestory window or a translucent window, are allowed. All materials within three feet of the property line shall be fire-rated to meet building code requirements.
- B. **Village house.** A village house may be permitted in a cluster development with a reduced front yard setback of 15 feet, provided that no front yard parking is allowed and alley or other rear access is provided for any garage.

### 6.5. Townhouse and condominium developments.

A. **In general.**

- 1. Townhouses and townhouse development occur in two different patterns:
  - a. Condominium (development with private drives and a homeowner's association); and
  - b. Fee simple townhouse (development with public or private streets and a homeowner's association).
- 2. The standards for each type of townhouse development are listed below.

B. **Condominium.** This form of townhouse development occurs on a unified parcel, where multiple townhouse units may lie on a single tract of land. The units may be made available through sale as condominium, or through lease (rental).

1. **Homeowner's association.**

- a. Homeowner's association declaration and by-law documents shall be submitted to the Town of Garner for acceptance.
- b. Such homeowner's association documents shall have adequate provisions to insure proper maintenance of all privately-owned areas such as, but not limited to, open space, recreational facilities and areas, parking lot areas and private drives.
- c. Applicants are encouraged to submit homeowner's association documents which contain provisions addressing exterior appearance and maintenance standards according to a set of architectural design criteria.
- d. The homeowner's association documents shall clearly state that the Town of Garner shall be held harmless from liability responsibility relative to the delivery of Town services on privately-owned property in the townhouse development.

2. **Interior roads.**

- a. Determination of whether interior roads shall be constructed as public streets or private drives or a combination of public streets and private drives shall be based upon recommendations from the Planning Department and Engineering Department. Consideration shall be given to the adopted major transportation plan, existing and proposed neighborhood streets and circulation needs, to the relationship of the site to adjoining lands, the size and shape of the tract to be developed, to the number of ultimate dwelling units

to be constructed on the tract and on adjoining lands and to anticipated traffic volumes.

- b. The determination of whether interior roads shall be public or private will consider only the minimum needs of the public for the public streets and will recognize the privacy, security and safety advantages of private drives. All public streets shall have curb and gutter according to Town standards. Private drives are interior circulation roads designed and constructed to carry vehicular traffic from a public street within or adjoining the site to terminal parking areas and service areas, or back to said public street.
- c. The design and arrangement of private streets shall be subject to review and approval by the Planning Department and Engineering Department.
  - (1) When there is a distance of 150 feet or more between an existing public street and points of refuse collection, a private drive shall be required.
  - (2) All portions of such private drives shall not be more than 1,000 feet from their point of public access.
  - (3) When the development is required to have a private drive, the private drive shall be paved to a minimum width of at least 27 feet, measured from edge of pavement. Concrete curb and gutter sections may be required, if determined necessary by the Planning, Engineering and Public Works Departments.
  - (4) A private drive may be constructed in the peripheral yard provided it is located a minimum distance of 25 feet off any property line or complies with the provisions of Article 7.
  - (5) A base course shall be applied to the entire required paved width of private drives and parking lots and shall consist of at least eight inches of compacted crushed stone.
  - (6) A surface course shall be applied to the entire required paved width of private drives and parking lots and shall consist of at least two inches of 1-2 asphalt paved surface.
  - (7) Cul-de-sac or dead-end streets shall be provided with a vehicular turning circle at least 80 feet in diameter, measured on the center line of the street or other acceptable design criteria for dead-end streets.
  - (8) Street jogs, intersections block lengths including cul-de-sac, street deflections shall conform to the design criteria set forth in Article 8.
  - (9) A permanent street address approved by the Planning Department shall be assigned to the private drives.

3. **Maintenance required.** Homeowner's association documents shall include adequate provisions to ensure proper maintenance by the homeowner's association of private drives, units, their structural components and exteriors, yard spaces and other commonly owned property and shall be recorded with the final plat.
4. **Minimum lot size.** There is no minimum lot size for individual units; density is controlled by district regulations. However, every individual lot shall meet the following criteria:
  - a. The minimum lot width is 16 feet;
  - b. The minimum frontage on a public street is 16 feet; and
  - c. The minimum front yard setback is 25 feet. (This setback is not in addition to the development-wide standard. However, where a 50 feet setback is required under development-wide standards, each affected lot must maintain the minimum 50-foot setback rather than the 25-foot setback.)

**C. Fee simple townhouse.**

1. **Special provisions.** This form of townhouse development involves attached housing units purchasable on a fee simple basis, on individual lots meeting minimum requirements and fronting on a dedicated public street, with or without provisions for commonly owned property controlled by a homeowner's association. This form of townhouse development differs from other townhouse developments in that no common areas may be required. Developers are encouraged to utilize restrictive covenants for townhouse developments that address architectural standards, exterior maintenance of units and other appropriate matters through homeowner association documents. It is strongly recommended that such agreements be made to insure the proper maintenance of units, their structural components and exteriors, and yard spaces. Where there is the provision of commonly owned land in a fee simple townhouse development a homeowner's association shall be required. Such documents shall be subject to the provisions of Article 6.
2. **Interior roads.**
  - a. Determination of whether interior roads shall be construed as public streets or private drives or a combination of public streets and private drives shall be based on recommendations from the Planning and Engineering Departments.
  - b. Consideration shall be given to the adopted major transportation plan, existing and proposed neighborhood streets and circulation needs, to the relationship of the site to adjoining lands, the size and shape of the tract to be developed, to the number of ultimate dwelling units to be constructed on the tract and on adjoining lands, and to anticipated traffic volumes.
  - c. The determination of whether interior roads shall be public or private will consider only the minimum needs of the public for the public streets and will recognize the privacy, security and safety advantages of private drives.
  - d. All public streets shall be constructed according to Town of Garner standards. All private drives shall be constructed according to the provisions of Article 6.
  - e. The issuance of any building permits shall not be permitted until a major subdivision final plat, meeting the appropriate requirements, has been approved by the Planning Director as set out in this UDO.
3. **Minimum lot size.** There is no minimum lot size for individual units;

density is controlled by district regulations. However, every individual lot shall meet the following criteria:

- a. The minimum lot width is 18 feet;
- b. The minimum frontage on a public street is 18 feet; and
- c. The minimum front yard setback is 25 feet where garages are accessed from the front. If rear access to garages is provided, the minimum front yard may be reduced to 15 feet.

(Ord. No. 3761, § 1, 2-2-15)

#### **6.6. Manufactured home parks and subdivisions.**

Manufactured home parks and subdivisions shall be subject to all applicable state and local regulations, as well as with the following standards.

- A. **Land area.** The minimum land area required for a manufactured housing park is three acres.
- B. **Density limitations.** Any lot or tract of land occupied by a manufactured housing park shall have a maximum density of five dwelling units per gross acre.
- C. **Lot size standards.** Single-family residential development in the RMH district requires a minimum 5,000 square foot lot for sites with both public water and sewer available, and a 10,000 square foot lot where either a well or septic system is used. Wake County Health Department regulations may require larger lots. Minimum lot widths shall be 50 feet in a manufactured home park and 70 feet in a manufactured home subdivision.
- D. **Orientation of manufactured homes.** No manufactured home shall face the narrow end of the manufactured unit to the public street unless the width of the unit is greater than 24 feet.
- E. **Separation of service buildings.** Every service building in a manufactured home park shall be at least 25 feet from the boundary of any other property in any residential zoning district.
- F. **Accessory structures in manufactured home parks.** No accessory structures, except common park structures, shall be located on manufactured home park spaces.
- G. **Required parking.** A minimum of two off-street parking spaces shall be provided for each dwelling unit within a manufactured housing park.
- H. **Street and drives.**
  1. No private drives are permitted within a manufactured home subdivision. Public streets must be constructed in accordance with Town of Garner standards.
  2. For manufactured home parks, the tract as whole shall have a minimum 20-foot frontage on a public right-of-way. Internal access may be by private drives. All private drives shall have a minimum of 24 feet of pavement. A minimum six-foot wide strip adjoining and parallel to the paved surface of the drive, on both sides, shall be reserved from use except for driveways, walkways and vegetation. The outer edge of the six-foot reserved strip is the limit of the reserved area referenced in previous sections of this UDO.
- I. **State standards.** All manufactured housing units shall conform to the State of North Carolina Standards for manufactured housing anchorage, tie downs and blocking.
- J. **Site plan.** Prior to the development of any new manufactured housing park established after the effective date of this UDO, and prior to the enlargement of any existing manufactured housing park, a site plan conforming to the requirements of this subsection shall be approved by

the Planning Director. The required site plan shall be drawn to scale and shall explicitly illustrate at least the following features.

1. Location and dimensions of all park boundaries.
2. Location of pavement on adjoining street rights-of-way.
3. Location and dimensions of any permanent improvements existing or planned within the park, including but not limited to the following:
  - a. Improved surfaces for common driveways, off-street parking and recreation areas.
  - b. Buildings for management, maintenance and recreational purposes.
  - c. Any other recreational facilities.
  - d. Any fences or walls.
  - e. The location of pipelines and systems for potable water distribution, sewage collection and fire protection, including location of all fire hydrants.

- K. **Subdivision plat required.** A subdivision plat in accordance with Section 3.5 is required for all manufactured home subdivisions.
- L. **Phasing.** Phasing of a proposed manufactured home park or subdivision may be allowed, provided the proposed phasing is approved by the Town Council and will not create undue hardships for the residents of the development or those vehicles that can reasonably be expected to service the development.

(Ord. No. 3558, § 2, 7-7-09)

**6.7. Manufactured homes.**

***Commentary: An individual manufactured home type A unit is permitted in the R-40 district or through rezoning to the -MH overlay.***

- A. **Application of standards.** There are three different classes (A, B, and C) of manufactured homes. The main differences are size, roof pitch and siding material.
- B. **Manufactured home class A.** A manufactured home meeting or exceeding the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction. Additionally, class A manufactured homes shall meet all of the following requirements:
  1. It shall be occupied as a single-family dwelling unit only;
  2. It shall have a minimum of two sections that when combined the total is a minimum of 24 feet in width;
  3. It shall have a length not exceeding four times its width, with length measured along the longest axis and width measured at the narrowest part of the shorter axis;
  4. The towing apparatus, wheels, axles and transporting lights shall be removed and shall not be included in measurements;
  5. The orientation of the structure must be consistent with that of the predominant number of units in the surrounding neighborhood. In special cases, the short axis (width) may face the road if the front door is incorporated in the unit's floor plan to be a part of the short axis;
  6. It shall be installed in accordance with the standards established by the North Carolina Department of Insurance. In addition, a continuous, permanent masonry foundation or masonry curtain wall constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for One and Two-Family Dwellings, un-pierced except for required ventilation and access, shall be installed under the perimeter of the manufactured home;



7. The exterior shall consist of one or more of the following:
    - a. Vinyl or metal siding (whose reflectivity does not exceed that of flat white paint);
    - b. Cedar or other wood siding;
    - c. Weather resistant press board siding; or
    - d. Stucco siding, brick or stone siding, which shall be comparable in composition, appearance and durability to the exterior siding commonly used in the standard residential construction of the surrounding neighborhood.
  8. The pitch of the roof shall have a minimum vertical rise of three and one-half feet for each 12 feet of horizontal run;
  9. The roof shall be finished with a roof covering that meets the minimum standards of the federal housing administration;
  10. All roof structures shall provide an eave projection of no less than six inches, which may include a gutter;
  11. Stairs, porches, entrance platforms, ramps and other means of entrance and exit to and from the manufactured home, shall be installed or constructed in compliance with the standards of the North Carolina Building Code, attached firmly to the primary structure, and anchored securely to the ground. Wood stairs shall only be used in conjunction with a porch or entrance platform with a minimum of 24 square feet. Use of wood stairs without a porch is prohibited at any entrance to a manufactured home;
  12. Minimum square footage of the home shall be compatible with the surrounding neighborhood. The length and size shall be no smaller than the average unit in this neighborhood; and
  13. For any unit on a lot that is less than 30,000 square feet, a community well or Town water and sewer is required. All units not connected to either a community or Town system shall present proof of utility approval by the Wake County Health Department.
- C. **Manufactured home class B.** A manufactured home meeting or exceeding the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction. Additionally, class B manufactured homes shall meet the following requirements:
1. It shall be occupied as a single-family dwelling unit only;
  2. It shall have a minimum of two sections that when combined the total is a minimum of 24 feet in width;
  3. There are no length requirements;
  4. The towing apparatus, wheels, axles and transporting lights shall be removed and shall not be included in measurements;
  5. The orientation of the structure must be consistent with that of the predominant number of units in the surrounding neighborhood. In special cases the short axis (width) may face the road if the front door is incorporated in the unit's floor plan to be a part of the short axis;
  6. It shall be installed in accordance with the standards established by the North Carolina Department of Insurance. In addition, a continuous, permanent masonry foundation or masonry curtain wall constructed in

accordance with the standards of the North Carolina Uniform Residential Building Code for One and Two-Family Dwellings, un-pierced except for required ventilation and access, shall be installed under the perimeter of the manufactured home;

7. Exterior standards are to be consistent with the industry's standards for class B;
8. The pitch of the roof shall have a minimum vertical rise of two and one-half feet for each 12 feet of horizontal run;
9. The roof shall be finished with a roof covering that meets the minimum standards of the federal housing administration;
10. There are no required eave projections;
11. Stairs, porches, entrance platforms, ramps, and other means of entrance and exit to and from the manufactured home, shall be installed or constructed in compliance with the standards of the North Carolina Building Code, attached firmly to the primary structure, and anchored securely to the ground. Wood stairs shall only be used in conjunction with a porch or entrance platform with a minimum of 24 square feet. Use of wood stairs without a porch is prohibited at any entrance to a manufactured home;
12. Minimum square footage of the home shall be compatible with the surrounding neighborhood. The length and size shall be no smaller than the average unit in this neighborhood; and
13. For any unit on a lot that is less than 30,000 square feet, a community well or Town water and sewer is required. All units not connected to either a community or Town system shall present proof of utility approval by the Wake County Health Department.

D. **Manufactured home class C.** Any single-wide manufactured home meeting or exceeding the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction, shall meet the following requirements:

1. It shall be occupied as a single-family dwelling unit only;
2. It shall have a minimum width of 14 feet;
3. There are no length requirements;
4. The towing apparatus, wheels, axles and transporting lights shall be removed and shall not be included in measurements;
5. There is no parallel orientation requirement;
6. All units shall be firmly anchored to the ground as required by the North Carolina Building Code and the Town shall designate and enforce a uniform type of foundation enclosure (skirting) for all manufactured home parks and subdivisions;
7. Exterior standards are to be approved by the Planning Director;
8. There are no roof pitch requirements;
9. The roof shall be finished with a roof covering that meets the minimum standards of the federal housing administration;
10. There are no required eave projections;
11. Stairs, porches, entrance platforms, ramps and other means of entrance and exit to and from the manufactured home, shall be installed or constructed in compliance with the standards of the North Carolina Building Code, attached firmly to the primary structure, and anchored securely to the ground. Wood stairs shall only be used in conjunction with a porch or entrance platform with a minimum of 24 square feet. It is the intent of this subsection to prohibit the use of wood stairs only at any entrance to a manufactured home;
12. There is no minimum square footage requirement; and
13. For any unit on a lot that is less than 30,000 square feet, a community

well or Town water and sewer is required. All units not connected to either a community or Town system shall present proof of utility approval by the Wake County Health Department.

- E. **Manufactured homes not located in RMH district.** The placement of a manufactured home in any R-40 district, or manufactured home floating zone (but not in RMH districts) must meet the following additional requirements. The purpose of these requirements is to protect the character of existing neighborhoods, and to establish new neighborhoods whose character is internally consistent, by achieving compatible exterior appearance between manufactured homes and stick- or modular-built homes on adjacent or nearby lots, or with other manufactured homes in an existing RMH district (appearance criteria). In satisfying this requirement, the applicant must also present illustrative examples of the types and design of structure they propose, plus photographs of at least five residences in the immediate vicinity in order to document that the exterior appearance of the proposed unit will be similar (as determined by the Planning Director) to the other homes that have been or will be constructed.

**6.8. Special development standards for single family and modular homes.**

- A. **General size and landscaping standards for modular and site-built homes.** The following standards shall apply only to new modular homes or single-family detached site-built homes. The provisions of this subsection shall not apply to properties zoned R-40 or additions to existing residential buildings.
  1. Foundation planting consisting of evergreen shrubs shall be installed along the entire front foundation wall of the building. Plant installation shall be a minimum of two feet in height planted at three- to four-foot intervals.
  2. All yard areas, excluding decorative landscaped areas, shall be appropriately graded and seeded up to 35 feet from the dwelling as applicable in order to establish a permanent lawn.
  3. A maximum 2.7 to 1 length to width ratio shall be required for new structures. The length shall be measured along the longest axis of the structure and the width shall be measured along the shortest axis of the structure.

(Ord. No. 3801, § 1, 12-7-15)

**6.9. Nonresidential district standards.**

- A. **Nonresidential development standards.** The following table illustrates the dimensional standards that apply in the Town's commercial, industrial and special purpose districts.

Standard	NO	NC	CBD	OI	CR	SB	I-1	I-2
<b>Lot Dimensions:</b>								
Lot area, minimum	6,000 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	None	None
Lot width, Minimum	60 ft.	60 ft.	60 ft.	60 ft.	60 ft.	60 ft.	100 ft.	100 ft.
Lot depth, minimum	None	None	None	None	None	None	None	None
<b>Minimum Yards:*</b>								
Front yard	35 ft.	35 ft.	None	35 ft.	35 ft.	35 ft.	50 ft.	50 ft.

Rear yard	25 ft.	0/25 ft.	0/15 ft.	25 ft.	0/25 ft.	0/25 ft.	0/50 ft.	0/50 ft.
Side yard	0/15 ft.	10/15 ft.	0/15 ft.	10/15 ft.	10/15 ft.	0/25 ft.	0/25 ft.	0/25 ft.
Corner lot side yard	35 ft.	35 ft.	20 ft.	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.
<b>Maximum Height</b>								
Maximum Net DU/Acre	35 ft.	35 ft.	None	None	None	None	None	None
	6,000 sq. ft. per single family detached dwelling unit	6,000 sq. ft. per unit	6,000 sq. ft. per unit	6,000 sq. ft. per unit	None	None	None	None

**\* Note:**

1. The minimum setback distance from a building to a street right-of-way is 35 feet; except front yard setbacks in the I-1 and I-2 districts required to be a minimum of 50 feet.
2. Where two-yard standards are shown in the tables above (0/15 feet, for example), the first standard shall apply if the lot is not adjacent to a residential, NC, NO or OI district. Additional fire-rated wall construction may be required on side and rear facades.

**B. Industrial performance standards.**

1. **In general.**

- a. Zoning regulations typically attempt to classify and segregate uses according to their differing impacts. For example, residences are usually allowed in certain zones and manufacturing plants in others because it is perceived that the impact of the latter would be detrimental to the former. Because the impacts associated with certain types of uses are well recognized, it is possible to regulate impacts indirectly by controlling the types of uses permissible in various zoning districts. Given the wide variety of impacts possible within the industrial use classification, it is not feasible to use an indirect method of controlling impacts. Therefore this part attempts to control impacts of industrial classification uses directly by establishing the performance standards set forth in this part.
- b. For the reasons set forth in paragraph above, it is necessary to use performance standards to determine what types of industrial and manufacturing uses (see Article 5) should be permissible in various zoning districts. However, the use of performance standards involves advance prediction of the extent to which a proposed development will generate negative impacts, and subsequent monitoring to determine the actual extent of such impacts. Because this advance prediction and subsequent verification may be cumbersome, time-consuming, and expensive, performance standards (other than noise standards) are applied only to uses within the industrial use classification.

2. **Smoke.**

- a. To determine the density of equivalent opacity of smoke, the Ringlemann Chart, as adopted and published by the United States

Department of Interior, Bureau of Mines Info. Circular 8333, May 1967, shall be used. The Ringlemann numbers cited refer to the area of the Ringlemann Chart that coincides most nearly with the visual equivalent opacity of the smoke emission observed.

- b. All measurements shall be taken at the point of emission of the smoke.
- c. In the OI, NC, CR, CBD, SB, MXD-I and all PUD districts, no industrial use classification use may emit from a vent, stack, chimney, or combustion process any smoke that is visible to the naked eye.
- d. In the I-1 district, no industrial use classification use may emit from a vent, stack, chimney, or combustion process any smoke that exceeds a density or equivalent opacity of Ringlemann No. 1, except one emission not exceeding an equivalent of Ringlemann No. 2 is permissible for a duration of not more than four minutes during any eight hour period if the emission source is not within 250 feet of a residential district.
- e. In the I-2 district, no industrial use classification use may emit from a vent, stack, chimney, or combustion process any smoke that exceeds a density or equivalent opacity of Ringlemann No. 2, except that an emission not exceeding an equivalent of Ringlemann No. 3 is permissible for a duration not more than four minutes during any eight hour period if the source of emission is not located within 500 feet of a residential district.

**3. Noise.**

- a. The following definitions shall apply in this section. All definitions shall be in conformance with those contained in ANSI 5.1.1-1960, R 1971, Acoustical Terminology.
- b. With respect to the standards established in the table of maximum permitted sound level (paragraph c., below), dB(A) are expressed in terms of the tenth percentile sound level (L10), which must be calculated by taking 100 instantaneous A-weighted sound levels at ten second intervals and computing the (L10) in accordance with the community noise measurement data sheet set forth in Appendix C.
- c. No person may operate or cause or permit the operation of any stationary source of sound that exceeds the limits set forth herein for the following receiving land use districts when measured at the boundary or at any point within the property affected by the noise.

<b>Table of Maximum Permitted Sound Level [dB(A)]</b>		
<b>Receiving Use Districts</b>	<b>Day (7:00 a.m.—10:00 p.m.)</b>	<b>Night (10:00 p.m.—7:00 a.m.)</b>
Residential	60	55
Commercial	65	60
Industrial	75	75

- d. When a noise source can be identified and its noise measured in more than one land use category, the limits of the most restrictive use shall apply at the boundaries between different land use categories.
- e. For any stationary source of sound which emits a pure tone, cyclically varying sound or repetitive impulsive sound, the

standards defined herein shall be reduced by five dB(A).

- f. The standards set forth in this section shall not apply to the following sources:
  - (1) Emergency warning devices and emergency equipment including medical transport helicopters;
  - (2) Lawn care equipment used during daytime hours;
  - (3) Equipment being used for construction.
- g. Notwithstanding any other provision of Article VIII (Nonconforming situations), any person who operates or permits to be operated any new stationary noise source after the effective date of this section shall comply with the standards defined herein.
- h. Measurement techniques to determine compliance with this section are set forth in Appendix C.

**4. Vibration.**

- a. No industrial use classification in any commercial district may generate any ground-transmitted vibration perceptible to the human sense of touch measured at (i) the outside boundary of the space leased, rented or occupied by the enterprise generating the vibration if the enterprise is one of several located on a lot, or (ii) the lot line if the enterprise generating the vibration is the only enterprise located on a lot.
- b. No industrial use classification use in the MXD-1, I-1 or I-2 district may generate any ground transmitted vibration in excess of the limits set forth in paragraph e below. Vibration shall be measured at any adjacent lot line or residential district line as indicated in the table set forth below in paragraph d.
- c. The instrument used to measure vibrations shall be a three component measuring system capable of simultaneous measurement of vibration in three mutually perpendicular directions.
- d. The vibration maximum set forth in paragraph e below are stated in terms of particle velocity, which may be measured directly with suitable instrumentation or computed on the basis of displacement and frequency. When computed, the following formula shall be used:

$$P.V. = 6.28 F \times D$$

P.V. = Particle velocity, inches per second

F = Vibration frequency, cycles per second

D = Single amplitude displacement of the vibration, inches

The maximum velocity shall be the vector sum of the three components recorded.

Table of Maximum Ground Transmitted Vibration		
Zoning District	Adjacent Lot Lines	Residential District
MXD	0.10	0.02
I-1	0.10	0.02
I-2	0.20	0.02

- e. The values stated in paragraph d above may be multiplied by two for impact vibrations, i.e., discrete vibration pulsations not exceeding one second between pulses.

- f. Vibrations resulting from temporary construction activity that occurs between 7:00 a.m. and 7:00 p.m. shall be exempt from the requirements of this section

**5. Odors.**

- a. For purposes of this section, the odor threshold is defined as the minimum concentration in air of a gas, vapor, or particulate matter than can be detected by the olfactory systems of a panel of healthy observers.
- b. No Industrial use classification in any district may generate any odor that reaches the odor threshold, measured at:
- (1) The outside boundary of the space leased, rented or occupied by the enterprise generating the odor; or
  - (2) The lot line if the enterprise generating the odor is the only enterprise located on a lot.

**6. Air pollution.**

- a. Any industrial use classification that emits any air contaminant (as defined in G.S. 143-213) shall comply with applicable state standards concerning air pollution, as set forth in Article 21B of Chapter 143 of the North Carolina General Statutes.
- b. No site or special use permit may be issued with respect to any development covered by paragraph a above until the state Division of Environmental Management has certified that the appropriate state permits have been received by the developer (as provided in G.S. 143-215.108) or that the developer will be eligible to receive such permits, and that the development is otherwise in compliance with applicable air pollution laws.

**7. Disposal of liquid wastes.**

- a. No industrial use classification in any district may discharge any waste contrary to the provisions of G.S. 143-214.2.
- b. No industrial use classification in any district may discharge into the City of Raleigh's sewage treatment facilities any waste that cannot be adequately treated by biological means or otherwise violates applicable City of Raleigh requirements or standards.

**8. Water consumption.** No industrial use classification that requires for its operations a one and one-half-inch or larger meter is permissible in any district unless specifically approved to do so by the Town Council.

**9. Electrical disturbance or interference.** No industrial use classification may:

- a. Create any electrical disturbance that adversely affects any operations or equipment other than those of the creator of such disturbance; or
- b. Otherwise cause, create, or contribute to the interference with electronic signals (including television, and radio broadcasting transmissions) to the extent that the operation of any equipment not owned by the creator of such disturbance is adversely affected.

(Ord. No. 3502, § 4, 3-3-08; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3656, § 5, 2-21-12; Ord. No. 3813, § 2, 4-19-16)

**6.10. Measurement and exceptions.**

- A. **Density.** Density refers to the number of dwelling units per unit of land area. Density is calculated by dividing the number of dwelling units on a site by the gross area (in acres) of the site on which the dwelling units are located. The number of dwelling units allowed on a site is based on the presumption that all

other applicable standards will be met. The maximum density established for a district is not a guarantee that such densities may be obtained, nor shall the inability of a development to achieve the stated maximum density be considered sufficient justification for varying or otherwise adjusting other density, intensity or dimensional standards.

**B. Lot area.**

1. **Measurement.** Lot area refers to the gross horizontal land area within lot lines, including any wetlands. No conservation buffer or other officially designated buffer area shall be included within the boundaries of any lot.
2. **Exceptions.** No building permit or development approval may be issued for a lot that does not meet the minimum lot area requirements of this UDO except in the following cases:
  - a. Nonconforming lots may be used in accordance with the provisions set forth in Article 9.
  - b. Utilities using land or an unoccupied building covering less than 1,000 square feet of site area shall be exempt from minimum lot area standards.
3. **Absence of sewer or water.** In the absence of public water or public sewer, no building permit shall be issued until the lot meets all applicable requirements of this UDO and Wake County.

**C. Minimum lot widths.**

1. No lot may be created that is so narrow or so irregularly shaped that it would be impracticable to construct on it a building that:
  - a. Could be used for purposes permissible in that zoning district;
  - b. Could satisfy setback requirements for that district.
2. Lot width.
  - a. Without limiting the generality of this standard, the following minimum lot widths are deemed presumptively to satisfy the standard. The lot width shall be a straight line measurement between opposite-side boundaries at the minimum required setback from the street, sufficiently distant from the street to meet the setback requirement and permit compliance with the standard. For instance, a cul-de-sac lot may not be 80 feet wide at the 35 feet front setback, but may be 80 feet wide 45 feet into the lot. Lot width would be measured at the 45 foot line except as provided for under D.3 of this section.
  - b. The minimum lot width of any rental space in a manufactured home park shall be 50 feet. The minimum lot width in an RMH zoned manufactured home subdivision shall be 70 feet.
  - c. No lot created after the effective date of this UDO having less than the recommended width shall be entitled to a variance from any building setback requirement.
  - d. The minimum lot width in a cluster development shall follow the provisions set forth in Article 6.
3. **Flag lots.** Flag lots are defined as an irregularly shaped lot where the buildable section (flag) of the lot is connected to a public or private street by a narrow nonbuildable strip of land (pole). The front setback line will be measured from that lot line more or less parallel to the public or private street.
  - a. The Town discourages the creation of flag lots in subdivisions. A flag lot will only be permitted via a successful Variance.
  - b. In addition to the standards of a Variance, flag lots are prohibited unless the BOA determines one of the following applies:



- i. Necessary to eliminate access onto a major thoroughfare;
  - ii. Necessary to reasonably use irregularly shaped property;
  - iii. Necessary to reasonably use land with significant topography limitations;
  - iv. Necessary to reasonably use land with limited sites for septic tank drain fields; and
  - v. Necessary to provide protection of significant environmental resources.
- c. If approved, the minimum lot width for a flag lot is 20 feet at the street; however a greater width may be required if the BOA finds that a greater width is needed to ensure adequate and safe access to the property.
  - d. Subdivisions approved and recorded after the effective date of this ordinance shall not be re-subdivided to create flag lots.
  - e. No flag lot will be allowed if it increases the number of access points to a major thoroughfare.
- D. **Setbacks.** Setbacks refer to the unobstructed, unoccupied open area between the furthest projection of a structure and the property line of the lot on which the structure is located, except as modified by the standards of this section.
1. **Features allowed within setbacks.** No enclosed usable space of a structure may project into any required yard space, except in the case of permitted rear yard accessory buildings. The following features may be located within a required setback:
    - a. Trees, shrubbery or other landscape features.
    - b. Fences and walls that meet the standards in Article 5.
    - c. Driveways may be located in any setbacks.
    - d. Sidewalks may be located within any required setback.
    - e. Utility lines, wires and associated structures, such as power pole.
    - f. Uncovered porches, uncovered steps to building entrances, uncovered patio decks and uncovered balconies may extend up to five feet into any required front, rear or street side setback.
    - g. Openwork fire balconies and fire escapes may extend up to five feet into any required setback.
    - h. Sills, belt courses, cornices, buttresses, bay windows, eaves and other architectural features may extend up to two feet into any required setback.
    - i. Chimneys and flues may extend up to two feet into any required setback.
    - j. Impervious surface associated with parking, driveways, etc. for single family detached dwellings shall occupy no more than 40 percent of the required front yard as established in Article 11.
  2. **Measurement of setback distances.** Setback distances shall be measured from the right-of-way line or property line (as applicable) to the nearest extension of any part of the building that is a substantial part of the building itself and not mere appendage to it (such as a flagpole or antenna).
  3. **Reduction for public purpose.** When an existing setback is reduced because of conveyance to a federal, state or local government for a public purpose and the remaining setback is at least 50 percent of the required minimum setback for the district in which it is located, then that remaining setback will be deemed to satisfy the minimum setback standards of this UDO.
  4. **Yard exceptions in all zoning districts.** The following exceptions shall apply in all zoning districts.

- 
- a. Projection of open structures into required yards.
- (1) Porches, canopies, stairways, carports, sundecks and similar structures completely open except for necessary supports, may extend into or over not more than 30 percent of the required rear yard distance or more than 20 percent into a front yard. Open stairways may extend into the front yard setback as required to meet the building code.
  - (2) Projections of the above-described open structures beyond the allowable encroachment of 30 percent into a rear yard or more than 20 percent into a front yard will be permitted only if granted by special exception from the Board of Adjustment. In no case shall any projection into a front or rear yard be greater than 45 percent of the required front or rear yard setback distance. At no time shall an exception be granted if it results in interference with a required sight distance triangle, substantial interference with convenient and enjoyable use of adjacent property or substantial danger to the public health or safety.
  - (3) Projections of the above-described open structures in any required side yard will be permitted only by special exception from the Board of Adjustment. Such projections shall not extend more than 40 percent into the required side yard distance, including gutters, except in no case shall any projection be closer than five feet to the side property line.
5. **Decorative walls**, planting areas and uncovered paved areas, such as stoops, patios, drives not more than three and one-half feet above surrounding grade level, may project not more than 20 percent into any required yard. If such areas are constructed at surrounding grade, they may extend into any yard spaces; except that at-grade swimming pool surroundings shall be no closer to any property line than five feet.
6. **The Planning Director, or designee**, shall grant a deviation of not more than ten percent from any setback or triangulation distance specified in this article when a violation of any such requirements has been created through a good faith error of the property owner or a person acting on his behalf, the error cannot be corrected without substantial hardship or expense, or that granting this relief would not substantially interfere with the convenient and enjoyable use of adjacent property or pose any substantial danger to the public health or safety. Prior to any decision to grant relief under this section, the owners of the directly adjoining properties shall be given notice by certified mail that a request for this encroachment has been made to the Planning Department. The notice given shall give the adjoining property owners a minimum of seven days from the date of receipt to provide any comments regarding the request to the Planning Department. The decision of the director of planning or designee may be appealed to the Board of Adjustment as provided under Section 3.16.
7. **In NC, CR, SB, I-1 and I-2 districts**, gas pump islands (without pay booths) and all canopies not attached to buildings may be permitted to encroach into the required front and corner side yard setbacks up to 75 percent, so long as a minimum front setback of 25 feet or corner side yard setback of 18 feet remains between the right-of-way line and the closest canopy structure support face or pump island; encroachments of 21 percent to 75 percent may be permitted only by special exception granted

by the Board of Adjustment. Approval of the special exception may be granted if all required findings can be made. The Board of Adjustment must be able to find that such projections will not interfere with adequate sight distance or negatively impact traffic circulation patterns.

**E. Minimum building separation.**

1. In MF-1 and MF-2 districts, the minimum building to building separation for multifamily developments, (other than duplexes), shall be determined through the triangulation formula identified in E.2., below.
2. The horizontal length of each exterior wall shall serve as the base of an isosceles triangle, the altitude of which shall be the length of this base line times the appropriate factor from the following table provided no building:

Stories in Structure	Factor
1	0.3
2	0.4
3 and above	0.5

3. These isosceles triangles shall not overlap. However, in no case shall the side yard separation between one-story buildings be less than 15 feet or 20 feet for buildings two-story and above.

**Commentary:** *Where individual units within a single building vary significantly in location (five feet or more) and, therefore, do not form a continuous straight building line, the isosceles triangle may be applied to each individual unit.*

**F. Building height limitations. For purposes of this section:**

1. The height of a building shall be the vertical distance measured from the mean elevation of the finished grade at the front of the building to the highest point of the building.
2. A point of access to a roof shall be the top of any parapet wall or the lowest point of a roof's surface, whichever is greater. Roofs with slopes greater than 75 percent are regarded as walls.
3. All buildings may exceed the designated height limit for the district, provided the depth of the required front, rear and both side yards shall be increased one foot for each foot or fraction thereof, of building height in excess of 35 feet; and
4. **Exceptions to height limits.** Unless otherwise expressly stated, the height limitations of this UDO shall not apply to any of the following:
  - a. Electrical power transmission lines;
  - b. Flagpoles, belfries, cupolas, spires, domes, monuments, chimneys, radio/television receiving antennas or chimney flues; or
  - c. Bulkhead, elevator, water tank, or any other similar structure or necessary mechanical appurtenance extending above the roof of any building if such structure does not occupy more than 33 percent of the area of the roof.

(Ord. No. 3396, § 12, 4-3-06; Ord. No. 3532, § 1, 11-4-08)

**6.11. Planned Unit Development (PUD) standards.**

- A. **Minimum requirements.** Planned Unit Developments are permissible only as conditional zoning on tracts of at least five contiguous acres. The general standards and criteria in Section 4.7 shall also be met.
- B. **Required development mix.** All PUD development shall adhere to the following maximum percentages of listed land uses.

Land Use	Maximum Percentage
Single-Family Residential	40 percent
Multifamily Residential	45 percent
Public, Civic and Institutional	15 percent
Commercial, Office and Retail	15 percent

- C. **PUD master plan.** The proposed Planned Unit Development master plan shall indicate the particular portions of the lot that the developer intends to develop for each of the elements described above. See Appendix D for the maps, information and analysis required as part of the submittal for PUD approvals. In addition to the requirements in above, the PUD master plan also illustrates:
  - 1. Neighborhood character and identity; and
  - 2. A mixture of land uses, including commercial and residential.
  
- D. **Nonresidential development restrictions.** The nonresidential portions of any Planned Unit Development may not be occupied until all of the residential portions of the development are completed or their completion is guaranteed by any of the mechanisms provided in Article 8. The intent of this provision is to ensure that the Planned Unit Development procedure is not used, intentionally or unintentionally, to create nonresidential uses in areas generally zoned for residential uses except as part of an integrated and well-planned, primarily residential, development.
  
- E. **Perimeter setback required.** A minimum 25-foot setback along the entire development perimeter is required, except where single-family residential lots of the standard required square footage of the district in which they are located abut similar single-family development. The setback from any street bordering the PUD tract is 35 feet unless a greater setback is required by this UDO.
  
- F. **Building separation.** A minimum separation between single-family and multifamily buildings of 60 feet is required. Building to building relationships are otherwise specified in Article 6.
  
- G. **Screening and buffering.** No required buffer shall be intruded on by any building, parking area or access drive. Screening and buffering between uses within the PUD shall be in conformance with Article 7. Reservation of significant natural features shall be documented in the required permit application materials, along with landscaping appropriate to the site, uses and building locations.
  
- H. **Common recreation and open space.** A minimum of 25 percent of the gross land area in the PUD master plan shall be reserved for common recreation and usable open space.
  
- I. **Deviations.** Any requested deviation from the standards otherwise applicable in this UDO shall be set forth in the documentation approved as part of the conditional rezoning.

**6.12. Planned Residential Development (PRD) standards.**

- A. **Minimum requirements.** Planned Residential Development is an option provided to encourage a mix of housing options within a comprehensively Planned Development, allowing a density bonus in return for provision of substantial landscaping, screening and buffering. Planned Residential Developments are permissible only on tracts of at least 15 contiguous acres. The general standards and criteria in Article 4 shall also be met.

Standard	Requirement
Maximum Density	7,500 sq. ft. per unit
Minimum Single-Family Requirement (no manufactured homes)	25 percent of total units
Minimum Single-Family Lot Percentages	Of All Single-Family Lots: 60 percent = 12,000 sq. ft. minimum 40 percent = 9,000 sq. ft. minimum
Setbacks Required	See setbacks for R-12 district

- B. **PRD master plan.** In addition to the requirements in above, the PRD master plan also illustrates:
  - 1. Identifiable neighborhoods that have a variety of residence types; and
  - 2. A mix of housing types and lot sizes.
- C. **Perimeter setback required.** A 25-foot setback along the entire development perimeter is required, except where 12,000 square foot lots abut similar development. Any required screening and buffering, located in Article 7 shall be within this perimeter setback. Parking and access drives may be permitted within the ten feet farthest from the development perimeter, provided any required buffer is not intruded upon.
- D. **Screening and buffering.** The screening requirements that would normally apply where a multifamily development adjoins a single-family development shall not apply within the Planned Residential Development, but all screening requirements shall apply between the development and adjacent lots. Preservation of significant natural features shall be documented in the required permit application materials, along with landscaping appropriate to the site, uses and building locations.
- E. **Common recreation and open space.** A minimum of 25 percent of the gross land area in the PRD master plan shall be reserved for common recreation and usable open space.
- F. **Minimum building separation.** A minimum separation between single-family and multi-family buildings of 60 feet is required. The building to building separation between multi-family buildings is specified in Section 6.11.

**6.13. Traditional Neighborhood Development (TND) standards.**

- A. **Minimum requirements.** Traditional Neighborhood Development is an option provided to encourage a compact housing within a comprehensively Planned Development that incorporates the principles of new urbanism. Traditional Neighborhood Developments are permissible only as conditional zoning on tracts of at least 40 contiguous acres. The general standards and criteria in Section 4.7 shall also be met.
- B. **TND master plan.** In addition to the requirements in above, the TND master plan also illustrates:
  - 1. A Town center which is memorable with a square, green and/or transit stop, with retail and office uses connected to the mix of residential uses in a practical way;
  - 2. Conformance with a general development pattern employing a grid pattern for a majority of development, with back alleys and garages and parking at the rear of buildings;
  - 3. Identifiable neighborhoods that have a variety of residence types;
  - 4. Shops and offices located at the edge of the neighborhoods;
  - 5. Interconnection of the Town center and neighborhoods with pedestrian ways and streetscapes;
  - 6. Common areas and meeting places within the general design of development, including churches and schools;

7. Relatively narrow streets, with trees and sidewalks on both sides;
  8. A network of open space serving the entire development and providing internal connections within the project;
  9. Prominent sites reserved for civic and other important community buildings; and
  10. Resulting land use patterns that promote and expand opportunities for pedestrian activity, public transportation and an efficient compact network of streets.
- C. **Perimeter setback required.** A 25-foot setback along the entire development perimeter is required, except where 12,000 square foot lots abut similar development. Any required screening and buffering, located in Article 7 shall be within this perimeter setback. Parking and access drives may be permitted within the ten feet farthest from the development perimeter, provided any required buffer is not intruded upon.
- D. **Screening and buffering.** The screening requirements that would normally apply where a multifamily development adjoins a single-family development shall not apply within the Traditional Neighborhood Development, but all screening requirements shall apply between the development and adjacent lots. Preservation of significant natural features shall be documented in the required permit application materials, along with landscaping appropriate to the site, uses and building locations.
- E. **Public facilities.**
1. The TND master plan shall establish public squares and meeting places that connect uses.
  2. The development may deviate from the City's road width standards, so the development achieves installation consistent with neo-traditional or new urban design principles as deemed appropriate by the Town Council.
- F. **Common recreation and open space.** A minimum of 35 percent of the gross land area in the TND master plan shall be reserved for common recreation and usable open space.
- G. **Minimum building separation.** Minimum building separation is specified in Section 6.1.
- H. **Traditional Neighborhood Development guidelines.**
1. A central community gathering place, surrounded by civic and nonresidential or mixed uses should be developed as focal point of the development.
  2. Residential densities in a Traditional Neighborhood Development should range from five to eight single family units per net acre, and from 15 to 25 multifamily units per net acre.
  3. Accessory dwelling units, as defined in Article 11, should make up approximately ten percent of the single-family housing stock of the development.
  4. Blocks within the development should range from 200 to 400 feet deep, and 400 to 800 feet long.
  5. A hierarchy of streets should be developed that includes collectors with two 12-foot travel lanes, subcollectors with two ten-foot travel lanes, local streets with two ten-foot lanes, and alleys with one 12-foot lane.
  6. Shared parking is encouraged, and a base ratio of one space per 500 square feet of Mixed Use Development should be applied.
  7. Architectural standards should be incorporated that are responsive to the community's context. The standards should include site design issues such as building orientation and location on the site, location of parking areas, and mixing of uses.
- I. **Deviations.** Any requested deviation from the standards otherwise applicable in

this UDO shall be set forth in the documentation approved by the Town Council as part of the conditional rezoning.

(Ord. No. 3558, § 2, 7-7-09)

#### 6.14. Mixed Use Development (MXD) standards.

- A. **Minimum requirements.** Mixed Use Developments are permissible only as conditional zoning on tracts of at least 40 contiguous acres. The general standards and criteria in Section 4.7 shall also be met.
- B. **Required development mix.** A minimum of three of the use categories listed below shall be included in any MXD district:
  - 1. Flex space;
  - 2. Office/institutional;
  - 3. Research, technology, and industrial;
  - 4. Commercial;
  - 5. Cultural; and
  - 6. Residential (Maximum of 50 percent of MXD, and then, at no more density than permitted in Article 6 for MF-2. No detached single-family residential is permitted).
- C. **MXD master plan.** The proposed Mixed Use Development master plan shall indicate the particular portions of the lot that the developer intends to develop for each of the elements described above. See Appendix D for the maps, information and analysis required as part of the submittal for MXD approvals.
- D. **Perimeter setback required.** A minimum 50-foot setback along the entire development perimeter is required. The setback from any street bordering the MXD tract shall be 35 feet unless a greater setback is required by this UDO.
- E. **Building separation.** Building to building relationships are otherwise specified in Article 6.
- F. **Screening and buffering.** No required buffer shall be intruded on by any building, parking area or access drive. Screening and buffering between uses within the MXD shall be in conformance with Section 7.1, Landscaping and tree protection. Reservation of significant natural features shall be documented in the required permit application materials, along with landscaping appropriate to the site, uses and building locations.
- G. **Public facilities.** Where residential uses are proposed, the MXD master plan shall establish public squares and meeting places that connect uses.
- H. **Common recreation and open space.** A minimum of five percent of the gross land area in the MXD master plan shall be reserved for common recreation and usable open space.
- I. **Mixed use guidelines.**
  - 1. The Mixed Use Development should contain some buildings that are vertically mixed in use.
  - 2. Retail uses should be placed at street level, while office and residential uses should be placed in the rear or on the upper stories.
  - 3. Any limitation on residential density should be a function of parking demands, vehicular traffic generation, adequate utility service, building height, and lot coverage.
  - 4. Streets should interconnect within the development and with adjoining development. Streets should be planned with due regard to the designated corridors shown on the thoroughfare plan.
  - 5. Mid-block and rear alleys should be utilized for access to parking, service and loading areas to minimize the number of driveways along the main pedestrian spaces.
  - 6. To facilitate transit usage and circulation, Mixed Use Development should provide transit stops at key nodes with easy access to the surrounding thoroughfares along routes through the development planned to

accommodate the technical requirements of bus operations.

7. Locate buildings close to the street, with parking behind and/or beside buildings. If the building is located at a street intersection, place the main building, or part of the building, at the corner. Parking, loading or service may not be located at an intersection.
8. Pedestrian circulation should be an integral part of the initial site layout. Organize the site so that the buildings frame and reinforce pedestrian circulation, and so that the pedestrians walk along building fronts rather than along or across parking lots and driveways.

- J. **Deviations.** Any requested deviation from the standards otherwise applicable in this UDO shall be set forth in the documentation approved by the Town Council as part of the conditional zoning.

(Ord. No. 3558, § 2, 7-7-09)



## 7.1. Landscaping and tree protection.

- A. **Purpose and intent.** The purpose of this section is to regulate the planting and preservation of landscape material, to promote the general health, safety and welfare of the community and in addition, to facilitate the creation of an attractive environment to protect property values and to further the urban design and economic development objectives of the Town-wide Comprehensive Growth Plan. This section is intended to apply minimum standards, which result in a better overall appearance of the community by:
1. Achieving a harmonious relationship between the natural landscape and manmade structures;
  2. Enhancing the community's natural, cultural and visual resources.
  3. Achieving the goals and policies of the officially adopted Comprehensive Growth Plan currently in force.
- B. **Applicability.** The provisions of this section and the Town of Garner Planting Manual contained in Appendix E shall apply to all public and private land located within the Town of Garner.
1. **New development.** The requirements of this section apply to the entire site for all new development.
  2. **Expansion of existing development.** Where existing development is expanded as described below, the requirements of this section shall apply to the entire site:
    - a. Residential district or exclusive residential use in any district. Any increase in the gross floor area of the building, developed area or site of 20 percent or more, or 1,000 square feet, whichever is less.
    - b. Commercial district or use. Any increase in the gross floor area of the building, developed area or site by ten percent or more, or 1,000 square feet, whichever is less.
    - c. Industrial district or use. Any increase in the gross floor area of the building, developed area, or site by 20 percent or more, or 5,000 square feet, whichever is less.
  3. **Exemptions to the landscape/maintenance requirements.**
    - a. Improvements or repairs to the interior or exterior of structures or buildings that do not result in an expansion or change in use shall be exempt from the landscape planting requirements, but not the maintenance requirements.
    - b. A single detached dwelling on its own lot shall be exempt from landscape planting and maintenance requirements.
- C. **Landscape plans.**  
***Commentary: Landscape plans should be prepared with the appropriate mix of plant varieties and quantities necessary to meet the requirements of Section 7.1 of the UDO. In cases where overhead power or utility lines exist, selected landscape material located underneath said lines must be the appropriate plant type so as not to create future conflicts. Information regarding the types of trees and shrubs that can be planted near power or utility lines can be obtained from the Garner Planning Department.***  
 A registered landscape architect shall prepare landscape plans, except where expressly exempted by the Planning Director. The landscape treatment shall adequately detail the requirements of this section; planting, landscape and buffer treatments required by the Town of Garner Planting Manual contained in Appendix E; and all other applicable sections of this UDO.
1. **Required planting components.**
    - a. There are four required planting components that may need to be addressed for any site subject to this section, as follows:

- (1) Tree canopy cover;
  - (2) Tree preservation (if required);
  - (3) Buffers, yards, vehicular surface areas and street trees; and
  - (4) Screening of objectionable views.
- b. These subsections address the minimum planting requirements for plan submittals.
2. **Landscape plan required.** Landscape plans shall include the following.
- a. Any natural features that influence the site's design.
  - b. Elements of required landscaping including buffers, tree cover, street yards, side and rear yards, open space, greenways, site distance triangles and easements.
  - c. Proposed plant schedule to include plant types, botanical and common name, spacing, quantities, sizes (height and spread and container size) and quantities. Tree cover calculations adequate in detail to determine compliance with these standards.
  - d. Proposed drives, paving, decks, walks, pools and other man-made structures/elements which are to be introduced within the property.
  - e. Proposed grades on landscape plan shall be half-toned on the print so as not to conflict with the legibility of the planting scheme and labels.
  - f. Construction notes/details relating to hardscape elements, specific material and planting procedures, and seeding schedules.
  - g. A plant points table that indicates the calculation of required and proposed landscape plantings for the development, detailing the use of the existing plant material, and the new plantings that are to be applied toward the required buffers, yards and vehicular surface areas.
  - h. Show calculations for tree canopy cover requirements.
  - i. If underground irrigation is to be used, all double check or RPZ valves and controllers shall be located on the landscape plans submitted and shall be screened from view from adjacent right-of-way.
  - j. Sight line drawings may be required by the Planning Director for development that proposes inappropriate building scale, materials or architecture or has a substantial grade difference or proposes insufficient screening treatments.
- D. **Plant material installation requirements.** Plant material requirements are based on square footage area of the four required planting components, and may be based on sight line drawings. Credits are based on the size and height of existing or proposed material. Refer to the credit for retaining mature trees chart and the plant points table below. Also refer to the residential and non-residential development cover requirements in Sections I.2.c. and d.; the perimeter and street buffer charts in Sections K.6 and Sections K.8 and Sections L.2.c, L.3.b, and L.4.b.
1. **Conditions.**
- a. All plants material installed must meet standards set by American Association of Nurserymen, Inc., "Standards for Nursery Stock".
  - b. The minimum number of plants required, regardless of area calculations, is three trees and 20 shrubs.
  - c. A minimum of ten percent of the required landscape installation based on the total plant points for the entire site shall be installed next to the building.
  - d. For large-scale buildings a minimum of 25 percent of the area of the front wall and of the building shall be screened with large trees planted within 25 feet of the building.

2. **Credit for retaining mature trees.** In order to promote the retention of existing mature trees, the following schedule provides more credits for existing mature trees with diameter at breast height (DBH) sizes as noted than are awarded in the plant points table for installed trees with smaller trunks. Qualification requires that the trees be in good health and of good quality, as determined by a landscape architect licensed in NC or a certified arborist.

Points	Small Hardwoods	Large Hardwoods	Softwoods
40	2½ to 4 inches	6 to 9 inches	8 to 11 inches
50	5 to 8 inches	10 to 17 inches	12 to 17 inches
64	9 to 11 inches	18 to 24 inches	18 to 29 inches
96	12 inches or larger	24 inches or larger	30 inches or larger

3. **Plant points table.**

Plant Type	Height (feet)	Size Root/ Container	Caliper (inches)	Points
Large Canopy Tree (minimum 35 feet at maturity)	14	B&B	3 to 9	40
	12	B&B	2.5	32
	10	B&B	2	25
	9	B&B	1.5	15
	8	B&B	1.25	8
Small Canopy Tree (less than 35 feet at maturity)	9	B&B	1.5	32
	8	B&B	1.25	25
	6	B&B	1	15
	5	B&B	0.75	8
Shrubs	8	B&B	—	15
	6	15 gallon/B&B	—	12
	4	10 gallon	—	10
	3	7 gallon	—	8
	2	5 gallon	—	6
	18	3 gallon	—	3
	< 18	or 1 gallon	—	1

- E. **Protection of planting areas.** Planting areas shall be permanently protected from damage by vehicular traffic through the use of curbing and or wheel stops. Wheel stops shall be used in parking areas where:

1. Curbing has not been used or is less than six inches in height.
2. Proposed new trees and shrubs are planted within five feet from adjacent curbing or edge of vehicular surface area paving.

- F. **Completion of work/letters of credit.**

1. A certificate of occupancy shall be issued only when all plantings have been installed and all the work shown on the approved landscape plan has been completed. Substantial changes in plantings which have changed the intent of the approved plans and changed the credit totals used to meet the ordinance requirements shall be reviewed by the Town staff for compliance prior to the issuance of the certificate of occupancy.
2. An irrevocable letter of credit or bond for 125 percent of the cost of landscaping and uncompleted work, as determined by the executed

contract, will be accepted in lieu of installation where periods of adverse planting conditions prohibit the installation of the work or where the certificate of occupancy is required prior to the completion of the landscaping.

**G. Tree preservation/protection.**

1. **Purpose and intent.** The purpose of this section to promote the preservation and protection of existing tree coverage on a site. Existing trees enhance and improve overall land values and aesthetics, contribute to the production of oxygen, reduction of carbon dioxide and water runoff while at the same time reducing the overall urban heat buildup and soil erosion.
2. **Exemptions for timbering and silviculture.** Normal forestry activities on property taxed under present-use value standard or conducted pursuant to a forestry management plan, prepared and approved by a forester registered according to G.S. § 89B are exempt from tree preservation requirements.
  - a. No forestry activities may take place on property until the property owner or his representative has obtained a forestry permit from the Town of Garner Planning Department. Failure to obtain a permit shall subject the owner to a fine not to exceed \$500.00. Each day the violation continues shall be considered a new violation, subject to a new penalty.
  - b. Forestry activities are strongly encouraged to exclude all tree harvesting and thereby preserving all trees within following perimeter buffer areas:
    - (1) Fifty-five-foot wide buffers located along roadways or located adjoining developed properties; and
    - (2) Thirty-foot wide buffers located adjoining undeveloped properties.
  - c. In cases where all trees or substantially all trees are removed from the above referenced perimeter buffers, the Town will not grant site plan or subdivision plan approval for said property for a period of five years following the harvest of such trees. The five-year

waiting period may be waived if the Town Council, by a three-quarters vote, determines a project to be desirable and grants the right to immediate development on recently timbered land where no perimeter buffer was kept.

3. **Significant or specimen tree protection requirements.** Rare species listed under the North Carolina Natural Heritage Program shall be saved. Such trees shall be required to be saved unless the BOA concludes such trees do not significantly contribute to the Town's appearance and natural environment, and where retaining such trees unreasonably burdens development, as described below.

Tree Type	Tree Size
Overstory Hardwood Tree	24" DBH or greater
Evergreen Tree	30" DBH or greater
Understory Tree	10" DBH or greater
Evergreen Tree	" DBH or greater
Understory Tree	" DBH or greater

- a. When development is unreasonably burdened by retaining such trees, the following criteria is used to prioritize trees to be saved based on the following criteria.
  - (1) Rareness of species;
  - (2) Evidence of disease/insects;
  - (3) Size and age of tree;
  - (4) Aesthetic value (i.e. flower, fruit, color, etc.);
  - (5) Expected longevity of species;
  - (6) Size at maturity; and
  - (7) Severity of slope.

H. **Stop work orders and violations/penalties.** See Article 10, Enforcement.

I. **Tree canopy cover.**

1. Purpose and intent. The objective of tree canopy cover standards is to preserve and maintain appropriate undisturbed tree cover, and where needed, require the provision of replacement tree cover on development sites within the Town of Garner zoning jurisdiction. Such standards support the reduction of soil erosion, air pollution, stormwater runoff and noise; moderate temperatures; and protect plant and wildlife habitat, which together assist in providing a healthier living environment for the citizens of the Town.
2. **Tree cover requirements.**
  - a. All new development must meet the tree cover requirements outlined in the tables below. These standards can be achieved by preserving existing trees on the site, or by planting replacement trees. Trees in required buffer yards and easements, and street trees may be credited towards the tree cover requirements. Preference is given to preserving existing trees, rather than preservation and planting, or exclusive planting, and this preference is reflected in the standards of the table.
  - b. Water surface areas of ponds, lakes or other surface water bodies (excluding stormwater control structures) shall be excluded from the total land area for the purposes of calculating tree cover requirements.
  - c. Tree residential development cover requirements.

Preserved Tree Cover Area	Replacement Tree Cover Area	Minimum Total Tree Cover Area
12%	Plus 0% equals	12%
8.5%	Plus 4% equals	12.5%
5%	Plus 8% equals	13%
1.5%	Plus 12% equals	13.5%
0%	Plus 14% equals	14%

d. Non-residential development cover requirements.

Preserved Tree Cover Area	Replacement Tree Cover Area	Minimum Total Tree Cover Area
10%	Plus 0% equals	10%
7.5%	Plus 3% equals	10.5%
5%	Plus 6% equals	11%
2.5%	Plus 9% equals	11.5%
0%	Plus 12% equals	12%

- e. Areas required to be undisturbed by other requirements of the Garner UDO shall be presumed to meet requirements of this section, provided applicable standards are met.
- f. All preliminary major subdivision plans, site plans, final plats and other types of plans or permits as determined by the Planning Director shall clearly indicate all tree preservation and tree replacement areas.
- g. Existing tree cover areas in new subdivisions are strongly encouraged to be located in common open space areas or protected buffers, where possible. Where this is not practical, perimeter buffer areas or conservation easement areas may be increased, provided the root zone of such trees can be protected during construction.

3. **Tree cover preservation area requirements.** Trees proposed to be preserved to meet the tree cover requirements above must also meet the following requirements for tree cover preservation areas.

- a. Preservation of groups of trees must occur in areas of at least 1,000 square feet on sites greater than one acre with no dimension less than 15 feet. For sites of one acre or less, preservation areas for groups of trees shall be a minimum of 500 square feet in area with no dimension less than 15 feet.
- b. Individual tree cover preservation area is defined by its root zone protection area, and must be minimum size of 200 square feet, even where the root zone protection area is smaller than this size. Where specimen trees are preserved outside of other required buffers, credit shall be granted at a rate of two times the square footage of the root zone protection area.
- c. In order to receive credit as tree cover, the minimum size for trees in a tree preservation area shall be two and one-half-inch DBH (except where such trees are specimen trees).
- d. In cases where there is uncertainty regarding the size and quality of trees proposed for preservation, the Planning Director shall have the authority to require submittal of a limited tree survey to substantiate that such areas meet the minimum standards.

4. **Replacement tree cover requirements.**

- a. Replacement trees are required to meet the standards listed in the

table below.

- b. At least 50 percent of the replacement trees shall be two and one-half-inch DBH or larger.
- c. At least 50 percent of the replacement trees must be large hardwoods native to this region.
- d. A Variance is required to approve replacement trees of different sizes or species when it determines that some flexibility is needed to better meet the purpose and intent of these regulations. For every one-half-inch caliper above what is listed below a credit of 25 square feet may be allowed (i.e. three-inch tree may receive a credit of 225 square feet).

DBH (inches)	Credit (square feet)
2½	200
2	175
1½	150
1	100
Less than 1	No credit

**5. Protection subsequent to plan approval.**

- a. **Fencing.** During the entire period of construction activity on the site, all protected trees shall be surrounded and protected by an orange Tensar geogrid fencing fabric or approved equal fencing. Tree protection fencing shall be installed a minimum of ten feet from the trunk of any protected tree or drip line, whichever is greater. For any tree greater than ten inches DBH, this distance shall be increased one foot for every one inch in DBH. Tree protection fencing shall be maintained until a final certificate of occupancy has been issued, unless expressly exempted by the Planning Director.

One sign shall be placed every 200 feet along fencing to read:

**"TREE PROTECTION AREA—DO NOT ENTER/  
PARA PROTECCION DE LOS ARBOLES—PROHIBIDO ENTRAR"**

- 6. **Soil disturbance.** Subsequent to plan approval and during the entire period of construction, there shall be no soil disturbance or compaction within areas designated for tree preservation and protection, and areas protected by tree protection fencing. This includes no stockpiling of construction or other material, and no bore sampling or other similar vehicular traffic. Failure to comply with this prohibition shall subject the owner to a fine in accordance with Section 10.3.

**7. Tree survey.**

***Commentary: Tree surveys are not mandatory, but may be required if landscape credit is requested for existing trees proposed for preservation when the location and size of said trees cannot easily be determined by the Planning Department.***

A tree survey when required by the Planning Director shall include:

- a. General significant area outline of existing trees to be saved and any individual trees meeting minimum requirements with species (abbreviated) and DBH next to each location;
- b. Any trees meeting the DBH standards in paragraph G.3., above; and

- c. Any existing tree eight inches DBH or greater within the first 15 feet of the portion of the buffer closest to the subject development.
- d. Specimen trees located within the following areas are not required to be surveyed:
  - (1) Floodway;
  - (2) Floodway fringe;
  - (3) Preserved wetlands;
  - (4) Stream buffers; and
  - (5) Undisturbed steep slopes.

**8. Tree preservation incentives.**

- a. The Planning Director shall approve up to a 15-percent reduction in the required number of parking spaces if at least one significant tree for every three parking spaces is saved outside of the required buffers and floodways.
- b. Trees and shrubs retained on-site may be used to meet landscape requirements if the trees and shrubs meet the standards of the buffer or yard to which they are being applied.
- c. Undisturbed areas may be counted towards nitrogen reduction requirements.

**J. Xeriscape landscape design and planting.**

- 1. **Purpose and intent.** Xeriscaping is a landscaping method that maximizes the conservation of water by the use of site appropriate plant material, adequate soil preparation, proper maintenance practices and efficient irrigation that conserves water and protects the environment. Implementing the seven principles of xeriscaping below reduces the use of fertilizers and chemicals, and can reduce water consumption and improve plant vigor.
- 2. **Reduction in buffer width for xeriscaping.** Where the applicant demonstrates that all seven of the xeriscaping principles in the paragraph below have been satisfied, a reduction of up to ten percent of a required perimeter buffer width shall be allowed.
- 3. **Seven principles of xeriscaping.**
  - a. **Planning and design.** Analyze the site to take advantage of the existing conditions (i.e. solar orientation, existing vegetation etc.) that can facilitate the conservation of utility and water usage and over all maintenance costs to a site, locate and develop use areas to accommodate specific activities, identify zones of varying water requirements.
  - b. **Soil analysis and preparation.** Typical construction site soils lack desirable soil structure and available water or nutrients. Xeriscape methods encourage plants to develop deep root growth so that plants have access to moisture after soils dry out. This is accomplished by breaking up soil compaction and adding organic matter to keep soils porous, as well as chemically improving soils with nutrient additives. Both physical and chemical improvements are needed for deep root growth. A successful xeriscape plan includes soil test results of each water requirement zone with recommendations on correcting deficiencies in soil pH, nutrients, and amendments. If soil test is not available the following soil improvements may be used as substitute:
    - (1) Till the soil to a depth of six inches to break up compaction; and
    - (2) Incorporate topsoil, add four inches of shredded or composted organic matter, lime 9, and a balanced fertilizer to the top two to four inches of soil.

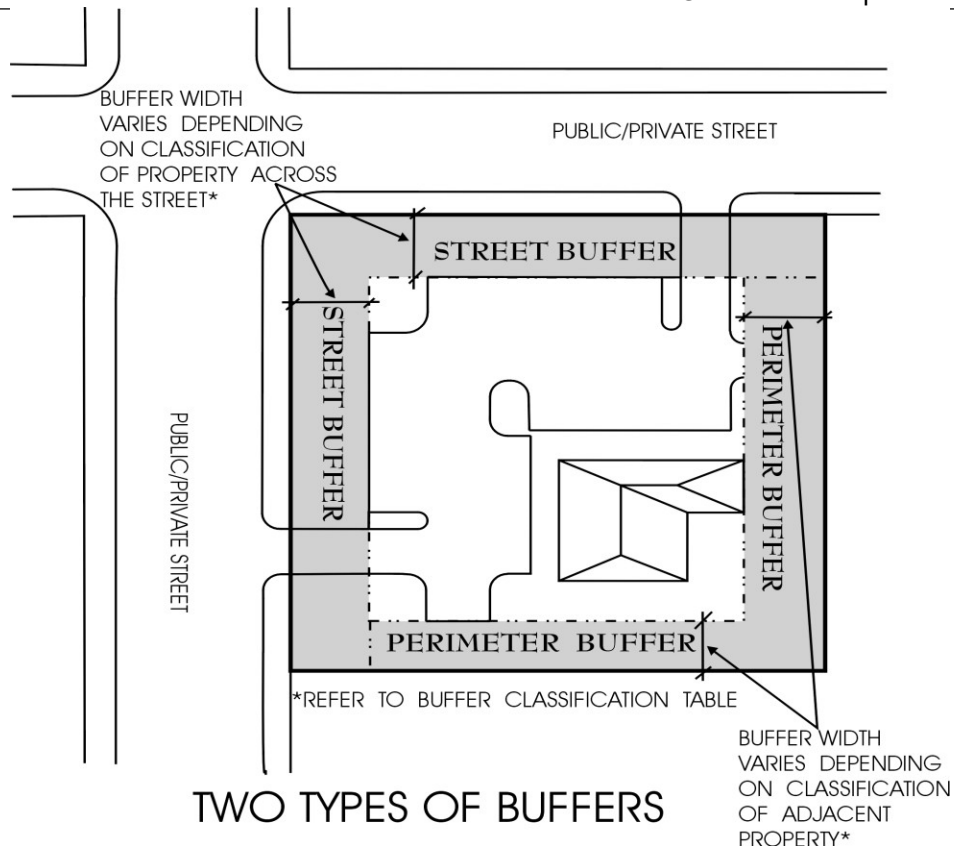


- c. **Appropriate plant selection.** When deciding on plant material, it is important to select material that is not only compatible with the design but also well suited to the site, adaptable to the local environment, and grouped according to water needs.
  - d. **Practical turf areas.** To reduce maintenance and utility costs, it is important to design turf areas that are specific to a use (i.e. accent area in front of a doorway, entertainment zone, or play area for children) and reduce or eliminate other areas of turf grass.
  - e. **Efficient irrigation.** Zone the different plant materials by water requirements and provide the type of irrigation appropriate to the zone. Irrigate between the hours of 9:00 p.m. and 9:00 a.m. so as to decrease water loss due to evaporation. Use drip irrigation in beds that are mulched or on steep slopes to thoroughly soak the area without washing away the mulch or causing run-off. Wet the soil to a depth of six to eight inches to encourage deep root growth. Simply sprinkling mulched areas lightly can induce shallow root growth; shallow-rooted plants suffer in dry periods. If necessary, split water applications into two time blocks to allow the soil to absorb the water.
  - f. **Mulching.** Use two to four inches of fine-textured organic mulches (wood chips, composted leaves, shredded bark, pine straw) to conserve moisture and reduce the need for supplemental water. Do not use inorganic mulches, such as gravel, which accelerates water loss from plants and soil by absorbing and reradiating heat from the sun. Do not use plastic as a soil cover as it prevents oxygen exchange and encourages shallow root growth.
  - g. **Appropriate maintenance.** Maintain xeriscape planting by fertilizing less during dry periods so as not to dehydrate roots, prune lightly especially during dry periods to avoid production of new growth when water is scarce, test the soil pH and correct for deficiencies; water thoroughly at a rate that matches soil absorption to encourage deep root growth and reduce run-off; mow turf grass often and high to encourage deep root growth and to shade the soil thereby reducing water use; regularly maintain and adjust irrigation systems for maximum efficiency; and, aerate to correct soil compaction and to reduce weeds and pests.
4. **More information.** For more information on xeriscaping, refer to the Town of Garner Planting Manual (in Appendix E) for details.

K. **Buffers.**

- 1. **Purpose and intent.** Buffers are required where incompatible uses are adjacent to or directly across the street from each other. There are two types of buffers: perimeter buffers along side and rear lot lines and street buffers along lot lines adjacent to private or public streets. Perimeter buffers perform a dual role of providing both horizontal separation and vertical screening. Street buffers provide horizontal separation only. Both perimeter and street buffers shall retain all existing vegetation a minimum of four inches DBH or greater. The potential negative effect of the incompatible use of the subject property shall determine the required buffer width. No land disturbing activities are allowed except where specified below. Minor clearing of underbrush is allowed in order to maintain or enhance public safety. Buffer requirements may be met with supplemental planting.

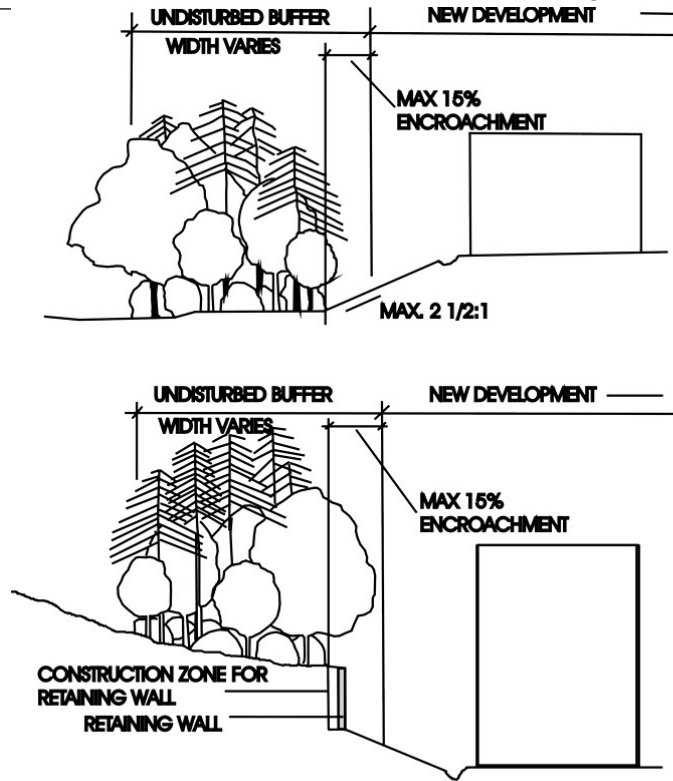
**Note: Image to follow**



## TWO TYPES OF BUFFERS

2. **Buffer vegetation requirements.** No land disturbing activities are permitted in buffers containing existing trees with a minimum caliper DBH of four inches except as provided below. A tree survey, in accordance with [Section 7.1] I.7, Tree survey, may be required for buffers containing significant or specimen trees that meet the requirements set forth in Subsection G.3, Significant or specimen tree protection requirements. No land disturbing activities shall be permitted within the critical root zone of any retained significant or specimen trees. When development is unreasonably burdened by saving significant or specimen trees within buffer classifications 3 through 6, the developer may file a Variance application with the BOA to determine what replanting and/or screening measures shall be implemented.
  - a. **Limited grading within buffers.** Limited grading within designated buffers may be permissible according to the following limitations when grading encroachment is the only practical solution after all other reasonable alternatives have been exhausted.
 

**Note: Image to follow on next page.**



### LIMITED GRADING WITHIN BUFFERS

- (1) In cases where designated buffers completely lack existing trees and vegetation, grading within the buffer area is permitted.
  - (2) In all other cases, grading encroachment is allowed only in buffers 35 feet wide or greater and is limited to a maximum of 15 percent into the development side of the buffer as illustrated by the above graphic. The length of the grading encroachment in the buffer area is limited to a maximum of 15 percent of the total length of the affected buffer.
  - (3) If retaining walls are used, grading shall not exceed a slope ratio of 2 1/2:1.
- b. **Existing vegetation.** Existing vegetation can be used to meet all or part of the requirements of this section where such vegetation meets the minimum standard for vertical screening under the appropriate classification. Where supplemental planting is required, the Planning Director shall have the authority to specify the location to account for and provide maximum screening in the

event of significant grade differences between properties to which the buffer standard applies.

- c. **Proposed vegetation.** Where supplemental planting is required in buffers, the Planning Director shall have the authority to specify the location to account for and provide maximum screening in the event of significant grade differences between properties to which the buffer standard applies. Proposed vegetation shall adhere to the following buffer planting requirements:

- (1) Required planting shall use a mix of deciduous overstory trees, evergreen trees, deciduous understory trees/large shrubs, and small evergreen shrubs to provide vertical screening;
- (2) Monoculture plantings are not permitted;
- (3) The mix shall create a 100 percent screening buffer within two years of planting.
- (4) In calculating buffer planting requirements, areas of driveways and sight distance triangles shall be excluded; and
- (5) Deciduous overstory trees, small trees or large shrubs, evergreen shrubs and evergreen trees shall be distributed along the entire length of the buffer. Due to unique characteristics of a site, or design objectives, alternative designs that achieve the required screening may be approved by the Planning Director.

- 3. **Site-specific conditions.** At the time of site plan approval, the Planning Director may require additional berming, landscaping, or screen walls to satisfy buffer separation and screening requirements on a case-by-case basis.

- a. If berming is used, it shall not exceed a slope ratio of 2:1 feet. The berm must be vegetated with plant material that will accomplish a height of six feet including the berm within two years of planting.
- b. If an opaque fence or wall is to be used, the height shall be six feet with the finished side facing adjacent property or right-of-way.

- 4. **Buffers and clear sight triangles.** No screening or buffering shall interfere with the sight distance triangles required for safe traffic movements at driveway or street intersections.

**5. Land use buffer classifications.**

Class	Uses Included
1	Single-family detached, modular single family homes, manufactured homes, cemeteries*, public park (passive use only)
2	Townhomes, condominiums (less than 12 units in project), two-family dwelling, apartments (12 units or less per acre), multiplex units, manufactured home parks, family care homes, group care homes, intermediate care homes, library, museum, art gallery, art center, day care facility, continuing care facility, group care facility, handicapped institution, intermediate care institution, nursing home, child care home, adult care, bank, community center (less than 5,000 sq. ft.)

3	Apartments (13 units or greater per acre), townhomes and condominiums (more than 12 units or more in project), business schools, public or private schools, post office, medical clinic, mental health facility, public park (active use only), minor utility, restaurant, public swimming pool, public tennis courts, indoor entertainment facility, theater, medical office, convenience store (without gasoline sales), office, retail sales with no outdoor operations, personal service, community ctr. (greater than 5,000 sq. ft.), gym, spa, bed and breakfast, religious institutions, agriculture, golf course/country club, private swimming pool), private indoor/outdoor tennis court, Town hall, hospice, hospitals or ambulatory health/emergency care facilities without heliport operations
4	Bus passenger terminal, taxi/limousine operations or facility, trade/vocational schools, hospital, major utility, telecommunication facility, drive in/up restaurant, horse stable, extended stay facility, hotel/motel, convenience store (with gasoline sales), open air markets, indoor veterinarian/kennel facility, car wash, vehicular repair, vehicular sales and rentals, limited vehicular service, commercial parking lots, private outdoor athletic facility, water slide, outdoor entertainment, shopping center
5	College or university, ambulance service, rescue squad, fire station, police station, solar farms, bar, tavern, night club, outdoor veterinarian/kennel facility, retail with outdoor operation, self-service storage (inside or outside), railroad tracks
6	Military reserve, prison or jail, sexually oriented business, drive in theater, aviation service, light industrial flex space, manufacturing/production, mining/quarry operations, warehouse or freight storage, truck terminals, reclamation landfill, recyclable material collections, salvage yard, sanitary landfill, wholesale sales, industrial (outside), vehicle towing, greenhouse, hospitals or ambulatory health/emergency care facilities with heliport operations

**Note: Projects (new or expansion to existing ones) that abut an existing cemetery shall provide a minimum ten-foot wide buffer area with landscaping to achieve a 100 percent screen up to a height of six feet. New cemeteries or expansion to existing ones must meet required landscape and buffers requirements of this ordinance.**

6. **Buffer width charts.** The following tables provide requirements for buffers between two uses. To use the tables identify the appropriate classification numbers for the proposed use and adjacent property or street. The required buffer width is listed at the intersection of the respective row and column.

**a. Perimeter buffers adjacent to developed zoning district.**

Proposed Use Classification	Adjacent Developed Classification (width in feet)					
	1	2	3	4	5	6
1	0	15	25	25	35	45
2	25	15	15	15	25	35
3	35	25	15	15	25	25
4	45	35	25	15	15	15
5	55	45	35	25	15	15
6	65	55	45	35	25	15

**b. Perimeter buffers adjacent to undeveloped zoning district.**

Proposed Use Classification	Adjacent Undeveloped Zoning District (width in feet)					
	SF	MF	NC, NO	CR, CBD, SB	OI	I-1, I-2
1	0	15	25	25	25	35
2	15	15	15	15	15	25

3	25	15	15	15	15	25
4	25	20	15	15	15	15
5	35	25	15	15	15	15
6	45	25	15	20	20	15

- c. **Street buffers across from existing and proposed development.** The street buffer has only a horizontal separation requirement. For screening requirements, refer to Section L.4.b, Planting requirements in vehicle surface area, and Section M., Screening of objectionable views. Street buffers include land classifications across an adjacent street or railroad track. Refer to overlay districts for further landscaping requirements specific to thoroughfares.

Proposed Use Classification	Street Buffer Width (width in feet)			
	1	2	3 and 4	5 and 6
1	0	15	20	25
2	15	15	15	25

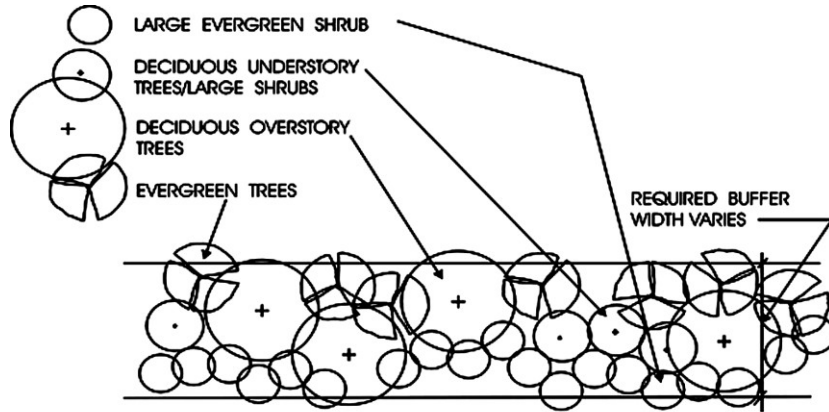
Proposed Use Classification	Street Buffer Width (width in feet)			
	1	2	3 and 4	5 and 6
3	20	15	15	15
4	25	25	15	15
5	25	25	15	15
6	25	25	15	15

7. **Buffer width reductions.**
- a. Where two adjacent properties, both in classifications 3 through 6, have planting requirements for perimeter buffers, the subject property may be allowed a 50% reduction in the required adjacent perimeter buffer width and planting. If the adjoining property is developed and has a continuous planting of existing, mature evergreen shrubs along the entire length of the adjacent side property line the subject property may reduce the adjacent perimeter buffer by up to 50 percent and install only half the required side buffer planting requirements.
  - b. If the adjoining property is undeveloped and has a planting requirement along the entire length of the adjacent side property line the subject property may reduce the adjacent perimeter buffer by up to 50 percent and install only half the required side buffer planting requirements.
8. **Planting requirements.** Planting requirements shall apply only to screening for perimeter buffers. Planting requirements shall apply to all classifications and shall be satisfied in accordance to this subsection.
- a. **Trees.** Trees shall be evenly distributed along the entire length of

the buffer. To calculate the required number of trees refer to Section K.5, Land use buffer classifications, and Section K.6, Buffer width charts, above. To calculate the spacing constraints for the respective trees/large shrubs and evergreen shrubs use the following applicable requirements:

**(1) Deciduous overstory trees.**

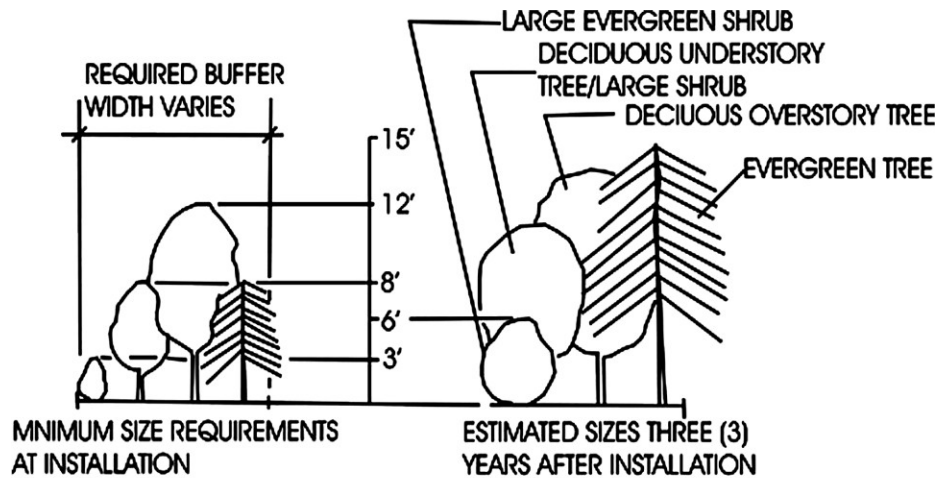
- (a) No tree with a caliper less than two and one-half inches shall be permitted.



**PLANTING RATE NOTES:**

1. EVERGREEN TREES AT 50% REQUIRED NUMBER
  2. DECIDUOUS OVERSTORY TREES AT 20% - 30% REQUIRED NUMBER
  3. DECIDUOUS UNDERSTORY TREES/LARGE SHRUBS AT 20% - 30% OF REQUIRED NUMBER
  4. LARGE EVERGREEN SHRUBS AT 1.2 TO 4 TIMES TOTAL NUMBER TREES
- \*DISTRIBUTE THE VARIOUS PLANT TYPES ALONG LENGTH OF BUFFER

**PLAN VIEW - TYPICAL BUFFER**



**SECTION VIEW - TYPICAL BUFFER**

- (b) Of the total number of required trees, 20 to 30 percent shall be deciduous overstory trees.
- (c) The planting rate per square foot shall be calculated in accordance to the following table:

<b>BUFFER POINTS FOR TREES</b>	
<b>Buffer Width</b>	<b>One Tree per Square Feet of Buffer</b>
15 feet	200 square feet
25 feet	300 square feet
35 feet	350 square feet
45 feet	400 square feet
55 feet	475 square feet
65 feet and above	550 square feet

- (2) **Deciduous understory trees/large shrubs.**
  - (a) No deciduous understory tree/large shrub less than eight feet tall shall be permitted to be planted.
  - (b) Of the total number of required trees, between 20 and 30 percent shall be deciduous understory trees/large shrubs.
  - (c) The shrubs can be deciduous or evergreen.
  - (d) If there is significant existing vegetation and/or significant site characteristics/design solutions that provide adequate screening, two smaller deciduous understory trees/large shrubs with a minimum height of four and half feet can be substituted for one required deciduous understory tree/large shrub.
- (3) **Large evergreen trees.**
  - (a) No large evergreen trees less than eight feet tall shall be permitted.
  - (b) Of the total number of required trees, at least 50 percent shall be large evergreen trees.
  - (c) If there is significant existing vegetation and/or significant site characteristics/design solutions that provide adequate screening, two smaller evergreen trees with a minimum height of four and half feet can be substituted for one required large evergreen tree.



**b. Evergreen shrubs.**

- (1) Evergreen shrubs shall be installed at a minimum height of 36 inches.
- (2) Evergreen shrubs shall reach six feet within two years of planting.
- (3) To calculate the required numbers of shrubs refer to Section K.5, Land use buffer classifications, and Section K.6, Buffer width charts.
- (4) Evergreen shrubs shall be evenly distributed along the entire length of the buffer at the following rates per square foot:

<b>BUFFER POINTS FOR SHRUBS</b>	
<b>Buffer Width</b>	<b>One Shrub per Square Feet of Buffer</b>
15 feet	50 square feet
25 feet	75 square feet
35 feet	125 square feet
45 feet	200 square feet
55 feet	300 square feet
65 feet and above	450 square feet

**9. Sight line drawings.**

- a. The Planning Director shall require sight line drawings to be submitted with landscape plans if the proposed development is adjacent to a residential district or use or in cases where the proposed development may have some impact on street views.
- b. The Planning Director may require sight line drawings to be submitted with landscape plans based on, but not limited to, the following criteria:
  - (1) Where existing vegetation or proposed vegetation and berming is not adequate;
  - (2) Where the first story finished floor elevation of the proposed development is a minimum six feet higher or lower than adjacent residential zoning or use;
  - (3) Where materials, character or architectural features for the proposed building are different from adjacent residential structures;
  - (4) Where the proposed building volume is five times or greater than adjacent residential building volume, and/or the height of the proposed building is three stories (or equivalent) or higher.
- c. Implications for site layout may include increased buffer width and standards, revision to building footprint dimension or location, revision to building orientation, revision to location of site support structures (dumpster, accessory buildings).

**L. Street trees, street yard, side and rear yard, vehicular surface areas.**

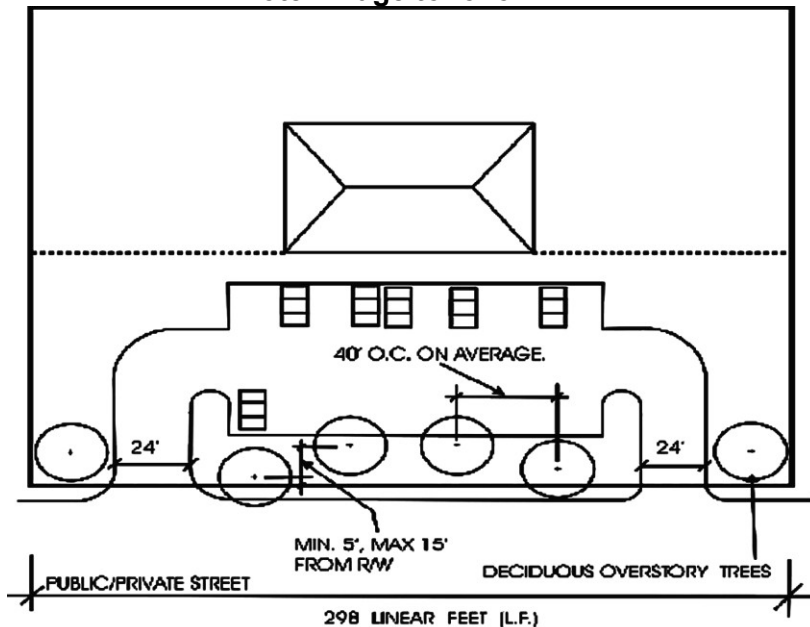
- 1. **Street trees.** Street trees shall create an environment that benefits from the aesthetic and environmental qualities of a consistent tree canopy along public and private streets and highways. Trees improve the overall appearance and provide shade, visual interest and reduce heat build up and run off.

- a. All new development and qualified expansion of existing

development, on both private and public street frontage, shall install at one overstory tree with a minimum caliper of two and one-half inches every 40 feet on average, or as close thereto as practicable. Planted trees shall be a minimum of five feet and maximum of 15 feet from the road right-of-way and shall be located within a public street tree easement. Variance from this spacing may be allowed to accommodate existing utilities or natural obstructions.

- b. Street trees shall be deciduous overstory trees that reach a minimum height of 35 feet at maturity. Where overhead wiring exists, small ornamental trees shall be used.
- c. To avoid a monoculture-planting scheme, it is recommended that a variety of tree species be planted for more diversity along the roadways.
- d. Credit will be given for the preservation of existing overstory trees that are healthy and of good quality. The developer may be required to submit a tree survey of all existing trees to be preserved. A minimum of two-thirds of the land area within each tree's critical root zone must be preserved for such trees to receive credit.

**Note: Image to follow**



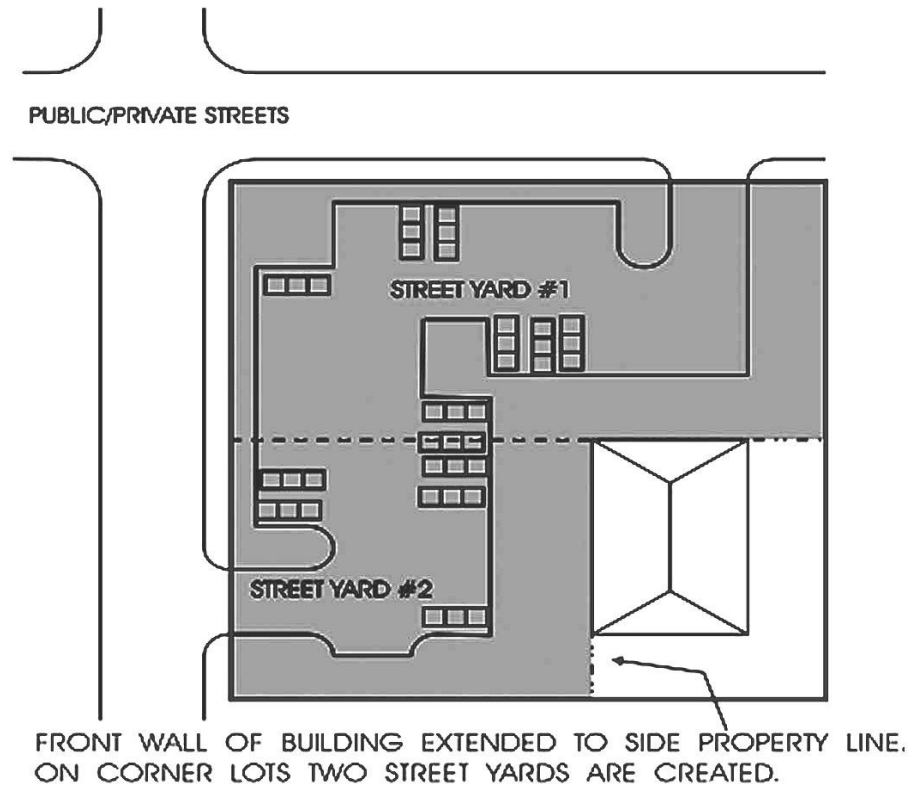
## STREET TREE REQUIREMENTS

298 L.F. - 48 L.F. (DRIVEWAYS) = 250 L.F.  
 250 L.F./40 = 6.25. i.e. 6. STREET TREES REQUIRED

- e. One hundred percent of the required street trees may be applied to the planting requirements of Section L.2, Street yards.
  - f. The BOA may waive strict compliance with this subsection if proposed alternative concepts would meet or exceed the visual impact provided by the deciduous overstory trees along the rights-of-way.
2. **Street yards.** A street yard is the protected landscape area contained by the existing or proposed street right-of-way and an imaginary line extending along the adjacent building facade or wall to the side property line (see illustrations on the next page). Street yards are intended to provide attractive vehicular and pedestrian views of the properties, to retain or supplement existing vegetation and to provide a visual and physical barrier between transportation routes and other land uses. Refer also to the overlay districts for discussion on street yards. Street yard requirements do

not apply to single-family residential districts or uses.

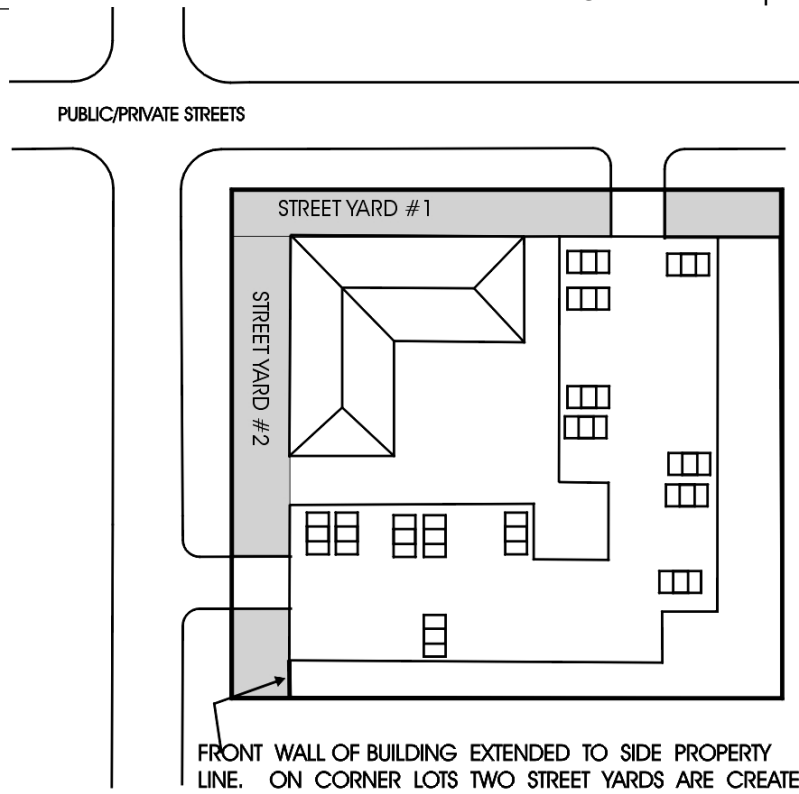
**a. Design requirements.**



**STREET YARD AREA**

- (1) Landscaping within the right-of-way of state roads requires an encroachment agreement from North Carolina's Department of Transportation (NCDOT). Applicants must contact NCDOT for their approval and coordinate landscape installation with any existing or proposed utility easements or services in the right-of-way. Applicants must provide the Town of Garner Planning Department with a copy of an approved encroachment agreement prior to the issuance of a building permit.
- (2) Sight distance triangles must be maintained at all intersections (see Section K.4). Plantings must not create any visual obstruction between 30 inches and seven feet in height within this triangle.

**Note: Image to follow**



**STREET YARD AREA**

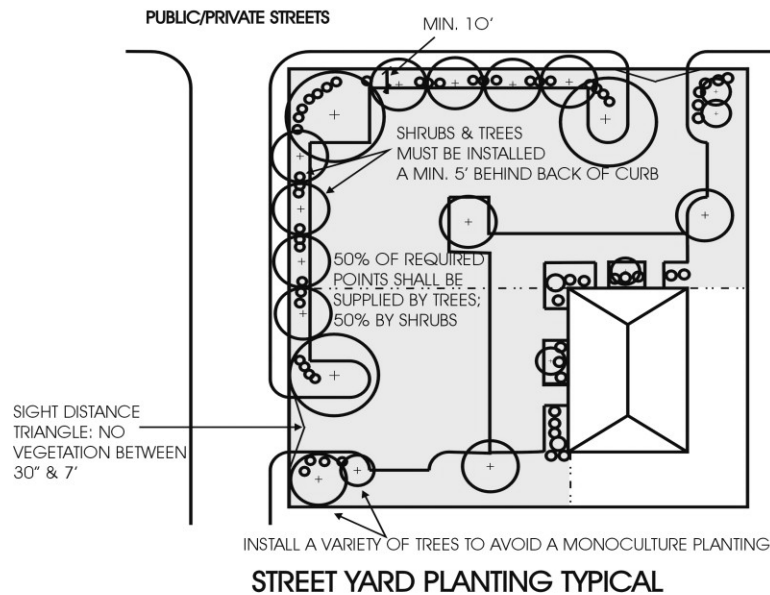
- (3) Refer to the plant point table in Section D.3 for point assignments specific to plant types and sizes. Refer to Section L.4.b, Planting requirements in vehicle surface area, for additional required screening of views of vehicles from the street right-of-way.
  - (4) If two street yards cross, the street yard with the lesser width between the right-of-way and the building wall/facade shall be used in this area of overlap. Refer to overlay districts for additional requirements.
- b. **Modification permitted in industrial subdivisions.** The landscaping requirements for industrial subdivision shall be met in a manner that enhances street appeal and maximizes screening of objectionable views. Up to 75 percent of the required plantings in the side and rear yard area, and vehicular surface area plantings can be applied toward street yard areas for maximum street appeal. No reduction shall be allowed in side and rear yards where that yard is adjacent to existing residential uses or districts.
- c. **Planting requirements.** The required tree and shrub installation is based on the total required points in street yards for the subject property.
- (1) Calculate the required points by determining the area in street yard(s). Multiply that area by a factor specific to the subject property's zoning district as follows:

Proposed Use	Points per Square Foot of Street Yard
Residential and Multifamily	0.06
Office and Industrial	0.025

Commercial	0.025
Retail, up to 3 acres	0.025
Retail, 3 acres or greater	0.015

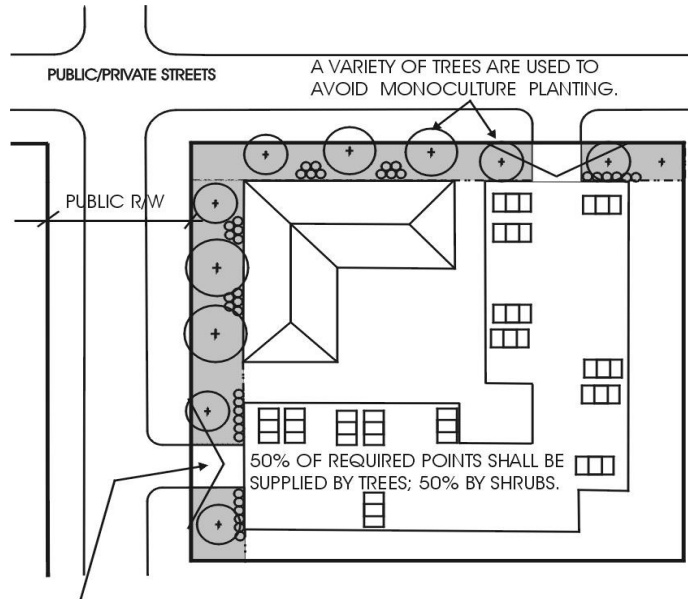
- (2) Reduction of total required points in street yards is allowed for large front setbacks according to the following percentages:
  - (a) Setbacks for commercial, office, and industrial districts up to 100 feet shall meet 100 percent of the total landscape credit requirements in the street yard for planting development.
  - (b) Setbacks for commercial, office, and industrial districts up to 200 feet shall meet 85 percent of the total landscape credit requirements in the street yard for planting development.
  - (c) Setbacks for commercial, office, and industrial districts greater than 200 feet shall meet 75 percent of the total landscape credit requirements in the street yard for their planting development.
- (3) Fifty percent of all required points in street yards shall be supplied by trees, and 50 percent of all required points in street yards shall be supplied by shrubs.
- (4) Required buffer plantings, required street trees, required street yard plantings, and required vehicular surface area (VSA) plantings may be credited at 100 percent towards street yard plant point requirements.

**Note: Images to follow on next page.**



**NOTES:**

- 1. SEE ALSO VEHICULAR SURFACE AREA (VSA) PLANTING REQUIREMENTS.
- 2. REQUIRED BUFFER PLANTINGS, AND REQUIRED VSA PLANTINGS MAY BE CREDITED AT 100% TOWARDS REQUIRED TREE COVER PLANTINGS.
- 3. SHOW ALL CALCULATIONS FOR REQUIRED PLANTINGS.

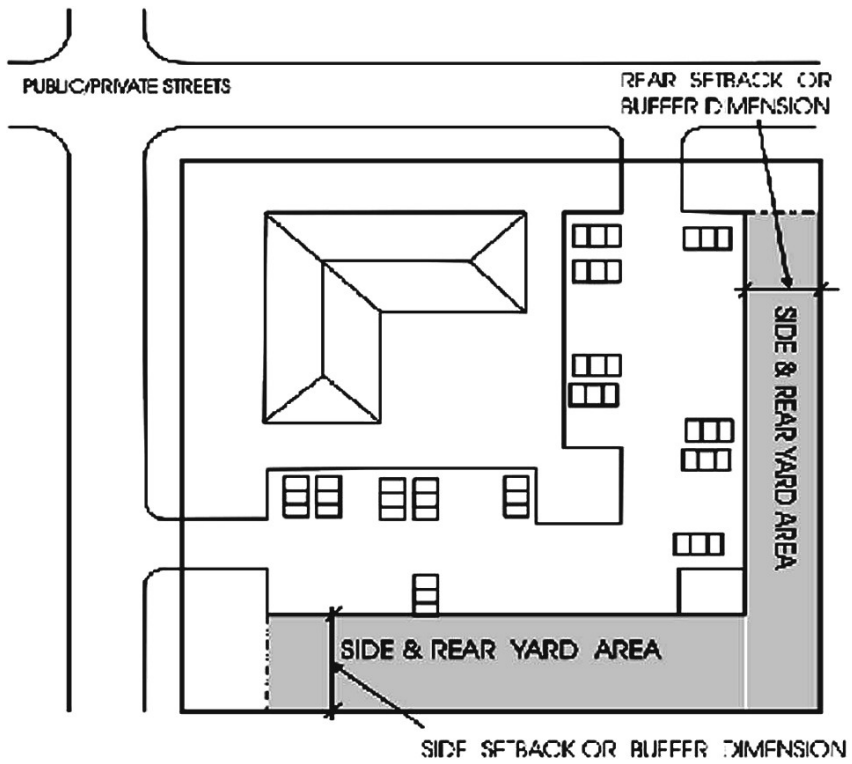


SIGHT DISTANCE TRIANGLE (TYP) - NO VEGETATION BETWEEN 30" & 7' ABOVE GRADE.

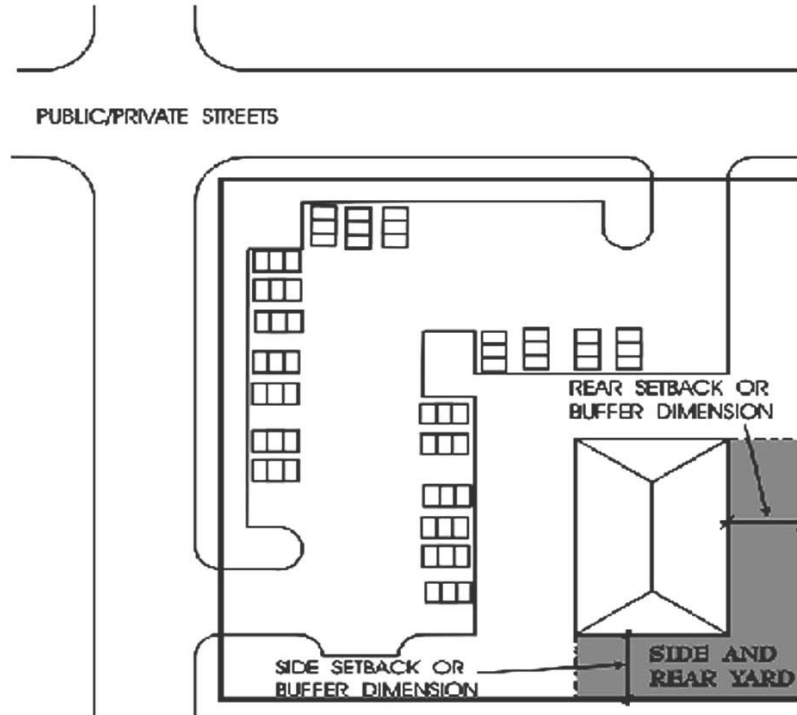
### STREET YARD PLANTING - TYPICAL

NOTES:

1. SEE ALSO VEHICULAR SURFACE AREA (VSA) PLANTING REQUIREMENTS.
  2. REQUIRED BUFFER PLANTINGS, REQUIRED STREET TREES, REQUIRED STREET YARD PLANTINGS, AND REQUIRED VSA PLANTINGS MAY BE CREDITED AT 100% TOWARDS REQUIRED TREE COVER PLANTINGS.
  3. SHOW ALL CALCULATIONS FOR REQUIRED PLANTINGS.
3. **Side and rear yards.** The side and rear yard is that part of the lot not in the street yard. Side and rear yard plant distribution shall occur throughout the entire side and rear yard. The side and rear yard area planting requirements shall be calculated by measuring the area bounded by the property line and the required side and rear building setbacks or the areas of required buffer, whichever area is greater.
- a. **Design requirements.**
- (1) Where the planting requirements are greater for the side and rear yard than the perimeter buffer then 100 percent of both requirements shall be installed.



**SIDE & REAR YARD AREA CALCULATION**  
Note: Image to follow on next page.



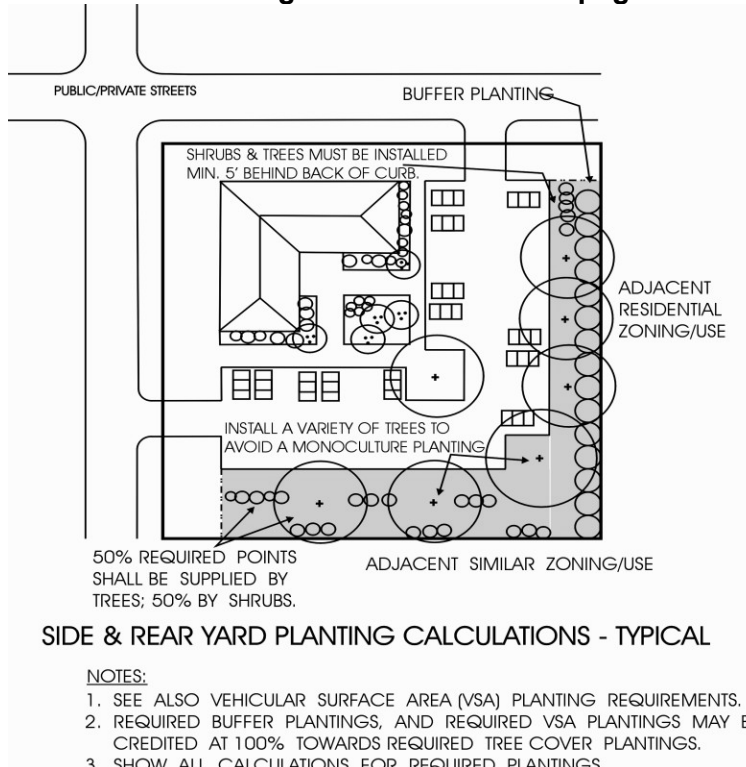
**SIDE & REAR YARD AREA CALCULATION**

- (2) Where the planting requirements are greater for the perimeter buffer than the side and rear yard then only the buffer requirements shall be installed.
- b. **Planting requirements.** The required tree and shrub installation is based on the total required plant points in the side and rear yard for the subject property. The required plant points vary according to the UDO 7:34

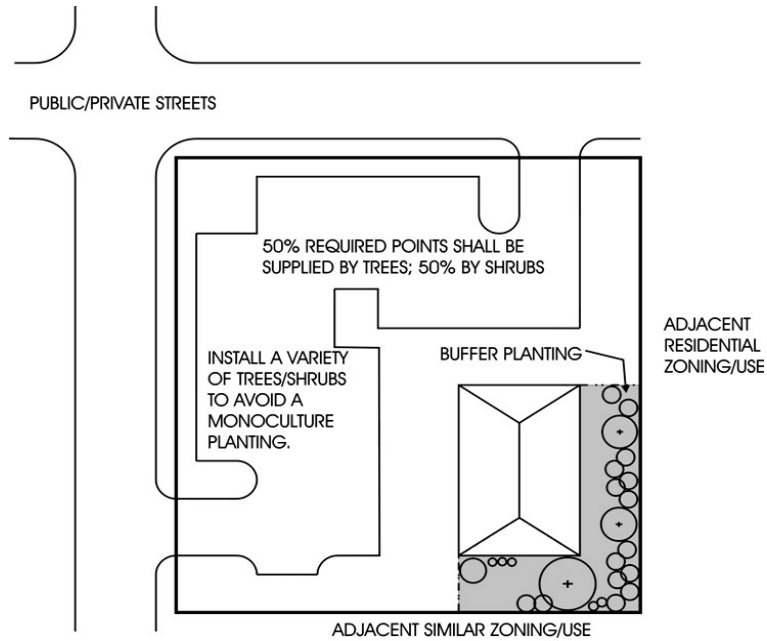
zoning district of the subject property as listed on the following page. At least 50 percent of the plant points must be from trees, and the remainder must be from shrubs.

Proposed Use	Points per Square Foot of Side/Rear Yard
Residential and Multifamily	0.030
Office	0.020
Commercial	0.020
Retail, up to 3 acres	0.015
Retail, 3 acres or greater	0.010
Industrial	0.025

**Note: Images to follow on next page.**





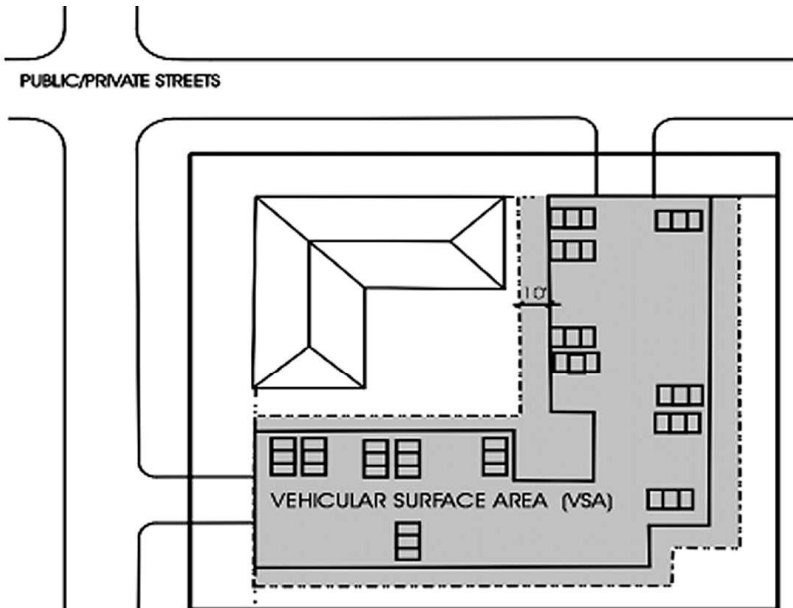


SIDE & REAR YARD PLANTING CALCULATIONS - TYPICAL

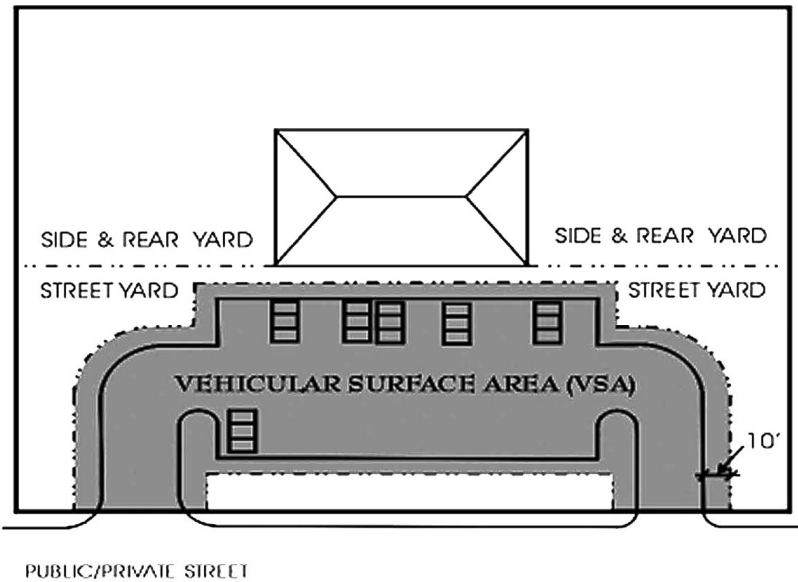
NOTES:

1. SEE ALSO VEHICULAR SURFACE AREA (VSA) PLANTING REQUIREMENTS
2. REQUIRED BUFFER PLANTINGS, AND REQUIRED VSA PLANTINGS MAY BE CREDITED AT 100% TOWARDS REQUIRED TREE COVER PLANTINGS.
3. SHOW ALL CALCULATIONS FOR REQUIRED PLANTINGS.

4. **Vehicular surface areas.** The purpose of this section is to provide visual relief from large expanses of pavement through the introduction of landscape plantings. Landscaping lessens the visual impact of parking areas while reducing heat, glare and pollution.



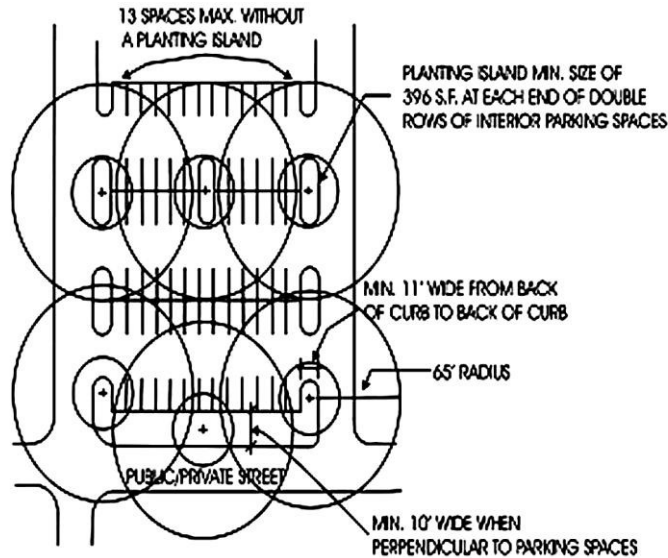
VEHICULAR SURFACE AREA  
IN SIDE AND REAR YARD



### VEHICULAR SURFACE AREA IN STREET YARD

- a. **Design requirements.** Vehicular surface areas may be located within the street, side and rear yards. Planting requirements are created for these vehicular surface areas based upon the yards they are within. Planting incorporated into these areas shall be designed using the following design guidelines and criteria.
- (1) Landscape islands shall be evenly distributed throughout the vehicular surface areas for maximum shade. No parking space shall be more than 65 feet from the trunk of a deciduous overstory tree. Trees are permitted to be planted in clusters provided that it exceeds all other planting requirements..
  - (2) Plantings used to meet these requirements shall be located within the vehicular surface area or in plant beds within ten feet of the parking surface areas. Trees in the adjacent street or side and rear yard that are within ten feet from the vehicular surface area may be used to meet this requirement.
  - (3) Landscape islands within the vehicular surface area shall be a minimum of 198 square feet in area and 11 feet in width from back-of-curb to back-of-curb.
  - (4) Landscape planting areas adjacent to vehicular surface areas and perpendicular to parking spaces shall be a minimum of ten feet in width. Unless a parking space contains a specified wheel stop, trees and shrubs shall be a minimum of five feet from the edge of the pavement.

**Note: Image to follow on next page.**



### PARKING LOT TREE PLANTING REQUIREMENTS

**NOTES:**

1. EVERY PARKING SPACE SHALL FALL WITHIN A 65' RADIUS OF AN OVERSTORY TREE TRUNK
2. FOR EVERY PLANTING ISLAND AT THE END OF AN INTERIOR SINGLE PARKING ROW THAT IS A MINIMUM 324 S.F. (18 x 18) THERE MAY BE A REDUCTION OF UP TO 12% OF TOTAL REQUIRED PARKING SPACES IN PARKING LOTS 75,000 S.F. OR LARGER.
3. DO NOT INSTALL POLE-MOUNT LIGHTS IN THE SAME PLANTING ISLAND AS HOUSES AN OVERSTORY.

- (5) Planting areas at the end of parking space rows shall be required as follows:
  - (a) The maximum number of continuous parking spaces shall be 13.
  - (b) There shall be a planting island at least 198 square feet in size at the end of every row of perimeter parking spaces exceeding 13 parking spaces.
  - (c) There shall be a planting island at least 198 square feet in size at the end of every single row of interior parking spaces.
  - (d) There shall be a planting island at least 396 square feet in size at the end of every double row of interior parking spaces.
  - (e) Planting areas inside of parking islands shall contain positive drainage with no low spots that could trap water. All parking lot planting islands shall have curbing, pavement edging, or similar treatment around the perimeter to protect plant material.

**b. Planting requirements.**

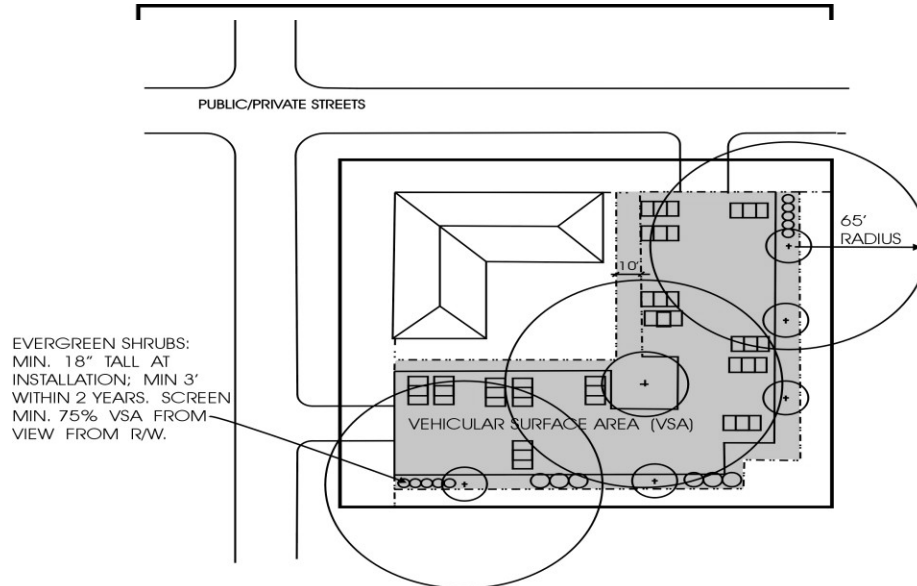
- (1) Screening of vehicular surface area from adjacent public rights-of-way or private streets is required. One hundred percent of the vehicular surface area requirements can be applied toward yard and buffer planting requirements if the planting used to meet specific yard and buffer planting requirements do not adequately provide the proper screening.
  - (a) Vehicular surface areas shall have a visually modifying year-round screen that screens a

minimum of 75 percent of the vehicular surface area from the public right-of-way and private street. The screen shall have a minimum height of 18 inches at planting. The screening must reach a height of three feet within two years of planting.

- (b) The screen used may be composed of plant material, fences, walls, berms or any combination of these elements. Berms shall have a slope ratio no greater than 2 1/2:1 with a minimum crown width of at least two feet and shall be stabilized and predominantly covered with staggered clusters of shrub plantings an average six feet on center.
- (c) Fences and walls shall be compatible with the adjacent existing or proposed structures. Fence or walls shall be supplemented with plant material, which shall screen 25 percent of the fence or wall area within one year of plant installation.
- (d) The required area to be landscaped within and directly adjacent to the vehicular surface area is based on the total size in vehicular surface area as follows:

Vehicular Surface Area	Required Landscaping
Under 10,000 square feet	5 percent
10,000 to 40,000 square feet	6 percent
Over 40,000 square feet	8 percent

- (2) Verification of obstructions shall be the responsibility of the developer through the use of sections and details illustrating the site conditions.



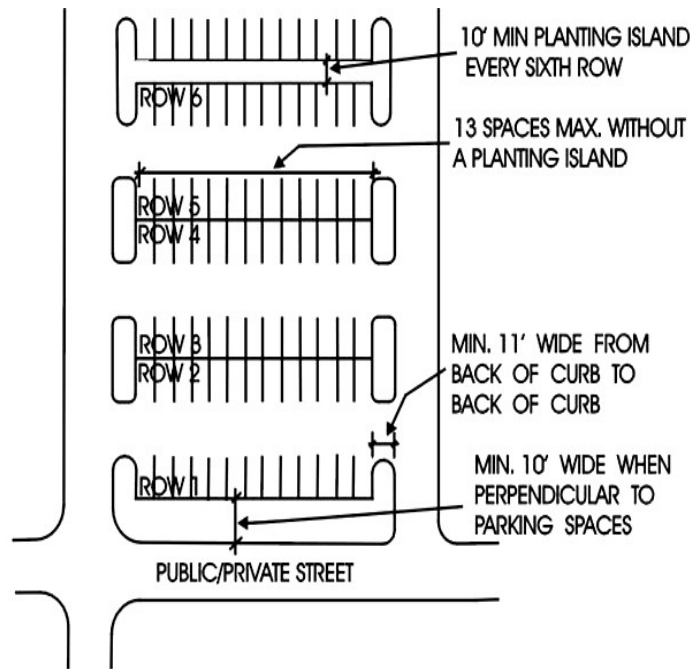
VEHICULAR SURFACE AREA IN SIDE AND REAR YARD - TYPICAL PLANTING

NOTES:

1. PLANTINGS USED FOR SIDE AND REAR YARD MAY ALSO BE CREDITED IN VSA IF INSTALLED WITHIN 10' OF PARKING LOT.
2. ALL PARKING SPACES MUST BE WITHIN 65' OF THE TRUNK OF AN OVERSTORY TREE.

**c. Parking lots equal to or greater than 75,000 square feet.**

- (1) A planting median is required in parking lots of all new development and qualified expansion of existing development. Parking lots equal to or greater than 75,000 square feet are required to provide a planting island a minimum of ten feet wide after every sixth single parking row.
- (2) The planting median shall contain at a minimum one shade tree for every 65 linear feet. A maximum of 30 percent of the island can be an impervious surface.
- (3) Existing, healthy trees protected in an island may be counted toward this requirement after completion of all construction in the adjacent area.



## MEDIAN AND ISLAND REQUIREMENTS FOR PARKING LOTS 75,00 S.F. OR GREATER.

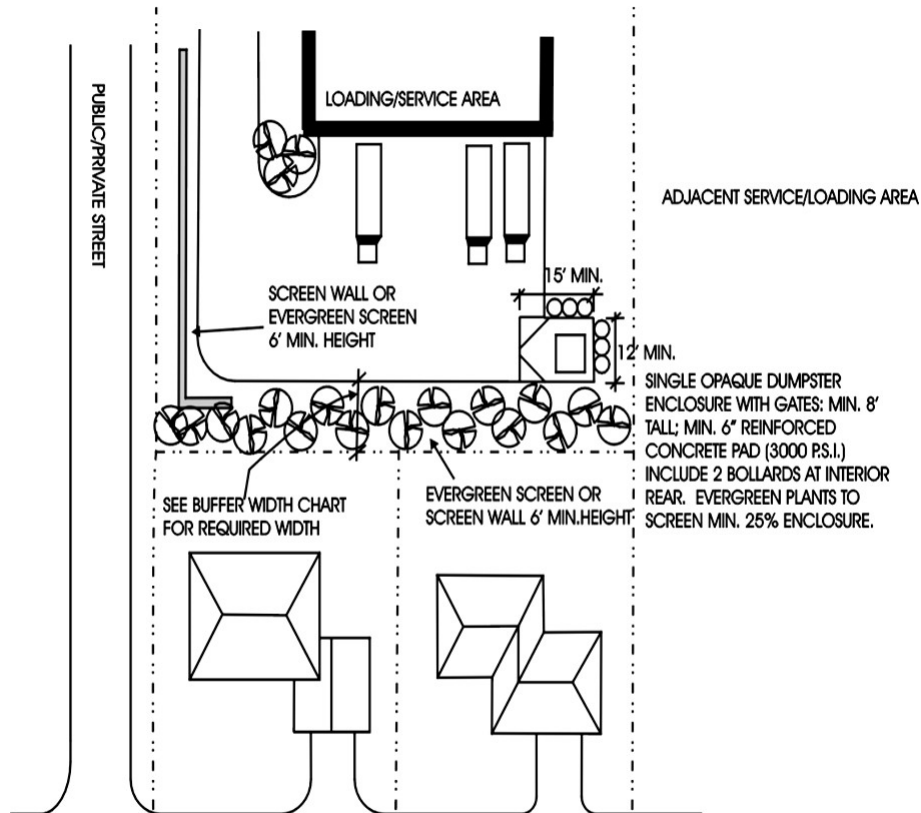
- (4) The installation of every planting island that is a minimum of 306 square feet in area at the end of a single or perimeter row or a minimum of 612 square feet at the end of every double row of interior parking spaces may result in the reduction of one required off-street parking space for a maximum of a 12 percent reduction in required off-street parking spaces.

### M. Screening of objectionable views.

1. **Trash container areas.** Trash container areas shall be subject to the following requirements:
  - a. Trash container areas shall be separated at least 50' from residential districts or uses.
  - b. Trash collection areas shall be fully enclosed with a fence or wall to a minimum height of eight feet to block 100 percent of the view into the enclosed area. The enclosure shall match the primary color and material of the building when viewed from public or private right-of-way and/or adjacent residential districts and uses. If the enclosure is not visible from a public or private right-of-way and/or adjacent residential district or use the enclosure panels and gate may be constructed of wood on metal posts/supports. The minimum eight-foot tall gate shall include a self-latching mechanism.
  - c. Plant material shall supplement berms, walls or fences. Planting material shall screen 25 percent of the dumpster wall area. Planting material shall consist of a minimum of six low branching evergreens shrubs a minimum of three feet in height at time of planting.
  - d. Standard dumpster enclosures shall be a minimum of 12 feet across by 12 feet deep for a single dumpster and 24 feet wide for a double dumpster. A six-inch thick reinforced concrete (3,000 psi) pad shall be 12 feet wide by 15 feet deep per container.
2. **Service and loading areas.** Service and loading areas shall be subject to the following screening requirements:
  - a. Provide a minimum 100 percent year-round screen of all loading

and service areas from the adjacent public and private right-of-way, and/or adjacent residential districts and uses.

- b. This screen shall consist of berms, walls, fences, plant material or combination totaling eight feet in height at installation or completion of construction.
- c. Wall or fence materials shall be compatible with the primary structure. Plantings shall be low branching evergreens and a minimum height of five feet at time of installation.
- d. Where a service or loading area is located closer than 25 feet from a property line adjacent to a residential district, the minimum required height of the plantings shall be six feet at time of installation.



**SERVICE AND LOADING AREA REQUIREMENTS**

- 3. **Stormwater devices.** All detention/retention ponds shall be screened on all sides with evergreen shrubs maintained at a minimum height of four feet. (Note: See also the general fencing requirements)
- 4. **Utility elements.** Utility elements shall be subject to the following requirements:
  - a. All utility devices visible from the public right-of-way or private street shall be screened with low branching evergreen shrubs a minimum of 30 inches tall at installation. Screening material shall be planted a minimum of ten feet from the access doors to provide room for service and utility maintenance activities.
  - b. Property owners shall follow the above requirements concerning utilities located on their property.
  - c. Miscellaneous elements (air conditioning units, storage tanks, non-utility transformers, compactors, and other similar elements) shall be screened entirely from vehicular view from the public right-of-

way and private streets. Access to elements shall be from a side other than side facing the right-of-way.

- d. All roof-mounted elements shall be 100 percent screened from view from the public right-of-way and/or adjacent properties.

5. **Solar Farms.** In addition to the buffer requirements of Section 7.1K, solar farms shall be screened from view as follows:

- a. Where a solar farm area is visible from a public right-of-way or private street, an evergreen screen of low-branching trees/shrubs shall be provided. All screening material shall be installed adjacent to security fencing surrounding the solar farm area and be a minimum of six (6) feet in height with an expected minimum height at maturity of 10 feet.
- b. Screening material required by subsection (1) shall be planted on center no more than 10 feet apart.

6. **Screening industrial properties.** Screening in industrial subdivisions shall be subject to the following requirements:

- a. Fencing, walls, hedges, landscaping, berms, natural areas or any combination of the above which is consistent with the requirements of this section shall be provided to obscure uses or portions of a specific use which by their nature have the potential to negatively impact the community and properties outside the subdivision.
- b. The following specific uses shall be 100 percent screened from adjacent properties outside the subdivision and from view from public rights-of-way:
  - (1) Dumpsters and trash handling areas.
  - (2) Service entrances and utility facilities.
  - (3) Loading docks or spaces.
  - (4) Outdoor storage and any material stocks or equipment, including, but not limited to, motor vehicles, farm or construction equipment, or other similar items.
- c. No buffer or screening is required in the side or rear yards between parcels with an industrial subdivision. The following standards shall apply where adjacent parcels are not within the industrial subdivision.

(1) **Buffer.**

- (a) A minimum 15-foot evergreen vegetative buffer will be required adjacent to lots not within the subdivision unless buffer table dictates wider buffer requirements.
- (b) Where lots adjacent to industrial subdivisions are vacant at the time the industrial subdivision receives site permit approval, then the minimum vegetative buffer shall be 15 feet unless the buffer table dictates wider buffer requirements.

(2) **Screening.**

- (a) One hundred percent screening will be required in the 15-foot buffer area.
- (b) Existing vegetation meeting the standards of this UDO can be used on a one-for-one basis in the areas where it meets the screening requirements.

**N. Maintenance requirements.**

- 1. **Owner/agent responsibility.** The owner/agent is responsible for the upkeep of their property with a regular and proper maintenance program. A proper program will reduce disease, insect problems, weed control,



- 
- pruning and watering. For further details refer to the Town of Garner Planting Manual in Appendix E for landscape maintenance guidelines.
2. **Slope stabilization.** All disturbed areas shall be stabilized from soil erosion immediately upon planting and shall be permanently maintained. Slopes greater than three to one shall not be stabilized with turf grass and shall require the planting of groundcover to stabilize any disturbed soil.
  3. **Replacement planting.** The owner is responsible for maintaining all required plant material in good health. Any dead, unhealthy or missing plants must be replaced in a manner consistent with the requirements contained in paragraph O., below (for replacement requirements where significant plant material has been lost due to catastrophe or natural causes).
  4. **Re-inspection program.** The owner is responsible for maintaining all required plant material in good health for the duration of the use of the property. Any dead, unhealthy or missing plants must be replaced with locally adapted vegetation, which conforms to the initial planting standards of this UDO and the Town of Garner Planting Manual contained in Appendix E.
  5. **Excessive tree pruning prohibited.** The owner is responsible for following accepted pruning practices for all required plant material and shall avoid excessive pruning of said material. Excessive pruning is defined as: removal of more than 25 percent of the crown or root system; failure to conform to standard pruning practices; or cutting other than for hazard, utility, or maintenance pruning. Illegally pruned trees must be replaced with trees proportional to the size of the tree damaged with the minimum replacement size of three inches caliper in a 200 square foot plant bed required. The applicable penalty provisions of Article 10 shall be applied to excessive pruning violations.
- O. **Loss due to catastrophe.** Should significant amounts of landscaping used to meet the requirements of this section be lost due to unusual causes or catastrophe, the owner of the property shall submit a plan detailing his/her intent in replacing lost material. Replacement planting may occur on a phased basis as approved by the Planning Director. Maximum time allowed in the phasing program is two years from the submittal of plans to the Town.
- P. **Flexibility in administration authorized.** The landscaping and tree protections requirements are established by the Town Council as standards that presumptively result in a better overall appearance of the built environment and protect the natural resources of the community. The Town Council recognizes that due to the particular nature of a tract, the nature of the proposed facilities, or other factors, the objectives of this article may be achieved even though the standards are not adhered to with mathematical precision.
1. The Planning Director shall permit minor deviations of no more than 10 percent from the general landscape standards and up to a 30 percent buffer width reduction.
  2. The BOA may allow greater deviations only for situations where a building or development was constructed prior to the adoption of the UDO and the buffer landscape planting standards or buffer width requirements cannot be met without removing significant portions of an existing building or significantly altering the property.
  3. Any deviation under this section may only be allowed when it is determined that:
    - (a) The objectives underlying these standards can be met without strict adherence to them.
    - (b) Because peculiarities in the developer's tract of land or the facilities

proposed it would be unreasonable to require strict adherence to these standards.

4. Where deviations are authorized, the official record of action taken on the development application shall contain a statement of the reasons for the deviation.

(Ord. No. 3396, § 15, 4-3-06; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3656, § 4, 2-21-12; Ord. No. 3780, §§ 10, 11, 7-7-15; Ord. No. 3881, §§ 5, 6, 9-5-17)

## 7.2. Stormwater management.

***Commentary: The stormwater management provisions apply seven sets of rules, covering the areas of erosion control, stormwater quantity, conservation or protected buffers, nitrogen reduction, water supply, watershed protection, environmentally sensitive watershed protection and floodplain management. Often, more than one element will apply to an individual property. Questions about the application of these provisions should be discussed with the Town Engineer.***

### A. Application to existing development.

1. Existing structures which become nonconforming with respect to watershed regulation by the adoption of this UDO are not affected unless and until there is a repair or expansion of or reconstruction of such structure.
2. Existing structures which become nonconforming with respect to watershed regulation by the adoption of this UDO may be repaired or reconstructed without a stormwater permit or watershed protection occupancy permit provided that there is no net increase in impervious surface.
3. Existing structures, whether conforming or nonconforming, may be added to or expanded without a stormwater permit or watershed protection occupancy permit provided there is no net increase in impervious surface.
4. In determining whether there is additional impervious surface area, and in determining the best management practices to be utilized in watershed protection in connection with an addition or expansion to an existing structure, the built-upon area of the existing development is to be excluded from any density calculations which are required to be performed.

***Commentary: This means, for example, that the owner of an existing lot may build on up to 70 percent of the remaining pervious surface, rather than the 70 percent limitation being applied to the entire lot including pre-existing development.***

### B. Stormwater Compliance Required

1. Application  
Stormwater compliance review materials shall be submitted to the Town Engineer for review and determination of completeness.
2. Issuance  
The Town Engineer, the Board of Adjustment sitting as the Watershed Review Board, or in the case of a variance, the Environmental Management Commission.
3. Vested Rights.  
See Article 3. All other stormwater compliance(s) shall expire within twelve (12) months of the date of issuance.
4. Watershed Protection Occupancy Permit.  
Upon completing construction, the applicant shall report to the Town and request issuance of a watershed protection occupancy permit described.
5. Variances
  - a. In the event of a deviation from the stormwater management standards outlined in this UDO, the variance process described in Article 3.

- b. Records shall be submitted to the supervisor of the classification and standards group, water quality section, and Division of Environmental Management on or before January 1st of the following year.

**C. Erosion and sedimentation control.**

1. A permit shall be obtained from the Wake County Erosion Control Inspector before a developer undertakes any land disturbing activity that would result in the uncovering of 40,000 square feet or more, and that no such permit may be issued for any development that would uncover 40,000 square feet or more until an erosion and sedimentation control plan is submitted and approved, provided, that this section does not apply to activity under the exclusive jurisdiction of the North Carolina Sedimentation Control Commission is exempt from these requirements.
2. No use permit may be issued or final plat approval be given for any development that would cause land disturbing activity subject to the jurisdiction of Wake County Erosion Control Inspector or the North Carolina Sedimentation Control Commission unless such inspector or agency has certified to the Town that:
  - a. Any permit required by such inspector or agency has been issued or any erosion control plan required by such inspector or agency has been approved; or
  - b. Upon examination of the preliminary plans for the development it appears that any required permit or erosion control plan can be approved upon submission by the developer of more detailed construction or design drawings. However, construction of the development may not begin until such inspector or agency issues any required permit or approves any required erosion control plan.

**D. Stormwater quantity.**

1. **Stormwater management; relation to adjacent properties.** No development shall unreasonably burden adjacent properties with surface waters as a result of such development, including specifically the following:
  - a. No development may be constructed or maintained so that such development unreasonably impedes the natural flow of water from higher to lower properties, thereby causing substantial damage to such higher properties; and
  - b. No development may be constructed or maintained so that surface waters from such development are unreasonably collected or diverted onto lower properties, thereby causing substantial damage to lower properties.
2. **Stormwater runoff design standards.**
  - a. To the extent practicable, all development shall conform to the natural contours and drainage patterns (watersheds) of the land, and retain existing patterns of flow;
  - b. To the extent practicable, lot boundaries shall be made to coincide with natural drainage ways within subdivisions to avoid the creation of lots that can be built upon only by altering such natural drainage ways;
  - c. All developments shall have a drainage system adequate to prevent the undue retention of surface water on the development site. Surface water shall not be regarded as unduly retained if:
    - (1) The retention results from a deliberate approved sedimentation or storm water run-off control plan.
    - (2) The retention is not substantially different in location or degree than in the site's pre-development stage, unless

such retention presents a danger to health or safety.

- d. No surface water may be channeled or directed into a sanitary sewer;
  - e. Whenever practicable, drainage systems shall coordinate with and connect to drainage systems or drainage ways on surrounding properties or streets; and
  - f. Drainage swales in subdivisions are provided for in Article 8, Streets. Private roads and access ways within unsubdivided developments shall utilize curb and gutter and storm drains to provide adequate drainage if the grade of such roads or access ways is too steep to provide drainage in another manner or if other sufficient reasons exist to require such construction.
3. **Evaluation of detention needs.** Applicants for development approval shall evaluate detention needs for the development as follows:
- a. Except in certain situations, stormwater detention will be required on new development. The design standard for detention will be based upon peak flow reduction to predevelopment (existing) conditions for the 1-, 10-, 25-, and in some cases, the 100-year return frequency storm events.
  - b. Detention requirements may be reduced or eliminated by the Town Engineer upon a showing that installation of reduced or eliminated detention facilities will not create adverse downstream impacts.
4. **Stormwater control structure requirements.**
- a. All stormwater control structures and any modifications thereto, shall be designed and sealed by a North Carolina registered professional engineer, except such a structure may be designed by a registered land surveyor, where the runoff consists solely incidental drainage within a subdivision, as provided in G.S. § 89(c)-3(7); and
  - b. All water quality controls shall use retention ponds, bioretention areas or other approved devices, as a primary treatment system. All approved devices shall be designed for specific pollutant removal according to modeling techniques approved by the North Carolina Division of Environmental Management. Specific requirements for these systems shall be in accordance with the North Carolina Division of Environmental Management design criteria or otherwise as approved by the Town Engineer.
  - c. All water quantity controls shall use detention ponds, bioretention areas or other devices or systems as approved by the Town Engineer. Detention facilities shall be designed using the design procedures set forth in Elements of Urban Stormwater Design, Malcolm, or other design procedures as approved by the Town Engineer.
  - d. A maintenance and operations plan, acceptable to the Town Engineer, shall be developed for each water quantity and water quality control structure proposed as part of the development.
5. **Maintenance of retention facilities and private streets.**
- a. All water quality controls and devices which are installed solely to provide 85 percent total suspended solid (TSS) removal in order to satisfy the water supply watershed protection section of the UDO shall be maintained by the Town of Garner. Such maintenance by the Town will be limited to the water quality treatment function of the stormwater control system. Maintenance activities not related to

water quality such as aesthetics, nuisance control, etc. will not be the responsibility of the Town but shall be the responsibility of the owner. The developer shall deed, dedicate or grant sufficient easement or right-of-way to allow for the access and maintenance of the water quality control system.

- b. All water quality controls and devices which are installed to meet the nitrogen reduction requirements of this UDO shall maintained by the property owner or the person or persons responsible for the maintenance of the property. In the case of residential or commercial subdivisions, a home owners association or merchants association shall be established in order to identify the person or persons responsible for the maintenance of the property. The developer shall deed, dedicate, or grant sufficient easement or right-of-way to for the access and inspection of the water quality control system.
- c. All water quantity controls and devices shall maintained by the property owner or the person or persons responsible for the maintenance of the property. In the case of residential or commercial subdivisions, a home owners association or merchants association shall be established in order to identify the person or persons responsible for the maintenance of the property. The developer shall deed, dedicate, or grant sufficient easement or right-of-way to for the access and inspection of the water quality control system.

**E. Watershed Conservation Buffer Areas.**

**1. Areas defined.**

- a. The development on lots abutting or including Lake Benson or any of the streams identified in this section shall be limited by an adjacent buffer area.
- b. This section shall apply to the following streams and lakes, including all branches of the identified streams to the limit of the intermittent and perennial streams as defined by the Neuse River Riparian Buffer rule, and if a future extraterritorial expansion includes any stream having a designated 100-year floodplain, such stream shall automatically be included as if listed below:

Stream Name	
Adams Branch	Mahler's Creek
Bagwell Branch	Reedy Branch
Big Branch #1	Reedy Creek Tributary
Big Branch #2, Mill Creek	Swift Creek
Big Branch Tributary	Walnut Creek
Buck Branch	White Oak Creek (see c. below)
Echo Creek	Yates Branch
Hilliard Creek	

- c. The Watershed Conservation Buffer Area requirements for nonresidential development shall not apply for property located adjacent to White Oak Creek. This exemption shall not apply to residential development to adjacent to White Oak Creek. In such cases where residential development adjoins White Oak Creek, a Watershed Conservation Buffer Area shall be required according to

the provisions of this section.

**2. Limitations on development in Conservation Buffer Areas.**

a. Development is prohibited in both the floodplain and the Watershed Conservation Buffer Areas for streams described in paragraph 1., above.

(1) Development within and adjacent to the Watershed Conservation Buffer Areas shall be subject to the following criteria:

(2) Buffer width: Along the lakefront or streams within 5,000 feet of the Lake Benson shoreline, the buffer area shall include the 100-year floodplain plus an area whose width is proportional to its distance from Lake Benson, beyond the edge of the floodplain and parallel to the stream, as follows:

<b>Distance from Lake Benson</b>	<b>Buffer</b>
Lakefront and within 1,000 feet of lakefront	100 feet
100 to 2,000 feet from lake	90 feet
2,001 to 3,000 feet from lake	80 feet
3,001 to 4,000 feet from lake	70 feet
4,001 to 5,000 feet from lake	60 feet

(3) Along other identified streams and along streams beyond 5,000 feet from the lakefront, the buffer area shall include the 100-year floodplain plus a 50-foot wide area beyond the edge of the floodplain and parallel to the stream; and

(4) If no floodplain exists on the portion of a stream in question, the buffer shall be considered to be the calculated 100-year storm high water mark based upon a built-out condition upstream.

(5) Application of a conservation buffer shall not diminish other riparian buffer requirements.

b. Buffers from which the vegetation cover has been removed shall be provided with ground cover. Crossings by streets, bridges, utilities or other facilities shall be kept at a minimum and their negative impact minimized.

c. Residential accessory buildings, on lots of record prior to March 1984, may encroach into designated conservation buffers provided that:

(1) Such buildings not exceed 25 percent of the area of the principal building served; and

(2) Such accessory building shall not be located in any designated floodway.

d. Placement of an accessory building in a flood fringe area shall meet all applicable construction requirements; and the area of the lot covered by impervious surfaces, including the accessory building, shall not exceed 25 percent.

e. Buffers shall be protected by easements and shall remain, where possible, in private ownership.

**3. Land disturbance limits in Conservation Buffer Areas.**

a. No land-disturbing activities (including agricultural uses) are permitted within the Conservation Buffer Areas, except for the following uses:

- (1) Street and associated facilities;
  - (2) Greenways and pedestrian paths; and
  - (3) Utility mains, pump stations and drainage facilities which comply with Town of Garner standards.
- b. Community service facilities, educational facilities, government facilities, parks and open space uses or public or private water dependent structures (functionally dependent facilities) may encroach into conservation buffer areas provided that:
- (1) The area of encroachment does not exceed ten percent of the total buffer area on the project site and a minimum of 40 feet of the buffer width remains undisturbed;
  - (2) The area of encroachment is the minimum amount necessary in order to reasonably use the property;
  - (3) No direct discharge of stormwater into the buffer from rooftops is allowed;
  - (4) No vehicular parking/loading areas or driveways are allowed within the buffer;
  - (5) The elevation of all finished floors of all structures located within the buffer shall be a minimum of two feet above the base flood elevation; and
  - (6) No encroachment into the floodplain or floodway shall be allowed except for water dependent structures and then only in accordance with the requirements and restrictions contained within Subsection 7.2.H. of this article.
- c. Within areas of the Lake Benson Conservation District not constituting the Conservation Buffer Areas, site disturbance on existing lots of record as of March 1984, except for agricultural use, including the cutting of trees, shall be permitted only pursuant to a removal plan approved by the Planning Director and the cutting of trees shall not exceed five times the actual impervious surface area planned for each site.
- d. Throughout the Lake Benson Conservation District and Conservation Buffer Areas, strict compliance with the Wake County Erosion and Sedimentation Control Ordinance is required. No construction is allowed in classes of soils which have severe erosion potential, or are classified as being otherwise unsuitable for urban uses, under the Urban Suitability Soil Groups in the Planning Guide to the Wake County Soil Survey (1970), unless the developer can provide either of the following:
- (1) An independent (sealed) engineering study which documents that the soils to be developed are not in the stated erosion categories, or
  - (2) Erosion prevention control measures that satisfy the Wake County Erosion and Sedimentation Control Ordinance.

**F. Nitrogen reduction.**

1. **Stormwater requirements for nitrogen control.** All new development shall meet the requirements of the "The Town of Garner Stormwater Program for Nitrogen Control." The major requirements that must be met by new development, as contained in the stormwater program, are as follows:
  - a. New development shall comply with the requirements for protecting and maintaining riparian buffers as specified in the Riparian Buffer Rule 15A NCAC 2B.0233.
  - b. As required by the Neuse Stormwater Rule 15A NCAC 2B.0235 the

nutrient load contributed by new development activities is limited to 3.6 pounds per acre per year (lbs/ac/yr) of nitrogen loading. Development shall have the option of partially offsetting projected nitrogen loads by funding wetland or riparian area restoration through the North Carolina Wetland Restoration Program. However, the total nitrogen loading rate cannot exceed 6.0 lbs/ac/yr for residential development or 10.0 lbs/ac/yr for nonresidential development. Best management practices (bmps) provided for in the stormwater program must be used to reduce nitrogen loading to the 6.0 and 10.0 limits and may be used to reduce nitrogen loading to the 3.6 limit. Maintenance of any bmps installed will be the responsibility of the development.

- c. Except in certain situations, stormwater detention will be required on new development. The design standard for detention will be based upon peak flow reduction to predevelopment (existing) conditions for the 1-, 10-, 25-, and in some cases, the 100-year return frequency storm events.

G. **Water supply watershed protection.** The water supply watershed protection areas described below are identified on the Town of Garner Watershed Protection Map.

1. **Water supply watershed protection areas.**

- a. **Swift Creek Watershed Protection Area.** The Town of Garner Swift Creek-Lake Benson public water supply watershed protection area (also variously known as the Swift Creek Watershed, Lake Benson Watershed, or Watershed Protection Area) is that portion of the land area within the present Town of Garner zoning jurisdiction designated on the Town of Garner Watershed Protection Map.
- b. **Lake Benson Conservation District.** This district constitutes what the state refers to as the critical area north of Lake Benson. Additional information is included in the zoning overlay district in Article 4.
- c. **Conditional zoning districts.** Conditional zoning district SB-C22 and conditional zoning district R-12-C53 and R1 2PR-C54. These constitute the portion of the Swift Creek critical area west of Lake Benson which is within the Town zoning limits.

2. **Exemptions.** The water supply watershed protection ordinances of the Town of Garner shall apply to the above-described land area, except, however that the watershed protection ordinances shall not apply to:

- a. Existing development, although they shall apply to future additions, expansion, repair, or reconstruction of existing development which are of such nature to create additional impervious surface; or
- b. To the development of a single existing lot for single-family residential purposes; although they shall apply to single-family residential development of multiple contiguous lots with common ownership.

3. **Impervious surface limits.**

- a. **Swift Creek Watershed Protection Area.** Within the Garner Swift Creek Watershed, impervious limits may not exceed 12 percent of land area, per lot, except that impervious limits may be a maximum of 70 percent, known as the high density option, where the stormwater runoff from a one inch rainfall event is retained by retention ponds, or other approved devices designed to achieve 85 percent total suspended solids as approved by the North



Carolina Division of Environmental Management and the Town of Garner, constructed in accordance with best management practices.

- b. **Lake Benson Conservation District.** Within that part of the Swift Creek Watershed Protection Area designated as the Lake Benson Conservation District, the impervious surface may not exceed six percent of land area per lot, except where runoff as described above is retained by retention ponds or other approved devices constructed pursuant to best management practices in which case it may not exceed, but may be a maximum of 35 percent. Performance standards are illustrated in the table captioned Lake Benson/Swift Creek Watershed Performance Standards.
- c. **Conditional districts.** Within that area subject to CUD SB-C- 22 or CUD R-L PR-C29, the impervious surface limits set therein, of 12 percent to 30 percent with retention ponds, or other approved devices, retaining the runoff as described and constructed pursuant to the best management practices in the area previously classified by the Swift Creek Land Management Plan as suburban new and 12 percent to 70 percent with retention ponds, or other approved devices, retaining the runoff as described above and constructed pursuant to the best management practices in the area classified in the Swift Creek Land Management Plan as urban new, shall apply pursuant to those Ordinances No. (1988) 2293 and (1989) 2370.
- d. **Watershed performance standards.** Watershed performance standards are contained in the table below.

Area	Maximum Impervious Surface			Maximum Residential Density
	Low Density Option	High Density Option*		
		Residential	Non-residential	
Swift Creek Watershed (except areas listed below)	12 percent	70 percent	70 percent	Controlled by underlying zoning
Lake Benson Conservation District (Critical Area)	6 percent	35 percent	35 percent	2.5 DU/Acre
Conditional District SB- C22 and R-12 PR-C29	12 percent	30 percent	70 percent	2.0 DU/Acre
Conservation Buffer Areas	See Section 4.8			

**\*Note: High density option requires construction of on-site retention ponds designed to retain runoff from a one-inch rainfall event or other approved devices.**

- e. **Front yards.** Impervious surface shall occupy no more than 40 percent of the required front yard.

**H. Swift Creek Conservation District.**

1. **Location.** This district constitutes an environmentally sensitive area located in the Swift Creek Watershed below Lake Benson as illustrated on the Town of Garner Official Zoning Map. Additional information is provided in Article 4 regarding zoning overlay districts.
2. **Use regulations.** The uses permitted or prohibited in the Swift Creek Conservation District shall be those uses permitted or prohibited in the underlying zoning district that apply to a particular parcel of land.
3. **Exempt from regulations.** All parcels of land that fall within the boundaries of the Swift Creek Conservation District which are identified on the Town of Garner Official Zoning Map as being exempt properties, shall not be subject to provisions of this overlay district.
4. **Existing development, redevelopment, and expansions.** Existing development (residential or non-residential) is not subject to the requirements of this section; existing development shall be considered to be existing any impervious surfaces, or for which plan or permit approval has been officially granted; or where a vested right has been established, as of May 31, 2005. Redevelopment or expansion of any existing non-residential development shall be subject to the requirements of this section; however, the impervious surface coverage of the existing development is not required to be included when applying the impervious surface coverage limits of this section.
5. **Development standards.** The following standards shall apply for new residential and non-residential development in Swift Creek Conservation District:
  - (1) The standards of both the Swift Creek Conservation District and the underlying zoning district shall apply to each parcel. Where the standards of the Overlay District and the underlying district differ, the more restrictive standards shall control development in new projects created after effective date of the Swift Creek Conservation District which is May 31, 2005.
  - (2) The maximum impervious surface coverage of the new residential development projects and new non-residential development projects, which are defined as those projects approved or permitted after the effective date of the Swift Creek Conservation District are as follows:
    - a. New single family detached residential subdivision development projects shall be limited to a maximum of 30 percent total impervious surface area.
    - b. New multi-family residential development projects defined to include townhomes, condominiums, or apartments shall be limited to a maximum of 50 percent total impervious surface area.
    - c. New non-residential development projects shall be limited to a maximum of 70 percent of total of impervious surface area.
6. **Lake Benson and buffer area development standards.** All building footprints and front, rear, and side yard areas as required by this UDO shall be provided outside of conservation buffers protecting the watershed of Lake Benson or other officially designated protected buffer areas. Rear yard areas adjacent to a conservation buffer shall be reduced to a minimum of fifteen feet during the review of a subdivision. However, no reduction, waiver, or variance below this fifteen-foot minimum shall be permitted.

**I. Floodplain management.**

***Commentary: The stormwater management provisions apply seven sets of***

*rules, covering the areas of erosion control, stormwater quantity, conservation or protected buffers, nitrogen reduction, water supply watershed protection, environmentally sensitive watershed protection and floodplain management. The Town of Garner adopted floodplain regulations to be consistent with federal and state requirements. However, Town regulations specifically prohibit development in the 100-year floodplain and in conservation or protected buffers areas except as noted in Section 7.2.D.1(c).*

*Often, more than one element of the stormwater provisions will apply to an individual property. Questions about the application of these provisions should be discussed with the Town Engineer.*

**1. Statutory authorization, findings of fact, purpose and objectives.**

**A. Statutory authorization.** The Legislature of the State of North Carolina has in delegated to local governmental the responsibility units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Town Council of the Town of Garner North Carolina, does ordain the following findings of fact:

- (1) The flood prone areas within the jurisdiction of Town of Garner 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.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

**B. 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:

- (1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains; stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

**C. Objectives.** The objectives of this ordinance are:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

- (4) To minimize prolonged business losses and interruptions;
- (5) To 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;
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (7) To ensure that potential buyers are aware that property is in a special flood hazard area.

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. The definitions listed below apply to Section 7.2H only.

*"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.

*"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 to three 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.

*"Area of special flood hazard"* see "Special flood hazard area (SFHA)".

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

*"Base flood"* means the flood having a one 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 federal or state or other source using FEMA approved engineering methodologies. This elevation, when combined with the "freeboard", establishes the "regulatory flood protection elevation".

*"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.

*"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.

*"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.

*"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, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

*"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) was completed before the original effective date of the floodplain management regulations adopted by the community.

*"Flood"* or *"flooding"* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

*"Flood boundary and floodway map (FBFM)"* means an official map of a community, issued by the federal emergency management agency, 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 federal emergency management agency, 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 federal emergency management agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

*"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 federal emergency management agency. 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".

*"Floodplain"* means 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.

*"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 which control development in flood-prone areas. 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.

*"Floodway"* means the channel of a river or other watercourse 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 foot.

*"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.

*"Freeboard"* means the height added to the base flood elevation (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, bridge openings, and the hydrological effect of urbanization on the watershed. The base flood elevation 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, such as 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 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 U.S. 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 U.S. 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.

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

*"Lowest floor"* means 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.

*"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.

*"Mean sea level"* means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

*"New construction"* means structures for which the "start of construction" commenced on or after the effective date of the original version of the community's flood damage prevention ordinance and includes any subsequent improvements to such structures.

*"Non-encroachment area"* means the channel of a river or other watercourse 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 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 for the area.

*"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 for the area.

*"Principally above ground"* means that at least 51 percent 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) Four hundred 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; and
  - (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

*"Reference level"* is the top of the lowest floor for structures within special flood hazard areas designated as Zone A1--A30, AE, A, A99 or AO. (Alternative acceptable language for reference level) *"Reference level"* is the bottom of the lowest horizontal structural member of the lowest floor, excluding the foundation system, for structures within all special flood hazard areas.

*"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.

*"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.

*"Solid waste disposal facility"* means, as defined in NCGS 130A-290(a)(35), any facility involved in the disposal of solid waste.

*"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 or greater chance of being flooded in any given year, as determined in Section 7.2H(3)b 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. See definition of "substantial improvement". 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. (The last sentence is OPTIONAL but required for eligibility for increased cost of compliance (ICC) benefits for repetitive losses.)

*"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.

*"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 Sections 7.2H(3) and 7.2H(4) are presumed to be in violation until such time as that documentation is provided.

*"Water surface elevation (WSE)"* means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or 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.

### 3. **General provisions.**

- a. **Lands to which this ordinance applies.** This ordinance shall apply to all special flood hazard areas within the jurisdiction, including extra-territorial jurisdictions (ETJs) if applicable, of Town of Garner and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.
- b. **Basis for establishing the special flood hazard areas.** The special flood hazard areas are those identified under the cooperating technical state (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its

accompanying flood insurance rate maps (FIRM), for Wake County dated May 2, 2006, which are adopted by reference and declared to be a part of this ordinance.

- c. **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 Section 7.2(4)c of this ordinance.
  - d. **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.
  - e. **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.
  - f. **Interpretation.** In the interpretation and application of this ordinance, all provisions shall be:
    - (1) Considered as minimum requirements;
    - (2) Liberally construed in favor of the governing body; and
    - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.
  - g. **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 damages. This ordinance shall not create liability on the part of Town of Garner 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.
  - h. **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 misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Town of Garner from taking such other lawful action as is necessary to prevent or remedy any violation.
4. **Administration.**
- a. **Designation of Floodplain Administrator.** The Town Engineer, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance.
  - b. **Floodplain development application requirements.** 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 7.2H(3)b 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 7.2H(3)b the boundary of the floodway(s) or non-encroachment area(s) as determined in Section 7.2H(3)b;
  - (d) The base flood elevation (BFE) where provided as set forth in Section 7.2H(3)b; 7.2H(4)e(11 and 12) or 7.2H(5)d;
  - (e) The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
  - (f) 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 mean sea level of the proposed reference level (including basement) of all structures;
  - (b) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be flood-proofed; and
  - (c) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed;
- (3) If floodproofing, a floodproofing certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is 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);
  - (b) Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with Section

7.2H(5)(b)(4), when solid foundation perimeter walls are used in Zones A, AO, AE, and A1--30;

- (5) Usage details of any enclosed areas below the regulatory flood protection elevation.
  - (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) Copies of all other local, state and federal permits required prior to floodplain development permit issuance (wetlands, endangered species, erosion and sedimentation control, riparian buffers, mining, etc.)
  - (8) Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure Section 7.2H(5)(b)(6 and 7) 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.
- c. **Permit requirements.** The floodplain development permit shall include, but not be limited to:
- (1) A description of the development to be permitted under the floodplain development permit.
  - (2) The special flood hazard area determination for the proposed development per available data specified in Section 7.2H(3)b.
  - (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, as applicable.
  - (7) The flood openings requirements, if in Zones A, AO, AE or A1--30.
- d. **Certification requirements.**
- (1) Elevation certificates.
    - (a) An elevation certificate (FEMA Form 81-31) 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 mean sea level. 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) A final as-built elevation certificate (FEMA Form 81-31) 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.
- (2) Floodproofing certificate. If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA Form 81-65), with supporting data and an operational plan, 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 floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. 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 and 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.
- (3) If a manufactured home is placed within Zone A, AO, AE, or A1--30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required per Section 7.2H(5)(b)3.
- (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 Zone A, AO, AE or A1--30, are exempt from the elevation/floodproofing certification requirements specified in item (a) of this subsection:

- (a) Recreational vehicles meeting requirements of Section 7.2H(5)b(6)a;
  - (b) Temporary structures meeting requirements of Section 7.2H(5)b(7); and
  - (c) Accessory structures less than 150 square feet meeting requirements of Section 7.2H(5)b(8).
- e. **Duties and responsibilities of the Floodplain Administrator.**  
 The Floodplain Administrator shall perform, but not be limited to, the following duties:
- (1) 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.
  - (2) Advise permittee that additional federal or state permits (wetlands, endangered species, erosion and sedimentation control, riparian buffers, mining, etc.) may be required, and require that copies of such permits be provided and maintained on file with the floodplain development permit.
  - (3) Notify adjacent communities and the North Carolina Department of Crime Control and 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).
  - (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
  - (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 7.2H(5)e are met.
  - (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with Section 7.2H(4)d.
  - (7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with Section 7.2H(4)d.
  - (8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with Section 7.2H(4)d.
  - (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Section 7.2H(4)d and Section 7.2H(5)b(2).
  - (10) Where interpretation is needed as to the exact location of boundaries of the special flood hazard 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.
  - (11) When base flood elevation (BFE) data has not been provided in accordance with Section 7.2H(3)b, obtain,

- 
- review, and reasonably utilize any base flood elevation (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 7.2H(5)d(2)b, in order to administer the provisions of this ordinance.
- (12) When base flood elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Section 7.2H(3)b, 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.
  - (13) When the lowest ground elevation of a parcel or structure in a special flood hazard area is above the base flood elevation, advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. Maintain a copy of the letter of map amendment (LOMA) issued by FEMA in the floodplain development permit file.
  - (14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.
  - (15) 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.
  - (16) 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 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.
  - (17) 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, or 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.
  - (18) Make periodic inspections throughout all 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.

- (19) Follow through with corrective procedures of Section 7.2H(4)f.
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with Section 7.2H(2)b of this ordinance, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.
- (22) Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).

**f. Corrective procedures.**

- (1) **Violations to be corrected:** When the floodplain administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (2) **Actions in event of failure to take corrective action:** If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
  - (a) That the building or property is in violation of the flood damage prevention ordinance;
  - (b) That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,
  - (c) That following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.
- (3) **Order to take corrective action:** If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the flood damage prevention ordinance, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60) calendar days, nor more than 180 calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may



be feasible.

- (4) **Appeal:** Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (5) **Failure to comply with order:** If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

**g. Variance procedures.**

- (1) The Board of Adjustment as established by the Town of Garner, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.
- (2) 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.
- (3) Variances may be issued for:
  - (a) 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;
  - (b) Functionally dependant facilities if determined to meet the definition as stated in Section 7.2H(2) of this ordinance, provided provisions of Section 7.2H(4)g(9)b and e have been satisfied, and such facilities are protected by methods that minimize flood damages and;
  - (c) Any other type of development, provided it meets the requirements stated in this section.
- (4) 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:
  - (a) The danger that materials may be swept onto other lands to the injury of others;
  - (b) The danger to life and property due to flooding or erosion damage;
  - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (d) The importance of the services provided by the proposed facility to the community;
  - (e) The necessity to the facility of a waterfront location as defined under Section 7.2H(2) of this ordinance as a functionally dependant facility, where

- applicable;
- (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (g) The compatibility of the proposed use with existing and anticipated development;
  - (h) The relationship of the proposed use to the Comprehensive Growth Plan and floodplain management program for that area;
  - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (j) 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
  - (k) 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.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
  - (6) 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 of this ordinance.
  - (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the base flood elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
  - (8) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the federal emergency management agency and the State of North Carolina upon request.
  - (9) Conditions for variances:
    - (a) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
    - (b) 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.
    - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
    - (d) Variances shall only be issued prior to development permit approval.
    - (e) Variances shall only be issued upon:

- i. A showing of good and sufficient cause;
  - ii. A determination that failure to grant the variance would result in exceptional hardship; and
  - iii. 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.
- (10) A variance may be issued for solid waste disposal facilities, 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.
- (a) The use serves a critical need in the community.
  - (b) No feasible location exists for the use outside the special flood hazard area.
  - (c) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
  - (d) The use complies with all other applicable federal, state and local laws.
  - (e) The Town of Garner has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

**5. Provisions for flood hazard reduction.**

- a. **General standards.** In all special flood hazard areas the following provisions are required:
- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
  - (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  - (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
  - (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, etc.), hot water heaters, and electric outlets/switches.
  - (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
  - (6) 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.

- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
  - (8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.
  - (9) 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.
  - (10) 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 7.2H(4)g(10). 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 according to Section 7.2H(4)d of this ordinance.
  - (11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
  - (12) 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.
  - (13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
  - (14) 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.
  - (15) Fill material located within any 100-year floodplain used for a proposed development shall require certification by a professional engineer, supported by appropriate documentation, that such fill material will not raise the 100-year floodplain elevation on any upstream property during a base flood event.
- b. **Specific standards.** In all special flood hazard areas where base flood elevation (BFE) data has been provided, as set forth in

---

Section 7.2H(2), or Section 7.2H(4)e(11 and 12), the following provisions, in addition to Section 7.2H(5)a, are required:

- (1) **Residential construction.** New construction and substantial homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Section 7.2H(2) of this ordinance.
- (2) **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 7.2H(1) of this ordinance. Structures located in A, AE and A1--30 Zones 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 impermeable 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 7.2H(5)g(2). A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 7.2H(4)d, along with the operational and maintenance plans.
- (3) **Manufactured homes.**
  - (a) New or 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 7.2H(2) of this ordinance.
  - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by engineer certification, 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 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 36 inches in height, an engineering certification is required.
  - (c) All enclosures or skirting below the lowest floor shall meet the requirements of Section 7.2H(3)b(4)(a), (b) and (c).
  - (d) 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.

(4) **Elevated buildings.** Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

- (a) 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;
- (b) Shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
- (c) Shall include, in Zones A, AO, AE, and A1--30, 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:
  - i. A minimum of two flood openings on different sides of each enclosed area subject to flooding;
  - ii. The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;
  - iii. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
  - iv. The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;
  - v. 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
  - vi. 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.

(5) **Additions/improvements.**

- (a) 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:

- i. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
    - ii. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
  - (b) Additions to post-FIRM structures with no modifications 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.
  - (c) 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:
    - i. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
    - ii. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
  - (d) Where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.
- (6) **Recreational vehicles.** Recreational vehicles shall either:
  - (a) Be on site for fewer than 180 consecutive days and 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); or
  - (b) Meet all the requirements for new construction.
- (7) **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:
  - (a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;
  - (b) The name, address, and phone number of the individual responsible for the removal of the temporary structure;

- (c) 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);
  - (d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
  - (e) Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.
- (8) **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:
- (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 Section 7.2H(5)a(1);
  - (f) All service facilities such as electrical shall be installed in accordance with Section 7.2H(5)a(4); and
  - (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with Section 7.2H(5)b(4)(c).
  - (h) An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 7.2H(4)d.

**c. Reserved.**

**d. Standards for floodplains without established base flood elevations.** Within the special flood hazard areas designated as approximate zone and established in Section 7.2H(3)b, where no base flood elevation (BFE) data has been provided by FEMA, the following provisions, in addition to Section 7.2H(5)(a and b), shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 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.



- (2) The BFE used in determining the regulatory flood protection elevation shall be determined based on one of the following criteria set in priority order:
- (a) If base flood elevation (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 Article 4, Section E(11 and 12).
  - (b) All subdivision, manufactured home park and other development proposals shall provide base flood elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. Such base flood elevation (BFE) data shall be adopted by reference per Section 7.2H(3)b to be utilized in implementing this ordinance.
  - (c) When base flood elevation (BFE) data is not available from a federal, state, or other source as outlined above, the reference level shall be elevated to or above the regulatory flood protection elevation, as defined in Section 7.2H(2).
- e. **Standards for Riverine Floodplains with BFE but without established floodways or non-encroachment areas.** Along rivers and streams where BFE data is provided 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 outlined in Section 7.2H(5)a and b; 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 foot at any point within the community.
- f. **Floodways and non-encroachment areas.** Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in Article 3. 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 Section 7.2H(3)b, shall apply to all development within such areas:
- 1. Construction within floodways restricted.
    - a. No development, including structures, fences, fill or storage of materials or equipment, are permitted within a floodway or the conservation buffer areas of specified streams, as defined above, except the following:
      - (1) Pasture, forestry, wildlife sanctuary, game farm and similar agricultural, wildlife and related uses.

- 
- (2) Lawns, gardens, play areas, and similar areas. Golf courses, tennis courts, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space and similar private and public recreational uses, provided that golf courses must have retention ponds.
  - (3) Public water, stormwater or sewer infrastructure and highways.
  - (4) No artificial obstruction may be located within any floodway, except as provided above. For purposes of this section, an artificial obstruction is any obstruction, other than a natural obstruction, that can reduce the floodcarrying capacity of a stream, or may accumulate debris and thereby reduce the floodcarrying capacity of a stream. A natural obstruction includes any rock, tree, or analogous natural matter located within the floodway by a non-human cause.
  - (5) The use of fill materials within a floodway is prohibited unless certification by a registered professional engineer is provided demonstrating that no increase in flood levels during a base flood will result. Fill dirt within a floodplain shall be adequately stabilized to withstand the erosive force of the base flood.
  - (6) No new building construction or substantial improvement of an existing building may take place within any floodway.
2. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been demonstrated that:
    - (a) The proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, 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
    - (b) A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained upon completion of the proposed encroachment.
  3. If Section 7.2H(5)F(2)(e) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
  4. No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
    - (a) The anchoring and the elevation standards of Section 7.2H(5)(b)(3); and
    - (b) The no encroachment standard of Section

## 7.2H(5)F(2)(a).

- g. **Standards for areas of shallow flooding (Zone AO).** Located within the special flood hazard areas established in Section 7.2H(3)b, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Section 7.2H(5)a, all new construction and substantial improvements shall meet the following requirements:
1. 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 feet, above the highest adjacent grade; or at least two feet above the highest adjacent grade plus a freeboard of two feet if no depth number is specified.
  2. Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Section 7.2H(5)(g)(2) 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 as per Section 7.2H(4)d and Section 7.2H(5)(b)2.
  3. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

(Ord. No. 3397, § 1, 4-18-06; Ord. No. 3507, § 1, 4-22-08; Ord. No. 3558, § 2, 7-7-09)

### 7.3. Outdoor storage and display.

- A. **Limited outside display of seasonal merchandise.** In NC, CR and I-1, limited outside display of seasonal merchandise is permitted provided:
1. Fire lanes and vehicular accessways are not obstructed or encroached upon.
  2. If a pedestrian walkway exists along the entrance frontage of the business, a minimum four-foot wide pedestrian walkway is maintained.
  3. The total square footage of outside display area is ten percent or less of the business's interior sales square footage.
  4. Sales transactions take place inside the business building.

### 7.4. Off-street parking and loading standards.

- A. **Number of parking spaces required.**
1. All developments shall provide a sufficient number of parking spaces to accommodate the number of vehicles likely to be attracted to the development. However, in an effort to minimize impervious surfaces that can cause stormwater quantity and quality problems, the number of parking spaces needed should not be based upon rare seasonal peak demands.
  2. The presumptions established by this section are that:
    - a. A development must comply with the parking standards set forth in this section to satisfy the requirement stated in paragraph 1. above; and
    - b. Any development that does meet these standards is in compliance. However, the table of parking standards is only intended to establish a presumption and should be flexibly administered, as provided in paragraph C.

3. The table of parking standards represents both the typical minimum number of parking spaces required and the maximum number of parking spaces allowed. For those developments desiring additional parking beyond that required by the parking standards, the total number of parking spaces provided may be increased by up to ten percent above that recommended by the parking standards. If additional parking, above the ten percent increase, is still needed, the additional parking shall be constructed of permeable pavement or shall be drained directly to a bioretention area or other approved water quality BMP as approved by the Town of Garner.
4. Uses in the table of parking requirements are keyed to the Article 5. If application of this table results in a fractional space, any fraction of one-half or less may be disregarded, while any fraction in excess of one-half be counted as one parking space.
5. The number of parking spaces in lots of ten or more spaces may be reduced by one if the developer provides a bicycle rack offering a secure parking area for at least five bicycles.
6. Accessible parking.
  - a. Accessible parking spaces shall be provided in compliance with the following table and shall be identified with above-ground signs as specified in General Statutes 20-37.6 and 136-30, the North Carolina Department of Transportation Manual on Uniform Traffic Control and Chapter 4 of the North Carolina Accessibility Code, as amended.

Total Spaces in Lot	Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	Two percent of total
1,001 and over	20 plus 1 for each 100 over 1,000

- b. One in every eight (1 in 8) accessible parking spaces, or a minimum of one (whichever is the greater number), shall be van accessible and shall be identified [by] the words "van accessible" on an above-ground sign. Van accessible parking spaces shall be open to all vehicles properly identified in compliance with General Statute 20-37.6.
7. Whenever a building is constructed, in whole or in part, for low parking need uses, the building should be located so that sufficient usable space remains on the lot to add the additional parking spaces that would be required to convert the use of the building entirely to the new use classifications.

Whenever a building is proposed for purposes that require a lesser number of parking spaces than other uses to which the building might well be put at some future date, the Planning Director should send to the developer a certified letter explaining that sufficient space should be left on the lot to add parking spaces at a later time if required.

- B. **Table of parking requirements.** The Town Council recognizes that the table of parking requirements cannot cover every possible situation that may arise. Therefore, in cases not specifically covered, the Planning Director is authorized through Written Interpretation to determine the parking requirements, using this table as a guide.

<b><u>TABLE OF PARKING REQUIREMENTS</u></b>		
<b><u>Use Category</u></b>	<b><u>Specific Use</u></b>	<b><u>Requirement</u></b>
<b>Household Living</b>	Single-Family Detached	2 spaces per unit, plus 1 space per room rented
	Residential Cluster	2 spaces per unit, plus 1 space per room rented
	Two-Family Dwelling	2 spaces for each unit, except that one-bedroom units require only 1 space
	Townhouse (fee simple or condominium)	2 spaces for each unit, plus 1 additional space for every 4 uses in the development
	Multifamily Residence	1½ spaces for each one-bedroom unit; 2 spaces for each two-bedroom unit; 2 ½ spaces for each unit with three or more bedrooms, plus one additional space for every four units in the development.
	Upper-Story Residential	2 spaces per unit
	Manufactured Home	2 spaces per unit
	Modular Home	2 spaces per unit, plus 1 space per room rented
	Security or Caretaker's Quarters	2 spaces per unit
	<b>Group Living</b>	Family Care Home
Group Care Home		2 spaces for every 5 beds, except for uses exclusively serving children under 16, in which case 1 space for every 3 beds
Intermediate Care Home		1 space for every two employees on maximum shift and 1 space for every 3 beds
Other		1 space per 2 bedrooms and 1.5 spaces per employee
<b>Community Service</b>		Community Center
	Library, Museum, Art Gallery, Art Center	1 space per 300 square feet

<b><u>TABLE OF PARKING REQUIREMENTS</u></b>		
<b><u>Use Category</u></b>	<b><u>Specific Use</u></b>	<b><u>Requirement</u></b>
	Other	1 space per 200 square feet of gross floor area
<b>Day Care</b>	Day Care Center	1 space per employee plus 1 space per 8 clients enrolled
<b>Educational Facilities</b>	Business Schools	5 spaces per classroom or office
	College/University	5 spaces per classroom or office
	Schools, Public/ Private	2 spaces per classroom or office in elementary schools; 5 spaces per classroom or office in high schools
	Trade/Vocational	5 spaces per classroom or office
<b>Government Facilities</b>	Ambulance Service, Rescue Squad, Police Station	1 space per 200 square feet of gross floor area
	Prison or Jail	1 per employee plus 1 visitor space per 10 inmates
	Other	1 space per 300 square feet of gross floor area
<b>Health Care</b>	Continuing Care Facility	1 space per employee on maximum shift plus 1 visitor space per 5 beds
	Hospital	2 spaces per bed
	Medical Clinic	1 space per 150 feet of gross floor area
	Other	1 space per 200 square feet of gross floor area
<b>Institutions</b>	Group Care Facility	1 per 3 beds
	Handicapped Institution	1 per 3 beds
	Intermediate Care institution	1 space for every two employees on maximum shift and 1 space for every 3 beds
	Mental Health Facility, Nursing Care Institution	1 space for every employee on maximum shift and 1 space for every 3 beds
	Other	1 space for every two employees on maximum shift and 1 space for every 3 beds
<b>Parks and Open Space</b>	Cemetery	1 space per 50 internment plots
<b><u>TABLE OF PARKING REQUIREMENTS</u></b>		
<b><u>Use Category</u></b>	<b><u>Specific Use</u></b>	<b><u>Requirement</u></b>

Article 7. General Development Standards

	Public Park	2 per acre, plus 1 per 250 square feet of developed park facility
	Public Swimming Pool, Tennis Courts, Golf Course	1 space for every 3 persons to be normally accommodated in the establishment, 5 per tennis court, and 4 per hole
	Other	2 per acre, plus 1 per 250 square feet of developed park facility
<b>Passenger Terminal</b>	Bus Passenger Terminal	1 per 300 square feet
	Taxicab or Limousine Operations or Facility	1 per employee, plus 2 visitor spaces
<b>Religious Institution</b>		1 space for every 4 seats or 1 space for every 40 square feet in the portion of the church building to be used for services
<b>Utilities</b>	Minor Utility	None
	Major Utility	1 per facility, plus 1 additional per 250 square feet of gross floor area and 1 per fleet vehicle
	Telecommunication Facility	1 for service vehicle
<b>Entertainment</b>	Golf Course or Country Club, Private	1 space per 200 square feet of area within enclosed building, plus 1 space for every 3 persons that the outdoor facilities are designed to accommodate when used to the maximum capacity
	Gym, Spa, Indoor Tennis Court or Pool, Private	1 space for every 3 persons that the facilities are designed to accommodate when fully utilized, plus 1 space per 200 square feet of gross floor area used in a manner not susceptible to such calculation
	Horse Stables	1 space per 2 horses at maximum capacity
	Electronic Gaming Centers	1 space for every 3 persons that the facilities are designed to accommodate when fully utilized (if they can be measured in such a fashion) plus 1 space per 200 square feet of gross floor area used in a manner not susceptible to such calculation
	Indoor Entertainment Facility	1 space for every 3 persons that the facilities are designed to accommodate when fully utilized (if they can be measured in such a fashion) plus 1 space per 200 square feet of gross floor area used in a manner not susceptible to such calculation
<b><u>TABLE OF PARKING REQUIREMENTS</u></b>		
<b><u>Use Category</u></b>	<b><u>Specific Use</u></b>	<b><u>Requirement</u></b>
	Outdoor Athletic Facility, Private	1 per 3 fixed seats, plus 1 per 25 square feet of gross floor area of exhibit or portable seating space.

Article 7. General Development Standards

	Sexually Oriented Business	1 per 100 square feet of gross floor area, or 1 per each 4 permanent seats, plus 1 space per 200 square feet of gross floor area
	Theater	1 space for every four seats
	Theater, Drive-In	1 space per speaker outlet
	Water Slide	1 space for every 3 persons that the facilities are designed to accommodate when fully utilized
	Other	1 space for every 200 square feet of gross floor area
<b>Office</b>	Medical Office	1 space for every 200 square feet of gross floor area
	Other	1 space for every 300 square feet of gross floor area
<b>Overnight Accommodations</b>	Bed and Breakfast	1 space per room plus 1 space for every 2 employees on the maximum shift
	Extended Stay Facility	1 space per room plus 1 space for every 2 employees on the maximum shift
	Hotel/Motel	1 space per room plus 1 space for every 2 employees on the maximum shift
<b>Parking, Commercial</b>		1 space per employee on the maximum shift
<b>Restaurants</b>	Drive-In Restaurant	1 space per 100 square feet of gross floor area, plus 1.5 spaces for every 2 employees.
	Drive-Through Restaurant	1 space for each 3 seats, plus reserve lane capacity equal to 5 spaces per drive-up window
	Other	1 space plus 6 spaces per order delivery person on maximum shift
<b>Retail Sales and Service</b>	Bar, Nightclub, Taverns	1 space per 100 square feet of gross floor area
	Convenience Store	1 space per 200 square feet of gross floor area

**TABLE OF PARKING REQUIREMENTS**

<b><u>Use Category</u></b>	<b><u>Specific Use</u></b>	<b><u>Requirement</u></b>
	Fuel Sales	1 space per 200 square feet of gross floor area of building devoted primarily to gas sales operation, plus sufficient parking area to accommodate 2 vehicles per pump without interfering with other parking spaces
	Open Air Market	1 space per 300 square feet of sales area
	Veterinarian/Kennel, Indoor	1 space per 200 square feet of gross floor area



Article 7. General Development Standards

	Veterinarian/Kennel, Outdoor	1 space per 200 square feet of gross floor area
	Other	1 space per 200 square feet of gross floor area
<b>Self-Service Storage</b>		1 per 5,000 square feet of area devoted to storage
<b>Vehicle Sales and Service</b>	Car Wash	1 space for every 3 employees on the maximum shift plus 3 spaces per stall
	Vehicle Repair	5 spaces per service bay plus 1 space for each employee
	Vehicle Sales, Rental	2 spaces per 300 square feet of gross floor area plus one space for every 2 employees on the maximum shift
	Vehicle Service, Limited	5 spaces per service bay plus 1 space for each employee
	Other	1 space per employee, plus one visitor space per 200 square feet of office
<b>Aviation Service</b>		1 space per employee, plus one visitor space per 200 square feet of office
<b>Light Industrial Service</b>	Flex Space	1 per 500 square feet of gross floor area
	Other	1 per 500 square feet of gross floor area, plus 1 additional per 1,000 square feet of gross floor area outdoor facility and 1 per 2,500 square feet of indoor storage area
<b>Manufacturing and Production</b>		1 space for every 2 employees on the maximum shift or 1 space per 200 square feet of gross floor area, as most appropriate
<b><u>TABLE OF PARKING REQUIREMENTS</u></b>		
<b><u>Use Category</u></b>	<b><u>Specific Use</u></b>	<b><u>Requirement</u></b>
<b>Resource Extraction</b>		1 space for every 2 employees on the maximum shift, plus 1 per 200 square feet of gross floor area indoor facilities
<b>Warehouse and Freight Movement</b>	Storage	1 space for every 2 employees on the maximum shift but not less than 1 per 5,000 square feet of area devoted to use (whether inside or outside)
	Truck Terminal	1 space per 2 employees on maximum shift
<b>Waste Related Service</b>	Reclamation Landfill	1 space per 2 employees on maximum shift plus 1 space per vehicle used in operation

Article 7. General Development Standards

	Recyclable Materials Collection	1 space per 2 employees on maximum shift plus 1 space per vehicle used in operation
	Salvage Yard	1 space per 2 employees on the maximum shift but not less than 1 per 5,000 square feet of area devoted to use, plus 1 space per vehicle use in operation
	Sanitary Landfill	1 space per 2 employees on maximum shift plus 1 space per vehicle used in operation
	Other	1 space per 2 employees on maximum shift plus 1 space per vehicle used in operation
<b>Wholesale Sales</b>		1 space for every 2 employees on maximum shift
<b>Agriculture</b>		1 space per 2 employees on maximum shift

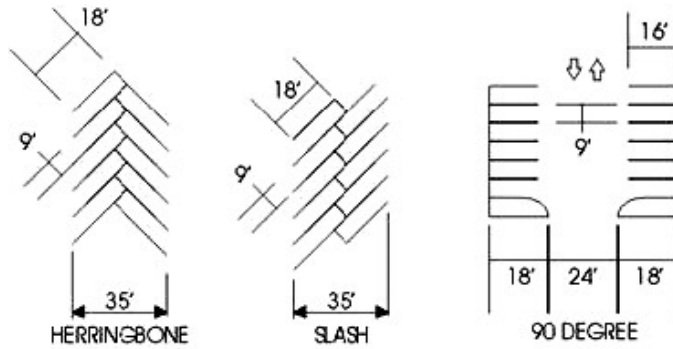
**C. Flexibility in administration authorized.**

1. In recognition that inflexible application of the parking standards in paragraph B., above, may result inadequate or excessive parking requirements, the permit-issuing authority shall permit deviations from the presumptive requirements of paragraph B. of up to 25%.
2. Any allowed or required deviation from the presumptive parking requirements set forth in paragraph B. above shall be entered on the permit.
3. If the permit-issuing authority is the Planning Director, and the applicant does not wish to accept the Planning Director's decision and requirements, the applicant can request a Variance.

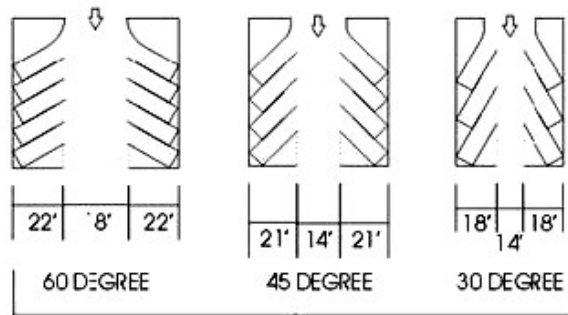
**D. Parking space dimensions.** Each parking space shall contain a rectangular area at least 18 feet long and nine feet wide, except as follows:

1. Handicapped spaces shall be consistent with the requirements of Chapter 4 of the North Carolina Accessibility Code, as amended and shall be located as closely and conveniently as practical to building entrances (see Appendix F).
2. Parallel parking spaces shall have a rectangular area of not less than 24 feet in length and nine feet in width.

3. Angled parking spaces shall conform with the dimensions illustrated below. Alternative designs may be allowed by the Town Engineer provided it is consistent with the recommended dimensions contained in



Note: Minimum 15 Degree Turning Radii  
Direction of Traffic Flow ⇌



Note: Parking Stalls 18'x9'

4. the latest edition of the Traffic Engineering Handbook published by the Institute of Traffic Engineers.

**E. Required widths of parking area aisles and driveways.**

1. Parking area aisle widths shall conform to the following table, which relates aisle widths to parking angles.

Parking Angle	Width: One Row Sharing Aisle	Width: Two Rows Sharing Aisle
90 degrees	42 feet	60 feet
60 degrees	40 feet	62 feet
45 degrees	35 feet	56 feet

2. Driveways shall be not less than ten feet in width for one-way traffic and 18 feet in width for two-way traffic, except that ten feet wide driveways are permissible for two-way traffic when:
- The driveway is not longer than 50 feet;
  - It provides access to not more than six spaces;
  - Sufficient turning space is provided so that vehicles need not back into a public street;
  - The use is a low traffic volume use and the public right-of-way has a low traffic volume.

A Variance may provide relief from this requirement.

3. For uses proposed adjacent to U.S. 70, 401 or N.C. 50, see Article 8.

**F. General design requirements.** Vehicle accommodation areas shall be designed so that:

1. Vehicles may exit such area without backing onto a public street. This requirement does not apply to driveways serving one or two dwelling units.
2. Vehicles cannot overhang property lines, public rights-of-way, or public sidewalks, or tend to bump against or damage any wall, vegetation or other obstruction.
3. Vehicles can move without posing a danger to pedestrians or other vehicles and without interfering with parking areas.

**G. Vehicle accommodation area surfaces and standards.**

1. It is strongly recommended that vehicle accommodation areas with lanes for drive-in windows or ten or more parking spaces, and that are used at least five days per week, be graded and surfaced with asphalt, concrete or other material that will provide equivalent protection against potholes, erosion, and dust. Appendix C contains specifications for surfaces meeting this standard.
2. Vehicle accommodation areas not permanently surfaced shall be graded and surfaced with crushed stone, gravel or other suitable material (as provided in the specifications set forth in the Town of Garner Standard Construction Details in Appendix B) to stabilize the area and reduce dust and erosion. The perimeter of such parking areas shall be defined by bricks, stones, railroad ties, or similar devices. This section shall not apply to uses required to have only one or two parking spaces.
3. Vehicle accommodation areas shall provide a minimum five feet or perimeter space between the right-of-way line or property line and the edge of the vehicle accommodation area, and shall be landscaped in plantings or other appropriate manner. When adjacent to residential uses and/or districts, plantings, hedge or a solid fence to a height of at least four feet shall provide a screen.
4. Parking spaces shall be demarcated in a practical and appropriate manner.
5. Vehicle accommodation areas shall be properly maintained. In particular, vehicle accommodation area surfaces shall be kept in good condition and parking space demarcations shall be kept clearly visible and distinct.
6. Parking spaces shall be separated from walkways so that at least a 4-foot walkway width is unobstructed.

**H. Joint use of required parking space.**

1. One parking area may contain required spaces for several uses, but, except as provided in paragraph 2. below, the required space assigned to one use may not be credited to any other use.
2. To the extent that developments that wish to make joint use of the same parking spaces operate at different times, the same spaces may be credited to both uses. For example, if a parking lot is used in connection with an office building on Monday through Friday but is generally 90 percent vacant on weekends, another development that operates only on weekends could be credited with 90 percent of the spaces on that lot. Or, if a church parking lot is generally occupied only to 50 percent of capacity on days other than Sunday, another development could make use of 50 percent of the church lot's spaces on those other days.
3. If the joint use of the same parking spaces by two or more principal uses involves satellite parking spaces, then the provisions of paragraph I. below are also applicable.

**I. Satellite parking.**

1. If the required number of off-street parking spaces cannot reasonably be provided on the same lot as the use they are serving then spaces may be provided on nearby lots in accordance with the provisions of this section. These off-site spaces are referred to as satellite parking spaces.

2. Satellite parking spaces (except spaces intended for employee use) must be located within 400 feet of the use associated with such parking.
3. Satisfactory written evidence of permission by the owner(s) of the area to be used for satellite parking spaces must be provided by the developer. The developer must also sign an acknowledgment that the continuing validity of his permit depends upon his continuing ability to provide the requisite number of parking spaces.
4. For developments where:
  - a. The building(s) pre-existed this UDO;
  - b. A change in use that does not involve any structural enlargement is proposed; and
  - c. The parking requirements cannot be satisfied on such lot, then the developer need only comply with the requirements of paragraph A. of this section to the extent that parking space is available on the lot where the development is located, and satellite parking space is reasonably available as provided in paragraph F of this section. It shall be a continuing condition of the permit authorizing development on such lot that the developer obtain satellite parking when it does become reasonably available.
5. Satellite parking areas are required to satisfy the general design requirements of paragraphs F. and G. of this section.

**J. Loading and unloading areas.**

1. Whenever normal business operations require routine deliveries to or shipments from a development, sufficient off-street loading and unloading area must be provided in accordance with this section to accommodate the delivery or shipment operations in a safe and convenient manner.
2. The loading and unloading area must be of sufficient size to accommodate the numbers and types of vehicles that are likely to use this area. The following table indicates the number and size of spaces that, presumptively, satisfy the standard set forth in this subsection. However, the permit-issuing authority shall approve more or less loading and unloading area if numerical justification is signed and sealed by an engineer licensed in NC.

Gross Floor Area of Building	Number of Spaces with Maximum Dimensions of 12' X 25' and Overhead Clearance of 14' From Street Grade
0—39,999	1
40,000—99,999	2
100,000—159,999	3
160,000—239,999	4
Gross Floor Area of Building	Number of Spaces with Maximum Dimensions of 12' X 25' and Overhead Clearance of 14' From Street Grade
240,000—319,999	5
320,000—399,000	6
400,000 and over	6 spaces plus one space for each additional 90,000 square feet over 400,000 square feet or fraction thereof

3. Loading and unloading areas shall be so located and designed that the  
UDO 7:124

vehicles intended to use them:

- a. Can maneuver safely and conveniently to and from a public right-of-way; and
  - b. Complete the loading and unloading operations without obstructing or interfering with any public right-of-way or any parking space or parking lot aisle.
4. No area allocated to loading and unloading facilities may be used to satisfy requirements for off-street parking and Vice-versa.
  5. Loading areas within the lots of industrial subdivisions shall be self contained and capable of handling its own truck maneuvering and docking requirements. The maneuvering, staging and docking areas shall not be in conflict with the required parking spaces, lots and their isle/maneuvering areas. The use of public streets for commercial vehicle staging and/or maneuvering is prohibited. Loading areas shall be located either to the rear or the side of the industrial structures(s) to alleviate unsightly appearances often created by loading facilities. Where such locations are not feasible, loading docks and doors shall be screened as detailed in Section 7.1.M.2.

(Ord. No. 3396, § 13, 4-3-06; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3673, § 4, 10-1-12; Ord. No. 3749, § 3, 10-6-14)

## 7.5. Sign regulations.

**Commentary:** Signs are permitted throughout the Town according to these sign regulations. Different areas of the community are subject to different sign regulations. In particular, the I-40, Timber Drive and U.S. 70/401 corridors have separate regulations in the following material.

Some signs are allowed without a permit (see D. below).

General sign requirements are set forth in G. below. Details about construction and location of specific types of signs are set forth in H. below.

Timber Drive regulations are set forth in J. below, and U.S. 70/401 regulations are set forth in K. below.

A. **Purpose and intent.** These sign regulations are intended to:

1. Encourage the effective use of signs as a means of communication for businesses, organizations and individuals in the Town of Garner;
2. Encourage the effective use of signs as a means to improve pedestrian and traffic safety and to promote safe way-finding in Garner by establishing minimum standards for visibility and legibility of signs;
3. Require that all signs that, because of their location, are within the view of drivers in active traffic, meet minimum standards of visibility, legibility and conspicuity standards, and to differentiate these signs from those signs that are not within the view of drivers in active traffic but that may provide information to them while they remain in their cars but out of active traffic;
4. Maintain and enhance the pleasing look of Garner and preserve Garner as a community that is attractive to business;
5. Minimize the possible adverse effects of signs on nearby public and private property;
6. Implement the provisions of the Comprehensive Growth Plan, as updated from time to time;
7. Create cohesive sign regulations that create a recognizable context in Garner; and
8. Prohibit all signs on private property not expressly permitted under this section.

B. **Sign regulations:** Height, number and size of signs. Unless otherwise provided, the total surface area of all signs on any lot shall not exceed the limitations set forth in this section, and all signs, except temporary signs and those excluded from regulation under this section shall be included in this calculation.

C. **Prohibited signs.** The following signs are prohibited in all districts.

1. Any non-government sign which by its location, shape, size, message, color or operation would tend to obstruct the view of or be confused with official traffic or railroad signs, signals or devices or other signs erected by governmental agencies;
2. Any sign which, at its proposed location, would interfere with the view necessary for motorists, bicyclists or pedestrians to proceed safely through intersections or to enter onto or exit from public streets or private roads or driveways;
3. Any sign, subject to paragraph D.1. below, placed or shaped so as to interfere with or obstruct any window, door, fire escape, stairway, walkway, opening intended to provide light, air, ingress or egress for any building or with vehicular movement on public streets or drives;
4. Any sign, or portion thereof, which, to attract attention, moves, rotates, flutters or appears to move in any way, whether by natural, electrical or mechanical means, including banners, flags, propellers and similar devices except where noted in paragraph I. of this section;
5. Any sign which contains or is illuminated by flashing or intermittent lights, lights of changing degrees of intensity, or rotating lights, except signs

indicating time and/or temperature or electronic message signs as regulated in Subsection I(2)(e);

6. Balloons, blimps or similar types of lighter-than-air objects, except those which are subject to Federal Aviation Administration regulations;
7. Portable signs, including any sign displayed on or painted on vehicles or trailers used primarily for the purpose of attracting attention, except signs painted or permanently attached to a commercial vehicle shall be allowed provided:
  - a. The vehicle is road worthy and is regularly used as part of the business operation;
  - b. The vehicle displays a current license that is registered to said vehicle and;
  - c. The vehicle displays any required North Carolina inspection decal;

**Commentary: The intent subsection 7 above is to prohibit the use of commercial vehicles that are used strictly for signage purposes in cases where there is no regular use of the vehicle in the business operation (i.e. the vehicle is not operable and is parked in one location and is not moved on any regular basis). Commercial vehicles that are regularly used as part of business are not restricted under this section.**

8. Any commercial sign not located on the premises for which it advertises, except as specifically permitted;
9. Any temporary sign or banner, except as specifically permitted;
10. Any sign or portion thereof placed into or overhanging any right-of-way, except as specifically permitted; and
11. Any sign extending above or placed upon any roof surface except as provided in paragraph H.1. of this section.

**D. Signs allowed without a permit.** The following signs may be erected and maintained in all districts without a permit.

1. Directional real estate signs no more than four square feet in size and posted only from Friday at 6:00 p.m. until Sunday at 8:00 p.m. Such signs shall be located no less than four feet from the back of curb, and shall not interfere with clear sight triangles at driveways or intersections.
2. Signs on interior window glass, regardless of number, size or coverage. Signs on glass doors are limited to 30 percent coverage of the glass area and enough clear area shall be maintained to allow adequate vision to ensure safe use of the doors by people of all sizes;
3. Un-illuminated temporary signs which advertise the sale, rental or lease of the premises upon which the sign is located, limited to five square feet in total area for residential uses, and 32 square feet in total area for commercial or industrial properties. Any such sign shall not be placed within any right-of-way or situated so as to interfere with sight distance, shall be limited to one sign per street frontage and six feet in height and shall be removed within ten days of the sale, lease or rental of the property advertised or within five days of the date the sold sign is added or affixed;
4. Signs directing and guiding traffic on private property that do not exceed two square feet in surface area or two feet in height and that bear no advertising matter;
5. Signs and displays, including lighting erected in connection with the observance of holidays. Such signs shall be removed within ten days following the holiday;
6. Changes in the moveable lettering of any permitted signs;
7. Signs advertising a special event such as a fair, carnival, circus, fish fry, garage sale or other similar happening provided the following conditions



are met:

- a. Signs are not erected more than two weeks before the event, and shall be removed not later than three days after the event.
  - b. Signs shall be placed no closer than ten feet back from the curb line or edge of pavement.
  - c. Signs shall not be placed on any existing official governmental signs, including legal notices, identification and informational signs and traffic, directional or regulatory signs.
  - d. Signs shall not be placed on any utility poles, trees on public right-of-way, or street medians.
  - e. Signs shall not exceed three feet in height and nine square feet in total area.
8. Political signs erected in connection with elections or political campaigns are permitted under the following conditions:
- a. Political signs in the vicinity of a polling place for a period not exceeding 24 hours preceding the opening of the local polls; such signs shall be removed within 24 hours following the closing of local polls.
  - b. All political signs shall be removed from the public street right-of-way within seven days after the election day. A political sign shall not be permitted in a sight distance triangle as specified in Article 11.2.
  - c. Except as noted in a. above, political signs shall not be erected or posted until the candidate filing deadline date for the applicable national, state, or local office, including primary elections. Prior to the erection of any political sign, the candidate, or authorized representative shall post a bond or cash deposit in the amount of \$200.00 with the Planning Department to guarantee the private removal of political signs. The bond or cash deposit may be returned only upon satisfactory removal of such signs according to the time requirements as specified herein. All political signs shall be removed from the public street right-of-way within seven days after the election day.
  - d. Signs shall be placed no closer than ten feet off the curb or ditch.
  - e. Signs shall not be placed on any utility poles, tree on public property, or in any street median.
  - f. No sign shall exceed 32 square feet in total area or more than eight feet in height.
  - g. Such signs on private property shall conform to this section.
9. Uses selling gasoline are allowed the following signs:
- a. Price, self-service and/or credit card signs located at and secured to each pump island and not exceeding nine square feet in aggregate per pump island or one square foot per side per pump.
  - b. Brand name, grade of gasoline and informational signage directly related to the gasoline being dispensed (i.e. pump usage directions, etc.) not exceeding nine square feet in aggregate per pump island or one square foot per side per pump.
10. One North Carolina automobile inspections sign located on the building or on a permitted freestanding sign, and not exceeding ten square feet; and
11. Signs sponsored by government, school, recreational or civic clubs providing rules for the use of developments and sites, such as a pool, or schedules, are permitted on the same site as the organization or use, limited to 16 square feet per side, 32 square feet in aggregate area.
12. Signs on residential structures, premises or mailboxes giving the names

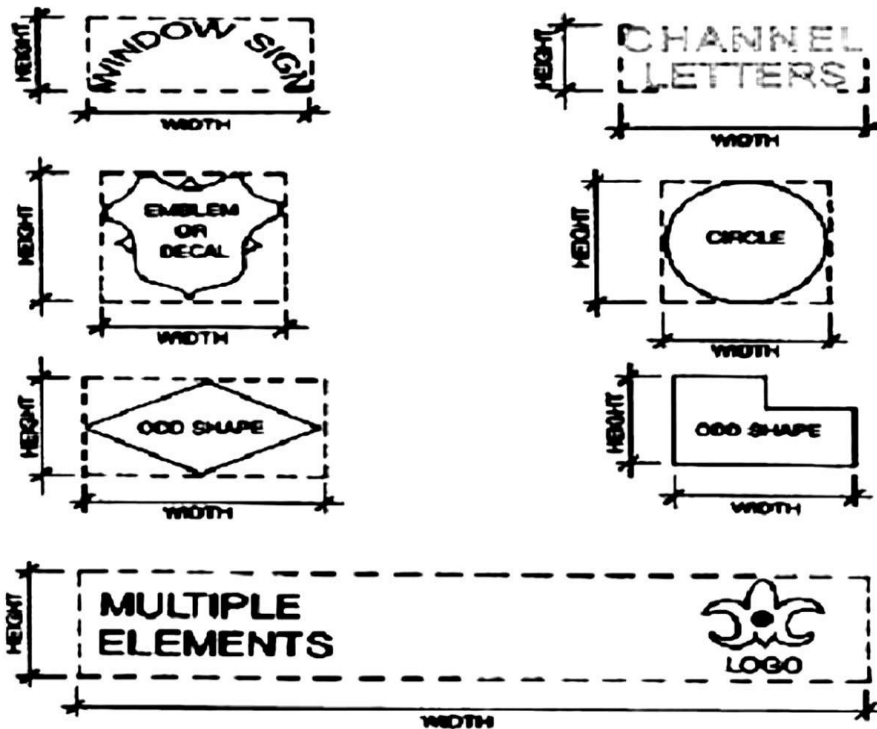
and/or address of the occupants and signs posted on property relating to private parking or warning the public against trespassing or danger from animals, provided any such sign shall not exceed two square feet in area; there shall be not more than two such signs per lot.

13. Signs erected by, on behalf of, or pursuant to the authorization of a governmental body, including legal notices, identification and informational signs, and traffic, directional, and regulatory signs.
14. Official signs of a noncommercial nature erected by public utilities, such as signs denoting the location of underground utilities.
15. Flags, pennants or insignia of any governmental, civic or non-profit organization when not displayed in connection with a commercial venture or an advertising device and when located on the same site as the organization provided the maximum height for such does not exceed 30 feet or the height of the tallest principle building on the site whichever is greater; and the maximum size does not exceed 32 square feet.
16. Signs proclaiming religious, political, or other noncommercial messages (other than those regulated by Section 280) that do not exceed one per abutting street and 16 square feet in area and that are not internally illuminated.

**E. Computation.**

**1. Sign area.**

- a. **Area to be included.** The area of a sign shall include all lettering, wording, designs and symbols, together with the background, whether open or enclosed, on which they are displayed. The supporting structure or bracing of a sign shall be omitted in measuring the area of the sign unless such structure or bracing is made part of the message or face of the sign.



**Signs attached to walls.** Where a sign consists of individual letters, words or symbols attached to a surface, building, canopy, awning, wall or window, the sign area shall be the area of the smallest rectangle which completely encompasses all such letters, words or symbols and any accompanying background of a color different than the natural color of the wall.

- b. **Gas sales or convenience store with gas sales.** The registered

trademark of the brand of gas sold shall not be considered in the number of wall signs allowed, but the area of such trademarks shall be included in the maximum sign area permitted by lot.

2. **Computation of height.** The height of a sign shall be computed as the distance from the base of the sign at a computed grade to the top of the highest attached component of the sign. The computed grade shall be the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the lot, whichever is lower.

**F. Schedule of general sign requirements.**

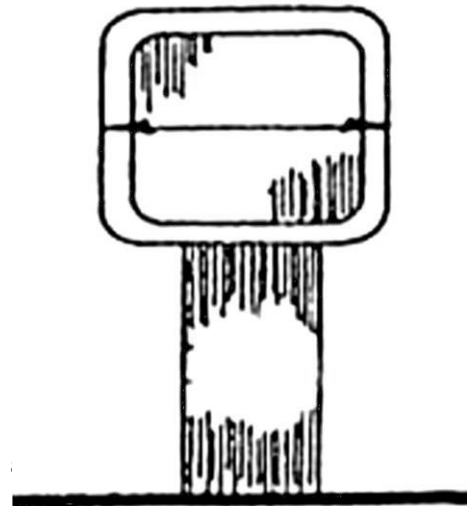
Zoning District	Sign Type	Maximum Sign Area Per Lot	Maximum Signs	Maximum Height
<b>Residential Zones:</b> All Residential Districts (R-40, R-20, R-15, R-12, R-9, RMH, MF-1, MF-2 and Planned Development Residential Uses)	Freestanding: Residential Use Other Permissible Use	4 square feet 32 square feet	1	4 feet
	Wall: Churches, schools, or other residential uses permitted in all residential zones	24 square feet	1	5 feet
	Residential Entrance Signs	See Section 7.5 (1)(2)(a)	1	None
<b>I-40:</b> All Business or Industrial Districts (NO, OI, NC, CR, SB, I-1, I-2)	Freestanding:	100 square feet	1 per street frontage, 2 maximum	12 feet
	Wall: Building up to 100,000 square feet floor area	Greater of 60 square feet or 7% of wall frontage	3 wall	None
	Wall: Building over 100,000 square feet	Lesser of 100 square feet or 10% of wall frontage	3 wall	None
<b>U.S. 70 &amp; U.S. 401:</b> All Business or Industrial Districts (NO, OI, NC, CR, SB, I-1, I-2)	Freestanding:	100 square feet	1 per street frontage, 2 maximum	12 feet
	Wall: Building up to 100,000 square feet floor area	Greater of 60 square feet or 7% of business wall frontage	3 wall	
	Wall: Building over 100,000 square feet floor area	Lesser of 100 square feet or 10% of wall frontage	4 wall	
<b>OI Districts:</b> All NO and OI Districts not on Timber Dr., U.S. 70, U.S. 401 or I-40	Freestanding (monument only): 100 square feet maximum total all freestanding and wall signs	48 square feet	1 per street frontage, 2 maximum	6 feet
	Wall: Building up to 100,000 square feet floor area	Greater of 60 square feet or 7% of wall frontage	3	N/A
	Wall: Building over 100,000 square feet	Lesser of 100 square feet or 10% of wall frontage	4	N/A

Article 7. General Development Standards

<b>Business Districts:</b> All Business Districts (NC, CR, SB, I-1, I-2) not on	Freestanding: 100 square feet maximum total all freestanding and wall signs	60 square feet	1 per street frontage, 2 maximum	12 feet
<b>Zoning District</b>	<b>Sign Type</b>	<b>Maximum Sign Area Per Lot</b>	<b>Maximum Signs</b>	<b>Maximum Height</b>
Timber Dr., U.S. 70, U.S. 401 or I-40	Wall: Building up to 100,000 square feet floor area	Greater of 60 square feet or 7% of wall frontage	3	None
	Wall: Building over 100,000 square feet	Lesser of 100 square feet or 10% of wall frontage	4	None

G. **General sign location and construction standards.** The following regulations shall apply to signs in all districts.

1. **Not in right-of-way.** No sign or portion thereof may be placed into or overhang any right-of-way.
2. **Sign located substantially below street.** Where a business is located substantially below the elevation of the street (as determined by the Planning Director) such that the allowable maximum sign height creates unreasonable hardship in terms of limited visibility, an exception to the usual maximum height requirements may be granted via a Variance. This exception shall allow only for the minimum height beyond that normally granted necessary to provide reasonable visibility for the sign from the street upon which the business fronts having the highest traffic count. (Unless conflicting with other provisions of this UDO, the sign shall be located at the point on the site along said frontage at which reasonable visibility from said street is first achieved within the allowable maximum height.) Regardless of location, and in no case after making this exception shall the sign be allowed at a height above said street which exceeds the maximum permitted height in this section.
3. **Sign materials.** All materials used for signs shall be durable. Examples of materials which do not endure include particle board and plywood. Additionally, the external painting of signs using methods that are not durable are not allowed. Enamels must be baked on so as to help retain a new look, and proper sealing from the weather is required. All signs should be fully encased or skirted at a minimum width that is one-half of the width of the sign face so as to present an appearance of pillars or other substantial supports.
4. **Sign lighting.** Illumination of signs is following provisions:



- a. No illuminated sign shall be permitted within 50 feet of any residential district. Church bulletin boards are exempt from this provision.
- b. No sign within 300 feet of a residential zone may be illuminated between the hours of 12:00 midnight and 6:00 a.m., unless the

impact of such lighting beyond the boundaries of the lot where the sign is located is entirely inconsequential.

- c. Lighting directed toward a sign shall be shielded so that it illuminates only the face of the sign and does not shine directly into a public right-of-way or residential premises.
- d. All lighted signs shall comply with state and local building and electrical codes, and shall bear the label of Underwriters Laboratories, Inc. All wiring to freestanding signs or to associated lighting equipment shall be underground, unless it is impracticable to do so.
- e. Poles and other supporting structures shall not be internally illuminated.

- 5. **Changeable copy.** A changeable copy or marquee sign shall be erected only in combination with an identification sign and shall be included in the computation of sign area.

**H. Sign standards by sign type.**

**1. Wall signs.**

- a. No sign may project more than 18 inches from the building wall.
- b. No wall sign shall project above the roofline.
- c. A sign may extend down from a roof or porch or walkway overhang not more than 18 inches (to the bottom of the sign), provided however that a minimum clearance of seven feet between the bottom of the sign and the walking surface shall be maintained.
- d. Displays on roofs of residential structures erected in connection with holiday observance are not included in this prohibition.
- e. Roof surfaces constructed at an angle of 75 degrees or more from horizontal shall be regarded as wall space for the purposes of this section.

**2. Freestanding signs.**

- a. Freestanding signs shall be securely fastened to the ground so that there is virtually no danger that the sign may be moved by wind or other forces of nature and cause injury to persons or property. All applications for a freestanding sign permit shall be accompanied by an engineer's sealed footing drawing and calculations testifying to the ability of the sign to withstand 100 mile-per-hour winds.
- b. No freestanding sign shall encroach into any right-of-way.
- c. The Town encourages the use of the specific information signing program (LOGO Program) along I-40.
- d. Where physically possible and to the greatest extent possible, all freestanding signs (including multi-tenant signs) shall be separated by a distance of at least 150 feet from the next nearest sign along the frontage.
- e. All freestanding outparcel signs shall be located on-site only, and shall be separated by a minimum distance of 100 feet.
- f. The base of every permanent freestanding sign that requires a sign permit shall be landscaped. The size of the planted landscape area shall be determined by multiplying the height of the sign (measured from the ground to the upper most part of the sign) by the width of the sign (widest dimension), divided by two, but in no case shall the planted area be less than 50 square feet, unless restricted by the amount or size of land upon which the sign is situated that is owned or controlled by the applicant. The planted landscape area shall contain materials such as, but not

limited to: vegetative ground covers, perennials, shrubs, ornamental trees and mulch, but excluding paving and artificial plant materials. A sketch plan of the landscaped area with the name, quantity and spacing of plants shall be included in the application for sign permit.

- g. Poles and other supporting structures shall not be internally illuminated.

**3. Off-premises advertising signs.**

- a. Off-premises advertising signs are permitted only in I-1 or I-2 zones; no off-premises advertising signs are permitted except along and facing U.S. 70 or U.S. 401, as set forth in paragraph of this section. No off-premises advertising signs shall be permitted along and facing the 1-40 corridor.
- b. Off-premises advertising signs shall be spaced a minimum of 2,500 feet apart, measured between signs facing the same street.
- c. Where the structural support is visible from any street, the display shall be constructed on a steel single pole.
- d. The immediate premises shall be kept free from debris or undergrowth. Appropriate landscaping shall be placed and maintained at the base of the structural support of every off-premise advertising sign erected.
- e. All displays shall be maintained in a state of good repair. The backs and supporting structures of all off-premise advertising signs shall be kept painted in a neutral color to blend with the natural environment.
- f. While minor repairs, maintenance and the posting of new messages on off-premise advertising signs made nonconforming by this UDO are permitted, no changes in the size of construction of the sign shall be permitted except to make the sign comply with the requirements.
- g. Off premises advertising signs may be placed back-to-back or in a v-type construction. Not more than one face is allowed on each side of the display.
- h. Size, height and setback requirements are as follows:

<b>Standard</b>	
Maximum Surface Area	150 square feet
Minimum Setback	50 feet
Maximum Height	25 feet

**4. Multi-tenant signs.**

- a. All multi-tenant signs, including but not limited to shopping center identification signs, multiple business signs, directory signs and all wall signs, shall meet the standards in the following table. For locations within the Timber Drive Overlay District, see paragraphs J., below.

<b>Multi-Tenant Sign Type</b>	<b>Maximum Sign Area</b>	<b>Maximum Number</b>	<b>Maximum Height</b>
Freestanding Project Signs: Development up to 300,000 square feet	100 square feet	1 per street frontage, 2 maximum	10 feet

Article 7. General Development Standards

Development over 300,000 square feet and up to 500,000 square feet	120 square feet	2 per street frontage, 3 maximum	15 feet
Development over 500,000 square feet	When project qualifies for 4 freestanding signs: 1 @ 180 square feet; 3 @ 120 square feet	Maximum of 4 when project has frontage on 3 or more public streets, no more than 2 per public street frontage*	When project qualifies for 4 freestanding signs: 1 @ 15 feet* 3 @ 12 feet*
	For projects that do not qualify for 4 freestanding signs the maximum area per sign is 120 square feet	For projects that do not qualify for 4 signs, a maximum of 3 allowed with no more than 2 per public street frontage	For projects that do not qualify for 4 signs, sign height may be up to 15 feet*
Freestanding community identification or directional sign (Applies only to Development over 500,000 square feet)	20 square feet	Maximum of 4 signs regardless of sign type, no more than 2 at any one location	4 feet
On-Premise Directional sign: Development up to 300,000 square feet	20 square feet	1 per entrance or internal intersection, 2 maximum	5 feet monument only
Development over 300,000 and up to 500,000 square feet	20 square feet	1 per entrance or internal intersection, 3 maximum	5 feet, monument only
Development over 500,000 square feet	20 square feet	1 per entrance, or other internal location (maximum of 4)	5 feet monument only
<b>Multi-Tenant Sign Type</b>	<b>Maximum Sign Area</b>	<b>Maximum Number</b>	<b>Maximum Height</b>
Outparcel: Freestanding monument sign (development up to 300,000 square feet)	32 square feet	1 per outparcel	4 feet
Freestanding monument sign (development over 300,000 and up to 500,000 square feet)	32 square feet	1 per outparcel	4 feet
Freestanding monument (Development over 500,000 square feet)	32 square feet	1 per outparcel	4 feet

Wall: (including canopy face) Development up to 100,000 square feet	Greater of 60 square feet or 10% of frontage wall area	1 per business frontage & 1 per public street, max. of 3	None
Development over 100,000 square feet and up to 500,000 square feet	Greater of 60 square feet or 7% of frontage wall area	1 per business frontage & 1 per public street, max. of 3	None
Development over 500,000 square feet	Greater of 60 square feet or 7% of business frontage wall area	1 per business frontage & 1 per public street, max. of 3	No signs above roofline
For 100,000 square foot major individual tenant in a shopping center	Greater of 60 square feet or 7% of business frontage wall	1 per business frontage & 1 per public street, max. of 4	No signs above roofline
Canopy Underhang: Projects of any size	4 square feet	1 per business	Bottom of sign maximum 18 inches below bottom of canopy face

**Note: All freestanding signs in multi-tenant developments shall be separated by 300 feet between freestanding project signs and 100 feet between outparcel freestanding signs.**

- b. Multi-tenant sign standards. All multi-tenant signs, including but not limited to shopping center identification signs, multiple business signs, directory signs and all wall signs, shall conform to the following criteria and standards. (Wall signs and freestanding signs on existing outparcels, regardless of the number of businesses on those parcels, are not required to meet the following criteria and standards, but are encouraged to do so to better achieve the purpose stated above.)

<b>Criteria and Standards for Multi-Tenant Signs</b>		
<b>Criteria</b>	<b>Wall Signs</b>	<b>Freestanding Signs</b>
<b>Locations</b>	Uniform vertical and horizontal positions on storefront	N/A
<b>Type</b>	Similar style encouraged; logos allowed; maximum of 2 lines per sign	N/A
<b>Materials</b>	Uniform; compliment building facade materials	
<b>Colors</b>	Same 3 matching colors (maximum) on each sign encouraged; pattern or scheme required. Garish schemes not allowed.	
<b>Logos</b>	Maximum 20 percent of approved sign area	
<b>Illumination</b>	Signs may be illuminated or not, but all illumination must be the same type and intensity of light	



<b>Poles</b>	N/A	One pole preferred for signs other than multi-business signs. Minimum skirt width of 4 feet for single pole. Maximum of 2 poles per sign. Poles may not be illuminated.
--------------	-----	---

**5. Nonresidential subdivision signs.**

- a. Nonresidential subdivision signs shall meet the standards in the following table:

<b>Sign Type</b>	<b>Maximum Sign Area</b>	<b>Maximum Signs</b>	<b>Maximum Height</b>
Freestanding: Subdivision identification or a freestanding multi-tenant sign (monument sign preferred)	72 square feet	1 per exterior road frontage, 2 maximum	12 feet for pole sign with minimum 7-foot wide base, 8 feet for monument
Monument Signs for individual parcels and lease lots	60 square feet	1 per parcel or lease lot	6 feet
<b>Sign Type</b>	<b>Maximum Sign Area</b>	<b>Maximum Signs</b>	<b>Maximum Height</b>
Wall: Including canopy face	Lesser of 72 square feet or 15% of business frontage wall area	1 per business frontage and one per public street, 3 maximum	None
Canopy Sign:	4 square feet	1 per business	Bottom of sign maximum 18 inches below bottom of canopy face

- 6. Nonresidential subdivision sign standards.** All commercial subdivision identification signs, multiple business signs, freestanding signs for individual businesses, and all wall signs shall conform to the following criteria and standards and the standards of paragraph N.

<b>Criteria and Standards for Nonresidential Subdivision Signs</b>		
<b>Criteria</b>	<b>Wall Signs</b>	<b>Freestanding Signs</b>
<b>Locations</b>	Uniform vertical positions; all centered on storefront or to one side of storefront	N/A
<b>Type</b>	Similar style encouraged; logos allowed	
<b>Materials</b>	Similar style; compliment building facade materials	
<b>Colors.</b>	Same 3 matching colors (maximum) on each sign encouraged; pattern or scheme required. Garish schemes not allowed	
<b>Logos</b>	Maximum of 20 percent of sign area	
<b>Illumination</b>	Signs may be illuminated or not, but all illumination must be the same type and intensity of light	

<b>Poles</b>	N/A	One pole preferred for signs other than multi-business signs. Maximum of 2 poles per sign. Poles may not be illuminated.
--------------	-----	--

I. **Miscellaneous temporary and permanent signs.** The following temporary and permanent signs are permitted in addition to any allowed in above, and all require a sign permit.

1. **Temporary signs.**

- a. Construction site identification signs, naming the project, developer, contractors and others connected with the construction, sale or lease of structures, and related information, are permitted. Not more than one such sign may be erected per site, and it may not exceed 32 square feet in area or six feet in height. Permits for such signs shall be limited to one-year, with a one year permit renewable option. Permits for such signs shall be limited to a maximum of two years, which includes the original permit period, provided:
  - i. such signs are not erected prior to site, Special Use or Conditional Zoning approval of the project identified;
  - ii. that such permits have not expired and;
  - iii. the signs are maintained in good condition with no visible deterioration, flaking paint, cracks, etc.

Any such sign shall be removed within ten days after the issuance of the final occupancy permit or where a site, Special Use or Conditional Zoning approval has expired.

- b. Signs or banners advertising special events must be on private property and shall not be permitted within public rights-of-way. Permits for such banners or signs shall be limited to 30 days and no more than three times each year. Any such banner or sign shall be removed within ten days after the event was advertised.
- c. Signs or banners advertising the initial opening of a business establishment may be permitted on private property. Not more than one such sign or banner per site is permitted at any one time; such sign or banner shall not exceed 32 square feet in area and shall meet all other requirements. Permits shall be limited to 30 days from the date of issue.
- d. Signs on private property directing the public to a subdivision or multifamily development are permitted, provided that the property owner's written permission for such use of his land accompanies the permit request, that the sign does not exceed 32 square feet in surface area or six (6) feet in height. The sign shall bear only the

name of and direction to the development. Permits for such signs are limited to one year with a one year permit renewal option. Permits for such signs shall be limited to a maximum of two (2) years which includes the original permit time period, provided such signs are maintained in good condition and appearance with no visible deterioration, flaking paint, cracks, etc.. Any such sign shall be removed within ten days after the issuance of the final occupancy permit or upon expiration of the sign permit.

- e. Signs providing direction to a U-pick farm operation or agricultural market are permitted. Any such sign shall not exceed 32 square feet in area. Permits shall be limited to a maximum of 60 days from the date of issue and require the written permission of the property owner or his agent for such use of his land.
- f. The application for a permit under the above noted sections and the enjoyment of the rights to display signage pursuant to this section constitute an authorization by the owner of the sign that the town may remove and destroy the sign if the owner fails to remove the sign within 10 days of the expiration of the last permit issued for the sign.

If the sign is located on private property, the application for the permit for the sign and the enjoyment of the right to display such signage constitutes authorization for the Town to enter upon such private property to remove the sign pursuant to the above noted sections.

**2. Permanent signs.**

**a. Residential subdivision signs.**

- (1) Each individual residential subdivision or multifamily development is permitted the option of having one freestanding monument sign to be located at the major entrance to the development with a single side of the sign not to exceed 32 square feet in area or five feet in height, or two freestanding monument signs with single faces not to exceed 16 square feet and five feet in height. The maximum deviation permissible under this section is 30 percent and requires a Variance.
- (2) All other entrances for each distinct phases of a residential subdivision or multifamily development are permitted one freestanding monument sign having a maximum single side surface area of 16 square feet and four feet in height. A single sign may be located within a median of a public right-of-way, at the major entrance to the development if such entrance is divided by a median with dimensions of minimum length of 50 feet and minimum width of ten feet. A sign located in the median of a public right-of-way shall be located a minimum of ten feet from the end of the median radius and shall not exceed 3.5 feet. The maximum deviation permissible under section is 30 percent and requires a Variance.
- (3) For all entrance signs, the height limitation shall apply to the sign as well as any support devices such as but not limited to a wall, monument, fence, etc., or similar architectural features.

**b. Promotional signs.** Promotional signs advertising commercial business or goods are allowed on the interior surface of fences of

private, public or semi-public ballfields.

- c. **Schedule and sponsor sign.**
  - (1) A schedule and sponsor sign may be erected on school property at a school ballfield provided no adverse impact on traffic safety or neighborhood character, as determined by the permit-issuing authority, will result. The sign may be erected according to the following:
    - (a) Zero--50 feet from road right-of-way, unlighted, maximum 50 square feet of face area;
    - (b) Fifty-one--150 feet from road right-of-way, unlighted, maximum of 150 square feet of face area; or
    - (c) Greater than 150 feet from right-of-way, 300 square feet maximum face area.
  - (2) The sign may list a schedule of dates and locations of play, and may list sponsors, by name only. Advertisements beyond the name of the sponsor(s) is not permitted. No part of this sign shall be higher than 25 feet above grade.
- d. **Bulletin boards.** Bulletin boards not over 12 square feet in area for public, charitable or religious institutions and located on the same premises as the institution being served is permitted.
- e. **Time and/or temperature signs in OI, CR, SB districts.** One freestanding or wall time and/or temperature sign not exceeding 18 square feet in aggregate surface area is permitted on any lot in an OI, CR or SB district. Such sign may be illuminated and animated to the extent necessary to display time or temperature or both, but shall not otherwise flash, blink or rotate.
- f. **Farm product signs.** Signs advertising the sale of farm products on-site, limited to a maximum of 24 square feet per face, are permitted. Not more than one such sign may be erected per site.
- g. **Community service signs.** A welcome sign, or a sign incorporating the insignias of more than one civic, governmental and/or non-profit organizations may be permitted. Any such sign shall not exceed 100 square feet, nor exceed 12 feet in height. Location within a right-of-way may be permitted with state and Town approval, as applicable. Such signs may be either on-premise or off-premise.
- h. **Electronic message signs.**
  - (1) Signs that have an electronic changeable copy message are allowed as part of a permanent freestanding monument sign. Such sign shall not be permitted to be on a wall sign. All electronic message signs must meet the following criteria:
    - (a) The square footage of the electronic message area and the primary sign area together shall not exceed the total allowable sign area for that use or zoning district;
    - (b) The electronic message sign area cannot exceed 40 percent of the total sign area;
    - (c) The electronic message sign must be physically attached to the primary sign;
    - (d) The electronic message sign area may contain up to three horizontal rows of information;
    - (e) The total electronic sign message, defined as both

sides of the sign, or any portion thereof may change only one timer per hour over a 24-hour period of time. This restriction does not apply to signs displaying emergency information during publicly declared local, state, or national emergencies or disasters; and

- (f) Gas sales or convenience stores with gas sales displaying digital gas prices must comply with the requirements of this section and all other applicable sign requirements, except gas price changes are not restricted to one time per day. In cases where a freestanding [sign] does not exist for the business, digital gas price wall signs may be allowed to locate on a canopy or its support columns subject to all applicable sign ordinance requirements.
- (2) Electronic message signs are not permitted to have scrolling, moving, rotating, fluttering, blinking, or flashing elements. In addition, such signs are not permitted to have any animation, video or audio elements.
- (3) The color of any digital message text or display shall be red. No background colors are allowed.
- (4) Electronic message signs are prohibited on off-premises advertising signs.
- (5) Illumination of electronic signs shall be in accordance with the requirements of Subsection G.4.
- (6) Electronic message signs that are part of multitenant signs including, but not limited to, shopping center identification signs or multiple business signs shall comply with the requirements of this section.
- (7) Violation of the electronic sign ordinance shall be punishable as follows:
  - (a) A civil penalty of \$100.00 for each day of the first violation and \$500.00 each day for subsequent violations;
  - (b) Injunctive relief;
  - (c) Upon issuance of a violation notice, the electronic sign must be turned off and remain turned off until the civil penalty has been paid;

- (d) Upon issuance of a second or subsequent violation, citation or notice, the sign permit shall be automatically terminated;
- (e) Any illumination of the sign following permit termination shall be punishable by a fine of \$1,000.00 per day;
- (f) The sign may not lawfully be illuminated following such termination except upon reapplication and issuance of a subsequent sign permit, and payment of all fees and fines; and
- (g) Issuance of a subsequent sign permit following such termination and reapplication shall be consummated only after the applicant has posted a cash bond in the amount of \$2,500.00, to be available for possible future fines.

**J. Timber Drive Overlay District sign regulations.**

1. **Signage for individual building.** Signs on an individual building shall meet the standards in the following table.

Sign Type	Maximum Sign Area Per Lot	Maximum Number	Maximum Height (Freestanding)
<b>Freestanding: (monument only)</b>	48 square feet	1 per street frontage, 2 maximum	5 feet, monument sign only
<b>Wall:</b>	Lesser of 60 square feet or 10% of business frontage wall area	1 per business frontage and 1 per street frontage, 3 maximum	No sign above roofline
<b>Combined:</b>	125 square feet		

**Note: Freestanding signage for all buildings with build-to option shall be limited to 36 square feet in sign area, one freestanding sign per lot not to exceed a height of four feet measured at grade.**

2. **Multi-tenant signs.** All multi-tenant signs, including but not limited to shopping center identification signs, multiple business signs, directory signs and all wall signs, shall meet the standards in the following table.

Sign Type	Maximum Sign Area	Maximum Number	Maximum Height
Freestanding shopping center sign or freestanding multi-business sign	48 square feet	1 per street frontage, 2 maximum	5 feet, monument sign only
On-premise freestanding directory sign	20 square feet	internal location only, 2 maximum	5 feet, monument sign only
Freestanding outparcel sign	40 square feet	1 per outparcel	5 feet, monument sign only
Wall (includes canopy face)	Lesser of 72 square feet or 10% of business frontage wall area	1 per business frontage and 1 per public street, 3 maximum	No sign above roofline

Wall for 100,000 square foot building, business complex or major tenant in a shopping center	Greater of 60 square feet or 7% of business frontage wall	4	No sign above roofline
Canopy Underhang	4 square feet	1 per business	Bottom of sign maximum 18 inches below bottom of canopy face

3. **Nonresidential subdivision signs.** Nonresidential subdivision signs shall meet the standards in the following table:

Sign Type	Maximum Sign Area	Maximum Number	Maximum Height
Directional sign: Development up to 300,000 square feet	20 square feet	1 per entrance or internal intersection, 2 maximum	5 feet
Development over 300,000 square feet	20 square feet	1 per entrance or internal intersection, 4 maximum	5 feet, monument only
Freestanding subdivision identification sign or freestanding multi-business sign (monument signs preferred)	48 square feet	1 per exterior road frontage, 2 maximum	5 feet, monument sign only
Freestanding signs for individual parcels & lease lots	48 square feet	1 per parcel or lease lot	5 feet, monument sign only
Sign Type	Maximum Sign Area	Maximum Number	Maximum Height
Wall (including canopy face)	Lesser of 72 square feet or 15% of business frontage wall area	1 per business frontage and 1 per public street, 3 maximum	No sign above roofline
Canopy Sign	4 square feet	1 per business	Bottom of sign maximum 18 inches below bottom of canopy face

K. **U.S. 70/401 Thoroughfare Overlay District signage requirements.** Shopping centers, business complex signs, and commercial subdivision signs shall meet the requirements in the following table (for shopping center development greater than 300,000 square feet, see paragraph H of this Section).

Sign Type	Maximum Sign Area	Maximum Number	Maximum Height
Directory: Development up to 300,000 square feet	20 square feet	1 per entrance or internal intersection, 2 maximum	5 feet monument only

<p>Freestanding shopping center sign or freestanding multi-business sign</p> <p>OR</p> <p>When a development has a minimum of 100 feet of frontage along 2 major thoroughfares the following applies:                  2 signs @ 100 square feet in area 12 feet tall (1 sign per street frontage)                  1 sign @ 100 square feet in area 6 feet tall (100 foot separation from other signs)</p>	<p>100 square feet</p> <p>100 square feet (all signs)</p>	<p>1 per street frontage, 2 maximum</p> <p>Two 12' signs (1 per street)</p> <p>One 6'tall sign (100' separation from other signs)                  3 maximum</p>	<p>12 feet, monument sign only</p> <p>2 @ 12 feet, monument only</p> <p>1 @ 6 feet, monument only</p>
<p>Freestanding shopping sign or freestanding multi-business sign for development that has a minimum 100,000 square feet of GLA and a minimum property frontage of 100 feet along each public street.</p>	<p>100 square feet</p>	<p>1 per street frontage, 3 maximum</p>	<p>12 feet, monument only</p>
<b>Sign Type</b>	<b>Maximum Sign Area</b>	<b>Maximum Number</b>	<b>Maximum Height</b>
<p>On-premise freestanding directory sign</p>	<p>20 square feet</p>	<p>Internal location only, 2 maximum</p>	<p>5 feet, monument sign only</p>
<p>Freestanding outparcel sign</p>	<p>32 square feet</p>	<p>1 per outparcel</p>	<p>4 feet, monument sign only</p>
<p>Wall (includes canopy face)</p>	<p>Lesser of 72 square feet or 10% of business frontage wall area</p>	<p>1 per business frontage and 1 per public street, 3 maximum</p>	
<p>Wall for 100,000 square foot building, business complex or major tenant in a shopping center</p>	<p>greater of 60 square feet or 7% of business frontage wall</p>	<p>4</p>	
<p>Canopy underhang</p>	<p>4 square feet</p>	<p>1 per business</p>	<p>Bottom of sign maximum 18 inches below bottom of canopy face</p>

**L. Removal or repair of signs.**

1. Whenever use of a building or premises by a specific business or activity is discontinued for that business or activity for a period of 60 days, signs pertaining to that business or activity shall be immediately removed by the owner. Failure to do so shall constitute abandonment of the sign and is sufficient grounds to order the sign's removal.
2. Every sign and sign structure shall be maintained in good condition at all times. The Planning Director shall have the authority to order painting, repair, alteration or removal of any sign or sign structure which



constitutes, by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, a public nuisance or hazard to safety, health, or public welfare. Permits for any such sign may be revoked in accordance with Article 10, Enforcement.

3. Procedures for handling violations are contained in Article 10, Enforcement.

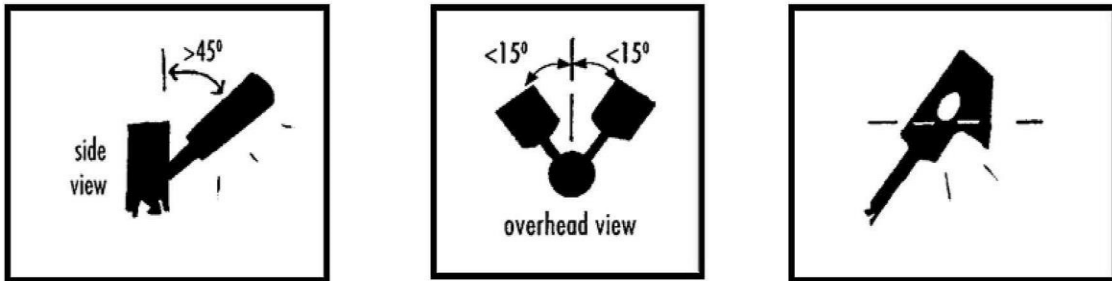
M. **Nonconforming signs.** See Article 9, Nonconformities.

(Ord. No. 3376, § 17, 1-17-06; Ord. No. 3515, §§ 2, 3, 6-2-08; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3576, § 1, 3-1-10; Ord. No. 3618, § 1, 5-2-11; Ord. No. 3675, § 1, 10-1-12; Ord. No. 3714, § 1, 10-22-13; Ord. No. 38-01, § 5, 12-7-15)

## 7.6. Outdoor lighting standards.

- A. **Applicability.** The standards of this section shall not apply to:
1. Individual residential lighting that is not part of a site plan or subdivision plan.
  2. Lighting associated with temporary uses that have been permitted.
  3. Seasonal lighting that is part of customary holiday decorations and annual civic events.
  4. Lighting associated with sign illumination as set forth in Article 8.
  5. Municipal lighting installed for the benefit of public health, safety, and welfare.
- B. **Lighting plan.** Any proposed development requiring a site plan or subdivision plan shall include, as part of site plan or subdivision plan submission, a detailed exterior lighting plan. This plan shall include:
1. Specifications for the lighting fixtures such as: type of unit (cutoff, non-cutoff, glare shields, etc.), lamps (wattage, etc.), electrical load requirements, utility company involved, method of wiring, routing/location of lines, location of lights, and mounting heights.
  2. An iso-footcandle plan that shows typical foot-candle contours or a point photometric grid that indicates foot-candle levels measured at grade across the site. Other information such as: maximum, average, and minimum site foot-candles, uniformity ratio (average/minimum), and depreciation factors should also be included.
- C. **Final acceptance.** Before certificates of occupancy are released, the owner/builder must supply the Town with a final letter of certification from the lighting engineer, lighting manufacturer, or authorized lighting contractor verifying that all site lighting is installed according to Town standards, the approved plans, and any applicable conditions.
- D. **Street lighting.**
1. **Street lighting required.** All streets and sidewalks shall be sufficiently illuminated to ensure the security of the street right-of-way and safety of persons using such areas. To comply with this provision, the applicant shall coordinate with the utility company and the Town to see that all necessary facilities for the eventual installation of street lights are put in place.
  2. **Town responsibility.** The Town shall be responsible for requesting the utility company to install street lights. Such lights shall be consistent with the Town's standard street light package with regard to fixture type, intensity, pole type, length, and spacing.
  3. **Developer responsibility.** The developer shall be responsible for the placement and operation of necessary lighting in common areas not dedicated to public use. The developer shall also be responsible for the placement and operation of any streets lights placed in the public right-of-way that are not consistent with the Town's standard lighting package. Such lights shall be approved by the Town Engineer.
- E. **Site lighting design requirements.** All lighting fixtures designed or placed so as to illuminate any portion of a site shall meet the following requirements:
1. **Fixture (luminaire).** The light source shall be completely concealed within an opaque housing and shall not be visible from any street right-of-way. Floodlights may be used in the rear of non-residential buildings that are not adjacent to residential uses or residentially zoned properties and are not visible from public or private roadways if there are not measurable impacts to neighboring properties. If floodlights are permitted, in addition to meeting the locational restrictions noted above, they shall be installed such that the fixture shall be aimed down at least 45 degrees from

vertical. Flood lights and display lights shall be positioned such that any such fixture with a side-to-side horizontal aiming tolerance not to exceed 15 degrees from perpendicular to the right-of-way. Glare shields must be added to reduce glare.



2. **Light source (lamp).** Only incandescent, LED, florescent, metal halide, or induction lighting may be used. High pressure sodium lighting may be used if approved by the permit issuing authority. The same type must be used for the same or similar types of lighting on any one site throughout any master-Planned Development.
3. **Mounting.** Fixtures shall be mounted in such a manner that the cone of light directly under the fixture does not cross any property line of the site.
  - a. All outdoor lighting fixtures shall be located a minimum of ten feet from a property or right-of-way line, and should be kept out of and at least two feet away from any required perimeter or streetscape buffer, and tree save area. If forward throw fixtures are used the minimum setback distance may be reduced to a minimum of five feet from a property or right-of-way line.
  - b. Lighting for outdoor display areas, such as auto dealerships, must be located inside the illuminated area or no more than ten feet away from the outside edge of the illuminated area so that the amount of direct glare and the visual field of view does not present a safety hazard to the passing motorist.
4. **Mounting heights.** Outdoor lighting fixtures shall be designed, located and mounted at heights no greater than:
  - a. Thirty feet above grade for non-cutoff lights; and
  - b. Thirty-seven feet above grade for cutoff lights.
  - c. Mounting height is measured from the finished grade or surface and includes the total height of the fixture, pole, and any base or other supporting structure required to mount the lights.
  - d. All wall packs must be full cut-off.
5. **Architectural/site compatibility.** Lighting fixtures shall be off a design and size compatible with the principal building of a development and adjacent areas, and shall be designed to be an integral part of the entire development site.
6. **Illumination levels.** All site lighting shall be designed so that the level of illumination as measured in foot-candles (fc) at any one point meets the standards in the table below. The minimum light level for all illuminated areas shall be no less than 0.2 foot-candles maintained. Average level is a not to exceed value calculated using only the area of the site intended to receive illumination. It is recognized that the site lighting of some land uses may need to be evaluated on a case by case basis, therefore the BOA, via Variance, may allow deviations from these standards if it concludes that the objectives underlying these standards can be met without strict adherence to them, provided there are no excessive measurable impacts to adjoining properties that result and it finds that

such deviations are more likely to satisfy the standards listed below.

**Note: Tables to follow on next page.**

Level of Activity	Horizontal Illumination (maintained f.c.)		
	Maximum	Average	Uniformity Ratio(average/minimum)
<b>HIGH:</b> Major athletic, cultural and civic facilities Regional retail Retail with drive-thru	9.0	3 to 5	4 to 1
<b>MEDIUM:</b> Cultural, civic and recreational facilities Residential complex Commercial, general	6.0	2 to 4	4 to 1
<b>LOW:</b> Neighborhood retail Industrial facilities Educational facilities Churches	5.0	1.5 to 3	4 to 1
Location	Horizontal Illumination (average)	Uniformity Ratio (initial foot-candles)	
Active entrances and vital locations (security)	5.0	4 to 1	
Inactive entrances	1.0	4 to 1	
Private sidewalks (residential)	0.3	4 to 1	
Private sidewalks (nonresidential)	0.8	6 to 1	
Vehicular use area (service areas, approach ways, private access roads, etc.)	1.0	4 to 1	
Storage yards (active)	5.0	6 to 1	
Storage yards (inactive)	1.0	6 to 1	
Loading docks and platforms	15.0	2 to 1	
Vehicle sales and display	20.0	2 to 1	
Recreational areas (fields, playgrounds, courts)	20.0	4 to 1	

**F. Lighting required for specific uses.**

1. Roads, driveways, sidewalks and parking lots. All roads, driveways, sidewalks and parking lots shall be sufficiently illuminated to ensure the security of property and safety of persons using such areas and facilities. Where such roads, driveways, sidewalks or parking lots fall on private property, the responsibility for lighting such areas shall fall upon the developer.
2. Entrances and exits in nonresidential and multifamily projects. All

entrances and exits in buildings used for nonresidential purposes and open to the general public, along with all entrances and exits in multifamily residential buildings containing more than four units, shall be adequately lighted to ensure the safety of persons and the security of the building.

3. Canopy area lighting. All development that incorporates a canopy area over fuel sales, automated bank machines, or similar installations shall use recessed a lens cover is flush with the bottom surface of the canopy that provides a cutoff or shielded light distribution. Areas under a vehicular canopy shall have an average of 12 foot-candles as measured at ground level at the inside of the outside edge of the canopy.

**G. Roof lighting.**

**Commentary: Many businesses use tasteful roof lighting not only to increase the visibility of their establishments, but to add visual structure to the nighttime sky of the Town. This section is intended to prevent gaudy, harsh, glaring, loudly contrasting and otherwise distasteful roof lighting within the Garner planning jurisdiction.**

1. Application.
  - a. An application for a permit authorizing a project including the use of roof lighting shall include a roof lighting plan containing sufficient information to determine whether the roof lighting, if installed as proposed, will meet the standards and intent of this section.
  - b. Whenever a roof lighting plan is submitted pursuant to this section, it may be referred to the Planning Commission to obtain the Commission's recommendation on the compliance of the plan with this section.
2. Roof lighting standards.
  - a. All bulbs or tubing shall be encased so that the bulb is not naked and that direct glare is prevented.
  - b. Complete outlining of the roof is not permitted.
  - c. Lights shall not run along the highest peak of a roof line, except that perimeter lighting around the top of a flat roof is allowed.
  - d. Roof lighting that qualifies as a sign under this UDO is prohibited.

**H. Excessive illumination.**

1. Lighting within any lot that unnecessarily illuminates and substantially interferes with the use or enjoyment of any other lot is prohibited. Lighting unnecessarily illuminates another lot if it clearly exceeds the requirements of this section, or if the standard could reasonably be achieved in a manner that would not substantially interfere with the use or enjoyment of neighboring properties.
2. Lighting shall not be oriented so as to direct glare or excessive illumination onto streets in a manner that may distract or interfere with the vision of drivers on such streets.
3. Illumination using bare illuminated tubing or strings of lights that completely outline or define property lines, sales areas, roofs, doors, windows or similar areas in a manner that is not primarily for safety purposes is prohibited.

**I. Special requirements in the Timber Drive Overlay District.**

1. A site lighting plan must be provided as part of any development plan submittal for property within the overlay district and shall contain the following information:
  - a. Lighting plan shall be superimposed on the site plan with the location of all poles and fixtures and reference for the height of

- each fixture, including a specification detail; and
- b. The distribution and intensity levels of illumination for each fixture producing a contour diagram of the light intensity delineated in foot-candle measurements must be indicated.
2. The following are lighting standards for new development within the Timber Drive Overlay District.

Standard	
<b>Type of fixture</b>	High Pressure Sodium, LED, or alternative authorized by the permit-issuing authority with cut-off (no glare on streets or outside boundaries of the lot is permissible)
<b>Height</b>	Maximum of 37 feet
<b>Foot-candle</b>	Not to exceed 250 watts (incandescent light equivalent) at perimeter of lot; average foot-candle on interior lot areas not to exceed an average of three foot-candles

3. The BOA, via Variance, may approve deviations from these presumptive standards if it concludes that objectives underlying these standards can be met without strict adherence to them, provided there are no excessive measurable impacts to adjoining properties and it finds that such deviations are more likely to satisfy the above noted standards.

4. .

**J. Special requirements in the U.S. 70/401 Thoroughfare Overlay.**

1. A site lighting plan must be provided as part of any development plan submittal for property within the overlay district. Such plan and shall meet the following information.
  - a. A lighting plan shall be superimposed on the site plan with the location of all poles and fixtures and reference for the height of each fixture, including a specification detail.
  - b. The distribution and intensity levels of illumination for each fixture producing a point-by-point foot-candle plan at intervals no greater than 20 feet.
  - c. The plan should include average foot-candles maintained and the average to minimum ratio.
2. The following lighting standards for new development shall apply within the U.S. 70/401 Thoroughfare Overlay District.

Standard	
<b>Type of fixture</b>	Cut-off Control Fixtures Recommended; Semi-cutoff Fixtures may be considered if appropriate
<b>Height</b>	Maximum of 37 feet
<b>Foot-candle</b>	Average maintained foot-candle not to exceed an average of 5 foot-candles; average to minimum ratio 4:1 to maintain uniformity; spill over adjacent property not to exceed .2 foot-candles

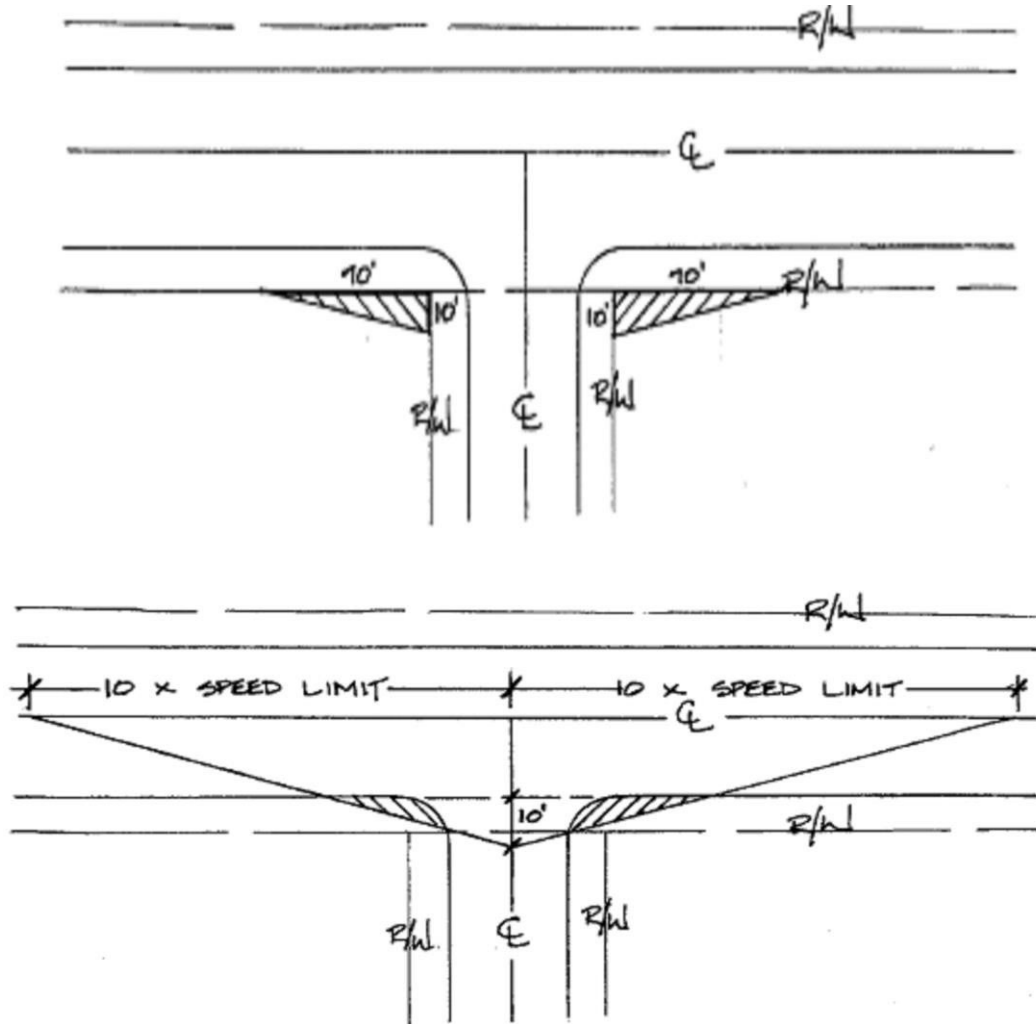
3. The permitting authority may approve deviations from these presumptive standards if it concludes that the objectives underlying these standards can be met without strict adherence to them, and that there are no excessive measurable impacts to adjoining properties, and it finds that such deviations are more likely to satisfy the above noted standards.

4. .

(Ord. No. 3396, § 14, 4-3-06)

**7.7. Access standards.**

- A. **On N.C. DOT streets (both sides).** From right-of-way line of street, along right-of-way of driveway or street to a point ten feet from the intersection of the right-of-way; from same point, along right-of-way 70 feet; with remaining side connecting these two points. These sight triangles shall be kept clear of any such visual obstructions between two and one-half feet and ten feet in height.
- B. **On all streets.** From right-of-way line of street, along centerline of driveway or street to a point ten feet from the intersection of the centerline and the back of curb; from same point, along the center of travel lane a distance of ten times the posted speed limit; with remaining side connecting these two points. These sight triangles shall be kept clear of any such visual obstructions between two and one-half feet and ten feet in height.



## 8.1. APPLICABILITY OF ARTICLE

This article shall apply to all development within the Town's planning jurisdiction.

## 8.2. STREETS.

### 8.2.1. Street classification.

- A. In all new subdivisions, streets that are dedicated to public use shall be classified as provided in subsection B, below.
  - 1. The classification shall be based upon the projected volume of traffic to be carried by the street, stated in terms of the number of trips per day or during the peak hour of the day;
  - 2. The number of dwelling units to be served by the street may be used as a useful indicator of the number of trips but is not conclusive; and
  - 3. Whenever a subdivision street continues on an existing street or it is expected that a subdivision street will be continued beyond the subdivision at some future time, the classification of the street will be based upon the street in its entirety, both within and outside of the subdivision.
- B. Street types:
  - 1. Major thoroughfare. A street serving the principal network for high volumes of traffic or high speed traffic as shown on the Town of Garner Transportation Plan. This street type consists of at least two travel lanes in each direction. A major thoroughfare shall be designated where the anticipated average daily volume exceeds 10,000 vehicles. Residences should not front on a major thoroughfare.
  - 2. Minor thoroughfare. A street designed primarily to collect and distribute traffic between local streets or areas and the major thoroughfare network as shown on the Town of Garner Transportation Plan. This street type generally consists of more than one travel lane in each direction. A minor thoroughfare shall be designated where the anticipated average daily volume ranges exceeds 6,000 vehicles. Residences should not front on a minor thoroughfare.
  - 3. Collector street. A street whose principle function is to carry traffic between local streets and major and minor thoroughfare streets but that may also provide direct access to abutting properties. This street type generally consists of one travel lane in each direction and may include on-street parking. A collector street shall be designated where the anticipated average daily volume exceeds 2,000 vehicles. Residences may front on a collector street. The Town may require a collector street to meet continuation, connectivity or spacing requirements.
  - 4. Local streets. A street whose primary function is serving adjacent land users. This street type generally consists of one travel lane in each direction and may include on-street parking. A local street generally carries an anticipated average daily volume that exceeds 500 vehicles. Residences should front on a local street.
  - 5. Cul-de-sac. A short local street having one end open to traffic and the other permanently terminated by a vehicular turn-around.



6. Service drive (alley). A public vehicular way used for providing service access along rear or side property lines of lots which are also served by one of the previously listed street types. Alleys are not intended to accommodate through traffic.
7. Access easement. An access easement is intended to provide connections to landlocked properties created prior to the adoption of land use ordinance requirements in the Town in 1984. It may also, in rare cases, be used to provide access for a new subdivision not to exceed three lots.
8. Frontage road. A street that is parallel to and adjacent to a major or minor thoroughfare street and that is designed to provide access to abutting properties.

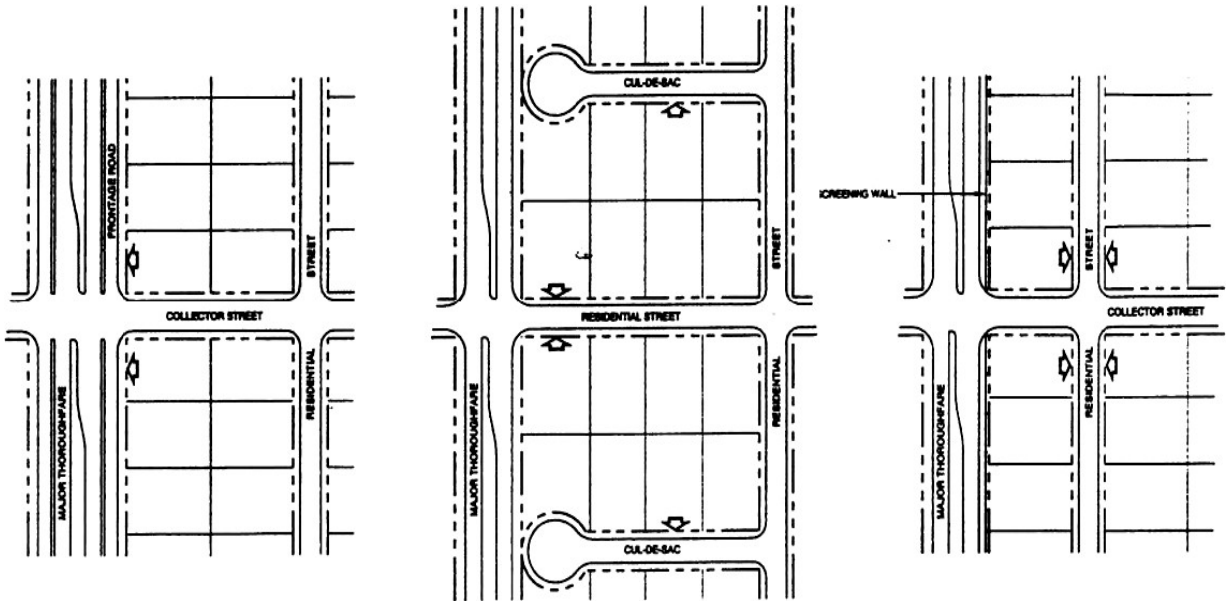
### **8.2.2. Access to public streets in general.**

- A. Every lot shall have either direct or indirect access to a public street. A lot has direct access to a public street if a sufficient portion of a boundary of the lot abuts the public street right-of-way so that an access way meeting the criteria set forth in this section can be established. A lot has indirect access if it connects to a public street by means of one or more private roads that are of sufficient size to meet the criteria for a public access easement. A sufficient portion of a boundary is 20 feet; however, this is a presumptive standard and greater or lesser frontage may be necessary to meet the criteria of this section and the provisions of this UDO.
- B. Access must provide a reasonable means of ingress and egress for emergency vehicles as well as for all those likely to need or desire access to the property in its intended use.

### **8.2.3. Access to major thoroughfares.**

- A. Whenever a subdivision that involves the creation of one or more new streets borders on or contains an existing or proposed thoroughfare street, no direct driveway access may be provided from lots within the subdivision onto this street.
- B. When a lot or development borders on or contains an existing or proposed thoroughfare as delineated by the Transportation Plan access to the thoroughfare may be limited by one of the following means:
  1. Driveway access between the lot and the thoroughfare shall be located not closer than 400 feet to the nearest centerline of any other proposed or existing driveway access along the same side of the thoroughfare.
  2. Lots shall be subdivided so as to provide access onto a frontage road or reverse frontage road. The centerline of the frontage or reverse frontage road where it intersects the thoroughfare shall be no closer than 800 feet to the centerline of the nearest proposed or existing driveway access or road.
  3. Approval of driveway access between a lot and the thoroughfare at an interval less than those specified herein may be granted only by review and recommendation of the Town Engineer and the Division of Highways of the North Carolina Department of Transportation.
  4. Driveway access closure may be required for any change in use of a lot based upon review and recommendation of the Town Engineer and the Division of Highways of the North Carolina Department of Transportation.

5. Road widening and right-of-way dedication shall be required to be consistent with the recommendations of the adopted CAMPO Transportation Plan or Garner Transportation Plan.
  6. Notwithstanding any other provisions of this section, the driveway access provisions shall not be applicable to any subdivision lot where:
    - a. The effect of such application would be to deprive the lot of reasonable access; or
    - b. The size of the tract being subdivided, or lack of frontage on the thoroughfare makes the alternatives above not feasible.
  - C. No building permit shall be issued until submitted site development plans have been approved as complying with the major thoroughfare access requirements of this UDO.
  - D. No certificate of compliance may be issued until the major thoroughfare access requirements of this UDO have been complied with in full.
- A. **Access to minor thoroughfares.** All access to minor thoroughfares shall occur in accordance with the following illustrations.
1. **Provision of a frontage road.** Lots may take direct access onto a frontage road.
  2. **Provision of cul-de-sac.** Lots may take indirect access by fronting on cul-de-sac.
  3. **Change of lot orientation.** Lots may front on a parallel residential street.



**B. DRIVEWAYS AND OTHER ENTRANCES TO STREETS.**

1. All driveway entrances and other openings onto streets within the Town's planning jurisdiction shall be constructed so that:

- a. Vehicles can enter and exit from the lot in question without posing any substantial danger to themselves, pedestrians, or vehicles traveling in abutting streets; and
  - b. Interference with the free and convenient flow of traffic in abutting or surrounding streets is minimized.
2. As provided in G.S. 136-93, no person may construct any driveway entrance or other opening onto a state maintained street except in accordance with a permit issued by the North Carolina Department of Transportation.
  3. All commercial or industrial development shall require a paved driveway.
  4. The design of entrance drives in industrial subdivisions shall be based upon the development standards detailed in Chapter 2 of Policy on Geometric Design of Highways and Streets by AASHTO (American Association of State Highway and Transportation Officials), dated 1984.
  5. For lots within industrial subdivisions with access onto existing, anticipated or proposed collector streets, the entrance drives shall be developed so turning movements will not encroach onto opposing travel lanes on the collector roadway or the drive through the property.

#### **8.2.4. Coordination with surrounding streets.**

- A. The street system of a subdivision shall be coordinated with existing, proposed and anticipated streets outside the subdivision (hereinafter, surrounding streets) as provided in this section.
- B. Collector streets shall intersect with surrounding collector or thoroughfare streets at safe and convenient locations.
- C. In order to accommodate emergency and service vehicles, the following standards shall apply.
  1. Any subdivision of greater than 75 lots shall include at least two access points to the collector and thoroughfare street network via public streets or private streets built to public standards.
  2. No more than 75 certificates of occupancy may be issued within the subdivision until the required secondary access has been constructed or bonded for construction.
  3. Subdivisions of 250 or more lots shall provide three separate access points. Where three or more access points are required, the Town Engineer may waive the requirement for immediate construction of more than two access points, provided that subdivision phasing and design illustrates the additional required connections.
  4. For those subdivisions large enough to require a third access, a stub-out street may be credited as a required access if the two functioning access roads are both connected to a collector road.
  5. Where acceptable to the Town of Garner Fire Official, secondary private access points may be gated.

6. A waiver of these standards may be allowed by the permit issuing authority during approval of the preliminary subdivision plat or site plan only in extreme cases where limited frontage, natural features (slope, topography), or similar circumstances preclude the required connections and there is no substantial impact noted regarding emergency service delivery.
- D. Local residential streets shall connect with surrounding streets where necessary to permit the convenient movement of traffic, or to facilitate access to neighborhoods by emergency service vehicles, or for other sufficient reasons, but connections shall be designed to avoid the use of such streets by substantial through traffic.
- E. Whenever connections to anticipated or proposed surrounding streets are required by this section, the right-of-way shall be extended and the street developed to the property line of the subdivided property (or to the edge of the remaining undeveloped portion of a single tract) at the point where the connection to the anticipated or proposed street is expected. A sign at the end of the street stub describing the street extension and Type III barriers may be required by the Town Engineer. Temporary turn-arounds are required to be constructed at the end of such streets pending their extension when such turn-arounds appear necessary to facilitate the flow of traffic or accommodate emergency or service vehicles. Notwithstanding the other provisions of this subsection, no temporary dead-end street in excess of 1,000 feet may be created unless no other practicable alternative is available.
- F. The street system of the industrial subdivision shall be designed to connect into existing, proposed or anticipated streets outside the subdivision. In cases where the connections to an anticipated or proposed surrounding street are called for but the streets are not designated for immediate construction, then the right-of-way shall be extended to the property line of the subdivided property (or to the edge of the remaining undeveloped portion of the tract) at the point where the connection to the anticipated or proposed street is expected. In lieu of the actual construction of the connection street, temporary turn-arounds may be constructed at a location which facilitates the flow of traffic inside the subdivision and accommodates emergency and service vehicles. No temporary dead-end streets in excess of 1,000 feet may be created unless no other practical alternative is available.

#### **8.2.5. Relationship of streets to topography.**

- A. Streets shall be designed to relate appropriately to the topography of a site. In particular, streets shall be designed to facilitate the drainage and stormwater runoff objectives in this Article, and, subject to the design requirements relating to maximum grades, street grades shall conform as closely as practicable to the original topography.
- B. The maximum grade for street construction shall meet design requirements of the North Carolina Department of Transportation. However, in no case may streets be constructed with grades that, in the professional opinion of the Town Engineer, create a substantial danger to the public safety or cause any substantial degradation to the street or drainage system.
- C. Construction standards and specifications. Construction standards and specifications shall be determined by the Town Engineer. The geometric layout of all streets shall

meet or exceed N.C. DOT requirements.

**8.2.6. Right-of-way and street width standards.**

- A. General intent. Streets and rights-of-way within the Town of Garner are intended for multi-purpose use, as follows:
  1. To carry motor vehicle traffic, and, in some cases, allow on-street parking;
  2. To provide a safe and convenient passageway for pedestrian traffic; and
  3. To serve as an important link in the Town's drainage system.
- B. Right-of-way standards by type of development. Street widths shall be measured from back of curb to back of curb.

Street Type	Right-of-Way	Width (Back of Curb)	Gutter	Sidewalk
Access Easement Landlocked Parcel (1 lot)	20 feet	10 feet	--	--
New Subdivision (max. 3 lots)	20 feet	16 feet	2-foot shoulder, each side	--
Alley	20 feet	12 feet		--
Local (and cul-de-sac)	55 feet	29 feet	2 feet	5 feet, one side
Collector	60 feet	32 feet	2 feet	5 feet, both sides

Lake Benson Conservation District::				
Street Type	Right-of-Way	Width (Back of Curb)	Gutter	Sidewalk
Collector	60 feet	26 feet	Roll Type	5 feet, both sides
Local	50 feet	26 feet		5 feet, one side
Rural Streets*	60 feet	20 feet (no curb)	6-foot shoulder, each side	--
Minor/Major Thoroughfare	Build to NCDOT standards. No driveway access for lots in a residential subdivision.			

\* Note: Rural street type shall not be used where public water or wastewater utility service is

available.

### 8.2.7. Other right-of-way standards.

#### A. Access easements.

1. A recorded access easement option is available for existing landlocked lots only; nothing in this section is intended to allow approval of new lots with easement frontage and access only.
2. In RMH districts, every lot or rental space shall have at least 20 feet of frontage on either a public street or a private drive, measured at the street right-of-way line or private drive "reserved area" limit.
3. The minimum acceptable access easement width shall be 20 feet.
4. The access easement shall be paved with, at minimum, gravel three to six inches in depth and 16 feet in width running down the center of the easement.
5. A full shoulder and ditch section shall be required on the subject property.

- #### B. Arterials and thoroughfares.
- Arterial and thoroughfare right-of-way widths shall be as determined by the Town in consultation with N.C. DOT. The geometric layout shall meet or exceed N.C. DOT standards.

### 8.2.8. Curb and gutter.

- #### A.
- All public streets within the Town or its extra-territorial zoning jurisdiction shall be constructed with curb and gutter section as provided for in this ordinance and the Town of Garner Standard Construction Details.
- #### B.
- The Town Council may allow non curb and gutter street construction in residential projects developed at rural densities of one dwelling unit per 30,000 square feet or greater without the provision of sidewalks or in non-residential projects under the following conditions:
1. Such project is located outside of the Town limits but within the Towns extraterritorial jurisdiction;
  2. There is no connection to municipal water or sewer proposed;
  3. This type of alternative street construction will not create significant storm water drainage impacts to surrounding areas;
  4. It may be applied only to local streets or cul-de-sac where the grade does not exceed eight percent;
  5. Streets with non curb and gutter sections shall have a minimum right-of-way width of 60 feet and;
  6. Streets with non curb and gutter sections shall have a minimum pavement width of 20 feet with eight-foot wide shoulders with drainage swales on each side. All non curb and gutter streets shall be constructed in accordance with the specifications in Appendix C. The non curb and gutter street construction provisions of this subsection shall not apply to streets in cluster developments, instead all streets in cluster development shall have curb and gutter construction as provided for in

## Article 6.

**8.2.9. Major or minor thoroughfare dedication.**

- A. Whenever a subdivision is developed in an area through which a proposed major or minor thoroughfare passes, according to the officially adopted CAMPO Transportation Plan or Garner Transportation Plan, then the developer shall dedicate to the Town a right-of-way as set forth in such plan and shall construct within such right-of-way a street meeting the specifications set forth in this section for a collector street.
- B. Whenever a subdivision or new development fronts along an existing major or minor thoroughfare, the development shall dedicate one-half of the right-of-way required for the appropriate street type and build at least one-half of the recommended cross-section as shown in the CAMPO Transportation Plan or the Garner Transportation Plan unless the subdivision or development does not propose street or driveway access to said thoroughfare. When the total peak hour trip generation according to the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual does not exceed a total of 50 trips for a project, the permit issuing authority may require only that a deceleration lane without curb and gutter construction be installed in lieu of full widening.

**8.2.10. General layout of streets.**

- A. Local residential streets shall be laid out so as to avoid conformity of lot appearance.
- B. Cul-de-sac streets shall be laid out only in limited instances where they are required to provide access to land which cannot be served by a loop or other street design solution.
- C. Traffic calming measures, including improved street network design and other technical solutions such as traffic circles and other natural calming measures may be used to limit cut-through traffic if approved by the Town Engineer.
- D. To the extent practical, driveway access to collector streets shall be minimized to facilitate the free flow of traffic and avoid traffic hazards.
- E. Half streets (i.e., streets of less than the full required right-of-way and pavement width) shall not be permitted.
- F. Streets shall intersect as nearly as possible at right angles, and no two streets may intersect at an angle of less than 80 degrees. Not more than two streets shall intersect at any one point.
- G. Whenever possible, proposed intersections along one side of a street shall coincide with existing or proposed intersections on the opposite side of such street. In any event, where a centerline offset (jog) occurs at an intersection, the distance between centerlines of the intersecting streets shall be not less than 150 feet unless the Town Engineer concludes that a shorter distance will not adversely affect public safety.
- H. No two streets may intersect with any other street on the same side at a distance of less than 400 feet measured from centerline to centerline of the intersecting street. When the intersected street is a major thoroughfare, the distance between intersecting streets shall be at least 1,000 feet wherever practicable.
- I. Local circulation systems and land development patterns should not detract from the

efficiency of adjacent major streets.

- J. To discourage excessive speeds, residential streets should be designed with curves, changes in alignment and short lengths. Residential streets should not be designed to be wider than is necessary.

### 8.3. DETAILED DESIGN OF STREETS.

#### 8.3.1. Local streets.

Local streets shall be designed to provide parking unless an alley is provided. Streets shall be laid out so that residential blocks do not exceed 1,000 feet, unless no other practicable alternative is available.

#### 8.3.2. Cul-de-sac streets.

- A. All permanent dead-end streets, as opposed to temporary dead- end streets, shall be developed as cul-de-sac in accordance with the standards set forth in the table below.
- B. A minimum 30’ wide pedestrian or bikeway connection with sidewalk is required through a cul-de-sac when the following criteria occur:
  - 1. the cul-de-sac is within 350’ of the street to which the connection will provide access, and
  - 2. the cul-de-sac is within ½ mile straight-line distance of a pedestrian traffic generator such as a school, public park or open space, library or recreation facility, or a shopping, office or governmental facility or district.
- C. The minimum right-of-way for cul-de-sac turnarounds shall be 100 feet in conventional subdivisions and 80 feet in cluster developments. Two types of cul-de-sac are permitted:
  - 1. A standard fully paved turn-around shall have a minimum pavement diameter of 80 feet in conventional subdivisions and 60 feet in cluster developments both measured back of curb to back of curb.
  - 2. Turn-arounds with one way travel lanes and unpaved centers shall have a minimum travel lane pavement width of 24 feet in conventional subdivisions and 20 feet in cluster developments. Unpaved centers of turn-arounds in all types of developments shall be landscaped.
- D. Streets shall be laid out so that residential blocks do not exceed 1,000 feet, unless no other practicable alternative is available. Cul-de-sac requirements are set forth in the table below. The BOA, via Variance, may allow cul-de-sac lengths in residential developments to exceed the maximum length allowable when there is no other practical alternative available due to steep slopes or other environmental restrictions (floodplains, buffer areas, etc.) In no case shall the length exceed 500 feet.

Type Subdivision	Type Street	Max. Length Cul-de-Sac	R/W Width Turn-Around	Pavement Width	Curb Type
------------------	-------------	------------------------	-----------------------	----------------	-----------



Article 8. Subdivision Design / Improvements

Industrial	Curb & Gutter	580 ft.	100 ft.	80 ft. back to back	90 degrees
	Ditch Section		120 ft.		8 ft. shoulders & swales
Conventional	Curb & Gutter	200 ft.	100 ft.	80 ft. back to back	90 degrees
	Ditch Section		120 ft.		8 ft. shoulders & swales
Cluster	Curb & Gutter	200 ft.	80 ft.	60 ft. back to back	90 degrees
	—		80 ft.		8 ft. shoulders & swales
Lake Benson Conservation District	Curb & Gutter	200 ft.	100 ft.	80 ft. back to back	Roll Type
	Ditch Section		120 ft.		8 ft. shoulders & swales

**8.3.3. Exceptions to street standards.**

- A. Only standard 90-degree curb shall be used in conventional subdivisions located outside the Lake Benson Conservation District.
- B. Roll type curb and gutter construction may be allowed in lieu of a ditch section as an option in the Lake Benson Conservation District in developments where all street surface runoff is diverted to permanent retention ponds constructed in accordance with the provisions of Article 7.
- C. In cluster developments, the type of curb and gutter section shall be standard 90-degree curb unless an alternative curb and gutter section which adequately provides for proper drainage, access and maintenance needs is approved by the Town Engineer.
- D. Within the Lake Benson Conservation District all roads shall be constructed and paved to the Town of Garner standards. No unimproved or gravel roads are permitted, with the exception of farm roads.
- E. The entrance of unpaved residential driveways shall be graveled for an area of 30 feet in length and ten feet in width, with a six-inch depth of stone. Roads, streets and driveways shall be designed to avoid direct runoff into streams through dispersion onto grassed and vegetated areas wherever possible.

### 8.3.4. Private roads.

- A. Except as provided in this section, all streets in subdivisions shall be constructed according to Town of Garner public street standards and shall be offered as a public street dedication to the Town. Unless the recorded plat of a subdivision clearly indicates a street to be private, the recording of such plat shall constitute an offer of dedication of such streets.
- B. A new subdivision shall be served by a private road where it contains three lots or less. A private road serving greater than three lots shall be built in accordance with public street standards. The Town shall have the discretion to require a public street connection for safety or access purposes.
- C. No final plat that shows lots served by private roads may be recorded unless the final plat contains the following notations:
  1. Further subdivision of any lot shown on this plat as served by a private road may be prohibited by the Town of Garner UDO.
  2. The policy of the Town of Garner is that, if the Town improves streets:
    - a. That were never constructed to the standards required in the Town of Garner Unified Development Ordinance for dedicated streets or its precedent; and
    - b. On which 75 percent of the dwelling units were constructed after July 1, 1981; 100 percent of the costs of such improvements shall be assessed to abutting landowners.
- D. The recorded plat of any subdivision that includes a private road shall clearly state that such road is a private road. Further, the initial purchasers of a newly-created lot served by a private road shall be furnished by the seller with a disclosure statement outlining the maintenance responsibilities for the road, in accordance with the requirements set forth in G.S. 136-102.6. The intention of this subsection is to afford the same protection to purchasers of lots on private roads within the Town as is provided to purchasers of lots outside the Town by G.S. 136-102.6.
- E. All private roads shall be maintained in accordance with Town of Garner standards.
- F. Where private roads are later made public through dedication to the Town, such roads shall be brought up to public standards, including maintenance, prior to their acceptance by the Town.

### 8.3.5. Sidewalks.

- A. Sidewalks required.
- B. The developer of any subdivision with frontage on any street identified as meeting the criteria set out in this section. below shall provide for the construction of public sidewalks in accordance with the Town standards across the entirety of such frontages. Subdivision exemptions are excluded from this requirement.
- C. Sidewalks shall be constructed to allow easy continuation by adjacent properties and to form a safe and convenient network for users.

**8.3.6. Criteria for sidewalks.**

The developer shall be responsible for constructing a sidewalk in the public right-of-way, or, where required by topography or other circumstances in duly obtained public easements approved by the Town Council, and along every street upon which the property fronts and along every new street within the development according to the following criteria:

- A. Public sidewalks shall be constructed on both sides of a road or street with four or more lanes; and
- B. Public sidewalks shall be constructed on one side of a road or street designated as a local street, cul-de-sac, and both sides of a street designated as a collector.

**8.3.7. Fee-in-lieu of sidewalk construction.**

For streets meeting any combination of the categories in the previous section, the developer may propose to pay a fee in lieu of sidewalk construction, based on the then current estimated per-foot cost of construction, if a particular street frontage qualifies under one or more of the following:

- A. Extenuating circumstances, documented by the developer and mutually acceptable to the Town which makes sidewalk construction along a particular frontage impractical or unreasonable at the time of the development's construction;
- B. A capital improvements program schedule that calls for the installation of sidewalk improvements by the Town along a particular frontage; or
- C. The Town Council has made a decision that sidewalks are only to be provided along the opposite side of the street. Such fees shall be held by the Town in a restricted sidewalk construction account.

**8.3.8. Previously constructed sidewalks.**

Where the sidewalk which a developer would otherwise be required to construct, or pay a fee-in-lieu of constructing pursuant to other sections in this UDO, has previously been constructed by the Town, the permitting authority shall determine during site plan review whether the developer's compliance with this subsection shall be accomplished by a re-design and reconstruction of said sidewalk, or by the payment of a fee-in-lieu in accordance with the then current Town schedule of fees.

**8.3.9. Sidewalk width.**

Public sidewalks in all developments shall be at least five feet in width.

**8.3.10. Construction standards.**

Sidewalks and walkways required by this section shall be constructed according to the specifications of the Town of Garner Standard Construction Details except that the Town Engineer may permit sidewalks and walkways to be constructed with other materials when it concludes that:

- A. Such sidewalks would serve the residents of the development as adequately as concrete sidewalks;
- B. Such sidewalks would be more environmentally desirable or more in keeping with the

overall design of the development; or

- C. Such sidewalks could be maintained as adequately as concrete sidewalks.
- D. Whenever the permit-issuing authority finds that a means of pedestrian access is necessary from the subdivision to schools, parks, playgrounds or other facilities within ½ mile distance, or roads within 350 feet distance, and that such access is not conveniently provided by sidewalks adjacent to the streets, the developer shall be required to provide an unobstructed easement of at least ten feet in width and a sidewalk through the easement to provide such access.

### **8.3.11. Unpaved roads to be paved prior to annexation.**

Where a property that is annexed after the effective date of this UDO uses nonconforming gravel roads to provide access, such roads shall be paved at the landowner's expense in accordance with Town specifications within 30 days of annexation. This requirement shall not apply to any roads permitted to be gravel by this section.

### **8.3.12. Road and sidewalk requirements in unsubdivided developments.**

- A. Within unsubdivided developments, all private roads and access ways shall be designed and constructed to facilitate the safe and convenient movement of vehicular and pedestrian traffic. Width of roads and use of curb and gutter shall be determined based on the density, size and type of development. The Town Engineer shall determine appropriate road widths and paving specifications based on the street classification system in Section 8.2. To the extent not otherwise covered in the articles, and to the extent that the requirements set forth in this article may be relevant to the roads in unsubdivided developments, the requirements of this article may be applied to satisfy the standard set forth in the first sentence of this subsection.
- B. Whenever a road in an unsubdivided development connects two or more collector, or major thoroughfare streets in such a manner that any substantial volume of through-traffic is likely to make use of this road, such road shall be constructed in accordance with the standards applicable to subdivision streets and shall be dedicated. In other cases when roads in unsubdivided developments within the Town are constructed in accordance with the specifications for subdivision streets, the Town may accept an offer of dedication of such streets.
- C. Whenever a development fronts along an existing major or minor thoroughfare, the development shall dedicate one-half of the right-of-way required for the appropriate street type and build at least one-half of the recommended cross-section as shown in the CAMPO Transportation Plan or the Garner Transportation Plan unless the development does not process street or driveway access to said thoroughfare.
- D. The developer(s) of any land in a location which meets the criteria established in this section shall provide for the construction of sidewalks or pay a fee in lieu of construction, in accordance with Town standards across the entirety of such frontages and along any new streets within the development. The residential development of one duplex or single-family dwelling on an existing lot is excluded from this requirement, unless sidewalks abut the property line, in which case, sidewalks shall be required.

- E. In all unsubdivided multifamily residential developments, private walkways shall be provided linking dwelling units with other dwelling units with the public street frontage and with on-site activity centers such as parking areas, laundry facilities and recreational areas and facilities. Such walkways shall not be required for developments of 25 or fewer units in which all units have direct access to an interior private drive or public street.
- F. Whenever the permit-issuing authority finds that a means of pedestrian access is necessary from an unsubdivided development to schools, parks, play-grounds or other facilities within ½ mile distance, or roads within 350 feet, and that such access is not conveniently provided by sidewalks adjacent to the roads, the developer shall be required to provide an unobstructed easement of at least ten feet and construct a sidewalk to provide such access.
- G. The public sidewalks required in of this subsection shall be at least five feet wide and those private walkways required in this subsection shall be at least four feet wide, except for walkways constructed along the back of parking bays which shall be at least six feet in width in order to accommodate vehicle overhang, unless wheel stops are placed at the ends of these parking spaces, in which case sidewalks shall be at least four feet in width.
- H. Sidewalks and walkways required by this subsection shall be constructed according to the specifications set forth in Appendix B, except that the Town Engineer may permit sidewalks and walkways to be constructed with other materials when it concludes that:
  - 1. Such sidewalks would serve the residents of the development as adequately as concrete sidewalks;
  - 2. Such sidewalks would be more environmentally desirable or more in keeping with the overall design of the development; or
  - 3. Such sidewalks could be maintained as adequately as concrete sidewalks.

**8.3.13. Attention to handicapped in street and sidewalk construction.**

- A. As provided in G.S. § 136-44.14, whenever curb and gutter construction is used on public streets, wheelchair ramps for the handicapped shall be provided at intersections and other major points of pedestrian flow. Wheelchair ramps and depressed curbs shall be constructed in accordance with published standards of the North Carolina Department of Transportation, Division of Highways.
- B. In unsubdivided developments, sidewalk construction for the handicapped shall conform to the published standards of the North Carolina Department of Transportation, Division of Highways.

**8.3.14. Public utility easements.**

- A. All public utility easements shall meet the requirements of the City of Raleigh as set forth in the City of Raleigh Public Utility Department Handbook.
- B. The City of Raleigh may allow deviations from the standards outlined above that may be less or more restrictive whenever it finds that such deviations are more likely to satisfy the public utility needs of the Town of Garner.

**8.3.15. Street names, street markers and house numbers.**

- A. Street names shall be assigned by the developer subject to the approval of the permit-issuing authority. Proposed streets that are obviously in alignment with existing streets shall be given the same name. Newly created streets shall be given names that neither duplicate nor are phonetically similar to other streets within Wake County;
- B. The developer shall bear the costs of the fabrication and installation of street markers on all streets within or intersecting the development in accordance with the standards of the Town; and
- C. Building numbers shall be assigned by the Town.
- D. All street makers shall be in accordance with the Town of Garner standard street number installation. If a development wishes to use an alternative street maker, such maker shall be maintained by the development and approved by the Town Engineer.

**8.3.16. Bridges.**

All bridges shall be constructed in accordance with the standards and specifications of the North Carolina Department of Transportation, except that bridges on roads not intended for public dedication in unsubdivided developments may be approved if designed by a licensed architect or engineer.

- A. Fee-in-lieu of street construction. In lieu of required street construction, a developer may be required to provide funds that the Town will use solely for the construction of roads to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. "Required street construction" as used in this subsection means either street construction required by existing provisions of the UDO or improvements required by a TIA where a consensus between the developer, the developer's traffic consultant and the Town Planning Department that said improvements are necessary to mitigate adverse traffic conditions resulting from the proposed development as reflected in a development agreement.
- B. Capital fund. The Town will establish a capital fund or funds dedicated to roadway improvements. All monies in said capital fund or funds shall be used only for the development of roads - including design, land acquisition and construction - which serve the occupants, residents or invitees of the subdivision or development being created by the entity providing the funds; and/or for roads in the vicinity which serve more than one subdivision or development within the area.
  - 1. All monies received by the Town pursuant to this subsection shall be deposited in the capital fund created herein.
  - 2. All monies to be paid into the aforesaid capital fund shall be paid prior to issuance of building permits relating to the proposed development.
  - 3. The Town may require a combination of partial payment of money and partial dedication of constructed streets when the Town Council determines that a combination is in the best interests of the citizens of the area to be served.
- C. Fee amount determination. The amount of any fee-in-lieu shall be determined as

follows:

1. The amount of any fee-in-lieu of completing roadway construction otherwise required by existing provisions of the UDO shall be established as a condition in the applicable permit. The developer shall initially provide an engineering estimate for staff review and discussion with the developer.
  2. Such engineering estimates shall at a minimum reflect the consideration of design and permitting costs, land acquisition costs, construction costs and a cost escalator based on known and reasonably anticipated construction cost increases; if the likely date of construction is not readily subject to estimation, the escalation factor shall be limited to ten years.
  3. The amount of any fee-in-lieu established in a Development Agreement shall be in an amount resulting from consensus involving the developer, the developer's traffic and other consultants, the Town Engineering and Planning departments, and shall be reflected by an executed Development Agreement between the developer and the Town.
  4. Any formula which may be adopted in a future ordinance to determine the amount of funds the developer should pay in lieu of required street construction shall be based on the trips generated from the subdivision or development.
- D. Use of capital funds. The Town may undertake such design, land acquisition and construction by itself or in conjunction with the North Carolina Department of Transportation.

(Ord. No. 3532, § 2, 11-4-08; Ord. No. 3558, § 2, 7-7-09; Ord. No. XXXXX, § XXXX, 11-19-19)

## **8.4. SEWAGE DISPOSAL FACILITIES, WATER SUPPLY AND UTILITIES.**

### **8.4.1. General.**

- A. Utility ownership and easement rights. In any case in which a developer installs or causes the installation of water, sewer, electric power, telephone or cable television facilities and intends that such facilities shall be owned, operated or maintained by a public utility or any entity other than the developer, the developer shall transfer to such utility or entity the necessary ownership or easement rights to enable the utility or entity to operate and maintain such facilities.

### **8.4.2. Lots served by publicly-owned water and sewer lines.**

- A. Whenever it is legally possible and practicable in terms of topography to connect a lot with a publicly-owned water or sewer line by running a connecting line not more than 300 feet from the lot to the Town line, then no use requiring water or sewage disposal service may be made of such lot unless that connection is made.
- B. Connection is not legally possible if it is necessary to run the connecting line over property not owned by the owner of the property to be served by the connection, and after diligent effort, the easement necessary to run the connecting line cannot reasonably be obtained.
- C. A lot is served by public water or sewer system if connection is required by this section.

- D. No requirements or provisions of this subsection are intended to supersede the requirements for utility extensions for a new development as provided for in the Town Garner Utility Extension Policy.

**8.4.3. Certification require prior to certificate of occupancy.**

The project engineer shall certify that the water and/or sewer system has been constructed according to plans and specifications approved by the Town prior to receipt of any certificate of occupancy.

**8.4.4. Sewage disposal facilities.**

- A. Sewage disposal facilities required.
- B. Every principal use and every lot within a subdivision shall be served by a sewage disposal system that:
  - A. Is adequate to accommodate the reasonable needs of such use or lot; and
  - B. Complies with applicable health regulations.

**8.4.5. Determining compliance.**

- A. Primary responsibility for determining compliance with the standards above, often lies with an agency other than the Town, and the developer must comply with the standards and specifications of such other agency. Whenever any such agency requires detailed construction or design drawings before giving its official approval to the proposed sewage disposal system, the Town may rely upon a preliminary review by such agency of the basic design elements of the proposed sewage disposal system to determine compliance with this section. However, construction of such system may not be commenced until the detailed plans and specifications have been reviewed and any appropriate permits issued or approvals given by such agency.
- B. In the following table, the column on the left describes the type of development and the column on the right indicates the agency that must certify to the permit-issuing authority whether the proposed sewage disposal system complies with the standard set forth above.

Type of Development	Permit-Issuing Authority Action
(1) The use is located on a lot that is served by the Town sewer system or a previously approved, privately owned package treatment plant, and the use can be served by a simple connection to the system (as in the case of a single-family residence) rather than the construction of an internal collection system (as in the case of a shopping center or apartment complex).	No further certification is necessary.



Article 8. Subdivision Design / Improvements

<p>(2) The use (other than a subdivision) is located on a lot that is served by the Town sewer system but service to the use necessitates construction of an internal collection system (as in the case of a shopping center or apartment complex); and,</p> <p>(a) The internal collection system is to be transferred to and maintained by the Town</p> <p>.The internal collection system is to be privately maintained</p>	<p>The Town Engineer must determine that the proposed collection system is adequate and conforms to the Town of Garner Utility Extension Policy.</p>
<p>(3) The use (other than a subdivision) is not served by the Town system, but is to be served by a privately operated sewage treatment system (that has not previously been approved) with 3,000 gallons or less design capacity, effluent from which does not discharge into surface waters.</p>	<p>The Wake County Health Department (WCHD) must certify to the Town that the proposed system complies with all applicable state regulations. If the proposed use is a single- family dwelling other than a mobile home, the developer must present to the Town a certificate of completion from the WCHD.</p>
<p style="text-align: center;"><b>Type of Development</b></p>	<p style="text-align: center;"><b>Permit-Issuing Authority Action</b></p>
<p>(4) The use (other than a subdivision) is to be served by a privately operated sewage treatment system (not previously approved) that has a design capacity of more than 3,000 gallons or that discharges effluent into surface waters.</p>	<p>The City of Raleigh must certify to the Town that the proposed system complies with all applicable state regulations. A "Permit to Construct" and a "Permit to Discharge" must be obtained from the City of Raleigh. The Town Engineer must also approve the system for future addition to the Town system.</p>
<p>(5) The proposed use is a subdivision, and</p> <p>(a) Lots within the subdivision are to be served by simple connection to existing Town lines or lines of a previously approved private system.</p>	<p>No further certification is necessary.</p>
<p>(b) Lots within the subdivision are to be served by the Town system, but the developer will be responsible for installing the necessary additions to the Town system.</p>	<p>The Town Engineer must determine that the proposed collection system is adequate and conforms to the Town of Garner Utility Extension Policy.</p>
<p>(c) Lots within the subdivision are to be served by a sewage treatment system that has not been approved that has a capacity of 3,000 gallons or less, and that does not discharge into surface waters.</p>	<p>The Wake County Health Department must certify that the proposed system complies with applicable state and local health regulations. If each lot within the subdivision is to be served by a separate on-site disposal system, the WCHD must certify that each lot shown on a major subdivision preliminary plat can probably be served, and each lot on a major or minor subdivision final plat can be served by an on-site disposal system.</p>

<p>(d) Lots within the subdivision are to be served by a privately operated sewage treatment system (not previously approved) that has a design capacity in excess of 3,000 gallons or that discharges effluent into surface waters.</p>	<p>The City of Raleigh must certify that proposed system complies with all applicable state regulations. A Permit to Discharge must be obtained from the City of Raleigh. The Town Engineer must also approve the system for future addition to the Town system</p>
--	---

**8.4.6. Water supply.**

- A. Water supply system required. Every principal use and every lot within a subdivision shall be served by a water supply system that:
  - 1. Is adequate to accommodate the reasonable needs of such use or lot; and
  - 2. Complies with all applicable health regulations.

**8.4.7. Determining compliance.**

- A. Primary responsibility for determining compliance with the standards in the section above, often lies with an agency other than the Town, and the developer must comply with the standards and specifications of such other agency. These agencies are listed in the table below. Whenever any such agency requires detailed construction or design drawings before giving its official approval to the proposed water supply system, the Town may rely upon a preliminary review by such agency of the basic design elements of the proposed water supply system to determine compliance with the section above. However, construction of such system may not be commenced until the detailed plans and specifications have been reviewed and any appropriate permits issued by such agency.
- B. In the following table, the column on the left describes the type of development and the column on the right indicates the agency that must certify to the Town whether the proposed water supply system complies with the standard set forth in the section above.

<p><b>Type of Development</b></p>	<p><b>Permit-Issuing Authority Action</b></p>
<p>(1) The use is located on a lot that is served by the Town water system or a previously approved, privately owned public water system and the use can be served by a simple connection to the system (as in the case of a single-family residence) rather than the construction of an internal distribution system (as in the case of a shopping center or apartment complex).</p>	<p>No further certification is necessary.</p>

Article 8. Subdivision Design / Improvements

<p>(2) The use (other than a subdivision) is located on a lot that is served by the Town water system but service to the use necessitates construction of an internal distribution system (as in the case of a shopping center or apartment complex); and</p> <p>(a) The internal distribution system is to be transferred to and maintained by the Town.</p>	<p>The Town Engineer must determine that the proposed collection system is adequate and conforms to the Town of Garner Utility Extension Policy.</p>
<p>(b) The internal distribution system is to be privately maintained.</p>	<p>The Town Engineer must certify that the proposed distribution system is adequate. A Permit to Construct must also be obtained from DHS.</p>
<p style="text-align: center;"><b>Type of Development</b></p>	<p style="text-align: center;"><b>Permit-Issuing Authority Action</b></p>
<p>(3) The use (other than a subdivision) is located on a lot not served by the Town system or a previously approved, privately owned public water supply system; and</p> <p>(a) The use is to be served by a privately owned public water supply system that has not previously been approved.</p>	<p>The Division of Health Services of North Carolina Department of Human Resources must certify that the proposed system complies with all applicable state and federal regulations. A Permit to Construct must be obtained from DHS. The City of Raleigh must also approve the plans if the water source is a well and the system has a design capacity of 100,000 gallons per day or greater or is located in certain areas designated by the city. The Town Engineer must also approve the system for possible future addition to the Town system.</p>
<p>(b) The use is to be served by some other source (such as an individual well).</p>	<p>The Wake County Health Department must certify that the proposed system meets all applicable state and local regulations.</p>
<p>(4) The proposed use is a subdivision; and</p> <p>(a) Lots within the subdivision are to be served by simple connection to existing Town lines or lines of a previously approved public water supply system;</p>	<p>No further certification is necessary.</p>
<p>(b) Lots within the subdivision are to be served by the Town system but the developer will be responsible for installing the necessary additions to the Town systems.</p>	<p>The Town Engineer must certify that the proposed system meets the necessary additions to the Town's standards and will be accepted by the Town. A Permit to Construct must also be obtained from the Division of Health Services of the North Carolina Department of Human Resources.</p>

Article 8. Subdivision Design / Improvements

<p>(c) Lots within the subdivision are to be served by a privately owned public water supply system that has not been previously approved.</p>	<p>The Division of Health Services of North Carolina Department of Human Resources must certify that the proposed system complies with all applicable state and federal regulations. A Permit to Construct must be obtained from DHS. The City of Raleigh must also approve the plans if the water source is a well and the design capacity of 100,000 gallons per day or greater or is located within certain areas designated by the City. The Town Engineer must also approve the system for possible future addition to the Town system.</p>
<p>(d) Lots within the subdivision are to be served by individual wells.</p>	<p>The Wake County Health Department must certify to the Town that each lot intended to be served by a well can be served in accordance with applicable health regulations</p>

**8.4.8. Fire hydrants.**

- A. Every development, subdivided or unsubdivided, shall include a system of fire hydrants sufficient to provide adequate fire protection for a building or buildings located or intended to be located within a development.
- B. All fire hydrants shall be installed on a minimum six inch water line. Only one fire hydrant may be installed on a dead-end six inch water line.
- C. The spacing and general location of hydrants shall be as follows:
  - 1. In all zoning districts, there shall be at least one fire hydrant at each public or private street intersection;
  - 2. In residential districts, the maximum distance between fire hydrants, measured along street centerlines, shall be 500 feet.
  - 3. In nonresidential zoning districts, the maximum distance between fire hydrants, measured along street centerlines, shall be 300 feet.
  - 4. In applying the previous sections, fire hydrants located on the opposite side of any major thoroughfare with four or more travel lanes, any U.S. or N.C. designated routes, divided highway, or railroad track shall not be counted when determining the fire hydrant coverage or locational requirements of this subsection; and
  - 5. All premises subject to the state building code where buildings or portions of buildings are located more than 500 feet from a fire hydrant system shall be provided with approved on-site fire hydrants and water mains capable of supplying the fire flow required by the Fire Official. The location and number of on-site hydrants shall be as designated by the Fire Official consistent with the criteria in the section below where practicable, with the minimum arrangement being so as to have a hydrant available for distribution of hose to any portion (including public hydrants) of any building on the premises at distances not exceeding 500 feet but in no case shall hose lengths be greater than 500 feet; provided, however that this subsection does not apply to one and two family dwellings with or without attached or detached accessory structures used exclusively by the owner and not subject to use by the public.
- D. The Town Fire Official shall approve the specific location of all fire hydrants, in accordance, where practicable, with the following design criteria:
  - 1. Relative location to streets: Streets with curb and gutter two to four feet behind back of curb; streets with ditch section--one foot inside right-of-way;
  - 2. Clear space: Four feet on all sides free of any structures, utility poles, landscaping planting, or other permanent objects;
  - 3. Minimum distance from nonresidential buildings: 40 feet;
  - 4. Construction standards and specifications: City of Raleigh Utilities Department, except that the nozzles still have national standard threads;
  - 5. Adequate fire flow and coverage for nonresidential buildings: Coverage from two hydrants generally required; and

6. Maximum distance from a hydrant to any portion of a building: 500 feet (as measured along the hose laying route).
- E. Provided, however, that the permit-issuing authority may apply either more restrictive or less restrictive fire hydrant location criteria when it finds that such deviations are more likely to accomplish the provision of sufficient fire protection for all buildings within a development.
- F. Whenever the permit-issuing authority allows or requires a deviation from the presumptive requirements, the reasons for doing so and the requirements imposed shall be listed on the permit.

## **8.5. OTHER UTILITIES.**

### **8.5.1. Electric power.**

Every principal use, and every lot within a subdivision shall have available to it a source of electric power adequate to accommodate the reasonable needs of such use and every lot within such subdivision. Compliance with this requirement shall be determined as follows:

- A. If the use is not a subdivision and is located on a lot served by an existing power line, and the use can be served by a simple connection (as opposed to a more complex distribution system, such as would be required in an apartment complex or shopping center), then no further certification is needed; and
- B. If the use is a subdivision or is not located on a lot served by an existing power line or a substantial internal distribution system, then the electric utility company must review the proposed plans and certify to the Town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

### **8.5.2. Telephone service.**

Every principal use and every lot within a subdivision must have available to it a telephone service cable adequate to accommodate the reasonable needs of such use or lot. Compliance with this requirement shall be determined as follows:

- A. If the use is not a subdivision and is located on a lot that is served by an existing telephone line and the use can be served by a simple connection to such line, then no further certification is necessary; and
- B. If the use is a subdivision, or is not located on a lot served by an existing telephone line, or will require a substantial internal distribution system, then the telephone company must review the proposed plans and certify to the Town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

### **8.5.3. Underground utilities.**

- A. All electric power lines, (not to include transformers or enclosures containing electrical equipment such as switches, meters, and capacitors, which may be pad mounted), telephone, gas distribution, and cable television lines in subdivisions developed after the effective date of this UDO shall be placed underground in accordance with the

specifications and policies of the respective utility companies and located in accordance with Town of Garner Standard Construction Details.

- B. Whenever an unsubdivided development is hereafter constructed on a lot that is undeveloped on the effective date of this UDO, then all electric power, telephone, gas distribution, and cable television lines shall run underground from the point of connection with the main lines to any structures on the lot served by those lines. Such lines shall be placed underground in accordance with the specifications and policies of the respective utility companies.

#### **8.5.4. Utilities to be consistent with internal and external development.**

- A. Whenever it can reasonably be anticipated that utility facilities constructed in one development will be extended to serve other adjacent or nearby developments, such utility facilities (e.g., water or sewer lines) shall be located and constructed so that extensions can be made conveniently and without undue expense or service duplication.
- B. All utility facilities shall be constructed in such a manner as to minimize interference with pedestrian or vehicle traffic and to facilitate maintenance without undue damage to improvements or facilities located within the development.

#### **8.5.5. As-built drawings required.**

- A. Whenever a developer installs or causes to be installed a utility line in any public right-of-way or easement, the developer shall, as soon as practical after complete installation furnish the Town with a permanent copy of a drawing that shows the exact location of such utility lines. Such drawings must be verified as accurate by an appropriately licensed designer and shall bear a certificate on the drawing to that effect. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing such development.
- B. If any utility line in any right-of-way is installed by a utility company, the company shall maintain accurate as-built drawings and shall make these available to the Town upon request. The Town will maintain as-built drawings furnished by the developer of all other utilities.

### **8.6. OPEN SPACE AND RECREATIONAL FACILITIES.**

#### **8.6.1. Open space.**

- A. The Town Council finds that, when land is developed for residential purposes, the public health, safety, and welfare are best served if a portion of the land so developed remains as common open space. The preservation of such open space areas serves the following important objectives, to the benefit of the residents of such developments as well as the general public:
  1. Preservation of open vistas, providing relief from an urban landscape;
  2. Preservation of environmentally sensitive lands;
  3. Preservation of habitat for wildlife;
  4. Preservation of historically or archaeologically significant areas; and

5. Provision of areas for passive recreation, such as walking or jogging.
- B. For purposes of this section:
  1. Open space refers to an area that:
    - a. Is not encumbered with any substantial structure;
    - b. Is not exclusively devoted to use as a roadway, parking area, or sidewalk;
    - c. Is not part of any privately owned lot that is used or intended for use for residential purposes;
    - d. Is private, is legally and practicably accessible to the residents of the subdivision or development it is designed to serve; and
    - e. If publicly dedicated, is legally and practicably accessible to the general public.
  - C. Narrow strips of common area that separate lots within a development from each other, from streets, or from adjoining tracts shall generally not be regarded as open space within the meaning of this section unless such areas:
    1. Are at least 50 feet in width and capable of functioning as a substantial visual buffer; or
    2. Are configured and improved in a manner acceptable to the permit issuing authority (e.g. through the installation of trails) in such a way as to be conducive to actual use for passive recreational purposes (i.e. walking or jogging) by residents of the development where located.
  - D. The following areas shall be regarded as open space where such areas satisfy the criteria set forth a.(1), a.(2) and a.(3) of this section:
    1. Utility easements located outside of street rights-of-way;
    2. Cemeteries located on a tract prior to its development;
    3. Areas used for the growing of crops, such as hay, corn, or vegetables, if and to the extent that such uses occur within an area that is subject to the control of a homeowners association and the homeowners association approves such uses; and
    4. Golf courses as private open space.
  - E. The term "primary conservation areas" shall mean:
    1. Areas shown as greenways on the adopted Garner Open Space and Greenways Plan or other applicable policies or plans;
    2. Wetlands as defined pursuant to Section 404 of the Clean Water Act;
    3. Floodplains;
    4. Lakes and ponds; or
    5. Areas containing slopes greater than 25 percent.
  - F. The term "secondary conservation areas" shall mean:
    1. Areas containing slopes greater than 15 percent but not more than 25 percent;
    2. Other areas containing unique vistas or unusual natural features (such as major rock



- formations); or
3. Other environmentally, historically or archaeologically significant or unique areas.
- G. Except as otherwise provided herein, every residential development shall be developed so that at least ten percent of the total area of the development remains permanently as open space.
1. The Town Council recognizes that, the smaller the development, the less practical value open space areas set aside under this section may have. Therefore, developments of less than one acre in overall size shall be exempt from the open space provisions of this section.
  2. For purposes of this section, the term "development" refers to the entire project developed on a single tract or contiguous multiple tracts under common ownership or control, regardless of whether the development is constructed in phases or stages.
- H. If a tract where a residential development is proposed contains any areas defined above as primary or secondary conservation areas, then such areas shall be designated as open space, subject to the following:
1. In no case shall the developer be required to set aside as open space more than the minimum required percentage of open space specified in this section.
  2. If the development tract contains primary or secondary conservation areas, then the specific areas to be set aside as open space shall be determined by the permit issuing authority, with priority given to primary conservation areas over secondary conservation areas.
  3. If the total of primary and secondary conservation areas on a development tract is less than the minimum required percentage of open space specified in this section, then the choice of additional open space areas to be set aside to satisfy this minimum percentage shall remain with the developer, provided the location meets the standards of this UDO.
- I. Notwithstanding the other provisions of this section, where a developer agrees to dedicate land to the Town that is intended to be used by the Town for open space purposes such dedication shall be credited to the developer in satisfaction of the open space requirements.

#### **8.6.2. Park land dedication and fee in-lieu requirement.**

- A. Purpose.
1. The Town Council finds that all new residential development places a demand on existing Town park and recreational facilities and creates the need for the expansion of existing park and recreation facilities and the development of new park and recreation facilities.
  2. The Council further concludes that the need for such new or expanded parks and recreation facilities is directly related to the number of persons expected to reside in such new development and is also affected by the housing type (single-family detached or multifamily and all other residential units) as well as the extent to

which such developments provide their own recreational facilities.

3. The Council concludes that it is appropriate for such new developments to contribute to the cost of such new or expanded parks and recreational facilities in a manner that is roughly proportional to the need generated by such developments either through public dedication of land or by the payment of fees in-lieu- of dedication.

#### **8.6.3. Use of fees.**

- A. The Town Council hereby establishes a park and recreational facilities capital improvement fund that is distinct from the general fund of the Town, the purpose of which shall be to accumulate the fees generated by this section.
- B. The park and recreational facilities capital improvement fund shall contain only those funds collected pursuant to this section plus any interest which may accrue from time to time on such amounts.
- C. The monies in such fund shall be used only for the acquisition of additional park land or for the construction of new recreational facilities in areas that will benefit the residents of the development that contributed to the fund. The Town Council may consider granting a credit against required fee-in-lieu of parkland dedication when a developer constructs public recreation facilities dedicated for public use and ownership as part of an approved residential development provided such facilities are designed and constructed a manner that is approved by the Town.
- D. The Town Council may establish more than one fund, and divide the Town into districts, each served by a separate fund, if the Council concludes that the establishment of such multiple districts and multiple funds will best serve the objectives of this section.

#### **8.6.4. Dedication or fee in-lieu.**

The procedure for determining if a subdivider is to dedicate land or pay a fee in-lieu of dedication shall be as follows:

- A. Subdivider. At the time of filing any subdivision plan, the subdivider shall, as part of such submission, indicate whether dedication of the property for park and recreational purposes is proposed, or whether the subdivider proposes to pay a fee in-lieu thereof. If the subdivider proposes to dedicate land for this purpose the subdivider shall designate the area thereof on the master subdivision plan as submitted.
- B. Action of Town. At the time of the subdivision plat review, the parks and recreation advisory Committee shall recommend and the Planning Commission shall determine as a part of its subdivision plat approval, whether to require a dedication of land within the subdivision, payment of a fee in-lieu thereof or a combination of both. In cases where there is any disagreement on the question of dedication or fee in-lieu, the Planning Commission shall refer the matter to the Town Council for a final decision.

#### **8.6.5. Park land dedication.**

Where it is determined that park land dedication is appropriate to satisfy the recreational requirements of the UDO, the amount of the park land to be dedicated shall be as follows:

Housing Type	Acres/Unit
Single-family detached	0.0354
All other residential	0.0287

- A. Acceptance of dedicated park land. The parks and recreation advisory Committee and the Planning Commission shall have the opportunity to review the proposed land dedication and recommend on its acceptability within the guidelines of this UDO and Town plans, and on the preferability of land dedication or payment of a fee-in-lieu of dedication.
- B. Standards for dedicated park land. All park land proposed for dedication shall meet the following criteria:
  - 1. Unity. The dedicated park land shall form a single parcel of land except where the parks and recreation advisory Committee recommends, and the Town Council finds, that two parcels or more would be in the public interest. Where two or more parcels exist, any connecting path or strip of land shall not be less than 30 feet in width.
  - 2. Shape. The shape of the dedicated parcel of land shall be a shape to be sufficiently usable for recreational activities generally associated with a public recreation park.
  - 3. Location. The dedicated land shall be located so as to reasonably serve the recreation area needs of the development and surrounding area for which the dedication was made.
  - 4. Access. Public access to the dedicated land shall be provided either by adjoining street frontage or public easement at least 30 feet in width.
  - 5. Topography. Slope on areas dedicated for parks shall not exceed five percent.
  - 6. Utility. The dedicated land shall be usable for active recreation, or could be improved so as to be so usable without exceeding the amount of the fee in-lieu.
  - 7. Consistency with adopted plans. The acceptance of dedication shall be consistent with the officially adopted open space and greenway plan, parks and recreation master plan or other applicable policies or plans.

**8.6.6. Fee-in-lieu of dedication.**

- A. Where determined appropriate, all residential development shall pay a fee-in-lieu of dedication to the Town in an amount equal to the fee set annually by the Town Council in the miscellaneous fees and charges schedule based on the number of dwelling units in the proposed development.
- B. The amount of the fee-in-lieu shall not exceed the cost per acre to acquire new park land multiplied by the acreage demand per housing unit, as set forth in Article 8.4.B.4.
- C. Fees-in-lieu are payable at the time of building permit issuance.

**8.6.7. Prerequisites for approval of final plat.**

- a. Where park land dedication is required, such dedication shall be shown on the final plat for the subdivision submitted for approval.
- b. Where a fee in-lieu is required, the fee in-lieu shall be deposited with the Town prior to the recording of the final plat for subdivision.
- c. Covenants for private open space areas shall be submitted to the Town prior to approval of the final plat and shall be recorded with the final plat.

**8.6.8. Refunds.**

Any monies in the park and recreational facilities capital improvement fund that have not been spent within ten years after the date on which such fee was paid shall be returned to the current owners with any accumulated interest since the date of payment.

- A. Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property within 30 days of the date the refund becomes due. The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.
- B. The refund shall be made on a pro rata basis, and shall be paid in full within 90 days of the date certain upon which the refund becomes due.

**8.6.9. Private ownership and maintenance.**

- A. Recreational facilities or open space not dedicated to the Town shall remain under the ownership and control of the developer (or his successor) or a homeowners' association or similar organization. Such recreational facilities and open space shall be made available to all residents of the development where they are located under reasonable rules and regulations established to encourage and govern the use of such facilities and open space by the residents without payment of separate optional fees or charges other than membership fees in a homeowners' association. Such facilities and open space may be made available to a limited extent on a fee basis to persons who are not residents of the development where such facilities or open space are located, so long as such use does not become so extensive as to remove the facilities and open space from the category of an accessory use to a residential development and transform the use to a separate principal use classification.
- B. The person or entity identified in subsection 1. as having the right of ownership and control over such recreational facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same.
- C. Homeowners' associations or similar legal entities that are responsible for the maintenance and control of common areas, including recreational facilities and open space, shall be established in such a manner that:
  1. Provisions for the establishment of the association or similar entity is made before

any lot in the development is sold or any building occupied;

2. The association or similar legal entity has clear legal authority to maintain and exercise control over such common areas and facilities;
3. The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas and facilities; and
4. The association will establish a capital fund for the maintenance and upkeep of common areas and facilities and a method of contributing to that fund which will spread the costs of said maintenance and upkeep to the residents over a number of years.

(Ord. No. 3558, § 2, 7-7-09; Ord. No. 3723, § 1, 12-17-13; Ord. No. 3801, § 7, 12-7-15; Ord. No. XXXXX, § XXXX, 11-19-19)

## **8.7. SUBDIVISION DEDICATION REQUIREMENTS.**

### **8.7.1. Plat approval does not constitute acceptance of dedication offers.**

Plat approval does not constitute acceptance by the Town of the offer of dedication of any public facilities shown on a plat. However, the Town may accept any such offer of dedication by resolution of the Town Council or by actually exercising control over and maintaining such facilities.

### **8.7.2. Protection against defects.**

- A. Whenever occupancy, use or sale is allowed prior to completion of all publicly dedicated facilities and improvements, the performance bond or surety posted pursuant to section 8.6.A shall guarantee correction by the developer of any defects in such improvements or facilities that appear within one year.
- B. Whenever all publicly dedicated facilities and improvements are installed before occupancy, use, or sale is authorized, then the developer shall post a performance bond or other sufficient surety to guarantee that he will correct all defects in such facilities or improvements that occur within one year after use, occupancy or sale is authorized.
- C. An architect or Engineer retained by the developer shall certify to the Town that all facilities and improvements to be dedicated to the Town have been constructed in accordance with the requirements of the ordinance. This certification shall be a condition precedent to acceptance by the Town of the offer of dedication of such facilities or improvements.
- D. For purposes of this section, the term defects refers to any condition that requires the Town to make repairs in such facilities over and above the normal amount of maintenance that they would require. If such defects appear, the guaranty may be enforced regardless of whether the facilities or improvements were constructed in accordance with the requirements of this UDO.

### **8.7.3. Maintenance of dedicated areas until acceptance.**

All facilities and improvements with respect to which the owner makes an offer of dedication to public

use shall be maintained by the owner until such offer is accepted by the appropriate public authority.

(Ord. No. 3558, § 2, 7-7-09)

## **8.8. IMPROVEMENT GUARANTEES.**

### **8.8.1. Performance guarantee to ensure compliance with subdivision or other approval.**

- A. There may be cases when it would be unreasonable to require the permit recipient to comply with all UDO requirements before commencing the intended use of the property or occupying any buildings or selling lots in a subdivision, such as weather conditions or other factors beyond the control of the permit recipient (exclusive of financial hardship). In these cases, the Town of Garner may authorize such commencement or occupancy or sale if the permit recipient provides a performance guarantee or other security of 125 percent of the costs of the remaining improvements satisfactory to the Town to ensure that all of these requirements will be fulfilled within not more than one year.
- B. When the Town of Garner imposes additional requirements upon the developer or when the permittee proposes to install amenities beyond those required by this UDO, the Town may authorize the permittee to commence the intended use, occupy any building, or sell any subdivision lots before the additional requirements are fulfilled or the amenities installed if it specifies a date or a schedule by which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:
  - 1. A commercial letter of credit, or a certified check satisfactory to the Town of Garner is furnished;
  - 2. A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when application for renewal is made; and
  - 3. The nature of the requirements or amenities is such that sufficient assurance of compliance is given by Article 10.
- C. With respect to subdivisions in which the permittee is selling only undeveloped lots, the Planning Director may authorize final plat approval before all of the requirements of this UDO are fulfilled if the permittee provides a commercial letter of credit or certified check satisfactory to the Town of Garner to ensure that all of these requirements will be fulfilled within not more than 12 months after final plat approval.
- D. In no case shall an improvement guarantee that reduces public safety be approved in place of the actual improvement.
- E. The final plat for a single phase subdivision (i.e. a plat that is recorded as a single unit and is not one that will be recorded in multiple phases) shall have a minimum of 10 lots withheld from plat recordation until such time as all remaining improvements have been satisfactorily installed in a manner acceptable to the Town of Garner. The last final plat of a multiple phase subdivision shall be withheld from plat recordation until such time as all remaining improvements have been satisfactorily installed in a manner

acceptable to the Town of Garner.

### **8.8.2. Performance guarantee.**

There may be cases when it would be unreasonable to require the applicant to comply with all of the requirements of this UDO prior to commencing the intended use of the property or occupying any buildings, such as weather conditions or other factors beyond the control of the permit recipient (exclusive of financial hardship). In these cases, the Planning Director may authorize commencement of the intended use or occupancy of buildings if the permit recipient provides a commercial letter of credit or certified check of 125 percent of the cost of the remaining improvement satisfactory to the Planning Director to ensure that all UDO requirements will be fulfilled within not more than 12 months.

### **8.8.3. Roads intended to be accepted by N.C. DOT.**

Any road intended to be accepted by the North Carolina Department of Transportation (N.C. DOT) shall meet the following requirements:

- A. An encroachment agreement with N.C. DOT for all utilities is required prior to the Town issuing a building permit for any more than 25 percent of the lots in the phase of the subdivision currently under construction.
- B. The road must be accepted by N.C. DOT prior to the Town issuing a building permit for any more than 70 percent of the lots in the phase of the subdivision currently under construction.

### **8.8.4. As-built and engineers' certificates submittals.**

For projects that involve infrastructure construction or stormwater best management practices (BMPs), as-built construction surveys and engineer's certification of the infrastructure and stormwater BMPs are required. Submittal of acceptable as-built surveys and engineer's certificate, as determined by the Town Engineer, shall conform to the following schedule:

- A. Water and/or sewer as-builts and an engineer's certificate must be submitted and accepted prior to the Town issuing a building permit for any more than 70 percent of the lots in the phase of a subdivision currently under construction.
- B. Water and/or sewer as-builts and an engineer's certificate must be submitted and accepted prior to the Town issuing any certificate of occupancy.
- C. Streets and/or stormwater as-builts and an engineer's certificate must be submitted and accepted prior to the Town issuing a building permit for any more than 70 percent of the lots in the phase of a subdivision currently under construction.
- D. For single building site plans, stormwater as-builts and an engineer's certificate must be submitted and accepted prior to the Town issuing a certificate of occupancy.
- E. For multiple building site plans, stormwater as-builts and an engineer's certificate must be submitted and accepted prior to the Town issuing a certificate of occupancy for more than 70 percent of the buildings shown on the site plan.

(Ord. No. 3376, § 13, 1-17-06; Ord. No. 3502, § 3, 3-3-08)





### **9.1. PURPOSE AND INTENT**

There exist within the Town of Garner uses of land, structures, lots, site elements, and signs that were lawfully established prior to the date of adoption of this UDO, but that no longer conform to the standards of this UDO. It is the intent of this UDO to move nonconformities in the direction of conformity (wherever possible), permit nonconformities to continue until they are removed (where necessary), and not to encourage their survival except under the limited circumstances established in this article. The Planning Director may require conformance with specific provisions of this UDO where deemed necessary to resolve immediate or pending public safety concerns. The intent of this Article in resolving and bringing uses, structures, and activities into conformance with this UDO is to protect the public health safety and welfare.

## **9.2. DEFINITIONS**

For the purposes of this Article and discussing nonconformities, the following definitions shall apply:

### **9.2.1. Abandoned**

To cease, either intentionally or unintentionally, from actively using land, structures, or any premises for the intended or previous use, but excluding temporary periods of inactivity due to remodeling, maintaining, or otherwise improving a facility. Abandonment is often referenced to a specified time period.

This definition includes “abandon”, “abandonment”, and any other tense or version of the word “abandoned.”

### **9.2.2. Discontinued**

To quit or cease, either intentionally or unintentionally, operation or activity associated with a use of land, structures, or any premises from their intended or previous use or to replace the previous use with a new use of a different kind or class. A change of occupancy, owner, or tenant does not constitute a discontinuance or change of use.

This definition includes “discontinue”, “discontinuance”, “ceased” (as it refers to a use, and any other tense or version of the word “discontinued.”

### **9.2.3. Other Clarification**

An “intent to resume” a use, operations, or activities may be demonstrated through continuous operation of a portion of the facility, by the maintenance of water, sewer, electric, and other utility service (as appropriate), or by other outside documentation such as proof of deliveries.

## 9.3. NONCONFORMING USES

### 9.3.1. Normal Maintenance and Repair

Normal maintenance or repair of structures where nonconforming uses are located may be performed in any consecutive twelve-month period, to an extent not exceeding 33% of the current assessed value of the structure. Such maintenance and repair shall not be allowed to increase the usable space of the structure occupied by the nonconforming use, except pursuant to this section.

### 9.3.2. Extension or Alteration

- A. A nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this UDO, was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.
- B. 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 involving the removal of natural materials (e.g., a quarry) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming if ten percent or more of the earth products had already been removed at the effective date of this UDO.
- C. For full description of standards for alterations or additions, see Figure 9.6-A.

### 9.3.3. Change in Use

A nonconforming use may be changed, modified, or expanded to any permitted use(s) in the subject district. The affected property may not then revert to a nonconforming use.

### 9.3.4. Single-Family Residential Nonconforming Uses

A structure used for a single-family residence and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as new nonconformities or an increase in the extent of existing nonconformities, such as parking requirements, are not created.

### 9.3.5. Continuation of Accessory Use

No use that is accessory to a principal nonconforming use shall continue after such principal use has discontinued, ceased, been abandoned, or terminated unless it conforms to all provisions of this UDO.

### 9.3.6. Discontinuance and Abandonment

- A. A nonconforming use shall be presumed to be discontinued and abandoned, shall lose its nonconforming status, and shall not be

reestablished or resumed and thereafter be used only for conforming purposes, when any of the following has occurred:

1. The owner has indicated intent to abandon the use, delivered in writing to the Planning Director.
  2. When a nonconforming use is abandoned or discontinued for a consecutive 180-day period or for a total of (180) calendar days in a 12-month period.
  3. At the point when the electric meter is pulled off or water service or other public utility service is terminated on a structure or lot due to any reason, provided that it is not replaced or reactivated within the 180-day period immediately following.
- B. When a use or use of land made nonconforming by adoption of this UDO is vacant or discontinued at the effective date of this UDO, the 180-day period begins to run at that date.
- C. All of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole in determining whether a right to continue a nonconforming situation is lost pursuant to this section. However, 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.

Commentary: For example, the failure to rent one apartment in a nonconforming apartment building 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 as whole is continuously maintained.

## 9.4. NONCONFORMING STRUCTURES

### 9.4.1. Normal Maintenance and Repair

Normal maintenance or repair of nonconforming structures may be performed in any consecutive twelve-month period, to an extent not exceeding 33% of the current assessed value of the structure. Such maintenance and repair shall not be allowed to increase the usable space of the structure, except pursuant to this section.

### 9.4.2. Alteration or Additions

Alterations or additions to a nonconforming building or structure may be permitted as long as the alterations or additions do not increase the nonconformity of the structure related to the building setback line, height limitations, yard or other provisions regulating the size and placement of buildings and structures for the district in which the nonconforming structure is located. For full description of standards for alterations or additions, see Figure 9.7-A: Required Site Element Upfits.

### 9.4.3. Reconstruction

#### A. Nonresidential Structures

1. If a nonresidential building or structure, including any accessory structures, is damaged by reason of fire, flood, explosion, earthquake, or other extraordinary circumstance, may be repaired, reconstructed, and used as before if the damage does not exceed 50 percent of its replacement value as determined by the Building Official, and if the repairs and reconstruction are done within twelve (12) months from the time such damage occurred. Notwithstanding the foregoing, no illegal use shall be re-established.
2. If a nonresidential building or structure, including any accessory structures, is damaged and if such damage is greater than 50 percent of its replacement value as determined by the Building Official, such building or structure may only be reconstructed to conform with the standards in the district in which it is situated.

#### B. Residential Structures

1. If a residential building or structure, including any accessory structures, is damaged by reason of fire, flood, explosion, earthquake, or other extraordinary circumstance, it may be repaired, reconstructed, and used as before if the damage does not exceed fifty (50) percent of its replacement value as determined by the Building Official, and if the repairs and reconstruction are done within twelve (12) months from the time such damage occurred.

2. If a residential building or structure (including any accessory structure) is damaged greater than fifty (50) percent of its replacement value as determined by the Building Official, such building or structure may be repaired, reconstructed, and used as before if the repairs and reconstruction are done within twelve (12) months from the time such damage occurred. Notwithstanding the foregoing, no illegal use shall be re-established.

#### **9.4.4. Unsafe Building or Structure**

If a nonconforming building or structure or portion thereof is declared to be an unsafe structure per G.S. § 160D-1119, it shall thereafter be rebuilt only in conformance with the standards of this UDO and the building code.

#### **9.4.5. Discontinuance and Abandonment**

- A. When a structure made nonconforming by this UDO is vacant or discontinued at the effective date of this UDO, the 180-day period begins to run at that date.
- B. If such nonconforming structure on a property is abandoned for a period of 180 consecutive days, any subsequent use of that property shall conform to current zoning district regulations. See 9.2.6.A. for full definition of abandonment.
- C. All of the buildings, activities and operations maintained on a lot are generally to be considered as a whole in determining whether a right to continue a nonconforming situation is lost pursuant to this section.

## 9.5. NONCONFORMING LOTS OF RECORD

### 9.5.1. Applicability

This section applies only to undeveloped nonconforming lots of record. A lot is undeveloped if it has no substantial structures upon it. A change in use of a developed nonconforming lot may be accomplished in accordance with Section 9.2.3.

### 9.5.2. Uses

When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum set forth in Article 6, then the lot may be used just as if it were conforming. However, no use that requires a greater than minimum lot size for a particular zone is permissible on a nonconforming lot.

### 9.5.3. Setback Requirements

When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements located in Article 6 cannot reasonably be complied with, then the entity authorized to issue a permit for the proposed use may allow deviations from the setback requirements if it finds that:

- A. The property cannot reasonably be developed for the use proposed without such deviations;
- B. These deviations are necessitated by the size or shape of the nonconforming lot; and
- C. The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.

### 9.5.4. Setback Hardship

For purposes of Section 9.4.3, compliance with applicable building setback requirements is not reasonably possible if a building serving the minimal needs of the proposed use cannot practicably be constructed and located on the lot in conformity with setback requirements. Financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

### 9.5.5. Governmental Acquisition of Land

A lot, established under the provisions of this or previous town zoning ordinance, that is reduced in size by governmental action, such as acquisition for a right-of-way or other governmental use, shall not render the lot nonconforming.

### 9.5.6. Contiguous Nonconforming Lots

If, on the effective date of this UDO, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots

Commentary: The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the way the existing neighborhood has been developed.

under the same ownership, then the provisions of this section cannot be taken advantage of and the undeveloped lots shall be considered as one lot. This shall not apply if a majority of the developed lots on either side of the street and within 500 feet of the undeveloped lot are also similarly nonconforming.



---

## **9.6. NONCONFORMING SIGNS**

It is the intent of this section to provide a reasonable time for the elimination of nonconforming signs and sign structures. The provisions of this section shall apply to nonconforming signs. Nonconforming signs may remain in use, subject to the regulations of this section and all other applicable requirements.

### **9.6.1. Normal Maintenance and Repair**

- A. Nonconforming signs may be repaired or renovated as long as the cost of such work does not exceed, within a twelve-month period, 33% of the value of such sign. A permit for such renovation or repair is required. Proof of value is required at the time of permit.
- B. The message of a nonconforming sign (sign face) may be changed, so long as a change in use has not occurred. If a change in use occurs, the sign must be brought into full conformity with this UDO.

### **9.6.2. Enlargement or Alteration**

- A. No nonconforming sign shall be enlarged or altered in any manner that results in a greater degree of nonconformity.
- B. No modification of the structure of any nonconforming sign shall be permitted, except to bring the sign into conformity.
- C. Illumination may not be added to a nonconforming sign that previously was unilluminated.

### **9.6.3. Discontinuation of Business**

If a nonconforming sign other than a billboard advertises a business, service, commodity, accommodation, attraction or other enterprise or activity no longer operating or being offered or conducted, that sign shall be considered abandoned and shall be removed within 90 days after such abandonment by the sign owner, property owner or other person having control of the property.

### **9.6.4. Billboards on Federal Aid Highways**

Billboards on federal aid highways are protected by the State and Federal Highway Beautification Acts and cannot be amortized and can be removed only upon payment of just compensation as defined by those Acts.

## 9.7. NONCONFORMING SITE ELEMENT

A nonconforming site element is a site improvement that is required as part of an approval but does not exist, or was existing or lawfully established prior to this UDO being adopted or amended. Site elements include, but are not limited to access, parking, pedestrian amenities, landscaping, signage, and lighting.

### 9.7.1. Reduction of Nonconformity

No nonconforming site element shall be erected, replaced, or modified except to reduce or eliminate the nonconformity. Repair and maintenance of nonconforming site elements is permitted.

### 9.7.2. Applicability Matrix

Notwithstanding other portions of this Article, the following table summarizes the minimum requirements that shall be met when there are changes to existing nonconforming development and/or to nonconforming structures or uses. A ✓ indicates that compliance with all applicable standards of this UDO is required.

Commentary: Previous interpretations have ruled that upper floor additions to structures can be constructed within the building footprint, provided all other criteria are met.

Figure 9.7-A: Required Site Element Upfits

	Dimensional Standards	Building Design Standards	Sidewalks, Street Trees, & Curb-and-gutter	Tree Protection & Landscaping	Bufers & Screening	Parking Lot Landscaping	Outdoor Lighting
<b>Existing Development</b>							
Change of Use (from residential to nonresidential or mixed use)		✓	✓	✓	✓	✓	✓
<b>Parking Area Expansion</b>							
Less than 12 Spaces or < 40% of Paved Area <sup>(a)</sup>			✓	✓	✓	✓	✓
Expansion of ≥ 40% of Paved Area or 12 Spaces or More			✓	✓	✓	✓	✓
<b>Building Expansion and/or Reconstruction</b>							
< 50% of Existing Floor Area	✓(a,b)	✓(a)					✓(a)
≥ 50% of Existing Floor Area	✓(a,b)	✓(c)	✓	✓	✓	✓	✓
<b>Notes:</b>							
<sup>(a)</sup> For expanded/reconstructed portion only. For sidewalks and curb-and-gutter, this includes any areas of abutting right-of-way.							
<sup>(b)</sup> Exception: Maximum front setback should be met to the extent practical as							

determined by the Board of Adjustment.

- (c) For expansions, reconstruction areas and all other walls facing public streets.

### **9.7.3. Compliance**

If all site elements cannot be brought into compliance with the current requirements of this Chapter for reasons which include, but are not limited to site layout, space limitations, tree preservation, or other natural features, the Board of Adjustment may approve a Variance to deviate from site element dimensional requirements so long as the modifications to the elements are moving in the direction of conformity with the provisions of this Chapter.

### **10.1. VIOLATIONS**

Pursuant to G.S. § 160D Article 4, any violation of the standards, procedures, and regulations of this UDO shall be subject to the enforcement remedies and penalties provided by this Article and by state law. The following are violations of this UDO, including but not limited to:

#### **10.1.1. Development without Permit**

To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this UDO without all required permits, certificates, or other forms of authorization as set forth in this UDO.

#### **10.1.2. Development Inconsistent with Permit**

To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.

#### **10.1.3. Violation by Act or Omission**

To violate, by act or omission, any term, variance, modification, condition, or qualification of any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

#### **10.1.4. Use in Violation**

To erect, construct, reconstruct, alter, repair, convert, maintain, or use any building or structure or to use any land in violation or contravention of this UDO or any other regulation made under the authority conferred thereby.

#### **10.1.5. Subdivide in Violation**

To subdivide land in violation of this UDO or transfer or sell land by reference to, exhibition of, or any other use of a plat or map showing a subdivision of the land before the plat or map has been properly approved under this UDO and recorded in the office of the county register of deeds. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from violation of this UDO.

#### **10.1.6. Continue a Violation**

To continue any of the above violations is a separate and distinct offense.

## **10.2. ENFORCEMENT BY PLANNING DIRECTOR**

The Planning Director is responsible for investigating, inspecting, and enforcing the standards of this UDO.

### **10.2.1. Complaints Regarding Violations**

- A. Whenever the Planning Director receives a written complaint alleging a violation of this UDO, he/she shall investigate the complaint, take such action as is warranted, and inform the complainant in writing what actions have been or will be taken.
- B. The Planning Director may investigate violations of this UDO on their own initiative or upon receipt of complaints (oral, written, or otherwise).

### **10.2.2. Procedures upon Discovery of Violations**

- A. If any provision of this UDO is being violated, a written notice of violation shall be issued, pursuant to G.S. § 160D-404, indicating the nature of the violation, ordering the action necessary to correct it, and associated deadlines and penalties.
- B. The final written notice of violation (and the initial written notice may be the final notice) shall state what action is intended if the violation is not corrected and shall advise that the order may be appealed to the Board of Adjustment, pursuant to G.S. §160D-405. A civil penalty may not be appealed to the Board of Adjustment if the offender was sent a final notice and did not take an appeal to the Board of Adjustment within the prescribed time.
- C. If the owner or occupant of a property does not appeal and fails to correct the violation or if the owner or occupant of a property fails to correct the violation after a final Board of Adjustment decision upholding the administrative action, the owner or occupant shall be subject to such remedies and penalties as authorized in Section 10.3.
- D. Notwithstanding the foregoing, in cases where delay would seriously threaten the effective enforcement of this UDO or pose a danger to the public health, safety, or welfare, the Planning Director may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section 10.3.

## 10.3. PENALTIES FOR VIOLATION

### 10.3.1. Persons Liable

The owner, tenant or occupant of any building, land or part thereof and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates or maintains any situation contrary to the requirements of this UDO may be held responsible for the violation, suffer the penalties and be subject to the remedies herein provided.

### 10.3.2. Penalties and Remedies for Violation

- A. A violation or failure to comply with any of the provisions or requirements of the UDO, including a violation of any of the conditions and safeguards established in connection with grants of variances or special use permits, shall constitute a misdemeanor punishable as provided in G.S § 14-4.
- B. Violation or failure to comply with any of the provisions or requirements of this UDO, including a violation of any conditions and safeguards established in connection with the grants of variances or special use use permits, shall also subject the offender to a civil penalty of \$50.00 for the first violation. If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the Town in a civil action in the nature of debt.
- C. Each day a violation continues after notification by the Planning Director that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this article.
- D. If a civil penalty is assessed after January 1, 2003, for an offense or series of related offenses as described above, and the property is brought into compliance with this UDO, but the same person, firm, or corporation repeats the offending activity, the civil penalty shall be increased to \$100.00 for the second violation, \$200.00 for the third violation, and \$500.00 for the fourth and each succeeding violation.
- E. This UDO may also be enforced by any appropriate equitable action. Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this UDO. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

### 10.3.3. Permit Revocation

- A. A permit issued under this UDO shall be revoked if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this UDO, or any additional requirements lawfully imposed by the permit-issuing authority.
- B. Before a permit may be revoked, all of the notice, hearing, and other requirements of Article 3, shall be met. The notice shall inform the permit recipient of the alleged grounds for the revocation.
- C. The burden of presenting evidence sufficient to allow the permit-issuing authority to conclude that a permit should be revoked shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.
- D. A motion to revoke a permit shall cite, insofar as practical, the specific reasons or findings of fact that support the motion. Such motion is adopted if passed by a majority vote, a quorum being present.
- E. No person may continue to make use of land or buildings in the manner authorized by any permit authorized by this UDO after such permit has been revoked.

### 10.3.4. Stop Work Order

Whenever there is a land disturbing activity and/or a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this UDO, the Planning Director may order the specific part of the work in violation of this UDO to be immediately stopped. See G.S. § 160D-404(b) for full procedures regarding stop work orders.

- A. A stop work order issued under this section shall be in writing, directed to the person doing the work and shall state the specific work to be stopped, the specific reasons therefore, and the conditions under which the work may be resumed. A copy of the stop work order shall also be sent forthwith to the owner of the property where the work is taking place and the developer, if different from the owner.
- B. Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order to the Board of Adjustment pursuant to Article 3. However, an appeal shall not stay the operation of the stop work order except as provided in the following paragraph of this section.
- C. The Board of Adjustment shall meet and act upon the appeal within 15 working days after the receipt of the appeal notice. If the Board

fails to comply with this requirement, the stop work order shall be stayed automatically beginning on the day following the expiration of the 15- working-day period, and the stay shall remain in effect until the Board of Adjustment meets and acts on the appeal.

- D. The notice of hearing requirements set forth in Article 3 shall not apply to appeals of stop work orders. However, the staff shall notify the applicant of the date, time and place of the hearing as soon as it has been scheduled and shall send to the appellant a written confirmation of this notice as soon as possible.
- E. Neither the person whom a stop work order is served nor an owner or developer served with a copy under paragraph 1. above, may thereafter cause, suffer, or permit a violation of the order while it remains in effect, except during a period in which the operation of the order is stayed under paragraph 3., above.



## **10.4. SPECIAL ENFORCEMENT OF LANDSCAPING REQUIREMENTS**

### **10.4.1. Completion of Work prior to Certificate of Occupancy Required**

Pursuant to G.S. § 160D-804(g), prior to issuance of a certificate of zoning compliance or a certificate of occupancy, all required landscape plantings and site elements must be installed and related work completed as indicated on the final, approved landscape and/or site plan. In periods of adverse weather conditions, a performance guarantee for 125 percent of the cost of installation of landscaping and other uncompleted site work or site elements, determined by the executed contract, will be accepted to allow the certificate of zoning compliance to be issued. Completion of the work must be completed by a prescribed time or the performance guarantee shall be called and the work completed by the Town of Garner or by a designated contractor. This optional means of temporary compliance shall not be available if the site is substandard in terms of any life safety, emergency services, or fire safety concerns or does not have adequate parking or pedestrian ingress/egress.

### **10.4.2. Procedures and Penalties Regarding Replacing Dead Plant Material**

- A. Upon notice by certified mail from the Planning Department regarding replacement of dead plant material, an offender shall have 10 business days to respond with a plan of action that includes a replacement planting plan designating the numbers, types, sizes and locations of replacement plants; an estimated date of completion of plant installation; and an agreed-upon date for a site inspection of the completed work.
- B. Failure by the offender to respond to the written notice from the Town within the aforementioned 10-day period may result in a \$100.00 per tree and \$50.00 per shrub per day of violation commencing on the eleventh day.
- C. Replacement plantings shall be inch for inch replacement with the smallest tree allowable being 2 ½-inch diameter-at-breast-height (DBH). If there is not enough land area available without destroying or endangering existing healthy and savable plants or if there is not a suitable location on site which can be agreed upon by the Town and the offender, then a payment in lieu may be made by the offender. This payment will be based upon current market price for materials installed and warranted as determined by the Town of Garner.
- D. Replacement vegetation as required by this UDO shall be installed by the offender within 30 days after the date the replacement

planting plan is approved by the Planning Department. Failure to comply with this requirement subjects the offender to these penalty provisions. If the 30-day period falls between May 15 and October 1, the offender may be allowed to delay replanting to the next acceptable planting season. Such an arrangement must have prior written approval by the Planning Department. Failure to comply with this alternative planting time arrangement subjects the offender to these penalty provisions retroactively back to the original violation date.

- E. A fine of \$250.00 per caliper inch for each tree removed in violation of an approved tree protection zone or buffer protection zone.
- F. The violator shall be required to install replacement trees at a rate of one caliper inch for every three DBH inches of tree removed. For trees removed that are greater than 30 DBH inches, the replacement rate shall be at one caliper inch per every five DBH inches.

**11.1. General.**

For the purpose of this UDO certain words shall be interpreted as follows:

- A. "Town" means the Town of Garner, North Carolina.
- B. "Governing authority", "Town Council", and "Council" means the Mayor and Town Council of the Town of Garner, North Carolina.
- C. "Administrator" means the Planning Director.
- D. "Zoning map" means the official zoning map of the Town of Garner, North Carolina.
- E. Words in the present tense include the future tense.
- F. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.
- G. The word "person" includes a firm, association, corporation, trust, and company as well as an individual.
- H. The word "structure" shall include the word "building."
- I. The word "lot" shall include the words, "plot," "parcel," or "tract."
- J. The words "will" and "shall" are always mandatory and not merely directory.
- K. The word "may" is optional or discretionary, but "may not" is mandatory.

(Ord. No. 3558, § 2, 7-7-09)

**11.2. Defined terms.**

Unless otherwise provided, or unless clearly required by the context, the terms defined in this section shall have one meaning indicated when used in this UDO.

**Accessory building, residential district.** In residential districts, an accessory building may be a detached garage, workshop, storage shed, hobby-type greenhouse or similar minor building.

**Accessory building or structure.** A building or structure which is on the same zoning lot as, and detached from a principal building to which the use is incidental and subordinate.

**Accessory building.** A minor building located on the same lot as a principal building and used incidentally to a principal building or housing an accessory use.

**Accessory dwelling unit.** A separate and complete dwelling unit that is contained on the same lot as the structure of a single-family dwelling.

**Accessory solar energy system.** A collection of solar panels and related equipment designed to convert sunlight into electrical power for direct consumption by the principal on-site use; accessory solar energy systems may be ground-mounted, roof-mounted or integrated into the building design, and are small and/or limited in scale.

**Accessory use or structure.** A use, building or structure that is subordinate to the principal use, building or structure on the lot, and used for purposes incidental to the main or principal use, building or structure.

**Adult cabaret.** Any place which features topless dancers, go-go dancers, strippers, male or female impersonator(s), or similar entertainers which are lawful under state law.

**Adult establishment.** An adult bookstore, adult motion picture theater, adult mini- motion picture theater, or other adult entertainment business or massage business as defined in G.S. 14-202-10.

**Agricultural use.** The use of waters for stock watering, irrigation and other farm purposes.

**Ambulatory health/emergency care facility.** A stand-alone emergency department which operates under the governance of a hospital operator: (a) is licensed by the State of North Carolina pursuant to the Hospital Licensure Act as amended. A heliport may be considered an accessory use for this type of health care facility provided all applicable sections of the UDO are met.

**Animal unit.** A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

**ANSI.** American National Standards Institute or its successor bodies.

**Antenna.** Equipment designed to transmit or receive radio or electronic signals.

**Approval authority.** The Town Council, Board of Adjustment or other Board or official designated by ordinance as being authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan.

**Automobile service center.** Any establishment where automobile parts sales or minor automobile service/repair activities occurs. Service/repair activities shall be limited to tuning or lubricating automobile engines, sales, repair or servicing of tires, mufflers or batteries. Major engine repair, transmission, or automobile body repair/paint shops are excluded activities under this use.

**A-weighted sound pressure level.** The sound pressure level as measured with a sound level meter using the A-weighting network. The symbol for this standard is dB(A).

**Base flood.** The flood having a one percent chance of being equaled or exceeded in any given year. Also known as the 100-year flood.

**Basement.** The lowest level or story of a building which has its floor subgrade on all sides.

**Best management practices (BMP).** A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

**Buffer.** An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

**Buffer (landscaping), perimeter.** The area of undisturbed land between adjacent incompatible uses. Performs the dual role of providing horizontal separation and vertical screening. The width and planting requirement varies according to the use classification of the subject and adjacent property.

**Buffer (landscaping), street.** The area of undisturbed land between incompatible uses across the street from each other. Provides horizontal separation only. The width varies according to the use classification of the subject and adjacent property.

**Buffer, stream.** The area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of the streams or rivers.

**Building.** (Per S.L. 2019-111 §1.17) Any structure used or intended for supporting or sheltering any use or occupancy

**Building coverage.** Building coverage refers to the area of a lot covered by buildings (principal and accessory) or roofed areas, as measured along the outside wall at ground level, and including all projections, other than open porches, fire escapes, canopies and the first two feet of a roof overhang.

**Built-upon area.** Built-upon areas shall include that portion of a development project that is covered by impervious improvements.

**Business complex.** A group of two or more office, industrial and/or other operations on an unsubdivided tract, operating under one name or presenting other elements of a unified image of identity to the public. A complex may or may not have a central core of attached businesses, (which a shopping center does have).

**Business frontage.** The distance that is occupied by a business or other activity measured along the outside wall of the building side on which the main entrance of the business or activity is located.

**Caliper.** Trunk diameter measurement for nursery grown stock taken six inches above grade of the rootball for trunks up to and including four inches, and 12 inches above grade of the rootball for trunks greater than four inches.

**Certified.** Whenever this UDO requires certification of the existence of some fact or circumstance to the Town, the Town may require that such certification be made in any

manner that provides reasonable assurance of the accuracy of the certification. By way of illustration, the Town may accept certification by telephone from some agency when the circumstances warrant it, or may require that the certification be in the form of a letter or other document.

**Child care center.** A child care arrangement that is licensed by the state of North Carolina and located in a residence where full time care is provided for at least three children but, not more than 12 children for which a special use permit has been granted by the Board of Adjustment.

**Child care home.** A home for not more than nine orphaned, abandoned, dependent, abused or neglected children, together with not more than two adults who supervise such children, all of whom live together as a single housekeeping unit.

**Child care institution.** An institutional facility housing more than nine orphaned, abandoned, dependent, abused, or neglected children.

**Circulation area.** That portion of the vehicle accommodation area used for access to parking or loading areas or other facilities on the lot. Essentially, driveways and maneuvering areas (other than parking aisles) comprise the circulation area.

**Cluster development.** A residential development constructed on a tract of land of at least five acres, zoned residential cluster district, under single ownership, planned, designed and developed as an integral unit, intended to allow flexibility in lot shapes, reduce infrastructure networks, provide inter-connected open space primarily along rear lot lines and protect natural resources by concentrating dwellings in specific areas of an overall tract.

**Combination use.** A use consisting of a combination on one lot of two or more principal uses. In some instances, a second principal use may be regarded as accessory to the first, and thus a combination use is not established.

**Commercial boundary.** Outer marker or boundary lines encompassing a tract or parcel of land used or zoned for commercial use.

**Commercial subdivision (lease lots or separate parcels).** A group of two or more office, commercial or other operations in geographic proximity, which may or may not operate under one banner, sharing ingress and egress, but having each operation on a separate lot, either through lease arrangement or through bonafide subdivision into separate parcels. (Examples in Garner include Plaza 70 East and the large lot of which PD Quix is a part.) Commercial Subdivisions are not shopping centers or business complexes as defined herein.

**Community center.** Governmentally owned and operated building(s) and facilities which may provide a wide range of activities predominately indoors to the general community such as but not limited to the following use: recreational; cultural; dining; educational; social and general administrative office uses.

**Community park.** A community park usually comprises 14 to 40 acres designed primarily to serve the community park district pursuant to the adopted park and greenway plan, usually serving residents within a radius of approximately one to two miles. A community park district is usually comprised of two or more neighborhood park districts. In addition to the facilities provided in neighborhood parks, community parks are designed to include such amenities as a community center or other special facilities, such as a swimming pool.

**Composting facility.** A facility in which stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

**Conditional use zoning district.** This consists of a legislative rezoning and a separate conditional use permit following a trial-like quasi-judicial hearing by the Town Council.

**Conditional use permit.** This is issued in conjunction with a legislative rezoning and consists of a separate conditional use permit following a trial-like quasi-judicial hearing. It is a permit issued by the Town Council that authorizes the recipient to make use of property in accordance with the requirements of this UDO as well as any additional requirements imposed by the Town Council.

**Condominium.** (See unit ownership structure).

**Construction.** On-site erection, fabrication, installation, alteration, demolition or removal of any structure, facility, or addition thereto, including all related activities, including, but not restricted to, clearing of land, earthmoving, blasting and landscaping.

**Controlled access roadway.** A roadway with four or more lanes divided by a median with speed limits that would exceed 50 mph, where access to and from said road is by interchange only.

**Correctional facility.** A facility that houses persons in the custody of Wake County, the North Carolina Department of Correction or its agent as a result of conviction of a criminal offense or persons on parole.

**Council.** The Town Council of the Town of Garner.

**Critical area.** The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. In this UDO, the critical area consists of the Lake Benson Conservation District, as previously established and mapped, extending to the next property line or major landmark after a distance of 2,000 feet from the lake, plus the Watershed Conservation Buffer Areas as established at specified distances beyond the floodplain of Swift Creek and all other creeks flowing into Lake Benson, up to a distance of 5,000 feet.

**Critical root zone.** A circular area measured outward from a tree trunk where roots must remain undisturbed to ensure the tree's survival. Measured as one foot radial distance for every inch of tree DBH at a minimum of eight feet.

**Crown dripline.** A vertical line extending from the outer most surface of a tree's branch tips projected down to the ground.

**Cyclically varying noise.** Any sound which varies in sound level such that the same level is obtained repetitively at reasonably uniform intervals of time.

**dB(A).** A sound level in decibels determined by using the A-weighting network of a sound level meter.

**DBH.** Diameter-at-breast-height is a standard forestry measure of tree size, and is a tree trunk diameter measured in inches at a height of four and one-half feet above the ground. If a tree splits into multiple trunks below four and one-half feet, then each trunk is measured as a separate tree. A tree which splits into multiple trunks above four and one-half feet is measured as a single tree at four and one-half feet.

**Decibel (dB).** A unit of measure, on a logarithmic scale, of the ratio or magnitude of a particular sound pressure to a standard reference pressure, which, for purposes of this UDO, shall be 20 micropascals.

**Developer.** A person who is responsible for any undertaking that requires a site, special use, conditional use, or sign permit.

**Development.** Any land disturbing activity which (a) requires a soil and erosion permit, site permit, special use permit or sign permit, or (b) which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

**Disabled or handicapped home.** A residential arrangement which does not meet the definition of group care home and consists of a single family dwelling unit with a single family kitchen facility housing up to six persons with a disability or handicap.

**Discharging landfill.** A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.

**Driveway.** That portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not part of the vehicle accommodation area.

**Driveway/intersection sight distance standards.** All driveway and/or street intersections shall maintain sight triangles meeting the following minimums, within which nothing that may obstruct a motorist's or pedestrian's view of traffic on the street onto which the motorist or pedestrian will enter shall be permitted, including structures, signs, plant materials or earth berms.

***Driveway or residential or secondary street onto U.S. or N.C. primary road.*** See Article 7.

***Dwelling.*** (Per S.L. 2019-111 §1.17) A building that contains one or two *dwelling units* used, intended, or designed to be used, rented, leased, let, or hired out to be occupied for living purposes.

***Dwelling unit.*** (Per S.L. 2019-111 §1.17) A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation

***Eighty-five percent TSS removal stormwater quality control device.*** A constructed device or series of devices designed to achieve the removal of 85 percent of the total suspended solids from stormwater runoff. This may be a single device with a removal efficiency of 85 percent or multiple devices with a collective removal efficiency of 85 percent. Examples of single devices with a removal efficiency of 85 percent include retention ponds, and bioretention devices. Other devices and their associated removal efficiencies are subject to approval by the North Carolina Division of Environmental Management.

***Electronic gaming centers.*** A business enterprise, as a principle use or as an accessory use where persons utilize more than six (6) electronic machine(s), including, but not limited to computers and gaming terminals, to conduct games including but not limited to sweepstakes, lotteries games, and or games of chance, and where cash, merchandise, or items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds, which have a finite pool of winners. The term includes, but is not limited to internet sweepstakes, video sweepstakes or cybercafes. This definition does not include any lottery endorsed, approved or sponsored by the State of North Carolina or arcade games of skill.

***Engineered stormwater control structure.*** Stormwater control structures designed by an engineer or landscape architect to control stormwater runoff. Such structures include but are not limited to wet retention ponds, detention ponds, etc.

***Existing development.*** Those projects that as of July 1, 1993, have been built or for which a permit has been issued, a subdivision plat has been recorded, or for which a vested right exists under Town ordinance or state law.

***Existing lot.*** A lot which is part of a subdivision, or a lot described by metes and bounds, a deed or plat of which has been recorded in the office of the register of deeds prior to the adoption of this UDO. Synonymous with lot of record.

***Existing manufactured home park or manufactured home subdivision.*** A parcel or parcels of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured home is to be affixed (including at a minimum the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of street(s) is completed before the effective date of this UDO.

***Expenditure.*** A sum paid out in return for some benefit or to fulfill some obligation. The term also includes binding, contractual commitments to make future expenditures, as well as any other substantial changes in position.

***Extraterritorial planning jurisdiction.*** That portion of the Town's planning jurisdiction located outside the corporate boundaries of the Town.

***Family.*** Two or more persons living together and occupying a single dwelling unit with a single kitchen facility, and who are related by blood, marriage, or adoption, or foster children, and including both a) a nuclear family consisting of one or two parents and any number of children and b) an extended family containing up to four adults and any number of children, but excluding from the definition of family a combination which consists of two or more nuclear families and more than four adults.

***Family care home.*** A home for a limited number of residents and support or supervisory personnel (as limited by state definitional requirements) that provides room and board,

personal care and rehabilitation services for handicapped persons in a family environment. According to GS 168-21, a handicapped person: is defined as a person with a temporary or permanent, physical, emotional, or mental disability. A family care home is a residential use of property and permissible by right in all residential districts, subject to additional requirements.

**Family child care home.** A child care arrangement that is licensed by the state of North Carolina and located in a residence where full time care is provided for at least three children but, not more than five children for which a site permit has been issued by the Planning Department.

**Flex space.** The sale, lease, or rental of space within a structure or multiple structures that will allow a combination of uses.

**Floating zone.** A zoning district whose requirements are fully described in this UDO but initially is unmapped. It is mapped in response to the approval of an applicant's request for a rezoning.

**Flood.** A general or temporary condition of partial or complete inundation of normally dry land areas from:

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

**Floodplain.** Any area susceptible to being inundated by water from the base flood. As used in this UDO, the term refers to that area designated as subject to flooding from the base flood on the flood boundary and the latest edition of the floodway map prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the Town Hall.

**Floodway.** The channel of a river or other watercourse 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 foot. As used in this UDO, the term refers to that area designated as a floodway on the flood boundary and the latest edition of the floodway map prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the Town Hall.

**Flood hazard boundary map.** An official map of a community issued by the federal emergency management agency, where the boundaries of the areas of special flood hazard have been defined in zone A.

**Flood insurance rate map.** An official map of a community on which the federal emergency management agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**Flood insurance study.** The official report provided by the federal management agency. The report contains flood profiles, as well as the flood boundary floodway map and the water surface elevation of the base flood.

**General use district.** A zoning district in which some uses are permissible with a site permit and others require a special use permit.

**Gross floor area.** The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

**Group care home.** A home where rehabilitation services are provided in a residential setting and family environment for up to nine persons at 200 square feet per occupant and one full bath per five occupants, including support and supervisory personnel who reside in the home. A group care home shall not include persons being housed in a correctional facility or mentally ill persons who are dangerous to others as defined in G.S. 122-3(11)b, as amended.

**Group care institution.** An institutional facility that provides rehabilitation services in a family environment for more than nine persons including support and supervisory personnel, and shall not include persons being housed in a correctional facility or mentally ill persons who are dangerous as defined in G.S. 122-3(11).

**Habitable floor.** Any floor usable for living purposes, which includes working, sleeping,



eating, cooking or recreation, or any combination thereof. A floor used only for storage is not a habitable floor.

**Handicapped or home disabled.** A residential arrangement which does not meet the definition of group care home and consists of a single family dwelling unit with a single family kitchen facility housing up to six persons with a disability or handicap.

**Handicapped or infirm institution.** An institutional facility housing and providing care or assistance for more than nine persons who are physically or mentally handicapped or infirm.

**Hazardous material.** Any substance listed as such in: SARA Section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

**Heliport.** A formalized helicopter landing area that offers some or all of the following services: fueling, maintenance, passenger building, hanger facilities and support services.

**High density development.** Development within the Lake Benson Swift Creek Watershed area that exceeds the amount of impervious area which is allowed without engineered stormwater control measures.

**Highest adjacent grade.** The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

**Home occupation.** A commercial activity in any residential district that: (i) is conducted by a person on the same lot where such person resides; and (ii) is not so insubstantial or incidental or is not so commonly associated with the residential use as to be regarded as an accessory use, but that can be conducted without any significantly adverse impact on the surrounding neighborhood.

**Household.** One or more persons occupying a single family dwelling unit with a single kitchen facility, including a family as defined in this ordinance, and including a group of not more than five persons living together as a housekeeping unit by joint agreement or non-profit cost sharing basis.

**Impacted area.** Areas of a site where the cultural, natural and visual resources will be effected by a proposed development and or land disturbance.

**Impervious surface.** Impervious surfaces are those natural or man-made structures, which prevent or restrict the infiltration of stormwater runoff into the underlying soil. For the purpose of impervious calculation, rooftops, gravel or paved driveways, sidewalk, gravel or paved streets, curb and gutter and like structures are considered to be impervious surfaces. Water impoundments, landscaped areas and wooden slatted decks are considered pervious.

**Impulsive sound.** Either a single pressure peak or a single burst (multiple pressure peaks) for a duration less than one second.

**In-home adult day care.** An adult day care arrangement that been issued a certificate to operate by the state of North Carolina and located in a residence where a day care program is provided for up to six adults which meets the standards of the UDO for which a zoning compliance permit has been issued by the Planning Department.

**Industrial boundary.** Outer marker or boundary lines encompassing a tract or parcel of land used or zoned for industrial use.

**Industrial development.** Any nonresidential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

**Intermediate care home.** A facility maintained for the purpose of providing accommodation for not more than seven occupants needing medical care at a lower level than that provided in a nursing care institution but at a higher level than that provided in institutions for the handicapped or infirm.

**Intermediate care institution.** An institutional facility maintained for the purpose of providing accommodations for more than seven persons needing medical care at a lower

level than that provided in a nursing care institution but at a higher level than that provided in institutions for the handicapped or infirm.

**Kenel.** A commercial operation that:

- (1) Provides food, shelter and care for animals for purposes not primarily related to medical care (a kennel may or may not be run by or associated with a veterinarian); or
- (2) Engages in the breeding of animals for sale.

**Land disturbing activity.** Any use of land in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. Sedimentation occurs whenever solid particulate matter, mineral or organic, is transported by water, air, gravity, or ice from the site of its origin, and is deposited elsewhere.

**Landfill.** A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the North Carolina General Statutes. For the purpose of this UDO this term does not include composting facilities.

**Landscaped area.** Areas of a site where groupings (more than one) of trees, shrubs and/or ground cover are proposed and are defined within a bed of mulch.

**Livestock.** All animals kept or raised on a farm, except however, that necessary working animals and pets are not included.

**Loading and unloading area.** That portion of the vehicle accommodation area used to satisfy the relevant requirements of this UDO.

**Logo.** A picture, pattern or way of writing its name that an establishment uses as its symbol and puts on its products or signs.

**Lot.** A parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or a recorded map, and which is recognized as a separate legal entity for purposes of transfer of title. The term tract is used interchangeably with the term lot.

**Lot area.** The area circumscribed by the boundaries of a lot, except that: (i) when the legal instrument creating a lot shows the boundary of the lot extending into a public street right-of-way, then the lot boundary for the purposes of computing the lot area shall be the street right-of-way line, or a line running parallel to and 30 feet from the center of the traveled portion of the street if the right-of-way line cannot be determined, and (ii) in a residential district, when a private road that serves more than three dwelling units is located along any lot boundary, then the lot boundary for purposes of computing the lot area shall be the inside boundary of the traveled portion of that road.

**Lower ratio of parking need to building square footage uses.** Uses, such as furniture stores, carpet stores, and major appliance stores, that sell items that are large and bulky, that need a relatively large amount of storage or display area for each unit offered for sale, and that therefore, generate less customer traffic per square foot of floor space than stores selling smaller items.

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

**Major watershed variance.** A watershed variance that results in any one or more of the following:

- (1) The complete waiver of a management requirement;
- (2) The relaxation, by a factor of more than ten percent, of any management requirement that takes the form of a numerical standard; and
- (3) The relaxation of any management requirement that applies to a development proposal intended to exceed 12 percent impervious surface within the Lake Benson Conservation District or within the area subject to CUD-SB-C-22, CUD

R-12-C53 or CUD-R-12 PR-C54 previously classified by the Swift Creek Land Management Plan as suburban new and those projects for which development would exceed 24 percent impervious surface for the balance of the watershed.

**Manufactured home.** A dwelling unit that:

- (1) Is composed of one or more components each of which was substantially assembled in a manufacturing plant and designed to be installed or assembled on the building site;
- (2) Exceeds 40 feet in length and eight feet in width;
- (3) Is constructed in accordance with the federal manufactured home construction and safety standards; and
- (4) Is constructed after June 15, 1976.

**Mean pool depth.** The cross-sectional area of a stream, pond or other body of water divided by the width of the water's free surface.

**Mini-parks.** A mini-park usually comprises one lot or less, and is designed primarily to serve the area contained on the final plat or approved site plan, and particularly to provide an area for play of younger children during daytime hours.

**Minor watershed variance.** A watershed variance that does not qualify as a major variance.

**Mobile home.** A dwelling unit that:

- (1) Was constructed before June 15, 1976 (pre-HUD requirements);
- (2) Is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the site on its own chassis; and
- (3) Exceeds 40 feet in length and eight feet in width.

**Modular home.** A dwelling unit that:

- (1) Is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the site on its own chassis;
- (2) Is constructed in accordance with the North Carolina Building Code (rather than HUD code) for single dwelling units.

**Neighborhood park.** A neighborhood park usually comprises three to ten acres serving the residents within the neighborhood park district as pursuant to the parks and greenway plan and primarily serving a radius of approximately three quarters of a mile. Typical facilities would include a meeting center, picnic areas, multi-use courts, ballfields, tot lots, tennis courts and special facilities as needed.

**Noise pollution.** The emission of sound that reasonably interferes with the enjoyment of life or with any lawful business or activity.

**Nonconforming lot.** A lot existing at the effective date of this UDO (and not created for the purposes of evading the restrictions of this UDO) that does not meet the minimum area requirements or the presumptive minimum lot width requirement of the district in which the lot is located.

**Nonconforming project.** Any structure, development, or undertaking that is incomplete at the effective date of this UDO and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

**Nonconforming situation.** A situation that occurs when any existing lot or structure, or use of an existing lot or structure, does not conform to one or more of the regulations applicable to the district in which the lot or structure is located on the effective date of this UDO. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this UDO, because signs do not meet the requirements of, or because land or buildings are used for purposes made unlawful by this UDO.

**Nonconforming use.** A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. For example, a commercial office building in a residential district may be a nonconforming use. The term also refers to the activity that constitutes the use made of the property. For example, all the activity associated with running a bakery in a residentially zoned area is a nonconforming use.

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

**Nonresidential development.** All development other than residential development, agriculture and silviculture.

**Nursing care home.** A facility maintained for the purpose of providing skilled nursing care and medical supervision at a lower level than that available in a hospital to not more than nine persons.

**Nursing care institution.** An institutional facility maintained for the purpose of providing skilled nursing care and medical supervision at a lower level than that available in a hospital to more than nine persons.

**Outdoor storage.** The storage of materials in an unenclosed area. Outdoor storage shall not include the temporary storage of vehicles at repair or sales facilities.

**Outparcel.** A parcel, adjacent to or partially surrounded by a shopping center tract, which was either part of the original shopping center tract, or which, as determined by the Planning Director, acts (in the manner in which it operates and the way it blends into the image of the overall shopping center), like part of the shopping center. Such parcels have separate deeds or have been sectioned-off by the developer for purposes of leasing to one or more businesses. In no case shall an outparcel as defined herein be considered as a separate shopping center.

**Parking area aisles.** That portion of the vehicle accommodation area consisting of lanes providing access to parking spaces.

**Parking space.** A portion of the parking area set aside for the parking of one vehicle.

**Passive stormwater quality control device.** A constructed device designed to achieve the removal of up to 40 percent of the total suspended solids from stormwater runoff. Examples of a passive device include grass swales and other devices approved by the North Carolina Division of Environmental Management.

**Person.** An individual, executor, corporation, partnership or other entity acting as a unit.

**Pervious surface.** Ground treatments which will allow the infiltration of water, air and nutrients to root systems of adjacent plant material which lie directly under the ground treatment.

**Planned Residential Development.** A development constructed on a tract of at least five acres under single ownership, planned and developed as an integral unit, and consisting of a combination of single-family residential subdivision lots and multi-family residences.

**Planned Unit Development.** A development constructed on a tract of at least 20 acres under single ownership, planned and developed as an integral unit, and consisting of a combination of principal uses that could be combined only in a Planned Unit Development District.

**Planning Director.** See Section 2.4.

**Planning jurisdiction.** The area within which the Town is authorized to plan for and regulate development pursuant to the authority granted in the North Carolina General Statutes.

**Plat.** A map or plan of a parcel of land which is to be, or has been subdivided.

**Principal building.** The primary building on a lot, or a building that houses a principal use.

**Private service laterals for water and sewer.** These facilities are defined as beginning at the public street right-of-way or public utility easement and extending onto private

property to a point necessary to serve said property, specifically for water this shall be beyond the water meter location; for sewer this shall be beyond the cleanout location.

**Project.** Any use requiring a permit from the building inspections and/or Planning Department. Such permits shall include, but not limited to a building permit and site permit.

**Public sewer and other utility system, municipally owned.** The existing Town of Garner or City of Raleigh owned water, storm sewer and sanitary sewer lines including all pipes, valves, valve boxes, hydrants and other fixtures, equipment and apparatus of the water main, storm sewer and sanitary sewer pipe lines and systems, and all appliances necessary and convenient thereto, and such lines built to the Town of Garner and City of Raleigh standards to be dedicated and accepted by the City of Raleigh or the Town of Garner. The utility lines dedicated to the City of Raleigh shall include only main distribution and collection lines and appurtenances in street right-of-way or dedicated recorded easements on private property. Such facilities shall be subject to the applicable provisions of this UDO and applicable sections of the Code of the Town of Garner.

**Public sewer or water system, non-municipally owned.** A sewer or water system designed for and intended to provide services to users and is franchised by the North Carolina Utilities Commission. Such systems and all appurtenances shall be built to the Town of Garner and City of Raleigh standards and specifications according to the applicable provisions of this UDO and the Code of the Town of Garner.

**Pure tone.** Any sound that can be distinctly heard as a single pitch or a set of single pitches.

**Recreational vehicle.** A vehicular type accommodation, other than a manufactured home designed as temporary accommodations for travel, vacation, or recreation purposes, which is propelled by its own motive power or is mounted on or drawn by another vehicle.

**Recycling collection point.** An incidental use that is considered an accessory use to only the principal uses. Recycling collection points serve as a neighborhood drop-off point outside of a fully enclosed building for temporary storage of small amounts of recyclable materials.

**Recyclable material collection center.** Operations inside or outside of enclosed buildings for the collection of recyclable materials such as aluminum, copper, plastic, glass or paper materials which may be recycled for re-manufacture or reuse.

**Repetitive impulsive noise.** Any noise that is composed of impulsive noises that are repeated at sufficiently slow rates such that a sound level meter set at fast meter characteristics will show changes in sound pressure level greater than ten dB(A).

**Residence, duplex.** A residential use consisting of two dwelling units within a single building on a single lot.

**Residence, multifamily.** A residential use consisting of two dwelling units located in separate buildings on the same lot, three or more dwelling units located in one or more buildings on the same lot, or attached or detached units on separate lots at densities permitted only in multifamily zones.

**Residence, single-family.** A residential use consisting of a detached building containing one dwelling unit on a single lot.

**Residential boundary.** Outer marker or boundary lines a tract or parcel of land used or zoned for residential use.

**Restaurant.** An establishment providing food and food service, whereby at least 51 percent of the establishment's revenue is derived from such food sales.

**Restaurant, drive-in.** A restaurant where a substantial portion of the food service is to occupants of motor vehicles parked on the premises.

**R/W.** Right-of-way line of a public street.

**Road.** All private ways used to provide motor vehicle access to:

- (1) Two or more lots; or
- (2) Two or more distinct areas or buildings in unsubdivided developments.

**Satellite dish antenna.** A device capable of receiving radio or television signals from

orbiting satellites and other extraterrestrial sources; and shall include all appurtenant components of the satellite dish antenna.

**Sewer or water facilities, individual.** A sewer or water system or facility designed for and intended for private use by one or more users, but not requiring a franchise from the North Carolina Utilities Commission, and not being a Municipally owned system. However, such facilities may require permit approvals by the Wake County Health Department as provided for in this UDO.

**Shopping center.** A building or group of buildings housing seven or more businesses (usually as in-line tenants) on a unified tract (i.e. not on a lease lot or parcel subdivided out of the original larger shopping center parcel), under one or multiple ownerships, and operating under one banner as a pedestrian movement, and/or common ingress and egress points. Its occupants provide or are intended to provide for the retail sale of goods and services (including postal services, etc.) to the public. However, expansions of shopping centers developed after the aforementioned date are required to conform to the uniform signage regulations applicable to the shopping center.

**Shrub, large.** A deciduous or evergreen shrub that matures at between six to 12 feet or greater in height. Usually maintains branches from the ground up, and if evergreen, used as a screening material.

**Shrub, medium.** A deciduous or evergreen shrub that matures (or is maintained) at three to six feet in height. If evergreen it is used as a screening material.

**Shrub, small.** A deciduous or evergreen shrub that matures (or is maintained) at one to three feet in height. May be used inside sight triangle planting.

**Sight distance standards (triangle).** To ensure that landscape materials do not constitute a traffic hazard, a triangle will be observed at all intersections of driveways/streets with adjacent streets. These sight triangles shall be kept clear of any such visual obstructions between two and one-half feet and ten feet in height.

**Sign.** Any device that is sufficiently visible to persons not on the premises and designed to attract or direct the attention of such persons or to communicate information to them.

- (1) **Sign, canopy.** Any sign attached to or made a part of a canopy; a canopy being any rooflike structure supported by posts or suspended from a wall and extending over an area for the purpose of providing protection against the weather. A canopy sign may be considered a wall or freestanding sign the area of which shall be calculated into the maximum sign area and maximum number permitted as either a wall sign or freestanding sign. Such signs are limited to two sides of a canopy and may not extend above or below the canopy fascia or project any further than necessary for attachment, not to exceed 18.
- (2) **Sign, changeable copy.** A sign whose display area is designed so that the characters, letters, or illustrations can be changed or rearranged without otherwise altering the face or surface of the sign. In the context of this UDO, a changeable copy sign is defined as a permanent sign and erected only in combination with an identification sign; also locally known as a marquee sign.
- (3) **Sign, directory.** A sign located on the interior portion of a shopping center or other business complex, designed to convey the names of occupants of the complex to persons on site. Such signs are typically located near entrances or at strategic locations within the parking area of the complex.
- (4) **Sign, freestanding.** A sign that is not attached to, suspended from, erected on or supported by a building or other structure having a principal function other than the support of such sign but is instead supported by some structure, such as a pole or post, or is without supporting elements, such as an A-frame or monument base. Any sign on a fence located within the required building setback area shall be considered a freestanding sign, and canopy signs may be interpreted as either freestanding or wall signs.
- (5) **Sign, ground.** See freestanding sign and monument sign.
- (6) **Sign, monument.** A type of freestanding sign (often referred to as a ground sign,

which has a low profile, typically below 36 feet in height, and is built of brick or other substantial material resembling a monument.

- (7) **Sign, multiple-business.** A sign of major significance designed to inform persons off the premises of the businesses which comprise a shopping center or business complex. It may or may not bear the name of the complex but must list the entities within the complex.
- (8) **Sign, off-premises.** A commercial sign which directs attention to or communicates about a business, service, commodity, attraction or other activity that is conducted sold or offered at a location other than the premises on which the sign is located.
- (9) **Sign, political.** A sign advertising a ballot measure or candidate for public office.
- (10) **Temporary sign.** A sign that is designed for short-term use or is used in connection with a circumstance or event expected to take place or be completed within a reasonably short period of time. (If a sign display area is permanent but the message is subject to periodic change, that sign shall not be regarded as temporary.)

**Significant trimming.** Any pruning and/or trimming of a tree which removes more than one-third of the branching of the tree and/or results in the loss of more than one-third of the tree's overall form and shape.

**Sign permit.** A permit issued by the Planning Director that authorizes the recipient to erect, move, enlarge or substantially alter a sign.

**Single-family residential.** Any development where (1) no building contains more than one dwelling unit, (2) every dwelling unit is on a separate lot, and (3) where no lot contains more than one dwelling unit.

**Site permit.** A permit issued by the land use Planning Director that authorizes the recipient to make use of property in accordance with the requirements of this UDO.

**Site specific development plan.** A plan of land development submitted to the Town for purposes of obtaining one of the following zoning or land use permits or approvals: subdivision plat, site permit, conditional use permit, special use permit, special exception, conditional use zoning district or variance; provided, notwithstanding the foregoing that neither a variance, a plat nor any other document that fails to describe with reasonable certainty that type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

**Sound.** An oscillation in pressure in air.

**Sleeping Unit.** (Per S.L. 2019-111 §1.17) A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities, but not both. Such rooms and spaces that are also part of *dwelling unit* are not sleeping units.

**Solar farm.** An entire tract or portion of a tract that contains a collection of ground-mounted solar panels and related equipment designed to convert sunlight into electrical power for direct on-site consumption or for interconnection with the power grid system for off-site consumption; the size of a solar farm may vary from a few acres to hundreds of acres.

**Sound level.** In decibels, a weighted sound pressure level, determined by the use of metering characteristics and frequency weightings specified in ANSI S1.4-1971 Specifications for Sound Level Meters.

**Sound level meter.** An instrument, including a microphone, amplifier, EMS detector and integrator, time average, output-meter and/or visual display and weighting networks, that is sensitive to pressure fluctuations. The instrument reads sound pressure level when properly calibrated and is of type I or better as specified in American National Standards Institute Publication S1.4-1971 or its successor publication.

**Sound pressure level.** In decibels, 20 times the logarithm to the base ten of the ratio of the magnitude of a particular sound pressure to the standard reference pressure. The standard reference pressure is 20 micropascals.

**Special scenic corridor.** An area parallel to the right-of-way of existing and proposed major and minor thoroughfares and other designated highways on the adopted or amended Garner Transportation Plan, that are subject to overlay district regulations to preserve natural scenic beauty and aesthetic character, promote design quality, to protect and enhance the public and private investment in and along said highways, and to enhance trade, tourism, capital investment and the general welfare.

**Special use permit.** A permit issued by the Board of Adjustment that authorizes the recipient to make use of property in accordance with the requirements of this UDO as well as any additional requirements imposed by the Board of Adjustment.

**Start of construction.** Substantial improvement, which means the date the building permit was issued, providing the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, 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.

**Steady-state noise source.** One that exhibits a sound level whose variation is within plus or minus five dB(A) over any one ten-minute period in a 24-hour day.

**Stormwater.** The runoff generated by rainfall during a storm event.

**Stream.** A perennial body of water running over the earth's surface in a channel or bed and also shown by a single blue line on the most recent version of the U.S. Geological Survey 1:24,000 scale (7.5 minute) topographic maps; or as delineated by the most recent Town of Garner study.

**Street.** A public street or a street with respect to which an offer of dedication has been made.

**Street wall.** The building facade and or wall which is facing the right-of-way line and the street.

**Structure.** Anything constructed or erected, including but not limited to buildings, which requires location on the land.

**Subdivider.** Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

**Subdivision.** The divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets, but the following shall not be included within this definition nor be subject to the regulations authorized by this UDO:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resulting lots are equal to or exceed the standards of this UDO;
- (2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for water or sewer infrastructure the widening or opening of streets;
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the this UDO; and



(5) The division of a tract into plots or lots used as a cemetery.

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

**Substantial improvement.** Any combination of repairs, reconstruction, alteration or improvements to a structure, taking place within any consecutive 12-month period in which the cumulative cost equals or exceeds 50 percent of the present market value of the structure. The market value should be:

- (1) The appraised value of the structure before the initial repair or improvement; or
- (2) In case of damage, the value of the structure prior to the damage occurring.

**Tenth percentile sound level.** The A-weighted sound pressure level that is exceeded ten percent of the time in any measurement period (such as the level that is exceeded for one minute in a ten minute period) and is denoted L10.

**Townhouse or townhome.** The townhouse is a form of single-family attached dwelling in which units share common side walls and are often designed in rows (although good design attempts to de-emphasize the lined-up appearance). Units are purchasable on a fee-simple basis on small individual parcels of land, fronting on either a public or private street. Yards are typically small, and privacy requires careful protection.

**Tower.** A structure whose principal function is to support an antenna with the exception of a satellite dish antenna (see definition of satellite dish antenna).

**Toxic substance.** Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

**Travel trailer.** A structure that is (i) intended to be transported over the streets and highways either as a motor vehicle, or attached to or hauled by a motor vehicle, and (ii) is designed for temporary use as sleeping quarters, but that does not satisfy one or more of the definitional criteria of a mobile home.

**Tree, ornamental.** A small to medium-sized tree growing to 15 to 35 feet in height at maturity, planted for aesthetic purposes such as colorful flower, interesting bark, or interesting fall foliage.

**Tree, overstory.** A large tree growing to 35 feet in height or spread or greater at maturity, usually deciduous, planted to provide a canopy of shade.

**Tree, screening.** Medium to large evergreen tree, 12 feet or greater in height at maturity, that keeps branches from the ground up. Examples include Thuga 'Green Giant', Virginia Pine, Cedar, Leyland Cypress, some Hollies, or vertical growing Junipers.

**Tree, street.** A deciduous overstory tree, installed at a minimum two and one-half-inch caliper size, planted a minimum five feet and a maximum of 15 feet from the road right-of-way. Where overhead lines exist an ornamental tree shall be used.

**Unit ownership structure (condominium).** Any building or structure in which dwelling unit ownership has been created by the owners or co-owners by an express declaration of intent under the Unit Ownership Act of Chapter 47A, North Carolina General Statutes.

**Use.** The activity or function that actually takes place or is intended to take place on or in a building, structure, or lot, including everything that is done to, on, or in a building, structure, or lot.

**Utility facilities.** Any above-ground structures or facilities, other than buildings, (unless such buildings are used for storage incidental to the operation of such structures or

facilities) owned by a governmental entity, a nonprofit organization, corporation, or any entity defined as a public utility for any purpose by Section 62.3 of the North Carolina General Statutes and used in connection with the production, generation, transmission, delivery, collection or storage of water, sewage, electricity, gas, oil or electronic signals. Excepted from this definition are utility lines and supporting structures.

**Utility facilities, community or regional.** All utility facilities other than neighborhood facilities.

**Utility facilities, neighborhood.** Utility facilities that are designed to serve the immediately surrounding neighborhood and that must, for reasons associated with the purpose of the utility in question, be located in or near the neighborhood where such facilities are proposed to be located.

**Variance.** A grant of permission by the Board of Adjustment that authorizes the recipient to do that which, according to the strict letter of this UDO, he could not otherwise legally do.

**Vehicle accommodation area.** That portion of a lot that is used by vehicles for access, circulation, parking, and loading and unloading. It comprises the total of circulation areas, loading and unloading areas and parking areas.

**Vehicular surface area.** The paved or non-paved area intended for vehicular circulation or storage. Square footage calculations shall include the total of all vehicular surface areas located in the street yard and in the rear yard. This section does not apply to single-family residential use or parking structures. Any vehicular surface area, or portions thereof, built after the adoption of this section, which area is expanded by 25 percent or more, shall be landscaped as required.

**Vested right.** A right pursuant to G.S. 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan after public notice and hearing.

**Water dependent structure.** Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

**Watershed.** The entire land area contributing surface drainage at a water supply intake.

**Watershed administrator.** An official or designated person of the Town of Garner responsible for administration and enforcement of the watershed provisions of this UDO.

**Watershed record.** An official record or file of all development requests within the watershed and the actions taken. This record will be maintained by the watershed Planning Director.

**Wholesale sales.** On-premises sales of goods primarily to customers engaged in the business of reselling the goods.

**Yard, front.** The portion of a lot bounded by a street right-of-way, side lot lines, and the front line of the principle building, structure or use, in the absence of a principle building or structure

**Yard, rear.** The portion of a lot bounded by side lot lines, the rear lot line or street right-of-way, and the rear line of the principle building, structure or use, in the absence of a principle building or structure.

**Yard, side.** The portion of a lot bounded by side lot line(s) and the side line of a principle building, structure or use in the absence of a principle building or structure, extending the full length of the building, structure or use and not including any front or rear yard (See diagram below).

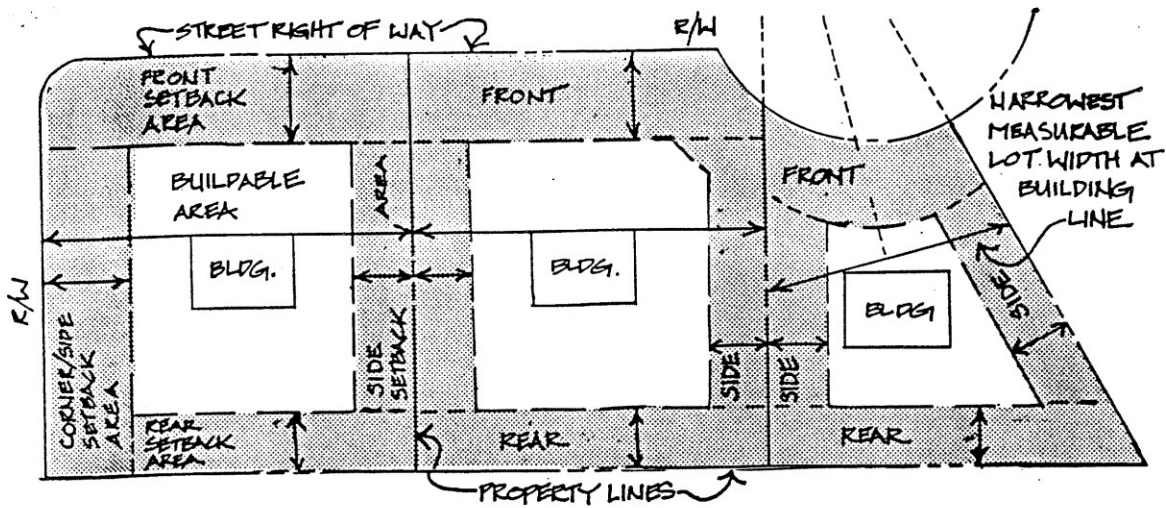
**Yard, cornerside.** The portion of a lot bounded by a street right-of-way and the side line of a principle building, structure or use in the absence of a principle building or structure extending the full length the building, structure or use and not including any front or rear yard.

**Yard, side and rear (applies to landscaping compliance only).** All of the required yard area within the interior side and rear yards as established in each underlying zone, that does not fall within the defined street yard.

**Yards, street (applies to landscaping compliance only).** The area of a lot that lies between the public right-of-way line abutting a street and the line created from the street wall/facade facing the right-of-way of a building that is extended toward the adjacent side or rear property lines. If the two street yards cross, the yard with the smaller distance between the right-of-way and the building wall/facade shall be used in this area of overlap.

**Zero-lot-line dwelling.** A group of two or three attached dwelling units with a common wall situated on a property line.

(Ord. No. 3376, § 15, 1-17-06; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3656, § 5, 2-21-12; Ord. No. 3673, § 1, 10-1-12; Ord. No. 3780, § 12, 7-7-15)



\* POINT OF PROPOSED STRUCTURE CLOSEST TO THE FRONT YARD SETBACK LINE.

J. —

L. —

### 1.3. JURISDICTION

This UDO shall apply to all land within Town of Garner and its planning jurisdiction. All structures and land uses constructed or commenced after the effective date of this UDO and all enlargements of, additions to, changes in and relocations of existing structures and uses occurring after the effective date of this UDO shall be subject to this UDO. This UDO shall be effective throughout the Town's planning jurisdiction. The Town's planning jurisdiction comprises the entire area within the boundary described in Appendix A.

### 1.4. EFFECTIVE DATE

This UDO, as amended from time to time, was originally adopted and became effective on October 1, 2003. Amendments to this ordinance will and have occurred from time to time. The most recent major reorganization and update of this UDO occurred on <insert date of adoption>.

### 1.5. ADMINISTRATION

The Planning Director is appointed to serve as administrator of this UDO. Should this position at any time become vacant, the Town Manager shall designate another official to act as administrator until the office is filled. The Planning Director may designate any staff member to represent the Planning Director in any function assigned by this UDO but shall remain responsible for any final action.

### 1.6. INTERPRETATION

The Planning Director is responsible for ultimate interpretation of this UDO and any dispute with any interpretation or administrative decision may be appealed per the standards of this Ordinance.

### 1.7. CONFORMITY WITH ARTICLE PROVISIONS

#### 1.7.1. Compliance Required

The purpose of this Ordinance is to ensure compliance with the zoning, subdivision, and other design and dimensional standards of the Town. No structure or land shall hereafter be used, occupied, or modified, and no structure or part thereof shall be erected, moved onto, or structurally altered, except in compliance with the regulations of this Chapter, for the district in which it is located. No building, sign, structure, or land-disturbing activities, or any part thereof shall be erected, structurally altered, moved, or changed in use until a zoning permit has been issued by the Planning Director.

#### 1.7.2. Minimum Requirements

For purposes of interpretation and application, the provisions of this UDO shall be the minimum requirements for the protection and promotion of public

health, safety, and general welfare.

## **1.8. RELATIONSHIP TO OTHER ORDINANCES AND STATUTES**

### **1.8.1. Conflicting Provisions**

Whenever the requirements of this UDO are inconsistent with the requirements of any other lawfully adopted governmental rules, regulations, or ordinances, the most restrictive requirement imposing the highest standards, as determined by the Planning Director, shall govern. However, the Town shall not be responsible for enforcing other agencies' regulations.

### **1.8.2. Minimization**

Where multiple ways to implement, administer, or construe a provision exist, the provision shall be implemented, administered, or construed to eliminate and minimize conflict with other provisions of the UDO.

### **1.8.3. Town Ordinances**

If substantially similar provisions existed in previous Town ordinances, the provisions of this UDO shall not be considered new enactments but as continuations of existing rule. Unlawful nonconformities do not achieve legal conforming status by virtue of the adoption of this Ordinance alone.

### **1.8.4. Amendments to State Statutes**

Whenever a North Carolina General Statute (a.k.a. "G.S.") section cited or referenced by any of these ordinance provisions is later amended or superseded, the ordinance provision shall be deemed to refer to the amended section or the section that most closely corresponds to the superseded section.

### **1.8.5. Validity**

If, for any reason, any condition imposed pursuant to these regulations is found to be illegal or invalid, such condition shall be null and void and of no effect. \_\_\_\_\_

Commentary: For instance, if this UDO references G.S. § 160D-702, which grants the regulation of zoning to local governments from the state, and the state should subsequently reorganize the statutes, then the reference in this Ordinance shall be understood to reference the most current statute. This shall be honored even if this Ordinance fails to modify references immediately at the time that the state statutes should be reorganized.

## **1.9. CONSISTENCY WITH ADOPTED PLANS**

### **1.9.1. General**

The Town Council intends that this UDO shall guide the administration of the Town's adopted planning policies within the Town and its extraterritorial jurisdiction.

### **1.9.2. Comprehensive Plan**

The most current Comprehensive Plan is hereby incorporated by reference.

### **1.9.3. Zoning**

The zoning regulations in this UDO are in accordance with the Comprehensive Plan and the Town of Garner Official Zoning Map (also known as "zoning map") which is hereby incorporated by reference.

### **1.9.4. Other Plans and Policies**

All other Town-adopted plans, maps, policies, and documents and all other outside agency maps, plans, policies, and documents referenced herein or necessary to enforce the provisions of this UDO are hereby incorporated by reference.

### **1.9.5. Conformity**

Subject to Article 9, Nonconformities, no person may use, occupy, or sell any land or buildings, or authorize or permit the use, occupancy under their control, except in accordance with all applicable provisions of this UDO. \_\_\_\_\_

## 1.10. TRANSITIONAL PROVISIONS

### 1.10.1. Vested Rights

- A. Any building or development for which a permit was issued before the effective date of this UDO may be completed in conformance with the issued permit and other applicable permits and conditions, even if such building or development does not fully comply with provisions of this UDO.
- B. Nothing in this UDO shall require a change to a phasing plan approved prior to the adoption of this UDO, provided construction is consistent with the terms and conditions of the phasing plan and proceeds to completion in a timely manner. Pursuant to G.S. § 160D-108(d)(4), the developer shall continue construction activities, as evidenced by an active building permit or other vested right, in order to continue a project under a previous phasing plan.
- C. If construction is not completed according to the applicable permit terms, the Town Council may, for good cause shown, grant an extension of up to one year for such construction.

### 1.10.2. Permit Choice

- A. Pursuant to G.S. § 160D-108, any complete application submitted before the effective date of an amendment to this UDO may be evaluated and decided, at the applicant's discretion, in conformance with applicable permits and regulations in effect at the time of submission of the application.
- B. If construction is not commenced or completed according to the applicable terms of the application, the Town Council may, for good cause shown, grant an extension of up to one year for such construction.

### 1.10.3. District Conversion

The zoning districts in effect prior to the effective date of this UDO are hereby converted, as shown on the following table:

Figure 1.10-A: District Conversions

PREVIOUS DISTRICT		NEW DISTRICT	
<b>OVERLAY ZONING DISTRICTS</b>			
--	Conservation Buffer Area	CBA	Conservation Buffer Area

--	Lake Benson Conservation	LBC	Lake Benson Conservation
--	Timber Drive Overlay	O-TD	Timber Drive Overlay
--	U.S. 70/401 Overlay	O-70	U.S. 70/401 Overlay
--	I-40/US 70 Special Highway Overlay	O-40	I-40 Overlay
--	New	GR-OD	Garner Road Overlay District
<b>OBSOLETE DISTRICTS</b>			
MR-1	Multi-Residential 1	MR-1	Multi-Residential 1
RCD	Residential Cluster District	RCD	Residential Cluster District
R-12 PR	R-12 Planned Residential District	R-12 PR	Planned Residential District
MXD-1	Mixed Use Development District	MXD-1	Mixed Use Development District
<b>RESIDENTIAL ZONING DISTRICTS</b>			
R-40	Single-Family Residential	R-40	Single-Family Residential
R-20	Single-Family Residential	R-20	Single-Family Residential
R-15	Single-Family Residential	R-15	Single-Family Residential
R-12	Single-Family Residential	R-12	Single-Family Residential
R-9	Single-Family Residential	R-9	Single-Family Residential
MF-1	Multi-Family 1	MF-1	Multifamily Residential
MF-2	Multi-Family 2	MF-2	Multifamily Residential
R-5	Manufactured Home Park/Subdivision	RMH	Manufactured Home Park/Subdivision
-MH	Mobile Home Floating District	-MH	Manufactured Home Floating Zone
<b>COMMERCIAL ZONING DISTRICTS</b>			



---	New	NO	Neighborhood Office
NB	Neighborhood Business	NC	Neighborhood Commercial
CBD	Central Business District	CBD	Central Business District
OI	Office and Institutional	OI	Office and Institutional
CB	Community Business	CR	Community Retail

#### **1.10.4. Conditional Use District Conversion**

On the earlier of either the adoption of this ordinance or January 1, 2021, any existing and legal Conditional Use zoning districts Planned Unit Development (PUD) zoning districts that are valid and in effect shall be deemed a Conditional Zoning (CZ) district subject to the same conditions of approval or conditions of operation of the existing entitlement.

#### **1.11. SEVERABILITY**

The sections, paragraphs, sentences, clauses, phrases, requirements, and criteria of this UDO are severable to the least extent necessary to carry out the purpose and intent of this Ordinance.

**2.1. ADMINISTRATION**

**2.1.1. Procedure**

A. Rules of Procedure

Boards and Commissions set out in this article may adopt rules and regulations governing their procedures in consistency with the provisions of this UDO.

B. Minutes

Each Board shall maintain accurate minutes of each meeting set out in this Article, showing the vote of each member on each decision, or if absent or failing to vote, indicating such fact.

C. Meetings

All meetings of Boards and Comissions shall be open to the public, and an agenda shall be made public according to administrative procedures.

**2.1.2. Maintenance of the Public Trust**

A. Oath of Office

Pursuant to G.S. § 160D-309, all members appointed to boards shall take the oath of office as required.

B. Conflict of Interest

Pursuant to G.S. § 160D-109, no elected or appointed board member or administrative staff shall make a final decision as required by this Ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on themselves 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 associated relationship.

## **2.2. TOWN COUNCIL**

### **2.2.1. Powers and Duties**

The Town Council shall have the power to appoint members of the Planning Commission and the Board of Adjustment (BOA) as well as those responsibilities enumerated in Article 3, Review ~~Authority Table~~Procedures. The Council may also appoint temporary advisory commissions or committees from time to time.

## 2.3. PLANNING COMMISSION

### 2.3.1. Creation

Pursuant to G.S. § 160D-301, there shall be a permanent Planning Commission (occasionally referred to herein as “Planning Board”) established to advise the Town Council on land use matters. The Planning Director shall oversee and facilitate the operations of the Planning Commission.

### 2.3.2. Membership and Terms

#### A. Number

Per G.S. § 160D-307, Planning Commission shall consist of seven members. The number of Planning Commission members representing in-Town members and extra-territorial jurisdiction (ETJ) area members shall be distributed proportionally using the most recent decennial Census.

#### B. Appointment

In-Town members shall be appointed by the Town Council and shall reside within the Town of Garner’s corporate limits. The Wake County Board of Commissioners shall appoint the remainder of the Planning Commission, all of whom shall reside within the Town's ETJ. If the Wake County Commissioners fail to make these appointments within ninety (90) days after receiving a written request from the Town Council, the Council shall make the appointments.

#### C. Terms

Members shall be appointed for two-year staggered terms. Members shall continue to serve until their successors have been appointed.

#### D. Term Limits

Planning Board members may be appointed for three consecutive 2-year terms.

#### E. Current Members

Members of the Planning Commission on the effective date of this UDO shall continue to serve until their respective terms expire.

#### F. Vacancies

A vacancy shall be filled for the unexpired term.

#### G. Removal

Members may be removed by the Town Council for failure to attend three consecutive meetings without having been excused, for failure to

attend thirty (30) percent of the meetings within any twelve-month period, or for other good cause related to performance of duties.

### 2.3.3. Rules of Procedure~~Officers and Meetings~~

A. The Planning Board shall elect officers and may set rules of procedure (consistent with G.S. § 160D-308), which are recorded in a separate document, maintained by the Planning Director.

~~H.B. Officers. Annually, at the first regular meeting during the month of July, the Planning Commission shall select from among its members a Chairperson and Vice Chairperson. The Chairperson and Vice Chairperson may be reelected for successive terms without limitation. A Secretary to the Planning Commission shall be designated by the Town Manager. Planning Director. The Planning Commission shall be subject to the following: The Chairperson shall preside over the Planning Commission's meetings, decide all points of order or procedure and transmit reports and recommendations of the Planning Commission to the Town Council. The Vice-Chairperson shall assume the duties of the Chairperson in his absence;~~

~~A.~~

~~B. The Chairperson and Vice-Chairperson shall take part in all deliberations and vote on all issues, unless absent or excused.~~ and

~~C. The Planning Commission shall conduct its meetings in an informal manner designed to obtain necessary information and to promote the exchange of ideas.~~

~~D. Meetings. The Planning Commission shall establish a regular meeting schedule and shall meet at least monthly. The Planning Commission is encouraged to attend joint public hearings with the Town Council when zoning petitions and UDO amendments are presented.~~

### 2.3.4. Powers and Duties

The Planning Commission shall have the powers and duties outlined below, in addition to those enumerated in Article 3, Review ~~Authority Table.~~ Procedures.

#### A. Growth Recommendations

The Planning Commission shall make recommendations to the Town Council concerning plans, goals, and objectives relating to growth, regarding development and redevelopment within the planning jurisdiction;

#### B. Comprehensive Growth Plan Administration

When directed by the Town Council, the Planning Commission shall be

responsible for the preparation of a Comprehensive Growth Plan and make recommendations on it to the Town Council on issues related to policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner;

C. Other Responsibilities

The Planning Commission shall have any other duties assigned by the Town Council.

## 2.4. BOARD OF ADJUSTMENT

### 2.4.1. Creation

Pursuant to North Carolina G.S. § 160D-302, the Board of Adjustment (BOA) is hereby established. The Planning Director shall oversee and facilitate the operations of the Board of Adjustment.

### 2.4.2. Membership and Terms

#### A. Number

The Board of Adjustment shall consist of five regular members and three alternate members. The number of both regular and alternate BOA members representing in-Town members and extra-territorial jurisdiction (ETJ) area members shall be distributed proportionally using the most recent decennial Census.

#### B. Appointment

In-Town members shall be appointed by the Town Council and shall reside within the Town of Garner's corporate limits. The Wake County Board of Commissioners shall appoint the remainder of the Planning Commission, all of whom shall reside within the Town's ETJ. If the Wake County Commissioners fail to make these appointments within ninety (90) days after receiving a written request from the Town Council, the Council shall make the appointments.

#### C. Terms

Members shall be appointed for three-year staggered terms, but members may continue to serve until their successors have been appointed.

#### D. Current Members

Members of the Board of Adjustment on the effective date of this UDO shall continue to serve until their respective terms expire.

#### E. Vacancies

Vacancies may be filled for the unexpired terms only.

#### F. Removal

1. Regular members may be removed by the Town Council at any time for two consecutive unexcused absences from a Board of Adjustment meeting or for a 30% unexcused absence rate in a twelve-month period. An unexcused absence is one without reasonably adequate notice to an appropriate alternate member, Chairperson of the Board of Adjustment, or the

Planning Director.

2. Alternate members may be removed by the Town Council for failure to respond on two consecutive occasions or, within any twelve-month period, on thirty (30) percent or more of the occasions when a timely request is made to such member to serve as an alternate.
3. Regular or alternate members may also be removed by the Town Council for other good cause related to performance of duties.

### **2.4.3. ~~Officers and meetings~~ Rules of Procedure**

A. The Board of Adjustment shall elect officers and may set rules of procedure (consistent with G.S. § 160D-308), which are recorded in a separate document, maintained by the Planning Director.

~~A. Officers.~~

- ~~1. Annually, at the first regular meeting after July 1, the Board of Adjustment shall select from among its members a Chairperson and Vice-Chairperson. The Chairperson and Vice-Chairperson may be selected for successive terms without limitation.~~
- ~~2. The Chairperson shall preside over the Board of Adjustment meetings and may administer oaths to witnesses coming before the Board of Adjustment. The Vice-Chairperson shall assume the duties of the Chairperson in his/her absence.~~

B. The Chairperson and Vice-Chairperson shall take part in all deliberations and vote on all issues, unless absent or excused.

C. Meetings

1. The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently so as to allow for expeditious processing of applications. The Board of Adjustment may provide in its by-laws for the calling of special meetings.
2. Pursuant to G.S. § 160D-406(g), the Board of Adjustment may issue subpoenas.

### **2.4.4. Quasi-judicial Decisions and Judicial Review**

A. The Board of Adjustment shall make and report decisions pursuant to G.S. § 160D-406(j). ~~The Board shall determine contested facts and make its decision within a reasonable time. 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 and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the Board. A quasi-judicial decision is~~



~~effective upon filing the written decision with the Planning Department. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.~~

- B. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. § 160D-1402. A petition for review shall be filed with the clerk of superior court by the later of thirty (30) days after the decision is effective or after a written copy thereof is ~~given in accordance with subdivision (1) of this subsection~~ delivered. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

#### **2.4.5. Powers and Duties**

The Board of Adjustment shall have the powers and duties outlined below, in addition to those enumerated in Article 3, Review ~~Authority Table~~ Procedures.

##### A. Watershed Review Board

The Board of Adjustment shall act as the Watershed Review Board.

##### B. Other Responsibilities

The Board of Adjustment shall have any other matter the Board of Adjustment is required to act upon by any Town ordinance.

## **2.5. PLANNING DIRECTOR**

### **2.5.1. Designation**

The Town Manager shall designate the Planning Director for the Town of Garner. ~~Where this UDO assigns a responsibility, power, or duty to the Planning Director, the Planning Director may delegate that responsibility.~~

### **2.5.2. Responsibility**

Except as otherwise specifically provided, primary responsibility for administering and enforcing this UDO ~~may be assigned to one or more individuals by the Town Manager~~ is the responsibility of the Planning Director. Where this UDO assigns a responsibility, power, or duty to the Planning Director, the Planning Director may delegate that responsibility, although the Planning Director shall be ultimately responsible for any decisions or actions made through that delegation of responsibility. The person or persons to whom these functions are assigned shall be referred to in this UDO as the "Planning Director".

### **2.5.3. Powers and Duties**

The Planning Director shall have the powers and duties outlined below, in

addition to those enumerated in Article 3, Review Procedures.

A. Administration and Enforcement

The Planning Director shall administer and enforce the provisions of this UDO.

B. Interpretation

The Planning Director shall make written interpretations of this UDO setting forth the reasons and explanation therefore, and shall forward same to the Town Attorney.

C. Technical Review Committee

The Planning Director shall serve as the chairperson for and be responsible for all final decisions of the Technical Review Committee.

D. Other Duties

The Planning Director shall perform other duties imposed under the provisions of the Garner UDO, as amended from time to time.

## **2.6. OTHER OFFICIALS**

### **2.5.4.2.6.1. Town Engineer**

#### A. Designation

The Town Manager shall designate the Town Engineer for the Town of Garner.

#### B. Powers and Duties

In addition to those powers and duties enumerated in Article 3, ~~Review Authority Table~~Procedures, the Town Engineer shall monitor land use activities within the watershed areas to the extent reasonably practicable, identify situations that may pose a threat to water quality, and report all significant findings to the Watershed Review Board.

### **2.5.5.2.6.2. Building Official**

#### A. Designation

The Town Manager shall designate the Building Official for the Town of Garner.

#### B. Powers and Duties

The Building Official shall have those powers and duties enumerated in Article 3, ~~Review Authority Table~~Review Procedures.

### **2.5.6.2.6.3. Technical Review Committee**

#### A. Designation

~~The Town Manager~~Planning Director shall designate a Technical Review Committee (TRC) consisting of the Planning Director (acting as chairperson), the Town Engineer, the Building Official, ~~the Town Manager~~and any other Town professional or outside agency representative the Planning Director deems necessary for the professional review of land use and development proposals, ~~with the requirement that the Executive, Planning and Engineering Divisions are represented. The Planning Director shall serve as Chair of the Committee and be responsible for all final decisions of the Committee.~~

#### B. Powers and Duties

The Technical Review Committee shall have those powers and duties enumerated in Article 3, ~~Review Authority Table~~Review Procedures.

## ARTICLE 3 REVIEW PROCEDURES

---

### Table of Contents

3.1.	Purpose .....	3
3.2.	General.....	4
3.2.1.	Interpretation.....	4
3.2.2.	Effects on Successors .....	4
3.2.3.	Revocation .....	4
3.2.4.	Development Moratoria .....	4
3.2.5.	Types of Decisions.....	4
3.2.6.	Vested Rights and Expiration .....	5
3.3.	Review Authority Table .....	7
3.4.	Common Review Procedures .....	9
3.4.1.	Preapplication Conference.....	9
3.4.2.	Application Requirements.....	9
3.4.3.	Withdrawal .....	10
3.4.4.	Resubmission .....	11
3.4.5.	Permit Choice.....	4
3.4.6.	Neighborhood Meetings .....	11
3.4.7.	Public Notice Requirements.....	12
3.4.8.	Hearings .....	13
3.4.9.	Written Decision .....	14
3.4.10.	Extensions .....	15
3.4.11.	Completing developments in phases.....	15
3.5.	SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - Subdivisions .....	17
3.5.1.	Subdivision in General.....	17
3.5.2.	Minor Subdivision .....	19
3.5.3.	Major Subdivision .....	19
3.5.4.	Final Plat.....	20
3.6.	SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – Map and text Amendments .....	22

3.6.1.	Rezoning / Map Amendment .....	22
3.6.2.	Conditional Zoning .....	24
3.6.3.	Text Amendment .....	27
<b>3.7.</b>	<b>SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS -</b>	
	<b>Permits .....</b>	<b>29</b>
3.7.1.	Zoning Compliance Permit .....	29
3.7.2.	Sign Permit .....	30
<b>3.8.</b>	<b>SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS -</b>	
	<b>Site Plans and Administrative Review .....</b>	<b>31</b>
3.8.1.	Site Plan .....	31
3.8.2.	Administrative Modifications .....	32
3.8.3.	Administrative Appeals .....	35
3.8.4.	Written Interpretation .....	33
<b>3.9.</b>	<b>SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS -</b>	
	<b>Miscellaneous .....</b>	<b>35</b>
3.9.1.	Special Use Permit .....	35
3.9.2.	Traffic Impact Analysis .....	38
3.9.3.	Variance .....	41
3.9.4.	Temporary Use Permit .....	43
<b>3.10.</b>	<b>SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS -</b>	
	<b>Environmental .....</b>	<b>45</b>
3.10.1.	Stormwater Permit .....	45
3.10.2.	Watershed Protection Occupancy Permit .....	46
3.10.3.	Flood Mitigation .....	46
3.10.4.	Subdivision Containing Floodplains, Floodways, or Buffer Areas .....	47

### **3.1. PURPOSE**

This Article establishes review procedures for land use and land development proposals within the Town's planning jurisdiction in order to enhance transparency, provide a standard and consistent development review and approval process, and ensure consistency with adopted Town plans, standards, and policies.

## **3.2. GENERAL**

### **3.2.1. Interpretation**

- A. When used throughout this Article, the words “request,” “application,” and “proposal” are equivalent.
- B. References to “permits” throughout this UDO do not necessarily include building permits. A development approval alone does not grant the holder rights to commence construction or development.

### **3.2.2. Effects on Successors**

Permits and development approvals are transferable. So long as there is an active or completed permit, no person shall make use of the land or structure except in accordance with the terms and requirements of the permit.

### **3.2.3. Permit Choice**

Pursuant to G.S. § 160D-108(b), if development regulations change between application submittal and the time of decision or project completion, the applicant may choose whether the Town will evaluate the application based on the previous or current version of the regulations.

### **3.2.4. Revocation**

- A. A permit or development approval described in this article may be revoked if the holder fails to maintain the property in accordance with the approved plans, the UDO, or other legal requirements.
- B. Revocation of a permit or development approval shall undergo the same process as was followed for the initial approval.

### **3.2.5. Development Moratoria**

Pursuant to G.S. § 160D-107, the Town may adopt a moratorium on development approval(s).

### **3.2.6. Types of Decisions**

Pursuant to G.S. § 160D-102, all applicable definitions and regulations from that chapter apply, in particular the following:

#### **A. Administrative**

Administrative decisions involve implementation, administration, or enforcement of development regulations. These decisions are made based on facts and objective standards.

#### **B. Legislative**

Legislative decisions include the adoption, amendment, or repeal of a regulation. A legislative hearing with public comment is required.

#### C. Quasi-judicial

Quasi-judicial decisions require evidentiary hearings involving findings of fact and competent, substantial, and material evidence, and are carried out according to G.S. 160D-406 and all other specifications herein. Quasi-judicial cases are unique and as such require high-level scrutiny, subjective decision-making, and discretion.

### 3.2.7. Vested Rights and Expiration

Pursuant to G.S. § 160D, a vested right is the right to undertake and complete the development and use of a property.

#### A. Building Permits

1. As provided in G.S. § 160D-108(d)(1), building permits expire six months after issuance, if the permit work has not commenced.
2. Discontinuance of work for a period of twelve months or more shall render the permit expired.

#### B. Zoning Compliance Permits

1. Pursuant to G.S. §160D-108(d)(2), zoning compliance permits shall expire within one year from date of issuance if unless work has substantially commenced.
2. For these purposes, “substantially commenced” includes but is not limited to application for and timely pursuit of a building permit, grading permit, or other permit necessary to commence installation of infrastructure or establishment of the intended use.

#### C. Site Specific Vesting Plans, per G.S. § 160D-108

1. The appropriate decision-making body’s approval of a site specific vesting plan establishes a vested right that runs with the land and authorizes the recipient to complete development as authorized by the issued permit.
2. Site specific vesting plans shall remain vested for two years, unless, upon applicant request, the Town Council grants a longer period up to no more than five years total.
3. The right shall terminate at the end of the vesting period if the next requisite permits have not been procured for the project.
4. Deviation from the site specific vesting plan shall result in forfeiture of the vested right.

Commentary (01/01/2021): Site specific vesting plans include planned developments, preliminary subdivision plats, site plans, preliminary or general development plans, special use permits, and conditional zoning districts.



5. Pursuant to G.S. §160D-108(d)(4), multi-phase developments shall be vested in their entirety with the regulations and ordinances in place at the time of site plan approval for the initial development phase. The vesting period for multi-phase developments shall be seven years.

### 3.3. REVIEW AUTHORITY TABLE

The Review Authority Table displays decision types, the participants in the review process, and their respective roles.

Figure 3.3-A Review Authority Table

Process	Type	Review	Final Action	Appeal Process	Public Notice Level (See Public Notice Requirements 3.4.6.)	Section
<b>3.5 Subdivision</b>						
<b>Major Subdivision</b>	Admin.	TRC	Planning Director	BOA	N/A	3.5.3
<b>Minor Subdivision/ Final Plat</b>	Admin.	TRC	Planning Director	BOA	N/A	3.5.2 3.5.4
<b>3.6 Map and Text Amendments</b>						
<b>Rezoning (Map Amendment)</b>	Leg.	Planning Commission	Town Council	Superior Court	A, B, C	3.6.1
<b>Conditional Zoning District/ Conditional Rezoning</b>	Leg.	Planning Commission	Town Council	Superior Court	A, B, C	3.6.2
<b>Text Amendment</b>	Leg.	Planning Director/ Planning Commission	Town Council	Superior Court	A, B, C	3.6.3
<b>3.7 Permits</b>						
<b>Zoning Compliance Permit</b>	Admin.	Planning Director	Planning Director	BOA	N/A	3.7.1
<b>Sign Permit</b>	Admin.	Planning Director	Planning Director	BOA	N/A	3.7.2
<b>Master Sign Plan</b>	Leg.	TRC	Planning Commission	BOA		3.5.11
<b>3.8 Site Plans and Administrative Review</b>						
<b>Site Plan</b>	Admin.	TRC	Planning Director	BOA	N/A	3.8.1
<b>Administrative Modification</b>	Admin.	Planning Director	Planning Director	BOA	N/A	3.8.2
<b>Determination of Vested Right</b>	See Written Interpretation					

3.3: Review Authority Table

Process	Type	Review	Final Action	Appeal Process	Public Notice Level (See Public Notice Requirements 3.4.6.)	Section
Written Interpretation	Admin.	Planning Director	Planning Director	BOA	N/A	3.8.3
<b>3.9 Miscellaneous</b>						
Administrative Appeal	QJ	Planning Director	BOA	Superior Court	A, B	3.9.1
Special Use Permit	QJ	TRC	Town Council	Superior Court	A, B, C	3.9.2
Traffic Impact Analysis	Admin.	TRC	Per primary development permit	Per primary development permit	Per primary development permit	3.9.3
Variance	QJ	TRC	BOA	Superior Court	A, B, C	3.9.4
Temporary Use Permit	Admin.	TRC	Planning Director	BOA	N/A	3.9.54
<b>3.10 Environmental</b>						
Stormwater Permit	Admin.	Town Engineer	Town Engineer	WRB	Per primary development permit	3.10.1
Watershed Protection Occupancy Permit	Admin.	Town Engineer	Town Engineer	WRB	Per primary development permit	3.10.2
Flood Mitigation Permit	QJ	Planning Director/Town Engineer (Floodplain Administrator)	BOA (acting as WRB)	Superior Court	A, B Per Variance	3.10.1
<del>Environmental Impact Analysis Subdivisions Containing Floodplains, Floodways, or Buffer Areas</del>	Admin.	Town Engineer	Town Engineer	BOA	N/A	3.10.24
<b>Notes:</b> Admin. = Administrative Leg. = Legislative QJ = Quasi-judicial TRC = Technical Review Committee, which also includes Planning Director BOA = Board of Adjustment WRB = Watershed Review Board						

## 3.4. COMMON REVIEW PROCEDURES

### 3.4.1. Preapplication Conference

- A. The purpose of a preapplication conference is to provide the applicant information on the appropriate application procedure for their desired action, background information, necessary materials, and other relevant information applicable to their proposed request.
- B. Preapplication conferences are encouraged for all development applications, but are mandatory for the following:
  1. Rezoning.
  2. Conditional zoning.
  3. Minor subdivision.
  4. Major subdivision.
  - ~~3-5. Variance, including Flood Mitigation Permit.~~
  4. ~~Planned development (PUD, PRD, TND, MXD)~~
- C. Applicants shall provide a sketch or drawing to aid in the understanding of the proposal. At minimum, the sketch plan should include:
  1. Property location or parcel number.
  2. Approximate location of existing structures.
  3. A description or drawing of the desired action or use and where it will occur.

### 3.4.2. Application Requirements

- A. Applicant Eligibility
  1. The property owner or the property owner's authorized agent may submit the applications described in this Article. Agents must produce notarized documentation of permission from the property owner.
  2. Pursuant to G.S. § 160D-702, the Town Council may initiate rezonings through direction to the Planning Director.
- B. Application Completeness
  1. The Planning Director will determine the completeness of each application.
  2. Incomplete applications will not be accepted. Incomplete applications do not have the sufficient information or materials

necessary for review and processing.

3. If an application is found to be incomplete or insufficient ~~for processing~~, the Planning Director ~~shall return the materials and all applicable fees or payments along~~ shall notify the applicant and provide with a list of deficiencies or missing materials that need correcting before the application can be reviewed.

#### C. Content

1. A complete application contains all materials and requirements set forth on each application form as provided by the Planning Director.
2. Under unique circumstances, the Planning Director may find that additional information is necessary to determine the sufficiency of a submitted application. The Planning Director is authorized to require the applicant to present this information for inclusion in the consideration of the application.

#### 3. Permits and Approvals from Outside Agencies

No plan, permit, or Certificate of Occupancy shall be issued without proof of receipt of necessary permits from outside agencies.

#### D. Fees as Outlined in the Town of Garner Adopted Fee Schedule

1. No application will be considered complete without rendering of appropriate fees at submittal.
2. The Town may fully refund application fees for withdrawn applications, provided review of the application has not begun.

#### E. Deadline

All applications shall be completed and submitted to the Planning Director in accordance with the published calendar on file in the Planning Department.

### 3.4.3. Withdrawal

- A. An applicant may withdraw a rezoning application at any time, by filing a signed, written statement of withdrawal with the Planning Director.
- B. The statement of withdrawal shall be signed by all persons who signed the application, or in the event of death or incompetence by the estate's lawful personal representative.
- C. Any application that has not provided any requested revisions or materials within 120 days of the request shall be administratively

Commentary (01/01/2021):  
Examples include permits issued by outside agencies such as USACE, CORPUD, etc. for approvals such as wetland mitigation (404/401), CLOMAR, utility tap approval, etc.

withdrawn by the Planning Director, with no refund of fees. The applicant shall be notified of the pending withdrawal in writing or by email 30 days prior to the withdrawal.

#### 3.4.4. Resubmission

- A. An incomplete application may be resubmitted at the next application intake date according to the standard application submission procedure described herein.
- B. Upon the denial or disapproval of an application (except for a rezoning application), an identical application may not be submitted.
- C. Any resubmittal must meet at least one of the following criteria:
  1. New or additional information has become available that may impact the application of review standards.
  2. The new application incorporates different standards, e.g., new uses or changes in density.
  3. ~~The~~ A finding, by the approving body, that the final decision on the application was based on a material mistake of fact.
  4. —

#### 3.4.5. Neighborhood Meetings

- A. The purpose of a neighborhood meeting to inform neighbors of the development proposal, receive their comments, and potentially resolve any conflicts or concerns prior to the official hearing.

##### 1. Applicability

At least one neighborhood meeting is required for-

- a. Rezoning / Map Amendments
- b. Conditional Zonings
- c. Special Use Permits
2. The meeting shall be held prior to review by the Planning Commission and/or the Town Council.
3. The applicant shall hold the neighborhood meeting within the town's ETJ in an accessible location that is proximate to the site or at a location that is centrally located within the town.

##### 4. Notification

See requirements for mailed notice, Section 3.4.6.

~~4.5.~~ The applicant shall submit a meeting summary identifying all issues raised and any resolution or explanation, a list of attendees, a list of addresses where notices were mailed, and a list of returned mail notices no later than ten (10) calendar days prior to the first reading or meeting of Planning Commission or Town Council.

### 3.4.6. Public Notice Requirements

#### A. Published~~-~~

The Planning Director shall place an advertisement on the Town's official webpage once a week for two successive weeks. The first notice shall be published no less than ten (10) days and no more than 25 days prior to the hearing. The contents of the published notice shall include:

1. The general location (including a map).
2. The parcel number and/or street address.
3. A description of the action requested.
4. Current and proposed zoning districts (rezonings only).
5. The time and location of the anticipated public hearing.
6. Phone number and email of the appropriate applicant's contact.
7. Phone number and email of the appropriate Town contact.
8. A statement that interested parties may appear at the hearing.
9. A statement that substantial changes to the proposed action may occur following the hearing.

#### B. Posted~~-~~

The Planning Director shall post a notice of application at a visible location on subject property no less than ~~fourteen~~ (14) days prior to the hearing. The contents of the posted notice shall include the Town's general contact information and that a land use decision is under consideration. ~~application type, the time and date of the hearing, and the phone number of the appropriate Town contact.~~

#### C. Mailed~~-~~

The owner of the affected parcels and the owners of parcels within 300 feet shall be notified of the hearing by first class mail. ~~If the notice only includes lots immediately adjacent to the property, the mailing will be extended by one lot beyond the required notice area.~~ For zoning map amendments, properties shall be considered abutting even if

separated by a street, railroad, or other transportation corridor. Mailed notices shall contain the same content as published notices outlined subsection A.

1. Pursuant to G.S. § 160D-602(b), if a mailed notice for a zoning map amendment hearing includes at least fifty individual owners of at least fifty individual properties, the Town may instead elect to publish notice of the hearing as specified in Section 3.4.5. In this case, each advertisement shall be at ½ of a newspaper page in size. Property owners outside of the newspaper's circulation area shall still be notified of the hearing via first class mail.
2. If a notice contains errors regarding the time, date, or location of the hearing or the location of the subject property, the notice shall be rendered inadequate. However, if a bona fide attempt resulted in any other minor or clerical defect in the notice, the notice shall remain valid. If questions of validity arise, the decision-making body shall make a formal finding of substantial compliance or lack thereof. If the decision-making body finds there is substantial compliance, it may then begin the proceedings for the case.

### 3.4.7. Hearings

#### A. Modification of Application

1. The applicant may agree to application modifications in response to questions or comments by persons appearing at the public hearing or to recommendations by the Town Council, Planning Commission or Board of Adjustment.
2. Unless such modifications are so substantial 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 Department.
3. The decision-making body may refer the case back to the recommending body for review, prior to further consideration. The decision-making body shall choose one of the following options:
  - a. Continue the hearing to a new date and time certain within 45 days in accordance with the provisions below.



- b. Close the hearing and re-publish notice of any future hearing in accordance with this paragraph.

B. Continuation

The decision-making body may continue hearings without further notification so long as the motion to continue the hearing, made in open session, specifies the date and time of the hearing continuation.

C. Evidentiary Hearings–

Pursuant to G.S. § 160D-406, evidentiary hearings shall be required as specified in Section 3.3.

1. Oaths

–The acting chair of the decision-making body and the clerk to the board are authorized to administer oaths to all witnesses in evidentiary hearings.

2. Parties

Pursuant to G.S. § 160D-1402(d), the applicant, local government, and other appropriate parties shall have the right to participate at the hearing. Additional witnesses may present competent evidence pertaining to the case.

~~4.3.~~ Evidence

- a. All findings and conclusions shall be based on substantial, competent, and material evidence. All competent evidence must be admissible in a court of law.
- b. Competent evidence does not include the opinions of lay witnesses attesting to property value implications, traffic impacts, or other matters about which expert testimony would generally be admissible.

~~5.4.~~ Meeting Record

- ~~a.~~ Audio of all hearings shall be recorded and retained for at least two years.
- ~~b.a.~~ All documented and physical evidence shall be kept as part of the record by the Town for at least two years. Kept pursuant to state public record retention laws.

### 3.4.8. Written Decision

Within thirty calendar days after a final decision is made by the Town Council, Planning Commission, Board of Adjustment, Planning Director, or

other review body under the requirements of this UDO, a copy of the written decision shall be sent to the applicant or appellant.

- A. A copy of the notice shall be filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.
- B. The written decision shall state the review body's findings, conclusions, and supporting reasons or facts whenever this UDO requires these as a prerequisite to acting.

### 3.4.9. Extensions

The Planning Director shall grant time extensions to approved and unexpired special use permits and administrative development approvals according to the provisions of this subsection.

- A. To receive an extension, the permit holder must file a written request with the Planning Director. One extension is permitted per parcel per development approval.
- B. Permit time extensions shall be limited to a period not to exceed 24 months from the date of the original permit expiration. ~~An approved special use permit or staff-approved site plan shall be limited to two (2) time extensions only. Each extension by the Planning Director shall be limited to a twelve (12) month period.~~
- ~~C. Once a permit has expired, a new application must be filed according to the applicable sections of the UDO. The burden of proof shall rest upon the permittee to justify the extension. Written justification must be provided by the applicant and filed with the extension request. When reviewing a request for a permit time extension, the Planning Director may consider criteria including:~~
  - ~~1. Present conditions of the location including traffic, recent development, etc.~~
  - ~~2. Amendments to the UDO occurring since the issuance of the permit.~~
  - ~~3. Satisfactory completion of all associated conditions.~~

### 3.4.10. Completing Developments in Phases

- A. Developers shall submit a phasing plan for developments that will be completed in phases. The phasing plan shall include drawings of each phase and schedule of any associated improvements to be completed during the phase. Any development approval or permit

shall be contingent on the drawings and the approved schedule.

B. Each phase of a proposed development shall include the infrastructure and other required elements of this Ordinance for each phase to stand alone.

—The provisions of this Ordinance shall apply to each phase of development as if it stood alone. \_\_\_\_\_

C.

### 3.5. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - SUBDIVISIONS

#### 3.5.1. Subdivision in General

##### A. Applicability

1. Pursuant to G.S. § 160D Article 8, subdivision approval shall be required before the division of land into two or more parcels.
2. In accordance with G.S. § 160D-802, the following types of subdivisions proceed directly to Final Plat (per Section 3.5.4):
  - a. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resulting lots are equal to or exceed the standards of this UDO.
  - b. The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.
  - c. The public acquisition of land for water or sewer infrastructure or the widening or opening of streets or public transportation corridors.
  - d. The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this UDO.
  - e. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession, per G.S. § 29.
  - f. The division of a tract into plots or lots used as a cemetery.

Commentary (1/1/2021):  
These types of subdivisions were previously referred to as "exempt" subdivisions.

##### B. No subdivision without plat approval

1. As provided in G.S. § 160D-807, no person may subdivide land except in accordance with all the provisions of this UDO. No subdivision may occur unless and until a final plat of the subdivision has been approved in accordance with the provisions of this Section and recorded in the Wake County Registry. The provisions of this section 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 approved or recorded in Wake County

Registry. Such arrangements shall strictly follow the provisions of G.S. § 160D-807.

2. As provided in G.S. § 160D-807, the Wake Register of Deeds shall not record a plat of any subdivision within the Town's planning jurisdiction unless the plat has been approved in accordance with the provisions of this UDO.
  3. As provided in G.S. § 160D-802, not all divisions of land constitute subdivisions that are subject to all regulations under this UDO. However, to ensure that such divisions are exempt from the requirements of this UDO, all plats creating a division of land shall be presented to the Planning Department before recordation in the Wake County Registry, and the planning staff shall indicate on the face of the plat that the division is exempt from the provisions of this UDO.
  4. All stormwater management provisions must be met prior to the subdivision of land.
  5. It shall be unlawful to offer and cause to be recorded any major or minor subdivision plan, plat, or replat of land within Garner's jurisdiction with the Wake County Register of Deeds unless the same bears the endorsement and approval of the Planning Director or Town Clerk.
- C. No occupancy, use, or sale of lots until requirements fulfilled
1. Where the subdivision process applies, the development or sale of lots prior to approval of a final plat is prohibited.
  2. For development on existing lots, no occupancy or use shall be permitted prior to the approval of at least one of the following permits:
    - a. Site Plan
    - b. Special Use Permit
    - c. Temporary Use Permit
    - d. Certificate of Zoning Compliance
  3. Issuance of a final plat or any of the permits listed above authorizes the holder to commence the approved activity; however, excepting phased developments, structures with temporary certificates of occupancy, and subdivisions with improvement guarantees, no intended use may commence, no building be occupied, nor any lot be sold until all of the UDO requirements have been met.

### 3.5.2. Minor Subdivision

- A. A minor subdivision is any subdivision that does not involve any of the following:
  - 1. Creation of a total of not more than five lots.
  - 2. Creation of any new public streets.
  - 3. Extension of the water or sewer system operated by the City of Raleigh.
  - 4. Installation of drainage improvements through one or more lots to serve one or more other lots.
- B. A preapplication conference with CORPUD is required prior to submission of an application to the Town.
- C. After a preapplication conference and sketch plan review and approval by the TRC, the applicant may apply for final plat approval.
- D. See 3.5.4 for approval criteria for minor subdivision final plats.

Commentary (1/1/2021):  
Approval of utility tap locations by CORPUD is required prior to final plat review by the Town.

### 3.5.3. Major Subdivision

- A. All other subdivisions of land not listed in Section 3.5.2 shall be considered major subdivisions.
- B. Review
  - 1. A major subdivision requires submission and review of a preliminary plat.
  - 2. The Town shall forward the preliminary plat to the Wake County Health Department, and any other affected agencies potentially including NCDOT and the Wake County Board of Education.
  - 3. Within 15 days of submittal of the application, the TRC shall review the preliminary plat and application for consistency with the UDO. For preliminary plats that do not meet the standards of this Ordinance, a list of deficiencies shall be provided to the applicant, which may also include a list of potential options for bringing the preliminary plat into compliance.
- C. Upon a determination by the TRC that the preliminary plat meets the standards of this Ordinance, it shall be approved by the Planning Director.
- D. Action following Preliminary Plat Approval.
  - 1. Following preliminary plat approval, the applicant may proceed to comply with other requirements of this UDO including construction plans, preparation of the final plat, and other

approvals and permits.

2. The preliminary plat approval does not guarantee the approval of the final subdivision plat.

#### 3.5.4. Final Plat

##### A. Applicability

Final plats are required for all subdivision of land in Garner's planning jurisdiction.

- B. The Final Plat shall only constitute the portion of the approved preliminary plat that the subdivider proposes to record and develop at the time of submission. Approval shall be subject to the installation of subdivision improvements described in this UDO.

##### C. Application

1. The final subdivision plat shall be submitted in accordance with G.S. § 47-30 and with the requirements maintained by the Planning Director.
2. Endorsements Required See appendix of certificates.
  - a. Certificate of ownership
  - b. Certificate of survey and accuracy
  - c. Certificate of dedication, if applicable
  - d. Certificate of approval by the Planning Director
  - e. Certificate of approval by City of Raleigh Utilities, if applicable
  - f. Wake County Plat Review Officer's certificate
3. All major subdivision final plats located outside the corporate limits of the Town, but within the planning jurisdiction, shall contain the following additional certificates:
  - a. NCDOT Division 5 of Highways District 1 Engineer certificate.
  - b. Wake County Environmental Health certificate of approval of non-municipal water supply and sewage disposal systems.
4. When required by the federal government, all final plats shall contain a certificate for a federally funded project.

##### D. Approval

1. After TRC certification that the final plat meets all applicable

- requirements of this Ordinance, the Planning Director shall approve a final subdivision plat.
2. When sufficient financial security in the amount of 125% of the required, uninstalled improvements is furnished to guarantee the completion of the improvements, the Planning Director shall approve a final subdivision plat prior to the full installation of all improvements.
  3. Additional approval criteria for minor subdivision final plats
    - a. The plat complies with the standards of Article 8, Subdivision, design/improvements, and any other applicable requirements of this UDO.
    - b. The plat is consistent with the approved preliminary plat, if applicable.
    - c. The plat indicates that all subject lots will have frontage on existing, approved streets or such provision will be made.
    - d. New or residual parcels will conform to the requirements of this UDO and other applicable regulations.
    - e. No new streets (not including widenings of existing roads) or road extensions are required or are likely to be required for access to interior property, or they have been provided.
    - f. No drainage or utility easements will be required to serve interior property, or they have been provided.
    - g. No extension of public sewerage or water lines will be required, or they have been provided.
    - h. All necessary right-of-way has been offered for reservation or dedication.
    - i. The proposed subdivision will not adversely affect permissible development of the remainder of the parcel or of adjoining property.
- E. Notice of Decision. Written decision as described in Section 3.4.8, Written Decision shall be provided to the applicant and filed in the Planning Department.



### 3.6. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – MAP AND TEXT AMENDMENTS

#### 3.5.5.3.6.1. Rezoning / Map Amendment

##### A. Applicability

Any owner of land, their authorized representative, or the Town Council may request that land be rezoned.

B. A rezoning request shall be filed with the Planning Director and shall include, at a minimum:

1. The name, address, and phone number of the applicant.
2. A description of the affected property and the proposed zoning change.

##### C. Receipt of Application

Upon receipt of a petition for a zoning map amendment of any type, the Town Clerk shall establish a date for a public hearing and schedule and advertise a public hearing.

~~C.D.~~ The Planning Director shall prepare a report that reviews the request and its compliance with the Comprehensive Plan and other adopted Town plans. The report shall include an analysis of the reasonableness of the proposed zoning. It shall be transmitted to the Planning Commission, Town Council, and the applicant.

##### ~~D.E.~~ Planning Commission:

1. After the initial meeting, the Council shall refer the case to the Planning Commission for review and recommendation.
2. The Commission shall examine the request and forward a written recommendation to Town Council remarking on consistency with all adopted plans within sixty (60) days. After sixty days have passed, the Town Council can proceed towards a decision without the Commission's report.

##### F. Review Approval Criteria

In making recommendations regarding amendments to the official zoning map, the ~~Planning Commission shall consider the following~~ approval criteria shall be considered:

- ~~3.1.~~ Consistency (or lack thereof) with the Comprehensive Growth Plan and other adopted plans.
- ~~4.2.~~ Compatibility with the present zoning and conforming uses of nearby property and with the character of the

neighborhood.

~~5.3.~~ Suitability of the subject property for uses permitted by the current versus the proposed district.

~~6.4.~~ Whether the proposed change tends to improve the balance of uses or meets a specific demand in the Town.

~~7.5.~~ Availability of sewer, water, transportation infrastructure, stormwater facilities, and other necessary infrastructure generally suitable and adequate for the proposed use.

~~E.G.~~ Public Hearing

In addition to comments provided in person at the public hearing, any resident or property owner in the Town may submit a written statement regarding the proposal to the Town Clerk at least two business days prior to the proposed vote on such change. If submitted according to the preceding condition, the Town Clerk shall submit said written statement(s) at any time prior to the Town Council vote.

~~F.H.~~ Modification of Application

1. An applicant in a zoning matter may reduce the geographic scope or propose a different district or combination thereof from that requested in the application by filing a statement of the same with the Planning Director.
2. If the application is limited by excluding certain enumerated land uses, either in the original application or in any amendment thereto, the application shall be resubmitted as a conditional zoning request.

~~G.I.~~ Time Lapse Between Similar Applications

1. In the event of a withdrawal of an application prior to action by the Town Council on the merits, no application may be filed requesting the rezoning of any parcel contained in the withdrawn application prior to the expiration of a minimum period of six months from the withdrawal of the application.
2. When the Town Council has voted on a zoning application and the proposed rezoning has either been denied or has failed to be adopted, then the application shall be deemed to have expired.
3. No subsequent application requesting a zoning change for any parcel contained in an application which has expired may be made prior to the expiration of a minimum period of six months from the date of expiration.

Commentary (1/1/2021):  
Requesting to limit uses must be a condition on a conditional zoning or conditional rezoning application.

### 3.6: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – MAP AND TEXT AMENDMENTS

4. No subsequent application requesting the same zoning category for any parcel contained in an application which has expired may be filed prior to the expiration of a minimum period of one year from the expiration.
5. The Town Council, by a ¾-majority vote, may waive the time-lapse requirements of this section if the Council deems it to be in the public interest to do so.

#### ~~H.~~J. Town Council

1. The Town Council may not take final action on request until it has received the Planning Commission recommendation or sixty (60) days have passed since the map amendment was first heard by the Planning Board.
2. Pursuant to G.S. § 160D-605, the Council shall prepare a consistency statement and ~~also~~ describe the reasonableness of the proposal and show that the proposal is in the public interest.

#### ~~3.5.6.3.6.1.~~ **3.6.2. Conditional Zoning**

##### ~~A.~~ Applicability

##### A.

Conditional zoning shall follow the same review and approval process as Section 3.6.1, with additional standards as described in this subsection. Where conflict occurs, these the more stringent standards shall apply.

##### B. Underlying General Zoning District

All conditional zoning districts shall be based on an underlying (base) general use zoning district.

##### C. Tiers

There are two tiers of conditional zoning districts.

##### 1. Tier 1

Tier 1 conditional zoning requests identify a base district(s) and any uses in that base district's permitted uses which are excluded in the conditional zoning district. Dimensional standards of the base district remain intact and unchanged. Tier 1 conditional

Commentary (01/01/2021):  
Conditions may neither circumvent the intent of the established general district nor alleviate the regulations without providing a method of alternative compliance. Conditions may impose stricter regulations.

### 3.6: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – MAP AND TEXT AMENDMENTS

zoning requests do not require a bubble master plan.:-

#### 2. Tier 2

Tier 2 conditional zoning requests identify a base district(s), any uses in that base district’s permitted uses which are excluded in the conditional zoning district, dimensional standards for each use permitted (either by-right or by other criteria such as Special Use Permit), and a bubble master plan. Tier 2 specifications shall also apply to any uses requiring conditional zoning approval as outlined in Article 5, Use Regulations.

##### a. Bubble Master Plan

All Tier 2 conditional zoning requests shall be accompanied by a bubble master plan master plan, which shall be reviewed and approved in concert with the conditional zoning request. The bubble master plan at a minimum shall show the following:

i.—The correct number of external, cross-access, and adjacent property stub-out access points, although the exact location may be modified through subsequent review.

i.

ii.—The uses desired and their general location and intensity or density. Tier 2 conditional zoning requests shall include a table of permitted uses for the proposed district. It shall include all uses listed in the table of permitted uses in Article 5, and whether they are permitted or excluded

ii.

iii.—The appropriate setbacks, dimensional standards, and other regulations for each zoning district, use, or area. Tier 2 conditional zoning requests shall include a table of dimensional standards. This shall be based on the general zoning district and updated to reflect altered dimensional standards.

Commentary (01/01/2021):  
The uses should be of similar intensity and complement each other to avoid creating conflicts or nuisances.

### 3.6: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – MAP AND TEXT AMENDMENTS

~~iv. The phasing of the project, including the maximum area of developed area, lots, square footage, etc. in each phase and in total.~~

~~iii. Any other information necessary to ensure that the master plan can meet the standards required by this Ordinance to execute a logical development plan.~~

~~F. The applicant shall propose standards and conditions to define uses proposed in a conditional zoning district. The request shall not include any automatically permitted uses unless the appropriate existing regulations in this Ordinance are specified.~~

~~G.D. If the Town Council modifies any conditions or imposes new ones, the property owner or authorized agent must provide (or decline) written consent prior to any decision of approval.~~

~~H. Subsequent Review of Phases~~

~~1. Following approval of a conditional zoning district master plan, all subsequent phases shall be reviewed administratively by the Planning Director and TRC, per the requirements and processes otherwise laid out in this Ordinance and any associated conditions of approval, with the following exceptions:~~

~~a. Any use requiring a Special Use Permit shall be reviewed according to that procedure, and shall not be approved administratively.~~

~~b. If the conditional zoning district master plan lacks the necessary information to make a determination, the Administrator shall elevate any decision on that phase or component according to the procedure for modification laid out in this Ordinance, with all applicable applications, fees, and review being the burden of the property owner or their representative.~~

~~I.E. Addition of property to a conditional zoning district~~

Entitlement, recordation, or construction of any or all portions of a conditional zoning district master plan shall not constitute any precedent or vesting of rights, design, development standards, uses, or otherwise, on any property that might be proposed for addition to a conditional zoning master plan in the future. The standards of this Ordinance in effect at the time of formal application of the property addition to a conditional zoning district master plan shall prevail.

Commentary  
(01/01/2021):  
Conditions may neither circumvent the intent of the established general district nor alleviate the regulations without providing a

**3.5.7.3.6.3. Text Amendment (aka Ordinance Amendment)**

A. Initiation

Text amendments to this Ordinance may be initiated by any citizen, by the Town Council, or proposed to Council by staff.

B. Process

1. Petition forms are available at Town Hall and shall be filed with the Planning Director. Upon receipt of the form, any supporting materials, and associated review fees, the Planning Director shall review the application and determine if the proposed amendment should be treated as if it were initiated by the Town.

2. The Planning Director shall prepare a written report to be provided to the applicant, the Town Council, and the Planning Commission prior to the legislative hearing.

3. Citizen Comments

In addition to comments provided at the public hearing, any resident or property owner in the Town may submit a written statement regarding a proposed text amendment to the Town Clerk at least two business days prior to the proposed vote on the amendment. The Town Clerk shall submit the written statement(s) to the Town Council at any time prior to the vote.

4. The Town Council shall refer the text amendment to the Planning Commission at the end of the hearing.

5. The Planning Commission shall review the proposed amendment and forward a recommendation to the Town Council for consideration. If the Planning Commission is not prepared to issue a recommendation, it may request the Town Council delay or continue final action on the amendment until the Planning Commission is prepared to give a recommendation.

6. The Town Council may not take final action on the proposed amendment until it receives the recommendation from the Planning Commission or until sixty (60) days have passed since the proposal referral.

C. Approval Criteria

1. The extent to which the proposed text amendment is consistent with the remainder of the UDO, including, specifically, any purpose and intent statements.

2. The extent to which the proposed text amendment represents

### 3.6: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – MAP AND TEXT AMENDMENTS

a new idea not considered in the existing UDO, or represents a revision necessitated by changing circumstances over time.

3. Whether or not the proposed text amendment corrects an error in the UDO.
4. Whether or not the proposed text amendment revises the UDO to comply with state or federal statutes or case law. \_\_\_\_\_

## **3.7. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - PERMITS**

### **3.5.8.3.7.1. Zoning Compliance Permit**

#### **A. Applicability**

Zoning compliance permits are required for all activities that do not require special use permits (Section 3.9.1) or site plans (Section 3.8.1).

#### **B. Effect**

It shall be unlawful to construct, grade, alter, excavate, or move, any land or building, including accessory structures, or to establish or change any use other, without a valid Zoning Compliance Permit issued by the Planning Director.

#### **C. Application**

1. **Submittal.** The application for a Zoning Compliance Permit shall be submitted to the Planning Director at the time of building permit application. Where a building permit is not required, the application shall be made prior to initiating any activity described herein.

2. **Contents**

The application form shall be accompanied by a written statement and scaled plans or plat drawings showing the following detail:

- a. Lot shape(s), location(s), and dimensions.
- b. Building shape(s), size(s), and location(s).
- c. Existing and intended use of lot and structures.
- d. Additional information as requested by the Planning Director, including, parking, landscaping, screening, buffers, signage, flood hazards, and floor areas.

#### **D. Review**

1. **Approval.** If the Planning Director determines that the application conforms to the requirements of this UDO, the Planning Director shall issue the Zoning Compliance Permit.
2. **Denial.** If the Planning Director determines that the application does not conform to the requirements of this UDO, the Planning Director shall deny the Zoning Compliance Permit and provide written notice to the applicant.

#### **E. Expiration**



~~n.~~ Failure to begin activities outlined in the Zoning Compliance Permit within ~~two years and any lapse of one year or more in activity~~ one year shall render the permit of no further force and effect.

### **3.5.9.3.7.2. Sign Permit**

#### **A. Purpose**

–It is the purpose of this subsection to permit and regulate signs and their placement in such a way as to support and complement the land use objectives set forth in this UDO and in other Town Council declarations of policy; to avoid endangering the public safety, and not confuse or mislead a driver or obstruct the vision necessary for traffic safety; and to advance the economic stability, preservation and enhancement of property values, and the visual impact and image of the Town.

~~E.~~B. A sign permit is a type of Zoning Compliance Permit, with additional standards as described herein. Where conflict occurs, these standards shall apply. Where a standard is not referenced or modified, the existing standard shall apply.

~~F.~~C. For standards related to signs and sign permits, see Article 7, General Development Standards.

#### **G.D. Applicability**

1. Except as otherwise provided in this UDO, no sign may be erected, moved, enlarged, or altered except in accordance with and pursuant to a sign permit.
2. No sign permit shall be issued unless the plans and information submitted demonstrate that the sign will conform to all applicable requirements of this UDO.

#### **E. Application**

–A sign permit application shall be submitted in accordance with the requirements maintained by the Planning Department.

~~H.~~F. The Planning Director shall review each sign permit application and act to approve, approve with conditions, or deny the permit. The Planning Director may grant approval with conditions only to the extent that such conditions specify the actions necessary to bring the application into complete compliance with this UDO.

~~I.~~G. A sign may also require separate building and electrical permits from the Town.

~~J.~~H. Sign permits expire as a Zoning Compliance Permit would.

**3.5.10. Master Sign Plan**

- ~~A. Applicability. All existing and newly proposed shopping centers, business complexes, commercial subdivisions, and mixed use residential subdivisions shall be required to submit a master sign plan of sufficient design quality to satisfy the requirements of this UDO.~~
- ~~B. Purpose.
  - 1. The purpose of the master sign plan is to detail the standards for uniformity to which the development will adhere, and to state the manner in which the design criteria and standards for uniform signage set forth in this section shall be met.
  - 2. All signs in a development shall conform to the approved master sign plan on file at the Town, if applicable.~~
- ~~C. Application. A master sign plan application shall be submitted to the Planning Director and shall contain documentation necessary to meet the standards of this Ordinance in general and Article X, Signs, in particular.~~
- ~~D. Review and action by the Planning Commission.
  - 1. All master sign plans shall be complete, as determined by the Planning Department, prior to submission to the Planning Commission for approval consideration.
  - 2. The Planning Commission shall have the authority to approve all master sign plans and amendments as provided for herein~~
- ~~E. Amendments to approved master sign plans shall follow the process of a new master sign plan application unless administrative modification is permitted per this Article.~~
- ~~F. Sign permits for individual businesses. Sign permits for individual businesses within a development and therefore subject to the master sign plan shall be reviewed administratively by the Planning Director, according to the approved master sign plan.~~

**3.8. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - SITE PLANS AND ADMINISTRATIVE REVIEW**

**3.5.11.3.8.1. Site Plan**

- ~~A. Applicability~~
  - ~~-A valid site plan approval is required prior to issuance of a Zoning~~

Compliance Permit or building permit for:

1. ~~A~~ny new nonresidential, mixed use, and residential development, excluding single family detached homes and duplex (aka two-family homes).
2. ~~A~~ny change of use from residential to nonresidential.
3. ~~A~~ny amenity, facility, parking area, developed common area, or accessory area, excluding discrete areas of signage permitted through the sign permit process.

B. Review

~~Upon~~ certification by the TRC that the site plan meets (or will meet) all applicable standards of this Ordinance and other Town ordinances, the Planning Director shall approve the site plan with or without conditions. Approval with conditions is only permitted to the extent that such conditions specify the actions necessary to bring the application into complete compliance with this UDO. Should the TRC determine that all such requirements and provisions have not been satisfied, the Planning Director shall deny the application.

~~3.5.12.~~**3.8.2. Administrative Modifications**

A. Applicability

An administrative modification may be requested for any valid development approval or site specific vesting plan, including conditional zoning districts and special use permits.

~~A.B.~~ The Planning Director shall make administrative design modifications to approved plans, permits, or development approvals according to the following standards.

~~B.C.~~ Any design modifications not identified as “major” shall be considered minor design modifications.

~~C.D.~~ Minor Design Modifications

1. Minor design modifications to approved permits are permissible with the approval of the Planning Director. ~~A design modification is minor if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.~~
2. Cumulative minor modifications that together would result in a major modification or deviation from the original entitlement shall trigger review as a major modification and shall be subject

to the appropriate review process.

3. The Planning Director and TRC shall review the modifications for consistency with this UDO and adopted Town plans and specifications and approve or deny the modification.
4. If review of a minor modification requires the application of subjective review criteria or standards, it shall be considered a major design modification.

~~D.E.~~ Major Design Modifications

1. Major design modifications require review according to the appropriate review procedure per the Review Authority Table (3.3).-
2. Major design modifications include:
  - a. Removal of a new vehicular access point to an existing street, road, or thoroughfare.
  - b. Modification of special performance criteria, design standards, or other conditions or requirements specified in the original entitlement.
  - c. An increase or decrease in the total number of residential dwelling units by ten percent or greater.
  - d. An increase in total floor area by ten percent or greater or a decrease in total floor area by twenty percent or greater.
  - e. Any increase in number of parking spaces of greater than ten percent.
  - f. Any increase greater than twenty percent or decrease of greater than ten percent in open space.
  - g. Any increase greater than ten percent in the amount of public right-of-way or utilities, provided that any change in location or reduction in amount must also be reviewed and approved by TRC else it shall be determined a major modification.

~~3.5.13.3.8.3.~~ **3.8.3. Written Interpretation**

A. Applicability-

When uncertainty exists and unless otherwise specified, the Planning Director shall be authorized to make all interpretations concerning the provisions of this Ordinance, review of administrative decisions taken in accordance with this Ordinance, including determination of existing

vested rights of property in accordance with Section 3.8.3.

B. Application Requirements

An application for a written interpretation shall be submitted in accordance with this Section. Such application shall provide a request of sufficient detail for the rendering of an interpretation.

C. Action

1. The Planning Director shall review and evaluate the request in light of the text of this Ordinance, the Zoning Map, all adopted plans, policies, or land use documents, and any other relevant information.
2. Following completion of any technical reviews by staff, the Planning Director shall render an opinion.
3. The interpretation shall be provided to the applicant in writing.

D. Official Record

The Administrator shall maintain an official record of all interpretations. The record of interpretations shall be available for public inspection during normal business hours. The rendering of an interpretation on a specific piece of land does not necessarily constitute a precedent. \_\_\_\_\_

## 3.9. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – MISCELLANEOUS

### 3.9.1. Administrative Appeals

#### A. Applicability

Any person possessing standing under G.S. § 160D-1402(c) may appeal a final order, interpretation, or administrative decision of the Planning Director to the Board of Adjustment.

Commentary  
(01/01/2021): In general, only an aggrieved party may bring an appeal.

#### B. Effect of Appeal

Pursuant G.S. § 160D-405(f), an appeal does not stop action lawfully approved by the Town but stays actions presumed in violation of this UDO.

#### C. Enforcement and Fines

Pursuant G.S. § 160D-405, enforcement action and accrual of fees and fines shall be stayed from the filing of the appeal until the time of decision.

#### A.D. Process

##### 1. Application

The aggrieved party must file a petition with the Town Clerk within thirty days of the written decision described in Section 3.4.8. ~~The aggrieved applicant or landowner may provide constructive notice of a decision by posting a sign on the property containing the words “Zoning Decision” or “Subdivision Decision” in letters at least six (6) inches high and the Town’s contact information.~~ Any other party with standing must file a petition with the Town Clerk within thirty days of actual or constructive notice of the disputed decision.

##### 2. Record of Administrative Decision

The Planning Director shall transmit all materials constituting the record of the contested action to the Board of Adjustment, the appellant and/or the owner.

##### 3. Public Notice

Public notice is required in accordance with Section 3.4.6 Public Notice Requirements.

##### 4. Witnesses

The official who made the decision, or his or her successor, shall appear at the hearing as a witness.

5. Decision

The Board of Adjustment may make a motion to reverse, affirm (wholly or partly), or modify the order. A majority shall be required to decide the case. For the purposes of this Section, vacant positions on the Board and members who are disqualified from voting shall not be included in the calculation of the requisite majority if there are no qualified alternates available.

6. Notice of Decision

See Section 3.4.8.

7. Appeals

Appeals of decisions of the Board of Adjustment shall be directed to the superior court.

**3.5.15.3.9.2. Special Use Permit**

A. Special use permits, as defined in G.S. §\_160D-102(30) and described in G.S. § 160D-705(c), are required for uses which in an unmitigated state may create negative impacts to neighboring properties or uses. This process allows each proposed use to be evaluated by its merits and conditions specific to each site.

B. Applicability-

In addition to the other special uses listed in the use table in Article 5, General Development Standards, the following development types have significant city-wide impacts and require special use permits:

~~1. A special permit use ordinarily has city wide impacts, and includes the following:~~

1. Any nonresidential or mixed-use development encompassing 100,000 or more square feet of gross floor area.
2. Any single-family residential subdivision of 200 or more lots.
3. Any multifamily residential development of 100 or more units.

C. Staff Review

Upon receipt of the application and determination of completeness, the Planning Director shall create a report for the Town Council.

~~B. Appropriate notice shall be provided, and an evidentiary hearing~~

~~shall be conducted by Town Council according to established rules and procedures.~~

D. Special Use Review Criteria

Special use applications may be approved by the Town Council if it finds that all the following findings of fact have been met:

1. The proposed use will not endanger the public health or safety.
2. The proposed use will not substantially injure the value of adjoining or abutting property.
3. If completed as proposed, the development will comply with all requirements of this Ordinance.
4. The proposed use is consistent with the Town's adopted transportation plan(s), other relevant adopted plans and policies, and the stated purpose and intent of this UDO (the fact that the use is permitted under certain circumstances in the zoning district creates a rebuttable presumption that the proposed use is in harmony with the intent of the UDO as relates to the general zoning plan).
5. The proposed use is compatible with adjacent uses and proximate neighborhood in terms of building scale, site design, buffering and screening, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts).
6. Any significant adverse impacts resulting from the use will be mitigated or offset, including impacts on the natural environment.
7. The public safety, transportation and utility facilities and services will be available to serve the subject property while maintaining sufficient levels of service for existing development.
8. Adequate assurances of continuing maintenance have been provided.

~~C.~~E. Conditions of Approval

1. Without limiting the foregoing, the permit-issuing authority may attach a condition limiting the permit to a specified duration or may otherwise impose such reasonable conditions as necessary to address the impacts of the proposed developments on:
  - a. Adjoining property.



- b. The existing natural and man-made features of the site.
  - c. Off-site and on-site traffic flow.
  - d. Public utilities, infrastructure, and services.
  - e. Such other public services or goals of the Comprehensive Growth Plan, adopted plans, or the Transportation Plan that may be negatively impacted by the proposed development.
2. All additional conditions or requirements shall be recorded on the permit and shall be affirmed (or declined) in writing by the applicant prior to a decision on the proposal.
  3. All additional conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirements of this UDO.
  4. A vote may be taken on additional conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth above. The applicant must give written consent to any conditions for the permit to be valid.

### **3.5.16.3.9.3. Traffic Impact Analysis**

#### **A. Applicability**

1. A Traffic Impact Analysis (TIA) shall be required for projects that are anticipated to generate 100 or more peak hour vehicle trips, based on the latest edition of the Institute of Transportation Engineers (ITE) Traffic Generation Manual.
2. A Traffic Impact Analysis shall be required for projects that are anticipated to generate 1,000 or more average daily trips (ADT), based on the latest edition of the ITE Traffic General Manual.

#### **B. Scope**

1. When a traffic impact analysis is required, the Planning Director and the Town Engineer shall determine the type and scope of the study jointly during a meeting with the applicant. The Planning Director may also involve representatives of other agencies or departments. The elements to be determined during the scoping session shall include:

##### a. Type of Study

A letter report, full traffic impact analysis report, or special report (such as a sight distance survey) may be required.

##### b. Definition of Impact Area

The points of access and key streets and intersections that

Commentary  
(01/01/2021): The application of these provisions should match the type of development proposed so that excessive study scope requirements are not unreasonably imposed.

may be affected by development of the subject tract constitute the impact area. Traffic recorder and turning movement assessment locations shall also be determined.

c. Period of Analysis

The period of analysis shall be for both the morning and afternoon peak hour.

d. Analysis Scenarios

Scenarios for analysis shall include existing conditions, and opening year with and without development, and shall include increments of five years after opening until the expected completion of the project, with or without development.

e. Assumptions

Trip generation and distribution assumptions including trip generation categories, diversion assumptions and distribution assumptions. Assumed rate of growth in background traffic, and developments in the area that have been approved or are under review shall also be included.

f. Duration of Study

The duration of traffic studies (the time period for which they are considered a valid basis for approvals) for large projects, particularly Planned Developments, will be evaluated on a case-by-case basis as part of the application review process.

2. Study Elements

a. The following details shall be required as determined in the scoping meeting

i. Existing Conditions Survey

(a) Street System Description

The street system shall be described, including geometric features, lane usage, traffic control, signage, sight distances, and adjacent uses and curb cuts.

(b) Traffic Volumes

Existing traffic volumes shall be provided for the impact area, including both average annual daily traffic (AADT) and peak hour volumes. AADT may be derived from current counts of the North Carolina Department

of Transportation (NCDOT), where available, and peak hour volumes shall be provided from field counts. Data shall be adjusted for daily and seasonal variations. Turning movement counts for peak hour shall be provided for critical intersections.

(c) Capacity Analysis

–Existing capacity of signalized and unsignalized intersections.

(d) Other Details

Other details may be required at the discretion of the Town Engineer or Planning Director depending upon the type and scale of the project. These may include, but are not limited to, queue length analysis, pedestrian counts, accident data, traffic speeds (both 50th and 85th percentile), and stopping distances.

ii. Future without Development

–Capacity analysis shall be based on the Highway Capacity Manual or other methodology approved in advance by the Town Engineer.

~~iii.~~ iii. Future with Development-

(a) Projections of peak hour traffic generation shall be made using the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual, unless the Town Engineer determines that locally derived data will provide more accurate forecasts. Data from similar facilities may be used where the information is not available from ITE.

(b) Special analysis may be required to determine the need for signalization, minimum safe sight distances, gap analysis, turning radius requirements, queue length analysis, turning lane length analysis, curb cut locations or similar requirements.

iv. Mitigation Plan-

Where the analysis indicates that the project will create deficiencies in the impact area, improvements shall be recommended, along with projected cost estimates. The design of improvements shall be in accordance with the Town of Garner or the North Carolina Department of

Transportation (NCDOT), as appropriate. Where a mitigation plan is not adequate to address the traffic impacts of the project, it may serve as a basis for denial of the rezoning, preliminary plat, site plan or Planned Development request.

v. Consultants

–The Planning Director or the Town Engineer shall require that an independent consultant be hired by the Town to perform the required studies, or to review all or part of a study prepared by the applicant's consultant. The Planning Director or Town Engineer are authorized to administer the contract for any such consultant.

~~(e)~~(a) The Town shall determine the scope of services to be performed by the independent consultant and receive a cost estimate of such services.

~~(d)~~(b) The applicant shall provide an amount equal to the estimate to the Town, who shall deposit the amount in an escrow or other special account set up for this purpose. Any funds not used shall be returned to the applicant in a timely manner, without interest.

~~(e)~~(c) The Town may require additional funds for independent review where a decision-making body expands the scope of the required review; the applicant substantially amends the application; additional meetings involving the consultant are requested by the applicant; or the consultant's appearance is requested at public or affected agency meetings beyond those anticipated in the original scope of services.

**3.5.17.3.9.4. Variance**

A. Applicability

1. Where, owing to special conditions, a strict enforcement of the provisions of this UDO would result in unnecessary hardship to the property owner, the Board of Adjustment is authorized to grant variances from standards of this UDO in accordance with the public interest or the spirit of this UDO.
2. Variances proposed within a floodway or regulatory floodplain must also meet the criteria of Flood Mitigation (per Section

3.10.1).

B. Burden of Proof

The applicant seeking the variance shall have the burden of presenting sufficient evidence to warrant Board approval.

B.C. Process:

1. Variance applications shall be submitted to the Planning Director for review and determination of completeness. The Planning Director shall prepare a written report to be provided to the applicant prior the Board of Adjustment meeting.
2. Public notice shall be provided in accordance with Section 3.4.6.
3. The Board of Adjustment shall hold a public hearing to review the matter. Pursuant to G.S. § 160D-705(d), the Board may grant variances which meet the following findings of fact:
  - a. 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.
  - b. That 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 public, may not be a basis for granting a variance.
  - c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
  - d. 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. A variance shall be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
4. Upon Board review and the public hearing, the Board of Adjustment shall make one of the following determinations:
  - a. Approval
  - b. Approval with ~~conditions or modifications~~ Conditions or

Modifications

The Board of Adjustment may impose reasonable conditions to ensure compatibility with surrounding property. Such conditions shall be consented to in writing (or declined) by the applicant prior to the vote for approval.

c. Denial

5. Written Decision

The written decision shall be provided to the applicant.

~~3.5.18.3.9.5.~~ **3.9.5. Temporary Use Permit**

A. Applicability

Temporary uses operating for up to ninety days within a one-year period shall obtain a temporary use permit from the Planning Director that outlines conditions of operations to protect the public, health, safety, and welfare.

B. Types

Temporary uses shall include short-term or seasonal uses that are not otherwise permanently allowed in the zoning district regulations.

C. Application

Applications shall include a description of the proposed use, the duration, the hours of operation, anticipated attendance, associated structures or signs, written permission from the property owner, and additional information deemed necessary by the Planning Director.

D. Review by Technical Review Committee

1. The application should be submitted at least thirty (30) days prior to the requested start date.
2. The Planning Director shall request additional materials or revisions to the application, approve, approve with conditions, or deny the permit at least ten business days in advance of the requested start date.
3. The Planning Director shall provide written decisions for all denials.

E. Approval Criteria

The Technical Review Committee shall evaluate temporary uses based on the following standards:

1. Land Use Compatibility

The temporary use must be compatible with the purpose and

Commentary (1/1/2021):  
The term “variance” as used in this subsection only applies to variance relief from the stormwater provisions.

intent of this UDO and the associated zoning district. The temporary use shall not impair the primary use of the same site.

2. Review by Building Official

Any temporary structures shall require building permits or approvals by the Building Official and Fire Code Inspector. If necessary, the applicant must obtain approvals from the State of North Carolina and Wake County Health Department.

3. Hours of Operation and Duration

Hours of operation and duration shall be approved by the Planning Director at the time of permit issuance.

4. Traffic Circulation

The Town Engineer shall determine that the temporary use will not disturb traffic patterns or cause undue congestion.

5. Off-street Parking

Adequate off-street parking must be provided for the use without creating greater than a 25% shortage of parking for permanent uses.

6. Appearance and Nuisances

The temporary use shall be compatible in intensity, appearance, and operation with surrounding land uses. It shall not impair the usefulness, enjoyment, or value of the surrounding properties by introducing nuisances.

7. Signs

The Planning Director shall review and approve all signage prior to issuing the permit.

F. Other ~~C~~onditions

The applicant must adhere to conditions specified by the Technical Review Committee. These conditions may but are not limited to ~~include~~ screening and buffering, site restoration, and clean-up provisions, in addition to any of the criteria described above.

G. Expiration

If the temporary use has not commenced within ninety days of the requested event start date, the permit shall expire.

### **3.10. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - ENVIRONMENTAL**

#### **3.5.19. Stormwater Permit Compliance**

~~A. Application. Stormwater permit applications compliance review materials shall be submitted to the Town Engineer for review and determination of completeness.~~

~~B. Issuance. The Town Engineer, the Board of Adjustment sitting as the Watershed Review Board, or in the case of a variance, the Environmental Management Commission.~~

~~C. Vested Rights.~~

~~3.2.6 Where the Town issues a stormwater permit in conjunction with another permit with a vesting period of two (2) years, the stormwater permit shall also expire in two (2) years.~~

~~1. All other stormwater permits compliance(s) shall expire within twelve (12) months of the date of issuance.~~

~~D. Watershed Protection Occupancy Permit.~~

~~E. Upon completing construction, the applicant shall report to the Town and request issuance of a watershed protection occupancy permit described in Section 3.10.2.~~

~~F. Fee in lieu~~

~~Where the stormwater permit waives construction of stormwater facilities by payment of fee in lieu, the applicant shall deposit fifty (50) percent of the amount due for the retention pond fees prior to issuance of the stormwater permit. The remaining balance, or a pro-rated portion in the event of a subdivision, shall be rendered prior to issuance of the watershed protection occupancy permit.~~

~~G. Variances~~

~~1. In the event of a deviation from the stormwater management standards outlined in this UDO, the variance process described in Section 3.9.3 shall apply with the Board of Adjustment acting as the Watershed Review Board.~~

~~2. Records shall be submitted to the supervisor of the classification and standards group, water quality section, and Division of Environmental Management on or before January~~



~~1<sup>st</sup> of the following year.~~

### ~~3.5.20. Watershed Protection Occupancy Permit~~

#### ~~A. Issuance~~

- ~~1. Per Section 3.10.1, upon satisfaction of a required stormwater permit, the Town Engineer may issue a watershed protection occupancy permit.~~
- ~~a. The applicant shall notify the Town Engineer of the completed improvements, and the Town Engineer shall complete a field inspection.~~
- ~~b. The Town Engineer may approve or deny the request or issue an exemption certificate.~~
- ~~2. Where the stormwater permit denotes only a change in use and a stormwater permit is not required, the Town Engineer may issue a watershed protection occupancy permit with the stormwater permit.~~

#### ~~B. Records~~

- ~~1. The Town Engineer shall keep copies of the issued watershed protection occupancy permits.~~
- ~~2. The Town Engineer shall provide written decisions for all denials.~~

#### ~~C. Variances~~

- ~~1. In the event of a deviation from the stormwater management standards outlined in this UDO, the variance process described in 3.9.3 shall apply with the Board of Adjustment acting as the Watershed Review Board.~~
- ~~2. Records shall be submitted to the supervisor of the classification and standards group, water quality section, and Division of Environmental Management on or before January 1<sup>st</sup> of the following year.~~

### ~~3.5.21.3.10.1. Flood Mitigation~~

- A. No variance shall be issued within any designated floodway or regulatory floodplain unless the Board of Adjustment finds the following:
  1. The proposed use is not likely to cause any increase in flood levels during the base flood discharge; and
  2. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

- B. In evaluating a variance application, the Board of Adjustment shall consider all technical evaluations and all relevant standards specified in other sections of this UDO. Additionally, the Board shall assess:
1. The danger that materials may be swept onto other lands to the injury of others
  2. The danger of 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 waterfront location, where applicable
  6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed uses
  7. The compatibility of the proposed use with existing and anticipated development
  8. The relationship of the proposed use to the Comprehensive Growth 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 flood waters 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.

**~~3.5.22. Subdivision Containing Floodplains, Floodways, or Buffer Areas~~**

- ~~12. If any portion of the land to be subdivided lies within a floodway, floodplain, conservation buffer area, lake conservation district, or other riparian buffer, the Planning Department shall inform the applicant of the use and construction restrictions contained in this UDO.~~

~~13. To receive approval, the plat shall show the boundary of the floodway and/or floodplain, the minimum lowest floor elevation on each lot affected by the floodway and/or floodplain, and the following statement in clear print:~~

~~14. "Use of land within a floodway or floodplain is substantially restricted by the Garner Unified Development Ordinance."~~

~~15. All building footprints and front, rear, and side yard areas as required by this UDO shall be provided outside of conservation buffers protecting the watershed of Lake Benson or other officially designated protected buffer areas. Rear yard areas adjacent to a conservation buffer may be reduced to a minimum of fifteen feet during the review of a subdivision. However, no reduction, waiver, or variance below this fifteen-foot minimum shall be permitted.~~

—  
~~16. Unless the developer demonstrates to the satisfaction of the Planning Director that the proposed lots are not intended for sale as residential building lots, no final plat approval for any subdivision may be given if:~~

—  
~~17. The land to be subdivided lies within a zone where residential uses are permissible and it reasonably appears that the subdivision is designed to create residential building lots, and~~

—  
~~18. Any portion of one or more of the proposed lots lies within a floodway or floodplain, and~~

—  
~~19.11. \_\_\_\_\_ It reasonably appears that one or more such lots could not practicably be used as a residential building site because of stormwater management restrictions set forth in this UDO.~~

**4.1. Establishment of districts.**

For the purpose of this Unified Development Ordinance (UDO), portions of the Town, as specified on the Town's official zoning map are hereby divided into the following zoning districts:

PREVIOUS DISTRICT		NEW DISTRICT	
<b>RESIDENTIAL ZONING DISTRICTS</b>			
R-40	Single-Family Residential	R-40	Single-Family Residential
R-20	Single-Family Residential	R-20	Single-Family Residential
R-15	Single-Family Residential	R-15	Single-Family Residential
R-12	Single-Family Residential	R-12	Single-Family Residential
R-9	Single-Family Residential	R-9	Single-Family Residential
MF-1	Multi-Family 1	MF-1	Multifamily Residential
MF-2	Multi-Family 2	MF-2	Multifamily Residential
R-5	Manufactured Home Park/Subdivision	RMH	Manufactured Home Park/Subdivision
-MH	Mobile Home Floating District	-MH	Manufactured Home Floating Zone
<b>COMMERCIAL ZONING DISTRICTS</b>			
---	New	NO	Neighborhood Office
NB	Neighborhood Business	NC	Neighborhood Commercial
CBD	Central Business District	CBD	Central Business District
OI	Office and Institutional	OI	Office and Institutional
CB	Community Business	CR	Community Retail
SB	Service Business	SB	Service Business
<b>INDUSTRIAL ZONING DISTRICTS</b>			
I-1	Industrial 1	I-1	Light Industrial
I-2	Industrial 2	I-2	Heavy Industrial
<b>PLANNED DEVELOPMENT DISTRICTS</b>			
---	New	PUD	Planned Unit Development
R-12-PR	Planned Residential 12	PRD	Planned Residential Development
---	New	TND	Traditional Neighborhood Development
MXD-1	Mixed Use District 1	MXD	Mixed Use Development
<b>OVERLAY ZONING DISTRICTS</b>			
---	Conservation Buffer Area	CBA	Conservation Buffer Area
---	Lake Benson Conservation	LBC	Lake Benson Conservation
-----	Timber Drive Overlay	O-TD	Timber Drive Overlay
-----	U.S. 70/401 Overlay	O-70	U.S. 70/401 Overlay
-----	I-40/US 70 Special Highway Overlay	O-40	I-40 Overlay
-----	Garner Road Overlay District	GR-OD	Garner Road Overlay District

PREVIOUS DISTRICT		NEW DISTRICT	
<b>OBSOLETE DISTRICTS</b>			
MR-1	Multi-Residential 1	MR-1	Multi-Residential 1
RCD	Residential Cluster District	RCD	Residential Cluster District
R-12 PR	R-12 Planned Residential District	R-12 PR	Planned Residential District
MXD-1	Mixed Use Development District	MXD-1	Mixed Use Development District

**Note: The MXD General Use District has been replaced by the MXD Planned Development Floating District. Existing MXD General Use Districts remained mapped on the official zoning map and can be developed according to the provisions of Section 4.14 Obsolete Districts.**

1. **General use districts.** Also known as base zoning districts, these represent the traditional residential, commercial, and industrial districts established above. They set uniform standards for uses in their district and are the governing standards unless overlaid with more restrictive standards as in the case of an overlay district.
2. **Conditional zoning use districts.**
  - a. ~~The Town Council may establish by ordinance various conditional use zoning districts upon request by or on behalf of the owner. In lieu of setting forth all of the regulations applicable to such district, the ordinance establishing it may incorporate by reference all of the regulations applicable to any general use district, except to the extent that the ordinance sets forth exceptions that are less stringent than those of the referenced general use district (e.g., the ordinance may provide for greater but not lesser setbacks than those applicable to the referenced general use district or may specify that only one or some of the uses permissible in the referenced general use district are permissible).~~
  - b. ~~Within any conditional use zoning district, all of the uses that are permissible shall require a concurrent conditional use permit.~~
  - b. Any conditional use zoning district shall be designated by adding the letters "CZ" followed by a unique number identifying the ordinance that created the district and followed to the general use district incorporated by reference and by adding a numerical subscript to indicate the order in which such districts are created or revised. Thus, the first such district created might be designated ~~SB-C1CZ1-4997-1,~~ the second MF-1-C2, and so forth. These designations shall be applied to the official zoning map as in the case of other amendments. All ordinances establishing a conditional use district shall be referenced in Appendix B to this UDO. Ordinances are on file in the Planning Department.
  - c. On January 1, 2021, any existing and legal Conditional Use zoning districts, Special Use zoning districts or Planned Unit Development (PUD) zoning districts that are valid and in effect shall be deemed a Conditional Zoning (CZ) district subject to the same conditions of approval or operation of the existing entitlement.
3. **Floating districts.** Floating districts are set forth in the ordinance text but not on the initial official zoning map. A floating district may be employed when the local government recognizes that a particular type of activity is desired for a general area but the specific site has not been located in advance. Property intended to be used for that activity may be rezoned

upon application if the owner can meet the conditions in the ordinance. Uses typically designated in floating districts include Planned Developments such as the PUD, PRD, TND and MXD districts.

4. **Overlay districts.** Overlay districts are established to define certain sub-areas within which development is subject to restrictions over and above those applicable to the underlying district. Within these overlay districts; any development that occurs must be in compliance not only with the regulations applicable to the underlying district but also with the additional requirements of the overlay district. The Conservation Buffer, Lake Benson Conservation, Swift Creek Conservation, I-40 Special Highway, Timber Drive, and the U.S. 70/401 Thoroughfare are seven such overlay districts. Overlay zones are not required to be mapped on the official zoning map if the description of such zones in this UDO is sufficient to define their extent and application to specific properties.
5. **Obsolete districts.** Obsolete districts have been mapped on the official zoning map of the Town of Garner, but are no longer part of the zoning district hierarchy applied to the Town. These districts have been retained from the previous version of the land use ordinance and land that is zoned with any of the obsolete district designations will continue to be developable under those use and dimensional regulations applicable to the districts immediately prior to the effective date of this UDO. See Section 4.1 entitled establishment of districts for list of obsolete districts.

(Ord. No. 3558, § 2, 7-7-09)

#### 4.2. Official zoning map.

- A. There shall be a map known as the official zoning map, which shall show the boundaries of all zoning districts within the Town's planning jurisdiction. This map shall be drawn on a durable material or generated in a digital format from which prints or digital copies can be made, shall be dated, and shall be kept in the Town Hall. Both the current and prior zoning maps are maintained and available for public inspection in the Planning Department.
- B. The official zoning map is adopted and incorporated herein by reference. Amendments to this map shall be made and posted in accordance with Article 3.
- C. Should the official zoning map be lost, destroyed, or damaged, it can be redrawn on a durable material or generated in a digital format from which prints can be made, so long as no district boundaries are changed in this process.

#### 4.3. Rules for interpretation of district boundaries.

##### A. Interpretations.

1. The Board of Adjustment is authorized to interpret the official 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 Planning Director, they shall be handled as provided in Article 3.
2. An application for an official zoning map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Planning Director. The application shall contain sufficient information to enable the Board of Adjustment to make the necessary interpretation.
3. Where uncertainty exists as to the boundaries of districts as shown on the official zoning map, the following rules shall apply:
  - a. Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerlines;
  - b. Boundaries indicated as approximately following lot lines, city limits or extraterritorial boundary lines, shall be construed as following such lines, limits or boundaries; and

- c. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following such changed shorelines.
- 4. Where a district boundary divides a lot or where distances are not specifically indicated on the official zoning map, the boundary shall be determined by measurement, using the scale of the official zoning map.
- 5. Where any street or alley is hereafter officially vacated or abandoned, the regulation applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

**4.4. Residential district purpose statements.**

- A. **Single-family residential districts (R-40, R-20, R-15, R-12, R-9).** These districts are designed to create and maintain residential neighborhoods composed primarily of single-family ~~residences~~~~dwellings~~ and, as special uses, such institutional, public, and other compatible uses that are designed, constructed and maintained so as not to detract from the quality of each district as a place for healthful, quiet, and aesthetically pleasing residential living.
- B. **Multifamily residential districts (MF-1, MF-2).** These districts are designed to create and maintain higher density residential neighborhoods composed primarily of multifamily ~~dwellings~~ residences and, as special uses, those service, institutional, public and other compatible uses that are so designed, constructed and maintained that they do not detract from the quality of the neighborhood as a place for healthful, quiet and aesthetically-pleasing residential living. When evaluating an application for the MF-1 or MF-2 zoning district, emphasis shall be given to the location of the proposed district to adjoining developed property to ensure that such district is carefully located and achieves a satisfactory relationship with the surrounding properties.
- C. **Manufactured home park/subdivision (RMH).** The RMH manufactured home park/subdivision district is hereby established to provide for the development of manufactured home parks or manufactured home subdivisions in which class A, class B or class C manufactured homes may be located.
- D. **Manufactured home floating zone (-MH).**
  - 1. **District established.** The manufactured home floating zone hereby established is provided for the designation of areas within selected residential zones other than RMH within which class A manufactured homes may be located. When the regulations and standards of this section are met, the suffix -MH is attached to a base residential zone on the Town's official zoning map. Without an -MH designation, a manufactured home cannot be placed in any residential zone except RMH. Such -MH designated districts may not consist of an individual lot or scattered lots, but shall consist of a defined area of not less than two acres, and must conform to the requirements for conventional residential subdivisions as set forth in Article 8, as well as those contained herein.
  - 2. **Purpose and intent.** This section is established to provide alternative, affordable housing opportunities for Garner and its planning jurisdiction by permitting the use of manufactured homes in selected single-family residential zoning districts, subject to the requirements set forth herein.
  - 3. **Rezoning procedures.** The Town shall process manufactured home district rezoning requests in the same manner as set forth by Article 3 for all other rezoning requests, except that they shall be reviewed by the Garner Planning Commission.
  - 4. **Development standards.** The development standards applicable to manufactured homes are located in Article 6.
  - 5. **Additional requirements.** Structures within a district suffixed as a

manufactured home district (-MH), must conform to the applicable dimensional, parking and setback requirements of Articles 6 and 7, and specifically those applicable to the zoning district to which they are suffixed. Developed subdivisions containing other than manufactured homes when rezoned with the -MH suffix may infill with either class A manufactured, stick built, or modular homes. Class B or C manufactured homes units are not permitted.

#### 4.5. Commercial district purpose statements.

- A. **Neighborhood Office (NO).** The purpose of this district is to accommodate modest-scale professional and service occupations, along with single-family residential units, to serve as a neighborhood activity center and as a transition between residential and more intense commercial uses.
- B. **Office and Institutional (OI).** The purpose of this district is to accommodate more intense professional and service occupations than permitted in the neighborhood office (NO) district and to insure that the environmental effects (including noise, odor, glare, heat, vibration and air pollution) resulting from the conduct of such operations shall not interfere with the quality of any surrounding district. This district is also intended to accommodate, as special uses, certain other compatible uses that are so designed, constructed and maintained that they do not interfere with the conduct of permitted professional and service occupations. When used as part of a rezoning, this district serves as a transition between residential districts and more intense districts, including commercial districts.
- C. **Neighborhood Commercial (NC).** This district is intended to accommodate low intensity commercial enterprises that provide goods or services primarily to residents of the surrounding neighborhood so that such residents can have convenient access to such goods and services without the necessity for making cross-town trips. The uses permitted are of such a nature and on such a scale that incompatibility with or disruption to nearby residences is minimized, and uses that by their very nature depend for a majority of their business upon traffic from the whole community rather than the immediate neighborhood are not permitted.
- D. **Community Retail (CR).** This district is designed to accommodate commercial activities that serve the entire community, especially retail businesses conducted within a building.
- E. **Central Business District (CBD).** This district is intended to provide for and maintain the Main Street business district.
- F. **Service Business (SB).** This district to accommodate commercial activities that are more intense in nature than those permitted in neighborhood or community business districts. This district allows merchandise or equipment to be stored and operations to be conducted outside a building.

#### 4.6. Industrial district purpose statements.

The following districts are established primarily to accommodate enterprises engaged in the manufacturing, processing, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise or equipment. These districts serve the entire community and are subject to the industrial performance standards of Article 6.

- A. **Light Industrial District (I-1).** The Light Industrial District is intended to provide for a limited range of low-intensity industrial uses that are not noxious or offensive due to odors, smoke, dust, noise, fumes or vibration and conducted. Operations are restricted to inside a building (outdoor storage prohibited).
- B. **Heavy Industrial District (I-2).** The Heavy Industrial District is intended to provide for industrial uses that are may be noxious or offensive due to odors, smoke, dust, noise, fumes or vibration. Operations may be inside or outside of a building.

#### 4.7. Planned Development Districts (PUD, PRD, TND, MXD).



See Section 1.10.4, relating to the transition of these districts to Conditional Zoning Districts. The remainder of this section is kept for reference. There shall be a Planned Development District which shall consist of any of the following types: Planned Unit Development (PUD), Planned Residential Development (PRD), Traditional Neighborhood Development (TND), or Mixed Use District (MXD). Each district is a floating district and additional standards are located in Article 6.

- A. **Planned Unit Development (PUD) purpose and intent.** The PUD district is intended to provide for a mix of uses, including commercial and residential uses. PUD provisions are intended to encourage creativity in the design and planning of parcels by allowing greater design flexibility than the underlying base districts to protect natural features and concentrate development in more suitable or less environmentally sensitive areas. The end result is creativity in design, additional open space and an appropriate mix of uses. PUD development is permissible on tracts of land of five acres or greater.
- B. **Planned Residential Development (PRD) purpose and intent.** The PRD district is intended to provide for master-planned residential communities containing a mix of housing types, including associated amenities. This district is primarily intended for large-scale residential projects that require either additional flexibility not available in the base residential districts, or greater scrutiny by the Town due to their scale. PRD development is permissible on tracts of land of 15 acres or greater.
- C. **Traditional Neighborhood Development (TND) purpose and intent.** TND is a development option allowing new standards for development focused on mixed residential development with a pedestrian orientation, and a centralized commercial or mixed use node serving as the focal point for the development. TND development must also incorporate a network of open space, a network of internal streets, and connections to the surrounding area. TND development is permissible on tracts of land of 40 acres or greater.
- D. **Mixed Use District (MXD) purpose and intent.** Mixed Use Districts are intended to produce higher levels of urban land use intensity at or near community focus nodes or regional focus nodes, consistent with the Town's long-range land use plan map. MXD zoning districts permit various combinations of usually separated uses, primarily promoting the development of business parks. It is not intended to be applied in a limited way to only inner city development or to mixed uses within one structure (high-rise), but rather, may be used to support either infill or new development on relatively large tracts. MXD development is permissible on tracts of land of 75 acres or greater.
- E. **Rezoning criteria for all Planned Development (PUD, PRD, TND, MXD).** In approving a rezoning for a Planned Development, the Town Council shall find the district designation and Planned Development master plan comply with the general standards for all Planned Development in this paragraph and the specific standards for the proposed Planned Development listed in Article 6.
  1. **Planned Development master plan.** The development proposed in the master plan is compatible with the character of surrounding land uses and maintains and enhances the value of surrounding properties. The master plan also illustrates:
    - a. A continuous pedestrian circulation system;
    - b. A network of open space serving the entire development and providing internal connections within the project;
    - c. Perimeter landscape areas to connect or buffer land uses both inside and outside the perimeter of the Planned

- Development; and
- d. Preservation of the natural environment.
2. **Design guidelines and dimensional standards.** Each Planned Development shall provide a comprehensive set of design guidelines that demonstrate the project will be appropriate within the context of the surrounding properties and the larger community. The dimensional standards identified in Article 6 may be varied in the development proposed in the master plan. The Town Council is not obligated to accept or approve any variation if it deems such variation to be inappropriate. Where such standards vary by more than 20 percent from the otherwise applicable numeric standard, a specific finding in the Council approval as to the acceptability of such a variation shall be required.
3. **Off-street parking and loading.** Off-street parking and loading shall comply with Article 7, except that variations from these standards may be permitted if a comprehensive parking and loading plan for the Planned Development is submitted, and determined to be suitable and generally consistent with the intent and purpose of the off-street parking and loading regulations.
4. **Signs.** Signs shall comply with Article 7, except that signs within the Planned Development may be constructed to alternate, but equivalent standards if a comprehensive sign plan for the Planned Development is submitted with the rezoning and master plan applications that is determined to be suitable for the Planned Development and generally consistent with the intent and purpose of the sign regulations.
5. **Public facilities.**
- a. The Planned Development master plan shall demonstrate a safe and adequate on-site transportation circulation system. The on-site transportation circulation system shall be integrated with the off-site transportation circulation system of the Town.
- b. The Planned Development master plan shall establish public places that connect uses.
- c. The Planned Development master plan shall demonstrate a safe and adequate on-site system of potable water and wastewater service that can accommodate the proposed development, and is efficiently integrated into off-site potable water and wastewater public improvement plans.
- d. Adequate off-site facilities for potable water supply, sewage disposal, solid waste disposal, electrical supply, fire protection and roads shall be planned and programmed for the Planned Development, and the development shall be conveniently located in relation to schools and police protection services.
- e. The improvement standards applicable to the public facilities that will serve the site shall comply with the provisions of Article 8, Subdivision, design/improvements. However, the development may deviate from the city's road width standards in order to achieve greater efficiency of infrastructure design.
6. **Common recreation and open space.** The development proposed in the Planned Development master plan complies with the following common recreation and open space standards:

- a. Water bodies, lands within wildlife habitat areas, riparian ecosystems and 100-year floodplains that are preserved as open space may be counted toward this minimum standard, even when they are not usable by or accessible to the residents of the Planned Development. A maximum of 50 percent of the required open space in a Planned Development may be comprised of water bodies. No water bodies may be counted towards the requirements for common recreation area.
- b. All common open space and recreational facilities shall be shown in the master plan and shall be constructed and fully improved according to the development schedule established for each phase of the Planned Development.
- c. All privately-owned common open space shall continue to conform to its intended use, as specified in the Planned Development master plan. To ensure that all the common open space identified in the master plan will be used as common open space, restrictions or covenants shall be placed in each deed to ensure their maintenance and to prohibit the partition of any common open space.
- d. If common open space is proposed to be maintained through an association or nonprofit corporation, such organization shall manage all common open space and recreational facilities that are not dedicated to the public, and shall provide for the maintenance, administration and operation of such land and any other land within the Planned Development not publicly owned, and secure adequate liability insurance on the land. The organization shall also conform to the following standards:
  - e. The association or nonprofit corporation shall be established prior to the sale of any lots or units within the Planned Development.
  - f. Membership in the association or nonprofit corporation shall be mandatory for all landowners within the Planned Development.
7. **Stormwater management.** The Planned Development master plan meets or exceeds the standards of Article 7.
8. **Phasing.** The Planned Development master plan includes a phasing plan for the development, if appropriate, with specific build-out dates. If development is proposed to occur in phases, then guarantees shall be provided that project improvements and amenities that are necessary and desirable for residents of the project, or that are of benefit to the Town, are constructed with the first phase of the project, or, if this is not possible, then as early in the project as is technically feasible.
9. **Consistent with Comprehensive Growth Plan.** The Planned Development master plan shall be consistent with the Comprehensive Growth Plan.
10. **Complies with this Code.** The Planned Development master plan shall comply with all other relevant portions of this UDO.

(Ord. No. 3558, § 2, 7-7-09)

**4.8. Conservation Buffer Areas (CBA).**

- A. **Purpose and intent.** The Conservation Buffer Areas are designated for the following purposes:

1. Soil and pollutants carried overland, primarily from roads, construction and development, can be effectively trapped by leaving a relatively undisturbed strip of vegetation parallel and adjacent to the watercourse.
  2. Properly managed overland water flow can be directed into this buffer area in a manner that will reduce velocity and cause dispersion of the water.
  3. Sediments and associated pollutants carried by the water will settle out as a result of this slowing and dispersion process.
  4. These are highly desirable effects of stream and watershed protection in that non-point pollution, erosion and sedimentation, and the resulting property damage and devaluation, are so reduced.
- B. **Areas designated.** The Conservation Buffer Areas located within the Town of Garner are not expressly mapped on the official zoning map. Each buffer area can be determined by reviewing the text of Article 7. These provisions do not create a new zoning district; rather, they overlay whatever zoning is in place.

**4.9. Lake Benson Conservation District (LBC).**

- A. **Purpose and intent.** The Council finds that Lake Benson, as a water supply for the Raleigh water service area, which includes Garner, is sensitive to and quickly impacted by pollutants set into the system by development. Protection of the lake from non-point pollution sources is the intent of the provisions of this section.
- B. **Lake Benson Conservation District Boundary.** That portion of the watershed which was made subject to watershed protection regulations known as the Lake Benson Conservation District effective March 1, 1987, as shown on maps previously adopted and reflecting approximately that area within 2,000 feet of the northern shore line of Lake Benson, shall constitute the Lake Benson Conservation District for purposes of this UDO. The boundary is shown on the official zoning map maintained in both the Planning and Engineering Departments of the Town.
- C. **Exemptions.** All lots platted prior to March 1984 are exempt from the requirements of this Lake Benson Conservation District Overlay.
- D. **Limitations on use in Lake Benson Conservation District.**
1. **Permitted uses.** Within the Lake Benson Conservation District only the following uses are permitted:
    - a. Agriculture;
    - b. Residential (meaning only the following uses as listed in Article 3;
    - c. Single-family residences; other than manufactured home parks or manufactured home subdivisions;
    - d. Duplex and triplex;
    - e. Multifamily residences;
    - f. Townhouses and townhouse developments;
    - g. Churches;
    - h. Cemeteries;
    - i. Public parks including ancillary concessions;
    - j. Community centers;
    - k. Indoor and outdoor recreation;
    - l. Home occupations;
    - m. Planned Residential Developments;
    - n. Zero-lot-line developments;
    - o. Necessary municipally owned and operated utilities; and
    - p. Individual residential wastewater holding tanks (sump pumps) and conventional septic tanks, subject to the other provisions.
  2. **Density.**
    - a. Within the Lake Benson Conservation District, density shall not exceed two and one-half residential units per acre where the development is served by municipal water and sewer.
    - b. Within the Lake Benson Conservation District, density shall not

exceed one-half unit per acre where there is no municipal water and sewer.

- E. **Master plan required.** A master plan detailing the distribution of units and improvements across the total development, shall be presented as part of application for land use permits. Where possible, developers shall use innovative site planning techniques to keep units away from the lakefront, streams, and other sensitive areas. Such techniques include but are not limited to cluster development patterns, mixtures of zoning categories, strategic location of densities so that larger and less densely developed lots are closer to the lakefront and creative use of greenways and open space.
- F. **Performance standards.** The Lake Benson Conservation District performance standards are set forth in Article 7.
- G. **Impervious surface limits.**
1. Within the Lake Benson Conservation District, in order to reduce stormwater pollution through natural infiltration on undisturbed vegetated land, the impervious surface area may not exceed six percent regardless of lot size or density, except where the stormwater runoff from a one-inch rainfall event is retained by retention ponds or other approved devices.
  2. Impervious surface area within the Lake Benson Conservation District may be a maximum of 35 percent under the high density development option where the stormwater runoff from a one-inch rainfall event is retained by retention ponds or other approved devices.
  3. Stormwater retention may be accomplished by paying a fee-in-lieu of pond construction if the proposed development is within the Regional Retention Pond Service District and meets the requirements of the table in Article 7.
  4. The calculation of the impervious surface ratio contained in subdivisions or other developments required to apply for major subdivision approval, conditional or special use permits shall include impervious areas from all newly proposed collector and sub-collector streets, parking lots and tennis courts as well as buildings, driveways, patios, decks and other impervious surfaces.
  5. The calculation of impervious surface ratios shall not include roads that were publicly maintained prior to March 1984.
  6. The calculation of impervious surface ratios may be based on the land area of the lots and any common areas, rights-of-way and easements dedicated pursuant to the development of the tract.
  7. Where the project is developed in phases, with separately recorded survey plats, the area to which the calculation is applied shall consist of that area within the recorded plat. Such phases shall be based upon natural or proposed drainage where practicable. The designation of a phase shall have as its objective the principle of not overloading one drainage way with run-off from high impervious surface ratios while under utilizing the capacity of other drainage ways. Approval of the Town Engineer is required for designation of each phase used in this calculation to ensure that the loading of drainage ways is balanced.
- H. **Standards for stormwater drainage system.** Standard 90-degree curb and gutter construction is not allowed in the Lake Benson Conservation District. Streets with properly maintained grass swales or roll type curb and gutter construction may be allowed in the Lake Benson Conservation District as an option by the Town Council if it concludes that regardless of street design used, surface run-off is diverted to permanent retention ponds constructed in accordance with the requirements of this UDO and the proposed design protects the water quality of Lake Benson.

(Ord. No. 3558, § 2, 7-7-09)

**4.10. Timber Drive Overlay District.**

- A. **Purpose and intent.** The Town Council finds that vehicular and pedestrian mobility should be maximized along the Timber Drive Corridor. The Council believes that Timber Drive is a place where residential neighborhoods should be preserved and quality commercial uses should be located only in areas recommended by the comprehensive growth plan, which together results in a pleasing and harmonious environment of trees, natural and landscaped areas, and building development. Therefore, the Council adopts the Timber Drive Overlay District as a means to direct commercial development at recommended focus areas along Timber Drive consistent with the standards established herein in order to protect the general appearance of the Timber Drive Corridor, while sustaining the livability of the surrounding residential neighborhoods and the natural beauty of the area.
- B. **Overlay zone.** The Timber Drive Overlay District is an overlay zone. The land use regulations applicable to the underlying zone remain in full force and effect except where superseded herein. Where there is a provision not expressed in the underlying zone, or where a provision hereof is in conflict with the underlying zone, the provision of the overlay ordinance shall be controlling.
- C. **Location.** The Timber Drive Overlay District shall apply to the entire length of Timber Drive from U.S. 70 to N.C. 50 for a depth of 250 feet from the right-of-way line, on either side, and shall include all of the property within the focus areas that has frontage on Timber Drive from N.C. 50 to U.S. 70. The Town of Garner Official Zoning Map shall clearly indicate the boundaries of the adopted Timber Drive Overlay District. In cases where any portion of a building or parking area falls within the boundaries of the overlay district, these provisions shall apply to all of the building(s) and parking areas.
- D. **Permissible and prohibited uses.** Unless otherwise restricted below, all uses allowed by the underlying zoning district are permissible in the Timber Drive Overlay District provided all requirements and permits as required by this UDO are satisfied.
1. **Restricted uses.** The following uses are permissible in the Timber Drive Overlay District provided the use complies with special standards listed below.
    - a. Temporary school classroom units are permissible provided they are screened from all public street views. Any landscaping required to achieve this standard shall be installed at an initial height of six feet ~~unless otherwise approved by the permit issuing authority.~~
    - b. Open storage and operations are restricted to only those activities associated with a garden center use operated in conjunction with a home improvement center or a large retail store provided the location of outside storage is sufficiently screened from public street views as determined by the Planning Department. The amount of outside storage areas is limited to 25 percent of the gross floor area of principal use served.
    - c. Fast food restaurants with drive-in window operations are permissible only when such drive-in window service area(s) are not visible from Timber Drive street views ~~unless otherwise approved by the permit issuing authority.~~
    - d. Convenience store or gas sales operations that meet the following design criteria:
      - (1) Operation limited to between 5:00 a.m. and 11:00 p.m.;
      - (2) The number of pump dispensing units shall be limited to a maximum of four units with no more than eight fueling positions;

- (3) Principal building shall have a pitched roof with shingle roof material ~~unless otherwise approved by the permit issuing authority;~~
  - (4) Canopy structure(s) shall be detached ~~unless otherwise approved by the permit issuing authority;~~
  - (5) Canopy structures shall have a roof style and be constructed of a building material to match the principal building and shall not exceed the height of the principal building, but in no case shall the canopy height exceed 20 feet (large canopy super structures are prohibited);
  - (6) Site lighting shall be designed to have a zero foot-candle measurement at property lines adjoining residential uses ~~and shall be designed in a manner that is acceptable to the permit issuing authority;~~
  - (7) Canopy/gas island operational areas shall be screened from adjoining residential uses to provide a 100 percent visual screen throughout the year to a minimum height of eight feet using any combination of landscaping, earthen berms or fencing ~~as approved by the permit issuing authority;~~ and
  - (8) Canopy/gas island operational vehicular areas shall be screened from all public streets to a minimum height of three feet ~~in a manner approved by the permit issuing authority.~~
- e. Gas sales operations, which may include a small kiosk or enclosed structure not exceeding 300 square feet in size that is not designed for walk-in traffic, ~~are may be~~ allowed in the Timber Drive Overlay District ~~if the permit issuing authority concludes all of~~ pursuant to the requirements listed in subsection d. above have been satisfied with the exception of [Subsection] d.(2), and that the following requirements have been met.
- (1) The site does not front directly on Timber Drive and the building/canopy is located a minimum of 200 feet from Timber Drive.
  - (2) Up to a total of six gas dispensing units with no more than a total of 12 fueling positions allowed.
  - (3) ~~The permit issuing authority concludes the~~ overall appearance and design of the building and/or canopy, including site landscaping, is consistent with surrounding development in terms of scale, building materials and colors.
- f. Automobile service centers that meet the following design criteria:
- (1) Automobile service centers are permissible on parcels located within the Timber Drive Overlay District that directly front along U.S. 70 or N.C. 50 only;
  - (2) All service bay(s) associated with uses shall be oriented so as not to directly face U.S. 70, N.C. 50, or adjoining residential use;
  - (3) All service bays shall have 100 percent screen to a minimum full height of two and one-half feet at time of plant installation, and shall be maintained at a minimum height of three and one-half feet ~~or to a greater height if required by the permit issuing authority;~~ and
  - (4) A type-A buffer with a 100 percent screen to a minimum height of eight feet shall be required where the property directly adjoins a residential use.

2. **Prohibited uses.** The following uses are prohibited in the Timber Drive UDO 4:12

Overlay District.

- a. Hotel and motels;
- b. Sales and rental of goods, merchandise and equipment with storage operations and display of goods outside fully enclosed building;
- c. Office, clerical, research and services not primarily related to goods or merchandise where operations are conducted outside a fully enclosed building;
- d. Manufacturing, processing, creating, repairing, renovation, painting, cleaning, assembling of goods, merchandise and equipment;
- e. Pool halls;
- f. Golf driving ranges (not accessory to golf courses), miniature golf courses, skateboard parks, water slides and similar uses;
- g. Drive-in movie theaters;
- h. Bars, nightclubs, ABC permitted private clubs;
- i. Adult cabarets and establishments;
- j. Motor vehicle sales or rental or sales and service;
- k. Auto service stations;
- l. Automobile repair shop;
- m. Car wash;
- n. Storage and parking;
- o. Scrap materials, salvage yards, junkyards, automobile graveyards;
- p. Service and enterprises related to animals with outside facilities for keeping animals;
- q. Mining or quarrying operations; including on-site sales of products; coal or aggregate sales and/or storage; concrete mixing plant;
- r. Reclamation landfill;
- s. Towers and antennas greater than 35 feet tall;
- t. Open air markets;
- u. Bus stations;
- v. Taxi base operations;
- w. Commercial greenhouse operations;
- x. Recyclable material collection centers;
- y. Solar farms.

**E. Land disturbing activities.**

1. All development plans submitted under this UDO shall show a construction limit line delineating protected buffer areas and any tree save areas intended for the property. Protective orange fencing, surrounding all protective buffer areas plus ten feet and around tree save areas at the drip line, shall be installed prior to construction. Any cutting or clearance within an approved protected buffer or tree save areas shall be subject to a fine of \$5.00 per square yard of area in the protected buffer or tree save area that has been prematurely denuded.
2. No minor clearance of the existing vegetation within an approved protected buffer area or tree save area to be retained on the property shall be allowed until after construction on the parcel is completed and upon approval by the Planning Department.
3. Logging or timbering activities on properties within the corridor are strongly encouraged to be limited to the interior portions of the lot exclusive of required buffer areas unless specifically approved by the Town of Garner.
4. Land development activities such as, but not limited to, site grading, buildings, parking and vehicular areas, shall be excluded from the



perimeter area of lots in order to protect existing trees and vegetation in required buffer areas ~~unless otherwise approved by the permit issuing authority.~~

5. Any grading or clearing (including removal of stumps) on land within the overlay district, not part of a development proposal, requires site plan approval by the Town of Garner prior to any such activity on the site. All such activities shall be consistent with the standards of this UDO.
- F. **Street access.** The existing access location standards set forth in this UDO shall govern driveway locations on Timber Drive. ~~The permit issuing authority may allow deviations from these standards if it concludes, may be allowed via a Variance if,~~ based upon a traffic impact study submitted by a professional traffic engineer, the requested deviations do not pose any traffic safety impacts to the public and that such deviations have been recommended by the Town Engineer and the North Carolina Department of Transportation.
- G. **Design standards.** The following design standards shall apply to all new development within the Timber Drive Overlay District:
1. **Building height.** The maximum building height for development located in neighborhood or convenience focus areas is 35 feet unless the building setback from all property lines increases one foot for every foot the building exceeds 35 feet in height. For all other locations on the corridor the applicable building height limits are controlled by the existing requirements of Article 6. The building height limitation for neighborhood or convenience focus areas may be waived by the ~~permit issuing authority~~ Board of Adjustment via a Variance for the building build to line option based upon findings that such an arrangement is in harmony with surrounding development.
  2. **Building setback from Timber Drive right-of-way.** Building setback shall be 35 feet from the Timber Drive right-of-way line, ~~unless the permit issuing authority approves the~~ Alternatively, option to allow a build to line of 20 feet is permitted provided there are with no vehicle surface areas in front of the building. For all other building yard setbacks the applicable underlying zoning standards shall apply.
  3. **Building design guidelines.** All shopping center development or business complexes, as defined in Article 11, Definitions, shall provide design guidelines consistent with the following standards which must be approved by the Town of Garner as part of the overall development plan submittal. An individual nonresidential building not part of a larger shopping center or business complex shall be subject to the following provisions:
    - a. No metal or vinyl siding on nonresidential buildings shall be permitted;
    - b. Seventy-five percent of the primary building materials shall consist of brick or decorative/scored concrete masonry units in styles and colors approved by the Town of Garner. Such building materials shall be applied on all building facades visible from Timber Drive;
    - c. All dumpster enclosures and accessory/storage buildings for new development shall be of materials and colors that match the principal building served and shall be sited on the property to minimize view from all public streets;
    - d. All building awnings used must be appropriately designed as part of the buildings architecture and unified with the buildings colors and style. Such awnings shall not be internally illuminated;
    - e. Buildings shall be limited to a maximum of three types of materials and colors. If a building is part of a shopping center or business complex, the materials and colors used must be consistent with the approved design guidelines for the larger development;

- f. Design guidelines required by this UDO shall include provisions that address building height, scale and setback distances, unifying site elements such as building materials and colors, landscaping, site lighting elements, ~~and pedestrian circulation systems and other elements deemed appropriate by the permit issuing authority for the particular location on Timber Drive~~; and
- g. Chain link fences in commercial zoning districts shall have vinyl covering or some other similar material in a color that is compatible with the principal building materials and colors ~~unless otherwise approved by the permit issuing authority.~~

**H. Vegetation and landscaping standards.**

**1. General street buffer requirements.**

- a. An undisturbed street buffer along Timber Drive shall be required ~~unless otherwise approved by the permit issuing authority.~~ Minor underbrush clearing is permissible only by obtaining pre-approval from the Planning Department. Such approval may not be unreasonably withheld without just cause.
- b. The street buffer shall extend 50 feet along corner side streets and 40 feet along all entrances to new development.
- c. The use of native or locally adaptable species is required ~~unless alternative plantings are approved by the permit issuing authority.~~
- d. Construction limit lines shall be shown on all site development plans. Approved undisturbed areas shall be protected on the ground with orange fencing and shall be installed prior to the issuance of a building permit. Such fencing shall be maintained during the entire time of construction.
- e. The suitability of existing vegetation to meet the planting requirements for a required street buffer must be approved by the Planning Department. Otherwise, the applicant shall be required to provide a new landscape planting plan which meets the standards of this UDO as well all other applicable requirements of Article 7. Such plans must be approved by the Town of Garner Planning Department ~~and the permit issuing authority.~~

**2. Residential street buffer.** Residential subdivisions and unsubdivided developments with frontage along the right-of-way of Timber Drive shall maintain a 25-foot undisturbed buffer. No fencing shall be allowed within the 25-foot buffer area. Fences shall not be allowed along property frontages with Timber Drive unless they are of uniform height and design according plans that have been approved by the permitting authority. Required landscape planting within the residential street buffer shall consist of one street tree (ten-foot tall with a two-inch caliper at installation) for every 40 feet of street frontage, with a combination of vegetation and/or earthen berms to achieve a 100 percent screen to a height of four feet.

**3. Nonresidential street buffer.**

- a. **Undisturbed street buffer.** A 20-foot undisturbed street buffer along Timber Drive shall be required. Minor underbrush clearing of an undisturbed street buffer is permissible only with pre-approval from the Planning Department. Where existing trees and vegetation are retained that qualify according to the terms of this UDO regarding types, sizes, locations, and are healthy species as determined by the Planning Department, additional landscaping may not be required. In cases where additional planting is required when existing vegetation is not present in the street buffer area, a street buffer planting plan must be approved by the Town of Garner. One street tree shall be provided for every 40 feet of frontage. Such

tree shall be a minimum of 12 feet tall with a 2.5-inch caliper at installation. All vehicular surface areas visible from Timber Drive must provide additional landscape screening to achieve a 100-percent screen of the vehicular surface area to a minimum height of three feet at installation.

- b. **Street buffer for 20 foot build-to line option.** ~~Where~~ ~~the~~ build-to line option ~~is~~ shall be approved by the permit issuing authority ~~and~~ when there is no vehicular surface area between the building and the right-of-way of Timber Drive, a 20-foot street buffer with only a lawn area and one street tree (12-feet tall with a 2.5-inch caliper at installation) for every 40 feet of frontage is permissible. Under this option, vehicular surface areas shall be located in the rear of the building ~~unless otherwise approved by the permit issuing authority.~~

- I. **Site lighting.** See Article 7, Special standards in the Timber Drive Overlay District.
- J. **Signage.** Article 7 of the Unified Development Ordinance governs the sign requirements for property located in the Timber Drive Overlay District. In cases where a property is located in the Timber Drive Overlay District and such property has frontage directly on U.S. 70, the freestanding sign requirements of the U.S. 70/401 Overlay District may apply provided the following is met:
- a. The freestanding sign must be located directly on U.S. 70 and be on a lot that meets the minimum lot width requirements of the controlling zoning district; and
  - b. Any freestanding sign located directly on Timber Drive shall be subject to the sign requirements of the Timber Drive Overlay District.

(Ord. No. 3487, §§ 1--3, 10-1-07; Ord. No. 3529, § 1, 10-6-08; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3780, § 1, 7-7-15)

#### 4.11. U.S. 70/401 Thoroughfare Overlay District.

- A. **Purpose and intent.** The Town Council finds that both the U.S. 70 and 401 highway corridors play a vital role in shaping the communities future, relative to transportation, economic development opportunities and the appearance of the community that is portrayed to the traveling public. Presently these highway corridors are characterized by large freestanding signs, large expanses of unscreened surface parking areas with little or no landscaping, poorly spaced driveway/access points in some locations, and a generally uncoordinated approach to visual appearance matters. The Town Council believes it is important for the community to improve these conditions in order for U.S. 70 and U.S. 401 to function efficiently as transportation corridors, to provide opportunities for new business locations and promote a strong commitment to quality community appearance. Therefore, the Town Council adopts these regulations as a means to address these aforementioned issues.
- B. **Overlay zone.** The U.S. 70/401 Thoroughfare District is an overlay zone. The land use regulations applicable to the underlying zone remain in full force and effect except where superseded herein. Where there is a provision not expressed in the underlying zone, or where a provision hereof is in conflict with the underlying zone, the provision of the overlay ordinance shall be controlling.
- C. **Location.** The U.S. 70/401 Thoroughfare Overlay District applies to the entire length of U.S. 70 and U.S. 401 located within Garners zoning jurisdiction. The overlay district shall be designated on each side of the thoroughfare to a depth of 450 feet measured from the center line of the applicable right-of-way line. The district shall include all of the property in mapped focus areas with frontage on U.S. 70 and U.S. 401 as depicted on the adopted Comprehensive Growth Plan's Future Land Use Intensities Map. The Town of Garner Official Zoning Map shall clearly indicate the boundaries of the adopted U.S. 70/401 Overlay Thoroughfare

District. In cases where any portion of a building or parking area falls within the boundaries of the overlay district, these provisions shall apply to all of the building(s) and parking areas.

- D. **Prohibited and restricted uses.** Unless otherwise prohibited or restricted below, all uses allowed by the underlying zoning district are permissible in the U.S. 70/401 Thoroughfare Overlay District, provided all requirements and permits as required by this UDO are satisfied.
1. Prohibited uses. The following uses are prohibited in the U.S. 70/401 Thoroughfare District.
    - a. Drive-in movie theaters;
    - b. Adult cabarets and establishments;
    - c. Outside storage of goods not related to sale or use on premises;
    - d. Scrap materials, salvage yards, junkyards, automobile graveyards;
    - e. Mining or quarrying operations; including on-site sales of products; coal or aggregate sale and or storage; concrete mixing plant;
    - f. Reclamation landfill;
    - g. Commercial greenhouse operations;
    - h. Recyclable material collection centers; and
    - i. Solar farms.
  2. **Prohibited uses adjacent to existing residential uses.** The following uses are prohibited when directly adjacent to, or within 150 feet of residential uses. This restriction applies to all of U.S. 401 within the overlay district and to only the portion of U.S. 70 from New Rand Road west to the Town limits at the intersection of U.S. 70 and Mechanical Boulevard in the overlay district.
    - a. Hotel/motels;
    - b. Pool halls/bowling alleys only; and
    - c. Bars/night clubs/ABC-permitted private clubs.
  3. **Restricted uses.** The following uses are permissible provided the performance standards listed below are met. These standards shall apply only to new development.
    - a. **Retail sales, offices and other permissible uses with outside display or storage of goods for sale:**
      - (1) Outside display of goods for sale and/or outside storage areas with direct frontage along street rights-of-way must be screened to a minimum height of two and one-half feet planted every five feet on center at installation;
      - (2) For new development; a maximum of 50 percent of the total property frontage along U.S. 70/401 may be devoted to outside display or storage of goods when vehicular parking areas (excludes vehicular loading/service areas) are located in the street yard area. A maximum of 66 percent of the total property frontage may be devoted to outside display or storage areas when vehicular parking/service areas are located in side or rear yards; and
      - (3) For new development; all outside displays of goods for sale or outdoor storage areas shall have a minimum setback distance of 15 feet from the street right-of-way.
    - b. **Manufactured home sales lots:**
      - (1) Model display units only are allowed in front areas (measured 100 feet from the r/w line) directly visible to U.S. 70 or U.S. 401;
      - (2) All display model units must have foundation planting and

~~underskirting material matching the unit as approved by the permit issuing authority; and~~

- (3) All storage units must be located in the rear of display model area and have appropriate screening if visible from the thoroughfare ~~as determined by the permit issuing authority.~~

**c. Motor vehicle sale lots:**

- (1) All vehicle display areas with frontage along U.S. 70 or U.S. 401 rights-of-way shall be screened to a minimum height of two and one-half feet; and
- (2) The two elevated display racks permitted per motor vehicle sales lot; not to exceed five feet in height.

**d. Automobile service centers:**

- (1) All service bay areas shall be oriented so as not to directly face U.S. 70 or U.S. 401; and
- (2) All service bay areas shall have a 100 percent screen to a minimum height of three and one-half feet if such areas are visible from public street views. Such screening height must be achieved within two years.

**e. Automobile repair and body shops:**

- (1) All service bay areas shall be located at the rear of the building or be oriented in such a manner so as not to be directly visible from U.S. 70 or U.S. 401 ~~as approved by the permit issuing authority; and~~
- (2) All overnight vehicle storage areas shall be located in the rear of the building. Such storage areas shall be 100 percent screened from public street rights-of-way to a minimum height of 6 feet by the use of fencing, landscaping, berms, or a combination thereof ~~as approved by the permit issuing authority.~~

- f. **Veterinarians or kennels:** Veterinarians or kennels with outside facilities for keeping animals are permissible provided such operations are not located within 500 feet of an existing residential use.

- g. **Truck terminals:** Truck terminals are permissible provided all operational and loading areas are located to the rear of the building and are not directly visible from U.S. 70 or U.S. 401. Parking lots for employees/ visitors are permissible in front of the building.

- h. **Car washes:** Car washes are permissible, provided the buildings are oriented in such a manner that the wash bays do not directly face U.S. 70 or U.S. 401. ~~If such orientation is not reasonably practical as determined by the permit issuing authority, then wash bays may face U.S. 70 or U.S. 401 if appropriate screening of the building is provided in a manner and location approved by the permit issuing authority.~~

**4. Amortization of nonconforming uses.**

- a. When a nonconforming use is abandoned or discontinued for a period of 180 consecutive days, any subsequent use of the property thereafter must comply with the applicable regulations of the Garner UDO regarding the use of the property.
- b. Any change of use as defined by this UDO requires full compliance with the sign requirements of the Garner UDO.

**E. Land disturbing activities.**

- 1. All development plans submitted under this UDO shall show a construction limit line delineating protected buffer areas and any tree save areas

intended for the property. Protective orange fencing, surrounding all protective buffer areas plus ten feet, and around tree save areas at the drip line, shall be installed prior to building and/or grading permit issuance. Any cutting or clearance within an approved protected buffer or tree save area shall be subject to a fine of \$5.00 per square yard of area in the protected buffer or tree save area that has been prematurely denuded and must be replaced with equivalent vegetation as determined by the Town of Garner.

2. No minor clearing of the existing vegetation within an approved protected buffer area or tree save area to be retained on the property shall not be allowed until after construction on the parcel is completed and upon approval by the Planning Department.
3. Logging or timbering activities on properties within the corridor are strongly encouraged to be limited to the interior portions of the lot exclusive of required buffer areas unless specifically approved by the Town of Garner.
4. Land development activities such as, but not limited to, site grading, buildings, parking and vehicular use areas, shall be excluded from the perimeter area of lots in order to protect existing trees and vegetation in required buffer areas ~~unless otherwise approved by the permit issuing authority.~~
5. Any grading or clearing (including removal of stumps) on land within the overlay district, not part of a development proposal, requires site plan approval by the Town of Garner prior to any such activity on the site. All such activities shall be consistent with the standards of this UDO.

F. **Access.** The existing access location standards under Article 8 of this UDO shall govern driveway locations on U.S. 70 and U.S. 401. ~~The permit issuing authority may allow~~ Deviations from these access location spacing standards may be approved by Variance if it the BOA concludes, based upon a traffic impact study submitted by a professional traffic engineer, the requested deviations do not pose any traffic safety impacts to the public and that such deviations have been recommended by the Town Engineer and the North Carolina Department of Transportation.

G. **Design standards.**

1. Building height standards identified below relate to areas depicted on the Town of Garner's Comprehensive Growth Plan's Land Use Intensities Map.
  - a. **Focus area.** Building height is limited to 70 feet within the first 100 feet; beyond the first 100 feet, height may be increased above 70 feet, provided for every additional foot of height the building setback is increased one foot. Building height is limited to 85 feet within the first 100 feet in **Regional Centers**; beyond the first 100 feet, height may be increased above 85 feet, provided for every additional foot of height the building setback is increased one foot.
  - b. **Support area.** Building height is limited to 48 feet in first 100 feet; beyond first 100 feet height may be increased above 48 feet provided for every additional foot of height the building setback is increased one foot.
2. When a nonresidential use directly adjoins an existing residential use, the building height is limited to 24 feet ~~unless otherwise approved by the permit issuing authority.~~ When increased building height is authorized, an additional setback distance of one foot must be provided for every additional foot of building height over 24 feet measured from the property line adjoining the existing residential use. This requirement does not apply to the property within the overlay district located east of New Rand Road along U.S. 70.
3. Building setback standards identified below relate to areas depicted on the Town of Garner's Comprehensive Growth Plan's Land Use Intensities Map.

	Focus Area	Support Area
Front	20 foot minimum (no vehicular/parking area permissible in setback); otherwise 35 feet	30 foot minimum (no vehicular/parking area permissible in setback); otherwise 50 feet
Side	10 feet	10 feet
Rear	15 feet	15 feet

H. **Building design guidelines.** All shopping center developments, business complexes or commercial subdivisions, as defined in this UDO, shall be required to obtain Town approval of building design guidelines that are consistent with the following standards. An individual nonresidential building, not part of a larger shopping center, business complex, or commercial subdivision, shall also be subject to these provisions. All new development must comply with the following standards.

1. The use of prefabricated metal buildings shall not be permitted unless all building facades visible from street views are treated with brick, decorative/scored concrete masonry units (CMU), exterior insulated finishing systems (EIFS), or other materials in styles and colors ~~approved by the permit issuing authority~~. The use of vinyl siding on nonresidential buildings is not permitted.
2. All dumpster enclosures and accessory/storage buildings for new development shall be constructed of materials and colors that match the principal building served and shall be sited on the property in such a manner to minimize view from all public streets.
3. All building awnings must be appropriately designed as part of the buildings architecture and be unified with the buildings colors and style.
4. Design guidelines shall be required for all shopping centers, business complexes and commercial subdivisions located within the overlay district. Such guidelines must be included as part of the initial overall development plan submittal. All development that is subject to design guidelines approved by the Town must be constructed in accordance with the applicable standards for that specific development.
5. All design guidelines shall include, but not be limited to, provisions that address building height, mass and scale, setback distances and unifying site elements such as building materials and colors, landscaping, site lighting elements, ~~and pedestrian circulation systems and other elements deemed appropriate by the permit issuing authority for the particular location on U.S. 70 or U.S. 401.~~
6. Vehicular parking surface areas with direct frontage on U.S. 70 or U.S. 401 shall have curb and gutter and be paved with a permanent surface consisting of a minimum six inches of base stone and two inches of I-2 asphalt from the edge of the front vehicular/parking surface area to the front building line. An equivalent permanent surface material may be used as an alternative if approved by the ~~permit issuing authority~~ Town Engineer. Truck loading and/or vehicular service areas are strongly encouraged to be oriented on the property so as to be out of public street views ~~unless approved by the permit issuing authority~~ consistent with the requirements herein.
7. Full lane widening with curb and gutter construction shall be required for all new development with property frontage on U.S. 70 or U.S. 401. This standard does not apply to new development where no direct driveway or street access to U.S. 70 or U.S. 401 is proposed. For new development

where access to U.S. 70 or U.S. 401 is proposed and the total peak hour trip generation according to the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual does not exceed a total of 50 trips, ~~the permit issuing authority may require that a deceleration lane without curb and gutter construction~~ may be installed in lieu of full lane widening.

- I. **General thoroughfare buffer requirements.** In addition to complying with all of the general landscape standards in the Garner UDO, new development must meet the standards listed below.
  1. The buffer shall extend 50 feet along corner side streets and 40 feet along all entrances to new development ~~unless otherwise approved by the permit issuing authority.~~
  2. The use of native or locally adaptable species is required ~~unless alternative landscape materials are approved by the permit issuing authority.~~
  3. Construction limit lines shall be shown on all site development plans. Approved undisturbed buffer areas shall be protected on the ground with orange fencing and shall be installed prior to the issuance of a building and/or grading permit. Such fencing shall be maintained during the entire time of construction.
  4. The suitability of existing vegetation to meet the planting requirements for required buffer areas must be approved by the Planning Department. If approved, it will be credited towards the projects landscaping requirements. Otherwise, the applicant shall be required to provide a new landscape planting plan which meets the standards of this UDO as well as all other applicable requirements of Article XIX entitled landscape and appearance. Such plans must be approved by the Town of Garner the Planning Department ~~and the permit issuing authority.~~
  5. Thoroughfare buffer design standards.
    - a. A seven and one-half-foot wide thoroughfare buffer shall be required on property lines along U.S. 70 or U.S. 401 for all development. One street tree shall be provided for every 40 feet of property frontage along U.S. 70 or U.S. 401. Such tree shall be a minimum of ten feet tall with a two-inch caliper at installation. All vehicular parking areas visible from U.S. 70 or U.S. 401 must provide additional landscape screening to achieve a 100 percent screen of the vehicular surface area to a minimum height of two and one-half feet and planted every five feet on center at installation.
    - b. Where existing trees and vegetation can be retained that qualify according to the terms of this UDO regarding types, sizes, and locations, and are healthy species as determined by the Planning Department, additional landscaping may not be required. In cases where additional planting is required, a street buffer planting plan must be approved by the Town of Garner.
  6. Additional screening, buffering and landscaping requirements in street yards for high intensity uses (new development only). The objective of this requirement is to provide denser screening, landscaping or a combination thereof for more intense uses of land between U.S. 70/401 and the principal improvements on the property which are identified as high intensity uses. High intensity uses include outdoor operations (loading or assembly areas), operation utility service areas, and similar uses. All such high intensity uses not screened by an intervening building shall be screened 100 percent from public street views by a continuous screen of evergreen plant material and/or berm that reaches six feet in height.
  7. Screening and landscape buffers adjoining residential uses.



- a. The nonresidential uses listed below shall be required to provide a 40-foot wide undisturbed buffer area with screening to a height of eight feet, or to a buffer width and screening height ~~determined by the permit issuing authority~~ provided by a professional engineer and based upon results of a sight line study, when directly adjacent to residential uses. Required screening may be achieved by using vegetation, earthen berms, solid fences, or a combination thereof, as approved by the permit issuing authority.
  - (1) Golf driving range;
  - (2) Veterinarian/kennel with outside operations;
  - (3) Auto service/auto repair; or
  - (4) Any other permissible use with outdoor display/storage that directly adjoins existing residential property.
- b. The permitting authority may approve deviations from these presumptive standards if it concludes that the objectives underlying these standards can be met without strict adherence to them, and that there are no excessive measurable impacts to adjoining properties, and it finds that such deviations are more likely to satisfy the above noted standards.

**J. Parking lot landscape planting for existing uses.**

1. All existing nonresidential uses of property with direct frontage on U.S. 70 or U.S. 401 shall comply with the following requirements within three years from the date the overlay district is adopted.
2. All affected properties shall comply with the street tree requirements of the overlay district and screen all outside display/storage areas or vehicular surface areas directly fronting along U.S. 70/401 to a minimum height of two and one-half feet at installation and planted five feet on center at installation.
3. Each property owner or designee shall be responsible for obtaining landscape plan approval from the Planning Department which complies with these standards and install the planting material prior to the three year deadline.
4. In cases where the existing property does not have sufficient land area available to accommodate the required landscaping on site without severely impacting business operations, the Planning Department may allow deviations from these standards provided the following is accomplished.
5. An appropriate combination of street trees and shrubs is provided in locations that effectively improve the appearance of the property and special highway corridor as determined by the Planning Department (the use of r/w area is permissible with an N.C. DOT encroachment agreement; maintenance by property owner shall be required).
6. A maximum deviation of up to 50 percent of required landscaping may be authorized by the Planning Department if it finds there is not sufficient space available on private property and/or public right-of-way areas (merely having to relocate storage areas when sufficient space elsewhere on site is available does not qualify for this type of relief).
7. The decision of the Planning Department may be appealed to the Planning Commission for review and recommendation with the final decision by the Town Council.

**K. Site lighting standards.** See Article 7, Special standards in the U.S. 70/401 Thoroughfare Overlay District.

**L. Sign regulations.**

1. The provisions set forth in Article 7 specific to U.S. 70 or U.S. 401 shall

govern all signage for individual building development that is located within the U.S. 70/401 Thoroughfare Overlay District and is not defined as a shopping center, business complex or commercial subdivision. Shopping centers, business complexes or commercial subdivisions are subject to uniform sign plan standards contained in Section 7.5.N., unless otherwise noted in said section.

2. When a new business occupies an existing building, the new business shall fully comply with the applicable sign regulations in Article 7.

(Ord. No. 3558, § 2, 7-7-09; Ord. 3714, § 2, 10-22-13; Ord. No. 3780, § 2, 7-7-15)

#### **4.12. I-40 Overlay District.**

##### **A. Purpose and intent.**

1. The Town Council finds that Garner is rich in natural scenic beauty along I-40 within its planning jurisdiction. The Town Council finds that the general welfare will be served by orderly development within the I-40 Overlay District in a fashion which would preserve natural scenic beauty and aesthetic character; promote design quality; and enhance trade, tourism, capital investment, and the general welfare along the thoroughfare. The Town Council therefore establishes these regulations in areas adjacent to I-40 to further those objectives while encouraging the orderly development of land within these corridors.
2. It is the intent of this section that as great a part of the tracts within the corridor as possible be left in an undisturbed or enhanced state of vegetation, and that sufficient areas of natural transitional buffer between uses remain so that the proposed use will be visually in harmony with the natural wooded character of the area. Removing or denuding natural forest vegetation along I-40 is prohibited except as provided in this section.
3. The I-40 Overlay District (O-40) is an overlay zone. The land use regulations applicable to the underlying zone remain in full force and effect except where superseded herein. Where there is a provision not expressed in the underlying zone, or where a provision hereof is in conflict with the underlying zone, the provision of the overlay ordinance shall be controlling.

- B. Location of I-40 Overlay District.** The district is located on either side of I-40 within the Garner zoning jurisdiction. The district shall extend from the right-of-way of the highway, on either side, and measured from the outside right-of-way line of the roadway at its farthest point, including access ramps and interchanges, a distance of 1,250 feet, as shown on the official zoning map maintained in the Planning Department. In cases where any portion of a building or parking area falls within the boundaries of the overlay district, these provisions shall apply to all of the building(s) and parking areas.

- C. Permits required.** Within the I-40 Overlay District, all developments for which a site plan or subdivision plat approval is required pursuant to other provisions of this UDO are required to receive a special use permit issued by the Town Council prior to issuance of building permits.

- D. Lot dimensional requirements.** All dimensional requirements, including minimum lot area and minimum lot width requirements, are established in the underlying zones.

- E. Maximum building height.** No building shall exceed 150 feet above grade; other building height restrictions are governed by the setback from the right-of-way as set forth below.

- F. Minimum building setback requirements.** The required setback for yards not adjacent to the right-of-way of I-40 shall be as set forth in the underlying zone. The minimum building setbacks measured from the scenic corridor right-of-way, including access ramps and interchanges, shall be as follows:

1. For buildings up to 35 feet above grade, there shall be a minimum setback

- of 50 feet from the right-of-way.
- 2. For buildings extending up to 60 feet above grade, there shall be a minimum setback of 100 feet.
- 3. For buildings exceeding 60 feet above grade, there shall be an additional setback, measured beyond the initial 100 foot setback, consisting of two feet for each additional one foot in height up to the maximum height of 150 feet.

G. **Buffering and screening.** Buffering and screening are required. For purposes of this section, the term buffer means a horizontal distance measured perpendicular to the right-of-way. The term screen pertains to vertical distance (height) of plantings, fences, berms and other landscape features. Screens provide visual obstruction; buffers only provide the space in which screens are used.

1. **Yards not adjacent to the right-of-way of I-40.** Those portions of front, rear, side or corner side yards that are not adjacent to the I-40 50-foot buffer and are not devoted to the uses, buildings and structures that are permitted within this section shall provide screening and buffering consistent with this UDO while emphasizing their natural wooded state, and where required, shall provide landscaping, provided, however, a minimum of 50 feet of natural transitional buffer area or its planted equivalent shall be preserved on corner side lot lines within 200 feet from the intersection of the side road with I-40. Provided, further, however, that this subsection shall not apply to single-family residential uses.

2. **Yards adjacent to the right-of-way of I-40.**

a. **Development options within the 50-foot buffer.** The 50-foot buffer adjacent to the right-of-way of I-40 shall be preserved or constructed in accordance with the following development options:

- (1) A natural screen or its newly planted equivalent providing the percentage of visual obstruction required by this section, established and maintained by the owner. ~~The Planning Director~~ A landscape architect licensed in the state of NC shall determine the vegetative composition of the equivalent planting. Provided, however, that this subsection shall not apply to agricultural uses where the 50 feet adjacent to I-40 has been cleared prior to December 7, 1987.
- (2) A natural water body or one specifically designed as a landscape feature adjacent to a low intensity use as defined herein.
- (3) Other landscaping adjacent to a low intensity use as defined herein.
- (4) Other improvements which themselves provide no visual obstruction, such as access roads, which meet the standards of paragraph P below and for which the Board of Adjustment grants a variance if the Board finds the proposed use will not result in a deviation from the letter of this section to any greater extent than is necessary to allow for reasonable development of the tract, provided that the site plan presented for the permit shall contain a condition that the developer install and maintain compensatory landscaping, screening or a combination thereof to meet the percentage of visual obstruction otherwise required in the 50-foot buffer area.

b. **Development options in the front yard beyond the 50-foot buffer.**

- (1) The front yard is defined as that area between the special scenic corridor right-of-way and the area at which the

principal building or buildings are constructed. The front yard includes the buffer and any additional area beyond the buffer as so defined.

- (2) Development options within the front yard area beyond the buffer, provided the screening requirements in the buffer are met first, or that these options, combined with the screening provided in the buffer, satisfy the intent of this section, are as follows:
- (a) Additional natural screening, water bodies and other landscaping as set forth in paragraph G.2.a., above, provided the same are adjacent to medium intensity uses or adjacent to low intensity uses.
  - (b) Other improvements, as set forth hereinafter which have significant impact on the visual quality of the corridor, but which reduce that impact to meet the intent of this section through the use of interior landscaping and screening consistent with this section as follows:
    - (i) Landscaped vehicular surface (parking) areas;
    - (ii) Access roads with street yards;
    - (iii) Accessory buildings;
    - (iv) Outdoor storage and/or display;
    - (v) Loading areas;
    - (vi) Utility service areas;
    - (vii) Boundary fences, gates and security stations.
- c. **Additional screening**, buffering and landscaping requirements, by intensity of use, in any front yard. Generally, the objective of these regulations is to provide a denser screening, landscaping or a combination thereof for more intense uses of land between the special highway and the principal improvements consistent with the purposes of this section and as described herein be high intensity, medium intensity, and low intensity uses.
3. **High intensity uses.** For purposes of this section, high intensity uses include outdoor operation (loading or assembly areas), outdoor storage, and operation utility service areas, and similar uses. All such high intensity uses not screened by an intervening building shall be completely screened (100 percent visual obstruction) from view from the right-of-way of I-40 except for necessary access in the following manner:
- a. A continuous screen of evergreen plant material and/or berm that reaches at least ten to 12 feet high within three years is required. This screen may be placed on either side of a public access road, provided the screen blocks visual penetration throughout all seasons of the year.
  - b. Beyond the initial three year height requirement, all required trees newly planted in the buffer must have an expected mature height of at least 35 feet or greater, unless subject to an overhead power line in which case the mature height may be ~~less as approved by the Planning Director~~ within a range of 8 to 15 feet.
  - c. Alternative screening for utility service areas may be accomplished by locally adapted planting (evergreen or deciduous) which are a minimum of 18 inches tall when planted and are expected to reach height and width equal to or greater than the utility service

structures which are required to be screened. Screening for utility service areas in the right-of-way are to be installed by the utility company or person who installed the service; in all other instances, the property owner shall install the plantings.

4. **Medium intensity uses.** For purposes of this section, medium intensity uses include vehicular surface parking areas in the front yard space adjacent to the right-of-way of I-40. Where such uses are proposed, the screening standards set forth herein apply and are designed to modify and reduce the deleterious visual, environmental and aesthetic effects of existing and proposed vehicular surface areas. Among other purposes, they are designed to modify the appearance of parking areas and vehicular surface areas, to encourage the construction of such necessary areas in a manner that more closely follows the existing natural contours of the land; to distribute planting areas around and within the parking area; and to break the visual blight created by large expanses of vehicular surface areas. The screening requirements are as follows:
  - a. An intermittent screen of mixed deciduous and/or evergreen plant material in the buffer at least ten to 12 feet high within three years, so as to achieve a 50 percent visual obstruction of the development, plus internal vehicular surface area landscaping according to the standards of paragraph P below.
  - b. Within the intermittent screen, beyond the initial three year height requirement, ~~and unless substitute plantings are approved by the Planning Director,~~ all required trees newly planted in the buffer or in the surface parking area must have an expected mature height of at least 35 feet or greater. For deciduous trees, a mature crown spread of at least 30 feet or greater is required unless subject to an overhead power line in which case the mature height may be within a range of 8 to 15 feet~~less as approved by the Planning Director.~~
5. **Low intensity uses.** For purposes of this section, low intensity uses refer to instances where there is only grass or landscaping (including a water body designed as a landscape feature) in the front yard space between the building and the right-of-way of I-40. The screening requirement is an intermittent screen of mixed deciduous and/or evergreen plant material in the buffer at least ten to 12 feet high within three years, or landscaping provided according to an approved plan, which achieves up to 25 percent visual obstruction of the development.

#### H. **Land disturbing activities.**

1. Unless qualifying under development options set forth in subsection G.2.a.(1) through (3) above, no clearing of vegetation shall be allowed for any purpose, including agriculture and timber harvesting, within the 50- foot buffer adjacent to the right-of-way of I-40 regardless of whether land use permits are required under this UDO. ~~The Planning Director has the discretion to grant approval of limited underbrush thinning is permitted provided no visual impacts result from such action~~ for purposes of maintaining or enhancing public safety.
2. Subject only to Article 9, Nonconformities, any expansion of existing land uses involving frontage on the special highway shall comply with this section.
  - a. Site plans submitted under this section shall show a construction limit line delineating the buffer area existing prior to commencing construction.
  - b. No construction, and only selective thinning of underbrush are permitted in the buffer. No clearance of the existing vegetation within the delineated buffer area is allowed until after construction

on the parcel is completed. Any cutting or clearance before completion of construction shall be subject to a fine of \$5.00 per square yard of area in the protected buffer that has been prematurely denuded.

- c. Upon completion of construction, if an approved screening/landscaping plan has not already been approved, such plan shall be submitted at that time indicating how the screening/landscaping objectives of this section are to be achieved, with particular regard to the delineated buffer.
- d. ~~Conditional use permits issued without an initially approved screening/landscaping plan shall bear a condition that a~~Any screening/landscaping plan submitted after construction is completed shall be consistent with this UDO, be complete, and receive the approval of the Town Council.

I. **Sign regulations.** See Article 7.

J. **Restricted uses.**

- 1. The following uses are permitted only if site plans are approved which assure (i.e. condition) that these uses will have no visible outdoor storage or operations adjacent to the special highway:
  - a. Truck service centers (truck stops);
  - b. Car and truck dealerships;
  - c. Uses with storage for retail such as lumber yards, heavy equipment dealers, and similar uses.
- 2. Such site plans shall indicate that all outdoor storage and operation will be located in the yard space farthest away from the special highway and on the far side of the principal buildings.
- 3. Outdoor display (as differentiated from outdoor storage) shall consist of only a sampling of wares sufficient to convey what is sold and is permitted in SB and I-2 zones on a limited basis in accordance with the approved site plan.

K. **Prohibited uses.** The following uses are prohibited:

- 1. Truck terminals mobile home parks and subdivisions;
- 2. Mobile home sales lots;
- 3. Scrap material salvage yards, junkyards, automobile graveyards;
- 4. Sanitary (reclamation) landfill;
- 5. Body shops;
- 6. Storage of radioactive or otherwise hazardous wastes;
- 7. Outside kennels;
- 8. Drive-in theaters;
- 9. Golf driving ranges;
- 10. Water slides;
- 11. Self-serve car washes;
- 12. Solar farms; and
- 13. ~~Other uses, which by their nature or design, fail to meet the tests for a conditional use permit for development within a special highway overlay district.~~

L. **Access points.**

- 1. For lots having more than 500 feet of frontage on an access or frontage road, points of ingress and egress shall be no closer than 500 linear feet.
- 2. For lots having less than 500 feet of frontage onto an access or frontage road, only one point of ingress or egress shall be allowed. Whenever possible, a minimum distance of 200 feet must be maintained between points of ingress and egress.
- 3. Ingress to and egress from a lot shall be prohibited within 200 feet of the

intersection of a special highway.

- M. **Parking.** See underlying zone (land use category). Also, parking areas shall be paved with dust-free, all-weather surface, and shall be properly drained and landscaped. The number of spaces required may be reduced in order to accommodate landscaping required by this section.
- N. **Industrial performance standards.** All outdoor lighting shall be shielded in such a manner that no direct glare from the light source can be seen from the special highway.
- O. **Regulations for screening, buffering, and landscaping in special districts.** The regulations set forth herein apply within the I-40 Overlay District and elsewhere as specifically enacted now or hereafter by the Town Council.
  - 1. **Street yard width and planting requirements.**
    - a. Any nonresidential use of land (including vehicular surface areas) established after the effective date of this section shall provide a street yard along any existing or proposed public street right-of-way adjacent to or adjoining the property except for those portions of the lot used for driveways or buffers planted in accordance with this UDO. The street yard shall be contiguous with the right-of-way.
    - b. The total square feet area of the street yard shall be at least equal to five times the length in feet of frontage adjoining the public right-of-way (i.e., have a minimum of five feet in width).
    - c. The minimum dimension of any street yard used to satisfy this section shall be measured perpendicular to the recorded public street right-of-way.
    - d. The street yard shall contain at least one natural tree for every 50 linear feet of street yard or fraction thereof as measured from the corners of the property, and shall be located so that at least one natural tree is within every 75 linear feet of street yard or fraction thereof and shall be planted at least ten feet from any tree on the right-of-way; but along street yards for display areas, the spacing of trees may be one natural tree every 150 linear feet of the street yard or fraction thereof.
    - e. The street yard shall contain natural trees, either existing or planted, of at least eight feet in height and six and one-quarter inches in circumference (two inches in diameter) measured at one-half foot above grade.
    - f. All required trees in the street yard must be a locally adapted species with an expected mature height of 35 feet or greater and an expected mature crown spread of at least 30 feet or greater, unless subject to an overhead power line in which case the mature height may be within a range of 8 to 15 feet~~less as approved by the Planning Director.~~
    - g. This yard shall be landscaped and be properly maintained by the owner and shall have live vegetation, groundcover, grass, trees, shrubs, and may, unless otherwise prohibited, include fences or walls, screening for loading, utility, and display areas, and plantings for vehicular surface areas. All fences must conform to the requirements of this UDO. No more than 15 percent of this required protective yard shall be covered with an impervious surface which may be used without limitation for walkways, fountains or walls, but not vehicular surface, storage, utility service, display, or loading areas.
  - 2. **Interior screening and landscaping standards.**
    - a. These regulations shall apply to any vehicular surface area or

---

portions thereof built after the adoption of this section, and to pre-existing vehicular surface area when there are additions or expansions which singularly or collectively exceed 25 percent of the land area or gross building floor areas existing at the time this section becomes applicable to the property. These requirements are for all vehicular surface areas, required or otherwise, regardless of the zoning district where they are located.

- b. Landscaped planting areas shall be provided and maintained within the interior of the vehicular surface area and adjacent thereto.
- c. Each planting area shall contain a minimum of 300 square feet in area with minimum dimensions of seven feet and, except for vehicular display areas for which trees are not required, shall contain at least one naturally locally adapted shade tree a minimum of six and one-quarter inches in circumference (two inches in diameter) measured one-half foot above grade with a minimum height of eight feet.
- d. Trees shall be required at the minimum rate of one natural shade tree for every 2,000 square feet of total vehicular surface. All vehicular areas located serving one or more businesses or uses of land or share unified ingress and egress shall be considered as a single vehicular surface area for the purpose of computing the required rate of trees, notwithstanding ownership.
- e. Shade trees as used herein means any tree, evergreen or deciduous, whose mature height of its species can be expected to exceed 35 feet and which has an expected crown spread of 30 feet or more, or is considered a shade tree in accordance with American Standards of Nursery Stock, set forth by the American Association of Nurserymen. The shade tree, existing or planted, shall be at least eight feet in height and six and one-quarter inches in circumference (two inches in diameter) measured at one-half foot above grade for new planted trees and measured at four and one-half feet above grade for existing trees.
- f. Landscaped planting areas are to be located within or adjacent to the parking area as tree islands, at the end of parking bays, inside seven-foot wide or greater medians, or between rows of cars or as part of continuous street or transitional protective yards. The number, size and shape of landscaped planting area shall be at the discretion of the owner; however, no vehicular parking space shall be separated from a shade tree by an intervening building and be located farther than 50 feet from the tree trunk of a shade tree planting area with one tree, or 75 feet from the tree trunk of a planting area with two or more shade trees (existing or planted) provided that any landscaped planting area has a minimum of 300 square feet of continuous growing area for each tree therein.
- g. Landscaped planting areas shall be distributed in a manner which fulfills the purposes of this section.
- h. For vehicular display areas which are not required to have trees, measurements shall be made from the edge of the landscaped planting areas, and no stored vehicle shall be farther than 50 feet from the edge of any landscaped planting area without a tree.
- i. The number of off-street parking spaces required in this UDO may be reduced by the following ratio: The square footage of required landscaped planting area divided by 150, but no fraction thereof, provided that no reduction in the number of off-street parking spaces authorized by this section in excess of ten percent shall



occur without the prior approval of the Town Council which shall first determine if further reductions will cause on-street parking congestion.

- j. Any vehicular surface area shall be provided with landscape areas containing shrubs. Shrubs shall attain a minimum size of 30 inches high within three years of planting. All shrubs shall be a minimum of 18 inches tall when planted and there shall be no gaps between required shrubs greater than ten feet. No more than 40 of the required shrubs may be deciduous. Shrubs shall be required at a rate of one shrub per 500 total feet of vehicular surface area.
- k. Earthen berms may be provided or the ground sloped. Any berms used to comply with this section shall have a minimum height of one and one-half feet and a minimum crown width of two feet and a total minimum width of seven feet and shall be planted with a locally adapted species of shrubs which conform to the first paragraph herein. However, shrubs planted on berms may have a lesser height provided that the combined height of the berm and the plantings after three years is at least 30 inches high.

(Ord. No. 3558, § 2, 7-7-09; Ord. No. 3780, § 3, 7-7-15)

#### 4.13. Swift Creek Conservation District.

- A. **Purpose and intent.** The purpose of these regulations is to protect and preserve the water quality of the Swift Creek Watershed below Lake Benson while allowing the orderly development of land in this environmentally sensitive area. It has been determined by federal and state agencies that this watershed area provides significant wildlife, aquatic, or plant life habitats; that possess characteristics unique to the Town of Garner. It is the intent of these regulations to protect the water quality in this watershed by requiring limits on the amount of impervious surface areas permissible for new residential and non-residential development.
- B. **Swift Creek Conservation District Boundaries.** The portion of the Swift Creek Watershed that is subject to these protection standards is located below Lake Benson in the Town of Garner's zoning jurisdiction generally bounded by Garner Road, N.C. 50, New Rand Road, White Oak Road and the southern Garner ETJ boundary. The exact boundaries are shown on the Official Town of Garner Zoning Map which constitute the official boundaries of the Swift Creek Conservation District where these provisions shall apply for purposes of this UDO.
- C. **Use regulations.** The uses permitted or prohibited in the Swift Creek Conservation District shall be those uses permitted or prohibited in the underlying zoning district that apply to a particular parcel of land.
- D. **Exempt from regulations.** All parcels of land that fall within the boundaries of the Swift Creek Conservation District which are identified on the Town of Garner Official Zoning Map as being exempt properties, shall not be subject to provisions of this overlay district.
- E. **Existing development, redevelopment, and expansions.** Existing development (residential or non-residential) is not subject to the requirements of this section; existing development shall be considered to be any existing impervious surfaces, or for which plan or permit approval has been officially granted; or where a vested right has been established, as of May 31, 2005. Redevelopment or expansion of any existing non-residential development shall be subject to the requirements of this section; however, the impervious surface coverage of the existing development is not required to be included when applying the impervious surface coverage limits of this section.
- F. **Development standards.** The following standards shall apply for new residential

and non-residential development in Swift Creek Conservation District.

1. The standards of both the Swift Creek Conservation District and the underlying zoning district shall apply to each parcel. Where the standards of the overlay district and the underlying district differ, the more restrictive standards shall control development in new projects created after effective date of the Swift Creek Conservation District which is May 31, 2005.
2. The maximum impervious surface coverage of the new residential development projects and new non-residential development projects, which are defined as those projects approved or permitted after the above noted effective date of the Swift Creek Conservation District are as follows:
  - a. New single family detached residential subdivision development projects shall be limited to a maximum of 30 percent total impervious surface area.
  - b. New multi-family residential development projects defined to include townhomes, condominiums, or apartments, ~~or other attached multi-family housing units as determined by the Planning Director,~~ shall be limited to a maximum of 50 percent total impervious surface area.
  - c. New non-residential development projects shall be limited to a maximum of 70 percent of total of impervious surface area.

#### 4.14. Obsolete districts.

**Commentary: These existing districts were applied to land in Garner prior to the adoption of the UDO and remain mapped on the official zoning map, but are no longer available for zoning future land.**

##### A. Residential cluster district (RCD).

1. **Purpose and intent.** The purpose of cluster development regulations is to provide an optional land development procedure which results in the preservation of open space; protection of streams, floodplain areas and significant existing tree cover; promotion of more efficient subdivision street and infrastructure networks; and encouragement of a variety of styles or types of residential dwellings. Cluster development should provide a total living environment for residential purposes that is in compliance with the land use plan and other applicable local, state or federal laws or regulations.

There shall be three residential cluster districts (RCD). Each residential cluster district is a special purpose zoning district and is designed to have similar density characteristics of the various residential zoning districts of the ordinance (excluding the R-5 district) according to one of the following three elements:

- a. RCD-1 shall be the low density cluster development district and shall have a permitted overall average tract density range of up to one dwelling unit per acre. All development within the RCD-1 district shall be in accordance with the provisions of Article 6 and the all other applicable requirements of this UDO.
- b. RCD-2 shall be the medium density cluster development district and shall have a permitted overall average tract density range in excess of one dwelling unit up to five dwelling units per acre. All development within the RCD-2 district shall be in accordance with the provisions of Section 6.1 and all other applicable requirements of the UDO.
- c. RCD-3 shall be the high-density cluster development district and shall have a permitted overall average tract density range in excess of five dwelling units up to 12 dwelling units per acre. All development within the RCD-3 district shall be in accordance with

Section 6.1 and all applicable requirements of the UDO.

2. **Permitted uses.** Residential cluster developments may have as permissible uses single-family detached dwelling units, ~~duplexes, single-family attached dwelling units,~~ residential townhouse dwelling units, and residential condominium dwelling units or any combination thereof so long as the permitted density of the selected residential cluster district is not exceeded.
3. **General requirements.**
  - a. Public sanitary sewer and water connections shall be required for every lot or dwelling unit in a cluster development.
  - b. A master plan shall be required to be submitted if the cluster development is to be the initial phase of a larger project. Conditional ~~use permit~~zoning approval procedures and final plat approval procedures according to the requirements of the land use ordinance shall apply to all cluster developments in designated cluster development districts.
  - c. Each individual cluster development lot containing single family detached or attached units public shall have street access according to the criteria listed in applicable sections of the land use ordinance.
  - d. Residential condominiums and townhouses shall meet the access standards, as well as other applicable sections of the land use ordinance.
  - e. Design of cluster developments will be reviewed by the Planning Commission based upon accepted general design principles, and special design criteria developed by the Commission and appropriate requirements of the ordinance. Where possible, appropriate information on floor plans, building areas, building elevations (materials colors) and landscape provisions should be furnished along with all required information with the CUP application. Restrictive covenants may be submitted to address the above related matters with the CUP application.
  - f. A homeowner's association shall be established to own and maintain all property or facilities held in common private ownership. Documents regarding the homeowner's association shall be submitted to the Town for approval with the final plat and shall be duly recorded with the final plat in the Wake County Register of Deeds Office by the applicant.
  - g. A pre-application conference between the developer or agent and the staff of the Town of Garner shall be required. The meeting should address procedures and requirements of the land use ordinance, conformance with the long range plan, availability of utilities, and general design related matters associated with the project. The developer shall furnish three copies of a conceptual plan which outlines the proposed development of the entire tract of lands. Such plan shall include the following:
    - (1) Structures, location and arrangement.
    - (2) Circulations patterns, vehicular (streets), pedestrian and parking.
    - (3) Existing site conditions, topography, vegetation cover, soil conditions, flood prone areas and streams, and other significant environmental conditions.
    - (4) Tentative provisions for all utilities.
    - (5) Recreational and open space locations.
    - (6) Boundaries of the development including acreage.

- 
- (7) The conceptual plan should be at a scale of one inch equals 100 feet, or larger.
  - h. Dimensional standards.
    - (1) A cluster development lot shall not have a minimum lot area requirement. The overall density or number of dwelling units in a cluster development shall not exceed the allowable density provisions of the cluster district.
    - (2) Front yards may be staggered to provide a variety in the size of such yards. The minimum average of all front yards in a cluster development shall be 20 feet; however, no front yard of any lot shall be less than 15 feet. Side yards shall be a minimum of eight feet each; corner side yards shall be a minimum of 15 feet. Rear yards shall be a minimum of 15 feet. Zero lot line building orientations may be allowed in a cluster development subject to the provisions of Section 6.5.A of the land use ordinance. Individual detached single family units in a cluster development shall have a minimum lot width of 20 feet measured at the street line. The provisions of Article 6 regarding minimum lot widths shall apply to residential townhouse and condominium units.
    - (3) A peripheral yard of at least 25 feet in width, shall be provided along the entire perimeter of a cluster development.
    - (4) Each dwelling unit in a cluster development shall have two off-street parking spaces. In addition, there shall be one space for every two dwelling units set aside in an auxiliary off-street parking area in a cluster development.
  - i. Open space standards. Open space in cluster development shall be no less than 35 percent of the gross area of the cluster development tract. All open space provided in a cluster development shall meet the following criteria in addition to the requirements of Article XIII of the land use ordinance:
    - (1) Open space shall about 75 percent of the lots within the subdivision and shall be well distributed throughout the development so as to achieve the requirement herein.
    - (2) All open space areas shall be at least 40 feet in width, except the open space that is provided around the perimeter of a cluster development. The 40-foot width minimum may be achieved through a combination of common open space and private land disturbing activities.
    - (3) All open space shall be linked, either directly or across street rights-of-way.

**B. Multi-residential district (MR-1).**

- 1. **Purpose and intent.** The MR-1 district must contain a minimum of five acres and is designed to accommodate single family detached units, duplexes, and triplexes as well as zero-lot-line attached units. This district is designed to create and maintain higher density residential neighborhoods and, as special uses, those service, institutional, public and other compatible uses that are so designed, constructed and maintained that they do not detract from the quality of the neighborhood as a place for healthful, quiet and aesthetically-pleasing residential living. When evaluating an application for the MR-1 zoning district, emphasis shall be given to the location of the proposed district to adjoining developed property to ensure that such district is carefully located and achieves a

satisfactory relationship with the surrounding properties.

2. **Permitted uses.** The MR-1 district shall permit the following uses:
  - a. Site-built and modular homes.
  - b. Duplexes and triplexes following approval of a special use permit.
  - c. Nursing and intermediate care homes; group care homes, child care homes, family care homes.
  - d. Zero lot line development following approval of a special use permit.
  - e. Elementary and secondary schools following approval of a special use permit.
  - f. Churches, synagogues and temples following approval of a special use permit.
  - g. Libraries, museums, art galleries, art centers and similar uses located within a building designed and previously occupied as a residence or within a building having a gross floor area not in excess of 3,500 square feet.
  - h. Community centers following approval of a special use permit.
  - i. Publicly or privately owned outdoor lower intensity and lower commercial recreational facilities such as golf and country clubs, swimming or tennis clubs, parks, etc. following approval of a special use permit.
  - j. Police stations, fire stations, rescue squad or ambulance service following approval of a special use permit.
  - k. Reclamation landfill following approval of a special use permit.
  - l. Cemetery following approval of a special use permit.
3. **Density and dimensional regulations.**
  - a. **Minimum lot size:** 7,000 square feet for single-family ~~detached units~~ ~~residences~~. Every lot developed for multifamily residential purposes shall have at least 6,000 square feet for each dwelling unit. Commentary: Single-family detached setbacks follow the same setbacks as the R-9 district.
  - b. **Minimum lot width: 60 feet.**
  - c. **Minimum side setbacks:**
    - (1) Fifteen feet from side lot boundary line for attached units.  
Ten feet from side lot boundary line for detached units.
    - (2) Twenty-five feet from street right-of-way along side of corner lot for attached units.  
Twenty feet from street right-of-way along side of corner lot for detached units.
  - d. **Minimum front and rear setbacks:** Minimum front and rear setbacks 25 feet for both attached and detached units.
  - e. **Maximum building height:** 35 feet for residential buildings. Nonresidential buildings may exceed the height of 35 feet provided the following occurs:
    - (1) The depth of the required front, rear and both side yards shall be increased one foot for each foot or fraction thereof of building height in excess of 35 feet; and
    - (2) ~~The permit issuing authority certifies that such building is designed to provide adequate access to fire fighting personnel, or the building is otherwise designed or equipped to provide protection against the dangers of fire.~~
  - f. **Zero lot line development:** Zero-lot-line developments consisting of groups of two or three attached units may be allowed in accordance with Article 6. Such developments shall be reviewed only through a special use permit, site plan and subdivision plat

concurrently submitted. In addition, a master plan shall be submitted if a zero-lot-line development is to be an initial phase of a larger development.

**C. Mixed Use Development (MXD-1).**

**1. Applicability.**

- a. There shall be a Mixed Use District-1 established.
- b. No area of less than 75 contiguous acres in single ownership or control may be zoned as a MXD-1 zoning district. Section 157 of the land use ordinance provides further guidance regarding MXD-1 regulations.

**2. Purpose.** MXD-1 is intended to produce higher levels of urban land use intensity at or near Community Level Nodes or Metro-focus Nodes, consistent with the Town's long-range plan. MXD-1 zoning permits various combinations of usually separated uses, primarily promoting the development of "business parks". It is not intended to be applied in a limited way to only inner-city development or to mixed uses within one structure (high-rise), but rather, may be used to support either infill or new development on relatively large tracts.

**3. Permitted uses.** Land shall be used and buildings erected, altered, enlarged, or used only for a combination of the uses listed below:

- a. Residential.
  - (1) Apartments and condominiums;
  - (2) Townhomes;
  - (3) Hotels and motels.
- b. Sales and rental of goods, merchandise and equipment.
  - (1) No storage or display of goods outside fully enclosed building;
  - (2) Storage and display of goods outside fully enclosed building if properly screened;
  - (3) Wholesale sales.
- c. Office, clerical, research and services not primarily related to goods or merchandise.
  - (1) Operations designed to attract and serve customers or clients on the premises, such as attorneys, physicians, other professionals, insurance and stock brokers, travel agents, government office buildings, banks, etc.;
  - (2) Operations designed to attract little or no client traffic other than employees of the entity operating the principal use;
  - (3) Offices or clinics of physicians or dentists;
  - (4) Operations conducted within a fully enclosed building.
- d. Manufacturing, processing, creating, repairing, renovating, painting, cleaning, assembling of goods, merchandise and equipment.
  - (1) Service, repair of goods, etc. sold or rented on-premises;
  - (2) Other fully-enclosed operations;
  - (3) Operations conducted outside fully enclosed building if properly screened.
- e. Educational, cultural, religious, philanthropic, social, fraternal uses.
  - (1) Business or vocational schools;
  - (2) Churches, synagogues and temples, including associated residential structures for religious personnel and associated buildings, but not including elementary or secondary school buildings;
  - (3) Libraries, museums, art galleries, art centers and similar

- uses (including associated educational and instructional activities);
- (4) Social, civic, service, fraternal clubs and lodges, union halls, and similar uses.
- f. Recreation, amusement and entertainment.
    - (1) Indoor tennis, racquetball courts, indoor athletic and exercise facilities and similar uses;
    - (2) Playhouse theaters, movie theaters, bowling, pool halls or similar uses.
  - g. Institutional residence of care or confinement facilities.
    - (1) Hospitals, clinics, other medical including mental health, treatment facilities in excess of 10,000 square feet of gross floor area;
    - (2) Nursing care institutions, intermediate care institutions, handicapped or infirm institutions;
    - (3) Group care institution;
    - (4) Continuing care retirement communities consistent with UDO provisions.
  - h. Restaurants, bars, night clubs.
    - (1) Restaurants without drive-in service (ancillary drive-thru window service allowed);
    - (2) Bars, nightclubs, ABC permitted private clubs.
  - i. Motor vehicle related sales and service operations.
    - (1) Motor vehicle sales or rental or sales and service;
    - (2) Automobile service stations;
    - (3) Gas sales operations.
  - j. Storage and parking.
    - (1) Automobile parking garages or parking lots (not provided to meet parking requirements for a principal use);
    - (2) Storage of goods not related to sale or use of these goods on the same lot where they are stored.
  - k. Services and enterprises related to animals.
    - (1) Veterinarian (inside facilities only).
  - l. Emergency services.
    - (1) Police stations;
    - (2) Fire stations;
    - (3) Rescue squad, ambulance service.
  - m. Miscellaneous public and semi-public utilities.
    - (1) Post office;
    - (2) Military reserve, national guard centers.
  - n. Dry cleaner, laundromat.
  - o. Towers and antennas greater than 35 feet tall.
  - p. Nursery schools, day care centers.
  - q. Temporary structures.
  - r. Public transportation facilities.
    - (1) Bus station.
  - s. Non-residential subdivisions.
  - t. Combination uses planned.
  - u. In addition, the MXD-1 district shall allow the use of "flex-space" defined as follows: the sale, lease, or rental of space within a structure or multiple structures that will allow a combination of uses permitted in the MXD-1 district. The following parameters apply to the use of flex-space.
    - (1) Changes in products, services, and square footage of the

permitted uses within a flex-space structure do not require approval of the Town.

- (2) Any portion of the gross floor area in each flex-space structure may be commercial space.
- (3) One parking space shall be provided for each 400 square feet of floor area used as flex space.

4. **Minimum standards for development plan.** The MXD-1 district shall be established through regular zoning procedures, except submission of a conceptual plan, while not required, is strongly encouraged at the time of submission of the zoning application.

a. Conceptual plan. "Conceptual" means that the developer intends to develop the site in the general manner indicated and that he is not to be literally held to specific configuration of the plan. If satisfactory, the Planning Commission and Town Council may elect to "receive" or "accept" the plan. If a conceptual plan is submitted, it should provide the following:

- (1) Proposed use and general location with acres identified.
- (2) Planned primary and secondary traffic circulation patterns with proposed ingress and egress to the district. Identify and locate existing roads, easements and proposed road improvements.
- (3) Planned open space buffers and parks to be provided and preserved, stating proposals for ownership, maintenance and preservation of open space.
- (4) Existing contours at vertical intervals of not more than five feet. Floodplains (100-year) areas are to be delineated.
- (5) Optional details may be required to provide the Town with a better understanding of the proposed MXD-1.

b. MXD-1 district shall be a minimum of 75 contiguous acres in single ownership or control at the time a rezoning application is submitted.

c. In addition to buffering and screening within the MXD-1, perimeter buffer and screen which is also consistent with Section 307 of the land use ordinance shall be provided around the development. A maintenance agreement for all buffer areas shall be developed by the owner/developer, with copies provided with the rezoning application.

d. Where applicable, the MXD-1 district shall be consistent with the Town's parks and greenway plan, special highway overlay district (SHOD) and other adopted Town policies.

e. A minimum of five percent of the total acreage in the overall development zoned MXD-1 shall be designated as common open space in accordance with the following guidelines:

- (1) Floodplains, natural areas, buffers, landscaped areas, seeded areas and lakes may be included in open space.
- (2) Roadways and parking areas may not be included in open space.
- (3) Whether or not dedication/reservation of land is involved, outdoor recreation facilities shall otherwise meet the standards of Section 202.
- (4) The acreage provided as open space shall not count toward satisfaction of the impervious surface requirements directed at controlling run-off from individual lots set forth in this section.

f. The major entrance (ingress and egress) to a MXD-1 shall have direct access to an existing thoroughfare or a thoroughfare



proposed by the developer. The purpose of this requirement is that roads of sufficient capacity to support the proposed development either in place or provided.

- g. A minimum of three of the use categories listed below shall be included in any MXD-1 District and specified at the submission of subdivision and/or site plans:
- (1) Flex space;
  - (2) Office/institutional;
  - (3) Research, technology, and industrial;
  - (4) Commercial;
  - (5) Hotel/motel;
  - (6) Cultural;
  - (7) Residential (maximum of 50 percent of MXD-1, and then, at no more density than that permitted in Section 181 for MF-2. No detached single family residential is permitted).
  - (8) Impervious surface area of individual non-residential lots or parcels in a MXD-1 district shall not exceed 80 percent. Residential uses shall not exceed 70 percent impervious surface ratio.
  - (9) While loading areas and display areas are addressed elsewhere in this section, other outdoor storage/operations shall be buffered and screened so as to provide 100 percent visual obstruction, consisting of fencing or berming and plantings, and otherwise consistent with Section 317 A(2).

5. **Site development criteria.** The development shall be implemented through the site plan conditional ~~use permit (CUP-SP)~~ zoning approval process, and shall meet the following minimum standards:

- a. **Setbacks.** Building setbacks shall not conflict with required buffers from existing rights-of-way, and otherwise, shall meet the following:
- (1) Setbacks for permissible residential uses:
    - (a) **Front yard:** 35 feet.
    - (b) **Side yard:** Ten feet.
    - (c) **Rear yard:** 25 feet.
    - (d) **Corner side yard:** 25 feet.
  - (2) Non-residential setbacks: There are no side and rear setbacks between structures and interior property lines; however, if a separation is proposed, the minimum distance between structures is 20 feet. Unless otherwise identified below, and regardless of yard type, the minimum setback for non-residential structures from any interior street right-of-way is 30 feet. From exterior street right-of-way, the setback shall vary by classification of said street as follows:
    - (a) **Local and collector street:** 60 feet.
    - (b) **Major and minor thoroughfare:** 75 feet.
- b. **Building height.** Building height shall be in conformance with Article 6, District development standards.
- c. **Landscaping.**
- (1) Each tract of land submitted for site plan review shall provide a minimum of 20 percent of the site as landscaped areas. Landscaped is defined as either natural areas or prepared planting areas containing trees, shrubs, and ground covers and seeded areas, and unroofed plazas or common areas, whether pervious or impervious, for pedestrian movement only.

- (2) Necessary easements or fee for greenways, in accordance with the Town's greenway plan, shall be dedicated with the approval of the site plan.
- d. **Off-street parking,** landscaping and loading requirements.
  - (1) Off-street parking shall be provided for each use permitted within the MXD-1 district based on the Town of Garner's requirements. No on-street parking shall be permitted on thoroughfare or collector streets within nonresidential portions of the district. However, on-street parking is allowed in the residential portions, but then, only on local streets.
  - (2) Except for work areas used for active loading/unloading and temporary parking of transport vehicles, parking areas shall be landscaped in accordance with Section 317(A)(2) of the Land Use Ordinance (although part of the MXD-1 district may lie outside the SHOD referenced in paragraph (A) of this section.
  - (3) Loading areas are allowed in any yard of industrial buildings. Otherwise, loading areas shall be located at the rear of buildings. In any case, such areas shall be screened from roads and adjacent property at the perimeter of the MXD-1 district consistent with Section 317(A)(2).
  - (4) Refuse areas and dumpster locations shall be fully screened from adjacent property and rights-of-way.
- e. **Signs.** It is not the intent of this section to require uniform signage throughout the entirety of acreage zoned MXD-1. However, any developments meeting the definition of "shopping center", "business complex" or "commercial subdivision" in Section 7.5 shall comply with the master sign plan requirements of that article. All others signs shall comply with the remainder of said article.

**D. Planned Residential Development.**

- 1. Planned Residential Developments are permissible only in the R-12 PR zoning district. Planned Residential Development is an option provided to encourage a mix of housing options within a comprehensively Planned Development, allowing a density bonus in return for provision of substantial landscaping, screening and buffering.
- 2. Planned Residential Developments are permissible only on tracts of at least five contiguous acres.
- 3. A Planned Residential Development may be developed up to but not exceeding a density of 7,500 square feet per dwelling unit. However, at least 25 percent of the total number of dwelling units constructed must be single family ~~residential dwellings~~residences (other than mobile homes); of the 25 percent, 60 percent of the ~~number of units~~single family residences must be on lots of at least 12,000 square feet, and 40 percent must be on lots of at least 9,000 square feet. Setbacks standard to R-12 must be observed for these units.
- 4. The R-12 PR district also allows the construction of small detached patio home lots with the option to have zero lot line orientation as provided for in this ordinance. The maximum number of lots allowed under this option shall not exceed 25 percent of the total number of dwelling units constructed in an R-12 PR district.
- 5. Each patio or zero lot line dwelling unit in R-12 PR developments shall meet one of the following parking standards:
  - a. A minimum of four off-street parking spaces on each lot;
  - b. A minimum of three off-street parking spaces on each lot plus one

parking space for each dwelling unit set aside in auxiliary off-street parking areas in locations approved by the permit issuing authority. Such parking areas shall be designed and constructed in accordance with all other applicable parking provisions of the land use ordinance.

- c. The ~~permit issuing authority~~BOA may approve an alternative parking design if it finds that the alternative achieves a parking standard of four off street parking spaces for each lot. setback along the entire development perimeter is required, except where 12,000 square foot lots abut similar development. Any required screening and buffering (see Article 7) shall be within this perimeter setback. Parking and access drives may be permitted within the ten feet farthest from the development perimeter, provided any required buffer is not intruded upon.
- 6. The screening requirements that would normally apply where a multifamily development adjoins a single family development shall not apply within the Planned Residential Development, but all screening requirements shall apply between the development and adjacent lots. Preservation of significant natural features shall be documented in the required permit application materials, along with landscaping appropriate to the site, uses and building locations. The provisions for recreation and open space shall be met within the development tract.
- 7. A minimum separation between single-family and multifamily buildings of 60 feet is required. The building to building separation between multifamily buildings is specified in Article 6.
- 8. The minimum dimensional standards for the R-12 PR district are as follows:
  - a. **Lot size:** 7,500 square feet for overall project density.
  - b. **Lot width:** 70 feet for detached unit, 50 feet for patio unit or zero lot line.
  - c. **Front setback:** Patio or zero lot line 15 feet or 20 feet with garage (other units must meet setbacks according to lot size).  
**Side setback:** Patio or zero lot line aggregate of 15 feet minimum seven feet.  
**Corner side setback:** Patio or zero lot line is 15 feet or 20 feet with garage.  
**Rear setback:** Patio or zero lot line is 20 feet.

(Ord. No. 3396, § 3, 4-3-06; Ord. No. 3523, § 2, 8-4-08; Ord. No. 3558, § 2, 7-7-09)

**4.15. Timber Drive East Overlay District.**

- A. **Purpose and intent.** The Town Council finds that vehicular and pedestrian mobility should be maximized along the Timber Drive East Corridor. The Council believes that Timber Drive East Extension is a place where residential neighborhoods should be preserved and quality commercial uses should be located only in areas recommended by the comprehensive growth plan, which together results in a pleasing and harmonious environment of trees, natural and landscaped areas, and building development. Therefore, the Council adopts the Timber Drive East Overlay District as a means to direct commercial development at recommended core areas along Timber Drive consistent with the standards established herein in order to protect the general appearance of the Timber Drive East Corridor, while sustaining the livability of the surrounding residential neighborhoods and the natural beauty of the area.
- B. **Overlay zone.** The Timber Drive East Overlay District is an overlay zone. The land use regulations applicable to the underlying zone remain in full force and effect except where superseded herein. Where there is a provision not expressed in the underlying zone, or where a provision hereof is in conflict with the underlying zone

or other requirement, the stricter provision shall be controlling.

- C. **Location.** The Timber Drive East Overlay District shall apply to the segment of Timber Drive from N.C. 50 to White Oak Road and shall include all of the property with frontage on Timber Drive from N.C. 50 to White Oak Road as defined by the Official Timber Drive East Overlay Map. The Town of Garner Official Zoning Map shall be amended to clearly indicate the boundaries of the adopted Timber Drive East Overlay District. In cases where any portion of a building or parking area falls within the boundaries of the overlay district, these provisions shall apply to all of the building(s) and parking areas.

D. **Conditional zoning districts authorized.**

1. The Town Council may establish conditional zoning districts upon request by or on behalf of the property owner as provided herein only for properties located within the Timber Drive East Overlay District.
- ~~2. Within any such conditional zoning district, all of the uses that are permissible shall require a conditional use permit site plan or subdivision plan where individualized development conditions are imposed. In lieu of setting forth all of the regulations applicable to such conditional zoning districts, the ordinance establishing it may incorporate by reference all of the regulations applicable to a corresponding general use district except to the extent that the ordinance cannot provide for less stringent requirements than those of the referenced general use district. Any conditional zoning district established under this section shall be designated by adding "C" to the general use district incorporated by reference and by adding a numerical subscript to indicate the order in which such districts were created. These designations shall be applied to the official zoning map as in the case for other amendments.~~
- ~~3. At the option of the applicant, the site or subdivision plan along with individualized conditions may be proposed in an application for a conditional use permit filed in tandem with a conditional use district rezoning application or it may be filed at a later date. When an application for a conditional district is filed with a conditional use permit for site plan or subdivision application, such applications shall follow the approval procedures outlined under Article 3 of the Unified Development Ordinance (the terms CUP and SUP being synonymous for the purpose of this article.)~~
- ~~4. When an application for a conditional district is filed without a conditional use permit site plan or subdivision application, the applicant is expected to impose such general conditions as are appropriate to effectuate the design standards set forth for the Timber Drive East Overlay District or other conditions deemed appropriate. When an application for a conditional district is filed without a conditional use permit site plan or subdivision application, such application shall follow the approval procedures outlined under Article 3 of the Unified Development Ordinance.~~

- E. **Permissible and Prohibited uses.** Unless otherwise restricted below, all uses allowed by the underlying zoning district are permissible in the Timber Drive East Overlay District provided all requirements and permits as required by this UDO are satisfied.

1. **Restricted uses.** The following uses are permissible in the Timber Drive East Overlay District provided the use complies with special standards listed below.
  - a. Temporary school classroom units are permissible provided they are screened from all public street views. Any landscaping required to achieve this standard shall be installed at an initial height of six feet ~~unless otherwise approved by the permit issuing authority.~~
  - b. Open storage and operations are restricted to only those activities associated with a garden center use operated in conjunction with a

home improvement center or a large retail store provided the location of outside storage is 100 percent screened from public street views as determined by the Planning Department. The amount of outside storage areas is limited to 25 percent of the gross floor area of principal use served.

- c. Fast food restaurants with drive-in window operations are permissible only when such drive-in window service area(s) are not visible from Timber Drive street views ~~unless otherwise approved by the permit issuing authority.~~
- d. Convenience store or gas sales operations that meet the following design criteria:
  - (1) Operation limited to between 5:00 a.m. and 11:00 p.m.;
  - (2) The number of pump dispensing units shall be limited to a maximum of four units with no more than eight fueling positions;
  - (3) Principal building shall have a pitched roof with shingle roof material ~~unless otherwise approved by the permit issuing authority;~~
  - (4) Canopy structure(s) shall be detached ~~unless otherwise approved by the permit issuing authority;~~
  - (5) Canopy structures shall have a roof style and be constructed of a building material to match the principal building and shall not exceed the height of the principal building, but in no case shall the canopy height exceed 20 feet (large canopy superstructures are prohibited);
  - (6) Site lighting shall be designed to have a zero foot-candle measurement at property lines adjoining residential uses ~~and shall be designed in a manner that is acceptable to the permit issuing authority;~~
  - (7) Canopy/gas island operational areas shall be screened from adjoining residential uses to provide a 100 percent visual screen throughout the year to a minimum height of eight feet using any combination of landscaping, earthen berms or fencing ~~as approved by the permit issuing authority;~~ and
  - (8) Canopy/gas island operational vehicular areas shall be screened from all public streets to a minimum height of three feet ~~in a manner approved by the permit issuing authority.~~
- e. Gas sales operations, which may include a small kiosk or enclosed structure not exceeding 300 square feet in size that is not designed for walk-in traffic may be allowed in the Timber Drive East Overlay District ~~if the permit issuing authority concludes all of~~ provided that the requirements listed in Subsection d. above have been satisfied with the exception of Subsection d.(2), and that the following requirements have been met.
  - (1) The site does not front directly on Timber Drive and the building/canopy is located a minimum of 200 feet from Timber Drive.
  - (2) Up to a total of six gas dispensing units with no more than a total of 12 fueling positions allowed.
  - (3) ~~The permit issuing authority concludes the overall appearance and design of the building and/or canopy, including site landscaping, is consistent with surrounding development in terms of scale, building materials and colors.~~
- f. Hotel and motels are allowed uses provided such uses are not

located closer than 300 feet to the boundary line of a single-family residential zoning district.

- g. Limited vehicle services are permitted/allowed provided the following design criteria are met:
  - (1) Limited vehicle service centers are permissible on parcels located within the Timber Drive East Overlay District that directly front along U.S. 70 or N.C. 50 only;
  - (2) All service bay(s) associated with uses shall be oriented so as not to directly face U.S. 70, N.C. 50, or an adjoining residential use;
  - (3) All service bays shall have 100 percent screen to a minimum full height of two and one-half feet at time of plant installation, and shall be maintained at a minimum height of three and one-half feet ~~or to a greater height if required by the permit issuing authority;~~ and
  - (4) A 100 percent screen to a minimum height of eight feet shall be required where the property directly adjoins a residential use.

2. **Prohibited uses.** The following uses are prohibited in the Timber Drive East Overlay District:

- a. Sales and rental of goods, merchandise and equipment with storage operations and display of goods outside a fully enclosed building.
- b. Office, clerical, research and services not primarily related to goods or merchandise where operations are conducted outside a fully enclosed building.
- c. Manufacturing, processing, creating, repairing, renovation, painting, cleaning, assembling of goods, merchandise and equipment.
- d. Pool halls.
- e. Golf driving ranges (not accessory to golf courses), miniature golf courses, skateboard parks, water slides and similar uses.
- f. Drive-in movie theaters.
- g. Bars, nightclubs, ABC permitted private clubs.
- h. Adults cabarets and establishments.
- i. Vehicle sales or rentals.
- j. Auto service stations.
- k. General vehicle repair.
- l. Vehicle towing and/or storage.
- m. Car wash.
- n. Storage and parking.
- o. Scrap materials, salvage yards, junkyards, and automobile graveyards.
- p. Service and enterprises related to animals with outside facilities for keeping animals.
- q. Mining or quarrying operations; including on-site sales of products; coal or aggregate sales and/or storage; and concrete mixing plants.
- r. Reclamation landfills.
- s. Towers and antennas greater than 35 feet tall.
- t. Open air markets.
- u. Bus stations.
- v. Taxi base operations.
- w. Commercial greenhouse operations.
- x. Recyclable material collection centers.

- y. Flex space.
- z. Outdoor entertainment facility.
- aa. Jail/detention facility.
- bb. Self-storage facility.
- cc. Solar farms.

**F. Land disturbing activities.**

1. All development plans submitted under this UDO shall show a construction limit line delineating protected buffer areas and any tree save areas intended for the property. Protective orange fencing surrounding all protective buffer areas, plus ten feet, and around tree save areas at the drip line shall be installed prior to construction. Any cutting or clearance within an approved protected buffer or tree save area shall be subject to a fine of \$5.00 per square yard of area in the protected buffer or tree save area that has been prematurely denuded.
2. No minor clearance of the existing vegetation within an approved protected buffer area or tree save area to be retained on the property shall be allowed until after construction on the parcel is completed and upon approval by the Planning Department.
3. Logging or timbering activities on properties within the corridor are strongly encouraged to be limited to the interior portions of the lot exclusive of required buffer areas unless specifically approved by the Town of Garner, according to the general requirements of the UDO.
4. Land development activities such as, but not limited to, site grading, buildings, parking and vehicular areas, shall be excluded from the perimeter area of lots in order to protect existing trees and vegetation in required buffer areas ~~unless otherwise approved by the permit issuing authority~~ if allowed under the general provisions of the UDO.
5. Any grading or clearing (including removal of stumps) on land within the overlay district, not part of a development proposal, requires site plan approval by the Town of Garner prior to any such activity on the site. All such activities shall be consistent with the standards of this UDO.

**G. Street access.** The existing access location standards set forth in Article 8 of the UDO shall govern driveway locations on Timber Drive as well as North Carolina Department of Transportation requirements. The permit issuing authority may allow deviations from these standards if it concludes, based upon a traffic impact study submitted by a professional traffic engineer, the requested deviations do not pose any traffic safety impacts to the public and that such deviations have been recommended by the Town Engineer and the North Carolina Department of Transportation.

**H. Design standards.** The following design standards shall apply to all new developments within the Timber Drive Overlay District:

1. **Building height.** The maximum building height for a development located in the Timber Drive East Overlay District is 35 feet when it directly adjoins residentially developed property, unless the building setback from all property lines increases one foot for every foot the building exceeds 35 feet in height. For all other locations on the corridor, the applicable building height limits are controlled by the existing requirements of Article 6.
2. **Building setback from Timber Drive right-of-way.** Building setback shall be 35 feet from the Timber Drive right-of-way line, ~~unless the permit issuing authority approves the option to allow a~~ build-to line of 20 feet with this permitted when no vehicle surface areas are located in front of the building. For all other building yard setbacks, the applicable underlying zoning standards shall apply.
3. **Building design guidelines.** All shopping center developments, business

or office complexes shall provide design guidelines consistent with the following standards which must be approved by the Town of Garner as part of the overall development plan submittal. An individual nonresidential building not part of a larger shopping center or business or office complex shall be subject to the following provisions:

- a. No metal or vinyl siding on nonresidential buildings shall be permitted;
- b. Seventy-five percent of the primary building materials shall consist of brick or decorative/scored concrete masonry units in styles and colors approved by the Town of Garner. Such building materials shall be applied on all building facades visible from Timber Drive;
- c. All dumpster enclosures and accessory/storage buildings for new development shall be of materials and colors that match the principal building served and shall be sited on the property to minimize views from all public streets.
- d. All building awnings used must be appropriately designed as part of the building's architecture and unified with the building's colors and style. Such awnings shall not be internally illuminated ~~unless specifically approved by the permit issuing authority;~~
- e. Buildings shall be limited to a maximum of three types of materials and colors. If a building is part of a shopping center, business or office complex, the materials and colors used must be consistent with the approved design guidelines for the larger development;
- f. Design guidelines required by this UDO shall substantially meet the applicable design recommendations of the comprehensive growth plan ~~in a manner acceptable to the permit issuing authority~~ and shall include provisions that address building height, scale and setback distances, unifying site elements such as building materials and colors, landscaping, site lighting elements, and pedestrian circulation systems ~~and other elements deemed appropriate by the permit issuing authority for the particular location on Timber Drive;~~ and
- g. Chain link fences in commercial zoning districts shall have vinyl covering or some other similar material in a color that is compatible with the principal building materials and colors ~~unless otherwise approved by the permit issuing authority.~~

**I. Vegetation and landscaping standards.**

**1. General street buffer requirements.**

- a. An undisturbed street buffer along Timber Drive shall be required ~~unless otherwise approved by the permit issuing authority.~~ Minor underbrush clearing is permissible only by obtaining preapproval from the Planning Department. Such approval may not be unreasonably withheld without just cause.
- b. The street buffer shall extend 50 feet along corner side streets and 40 feet along all entrances to new developments.
- c. The use of native or locally adaptable species is required ~~unless alternative plantings are approved by the permit issuing authority.~~
- d. Construction limit lines shall be shown on all site development plans. Approved undisturbed areas shall be protected on the ground with orange fencing and shall be installed prior to the issuance of a building permit. Such fencing shall be maintained during the entire time of construction.
- e. The suitability of existing vegetation to meet the planting requirements for a required street buffer must be approved by the



Planning Department. Otherwise, the applicant shall be required to provide a new landscape planting plan which meets the standards of this UDO as well all other applicable requirements of Article 7. Such plans must be approved by the Town of Garner Planning Department and the permit issuing authority.

2. **Residential street buffer.** Residential subdivisions and unsubdivided developments with frontage along the right-of-way of Timber Drive shall maintain a 25-foot undisturbed buffer. No fencing shall be allowed within the 25-foot buffer area. Fences shall not be allowed along property frontages with Timber Drive unless they are of uniform height and design according to plans that have been approved by the permitting authority. Required landscape planting within the residential street buffer shall consist of one street tree (ten feet tall with a two-inch caliper at installation) for every 40 feet of street frontage, with a combination of vegetation and/or earthen berms to achieve a 100 percent screen to a height of four feet.
3. **Nonresidential street buffer.**

- a. **Undisturbed street buffer.** A 20-foot undisturbed street buffer along Timber Drive shall be required. Minor underbrush clearing of an undisturbed street buffer is permissible only with preapproval from the Planning Department. Where existing trees and vegetation are retained that qualify according to the terms of this UDO regarding types, sizes, locations, and are healthy species as determined by the Planning Department, additional landscaping may not be required. In cases where additional planting is required when existing vegetation is not present in the street buffer area, a street buffer planting plan must be approved by the Town of Garner. One street tree shall be provided for every 40 feet of frontage. Such tree shall be a minimum of 12 feet tall with a two and one-half-inch caliper at installation. All vehicular surface areas visible from Timber Drive must provide additional landscape screening to achieve a 100 percent screen of the vehicular surface area to a minimum height of three feet at installation.

- b. **Street buffer for 20-foot build-to-line option.** Where the build-to-line option is approved by the permit issuing authority and there is no vehicular surface area between the building and the right-of-way of Timber Drive, a 20-foot street buffer with only a lawn area and one street tree (12 feet tall with a two and one-half-inch caliper at installation) for every 40 feet of frontage is permissible. Under this option, vehicular surface areas shall be located in the rear of the building unless otherwise approved by the permit issuing authority.

- J. **Site lighting.** The provisions of Article 7, Special standards in the Timber Drive Overlay District, shall apply to properties located in the Timber Drive East Overlay District.

- K. **Signage.** The provisions of Article 7 regarding signage requirements for Timber Drive shall apply to property located in the Timber Drive East Overlay District.

(Ord. No. 3497, § 1, 12-18-07; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3780, § 4, 7-7-15)

#### 4.16. Garner Road Overlay District.

- A. **Purpose and intent.** The Town Council finds that Garner Road is an important roadway corridor through the historic portion of the Town of Garner. It was the first paved road in the state and once served as a main travel route connecting central North Carolina to the coast. As such, this roadway corridor played a very important role in the early development of Garner. Presently commercial areas along this corridor are characterized by large signs, unscreened surface parking areas with little or no landscaping and significant amounts of

outdoor storage. The Council believes it is important for the community to improve these conditions in order for Garner Road to function efficiently as a transportation facility, provide opportunities for new business locations and promote a strong commitment to quality community appearance.

- B. **Overlay zone.** The Garner Road Overlay District is an overlay zone. The land use regulations applicable to the underlying zone remain in full force and effect except where superseded herein. Where there is a provision not expressed in the underlying zone, or where a provision hereof is in conflict with the underlying zone or other requirement, the stricter provision shall be controlling.
- C. **Location.** The Garner Road Overlay District shall apply to the segment of Garner Road located generally from Northview Street east to the limits of the Town's jurisdiction near the intersection of Garner Road and Auburn-Knightdale Road as illustrated on the attached map which is herein incorporated as part of this ordinance. The Town of Garner Official Zoning Map shall be amended to clearly indicate the boundaries of the adopted Garner Road Overlay District. In cases where any portion of a building or parking area falls within the boundaries of the overlay district, these provisions shall apply to all of the building(s) and parking areas.
- D. **Permissible and prohibited uses.** Unless otherwise restricted below, all uses allowed by the underlying zoning district are permissible in the Garner Road Overlay District provided all requirements and permits as required by this UDO are satisfied.
1. **Prohibited Uses.**  
The following uses are prohibited in the Overlay District.
    - a. Drive-in movie theaters;
    - b. Adult cabarets and establishments;
    - c. Outside Storage of Goods not related to Sale or Use on Premises;
    - d. Junkyards, automobile graveyards;
    - e. Commercial Greenhouse Operations; and
    - f. Solar farms.
  2. **Prohibited uses adjacent to or within 150 feet of existing residential uses.**  
The following uses are prohibited adjacent to or within 150 feet of an existing residential use:
    - a. Pool halls/bowling alleys only; and
    - b. Bars/night clubs/ABC-permitted private clubs..
  3. **Restricted uses.** The following uses are permissible in the Garner Road Overlay District provided the use complies with special standards listed below:
    - a. **Motor vehicle sale lots.** All vehicle display areas with frontage along Garner Road shall be screened to a minimum height of 2½ feet. Such screening height must be achieved within 1 year.
    - b. **Automobile service centers.** All service bay door areas shall be oriented so as not to directly face Garner Road. All service bay doors areas shall have a 100 percent screen to a minimum height of 3 ½ feet if such areas are visible from public street views. Such screening height must be achieved within 1 year.
    - c. **Automobile repair and body shops.** All service bay areas shall be located at the rear of the building or be oriented in such a manner so as not to be directly visible from Garner Road ~~as approved by the permit issuing authority.~~ All overnight vehicle storage areas shall be located in the rear of the building. Such storage areas shall be 100 percent screened from public street rights-of-way to a minimum height of 6 feet by the use of fencing, landscaping, berms, or a combination thereof ~~as approved by the permit issuing authority.~~
    - d. **Car washes.** Car washes are permissible, provided the buildings are oriented in such a manner that the wash bays do not directly

~~face Garner Road. If such orientation is not reasonably practical as determined by the permit issuing appropriate screening of the building is provided in a manner and location approved by the permit issuing authority~~

4. **Nonconforming uses.** The provisions of Article 9 regarding nonconformities shall apply to properties located in the Garner Road Overlay District.
5. **Street and driveway access.** The existing access location standards set forth in Section 8.2 of the UDO shall govern driveway locations on Garner Road as well as North Carolina Department of Transportation requirements. ~~The permit issuing authority may allow deviations~~ Deviations from these standards if it concludes may be allowed via Variance, based upon a Traffic Impact Study submitted by a professional traffic engineer, the requested deviations do not pose any traffic safety impacts to the public and that such deviations have been recommended by the Town Engineer and the North Carolina Department of Transportation.
6. **Site lighting.** The provisions of Article 7 shall apply to properties Located in the Garner Road Overlay District.
7. **Signage.** The provisions of Article 7 shall apply to property located in the Garner Road Overlay District.
8. **Nonconforming sign requirements.** Existing non-conforming signs located in the Garner Road Overlay District as of the date of the adoption of this ordinance shall be required to come into compliance when a change in business operations occurs or a change in use occurs.
9. **Building design standards.** All retail or office complexes or commercial subdivisions, as defined in this UDO, shall be required to obtain Town approval of Building Design Guidelines that are consistent with the following standards. An individual nonresidential building, not part of a Larger retail center, office complex, or commercial subdivision, shall also be subject to these provisions. All new development must comply with the following standards:
  - a. The use of pre-fabricated metal buildings shall not be permitted unless all building facades visible from street views are treated with brick, decorative/scored concrete masonry units (CMU). Exterior insulated finishing systems (EIFS), or ~~other similar materials in styles and colors approved by the permit issuing authority~~ may be used only as minor accents (less than 25% of a visible building façade).
  - b. Design guidelines shall be required for all shopping centers, business or offices complexes and commercial subdivisions located within the overlay district. Such guidelines must be included as part of the initial overall development plan submittal. All development that is subject to Design Guidelines approved by the Town must be constructed in accordance with the applicable standards for that specific development.
  - c. All design guidelines shall include, but not be limited to, provisions that address building height, mass and scale, setback distances and unifying site elements such as building materials and colors, Landscaping, site Lighting elements, and pedestrian circulation systems and other elements deemed appropriate by the permit issuing authority for the particular location on Garner Road.
  - d. Vehicular parking surface areas with direct frontage on Garner Road shall have curb and gutter and be paved with a permanent surface consisting of a minimum six inches of base stone and two

inches of 1-2 asphalt from the edge of the front vehicular/parking surface area to the front building line. An equivalent permanent surface material may be used as an alternative ~~if approved by the permit issuing authority.~~ Truck Loading and/or vehicular service areas shall be oriented on the property so as to be out of public street views unless ~~approved by the permit issuing authority~~ consistent with the requirements herein.

10. **Requirements for existing uses.** All existing nonresidential uses of property with direct frontage on Garner Road shall comply with the following requirements by December 31, 2010:

**a. Parking lot landscape planting for existing uses.**

- i. All affected properties shall comply with the street tree requirements of the UDO and screen all outside display/storage areas or vehicular surface areas directly fronting along Garner Road to a minimum height of 2'2 feet at installation and planted five feet on center at installation. All landscape areas shall be edged with curb and gutter construction in a manner and location approved by the Town of Garner.
- iii. Each property owner or designee shall be responsible for obtaining landscape plan approval from the Planning Department which complies with these standards and install the planting material prior to the December 31, 2010 deadline date.
- iv. In cases where the existing property does not have sufficient land area available to accommodate the required landscaping on site without severely impacting business operations, the Planning Department may allow deviations from these standards provided the following is accomplished:
  - An appropriate combination of street trees and shrubs is provided in Locations that effectively improve the appearance of the property and special highway corridor as determined by the Planning Department (the use of nw area is permissible with an NC DOT encroachment agreement; maintenance by property owner shall be required).
  - A maximum deviation of up to 50 percent of required Landscaping may be authorized by the Planning Department if it finds there is not sufficient space available on private property and/or public right-of-way areas (merely having to relocate storage areas when sufficient space elsewhere on site is available does not qualify for this type of relief).
  - The decision of the Planning Department may be appealed to the Planning Commission for review and recommendation with the final decision by the Board of Aldermen

**b. Existing Businesses with outdoor storage.**

- i. All outdoor storage of unlicensed vehicles, equipment or other materials as identified by the town of Garner Located between the front of the building and the right-of-way of Garner Road shall be removed by December 31, 2010. This restriction includes the prohibition of overnight storage of vehicles in the above defined area that are associated with automobile repair shops. The provision is not intended to prohibit or restrict overnight parking of licensed commercial vehicles associated with the conduct of the business.

- 
- ii. All outdoor storage of items described above shall be allowed only if such storage is located in an area behind the front building line of a building with 100% screening is provided up to a height of 6 feet from all street views in a manner acceptable to the Town.
  - iii. Each property owner or designee shall be responsible for obtaining plan approval from the Planning Department which complies with these standards and install the required improvements prior to the December 31, 2010 deadline.
  - iv. Some minor deviation of the standards identified (b) (i) above may be authorized by the Planning Department if it finds it is in the public interest to grant some minor relief from these requirements.
  - v. The decision of the Planning Department may be appealed to the Planning Commission for review and recommendation with the final decision by the Town Council.

(Ord. No. 3528, § 1, 10-21-08; Ord. No. 3558, §§ 2, 3, 7-7-09; Ord. No. 3780, § 5, 7-7-15)

**Editor's note:** The map referred to in subsection C. is not set out herein but is on file and available for inspection in the offices of the Town.

5.1. Use tables.

- A. **Types of use.** All of the use categories listed in the use table are defined and described in Section 5.2 immediately following the use table.
  1. **Uses permitted by right.** A "P" indicates that a use is allowed by right in the respective district. Such uses are subject to all other applicable regulations of this UDO.
  2. **Permitted uses subject to supplemental standards.** A "P\*" indicates a use that will be permitted, provided that the use meets ~~an additional list of~~ additional standards contained in Section 5.3, Specific use standards. Such uses are subject to all other applicable regulations of this UDO.
  3. **Special uses.** An "S" indicates that a use is allowed only if reviewed and approved as a special use permit in accordance with Section 3.14. Special uses are subject to all other applicable regulations of this UDO.
  4. **Conditional uses.** A "CZ" indicates that a use may only be established through a Conditional Zoning approval. The term conditional uses applies only to those uses permitted as part of a conditional zoning ~~conditional use zoning district~~ adopted in accordance with ~~Section 3.13~~ Article 3 or for existing, legally-established and operated, conditional zoning districts ~~established prior to the adoption of the UDO.~~
- B. **Uses not allowed.** A blank cell in the use table indicates that a use or use category is not allowed in the respective district.
- C. **Uses not listed.** The Planning Director shall determine whether or not an unlisted use is part of an existing use category defined in or is substantially similar to an already defined use, using the criteria in Section 5.2, Use categories.

USE		RESIDENTIAL DISTRICTS								NONRESIDENTIAL DISTRICTS									
P = Permitted by right		P* = Permitted subject to standards								S = Special use permit required									
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes	
<b>RESIDENTIAL</b>																			
Household Living (see 5.2D.1)	Single-Family Detached	P*	P*	P*	P*	P*	P*			P*								6.1 & 6.8	
	Residential Cluster	P*	P*	P*	P*	P*		P*	P*									6.3	
	Two-Family Dwelling							P*	P*									6.2	
	Townhouse							P*	P*		P*	P*	P*	P*				6.5	
	Condominium							P*	P*		P*	P*	P*	P*				6.5	
	Multifamily (triplex and higher, including Apartment)								P*	P*									6.2
	Upper-Story Residential										P*	P*	P*		P				5.3A.5
USE		RESIDENTIAL DISTRICTS								NONRESIDENTIAL DISTRICTS									
P = Permitted by right		P* = Permitted subject to standards								S = Special use permit required									
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes	
	Manufactured Home (Class A Unit Only)	P*																6.7.B	



Article 5. Use Regulations

Funeral Home and Crematorium											P		P	P	P	P			5.3F
Government Facilities (see 5.2E.4)	Ambulance Service, Rescue Squad, Police or Fire Station	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	P	P	P		
	Government, Utility Facility with Outdoor Storage															<u>CZS</u>		<u>CZS</u>	
	Government Office											<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>			
	Prison, Jail, Detention Facility																S	S	
Health Care (see 5.2E.5)	Continuing Care, Retirement Facility							<u>CZS</u>	<u>CZS</u>					<u>CZS</u>					5.3B.10
	Hospice							P	P					P	P				
	Hospital												S	S	S				5.3B.11
	Ambulatory Health & Emergency Care Facility													S	S				5.3B.11
	Medical Clinic													P	P	P	P		
	Mental Health Facility														P	P			
Institutions (see 5.2E.6)	Group Care Facility														P	P			
	Handicapped Institution														P	P			
	Intermediate Care Institution														P	P			
	Nursing Care Institution														P	P	P		
<b>USE</b>		<b>RESIDENTIAL DISTRICTS</b>									<b>NONRESIDENTIAL DISTRICTS</b>								
<b>P = Permitted by right</b>		<b>P* = Permitted subject to standards</b>									<b>S = Special use permit required</b>								
<b>Use Category</b>	<b>Specific Use</b>	<b>R-40</b>	<b>R-20</b>	<b>R-15</b>	<b>R-12</b>	<b>R-9</b>	<b>RMH</b>	<b>MF-1</b>	<b>MF-2</b>	<b>NO</b>	<b>NC</b>	<b>C B D</b>	<b>OI</b>	<b>CR</b>	<b>SB</b>	<b>I-1</b>	<b>I-2</b>	<b>Notes</b>	
Parks and Open Space (see 5.2E.7)	Cemetery	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*			5.3B.2	
	Public Park, Swimming Pool, Tennis Court, Golf Course	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	<u>CZS</u>	
Passenger Terminal (see 5.2E.8)	Bus Passenger Terminal															S	<u>CZS</u>	<u>CZS</u>	
	Taxicab or Limousine Operations or Facility															S	<u>CZS</u>	P	
Religious Institution (see 5.2E.9)		P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*			5.3B.6	
	Broadcast Tower																S	S	



Article 5. Use Regulations

Utilities (see 5.2E.10)	Minor Utility, Elevated Water Storage Tank	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	5.3B4			
	Solar Farms	S														S	S	S	5.3B.5			
	Telecommunication Facility	S													S	S	P*	P*	5.3B.8			
	Other Major Utility	S														S	S	S				
<b>COMMERCIAL, OFFICE, RETAIL</b>																						
Entertainment (see 5.2F.1)	Bar, Nightclub, Tavern														<u>CZ</u> S		<u>CZ</u> S	<u>CZ</u> S	P*	P*	5.3C.2	
	Golf Course or Country Club, Private	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S						
	Gym, Spa, Indoor Tennis Court or Pool, Private											P*	P*	P	P	P	P	P	P	P	5.3C.6	
	Horse Stables and Related Facilities	<u>CZ</u> S																	P	P		
	Indoor Entertainment Facility																P*	P*	P*	P*	5.3C.6	
	Electronic Gaming Centers																P*	P*	P*	P*	5.3C.17	
<b>USE</b>		<b>RESIDENTIAL DISTRICTS</b>										<b>NONRESIDENTIAL DISTRICTS</b>										
<b>P = Permitted by right</b>		<b>P* = Permitted subject to standards</b>										<b>S = Special use permit required</b>										
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes				
	Outdoor Athletic or Entertainment Facility, Private											<u>CZ</u> S			<u>CZ</u> S	<u>CZ</u> S						
	Sexually Oriented Business														S			5.3C.10				
	Theater											<u>CZ</u> S		P	P							
	Theater, Drive-In														S	S	S					
	Water Slide, Golf Driving Range, Miniature Golf, Batting Cage or Similar Use														<u>CZ</u> C	<u>CZ</u> C						
	Medical Office, Individual										P	P	P	P	P	P	P	P				
	Other Office										P	P	P	P	P	P	P	P				
Overnight Accommodation (see 5.2F.3)	Bed and Breakfast	S	S	S	S	S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S							
	Extended Stay Facility														<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	5.3C.5				
	Hotel/Motel													<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S						

Article 5. Use Regulations

USE	RESIDENTIAL DISTRICTS										NONRESIDENTIAL DISTRICTS							
P = Permitted by right	P* = Permitted subject to standards										S = Special use permit required							
Use Category	Specific Use	R-40	R-20	R-15	R-12	R-9	RMH	MF-1	MF-2	NO	NC	C B D	OI	CR	SB	I-1	I-2	Notes
Parking, Commercial (see 5.2F.4)																		
Restaurants (see 5.2F.5)	Restaurant, Drive-In or Outdoor Curb Service														P	P	P	
	Restaurant, Indoor with Seating Only									P*	P			P	P	P	P	5.3C.8
	Restaurant with Seating and Drive-Through Window													P	P	P	P	
	Restaurant, Take-Out Only (Drive-Through or Walk Up)										P*	P			P	P	P	5.3C.9
Retail Sales and Service (see 5.2F.6)	Convenience Store without Fuel Sales										P*	P*		P	P	P	P	5.3C.4
	Convenience Store with Fuel Sales													P	P	P	P	
	Open Air Market											CZ S			P	P	P	



Agriculture (see 5.2H.1)	Greenhouse, Nursery (Commercial)													P	P	P	
-----------------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	---	---	---	--

(Ord. No. 3396, §§ 4, 7, 4-3-06; Ord. No. 3417, § 2, 7-5-06; Ord. No. 3423, § 1, 8-22-06; Ord. No. 3523, § 4, 8-4-08; Ord. No. 3579, § 1, 5-3-10; Ord. No. 3617, § 1, 4-4-11; Ord. No. 3656, § 1, 2-21-12; Ord. 3673, § 2, 10-1-12; Ord. No. 3749, § 1, 10-6-14; Ord. No. 3780, § 6, 7-7-15; Ord. No. 3781, § 1, 7-7-15; Ord. No.3801, § 6, 12-7-15; Ord. No. 3881, § 3, 9-5-17)

**5.2. Use categories.**

- A. **Basis for classification.** Use categories classify land uses and activities into use categories based on common functional, product or physical characteristics. Characteristics include the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered and site conditions. The use categories provide a systematic basis for assigning present and future land uses into appropriate zoning districts.
- B. **Principal uses.** Principal uses are assigned to the category that most closely describes the nature of the principal use. The "characteristics" subsection of each use category describes the common characteristics of each principal use.
  - 1. **The developments with multiple principal uses.** When all principal uses of a development fall within one use category, the entire development is assigned to that use category. A development that contains a coffee shop, bookstore and bakery, for example, would be classified in the retail sales and service category because all of the development's principal uses are in that category. When the principal uses of a development fall within different use categories, each principal use is classified in the applicable category and each use is subject to all applicable regulations for that category. If a principal use is not listed for a given district, it may not be developed in that district, whether as part of a proposed mixed-use project or a stand-alone project.
  - 2. **Accessory uses.** Accessory uses are allowed by-right in conjunction with a principal use unless otherwise stated in this UDO. Also, unless otherwise stated, accessory uses are subject to the same regulations as the principal use. Common accessory uses are listed as examples in the use category descriptions.
  - 3. **Use of examples.** The "examples" subsection of each use category lists common examples of uses included in the respective use category. The names of these sample uses are generic. They are based on common meanings and not on what a specific use may call itself. For example, a use that calls itself "wholesale warehouse" but that sells mostly to consumers, is included in the retail sales and service category rather than the wholesale sales category. This is because the actual activity on the site matches the description of the retail sales and service category.
- C. **Similar use interpretation criteria.** The following considerations shall be used in making similar use interpretations:
  - 1. The actual or projected characteristics of the activity in relationship to the stated characteristics of each use category;
  - 2. The relative amount of site area or floor space and equipment devoted to the activity;
  - 3. Relative amounts of sales from each activity;
  - 4. The customer type for each activity;
  - 5. The relative number of employees in each activity;
  - 6. Hours of operation;
  - 7. Building and site arrangement;
  - 8. Vehicles used with the activity;

9. The relative number of vehicle trips generated by the use; and
10. How the use advertises itself.

**D. Residential use categories.**

**1. Household living.**

- a. **Characteristics.** Household living is characterized by the residential occupancy of a dwelling unit by a household. Tenancy is arranged on a month-to-month or longer basis.
- b. **Accessory uses.** Accessory uses commonly associated with household living are recreational activities, raising of pets, hobbies and parking of the occupants' vehicles. Home occupations are accessory uses that are subject to additional regulations set forth in Section 5.4.
- c. **Examples.** Uses include living in single-family, attached; single-family detached; condominiums; townhouses on separately platted or combined lots; mixed use dwellings; zero lot line dwelling; two-family dwellings; triplexes and multifamily dwellings; retirement center apartments; some continuing care facilities; manufactured housing, modular housing and other structures with self-contained dwelling units.
- d. **Exceptions.** Lodging in a dwelling unit or where units are rented on a less than monthly basis is classified in the overnight accommodations category.

**2. Group living.**

- a. **Characteristics.** Group living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of household living. The size of the group may be larger than the average size of a household. Tenancy is arranged on a monthly or longer basis. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see overnight accommodations and community service categories). Generally, group living structures have a common eating area for residents. The residents may receive care, training or treatment, as long as the care givers also reside at the site.
- b. **Accessory uses.** Accessory uses commonly associated with group living are recreational facilities, dining facilities and parking of vehicles for occupants and staff.
- c. **Examples.** Examples of group living include boarding house or rooming house; family care home; group care home; immediate care home; dormitories; and monasteries and convents.
- d. **Exceptions.**
  - (1) Lodging where tenancy may be arranged for periods of less than 30 days is classified in the overnight accommodations category.
  - (2) Lodging where the residents meet the definition of household and where tenancy is arranged on a month-to-month basis, or for a longer period is classified as household living.
  - (3) Continuing care facilities where individual units meet the definition of a dwelling unit in Article 11, Definitions, are classified as household living.
  - (4) Prisons, jails and other incarceration facilities are classified as government facilities.
  - (5) Post-incarceration facilities are classified as institutions.

**E. Public, civic and institutional use categories.**

**1. Community service.**

- a. **Characteristics.** Community Services are uses of a public, nonprofit or charitable nature generally providing a local service to people of the community. Generally, they provide the service on-site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join at any time, (for instance, any senior citizen could join a senior center). The use may provide special counseling, education, or training of a public, nonprofit or charitable nature.
  - b. **Accessory uses.** Accessory uses may include offices; meeting areas; food preparation areas; parking, health and therapy areas and athletic facilities.
  - c. **Examples.** Examples include libraries, museums, art galleries, art centers, senior centers; community centers, youth club facilities, social service facilities, civil, service, fraternal clubs, lodges and similar uses.
- 2. Day care.**
- a. **Characteristics.** Day care uses provide care, protection and supervision for children or adults on a regular basis away from their primary residence for less than 24 hours per day.
  - b. **Accessory uses.** Accessory uses include offices, recreation areas and parking.
  - c. **Examples.** Examples include preschools, child care centers (outside home), nursery schools, latch-key programs and adult day care programs.
  - d. **Exceptions.** Day care does not include public or private schools or facilities operated in connection with an employment use, shopping center, religious institution or other principal use, where children are cared for while parents or guardians are occupied on the premises or in the immediate vicinity.
- 3. Educational facilities.**
- a. **Characteristics.** This category includes public and private schools at the primary, elementary, middle, junior high or high school level that provide state-mandated basic education. This category also includes colleges and other institutions of higher learning that offer courses of general or specialized study leading to a degree. Colleges tend to be in campus-like settings or on multiple blocks. This category also includes instruction in the fine arts such as music, dance, art etc.
  - b. **Accessory uses.** Accessory Uses at schools include play areas, cafeterias, recreational and sport facilities, auditoriums and before- or after-school day care. Accessory Uses at colleges include offices, housing for students, food service, laboratories, health and sports facilities, theaters, meeting areas, parking, maintenance facilities and support commercial.
  - c. **Examples.** Examples include public, private and charter daytime schools; business, trade and vocational schools; universities; liberal arts colleges; community colleges; and instruction in music, dance, art and similar fine arts.
  - d. **Exceptions.** Preschools are classified as Day Care uses.
- 4. Government facilities.**
- a. **Characteristics.** Government facilities includes offices, storage, maintenance and other facilities for the operation of federal, state or local government.
  - b. **Accessory uses.** Accessory uses include storage, maintenance

- and fueling facilities, satellite offices and parking areas.
- c. **Examples.** Examples include Town hall; public/community buildings; government offices; municipal service facilities; maintenance and utility facilities; fire stations, police stations and emergency medical and ambulance stations; prisons and jails; post offices and federal, state or local offices.
  - d. **Exceptions.**
    - (1) Passenger terminals for airports and regional bus service are classified as passenger terminals.
    - (2) State, county or city parks are classified as parks and open space.
    - (3) Water and wastewater facilities, gas, electric and other infrastructure services, whether public or private, are classified as utilities.
    - (4) Waste and recycling services are classified as waste related services.
- 5. Health care facilities.**
- a. **Characteristics.** Health care facilities include uses providing medical or surgical care to patients and offering overnight care.
  - b. **Accessory uses.** Accessory uses include out-patient clinics, offices, laboratories, teaching facilities, meeting areas, cafeterias, parking, maintenance facilities and housing facilities for staff or trainees.
  - c. **Examples.** Examples include medical centers, hospices, continuing care facilities, mental health facilities, ambulatory health and emergency care facilities without overnight care, and hospitals.
  - d. **Exceptions.**
    - (1) Uses that provide exclusive care and planned treatment or training for psychiatric, alcohol, or drug problems, where patients are residents of the program, are classified in the institutional category.
    - (2) Medical clinics that provide care where patients are not kept overnight are classified as office.
- 6. Institutions.**
- a. **Characteristics.** Institutions provide a variety of facilities including housing and care for the disabled, care and medical supervision at a lower level than a hospital in nursing care institutions for more than nine people and housing related to treatment programs.
  - b. **Accessory uses.** Accessory uses include school facilities, meeting rooms, parking and staff residences (household living).
  - c. **Examples.** Examples include; some group homes for the physically disabled, mentally retarded, or emotionally disturbed; nursing care institutions and some residential programs for drug and alcohol treatment.
  - d. **Exceptions.**
    - (1) Continuing care facilities where individual units meet the definition of a dwelling unit in Article 11, Definitions, are classified as household living.
    - (2) Continuing care facilities where individual units do not meet the definition of a dwelling unit are classified as health care.
- 7. Parks and open areas.**
- a. **Characteristics.** Parks and open areas are uses of land focusing on natural areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, or public squares. Lands

tend to have few structures.

- b. **Accessory uses.** Accessory uses may include clubhouses, maintenance facilities, concessions, caretaker's quarters and parking.
- c. **Examples.** Examples include public parks; publicly-owned golf courses; cemeteries; public squares; plazas; public swimming pools; public tennis courts; recreational trails, botanical gardens and nature preserves.
- d. **Exceptions.** Privately-owned golf courses are classified as entertainment uses.

**8. Passenger terminal.**

- a. **Characteristics.** Passenger terminal includes facilities for the landing and takeoff of airplanes and helicopters, including loading and unloading areas. Aviation facilities may be improved or unimproved. Passenger terminal also includes passenger terminals for bus service and taxicab or limousine operations or facilities.
- b. **Accessory uses.** Accessory uses include freight handling areas, concessions, offices, parking and maintenance and fueling facilities.
- c. **Examples.** Examples include airports, bus passenger terminals, taxicab and limousine operations and facilities and helicopter landing facilities.
- d. **Exceptions.**
  - (1) Bus passenger stations for local service such as mass transit stops and park-and-ride facilities are classified as minor utilities.
  - (2) Private helicopter landing facilities that are accessory to another use.

**9. Religious institutions.**

- a. **Characteristics.** Religious institutions primarily provide meeting areas for religious activities.
- b. **Accessory uses.** Accessory uses include Sunday school facilities, day care during services where parents are on the premises, parking, caretaker's housing and group living facilities such as convents.
- c. **Examples.** Examples include churches, temples, synagogues and mosques.
- d. **Exceptions.**
  - (1) Preschools are classified as day care uses.
  - (2) Day care provided when parents are not on the premises is classified as day care.
  - (3) Schools providing a K--12 curriculum similar to public schools are classified as schools.

**10. Utilities.**

- a. **Characteristics.** Major utilities are infrastructure services providing Town-wide service. Minor utilities are infrastructure services that need to be located in or near the area where the service is provided. Utility uses generally do not regularly have employees at the site. Services may be publicly or privately provided.
- b. **Accessory uses.** Accessory uses may include parking and control, monitoring, data or transmission equipment.
- c. **Examples.**
  - (1) Examples of major utilities include water towers; radio and television broadcast towers; telecommunication towers; solar farms; water plants; wastewater plants; and electrical



- substations.
- (2) Examples of minor utilities include water and sewage pump stations; stormwater retention and detention facilities; public transportation facilities and telephone exchanges.
- d. **Exceptions.**
- (1) Maintenance yards and buildings, or other facilities with outdoor storage are classified as government.
- (2) Utility offices are classified as offices.
- F. Commercial use categories.**
- 1. Entertainment.**
- a. **Characteristics.** Entertainment uses are generally commercial uses, varying in size, providing daily or regularly scheduled entertainment-oriented activities.
- b. **Accessory uses.** Accessory uses may include restaurants, bars, concessions, parking and maintenance facilities.
- c. **Examples.** Examples include athletic facilities; commercial amusements; private entertainment facilities; horse stables; privately-owned golf courses, golf driving ranges; miniature golf facilities; private country club; privately-owned tennis facilities; skateboard park; water slide; privately-owned active sports facilities such as ballfields and basketball courts; bar, night club and tavern; indoor entertainment activities such as bowling alleys, game arcades, pool halls, dance halls, indoor firing ranges, theaters; membership clubs.
- d. **Exceptions.**
- (1) Banquet halls that are part of hotels or restaurants are accessory to those uses.
- (2) Publicly-owned golf courses are classified as parks and open areas.
- (3) Civic, service, fraternal clubs, lodges and similar uses are considered public, civil, and institutional use categories.
- 2. Office.**
- a. **Characteristics.** Office uses are characterized by activities conducted in an office setting and generally focusing on business, government, professional, medical or financial services. No wholesale or external retail sales activity is included.
- b. **Accessory uses.** Accessory uses may include cafeterias, health facilities, parking, or other amenities primarily for the use of employees in the firm or building.
- c. **Examples.** Examples include professional services such as lawyers, accountants, engineers or architects; banks; financial institutions such as lenders or brokerage houses; insurance agents or real estate agents; administrative offices; data processing; sales offices; radio and television stations/studios; and individual medical and dental offices.
- d. **Exceptions.**
- (1) Offices that are part of and located with a principal use in another category are considered accessory to the firm's primary activity. Headquarters offices, when in conjunction with or adjacent to a principal use in another category, are considered part of the other category.
- (2) Contractors and others who perform services off-site are included in the office category if equipment and materials are not stored outside and fabrication, services or similar

- work is not carried on at the site.
- (3) Medical and dental clinics and labs are classified as health care.
3. **Overnight accommodations.**
- a. **Characteristics.** Dwelling units arranged for short term stays of less than 30 days for rent or lease.
- b. **Accessory uses.** Accessory uses may include pools and other recreational facilities, limited storage, food preparation and dining facilities, laundry facilities, meeting rooms, off-street parking and offices.
- c. **Examples.** Examples include bed and breakfast establishments; hotels, motels, inns, and extended stay facilities.
4. **Parking, commercial.**
- a. **Characteristics.** Commercial parking facilities provide parking that is not accessory to a specific use. A fee may or may not be charged. A facility that provides both accessory parking for a specific use and regular fee parking for people not connected to the use is also classified as a commercial parking facility.
- b. **Accessory uses.** Small structures intended to shield parking attendants from the weather.
- c. **Examples.** Examples include short- and long-term fee parking facilities and mixed parking lots (partially accessory to a specific use, partially for rent to others).
- d. **Exceptions.**
- (1) Parking facilities that are accessory to a principal use, but that charge the public to park for occasional events nearby, are not considered commercial parking facilities.
- (2) Parking facilities that are accessory to a principal use are not considered commercial parking uses, even if the operator leases the facility to the principal use or charges a fee to the individuals who park in the facility.
- (3) Public transit park-and-ride facilities are classified as utilities.
- (4) Sales or servicing of vehicles is classified as vehicle sales and service.
5. **Restaurants.**
- a. **Characteristics.** Establishments that sell food for on- or off-premise consumption.
- b. **Accessory uses.** Accessory uses may include decks and patios for outdoor seating, drive-thru facilities, customer and employee parking areas, and valet parking facilities.
- c. **Examples.** Includes restaurants, drive-ins, drive-throughs, fast food establishments, yogurt or ice cream shops and pizza delivery facilities.
- d. **Exceptions.** Nightclubs, taverns and bars are classified as entertainment uses.
6. **Retail Sales and Service.**
- a. **Characteristics.** Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services, or provide product repair or services for consumer and business goods.
- b. **Accessory uses.** Accessory Uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale and parking.

- c. **Examples.** Examples include uses from the three following groups:
- (1) **Sales-Oriented.** Stores selling, leasing or renting, consumer, home and business goods including alcohol, appliances, art, art supplies, bicycles, books, building/lumber sales, clothing, dry goods, electronic equipment, fabric, farm supplies, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, manufactured home sales, marine and fishing equipment, monument, optical, pets, pet food, pharmaceuticals, plants, printed material, stationary and medical and dental supply stores, trailer equipment, videos; and food sales.
  - (2) **Personal Service-Oriented.** Banks; commercial greenhouse; drive-in sales: dry cleaner/laundry: emergency medical care offices; funeral home; household equipment rental: photographic studios; photocopy and blueprint services; hair, tanning and personal care services; health clubs and gyms: office equipment rental; personal service shops, travel agencies; animal hospital/care facility, and animal grooming.
  - (3) **Repair-Oriented.** Repair of TV's, bicycles, clocks, watches, shoes, guns, canvas products, appliances and office equipment: photo or laundry drop-off; tailor; locksmith and upholsterer.
- d. **Exceptions.**
- (1) Restaurants are classified as restaurants.
  - (2) Laundry and dry-cleaning plants are considered light industrial services.
  - (3) Lumber yards and other building material sales that sell primarily to contractors and do not have a retail orientation are classified as wholesale sales.
  - (4) Rental, repair and service of consumer motor vehicles, motorcycles and light and medium trucks is classified as vehicle sales and service.
  - (5) Taxicab and limousine operations or facilities are classified as passenger terminals.
  - (6) Hair salons, barbershops and beauty shops are classified as a separate land use category. Refer to the Use Table under Section 5.1 for zoning districts where this use is permitted.
7. **Self-service storage.**
- a. **Characteristics.** Self-service storage uses provide separate storage areas for individual or business uses. The storage areas are designed to allow private access by the tenant for storing or removing personal property.
  - b. **Accessory uses.**
    - (1) Accessory uses may include living quarters for a resident Manager or security and leasing offices and outside storage of boats and campers.
    - (2) Use of the storage areas for sales, service and repair operations, or manufacturing is not considered accessory to the self-service storage use.
    - (3) The rental of trucks or equipment is also not considered accessory to a self-service storage use.
  - c. **Examples.** Examples include facilities that provide individual storage areas for rent. These uses are also called mini-

warehouses.

- d. **Exceptions.** A transfer and storage business where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred is in the warehouse and freight movement category.

**8. Vehicle sales and service.**

- a. **Characteristics.** Vehicle sales and service uses provide direct services to motor vehicles. They also may include firms that rent or service passenger vehicles, light and medium trucks and other consumer motor vehicles such as motorcycles.
- b. **Accessory uses.** Accessory uses may include offices, sales of parts and vehicle storage.
- c. **Examples.** Examples include automobile rental; automobile sales; car washes; quick lubrication services; vehicle repair, transmission or muffler shop; towing service; auto body shop; alignment shop; auto upholstery shop; auto detailing; and tire sales and mounting.
- d. **Exceptions.**
  - (1) Refueling facilities for vehicles that belong to a specific use (fleet vehicles) are considered accessory uses if they are located on the site of the principal use.
  - (2) Convenience stores with fuel sales are classified as retail sales and service.

**G. Industrial use categories.**

**1. Aviation service.**

- a. **Characteristics.** Aviation service firms are engaged in storage, repair or servicing of airplanes, helicopters and related aviation equipment, charter aviation services, flying-related education, and warehousing related to air shipping.
- b. **Accessory uses.** Accessory activities may include offices, parking, warehousing and storage.
- c. **Examples.** Examples include airplane landing strips, sales, service and repair, fixed base operators, flying schools and air shipment warehouses.
- d. **Exceptions.**
  - (1) Car rental agencies associated with commercial air travel are classified as passenger terminals.
  - (2) Warehousing not associated with air shipping is classified as warehousing and freight movement.

**2. Light industrial service.**

- a. **Characteristics.** Light industrial service firms are engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site. The uses may have indoor or outdoor operations.
- b. **Accessory uses.** Accessory activities may include offices, parking and storage.
- c. **Examples.** Examples include welding shops; sheet metal fabrication shop; machine shops; tool repair; electric motor repair; farm equipment repair and storage; repair of scientific or professional instruments; building, heating, plumbing or electrical contractors; printing, publishing and lithography; exterminators; janitorial and building maintenance services; fuel oil distributors;

research and development; testing and development laboratories; sign shop; laundry, dry-cleaning and carpet cleaning plants and photo-finishing laboratories.

- d. **Exceptions.** Contractors and others who perform services off-site are included in the office category, if major equipment and materials are not stored on-site and fabrication or similar work is not carried on at the site.

### 3. **Manufacturing and production.**

- a. **Characteristics.** Manufacturing and production firms are involved in the manufacturing, processing, fabrication, packaging or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site.
- b. **Accessory uses.** Accessory activities may include offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, repair facilities, truck fleets and caretaker's quarters.
- c. **Examples.** Examples include processing of food and related products, including apparel; catering establishments; concrete batching and products and asphalt mixing; electric machines; food processing plants; instruments and components; light manufacturing; woodworking, including cabinet makers; production of chemical, rubber, leather, clay, bone, plastic, stone, or glass materials or products; movie production facilities; production or fabrication of metals or metal products including enameling and galvanizing; office equipment and supplies; manufacture or assembly of equipment, instruments, including musical instruments, appliances, precision items and other electrical items; production of artwork and toys and sign making.
- d. **Exceptions.**
  - (1) Manufacturing of goods to be sold primarily on-site and to the general public are classified as retail sales and service.
  - (2) Manufacture and production of goods from composting organic material is classified as waste related service.

### 4. **Resource extraction.**

- a. **Characteristics.** Resource extraction uses include those uses that rely on mining, quarrying or other similar activity to extract resources from the ground.
- b. **Accessory uses.** Accessory uses include offices for mining personnel, parking and storage.
- c. **Examples.** Examples include mines, borrow pits, and quarries.

### 5. **Warehouse and freight movement.**

- a. **Characteristics.** Warehouse and freight movement firms are involved in the storage, or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present.
- b. **Accessory uses.** Accessory uses may include offices, truck fleet parking and maintenance areas.
- c. **Examples.** Examples include separate warehouses used by retail stores such as building and lumber materials; storage furniture and appliance stores; household moving and general freight storage; cold storage plants; truck terminals; storage garage warehouses,

indoor only, including frozen food lockers; storage tanks; parcel services; and the stockpiling of gravel or other aggregate materials.

**d. Exceptions.**

- (1) Uses that involve the transfer or storage of solid or liquid wastes are classified as waste related service.
- (2) Mini-warehouses are classified as self-service storage uses.
- (3) Flex space is classified as light industrial service.

**6. Waste related service.**

- a. **Characteristics.** Waste related services are characterized by uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the composting of organic material
- b. **Accessory uses.** Accessory uses may include recycling of materials, offices and repackaging and transshipment of by-products.
- c. **Examples.** Examples include waste transfer or composting and large recycling facilities and salvage/junk yards; reclamation landfill; and sanitary landfill.
- d. **Exceptions.** Disposal of dirt, concrete, asphalt and similar non-decomposable materials is considered fill.

**7. Wholesale sales.**

- a. **Characteristics.** Wholesale sales firms are involved in the sale, lease, or rent of products primarily intended for industrial, institutional or commercial businesses. The uses emphasize on-site sales or order taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited. Products may be picked up on-site or delivered to the customer.
- b. **Accessory uses.** Accessory uses may include offices, product repair, warehouses, parking, minor fabrication services and repackaging of goods.
- c. **Examples.** Examples include sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment and store fixtures; mail order houses; and wholesalers of food, clothing, auto parts, building hardware.
- d. **Exceptions.**
  - (1) Firms that engage primarily in sales to the general public or on a membership basis are classified as retail sales and service.
  - (2) Firms that are primarily storing goods with little on-site business activity are classified as warehouse and freight movement.

**H. Other use categories.**

**1. Agriculture.**

- a. **Characteristics.** Agriculture includes activities that primarily involve raising, producing or keeping plants or animals. Also includes direct sales of such products at wholesale.
- b. **Accessory uses.** Accessory uses include dwellings for proprietors and employees of the use and animal training.
- c. **Examples.** Examples include breeding or raising of fowl or other animals; barn/ stable for private animal livestock; catfish farm; riding academies; crop production; farming; pasturage; truck

gardening and wholesale plant nurseries or greenhouses.

**d. Exceptions.**

- (1) Processing of animal or plant products are classified as manufacturing and production.
- (2) Plant nurseries or greenhouses that are oriented to retail sales are classified as retail sales and service.

(Ord. No. 3396, § 5, 4-3-06; Ord. No. 3423, §§ 2, 3, 8-22-06; Ord. No. 3523, § 6, 8-4-08; Ord. No. 3579, §§ 2, 3, 5-3-10; Ord. No. 3656, § 2, 2-21-12; Ord. No. 3749, § 2, 10-6-14; Ord. No. 3780, § 7, 7-7-15)

Specific use standards.

**I. Residential uses.**

1. **Group Living.** Family care, group care and intermediate care homes - or another form of group living permitted through a special exception - are permitted in accordance with the use table in Section 5.1 and the following standards:

- a. No more than one family care home may be located within one-half mile of another family care home, a group care home, an intermediate care home or another form of group living permitted through a special exception; measured by a straight line from the nearest property line. A family care home shall be certified as a licensed family care home by the North Carolina Department of Health and Human Services.
- b. Group care homes shall not be located closer than one-half mile to any other existing group care home, family care home, an intermediate care home or another form of group living permitted through a special exception; measured by a straight line from the nearest property lines.
- c. Intermediate care homes shall not be located closer than one-half mile to any other existing intermediate care home, family care home or group care home; measured by a straight line from the nearest property lines.
- d. Family or group care homes shall be separated by a 15-foot wide buffer with 50 percent screening to height of six feet from any abutting property located in a residential district. ~~The Planning Director may allow deviations from the landscape standards provided the requirements of Article 7 are satisfied.~~
- e. One off street parking space shall be provided for every two beds in a group care home or facility plus one space for each staff person per shift. Parking improvements shall be constructed in accordance with all applicable parking standards of Article 7. ~~The Planning Director may allow deviations from these parking standards provided the requirements of Article 7 are satisfied.~~
- f. A residence used for a family or group care home shall maintain a residential appearance which is compatible with the surrounding neighborhood and no exterior alterations are permissible without prior approval from the Town of Garner.
- g. No family care, group care or intermediate care home - or another form of group living permitted through a special exception - shall be established, constructed or expanded except in accordance with applicable sections of this UDO and North Carolina State Building Code.
- h. Group care homes with a significant juvenile population shall be required to have the rear yard area enclosed by a fence at least six feet in height.
- i. No family or group care home shall be established or maintained

without trained supervisory personnel on site.

2. **Manufactured home.** An individual manufactured home may be allowed in the R-40 districts. In the R-40, and the home must be a class A manufactured home, as defined in Article 6. A manufactured home located on an individual lot outside the RMH or R-40 districts shall only be sited following approval of a manufactured home floating zone (-MH) through the rezoning procedures in Article 3.
3. **Residential uses in the CBD.** Residential uses located within the Central Business District shall conform to the following standards:
  - a. New single residential development is not allowed;
  - b. Duplex, triplex and multifamily developments is not allowed within the CBD;
  - c. Multifamily development of the downtown structures between Purvis Street and Griffin Street shall be limited to the occupancy of the second floor and shall require conformance to the North Carolina State Building Code for all units prior to occupancy;
  - d. Townhouse or condominium uses are allowed within the CBD and shall meet the development standards of Article 6.
4. **Upper-story residential.** Upper-story residential development is permitted provided it is part of a larger project, the residential component does not exceed 50 percent of the land area of the project, and a site plan for the project is reviewed in accordance with Article 3

**J. Public, civic and institutional uses.**

1. **Business school, college or university.** Business schools, colleges or universities in the NC, NO or CBD district are permitted, provided that:
  - a. Only a single building is used for the school, college or university; and
  - b. All activities are conducted in a completely enclosed building.
2. **Cemetery.** Cemeteries are permitted in accordance with the use table in Section 5.1 and the following standards:
  - a. When a cemetery abuts or is across a street, alley, or easement from private property zoned in a residential district classification, a 20-foot buffer shall be provided and the following conditions shall be observed:
    - (1) No burials shall be permitted in the buffer;
    - (2) The buffer shall be landscaped with grass and trees, shrubs, or other ornamental horticultural materials; and
    - (3) The buffer shall be maintained in a neat and orderly condition at all times.
  - b. Warehouses, storage or maintenance buildings, mausoleums, crematories, or columbaria shall be located not less than 150 feet from the nearest private residential property line.
3. **Day care.** Day care (up to three children as a home occupation) is permitted in accordance with the use table in Section 5.1. The following standards apply to child day care and adult day care uses:
  - a. **Adult day care.** Commercial adult day care is licensed by the North Carolina Department of Health and Human Services.
  - b. **Child day care.** Up to three children cared for in a residence, and subject to the requirements for a home occupation.  
 Commentary: The State of North Carolina requires a license for the care of three or more children.
  - c. **Family child day care.** Up to eight children in a residence, and subject to a license from the North Carolina Department of Health and Human Services.



- (1) At least 100 square feet of outdoor play area shall be provided for each child. The outdoor play area shall be enclosed by a fence having a minimum height of four feet, which shall be maintained in good condition.
  - (2) An off-street drop-off and loading area shall be provided.
  - (3) Family child day care shall only be permitted to operate between the hours of 6:00 a.m. and 10:00 p.m.
  - (4) A 15-foot landscape buffer with a 50 percent screen to a height of six feet adjacent to any property zoned or used residentially shall be provided.
- d. **Day care center.** Any day care not defined in paragraphs a through c above.
- (1) At least 100 square feet of outdoor play area shall be provided for each child. The outdoor play area shall be located at least 50 feet from the lot line of any residential property, and enclosed by a fence having a minimum height of four feet, which shall be maintained in good condition.
  - (2) An off-street drop-off and loading area shall be provided.
- 4. Minor utilities.**
- a. Utilities are permitted in accordance with the use table in Section 5.1 and the following standards:
  - b. Electric power, telephone, cable televisions, gas, water, and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right-of-way.
  - c. Neighborhood utility facilities located within a public right-of-way with the permission of the owner (state or Town) of the right-of-way.
  - d. Wells, pumping stations, or other similar facilities that are owned or operated by the City of Raleigh as part of the public water and sewer system.
  - e. However, uses listed in paragraphs a and b above shall be subject to any notification, review and plan submission requirements approved by the Town Council.
  - f. On-site water or wastewater treatment facilities that are authorized pursuant to an approved permit for a development project; provided such facilities are designed and constructed to primarily serve said development.
- 5. Solar Farms.**
- a. The maximum height for all solar panels, mounts and related equipment or structures shall not exceed 15 feet. This includes solar panels at maximum tilt.
  - b. The solar farm area shall be enclosed with a minimum 6-foot tall security fence along its entire perimeter. Gates shall be locked and secured.
  - c. The minimum front and corner-side setback is 30 feet from the right-of-way of a public or private road, or private road easement. In the case of a public road that is designated by the current Town of Garner transportation plan as a minor or major thoroughfare, freeway or interstate, the minimum setback from the right-of-way of said designated road shall be 50 feet.
  - d. The minimum interior side and rear setbacks shall be equal to the applicable buffer width specified in Article 7.
  - e. With the exception of the perimeter security fence required in subsection (b), all other solar farm structures; including but not limited to: mechanical equipment, panels and mounts; and materials shall be set back a minimum of 100 feet from footprint of

- any existing residential dwelling ~~unit~~.
- f. Solar farms shall meet the screening of objectionable views requirements of Article 7
  - g. Solar farms shall meet the industrial performance standards of Article 6.
  - h. Solar panels shall not create a traffic or safety hazard; solar panels shall be arranged, angled or sited to minimize glare or reflection onto adjoining properties and rights-of-way. Panels shall have a textured or anti-reflective surface or coating. Mirrors or mirrored panels are prohibited.
  - i. **Decommissioning Plan:** A Decommissioning Plan shall be approved and recorded as a condition of the Special Use Permit. At a minimum, the Decommissioning Plan shall address the following requirements:
    - (1) Responsible parties.
    - (2) Timeline for the completion of all decommissioning plan activities within 6 months of power ceasing to be provided to the recipient client.
    - (3) Removal and disposal of all equipment and materials; including but not limited to: panels, mounts, structures, pads, foundations, underground wiring and fencing.
    - (4) Site reclamation and surface restoration; including but not limited to: retention of installed landscaping, putting down new topsoil, re-grading, and re-seeding.
    - (5) An "Estimated Net Cost of Decommissioning" prepared by a licensed engineer, inclusive of salvage proceeds; and a mechanism to annually report to the Town of Garner Planning Department a "Revised Estimate of the Net Cost of Decommissioning" that accounts for items such as - but not limited to - inflation, deflation and depreciation.
  - j. **Decommissioning Surety:** Prior to the issuance of any building permits, a surety acceptable to the Town Attorney of the Town of Garner naming the Town of Garner as beneficiary shall be posted for 125% of the Estimated Net Cost of Decommissioning established within the approved Decommissioning Plan or \$25,000, whichever is greater.  
If at any time, the Revised Estimate of the Net Cost of Decommissioning exceeds 90% of the value of the posted surety, a new or amended surety shall be posted in the amount of 125% of the newly Revised Net Cost of Decommissioning.

**6. Religious institutions.**

- a. **[Religious institutions in residential districts.]** Religious institutions are permitted in residential districts in accordance with the use table in Section 5.1 and the following standards:
  - (1) A minimum setback of 40 feet from all exterior lot lines is required; and
  - (2) The minimum distance between any exterior lot lines and the perimeter of a parking area shall be 25 feet where such boundaries adjoin a residential zoning district.
  - (3) A religious institution in or adjacent to any residential district shall have its principal vehicular entrance and exit on an arterial street, or on a collector street within 150 feet of its intersection with an arterial.
  - (4) The principal building and accessory uses must be on a contiguous site or sites separated only by a public street ~~if~~

~~approved by the permit issuing authority.~~

- (5) After the effective date of this UDO, a religious institution shall not be established in a residential structure in any residential district.
  - b. **Religious institutions in the CBD.**
    - (1) Religious institutions shall not be a permissible use within existing commercial buildings in downtown Garner located along Main Street between Purvis Street and Griffin Street and zoned CBD.
    - (2) Existing religious institutions located in commercial buildings within the area defined above shall be permitted to continue after the effective date of this ordinance; however, once an existing religious institution located in a commercial building in the area defined above ceases operation, a new or different religious institution shall not be permitted to occupy the vacated location.
7. **Schools in residential districts.**
- a. Public or private schools are permitted in accordance with the use table in Section 5.1 and the following standards:
  - b. A minimum setback of 40 feet from all exterior lot lines is required; and
  - c. The minimum distance between any exterior lot lines and the perimeter of a parking area shall be 25 feet where such boundaries adjoin a residential zoning district.
  - d. A school in or adjacent to any residential district shall have its principal vehicular entrance and exit on an arterial street, or on a collector street within 150 feet of its intersection with an arterial.
  - e. The principal building and accessory uses must be on a contiguous site.
8. **Telecommunication facility.** Towers and antennas greater than 35 feet in height are permitted in accordance with the use table in Section 5.1 and the following standards:
- a. The Town Council encourages the co-location of antennas on existing towers in the Towns planning jurisdiction where possible in order to reduce the amount of visual clutter that new towers create in the community.
  - b. The applicant shall attend a pre-application meeting with the Planning Department. The applicant shall provide information regarding the proposed facility's service area requirements, co-location opportunities and review a checklist of information required for the formal application. Additional information necessary to review the impact of the proposed facility on surrounding properties may be required by the Planning Director at the time of pre-application meeting.
  - c. The application shall comply with the criteria of Article 3 where applicable of the ordinance and meet the following standards.
    - (1) Reserved.
    - (2) The applicant shall provide competent evidence to the Town Council that all reasonable efforts have been made to co-locate on an existing tower, building, or structure or that no existing tower, building or structure will technically satisfy the applicant's needs.
    - (3) The applicant shall certify to the Town Council that a new tower location will be constructed for co-location of future users and that radio, television or similar reception for

- adjoining properties will not be disturbed or diminished.
- (4) Advertising copy or any logo which constitutes a sign is prohibited on any tower and antenna or satellite dish antenna in any zoning district.
  - (5) The proposed tower location must be in conformity with the Comprehensive Growth Plan, the Transportation Plan and other plans officially adopted by the Town Council and applicable zoning overlay districts (I-40, U.S. 70/401, and Timber Drive). Towers shall not be allowed in the Lake Benson Conservation Overlay District.
  - (6) To assure that the proposed tower will be in conformity with the adopted plans and policies of the Town, the Town Council may require a specific type of tower construction. Monopole towers shall be required for sites that fall within the I-40, U.S. 70/401 and Timber Drive Overlay Districts. The Council may require specific tower construction types in other areas of the Town, based on site specific needs and characteristics of the surrounding neighborhood.
  - (7) A setback radius (a circle whose center is the tower base) shall be required as follows for all towers that are permissible in districts except where stricter standards are required in the R-40 district (see subsection (15) below).
    - (a) From all sides of a tower there shall be a minimum setback of 500 feet measured in straight line to any portion of a property line of a residentially developed lot.
    - (b) Where any side of a tower site adjoins undeveloped property zoned residential, the required setback distance from the tower to any property line shall be equal to at least 100 percent of the tower height. The Town Council may allow this setback requirement to be reduced to a minimum of 60 percent of the tower height based on competent evidence provided by the applicant clearly showing that the structural integrity of the tower is designed to collapse within the reduced setback distance and that affected owners of record adjacent to the reduced setback distance provide written documentation that they do not object to such setback reduction.
    - (c) Where any side of a tower site adjoins property zoned nonresidential, the required setback distance from the tower to any property line shall be equal to at least 60 percent of the tower height.
    - (d) The Town Council may require that a tower setback radius area not contain any buildings, structures or land uses if the Council concludes that such buildings, structures or land uses could be impacted by the structural failure of the tower.
  - (8) Landscape screening and buffering. A landscape buffer shall be required between a tower and all adjacent land uses with the exception of manufacturing, airport, armory and crematorium uses. See Article 7 for specific buffer and screening standards. In addition, the following standards

shall apply:

- (a) The required landscape buffer shall be required between the base of a tower and any street right-of-way from which the tower is visible.
  - (b) The Planning Director has the discretion to require that the landscape buffer be provided adjacent to the fencing surrounding the tower base rather than at the property line, when the site conditions are such that tower base location will create a more effective visual screen from the adjacent property line or street right-of-way.
- (9) The Town Council may require the applicant to apply to the Federal Aviation Administration (FAA) for compliance with FAA standards for a dual lighting system rather than the red and white marking pattern, when such marking pattern is determined to be aesthetically blighting due to the location of surrounding land uses or the visibility of the tower.
  - (10) When tower lighting is proposed, the applicant shall certify to the permitting authority, as part of the conditional or special use permit application, that the lighting planned for the tower does not exceed the minimum standards of the Federal Aviation Administration (FAA), as amended.
  - (11) The exterior appearance of all buildings associated with a telecommunications tower located adjacent to any residential zoning district may be required by the Town Council to resemble a residential dwelling, including a pitched roof(s), and frame or brick veneer construction.
  - (12) The exterior appearance of all buildings associated with a telecommunications tower located in a residential or non residential zoning district, which is visible from a public right-of-way, may be required by the Town Council to have architectural enhancements, such as, siding, split face block or brick veneer on all facades visible from the public right-of-way.
  - (13) A tower that has been abandoned or has not been actively used for a period of six consecutive months shall be removed by the tower user that currently owns or leases the facility upon notice from the Town of Garner, unless the Town Council grants a time extension at the owner's request, for a period not to exceed one year from the date of official notice.
  - (14) The tower shall be a tapered monopole construction unless otherwise approved by the Town Council. The tower shall not exceed a height of 200 feet (measured from the finish grade elevation to the top of the tower). However, the Town Council may require a tower be of a certain height, not to exceed the maximum permitted, if it finds that such a requirement is necessary to support the design for co-location of additional users or is needed to address the impact of the tower on adjacent properties and uses.
  - (15) In addition to meeting the standards listed above towers located in R-40 zoning districts shall comply with the requirements outlined below.
    - (a) There shall be a minimum setback from all sides of a tower equal to 2.5 times the tower height

measured in a straight line to an existing residence, excluding the applicant's residence.

- (b) Towers located in R-40 districts greater than 75 feet in height shall not be located closer than 2,500 feet to another tower greater than 75 feet in height. This separation provision applies only to communication towers which transmit or receive telephone, telecommunication, radio or TV signals and does not include amateur or ham radio towers and antennas.
- (c) Associated buildings used in connection with a tower located in R-40 districts may not be used as an employment center for any worker. This provision does not prohibit periodic maintenance and monitoring of equipment and instruments.
- (d) The applicant shall apply stealth technologies for towers located in R-40 districts where practical. However, all antennas on towers in R-40 districts shall employ a type of stealth application that visually screens antennas from any off-site location in a manner approved by the Town Council.
- (e) Tower locations in R-40 districts are subject to applicable standards of the Town's landscape ordinance and shall comply with the following specific landscaping/buffer standards:
  - i. The base of the tower, including associated structures, fences, etc. shall be surrounded by a forested area 75 feet wide buffer with planted vegetation necessary to achieve a 100 percent screen at eight feet in height. Existing mature forest areas may be used to reduce the buffer width requirement if the screening standard can be met ~~and is approved by the permit issuing authority.~~
  - ii. Landscape berms may be allowed in lieu of the required landscaped forest area provided the landscape berm is appropriate for the tower location and it achieves the required screening standards outlined above.
  - iii. The Planning Director has the discretion to require that the required Buffer be provided adjacent to the fencing surrounding the tower base rather than at the property line, when the site conditions are such that tower base location will create a more effective visual screen from the adjacent property line or street right-of-way.

9. **Trade/vocational educational facilities.** Trade/vocational educational facilities are permitted, provided that all activities are conducted in a completely enclosed building.

10. **Continuing care retirement facilities.** Continuing care retirement facilities shall meet the following provisions:

- a. The number of persons who may housed in non-independent rooms or apartments (not including hospital or clinic beds) does not exceed the number of persons housed in- independent dwelling units by a ratio of 3:1.

- b. The continuing care retirement facility do not exceed a density of ten units per acre, not including the number of persons occupying hospital or clinic beds.
- c. The number of hospital or clinic beds shall not be more than 50 percent of the total number of permitted dwelling units.
- d. Retail stores and personal service establishments located within the continuing care retirement facility are permissible only when:
  - (1) Such uses exclusively serve the residents of the facility;
  - (2) There is no exterior evidence of such uses outside of the building they are located in and have no outdoor entrance for customers separate from the main entrance of the activity or administrative building; and
  - (3) The floor area devoted to such uses shall not exceed 50 percent of the floor area of the building where the uses area located.
- e. The facility is located on a minor or major thoroughfare.
- f. The total number of persons residing in the continuing care retirement facility does not exceed 500.
- g. A minimum of 25 percent of the tract must be retained on site as permanent open space.

**11. Hospitals or Ambulatory Health/Emergency Care with heliport operations in the O&I and CR Districts.**

These provisions shall only apply to Hospitals or Ambulatory Health/Emergency Care Facilities with heliport operations.

- a. Structures shall be designed and placed in a manner that is not to be detrimental to adjoining properties within a 1,000 feet radius of the heliport site measured from the center of final approach and take off area.
- b. Proof of airspace clearance from the Federal Aviation Agency must be provided prior to the issuance of a certificate of occupancy.
- c. Evidence of applicable approvals required by the North Carolina Department of Transportation for helicopter flight operations must be provided prior to the issuance of a certificate of occupancy.
- d. ~~The permit issuing authority~~ Town Council may require the applicant to implement noise reduction measures or flight operational restrictions deemed reasonable in order to protect the public health, safety and welfare of surrounding residents and businesses.
- e. ~~The permit issuing authority may require additional~~ A 6-foot tall, opaque, year round landscape buffers and/or plantings if deemed necessary is required in order to mitigate visual impacts to surrounding ground-floor residential properties.

**K. Commercial, office and retail uses.**

- 1. **Bank, financial institution.** A bank, credit union, or other financial institution located in the NO or NC districts shall provide only indoor transactions, which shall be further limited to the hours between 6:00 a.m. and 10:00 p.m. No external automated teller machine, drive-through windows, or night drop windows shall be permitted.
- 2. **2. Bar, nightclub, tavern.**
  - a. In the CR, SB, I-1 and I-2 districts, a bar, nightclub or tavern shall not be permitted within 500 feet of any residential use or residential district.
  - b. In the CBD district, a bar, nightclub or tavern may only be located on parcels with frontage on Main Street between Montague and Griffin streets or along Rand Mill Rd.
  - c. In the CBD district, a bar, nightclub or tavern shall have a minimum of 250 square feet devoted to food preparation (kitchen, food refrigeration/freezers, etc.)

- d. In the CBD district, a bar, nightclub or tavern shall be open no later than 1:00am.
3. **Car wash.** A car wash shall be permitted in accordance with the use table in Section 5.1 and the following standards:
    - a. No outdoor storage is permitted;
    - b. Any bay doors shall not be oriented toward the public right-of-way unless appropriately screened as determined by the permit-issuing authority;
    - c. All washing operations shall be conducted within a completely enclosed building; and
    - d. No car wash facility, including any areas for vehicular use, shall be located within 500 feet of any existing residential zoning district.
    - e. No vehicles shall be stored overnight.
  4. **Convenience store without fuel sales.** A convenience store in the NC and CBD districts may not exceed 5,000 square feet in gross floor area.
  5. **Extended stay facility.** Extended stay facilities are permitted in accordance with the use table in Section 5.1 and the following standards:
    - a. All guest rooms shall take access from an interior hallway. No guest rooms shall be accessible without passing through a secured area.
    - b. Staff or management shall be on duty 24-hours per day, seven days per week;
    - c. Each guest room shall have a minimum of 280 square feet;
    - d. No outside storage or permanent parking of equipment or vehicles shall be permitted; and
    - e. No buildings constructed under this section may be converted to or used as apartments or condominiums.
    - f. No extended stay facility shall be located on a site within 500 feet of any residential district or use.
  6. **Gym, spa, indoor tennis court or pool, private.** A private gym, spa, indoor tennis court or pool in the NC and NO districts may not exceed 5,000 square feet in gross floor area.
  7. **Repair oriented use.** A repair-oriented use in the NC district may not exceed 5,000 square feet in gross floor area. No outdoor storage at a repair-oriented use shall be permitted.
  8. **Restaurant, indoor with seating only.** An indoor restaurant in the NC district may not exceed 5,000 square feet in gross floor area.
  9. **Restaurant, take-out only.** A take-out restaurant in the NC district may not exceed 5,000 square feet in gross floor area.
  10. **Sexually oriented business (adult uses).** Adult uses are permitted in accordance with the use table in Section 5.1 and the following standards:
    - a. No adult cabaret or adult establishment shall be located closer than a distance of 1,000 feet from a church, school, park, residential zoning district or other adult cabaret or adult establishment. The 1,000 foot distance shall be measured from the closest point on the perimeter of the lot on which the described establishment is located to the nearest point on the lot on which the church, school, park, residentially zoned district, adult cabaret or adult establishment is located.
    - b. Except as permitted in Section 7.5, Sign regulations, no signs, logos, promotional materials or other distinctive decorations or markings shall be placed on the exterior of the establishment or shall be visible to the public from streets or highways, pedestrian sidewalks or walkways.
  11. **Vehicle general repair.** Outdoor storage is restricted to the rear of a building and must be 100 percent screened from all street views. No vehicles shall be stored for more than 30 days.



12. **Vehicle sales, rental.** Outdoor storage is restricted to the rear of a building and must be 100 percent screened from all street views. Sales areas where vehicles for sale are parked may be permitted, subject to any restrictions for parking area in the SB district.
  13. **Vehicle service, limited.** No outdoor storage is permitted in the CR and I-1 districts and no vehicles shall be stored overnight. Outdoor storage in the SB district is limited to the rear of the building with 100 percent screening from all views ~~in a manner acceptable to the permit issuing authority.~~
  14. **Vehicle towing, storage.**
    - a. No vehicle towing or storage facility shall be located within 500 feet of any residential use or district.
    - b. All overnight storage of vehicles shall be completely screened from view from the public right-of-way and adjacent properties by a six-foot fence or other methods that achieve the screening objective ~~that are acceptable to permit-issuing authority.~~
  15. **Veterinarian/kennel, indoor.**
    - a. No veterinarian or kennel in the NC, NO or CBD districts shall exceed 5,000 square feet.
    - b. All activity associated with the operation shall take place within a completely enclosed building.
  16. **Veterinarian/kennel with outdoor operations.** No veterinarian or kennel with outdoor operations shall be located within 500 feet of any residential use or district.
  17. **Electronic gaming center.** No electronic gaming center shall be located within ¼ mile of another electronic gaming center. The distance shall be measured from the closest point on the perimeter of the parcel on which the described establishments are located.
- L. Industrial and manufacturing uses.**
1. **Flex space.** Flex space is permitted in accordance with the use table in Section 5.1 and the following standards:
    - a. Changes in products, services, and square footage of the permitted uses within a flex-space structure do not require approval of the Town.
    - b. Any portion of the gross floor area in each flex space structure may be commercial space provided sufficient off-street parking is available on-site.
    - c. One parking space shall be provided for each 400 square feet of floor area used as flex space.
  2. **Industrial use, indoor.** No outdoor storage is permitted in the I-1 district. Outdoor storage in the SB district is limited to the rear of the building with 100 percent screening from all views ~~in a manner acceptable to the permit issuing authority.~~
  3. **Manufacturing and production.** Manufacturing and production facilities are permitted in accordance with the use table in Section 5.3 and the following standards:
    - a. No vibration shall be produced which is transmitted through the ground (and is discernible without the aid of instruments) at or at any point beyond the lot line.
    - b. All noise shall be muffled so as to not be objectionable due to intermittence, beat frequency or shrillness.
    - c. Visible emissions of air pollutants of any kind at ground level, past the lot line of the lot on which the source of emissions is located, are prohibited.
    - d. No person shall cause or permit any materials to be handled, transported or stored in such a manner which allows or may allow

- particulate matter to become airborne.
- e. No direct glare from high temperature processes such as combustion or welding, which is visible at the lot line, shall be permitted.
  - f. There shall be no emission or transmission of heat or heated air so as to be discernible from the lot line.
  - g. Any condition or operation which results in the creation of odors of such intensity or character as to unreasonably interfere with the comfort of the public shall be removed, stopped or modified so as to remove the odor.
  - h. Manufacturing and production uses shall not be a permissible use within existing commercial buildings in downtown Garner located along Main Street between Montague Street and Griffin Street, and zoned CBD.
4. **Recycling collection (outside).** Recycling collection points are permitted in accordance with the use table in Section 5.1 and the following standards:
- a. Recycling collection points shall be limited to one operation per principle use (i.e., one per shopping center, or office complex or building).
  - b. Recycling collection points shall present an appropriate appearance in the community. This objective may be accomplished by the use of containers which are uniform in size, color and shape, or by the use of sufficient measures to screen recycling collection points from external views ~~in a manner approved by the Planning Director.~~
  - c. Materials collected at recycling collection points shall be limited to aluminum, plastic, glass, or paper materials which may be recycled for re-manufacture or reuse.
  - d. Recyclable materials shall be stored within a weather-tight container or a durable material container ~~approved by the Planning Director.~~ An individual container shall not exceed a height of eight feet. The use of containers with self-closing doors is strongly encouraged.
  - e. Outside recycling collection points should be located on a site so as to avoid direct street view such as side or rear areas of existing building. The location of a recycling collection point shall be situated on a site so as not to create unsafe or hazardous traffic movements on or off the site.
  - f. Processing equipment shall not be a part of a recycling collection point.
  - g. The area immediately surrounding recycling collection points shall be kept clean and in a good state of repair at all times. The Planning Director shall have the authority to order, at the owner's expense, painting, repair, alteration, screening or removal of containers or receptacles and the cleaning of recycling collection point areas which constitute by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, a public nuisance or hazard to public health, safety or welfare. Failure to comply with the provisions of this section shall result in enforcement action according to the requirements of Article 10, Enforcement.
  - h. The setback requirements that apply to the principal use of property where a recycling collection point is located shall also apply to individual recycling collection containers.
  - i. Signage for recycling collection points shall be subject to the sign regulations set forth in Article 7. The use of the recycling

symbol as the only signage for recycling collections points is required.

- j. A minimum of five parking spaces per recycling collection point or one parking space for each receptacle, whichever is greater, shall be required.
- k. In order to establish a recycling collection point, an applicant shall submit information to the Planning Director outlining the general operation of the use and a site plan depicting the location of all containers on the site. The submitted information must be of sufficient detail; to enable the Planning Director to determine if the standards of this UDO and other applicable requirements have been met. A recycling collection point shall not be established and operated until the Planning Director has issued written approval of the request.

5. **Recyclable material collection centers.** Recyclable material collection centers are permitted in accordance with the use table in Section 5.1 and the following standards:

- a. Collectible recyclable materials shall be limited to aluminum, copper, plastic, glass or paper.
- b. Storage of collectible recyclable materials may be located inside or outside of an enclosed building. If located outside of an enclosed building, recyclable materials shall be stored within a trailer that is drawn by motor power and bears a valid and current state license. Or, such material located outside an enclosed building may be stored within weather tight metal containers which do not exceed a height of eight feet.
- c. Recyclable material collection centers outside of an enclosed building should be located on a site to avoid direct street view, such as but not limited to being located in the rear of existing building(s). Direct street view of outside collection centers is permissible only when a 100 percent screen on all sides of the receptacle is completed by the developer according to the standards outlined below prior to the start of collection operations. Plans detailing how an outside collection center is to be screened shall be submitted as part of the site ~~or conditional use permit~~plan application ~~and be approved by the permit issuing authority prior to the start of collection operations.~~
- d. Where an outside collection receptacle is a trailer, screening shall be accomplished by solid fencing sufficient to screen tires of all trailer wheels and shall be located a maximum of six feet from the designated trailer location closest to street view. A minimum of 50 percent of the solid fence shall be softened with vegetation consisting of a combination of shrubs and trees and shall extend 15 feet on either end of said fencing.
- e. Where an outside collection receptacle is a weather tight metal container, a 100 percent solid screen shall be provided on all sides with a direct street view. Screening shall be accomplished by solid fencing to a minimum height of eight feet; located a maximum of four feet from the container. A minimum of 50 percent of the fence shall be softened with vegetation consisting of a combination of shrubs and trees.
- f. Processing equipment, such as but not limited to crushers, sorting equipment shall not be part of an outside collection operation.
- g. Collection containers shall be located a minimum of 50 feet from any property line adjoining a residence or residential district. A type

- h. A buffer/screen shall be required along such property lines. Recyclable material collection center sites shall be kept clean and free of materials, rubbish or debris. The exterior of outside collection containers shall be kept clean and kept in a good state of repair at all times. The Planning Director shall have the authority to order painting, repair, alteration, or removal of receptacles and the cleaning of collection sites which constitutes by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, a public nuisance or hazard to public health, safety or welfare.
- i. All applicable setback requirements of Article 6 shall apply to situations where all collection and storage operations are conducted inside a completely enclosed building.
- j. In situations where collection and storage operations occur outside of an enclosed building the following setbacks shall apply:

<b>Standard</b>	
Front setback	50 feet
Interior side	25 feet
Corner side	50 feet
Rear side	25 feet (50 feet if site abuts a street)

**Note: Greater setback may be required if site adjoins a residence or residential district.**

- k. A minimum of five parking spaces per recyclable material collection center site or two parking spaces for each receptacle, whichever is greater, shall be required.
  - l. Signage for collection centers shall be subject to the sign regulations set forth in Section 7.5.
  - m. A recyclable material collection center with outside operations shall be located on a lot which abuts U.S. 401, U.S. 70, N.C. 50, or Mechanical Boulevard.
6. **Storage.**
- a. All outdoor storage areas shall be screened from view from any public right-of-way or adjacent property with a six-foot opaque fence, wall; or other methods that achieve the screening objective ~~that are acceptable to the permit-issuing authority.~~
7. **Wholesale sales.** No outdoor storage is permitted in the I-1 district. Outdoor storage in the SB district is limited to the rear of the building with 100 percent screening from all views ~~in a manner acceptable to the permit issuing authority.~~

**M. Other uses.**

**1. Agriculture and silviculture.**

- a. Agriculture. Structures for keeping and raising of livestock and poultry shall be separated from residentially-zoned property by 500 feet.
- b. Silviculture. Forest management, tree farm and timber areas are permitted subject to the following standards:
  - (1) No clearing of timber, trees or understory vegetation will be permitted in the perimeter and street buffers as established in Article 7, except for any road/driveway necessary to serve the property;
  - (2) No site plan approval shall be issued within two years of the harvesting of timber; and

- (3) No clearing of timbers, trees or understory vegetation will occur within 20 feet of the property line of an adjoining property devoted to a residential use.

**N. Funeral home and crematorium.**

- 1. Crematoriums are allowed only as an accessory use to a funeral home.
- 2. All crematoriums must meet the requirements of the North Carolina Crematory Act.
- 3. All crematorium operations must be conducted entirely within a structure; outdoor storage is prohibited.
- 4. All crematorium operations must provide certification from the N.C. Division of Air Quality that a permit is or is not required.

(Ord. No. 3396, §§ 6--10, 4-3-06; Ord. No. 3502, §§ 1, 2, 3-3-08; Ord. No. 3523, § 5, 8-4-08; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3656, § 3, 2-21-12; Ord. No. 3673, § 3, 10-1-12; Ord. No. 3780, § 8, 7-7-15; Ord. No. 3881, § 4, 9-5-17; Ord. No. 3963, §XXXXX, 04-16-19; Ord. No. 18-01, §XXXXX, 09-04-18)

**5.3. Accessory uses and structures.**

**A. General.**

- 1. Whenever a use is conducted in conjunction with another principal use, and the first use:
  - a. Constitutes only an incidental or insubstantial part of the total activity on a lot; or
  - b. Is commonly associated with the principal use and integrally related to it,
- 2. Then the first use may be regarded as accessory and may be carried on under the umbrella of the permit issued for the principal use.

**B. Accessory buildings and uses in residential districts.**

- 1. The following standards shall apply to all accessory buildings in residential districts:
  - a. The maximum height of a garage shall not exceed the height of the principal structure.
  - b. The maximum height of an accessory building other than a garage shall be 20 feet.
  - c. The minimum setback from a side lot line is ten feet;
  - d. The minimum setback from a rear lot line is five feet;
  - e. If an easement exists along such a lot line, the minimum setback will be coincident with the easement line if it is greater than the applicable minimum stated above;
  - f. The floor area of the total number of accessory buildings shall not exceed one-half of the heated square footage of the principal building served, except in the R-40 district;

**Commentary: Floor area for accessory building cannot exceed one-half of the heated space of the principle building, plus any existing accessory building(s).**

- g. Residential accessory buildings, on lots of record prior to March 1984, may encroach into designated conservation buffers provided that: (1) such buildings not exceed one-quarter of the area of the principal building served; (2) such accessory building shall not be located in any designated floodway; (3) placement of an accessory building in a flood fringe area shall meet all applicable construction requirements; and (4) including the accessory building, the area of the lot covered by impervious surfaces shall not exceed 25 percent.
- 2. The following are specifically regarded as accessory to residential principal uses so long as they satisfy the general criteria set forth in paragraph 1., above:
  - a. Offices or studios within an enclosed building and used by an

occupant of a residence located on the same lot to carry on administrative or artistic activities, so long as such activities do not fall within the definition of a home occupation.

- b. Hobbies or recreational activities of a noncommercial nature.
- c. The renting out of one or two rooms within a single-family residence (which one or two rooms do not themselves constitute a separate dwelling unit) to persons who are not part of the family that resides in the single-family ~~dwelling~~residence.

3. The following activities shall not be regarded as accessory to a residential principal use and are prohibited in residential districts:

- a. Storage or parking of any vehicle or trailer overnight or for a longer period of time, if said vehicle or trailer is licensed or regularly used for commercial or industrial purposes, and meets any of the following criteria:
  - (1) A vehicle for which a commercial driver's license is required by state law; or
  - (2) A vehicle or trailer having in excess of two axles; or
  - (3) Any trailer bearing commercial signage, logo, or actually carrying commercial or industrial equipment or materials, or
  - (4) A vehicle or trailer having a height in excess of 90 inches stored or parked in any required front yard.
- b. However, nothing in the UDO shall prohibit the overnight parking or storage of pickup trucks or of trailers used exclusively for noncommercial or non-industrial purposes.
- c. Automotive repair, including engine, body or other repair or repainting of any vehicle owned by a person not residing at that address, notwithstanding whether compensation was paid for said service.
- d. Skateboard ramps, except as follows:
  - (1) Ramps that do not exceed four feet in height off a horizontal plane at the highest point of ground where the structure is immediately erected; and
  - (2) That meet all side and rear yard setback requirements.

C. **Junked or abandoned vehicles.** The following activities shall not be regarded as accessory to any principal use and are prohibited in all districts, except as a principal use expressly allowed in the use table in Section 5.1:

- 1. Storage outside a substantially enclosed building of any junked or abandoned motor vehicle that also constitutes a nuisance for more than 30 days. (A building is substantially enclosed if the length of the additional wall necessary to fully enclose it would not exceed 25 percent of the length of the existing walls.) Abandoned and junked motor vehicles are defined as follows:
  - a. An abandoned motor vehicle is a self-propelled, land operated vehicle (e.g., truck, car, tractor, etc.) that:
    - (1) Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or
    - (2) Is left on property owned or operated by the Town for longer than 24 hours; or
    - (3) Is left on private property without the consent of the owner, occupant or lessee thereof for longer than two hours; or
    - (4) Is left on any public street or highway for longer than seven days.
  - b. A junked motor vehicle is an abandoned motor vehicle that also:
    - (1) Is partially dismantled or wrecked; or

- (2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- (3) Is more than five years old and worth less than \$100.00; or
- (4) Does not display a current license plate.

D. **Automatic one bay (non-wand) car wash facility.** A one bay automatic (non-wand) car wash facility that is completely enclosed except for openings necessary to allow entry and exit of vehicles is permissible in CR and SB districts only, provided:

- 1. The facility serves as an accessory use to the principal use of a convenience store only.
- 2. The car wash building or structure cannot exceed a height of 20 feet or exceed an overall building dimension of 25 feet in width and 50 feet in length.
- 3. The car wash accessory building shall have the same architectural character as the onsite principal building and shall house car wash related storage and/or rest rooms only. The doors of the car wash building shall be architecturally compatible with the car wash building. The doors of the car wash accessory building shall be closed when the facility is not in operation.
- 4. The car wash building and storage of auxiliary equipment related to the car wash facility shall be located behind the rear building line of the principle use building.
- 5. The orientation of a one bay automatic car wash structure shall be sited so as to discourage direct street view of the facility. Direct street access of a one bay automatic car wash structure and related auxiliary equipment is permissible only when appropriate landscaped areas such as, but not limited to, planter islands or other landscaped features are used to provide a 50 percent screen of the facility and related equipment from street view.
- 6. All one bay (non-wand) automatic car wash structures shall meet the applicable setback standards of Article 6. The use shall be subject to the noise standards.
- 7. In addition to meeting the screening standards outlined above, the provisions of Article 7, regarding buffer/screen requirements shall apply to a one bay automatic car wash facility ~~and all landscape plans for such uses must be reviewed by the Planning Commission and approved by the permit issuing authority.~~
- 8. The property on which an accessory automatic non-wand car wash is located shall abut the major thoroughfares, U.S. 401 and U.S. 70 and N.C. 50, as designated on the adopted greater Capital Area Metropolitan Planning Organization Transportation Plan.
- 9. All car wash facilities shall be equipped with a water recycling system that meets all applicable standards and regulations of the Town, City of Raleigh, Wake County and state or connect to the Town of Garner Sewer System upon the approval of the Town Engineer.

E. **Automatic car wash facility.** An automatic (non-wand) car wash facility that is completely enclosed except for openings necessary to allow entry and exit of vehicles is permissible as an accessory use to the principle use of an automobile service center, in the CR and SB districts provided the following standards are met:

- 1. The number of car wash bays shall be limited to a maximum of two, provided the number of car wash bays does not exceed more than one-third of the total number of bays contained in the entire building.
- 2. The car wash bays shall be architecturally integrated into the overall building to as to present a unified building design in a manner that utilizes the same building materials and colors as the other portions of the building.

3. Hours of operation for the automatic car wash shall be limited to between 6:00 a.m. and 11:00 p.m. each day.
4. Appearance and landscaping.
5. The orientation of the automatic car wash bays shall be sited so as to discourage direct street views of the facility where practical.
6. Automobile service centers with automatic car wash bays as an accessory use located within the Timber Drive or U.S. 70/401 overlay districts shall be subject to the landscape standards of those overlay districts.
7. Automobile service centers with automatic car wash bays as an accessory use not located within a special overlay district shall provide a 100 percent screen of the facility and related equipment from street views to a minimum height of four feet within two years of initial planting.
8. All car wash facilities shall be equipped with a water recycling system that meets all applicable standards and regulations of the Town, City of Raleigh, Wake County, and state or connect to the Town of Garner Sewer System upon the approval of the Town Engineer.

**F. Home occupations in residential zoning districts.**

1. **Defined.** A commercial activity in any residential district that:
  - a. Is conducted by a person on the same lot where such person resides; and
  - b. Is not so insubstantial or incidental or is not so commonly associated with the residential use as to be regarded as an accessory use, but that can be conducted without any significantly adverse impact on the surrounding neighborhood.
2. **Uses not permitted.** A use may not be regarded as having an insignificant adverse impact on the surrounding neighborhood if:
  - a. The home occupation changes the outside appearance of the dwelling;
  - b. Goods, stock in trade, or other commodities are displayed;
  - c. It results in the outside storage or display of anything;
  - d. Any on-premises retail sales occur;
  - e. More than one person not a resident on the premises is employed in connection with the occupation;
  - f. It generates traffic, parking, sewerage, or water use in excess of what is normal in the residential neighborhood;
  - g. It results in the off-street or on-street parking of more than two vehicles at any one time not owned by members of the occupant household;
  - h. Creates a hazard to persons or property;
  - i. Is a nuisance;
  - j. It creates objectionable traffic, noise, fumes, odor, dust or electrical interference; or
  - k. More than 25 percent of the total gross floor area of the residential building plus other buildings used for the occupation, or more than 500 square feet of gross floor area, whichever is less, is used for home occupation purposes.
3. **Home occupation standards.**
  - a. The residential character of the lot and dwelling shall be maintained. Neither the interior nor the exterior of the dwelling shall be structurally altered so as to require compliance with nonresidential construction codes to accommodate the home occupation. A sign up to four square feet in area and four feet in height may be allowed as noted in Article 7, provided a sign permit is obtained.
  - b. No additional buildings or structures shall be added on the property



- to accommodate the home occupation.
      - c. No outdoor storage or separate entrance shall be permitted.
      - d. Instruction in music, dancing and similar subjects shall be limited to two students at a time.
      - e. Any activities involving outside visitors or clients shall be limited to the hours between 8:00 a.m. and 8:00 p.m.
    - 4. **Exclusions to home occupations.** The following are expressly prohibited as home occupations:
      - a. Animal hospitals, stables, or kennels;
      - b. Barber, beauty and other personal service shops;
      - c. Dance studios, schools;
      - d. Mortuaries;
      - e. Private clubs;
      - f. Repair shops;
      - g. Restaurants;
      - h. Automobile paint or repair shops; or
      - i. Doctor, dentist, veterinarian or other medically related office.
- G. **Home occupations in the Neighborhood Office zoning district.**
  - 1. **Defined.** A commercial activity in a single family dwelling located in the Neighborhood Office district that:
    - a. Is conducted by a person on the same lot where such person resides; and
    - b. Is not so insubstantial or incidental or is not so commonly associated with the residential use as to be regarded as an accessory use, but that can be conducted without any significantly adverse impact on the surrounding neighborhood.
  - 2. **Uses not permitted.** A home occupation use is not allowed if:
    - a. The home occupation changes the outside appearance of the dwelling;
    - b. Goods, stock in trade, or other commodities are displayed;
    - c. It results in the outside storage or display of anything;
    - d. Any on-premises retail sales occur;
    - e. More than six people not a resident on the premises are employed in connection with the occupation;
    - f. It generates traffic, parking, sewerage, or water use in excess of what is normal in the residential neighborhood;
    - g. It results in any on-street parking of vehicles;
    - h. Creates a hazard to persons or property;
    - i. Is a nuisance;
    - j. It creates objectionable traffic, noise, fumes, odor, dust or electrical interference; or
    - k. More than 50 percent of the total gross floor area of the residential building plus other buildings used for the occupation, or more than 700 square feet of gross floor area, whichever is less, is used for home occupation purposes.
  - 3. **Home occupation standards.**
    - a. The residential character of the lot and dwelling shall be maintained. The dwelling must comply with all applicable NC Building Codes necessary to accommodate the home occupation.
    - b. A sign up to four square feet in area and four feet in height may be allowed as noted in Article 7 provided a sign permit is obtained.
    - c. No additional buildings or structures shall be added on the property to accommodate the home occupation.
    - d. No outdoor storage or separate entrance shall be permitted.

- e. Instruction in music, dancing and similar subjects shall be limited to two students at a time.
  - f. All activities involving the home occupation limited to the hours between 7:30 a.m. and 8:00 p.m.
  - g. Off-street parking shall be provided in the amount of one parking space per employee in addition to required parking for the residential use of the dwelling. All parking must be designed to meet the requirements of Article 7 of the UDO.
  - h. Commercial vehicles as defined in Section 5.4.3(a) are prohibited as part of the home occupation.
4. **Exclusions to home occupations.** The following are expressly prohibited as home occupations:
- a. Animal hospitals, stables, or kennels;
  - b. Dance studios, schools;
  - c. Mortuaries;
  - d. Private clubs;
  - e. Repair shops;
  - f. Restaurants;
  - g. Automobile paint or repair shops; or
  - h. Doctor, dentist, veterinarian or other medically related office.
- H. **Fences and walls.** Fences and walls are permitted in any yard or along the edge of any yard and to such heights as follows, provided the vision necessary for safe vehicular and pedestrian movement on driveways and streets is not impeded:
1. **All residential, OI, NC and CR districts.** Open and solid fences to four feet in front and corner side yards; solid fences to six feet in side and rear yards; open fences to any structurally-sound height in side and rear yards; solid rear and side yard fences to eight feet as a special exception if granted by the Board of Adjustment.
  2. **Service Business (SB) districts.** Solid fences to four feet in front yards; solid fences to ten feet in side and rear yards; open fences to any structurally-sound height in any yard.
  3. **Industrial districts (I-1, I-2).** Solid and open fences to any structurally-sound height.
  4. **Salvage operations.** Solid fences not less than eight feet in height must be provided to enclose any salvage, scrap or reclamation operation.
  5. **Swimming pools.** Swimming pools shall be completely isolated from adjacent properties and from streets by a fence or wall having a minimum height of four feet, and a maximum height as provided above, constructed so as to prevent the passage of small children.
  6. **Water impoundment ponds or other water feature.**
    - a. Where a water impoundment pond or other water feature is located more than 100 feet from the property line of any adjacent residential use or zoning district and provides an aquatic shelf acceptable to the Town Engineer, no fence shall be required.
    - b. Where no such shelf is proposed, or the site is located closer than 100 feet to the property line of any residential use or zoning district, the pond or water feature shall be fenced and landscaped ~~in a fashion acceptable to the Town Engineer and Planning Director.~~
    - c. As an alternative to subparagraphs a. and b. above, a pre-existing pond may be retained without fencing if the real property on which it is situated is owned by a homeowners' association which maintains a liability insurance policy, prepaid annually, with minimum limits of \$1,000,000 which lists the Town as an additional insured; the H.O.A. must submit an initial budget which provides for

payment of the premium, and must assure that its agent annually certifies such coverage to the Town. A lapse in coverage shall be punishable as a misdemeanor. The homeowners' association shall notify the Town of any lapse in coverage. The declaration shall provide that any person or entity which pays the delinquent premium has a lien on the common areas and on each lot affected by the declaration. Lapse of coverage is also enforceable by any other enforcement means available to the Town, including nuisance abatement, civil penalty, injunctive relief and otherwise.

7. **Maintenance and appearance standards.** These provisions shall apply to all fences and walls installed as part of an approved development screening requirement and to fences and walls that are an accessory structure to a residential or commercial property visible from a major or minor thoroughfare. Streets considered major and minor thoroughfares are listed under Subsection 5.4(H)(7)(h). The responsibility for maintenance of fences and walls shall be the property owner or an authorized designee.
- a. A fence or wall shall not be disfigured [by] such as, but not limited to, graffiti, cracks, peeling paint or other material.
  - b. A fence shall not stand with bent or broken supports.
  - c. Fences shall be kept free of missing boards and gaps.
  - d. Repair of fences and walls shall be completed with the same or an acceptable similar material as the original structure. Size, width and other dimensional attributes of existing fences and walls shall be used for replacement material.
  - e. When portions of fences and walls are removed or taken down with no intention to rebuild or replace, all portions of the fence must be removed. In cases where the fence or wall is part of the screening required for an approved development project, the fence or wall must be replaced consistent with the provisions of this section ~~unless an acceptable alternative is approved by the Planning Director.~~
  - f. If a nonconforming fence or wall is damaged and it is determined by the Planning Director that such damage is greater than 50 percent of the replacement value of the entire fence or wall, the entire fence or wall must be reconstructed to conform with the provisions regulating fences and walls.
  - g. Fences shall be constructed such that exposed framing faces the interior yard and not visible from the street right-of-way.
  - h. The provisions of this section apply to all existing or future major or minor thoroughfares listed on the Town's adopted Transportation Plan as amended.
    - (1) Major thoroughfares: Garner Road, Jones Sausage Road, Mechanical Boulevard, N.C. 50, Old Stage Road, Ten Ten Road, Timber Drive, U.S. 70, U.S. 401, Vandora Springs Road, and White Oak Road.
    - (2) Minor thoroughfares: Auburn-Knightdale Road, Auburn Church Road, Aversboro Road, Buffalo Road, Creech Road, Grovemont Road, New Bethel Church Road, New Rand Road, Rand Road, Woodland Road, and Yeargan Road South.
  - i. An appeal by any person aggrieved by a final order, interpretation or decision of the Planning Director, Building Official or other administrator of the Town may be taken to the Board of Adjustment in accordance with Article 3.

**I. Towers and antennas or satellite dishes 35 feet tall or less.**

1. Towers and antennas or satellite dishes 35 feet tall or less, mounted on the ground are considered accessory uses and structures in all zones provided they meet the following criteria:
  - a. Towers and antennas or satellite dish antennas shall not be located in a public right-of-way or public easement.
  - b. Towers and antennas or satellite dish antennas shall be prohibited in front and corner-side street yards in all residential districts.
  - c. Towers and antennas or satellite dish antennas shall meet the applicable rear or interior side yard setback requirement in all residential zoning districts.
  - d. Satellite dish antennas in all residential zoning districts shall not exceed a height of 20 feet and 12 feet in diameter and shall be limited to one device per lot. A satellite dish that exceeds four feet in diameter shall be constructed of black mesh material.
  - e. Towers and antennas or satellite dish antennas shall meet the applicable yard setback requirement in all nonresidential districts.
  - f. In addition, the following criteria must be met:
    - (1) The owner of a tower and antenna or satellite dish shall certify that radio, television or similar reception for adjoining properties will not be disturbed or diminished.
    - (2) Advertising copy or any logo which constitutes a sign are prohibited on any tower and antenna or satellite dish antenna in any zoning district.
    - (3) A satellite dish antenna located in a residential zoning district shall be screened from all street views. The screen shall be made of plant materials enclosed fences or walls, earthen beams or any combination thereof which is immediately adjacent to the dish antenna. Such screening shall be a height of six feet above ground elevation.

**J. Towers and antennas or satellite dishes, 20 feet tall or less.**

1. Towers and antennas or satellite dishes, 20 feet tall or less, mounted on the roof of a building or structure are considered accessory uses in all zones provided they meet the following criteria:
  - a. The applicant shall submit a site plan and roof plan showing the exact location of the satellite dish antenna and how its location and/or architectural enhancements will provide a 50 percent screen of the structure from all street views for dish antennas located in nonresidential districts and a 75 percent screen from all street views in residential districts.
  - b. The applicant shall certify that radio or television or similar reception for adjoining properties will not be disturbed or diminished by a satellite dish.
  - c. Advertising copy or logos which meets the definition of a sign shall not be permitted on any tower and antenna or satellite dish antenna in any zoning district.
  - d. A roof mounted satellite dish antenna in a residential district that exceeds four feet in diameter shall be constructed of black mesh material.
2. The Board of Adjustment may grant an exception to these requirements regarding the location, height and setback requirements provided the Board concludes the following conditions have been satisfied.
  - a. The applicant provides acceptable evidence that literal compliance with the required locational or dimensional standards will result in

the obstruction of the antenna or satellite dish's reception and will not permit the normal use of the antenna or satellite dish.

- b. The applicant provides acceptable evidence to the Board of Adjustment that the granting of the exception is the minimum necessary to operate the antenna or satellite dish in a normal manner according to the manufacturer's specifications.
- c. In addition to the above required findings, in order to grant an exception the Board of Adjustment must find the following:
  - (1) That the request will be in general harmony with adjoining properties;
  - (2) That the request will not endanger the public safety or welfare; and
  - (3) That the request does not violate any other local, state or federal laws or regulations.

**K. Accessory solar energy systems.**

- 1. All zoning districts: Solar panels shall not create a traffic or safety hazard; solar panels shall be arranged, angled or sited to minimize glare or reflection onto adjoining properties and rights-of-way. Panels shall have a textured or anti-reflective surface or coating. Mirrors or mirrored panels are prohibited.
- 2. NO, NC, O&I, CR, SB, I-1, I-2 and MXD-1 zoning districts:
  - a. The maximum height for all ground-mounted solar panels and related equipment shall not exceed 15 feet. This includes solar panels at maximum tilt.
  - b. The area for ground-mounted panels and equipment shall be no more than 25% of the principal building's footprint.
  - c. Ground-mounted panels are restricted to the interior side and rear yards only, and shall not be located within any perimeter buffer required by Article 7.
  - d. Flush-mounted roof panels are exempt from the screening of objectionable views requirements of Article 7.
  - e. Any roof panel not installed flush to the roof surface shall be 100% screened from view in accordance with the screening of objectionable views requirements of Article 7.
- 3. CBD and all residential zoning districts: Only flush-mounted solar roof panels or solar shingles are permitted.

(Ord. No. 3396, § 11, 4-3-06; Ord. No. 3418, §§ 1--5, 7-5-06; Ord. No. 3519, 7-7-08; Ord. No. 3523, § 1, 8-4-08; Ord. No. 3780, § 9, 7-7-15)

**5.4. Temporary uses.**

- A. **Permit required.** A temporary use or structure for one or more of the following described uses in paragraph C., below, shall be permitted in any district. All temporary uses and structures shall obtain a temporary use permit pursuant to the procedures set forth in Article 3.
- B. **General regulations.** The general regulations of this section shall apply to all allowed temporary uses unless otherwise expressly stated.
  - 1. Permanent changes prohibited. Permanent changes to the site of a temporary use are prohibited.
  - 2. Accessory signage.
    - a. Permanent signs accessory to temporary uses are prohibited;
    - b. Signs accessory to temporary uses shall be limited to the premises of the temporary use except as specifically permitted under Article 7.
    - c. Not more than one double-faced, non-illuminated sign shall be permitted;

- d. Said sign shall not exceed 32 square feet in area nor eight feet in height and shall be set back not less than five feet from the front and/or side property line;
  - e. Signs accessory to temporary uses require a permit; and
  - f. All signs accessory to temporary uses shall be removed when the activity ends.
- 3. Temporary uses shall not violate any applicable conditions of approval that apply to the principal use on the site.
  - 4. The operator must obtain all other required permits applicable to the activity, such as health department permits.
  - 5. All temporary structures shall be erected in a safe manner in accordance with any applicable Town codes, ordinances or standards.
    - a. No temporary use shall be placed on any public sidewalk, public street, or other public property except as provided in the Town of Garner Code of Ordinances; and
    - b. Electrical and utility connections, if applicable, shall be approved by the Town.

C. **Temporary uses allowed.** Temporary uses shall be allowed in accordance with the standards of this section.

1. **Table of temporary uses permitted by district:**

Allowable Temporary Use	R40	R-20, R-15, R-12, R-9, RMH, MF-1, MF-2	NO, NC, CBD	OI, CR, SB	I-1, I-2
Carnivals, Fairs, Circuses, Concerts and Similar Uses	Permit Required	Not Allowed; except rodeos in the R-20 district, subject to all activities being located a minimum of 100 feet from any lot line zoned residential or used as a residence with Permit Required	Permit Required	Permit Required	Permit Required
Natural Disasters and Emergencies Offices	Allowed	Allowed	Allowed	Allowed	Allowed
Parking Lot Sales	Not Allowed	Not Allowed	Not Allowed	Permit Required	Permit Required
Seasonal Outdoor Sales	Not Allowed	Not Allowed	Permit Required	Permit Required	Permit Required
Temporary Construction, Security, Real Estate Sales Offices	Permit Required	Permit Required	Permit Required	Permit Required	Permit Required
Yard or Garage Sales	Allowed	Allowed	Not Allowed	Not Allowed	Not Allowed

Temporary Storage Container	Registration Required	Registration Required	Registration Required; Permit Required after 15 days	Registration Required; Permit Required after 15 days	Registration Required; Permit Required after 15 days
-----------------------------	-----------------------	-----------------------	--	--	--

2. **Carnivals, fairs, circuses, concerts and other public entertainment.** Such temporary, outdoor events shall be governed by the provisions of the Town of Garner Code of Ordinances. No person shall permit, maintain, promote, conduct, advertise, act as entrepreneur, undertake, organize, manage or sell or give tickets to an actual or reasonably anticipated assembly of 500 or more people which continues or can reasonably be expected to continue for 18 or more consecutive hours, whether on public or private property, unless the standards of this section are met.

**a. Exemptions.**

- (1) This section shall not apply to any regularly established, permanent place of worship, stadium, athletic field, arena, auditorium, coliseum, or other similar permanently established place of assembly for assemblies that do not exceed by more than 250 people the maximum seating capacity of the structure where the assembly is held.
- (2) This section shall not apply to government-sponsored fairs held on regularly established fairgrounds nor to assemblies required to be licensed by other ordinances and regulations of the Town.

**b. Required facilities.** Prior to commencement of the assembly, the organizer shall provide the following facilities to ensure the assembly causes as little disruption and inconvenience as possible to adjacent properties, neighborhoods and traffic patterns.

- (1) A fence completely enclosing the proposed location, of sufficient height and strength to prevent people in excess of the maximum permissible number from gaining access to the assembly grounds, which shall have at least four gates, at least one at or near four opposite points of the compass. ~~If the applicant provides acceptable alternative security measures this requirement may be waived by the Planning Director.~~
- (2) Potable water meeting all federal and state requirements for purity, sufficient to provide drinking water for the maximum number of people to be assembled at the rate of at least one gallon per person per day.
- (3) Separate enclosed toilets for males and females, meeting all state and local specifications, conveniently located throughout the grounds, sufficient to provide facilities for the maximum number of people to be assembled at the rate of at least one toilet for every 200 females and at least one toilet for every 300 males, together with an efficient, sanitary means of disposing of waste matter deposited, which is in compliance with all state and local laws and regulations.
- (4) A sanitary method of disposing of solid waste in compliance with state and local laws and regulations, sufficient to dispose of the solid waste production of the maximum number of people to be assembled at the rate of at least two and one-half pounds of solid waste per person per day, together with a plan for holding and a plan for collecting al

such waste at least once each day of the assembly and sufficient trash cans with V-lids and personnel to perform the task.

- (5) EMS personnel and at least one emergency ambulance must be available for use at all times.
- (6) If the assembly is to continue during hours of darkness, illumination sufficient to light the entire area of the assembly at the rate of at least five foot-candles, but not to shine unreasonably beyond the boundary enclosed location of the assembly.
- (7) Security guards, either regularly employed, duly sworn, off-duty North Carolina peace officers or private guards licensed in North Carolina, sufficient to provide adequate security for the maximum number of people to be assembled at the rate of at least one security guard for every 750 people.
- (8) Fire protection, including alarms, extinguishing devices and fire lanes and escapes, sufficient to meet all state and local standards for the location of the assembly as set forth in the North Carolina Administrative Code and ordinances of the Town, and sufficient emergency personnel to efficiently operate the required equipment.
- (9) All reasonably necessary precautions to ensure that the sound of the assembly will not carry unreasonably beyond the enclosed boundaries of the location of the assembly.
- (10) Traffic control plan that is acceptable to the Planning, Engineering and Police Departments.

3. **Natural disasters and emergencies.** Temporary uses and structures needed as the result of a natural disaster or other health and safety emergencies are allowed for the duration of the emergency, but shall coordinated with the Town Manager's office.

4. **Parking lot sales.** Temporary outdoor retail sales on private property are permitted subject to the following:

- a. Temporary outdoor retail sales are only allowed on property with an already operating permitted, and licensed if applicable, commercial or industrial principal use. Locating on vacant property or on property with a vacant or abandoned use is not permitted.
- b. Temporary outdoor retail sales refers to the sale of goods or merchandise that are not generally sold as part of the principal use's inventory. Sales for the temporary outdoor retail operation shall be separate and apart from sales for the principal use.
- c. The proposed temporary outdoor use shall not conflict with principal activities conducted on the site.
- d. The sales and display area of the temporary outdoor retail use shall not exceed ten percent of the gross floor area of the principal building on the premises.
- e. Only one temporary outdoor retail use is allowed per site at a time. The use shall last no longer than three consecutive days. Permits for no more than three such temporary outdoor retail sales shall be issued for a given location within a single calendar year.
- f. A temporary retail use operator shall operate not more than three such uses anywhere in the Town within a single calendar year.
- g. The temporary retail use shall operate only when the principal use



- is operating.
- h. No sales shall be conducted from a truck or other vehicle.
  - i. It shall be unlawful to conduct business within 500 feet of the entrance of any place of business that sells the same commodity.
  - j. Items allowed for sale may include food, but may not include potentially hazardous food (such as uncooked and unprepared fish and seafood products).
  - k. Second-hand goods may not be sold under this paragraph.
5. **Seasonal outdoor sales.** Seasonal outdoor sales for Christmas trees or Halloween pumpkins are allowed at a religious institution or school regardless of zoning classification. Each seasonal sales activity is limited to a maximum of 45 consecutive days. Not more than three events are allowed per calendar year subject to the following provisions:
- a. Permits for Christmas tree sales shall expire on December 26th. The lot, and any abutting private or public property, shall be cleaned and any remaining trees shall be disposed of by an approved method on or before December 31st of the year of issue of said permit.
  - b. The Planning Director shall require the applicant to deposit such sum as specified in the schedule of fees to guarantee the proper cleaning of the site and proper disposal of any remaining materials.
  - c. Any temporary outdoor storage shall be subject to the requirements of Article 7.
  - d. A temporary use permit shall not be required for seasonal outdoor sales when such sales are part of the inventory of an established business holding a valid building permit.
6. **Temporary construction, security, real estate sales offices.** The applicant for a temporary use permit for such temporary office shall comply with all conditions imposed by the Planning Director, which conditions may include fencing, surfacing, setbacks, etc., as deemed necessary to ensure no undue interference with the use and enjoyment of neighboring property. Such office shall be located within a reasonable distance, as determined by the Planning Director, of the primary development or improvement.
- a. The owner of a construction project may place on the construction site and utilize a trailer coach as a temporary office for use by construction, security, and real estate sales personnel.
  - b. The temporary office shall be located on the lot on which construction or development is occurring and shall not be located within 25 feet of any abutting residential use.
  - c. The office shall be removed within ten days after final inspection of the permanent structure or expiration of the corresponding building permit, whichever event occurs first. In the case of residential development projects, the office must be removed within ten days of sale or lease of all dwelling units.
  - d. The owner of a permitted business who requires security protection during hours of closure may maintain a travel trailer for that purpose until a permanent facility can be constructed. In no case shall the use of such security trailer be for longer than a six month period.
7. **Yard or garage sales accessory to a dwelling.** No temporary use permit is required for a yard or garage sale accessory to a residential dwelling, religious institution or school, subject to the following conditions.
- a. All yard and garage sales shall be conducted so that no goods offered for sale are located on any public street or sidewalk, and so that vehicle and pedestrian traffic on public streets and sidewalks is

- not obstructed.
- b. No sign advertising a yard or garage sale may be posted on any public property.
  - c. Only goods of the property owner or tenant shall be sold.
8. **Other uses.** The Planning Director may approve other temporary uses and activities or special events including specific time limits, if it is determined that such uses would not jeopardize the health, safety or general welfare, or be injurious or detrimental to properties adjacent to, or in the vicinity of, the proposed location of the activity.
9. **Temporary storage container.** A transportable unit designed and used primarily for temporary storage of household goods, commodities, building materials and other items on a limited basis.
- a. **Residential use or district.**
    - (1) Temporary storage containers in residential zoning districts or use must be registered by the service provider or property owner with the Town of Garner Planning Department. Storage containers are permitted for a total of 60 consecutive days.
    - (2) If placement of a storage container is in conjunction with an active construction permit for renovation, the container is permitted for the duration of the construction permit.
    - (3) Placement of unit is restricted to the driveway or designated parking area with a minimum distance of ten feet from the existing structure. If, because of lot size or obstructions the portable storage unit cannot be located in a driveway or designated parking area, then the placement of the unit shall be contiguous to the parking area and maintain a five foot setback from side and rear property line.
    - (4) Temporary storage containers for any residential housing type other than single family detached residences shall be located in an onsite vehicular use area and shall not obstruct any drive aisle or block any required parking space.
    - (5) Temporary storage containers shall not be located in the street or in such a manner to impair a motor vehicle operator, bicyclist or pedestrian's view, upon entering or exiting the street, or obstruct the flow of vehicular or pedestrian traffic.
    - (6) Temporary storage containers shall be no greater than eight feet six inches in height, eight feet in width and 20 feet in length.
    - (7) A maximum of two temporary storage containers may be placed on a property at any one time; ~~more than two may be permitted with prior approval from the Planning Director.~~
    - (8) Temporary storage containers may be placed on property for a maximum of two times per year.
    - (9) Temporary storage containers shall be in good condition; i.e., no rust, primer patches, etc. Signage may identify the owner or provider of the storage container only and shall not include the advertisement of any other product or service.
    - (10) Temporary storage containers on property at the time of adoption of this ordinance must comply with this section.
    - (11) Temporary storage containers may not be used as permanent accessory buildings.
    - (12) Storage containers used for new construction shall comply with the requirements outlined in Article 5 for temporary

construction offices.

b. **Nonresidential use or district.**

- (1) A temporary storage unit in nonresidential zoning districts or uses, for 15 days or less must be registered with the Town of Garner Planning Department by the storage unit provider or business owner.
- (2) A temporary use permit is required for temporary storage containers in nonresidential zoning districts or use for more than 15 days. Applications for the temporary use permits shall include a site plan, showing the proposed location of the container on the site in relation to the building, street, driveway and parking area; such other information as may be required to determine full compliance with this and other applicable ordinances of the Town; contact information for the leasing company or owner of the storage container.
- (3) [Reserved.]
- (4) Temporary storage containers may be placed on property for a maximum of 90 consecutive days. Placement for greater than 90 days shall be considered permanent and requires site plan approval and compliance with applicable ordinances of the Town.
- (5) If placement of a temporary storage container is in conjunction with an active construction permit for renovations, etc., the container is permitted for the duration of the construction permit.
- (6) Placement of temporary storage containers for nonresidential zoning districts and uses shall meet all of the following provisions:
  - (a) The container shall be placed to minimize visibility from adjacent properties and rights-of-way; in the rear yard when possible.
  - (b) The container shall meet building setbacks.
  - (c) Placement is limited to areas that are surfaced with asphalt, concrete, gravel or other materials equal in quality.
  - (d) Placement of the storage container in an existing parking area may not reduce the amount of available parking below the required minimum.
  - (e) The storage container must be a minimum of ten feet from the primary structure.
- (7) Temporary storage containers shall be no greater than eight feet six inches in height, eight feet in width and 40 feet in length.
- (8) A maximum of two temporary storage containers may be placed on a property at any one time; ~~more than two may be permitted with prior approval from the Planning Director.~~
- (9) Temporary storage containers shall be in good condition; i.e., no rust, primer patches, etc. Signage may identify the owner or provider of the storage container only and shall not include the advertisement of any other product or service.
- (10) Temporary storage containers on property at the time of adoption of this ordinance must comply with this section and secure a temporary use permit for the unit.
- (11) Storage containers used for new construction shall comply

---

with the requirements outlined in Article 5 for temporary construction offices.

**D. Prohibited temporary uses.**

1. Sales of firearms.
2. Sales of any materials characterized by an emphasis on specified anatomical areas or specified sexual activities.

(Ord. No. 3559, §§ 1, 2, 7-7-09)

**6.1. Residential district development standards.**

A. Single-family residential dimensional standards.

Single-Family Residential Districts						
Lot Dimensions:	R-40	R-20	R-15	R-12	R-9	RMH
Minimum Lot Area	40,000 sq. ft.	20,000 sq. ft.	15,000 sq. ft.	12,000 sq. ft.	9,000 sq. ft.	5,000 sq. ft.* 70 ft. in Park
Minimum Lot Width	100 ft.	90 ft.	80 ft.	70 ft.	60 ft.	50 ft. in Subdiv.
Minimum Yards:						
Front Yard	35 ft.	35 ft.	30 ft.	30 ft.	25 ft.	25 ft.
Rear Yard	25 ft.	25 ft.	20 ft.	20 ft.	20 ft.	25 ft.
Side Yard	10 ft.	10 ft.	6' minimum 15' combined**	6' minimum 15' combined**	6' minimum 15' combined**	10 ft.
Corner Lot Side Yard	25 ft.	25 ft.	20 ft.	20 ft.	20 ft.	25 ft.
Maximum Height	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.
Maximum Gross DU/Acre (Applies to Cluster Only)	0.8	1.5	2.0	2.5	3.0	—

\* Note: 10,000 square foot minimum required for RMH lots without both public water and sewer. Wake County Health Department may require larger lot sizes.

\*\* Interior side setback distance less than 10 feet requires a five-foot property maintenance easement be provided on the adjoining lot and recorded on the final subdivision plat.

B. **Special lot area reduction adjacent to conservation or other designated buffer.** Lots adjacent to a conservation or other officially designated buffer may be reduced by up to 20 percent where the buffer itself would, in theory, make up the remaining lot size. No lots shall extend into the conservation buffer other designated buffer and such buffers shall be protected in perpetuity by a conservation easement.

(Ord. No. 3813, § 1, 4-19-16)

Town of Garner Unified Development Ordinance (UDO)

**6.2. Multifamily residential dimensional standards.**

Standards	Multifamily Districts	
	MF-1	MF-2
<b>Lot Dimensions: Lot area, minimum</b>		
Two-family lot	9,000 sq. ft.	8,000 sq. ft.
MF, first unit	6,000 sq. ft.	5,000 sq. ft.

MF, additional units	4,500 sq. ft.	3,000 sq. ft.
Lot width, minimum	60 ft.	60 ft.
<b>Minimum Yards:</b>		
Front yard	35 ft.	35 ft.
Rear yard	25 ft.	25 ft.
Side yard	15 ft.	15 ft.
Corner lot side yard	25 ft.	25 ft.
Maximum Height	See Section 6.10.F	See Section 6.10.F

**6.3. Residential cluster development.**

A. **Purpose.** The purpose of cluster development regulations is to provide an optional land development procedure which results in the preservation of open space; protection of streams, floodplain areas and significant existing tree cover; promotion of more efficient subdivision street and infrastructure networks; and encouragement of a variety of styles or types of residential dwellings, residences. Cluster development should provide a total living environment for residential purposes that is in compliance with the Comprehensive Growth Plan and other applicable local, state or federal laws or regulations.

**B. General requirements.**

1. Cluster developments shall be developed on tracts of five acres or more.
2. Cluster developments may have as permissible uses: single-family detached, zero lot line and village houses.
3. Public sanitary sewer and water connections shall be required for every lot or dwelling unit in a cluster development, except in the R-40 district, where the Wake County Health Department may approve a shared private sanitary sewer and water system.
4. A master plan shall be required to be submitted if the cluster development is to be the initial phase of a larger project. Final plat approval procedures according to the requirements of the UDO shall apply to all cluster developments. Town of Garner Unified Development Ordinance (UDO)
5. Each individual cluster development lot containing single-family detached or attached units shall have public or private street access according to the criteria listed in applicable sections of this UDO.
6. A homeowner's association shall be established to own and maintain all property or facilities held in common private ownership. Documents regarding the homeowner's association shall be submitted to the Town for approval with the final plat and shall be duly recorded with the final plat in the Wake County Register of Deeds Office by the applicant.
7. A pre-application conference between the developer or agent and the staff of the Town of Garner shall be required.

**C. Dimensional standards.**

1. The maximum permissible gross density in a cluster development shall be that set forth for the applicable single family zoning district in the Table in ~~Section 6.1~~ Article 6. Cluster development in the MF-1 and MF-2 zoning districts shall be limited to a maximum of six dwelling units per acre. Land not required for residential lots and associated development shall be maintained as undisturbed permanent open space except for required stormwater management devices provided no more than 25 percent of open spaces areas are devoted to such uses.
2. Cluster developments containing single-family development may use the minimum dimensional standards shown in the table below.

Cluster Development	R-40, R-20	R-15, R-12, R-9	MF-1, MF-2
<b>Lot Dimensions:</b>			
Lot area, minimum	12,000 sq. ft.	6,000 sq. ft.	5,000 sq. ft.
Lot width, minimum	70 ft.	50 ft.	50 ft.
<b>Minimum Yards:</b>			
Front yard	35 ft.	20 ft.	20 ft.
Rear yard	25 ft.	20 ft.	15 ft.*
Side yard	10 ft.	10 ft.	7.5 ft.**
Corner lot side yard	25 ft.	20 ft.	15 ft.***
Maximum Height	35 ft.	35 ft.	35 ft.

\* The rear setback for lots that abut open space may be reduced to ten feet as long as the overall width still meets or exceeds the otherwise required setback width with approval of the permit issuing authority.

\*\* The interior side setback may be reduced to a minimum of five feet when individual building footprints are shown on the preliminary subdivision plat ~~and the building to building setbacks and orientation are deemed appropriate by the permit issuing authority.~~ In such cases a five-foot property maintenance easement must be provided on the adjoining property and recorded on the final subdivision plat.

\*\*\* The corner side setback may be reduced to a minimum of ten feet when individual building footprints are shown on the preliminary subdivision plat and no garage access is provided on the corner side and the ~~permit issuing authority, upon the recommendation of the Town Engineer,~~ determines there is no sight distance obstruction or public safety concern that results.

3. a. When a cluster development located in the R-40, R-20, R-15, R-12 or R-9 zoning district adjoins a single family residential zoning district or an existing single family development then one of the following shall be required:
  - i. if the perimeter row of lots in the cluster development is to be reduced in size below the minimum lot size of the adjoining single family residential zoning district, then a perimeter buffer measuring at least 50 feet in width along the affected perimeter of the said cluster development shall be required. No land disturbing are allowed within this buffer.
  - ii. if the perimeter row of lots in the cluster development is not reduced in size below the minimum lot size of the adjoining single family residential zoning district or development, then a 50 foot perimeter buffer is not required.
- b. i. Cluster development in MF-1 and MF-2 zoning districts shall provide a 30 foot perimeter buffer along the entire boundary of the development that adjoins a single family residential zoning district or a single family development. No land disturbing activities are allowed

within this buffer except for required landscaping. Such perimeter buffer must have the required mix of plant material that meets 50 percent of the perimeter landscape buffer planting requirements of the Landscape Ordinance and that is designed in a manner that is acceptable to the Planning Director.

- ii. No buffer shall be required where the lots are the same size or larger than those on the adjacent residential parcel.
4. No garage door shall be located closer than the lesser of the minimum setback or 20 feet back from the right-of-way line, or rear edge of the adjacent sidewalk, whichever is greater, in order to ensure that vehicles parked on the driveway do not hinder pedestrian access.
- D. **Open space standards.** Open space in cluster development shall be no less than 25 percent of the gross area of the cluster development tract. All open space provided in a cluster development shall meet the following criteria in addition to the requirements of this UDO:
1. Open space shall abut 40 percent of the lots within the subdivision and shall be well distributed throughout the development so as to achieve the requirement herein.
  2. All open space areas shall be at least 20 feet in width, except the open space that is provided around the perimeter of a cluster development. Such open space areas shall be undisturbed.
  3. All open space shall be linked, either directly or across street rights-of-way.
- E. **Parking standards.** All cluster development shall meet the parking requirements of ~~Section 7.4. Off Street Parking and Loading~~Article 7.

(Ord. No. 3417, § 1, 7-5-06)

#### 6.4. Alternative single-family options.

The following alternative single-family residential options are allowed only in residential cluster developments.

**A. Zero lot line.**

1. **Description.** A zero lot line development is where houses in a development on a common street frontage are shifted to one side of their lot. This provides for greater usable yard space on each lot. These developments require that planning for all of the house locations be done at the same time. Since the exact location of each house is predetermined, greater flexibility in site development standards are possible while assuring that single-family residential ~~dwelling~~ character is maintained.
2. **Setbacks.** The side building setback may be reduced to zero on one side of the house. This reduction does not apply to the street side setback or to the interior side setback adjacent to lots that are not part of the zero lot line project. The reduced setback may be located anywhere between the lot line and the minimum setback required for the district. The remaining side yard setback shall be equal to two times the side yard setback required for the district.
3. **Additional standards.**
  - a. **Distance between houses.** The minimum distance between all buildings in the development must be equal to twice the required side setback required by the underlying zoning district. A deed restriction must be recorded on the deed of each applicable lot to ensure continued compliance with this setback.



- b. **Eaves.** The eaves on the side of a house with a reduced setback may project a maximum of 18 inches over the adjacent property line. In this case, an easement for the eave projection must be recorded on the deed for the lot where the projection occurs.
  - c. **Maintenance easement.** An easement between the two property owners to allow for maintenance or repair of the house is required when the eaves or side wall of the house are within four feet of the adjacent property line. The easement on the adjacent property must provide at least five feet of unobstructed space between the furthestmost project of the structure and the edge of the easement. The easement shall be recorded on the subdivision plat.
  - d. **Privacy.** If the side wall of the house is on the property line, or within three feet of the property line, windows or other openings that allow for visibility into the side yard of the adjacent lot are not allowed. Windows that do not allow visibility into the side yard of the adjacent lot, such as a clerestory window or a translucent window, are allowed. All materials within three feet of the property line shall be fire-rated to meet building code requirements.
- B. **Village house.** A village house may be permitted in a cluster development with a reduced front yard setback of 15 feet, provided that no front yard parking is allowed and alley or other rear access is provided for any garage.

#### 6.5. Townhouse and condominium developments.

A. **In general.**

- 1. Townhouses and townhouse development occur in two different patterns:
  - a. Condominium (development with private drives and a homeowner's association); and
  - b. Fee simple townhouse (development with public or private streets and a homeowner's association).
- 2. The standards for each type of townhouse development are listed below.

B. **Condominium.** This form of townhouse development occurs on a unified parcel, where multiple townhouse units may lie on a single tract of land. The units may be made available through sale as condominium, or through lease (rental).

1. **Homeowner's association.**

- a. Homeowner's association declaration and by-law documents shall be submitted to the Town of Garner for acceptance.
- b. Such homeowner's association documents shall have adequate provisions to insure proper maintenance of all privately-owned areas such as, but not limited to, open space, recreational facilities and areas, parking lot areas and private drives.
- c. Applicants are encouraged to submit homeowner's association documents which contain provisions addressing exterior appearance and maintenance standards according to a set of architectural design criteria.
- d. The homeowner's association documents shall clearly state that the Town of Garner shall be held harmless from liability responsibility relative to the delivery of Town services on privately-owned property in the townhouse development.

2. **Interior roads.**

- a. Determination of whether interior roads shall be constructed as public streets or private drives or a combination of public streets

and private drives shall be ~~made by the permit issuing authority~~ based upon recommendations from the Planning Department and Engineering Department. Consideration shall be given to the adopted major transportation plan, existing and proposed neighborhood streets and circulation needs, to the relationship of the site to adjoining lands, the size and shape of the tract to be developed, to the number of ultimate dwelling units to be constructed on the tract and on adjoining lands and to anticipated traffic volumes.

- b. The determination of whether interior roads shall be public or private will consider only the minimum needs of the public for the public streets and will recognize the privacy, security and safety advantages of private drives. ~~Where public streets are required the permit issuing authority, upon request of the developer, provide in writing the reason for such requirement.~~ All public streets shall have curb and gutter according to Town standards. Private drives are interior circulation roads designed and constructed to carry vehicular traffic from a public street within or adjoining the site to terminal parking areas and service areas, or back to said public street.
- c. The design and arrangement of private streets shall be subject to review and approval by the ~~permit issuing authority upon recommendation of the~~ Planning Department and Engineering Department.
  - (1) When there is a distance of 150 feet or more between an existing public street and points of refuse collection, a private drive shall be required.
  - (2) All portions of such private drives shall not be more than 1,000 feet from their point of public access.
  - (3) When the development is required to have a private drive, the private drive shall be paved to a minimum width of at least 27 feet, measured from edge of pavement. Concrete curb and gutter sections may be required, if determined necessary by the Planning, Engineering and Public Works Departments.
  - (4) A private drive may be constructed in the peripheral yard provided it is located a minimum distance of 25 feet off any property line or complies with the provisions of ~~Section 7.1K.3-~~Article 7.
  - (5) A base course shall be applied to the entire required paved width of private drives and parking lots and shall consist of at least eight inches of compacted crushed stone.
  - (6) A surface course shall be applied to the entire required paved width of private drives and parking lots and shall consist of at least two inches of 1-2 asphalt paved surface.
  - (7) Cul-de-sac or dead-end streets shall be provided with a vehicular turning circle at least 80 feet in diameter, measured on the center line of the street or other acceptable design criteria for dead-end streets.
  - (8) Street jogs, intersections block lengths including cul-de-sac, street deflections shall conform to the design criteria set forth in Article 8.
  - (9) A permanent street address approved by the Planning Department shall be assigned to the private drives.

3. **Maintenance required.** Homeowner's association documents shall include adequate provisions to ~~insure~~ensure proper maintenance by the homeowner's association of private drives, units, their structural components and exteriors, yard spaces and other commonly owned property and shall be recorded with the final plat.
4. **Minimum lot size.** There is no minimum lot size for individual units; density is controlled by district regulations. However, every individual lot shall meet the following criteria:
  - a. The minimum lot width is 16 feet;
  - b. The minimum frontage on a public street is 16 feet; and
  - c. The minimum front yard setback is 25 feet. (This setback is not in addition to the development-wide standard. However, where a 50 feet setback is required under development-wide standards, each affected lot must maintain the minimum 50-foot setback rather than the 25-foot setback.)

**C. Fee simple townhouse.**

1. **Special provisions.** This form of townhouse development involves attached housing units purchasable on a fee simple basis, on individual lots meeting minimum requirements and fronting on a dedicated public street, with or without provisions for commonly owned property controlled by a homeowner's association. This form of townhouse development differs from other townhouse developments in that no common areas may be required. Developers are encouraged to utilize restrictive covenants for townhouse developments that address architectural standards, exterior maintenance of units and other appropriate matters through homeowner association documents. It is strongly recommended that such agreements be made to insure the proper maintenance of units, their structural components and exteriors, and yard spaces. Where there is the provision of commonly owned land in a fee simple townhouse development a homeowner's association shall be required. Such documents shall be subject to the provisions of ~~Section 6.4.B.1.~~Article 6.
2. **Interior roads.**
  - a. Determination of whether interior roads shall be construed as public streets or private drives or a combination of public streets and private drives shall be ~~made by the permit-issuing authority~~ with based on recommendations from the Planning and Engineering Departments.
  - b. Consideration shall be given to the adopted major transportation plan, existing and proposed neighborhood streets and circulation needs, to the relationship of the site to adjoining lands, the size and shape of the tract to be developed, to the number of ultimate dwelling units to be constructed on the tract and on adjoining lands, and to anticipated traffic volumes.
  - c. The determination of whether interior roads shall be public or private will consider only the minimum needs of the public for the public streets and will recognize the privacy, security and safety advantages of private drives.
  - ~~d. Where public streets are required, the permit-issuing authority will, upon request of the developer, provide in writing the reason for such requirement; and~~
  - ~~e.d.~~ All public streets shall be constructed according to Town of Garner standards. All private drives shall be constructed according to the provisions of ~~Section 6.5.B.2.(c)(1-9).~~Article 6.
  - ~~f.e.~~ The issuance of any building permits shall not be permitted until a

major subdivision final plat, meeting the appropriate requirements, has been approved by the Planning Director as set out in this UDO.

3. **Minimum lot size.** There is no minimum lot size for individual units; density is controlled by district regulations. However, every individual lot shall meet the following criteria:
  - a. The minimum lot width is 18 feet;
  - b. The minimum frontage on a public street is 18 feet; and
  - c. The minimum front yard setback is 25 feet where garages are accessed from the front. If rear access to garages is provided, the minimum front yard may be reduced to 15 feet.

(Ord. No. 3761, § 1, 2-2-15)

### 6.6. Manufactured home parks and subdivisions.

Manufactured home parks and subdivisions shall be subject to all applicable state and local regulations, as well as with the following standards.

- A. **Land area.** The minimum land area required for a manufactured housing park is three acres.
- B. **Density limitations.** Any lot or tract of land occupied by a manufactured housing park shall have a maximum density of five dwelling units per gross acre.
- C. **Lot size standards.** Single-family residential development in the RMH district requires a minimum 5,000 square foot lot for sites with both public water and sewer available, and a 10,000 square foot lot where either a well or septic system is used. Wake County Health Department regulations may require larger lots. Minimum lot widths shall be 50 feet in a manufactured home park and 70 feet in a manufactured home subdivision.
- D. **Orientation of manufactured homes.** No manufactured home shall face the narrow end of the manufactured unit to the public street unless the width of the unit is greater than 24 feet.
- E. **Separation of service buildings.** Every service building in a manufactured home park shall be at least 25 feet from the boundary of any other property in any residential zoning district.
- F. **Accessory structures in manufactured home parks.** No accessory structures, except common park structures, shall be located on manufactured home park spaces.
- G. **Required parking.** A minimum of two off-street parking spaces shall be provided for each dwelling unit within a manufactured housing park.
- H. **Street and drives.**
  1. No private drives are permitted within a manufactured home subdivision. Public streets must be constructed in accordance with Town of Garner standards.
  2. For manufactured home parks, the tract as whole shall have a minimum 20-foot frontage on a public right-of-way. Internal access may be by private drives. All private drives shall have a minimum of 24 feet of pavement. A minimum six-foot wide strip adjoining and parallel to the paved surface of the drive, on both sides, shall be reserved from use except for driveways, walkways and vegetation. The outer edge of the ~~six feet~~ six-foot reserved strip is the limit of the reserved area referenced in previous sections of this UDO.
- I. **State standards.** All manufactured housing units shall conform to the State of North Carolina Standards for manufactured housing anchorage, tie downs and blocking.

- J. **Site plan.** Prior to the development of any new manufactured housing park established after the effective date of this UDO, and prior to the enlargement of any existing manufactured housing park, a site plan conforming to the requirements of this subsection shall be approved by the Planning Director. The required site plan shall be drawn to scale and shall explicitly illustrate at least the following features.
1. Location and dimensions of all park boundaries.
  2. Location of pavement on adjoining street rights-of-way.
  3. Location and dimensions of any permanent improvements existing or planned within the park, including but not limited to the following:
    - a. Improved surfaces for common driveways, off-street parking and recreation areas.
    - b. Buildings for management, maintenance and recreational purposes.
    - c. Any other recreational facilities.
    - d. Any fences or walls.
    - e. The location of pipelines and systems for potable water distribution, sewage collection and fire protection, including location of all fire hydrants.
- K. **Subdivision plat required.** A subdivision plat in accordance with Section 3.5 is required for all manufactured home subdivisions.
- L. **Phasing.** Phasing of a proposed manufactured home park or subdivision may be allowed, provided the proposed phasing is approved by the Town Council and will not create undue hardships for the residents of the development or those vehicles that can reasonably be expected to service the development.

(Ord. No. 3558, § 2, 7-7-09)

**6.7. Manufactured homes.**

***Commentary: An individual manufactured home type A unit is permitted in the R-40 district or through rezoning to the -MH overlay.***

- A. **Application of standards.** There are three different classes (A, B, and C) of manufactured homes. The main differences are size, roof pitch and siding material.
- B. **Manufactured home class A.** A manufactured home ~~constructed after July 1, 1976 and~~ meeting or exceeding the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction. Additionally, class A manufactured homes shall meet all of the following requirements:
1. It shall be occupied as a single-family dwelling unit only;
  2. It shall have a minimum of two sections that when combined the total is a minimum of 24 feet in width;
  3. It shall have a length not exceeding four times its width, with length measured along the longest axis and width measured at the narrowest part of the shorter axis;
  4. The towing apparatus, wheels, axles and transporting lights shall be removed and shall not be included in measurements;
  5. The orientation of the structure must be consistent with that of the predominant number of units in the surrounding neighborhood. In special cases, the short axis (width) may face the road if the front door is incorporated in the unit's floor plan to be a part of the short axis;
  6. It shall be installed in accordance with the standards established by the North Carolina Department of Insurance. In addition, a continuous,

permanent masonry foundation or masonry curtain wall constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for One and Two-Family Dwellings, un-pierced except for required ventilation and access, shall be installed under the perimeter of the manufactured home;

7. The exterior shall consist of one or more of the following:
  - a. Vinyl or metal siding (whose reflectivity does not exceed that of flat white paint);
  - b. Cedar or other wood siding;
  - c. Weather resistant press board siding; or
  - d. Stucco siding, brick or stone siding, which shall be comparable in composition, appearance and durability to the exterior siding commonly used in the standard residential construction of the surrounding neighborhood.
8. The pitch of the roof shall have a minimum vertical rise of three and one-half feet for each 12 feet of horizontal run;
9. The roof shall be finished with a roof covering that meets the minimum standards of the federal housing administration;
10. All roof structures shall provide an eave projection of no less than six inches, which may include a gutter;
11. Stairs, porches, entrance platforms, ramps and other means of entrance and exit to and from the manufactured home, shall be installed or constructed in compliance with the standards of the North Carolina Building Code, attached firmly to the primary structure, and anchored securely to the ground. Wood stairs shall only be used in conjunction with a porch or entrance platform with a minimum of 24 square feet. Use of wood stairs without a porch is prohibited at any entrance to a manufactured home;
12. Minimum square footage of the home shall be compatible with the surrounding neighborhood. The length and size shall be no smaller than the average unit in this neighborhood; and
13. For any unit on a lot that is less than 30,000 square feet, a community well or Town water and sewer is required. All units not connected to either a community or Town system shall present proof of utility approval by the Wake County Health Department.

C. **Manufactured home class B.** A manufactured home ~~constructed after July 1, 1976 and~~ meeting or exceeding the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction. Additionally, class B manufactured homes shall meet the following requirements:

1. It shall be occupied as a single-family dwelling unit only;
2. It shall have a minimum of two sections that when combined the total is a minimum of 24 feet in width;
3. There are no length requirements;
4. The towing apparatus, wheels, axles and transporting lights shall be removed and shall not be included in measurements;
5. The orientation of the structure must be consistent with that of the predominant number of units in the surrounding neighborhood. In special cases the short axis (width) may face the road if the front door is incorporated in the unit's floor plan to be a part of the short axis;
6. It shall be installed in accordance with the standards established by the North Carolina Department of Insurance. In addition, a continuous, permanent masonry foundation or masonry curtain wall constructed in

accordance with the standards of the North Carolina Uniform Residential Building Code for One and Two-Family Dwellings, un-pierced except for required ventilation and access, shall be installed under the perimeter of the manufactured home;

7. Exterior standards are to be consistent with the industry's standards for class B;
8. The pitch of the roof shall have a minimum vertical rise of two and one-half feet for each 12 feet of horizontal run;
9. The roof shall be finished with a roof covering that meets the minimum standards of the federal housing administration;
10. There are no required eave projections;
11. Stairs, porches, entrance platforms, ramps, and other means of entrance and exit to and from the manufactured home, shall be installed or constructed in compliance with the standards of the North Carolina Building Code, attached firmly to the primary structure, and anchored securely to the ground. Wood stairs shall only be used in conjunction with a porch or entrance platform with a minimum of 24 square feet. Use of wood stairs without a porch is prohibited at any entrance to a manufactured home;
12. Minimum square footage of the home shall be compatible with the surrounding neighborhood. The length and size shall be no smaller than the average unit in this neighborhood; and
13. For any unit on a lot that is less than 30,000 square feet, a community well or Town water and sewer is required. All units not connected to either a community or Town system shall present proof of utility approval by the Wake County Health Department.

D. **Manufactured home class C.** Any single-wide manufactured home ~~constructed after July 1, 1976, and~~ meeting or exceeding the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction, shall meet the following requirements:

1. It shall be occupied as a single-family dwelling unit only;
2. It shall have a minimum width of 14 feet;
3. There are no length requirements;
4. The towing apparatus, wheels, axles and transporting lights shall be removed and shall not be included in measurements;
5. There is no parallel orientation requirement;
6. All units shall be firmly anchored to the ground as required by the North Carolina Building Code and the Town shall designate and enforce a uniform type of foundation enclosure (skirting) for all manufactured home parks and subdivisions;
7. Exterior standards are to be approved by the Planning Director;
8. There are no roof pitch requirements;
9. The roof shall be finished with a roof covering that meets the minimum standards of the federal housing administration;
10. There are no required eave projections;
11. Stairs, porches, entrance platforms, ramps and other means of entrance and exit to and from the manufactured home, shall be installed or constructed in compliance with the standards of the North Carolina Building Code, attached firmly to the primary structure, and anchored securely to the ground. Wood stairs shall only be used in conjunction with a porch or entrance platform with a minimum of 24 square feet. It is the intent of this subsection to prohibit the use of wood stairs only at any entrance to a manufactured home;
12. There is no minimum square footage requirement; and
13. For any unit on a lot that is less than 30,000 square feet, a community

well or Town water and sewer is required. All units not connected to either a community or Town system shall present proof of utility approval by the Wake County Health Department.

- E. **Manufactured homes not located in RMH district.** The placement of a manufactured home in any R-40 district, or manufactured home floating zone (but not in RMH districts) must meet the following additional requirements. The purpose of these requirements is to protect the character of existing neighborhoods, and to establish new neighborhoods whose character is internally consistent, by achieving compatible exterior appearance between manufactured homes and stick- or modular-built homes on adjacent or nearby lots, or with other manufactured homes in an existing RMH district (appearance criteria). In satisfying this requirement, the applicant must also present illustrative examples of the types and design of structure they propose, plus photographs of at least five residences in the immediate vicinity in order to document that the exterior appearance of the proposed unit will be similar (as determined by the Planning Director) to the other homes that have been or will be constructed.

**6.8. Special development standards for single family and modular homes.**

- A. **General size and landscaping standards for modular and site-built homes.** The following standards shall apply only to new modular homes or single-family detached site-built homes. The provisions of this subsection shall not apply to properties zoned R-40 or additions to existing residential buildings.
  1. Foundation planting consisting of evergreen shrubs shall be installed along the entire front foundation wall of the building. Plant installation shall be a minimum of two feet in height planted at three- to four-foot intervals.
  2. All yard areas, excluding decorative landscaped areas, shall be appropriately graded and seeded up to 35 feet from the dwelling as applicable in order to establish a permanent lawn.
  3. A maximum 2.7 to 1 length to width ratio shall be required for new structures. The length shall be measured along the longest axis of the structure and the width shall be measured along the shortest axis of the structure.

(Ord. No. 3801, § 1, 12-7-15)

**6.9. Nonresidential district standards.**

- A. **Nonresidential development standards.** The following table illustrates the dimensional standards that apply in the Town's commercial, industrial and special purpose districts.

Standard	NO	NC	CBD	OI	CR	SB	I-1	I-2
<b>Lot Dimensions:</b>								
Lot area, minimum	6,000 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	None	None
Lot width, Minimum	60 ft.	60 ft.	60 ft.	60 ft.	60 ft.	60 ft.	100 ft.	100 ft.
Lot depth, minimum	None	None	None	None	None	None	None	None
<b>Minimum Yards:*</b>								
Front yard	35 ft.	35 ft.	None	35 ft.	35 ft.	35 ft.	50 ft.	50 ft.



Rear yard	25 ft.	0/25 ft.	0/15 ft.	25 ft.	0/25 ft.	0/25 ft.	0/50 ft.	0/50 ft.
Side yard	0/15 ft.	10/15 ft.	0/15 ft.	10/15 ft.	10/15 ft.	0/25 ft.	0/25 ft.	0/25 ft.
Corner lot side yard	35 ft.	35 ft.	20 ft.	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.
<b>Maximum Height</b>								
Maximum Net DU/Acre	35 ft.	35 ft.	None	None	None	None	None	None
	6,000 sq. ft. per single family detached dwelling unit	6,000 sq. ft. per unit	6,000 sq. ft. per unit	6,000 sq. ft. per unit	None	None	None	None

**\* Note:**

1. The minimum setback distance from a building to a street right-of-way is 35 feet; except front yard setbacks in the I-1 and I-2 districts required to be a minimum of 50 feet.
2. Where two-yard standards are shown in the tables above (0/15 feet, for example), the first standard shall apply if the lot is not adjacent to a residential, NC, NO or OI district. Additional fire-rated wall construction may be required on side and rear facades.

**B. Industrial performance standards.**

1. In general.

a. Zoning regulations typically attempt to classify and segregate uses according to their differing impacts. For example, residences are usually allowed in certain zones and manufacturing plants in others because it is perceived that the impact of the latter would be detrimental to the former. Because the impacts associated with certain types of uses are well recognized, it is possible to regulate impacts indirectly by controlling the types of uses permissible in various zoning districts. Given the wide variety of impacts possible within the industrial use classification, it is not feasible to use an indirect method of controlling impacts. Therefore this part attempts to control impacts of industrial classification uses directly by establishing the performance standards set forth in this part.

b. For the reasons set forth in paragraph above, it is necessary to use performance standards to determine what types of industrial and manufacturing uses (~~see table 5.1~~ see Article 5) should be permissible in various zoning districts. However, the use of performance standards involves advance prediction of the extent to which a proposed development will generate negative impacts, and subsequent monitoring to determine the actual extent of such impacts. Because this advance prediction and subsequent verification may be cumbersome, time-consuming, and expensive, performance standards (other than noise standards) are applied only to uses within the industrial use classification.

2. Smoke.

a. To determine the density of equivalent opacity of smoke, the Ringlemann Chart, as adopted and published by the United States

Department of Interior, Bureau of Mines Info. Circular 8333, May 1967, shall be used. The Ringlemann numbers cited refer to the area of the Ringlemann Chart that coincides most nearly with the visual equivalent opacity of the smoke emission observed.

- b. All measurements shall be taken at the point of emission of the smoke.
- c. In the OI, NC, CR, CBD, SB, MXD-I and all PUD districts, no industrial use classification use may emit from a vent, stack, chimney, or combustion process any smoke that is visible to the naked eye.
- d. In the I-1 district, no industrial use classification use may emit from a vent, stack, chimney, or combustion process any smoke that exceeds a density or equivalent opacity of Ringlemann No. 1, except one emission not exceeding an equivalent of Ringlemann No. 2 is permissible for a duration of not more than four minutes during any eight hour period if the emission source is not within 250 feet of a residential district.
- e. In the I-2 district, no industrial use classification use may emit from a vent, stack, chimney, or combustion process any smoke that exceeds a density or equivalent opacity of Ringlemann No. 2, except that an emission not exceeding an equivalent of Ringlemann No. 3 is permissible for a duration not more than four minutes during any eight hour period if the source of emission is not located within 500 feet of a residential district.

**3. Noise.**

- a. The following definitions shall apply in this section. All definitions shall be in conformance with those contained in ANSI 5.1.1-1960, R 1971, Acoustical Terminology.
- b. With respect to the standards established in the table of maximum permitted sound level (paragraph c., below), dB(A) are expressed in terms of the tenth percentile sound level (L10), which must be calculated by taking 100 instantaneous A-weighted sound levels at ten second intervals and computing the (L10) in accordance with the community noise measurement data sheet set forth in Appendix C.
- c. No person may operate or cause or permit the operation of any stationary source of sound that exceeds the limits set forth herein for the following receiving land use districts when measured at the boundary or at any point within the property affected by the noise.

<b>Table of Maximum Permitted Sound Level [dB(A)]</b>		
<b>Receiving Use Districts</b>	<b>Day (7:00 a.m.—10:00 p.m.)</b>	<b>Night (10:00 p.m.—7:00 a.m.)</b>
Residential	60	55
Commercial	65	60
Industrial	75	75

- d. When a noise source can be identified and its noise measured in more than one land use category, the limits of the most restrictive use shall apply at the boundaries between different land use categories.
- e. For any stationary source of sound which emits a pure tone, cyclically varying sound or repetitive impulsive sound, the

standards defined herein shall be reduced by five dB(A).

- f. The standards set forth in this section shall not apply to the following sources:
  - (1) Emergency warning devices and emergency equipment including medical transport helicopters;
  - (2) Lawn care equipment used during daytime hours;
  - (3) Equipment being used for construction.
- g. Notwithstanding any other provision of Article VIII (Nonconforming situations), any person who operates or permits to be operated any new stationary noise source after the effective date of this section shall comply with the standards defined herein.
- h. Measurement techniques to determine compliance with this section are set forth in Appendix C.

**4. Vibration.**

- a. No industrial use classification in any commercial district may generate any ground-transmitted vibration perceptible to the human sense of touch measured at (i) the outside boundary of the space leased, rented or occupied by the enterprise generating the vibration if the enterprise is one of several located on a lot, or (ii) the lot line if the enterprise generating the vibration is the only enterprise located on a lot.
- b. No industrial use classification use in the MXD-1, I-1 or I-2 district may generate any ground transmitted vibration in excess of the limits set forth in paragraph e below. Vibration shall be measured at any adjacent lot line or residential district line as indicated in the table set forth below in paragraph d.
- c. The instrument used to measure vibrations shall be a three component measuring system capable of simultaneous measurement of vibration in three mutually perpendicular directions.
- d. The vibration maximum set forth in paragraph e below are stated in terms of particle velocity, which may be measured directly with suitable instrumentation or computed on the basis of displacement and frequency. When computed, the following formula shall be used:

$$P.V. = 6.28 F \times D$$

P.V. = Particle velocity, inches per second

F = Vibration frequency, cycles per second

D = Single amplitude displacement of the vibration, inches

The maximum velocity shall be the vector sum of the three components recorded.

Table of Maximum Ground Transmitted Vibration		
Zoning District	Adjacent Lot Lines	Residential District
MXD	0.10	0.02
I-1	0.10	0.02
I-2	0.20	0.02

- e. The values stated in paragraph d above may be multiplied by two for impact vibrations, i.e., discrete vibration pulsations not exceeding one second between pulses.

- f. Vibrations resulting from temporary construction activity that occurs between 7:00 a.m. and 7:00 p.m. shall be exempt from the requirements of this section

**5. Odors.**

- a. For purposes of this section, the odor threshold is defined as the minimum concentration in air of a gas, vapor, or particulate matter than can be detected by the olfactory systems of a panel of healthy observers.
- b. No Industrial use classification in any district may generate any odor that reaches the odor threshold, measured at:
- (1) The outside boundary of the space leased, rented or occupied by the enterprise generating the odor; or
  - (2) The lot line if the enterprise generating the odor is the only enterprise located on a lot.

**6. Air pollution.**

- a. Any industrial use classification that emits any air contaminant (as defined in G.S. 143-213) shall comply with applicable state standards concerning air pollution, as set forth in Article 21B of Chapter 143 of the North Carolina General Statutes.
- b. No site, ~~or special use, or conditional use~~ permit may be issued with respect to any development covered by paragraph a above until the state Division of Environmental Management has certified ~~to the permit-issuing authority~~ that the appropriate state permits have been received by the developer (as provided in G.S. 143-215.108) or that the developer will be eligible to receive such permits, and that the development is otherwise in compliance with applicable air pollution laws.

**7. Disposal of liquid wastes.**

- a. No industrial use classification in any district may discharge any waste contrary to the provisions of G.S. 143-214.2.
- b. No industrial use classification in any district may discharge into the City of Raleigh's sewage treatment facilities any waste that cannot be adequately treated by biological means or otherwise violates applicable City of Raleigh requirements or standards.

**8. Water consumption.** No industrial use classification that requires for its operations a one and one-half-inch or larger meter is permissible in any district unless specifically approved to do so by the Town Council.

**9. Electrical disturbance or interference.** No industrial use classification may:

- a. Create any electrical disturbance that adversely affects any operations or equipment other than those of the creator of such disturbance; or
- b. Otherwise cause, create, or contribute to the interference with electronic signals (including television, and radio broadcasting transmissions) to the extent that the operation of any equipment not owned by the creator of such disturbance is adversely affected.

(Ord. No. 3502, § 4, 3-3-08; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3656, § 5, 2-21-12; Ord. No. 3813, § 2, 4-19-16)

**6.10. Measurement and exceptions.**

- A. **Density.** Density refers to the number of dwelling units per unit of land area. Density is calculated by dividing the number of dwelling units on a site by the gross area (in acres) of the site on which the dwelling units are located. The

number of dwelling units allowed on a site is based on the presumption that all other applicable standards will be met. The maximum density established for a district is not a guarantee that such densities may be obtained, nor shall the inability of a development to achieve the stated maximum density be considered sufficient justification for varying or otherwise adjusting other density, intensity or dimensional standards.

**B. Lot area.**

1. **Measurement.** Lot area refers to the gross horizontal land area within lot lines, including any wetlands. No conservation buffer or other officially designated buffer area shall be included within the boundaries of any lot.
2. **Exceptions.** No building permit or development approval may be issued for a lot that does not meet the minimum lot area requirements of this UDO except in the following cases:
  - a. Nonconforming lots may be used in accordance with the provisions set forth in ~~Section 9.4~~ Article 9.
  - b. Utilities using land or an unoccupied building covering less than 1,000 square feet of site area shall be exempt from minimum lot area standards.
3. **Absence of sewer or water.** In the absence of public water or public sewer, no building permit shall be issued until the lot meets all applicable requirements of this UDO and Wake County.

**C. Minimum lot widths.**

1. No lot may be created that is so narrow or so irregularly shaped that it would be impracticable to construct on it a building that:
  - a. Could be used for purposes permissible in that zoning district;
  - b. Could satisfy setback requirements for that district.
2. Lot width.
  - a. Without limiting the generality of this standard, the following minimum lot widths are deemed presumptively to satisfy the standard. The lot width shall be a straight line measurement between opposite-side boundaries at the minimum required setback from the street, sufficiently distant from the street to meet the setback requirement and permit compliance with the standard. For instance, a cul-de-sac lot may not be 80 feet wide at the 35 feet front setback, but may be 80 feet wide 45 feet into the lot. Lot width would be measured at the 45 foot line except as provided for under D.3 of this section.
  - b. The minimum lot width of any rental space in a manufactured home park shall be 50 feet. The minimum lot width in an RMH zoned manufactured home subdivision shall be 70 feet.
  - c. No lot created after the effective date of this UDO having less than the recommended width shall be entitled to a variance from any building setback requirement.
  - d. The minimum lot width in a cluster development shall follow the provisions set forth in Article 6.
3. **Flag lots.** Flag lots are defined as an irregularly shaped lot where the buildable section (flag) of the lot is connected to a public or private street by a narrow nonbuildable strip of land (pole). The front setback line will be measured from that lot line more or less parallel to the public or private street.
  - a. The Town discourages the creation of flag lots in subdivisions. A flag lot will only be permitted if ~~the Planning Director determines such design is necessary to allow the property owner reasonable~~

~~use of his property when otherwise it would cause an extreme hardship for the owner to comply with the standards of the UDO via a successful Variance.~~

- b. ~~Flag~~ In addition to the standards of a Variance, flag lots are prohibited unless the ~~Planning Director~~BOA determines one of the following applies:
  - i. Necessary to eliminate access onto a major thoroughfare;
  - ii. Necessary to reasonably use irregularly shaped property;
  - iii. Necessary to reasonably use land with significant topography limitations;
  - iv. Necessary to reasonably use land with limited sites for septic tank drain fields; and
  - v. Necessary to provide protection of significant environmental resources.
- c. ~~When If approved by the Planning Director,~~ the minimum lot width for a flag lot is 20 feet at the street; however a greater width may be required if the ~~Planning Director~~BOA finds that a greater width is needed to ensure adequate and safe access to the property.
- d. Subdivisions approved and recorded after the effective date of this ordinance shall not be re-subdivided to create flag lots.
- e. No flag lot will be allowed if it increases the number of access points to a major thoroughfare.

D. **Setbacks.** Setbacks refer to the unobstructed, unoccupied open area between the furthestmost projection of a structure and the property line of the lot on which the structure is located, except as modified by the standards of this section.

- 1. **Features allowed within setbacks.** No enclosed usable space of a structure may project into any required yard space, except in the case of permitted rear yard accessory buildings. The following features may be located within a required setback:
  - a. Trees, shrubbery or other landscape features.
  - b. Fences and walls that meet the standards in ~~Section 5.4.C~~Article 5.
  - c. Driveways may be located in any setbacks.
  - d. Sidewalks may be located within any required setback.
  - e. Utility lines, wires and associated structures, such as power pole.
  - f. Uncovered porches, uncovered steps to building entrances, uncovered patio decks and uncovered balconies may extend up to five feet into any required front, rear or street side setback.
  - g. Openwork fire balconies and fire escapes may extend up to five feet into any required setback.
  - h. Sills, belt courses, cornices, buttresses, bay windows, eaves and other architectural features may extend up to two feet into any required setback.
  - i. Chimneys and flues may extend up to two feet into any required setback.
  - j. Impervious surface associated with parking, driveways, etc. for single family detached dwellings shall occupy no more than 40 percent of the required front yard as established in Article 11.
- 2. **Measurement of setback distances.** Setback distances shall be measured from the right-of-way line or property line (as applicable) to the nearest extension of any part of the building that is a substantial part of the building itself and not mere appendage to it (such as a flagpole or antenna).
- 3. ~~Front setbacks on cul-de-sac.~~ ~~The Planning Director shall be authorized to approve front setback reductions for lots that front on cul-~~

~~de-sac streets when the Planning Director determines that such reduction is necessary to allow reasonable development on the subject lot. In no case shall this provision be used to approve front setbacks of less than applicable front yard setback requirement.~~

- 4.3. **Reduction for public purpose.** When an existing setback is reduced because of conveyance to a federal, state or local government for a public purpose and the remaining setback is at least 50 percent of the required minimum setback for the district in which it is located, then that remaining setback will be deemed to satisfy the minimum setback standards of this UDO.
- 5.4. **Yard exceptions in all zoning districts.** The following exceptions shall apply in all zoning districts.
- a. Projection of open structures into required yards.
- (1) Porches, canopies, stairways, carports, sun decks and similar structures completely open except for necessary supports, may extend into or over not more than 30 percent of the required rear yard distance or more than 20 percent into a front yard. Open stairways may extend into the front yard setback as required to meet the building code.
  - (2) Projections of the above-described open structures beyond the allowable encroachment of 30 percent into a rear yard or more than 20 percent into a front yard will be permitted only if granted by special exception from the Board of Adjustment. In no case shall any projection into a front or rear yard be greater than 45 percent of the required front or rear yard setback distance. At no time shall an exception be granted if it results in interference with a required sight distance triangle, substantial interference with convenient and enjoyable use of adjacent property or substantial danger to the public health or safety.
  - (3) Projections of the above-described open structures in any required side yard will be permitted only by special exception from the Board of Adjustment. Such projections shall not extend more than 40 percent into the required side yard distance, including gutters, except in no case shall any projection be closer than five feet to the side property line.
- 6.5. **Decorative walls,** planting areas and uncovered paved areas, such as stoops, patios, drives not more than three and one-half feet above surrounding grade level, may project not more than 20 percent into any required yard. If such areas are constructed at surrounding grade, they may extend into any yard spaces; except that at-grade swimming pool surroundings shall be no closer to any property line than five feet.
- 7.6. **The Planning Director, or designee,** ~~may shall~~ grant a deviation of not more than ten percent from any setback or triangulation distance specified in this article when a violation of any such requirements has been created through a good faith error of the property owner or a person acting on his behalf, the error cannot be corrected without substantial hardship or expense, ~~and or~~ that granting this relief would not substantially interfere with the convenient and enjoyable use of adjacent property or pose any substantial danger to the public health or safety. Prior to any decision to grant relief under this section, the owners of the directly adjoining properties shall be given notice by certified mail that a

request for this encroachment has been made to the Planning Department. The notice given shall give the adjoining property owners a minimum of seven days from the date of receipt to provide any comments regarding the request to the Planning Department. The decision of the director of planning or designee may be appealed to the Board of Adjustment as provided under Section 3.16.

8.7. **In NC, CR, SB, I-1 and I-2 districts**, gas pump islands (without pay booths) and all canopies not attached to buildings may be permitted to encroach into the required front and corner side yard setbacks up to 75 percent, so long as a minimum front setback of 25 feet or corner side yard setback of 18 feet remains between the right-of-way line and the closest canopy structure support face or pump island; encroachments of 21 percent to 75 percent may be permitted only by special exception granted by the Board of Adjustment. Approval of the special exception may be granted if all required findings can be made. The Board of Adjustment must be able to find that such projections will not interfere with adequate sight distance or negatively impact traffic circulation patterns.

**E. Minimum building separation.**

1. In MF-1 and MF-2 districts, the minimum building to building separation for multifamily developments, (other than duplexes), shall be determined through the triangulation formula identified in E.2., below.
2. The horizontal length of each exterior wall shall serve as the base of an isosceles triangle, the altitude of which shall be the length of this base line times the appropriate factor from the following table provided no building:

Stories in Dwelling Structure	Factor
1	0.3
2	0.4
3 and above	0.5

3. These isosceles triangles shall not overlap. However, in no case shall the side yard separation between one-story buildings be less than 15 feet or 20 feet for buildings two-story and above.

**Commentary:** *Where individual units within a single building vary significantly in location (five feet or more) and, therefore, do not form a continuous straight building line, the isosceles triangle may be applied to each individual unit.*

**F. Building height limitations. For purposes of this section:**

1. The height of a building shall be the vertical distance measured from the mean elevation of the finished grade at the front of the building to the highest point of the building.
2. A point of access to a roof shall be the top of any parapet wall or the lowest point of a roof's surface, whichever is greater. Roofs with slopes greater than 75 percent are regarded as walls.
3. All buildings may exceed the designated height limit for the district, provided the depth of the required front, rear and both side yards shall be increased one foot for each foot or fraction thereof, of building height in excess of 35 feet; and
4. **Exceptions to height limits.** Unless otherwise expressly stated, the height limitations of this UDO shall not apply to any of the following:
  - a. Electrical power transmission lines;
  - b. Flagpoles, belfries, cupolas, spires, domes, monuments, chimneys, radio/television receiving antennas or chimney flues; or
  - c. Bulkhead, elevator, water tank, or any other similar structure or



necessary mechanical appurtenance extending above the roof of any building if such structure does not occupy more than 33 percent of the area of the roof.

(Ord. No. 3396, § 12, 4-3-06; Ord. No. 3532, § 1, 11-4-08)

**6.11. Planned Unit Development (PUD) standards.**

- A. **Minimum requirements.** Planned Unit Developments are permissible only as conditional zoning on tracts of at least five contiguous acres. The general standards and criteria in Section 4.7 shall also be met.
- B. **Required development mix.** All PUD development shall adhere to the following maximum percentages of listed land uses.

Land Use	Maximum Percentage
Single-Family Residential	40 percent
Multifamily Residential	45 percent
Public, Civic and Institutional	15 percent
Commercial, Office and Retail	15 percent

- C. **PUD master plan.** The proposed Planned Unit Development master plan shall indicate the particular portions of the lot that the developer intends to develop for each of the elements described above. See Appendix D for the maps, information and analysis required as part of the submittal for PUD approvals. In addition to the requirements in ~~Section 4.7~~ above, the PUD master plan also illustrates:
  - 1. Neighborhood character and identity; and
  - 2. A mixture of land uses, including commercial and residential.
- D. **Nonresidential development restrictions.** The nonresidential portions of any Planned Unit Development may not be occupied until all of the residential portions of the development are completed or their completion is guaranteed by any of the mechanisms provided in ~~Section 8.6, Article 8.~~ The intent of this provision is to ensure that the Planned Unit Development procedure is not used, intentionally or unintentionally, to create nonresidential uses in areas generally zoned for residential uses except as part of an integrated and well-planned, primarily residential, development.
- E. **Perimeter setback required.** A minimum 25-foot setback along the entire development perimeter is required, except where single-family residential lots of the standard required square footage of the district in which they are located abut similar single-family development. The setback from any street bordering the PUD tract is 35 feet unless a greater setback is required by this UDO.
- F. **Building separation.** A minimum separation between single-family and multifamily buildings of 60 feet is required. Building to building relationships are otherwise specified in Article 6.
- G. **Screening and buffering.** No required buffer shall be intruded on by any building, parking area or access drive. Screening and buffering between uses within the PUD shall be in conformance with ~~Article 7, Section 7.1, Landscaping and tree protection.~~ Reservation of significant natural features shall be documented in the required permit application materials, along with landscaping appropriate to the site, uses and building locations.

- H. **Common recreation and open space.** A minimum of 25 percent of the gross land area in the PUD master plan shall be reserved for common recreation and usable open space.
- I. **Deviations.** Any requested deviation from the standards otherwise applicable in this UDO shall be set forth in the documentation approved as part of the conditional rezoning and conditional use permit.

**6.12. Planned Residential Development (PRD) standards.**

- A. **Minimum requirements.** Planned Residential Development is an option provided to encourage a mix of housing options within a comprehensively Planned Development, allowing a density bonus in return for provision of substantial landscaping, screening and buffering. Planned Residential Developments are permissible only on tracts of at least 15 contiguous acres. The general standards and criteria in ~~Section 4.7~~Article 4 shall also be met.

Standard	Requirement
Maximum Density	7,500 sq. ft. per unit
Minimum Single-Family Requirement (no manufactured homes)	25 percent of total units
Minimum Single-Family Lot Percentages	Of All Single-Family Lots: 60 percent = 12,000 sq. ft. minimum 40 percent = 9,000 sq. ft. minimum
Setbacks Required	See setbacks for R-12 district

- B. **PRD master plan.** In addition to the requirements in ~~Section 4.7~~ above, the PRD master plan also illustrates:
  1. Identifiable neighborhoods that have a variety of dwelling-residence types; and
  2. A mix of housing types and lot sizes.
- C. **Perimeter setback required.** A 25-foot setback along the entire development perimeter is required, except where 12,000 square foot lots abut similar development. Any required screening and buffering, located in ~~Section 7.1, Landscaping and tree protection,~~Article 7 shall be within this perimeter setback. Parking and access drives may be permitted within the ten feet farthest from the development perimeter, provided any required buffer is not intruded upon.
- D. **Screening and buffering.** The screening requirements that would normally apply where a multifamily development adjoins a single-family development shall not apply within the Planned Residential Development, but all screening requirements shall apply between the development and adjacent lots. Preservation of significant natural features shall be documented in the required permit application materials, along with landscaping appropriate to the site, uses and building locations.
- E. **Common recreation and open space.** A minimum of 25 percent of the gross land area in the PRD master plan shall be reserved for common recreation and usable open space.
- F. **Minimum building separation.** A minimum separation between single-family and multi-family buildings of 60 feet is required. The building to building separation between multi-family buildings is specified in Section 6.11.

**6.13. Traditional Neighborhood Development (TND) standards.**

- A. **Minimum requirements.** Traditional Neighborhood Development is an option provided to encourage a compact housing within a comprehensively Planned Development that incorporates the principles of new urbanism. Traditional Neighborhood Developments are permissible only as conditional zoning on tracts of at least 40 contiguous acres. The general standards and criteria in Section 4.7 shall also be met.

- B. **TND master plan.** In addition to the requirements in ~~Section 4.7~~ above, the TND master plan also illustrates:
1. A Town center which is memorable with a square, green and/or transit stop, with retail and office uses connected to the mix of residential uses in a practical way;
  2. Conformance with a general development pattern employing a grid pattern for a majority of development, with back alleys and garages and parking at the rear of buildings;
  3. Identifiable neighborhoods that have a variety of ~~dwelling-residence~~ types;
  4. Shops and offices located at the edge of the neighborhoods;
  5. Interconnection of the Town center and neighborhoods with pedestrian ways and streetscapes;
  6. Common areas and meeting places within the general design of development, including churches and schools;
  7. Relatively narrow streets, with trees and sidewalks on both sides;
  8. A network of open space serving the entire development and providing internal connections within the project;
  9. Prominent sites reserved for civic and other important community buildings; and
  10. Resulting land use patterns that promote and expand opportunities for pedestrian activity, public transportation and an efficient compact network of streets.
- C. **Perimeter setback required.** A 25-foot setback along the entire development perimeter is required, except where 12,000 square foot lots abut similar development. Any required screening and buffering, located in ~~Section 7.1~~ Article 7, Landscaping and tree protection, shall be within this perimeter setback. Parking and access drives may be permitted within the ten feet farthest from the development perimeter, provided any required buffer is not intruded upon.
- D. **Screening and buffering.** The screening requirements that would normally apply where a multifamily development adjoins a single-family development shall not apply within the Traditional Neighborhood Development, but all screening requirements shall apply between the development and adjacent lots. Preservation of significant natural features shall be documented in the required permit application materials, along with landscaping appropriate to the site, uses and building locations.
- E. **Public facilities.**
1. The TND master plan shall establish public squares and meeting places that connect uses.
  2. The development may deviate from the City's road width standards, so the development achieves installation consistent with neo-traditional or new urban design principles as deemed appropriate by the Town Council.
- F. **Common recreation and open space.** A minimum of 35 percent of the gross land area in the TND master plan shall be reserved for common recreation and usable open space.
- G. **Minimum building separation.** Minimum building separation is specified in Section 6.1.
- H. **Traditional Neighborhood Development guidelines.**
1. A central community gathering place, surrounded by civic and nonresidential or mixed uses should be developed as focal point of the development.
  2. Residential densities in a Traditional Neighborhood Development should range from five to eight single family units per net acre, and from 15 to 25 multifamily units per net acre.
  3. Accessory dwelling units, as defined in Article 11, should make up

approximately ten percent of the single-family housing stock of the development.

4. Blocks within the development should range from 200 to 400 feet deep, and 400 to 800 feet long.
5. A hierarchy of streets should be developed that includes collectors with two 12-foot travel lanes, subcollectors with two ten-foot travel lanes, local streets with two ten-foot lanes, and alleys with one 12-foot lane.
6. Shared parking is encouraged, and a base ratio of one space per 500 square feet of Mixed Use Development should be applied.
7. Architectural standards should be incorporated that are responsive to the community's context. The standards should include site design issues such as building orientation and location on the site, location of parking areas, and mixing of uses.

- I. **Deviations.** Any requested deviation from the standards otherwise applicable in this UDO shall be set forth in the documentation approved by the Town Council as part of the ~~rezoning and conditional use permit~~conditional rezoning.

(Ord. No. 3558, § 2, 7-7-09)

**6.14. Mixed Use Development (MXD) standards.**

- A. **Minimum requirements.** Mixed Use Developments are permissible only as conditional zoning on tracts of at least 40 contiguous acres. The general standards and criteria in Section 4.7 shall also be met.
- B. **Required development mix.** A minimum of three of the use categories listed below shall be included in any MXD district:
  1. Flex space;
  2. Office/institutional;
  3. Research, technology, and industrial;
  4. Commercial;
  5. Cultural; and
  6. Residential (Maximum of 50 percent of MXD, and then, at no more density than permitted in Article 6 for MF-2. No detached single-family residential is permitted).
- C. **MXD master plan.** The proposed Mixed Use Development master plan shall indicate the particular portions of the lot that the developer intends to develop for each of the elements described above. See Appendix D for the maps, information and analysis required as part of the submittal for MXD approvals.
- D. **Perimeter setback required.** A minimum 50-foot setback along the entire development perimeter is required. The setback from any street bordering the MXD tract shall be 35 feet unless a greater setback is required by this UDO.
- E. **Building separation.** Building to building relationships are otherwise specified in Article 6.
- F. **Screening and buffering.** No required buffer shall be intruded on by any building, parking area or access drive. Screening and buffering between uses within the MXD shall be in conformance with Section 7.1, Landscaping and tree protection. Reservation of significant natural features shall be documented in the required permit application materials, along with landscaping appropriate to the site, uses and building locations.
- G. **Public facilities.** Where residential uses are proposed, the MXD master plan shall establish public squares and meeting places that connect uses.
- H. **Common recreation and open space.** A minimum of five percent of the gross land area in the MXD master plan shall be reserved for common recreation and usable open space.
- I. **Mixed use guidelines.**
  1. The Mixed Use Development should contain some buildings that are vertically mixed in use.

2. Retail uses should be placed at street level, while office and residential uses should be placed in the rear or on the upper stories.
  3. Any limitation on residential density should be a function of parking demands, vehicular traffic generation, adequate utility service, building height, and lot coverage.
  4. Streets should interconnect within the development and with adjoining development. Streets should be planned with due regard to the designated corridors shown on the thoroughfare plan.
  5. Mid-block and rear alleys should be utilized for access to parking, service and loading areas to minimize the number of driveways along the main pedestrian spaces.
  6. To facilitate transit usage and circulation, Mixed Use Development should provide transit stops at key nodes with easy access to the surrounding thoroughfares along routes through the development planned to accommodate the technical requirements of bus operations.
  7. Locate buildings close to the street, with parking behind and/or beside buildings. If the building is located at a street intersection, place the main building, or part of the building, at the corner. Parking, loading or service may not be located at an intersection.
  8. Pedestrian circulation should be an integral part of the initial site layout. Organize the site so that the buildings frame and reinforce pedestrian circulation, and so that the pedestrians walk along building fronts rather than along or across parking lots and driveways.
- J. **Deviations.** Any requested deviation from the standards otherwise applicable in this UDO shall be set forth in the documentation approved by the Town Council as part of the ~~rezoning and conditional use permit~~conditional zoning.

(Ord. No. 3558, § 2, 7-7-09)

## 7.1. Landscaping and tree protection.

- A. **Purpose and intent.** The purpose of this section is to regulate the planting and preservation of landscape material, to promote the general health, safety and welfare of the community and in addition, to facilitate the creation of an attractive environment to protect property values and to further the urban design and economic development objectives of the Town-wide Comprehensive Growth Plan. This section is intended to apply minimum standards, which result in a better overall appearance of the community by:
1. Achieving a harmonious relationship between the natural landscape and manmade structures;
  2. Enhancing the community's natural, cultural and visual resources.
  3. Achieving the goals and policies of the officially adopted Comprehensive Growth Plan currently in force.
- B. **Applicability.** The provisions of this section and the Town of Garner Planting Manual contained in Appendix E shall apply to all public and private land located within the Town of Garner.
1. **New development.** The requirements of this section apply to the entire site for all new development.
  2. **Expansion of existing development.** Where existing development is expanded as described below, the requirements of this section shall apply to the entire site:
    - a. Residential district or exclusive residential use in any district. Any increase in the gross floor area of the building, developed area or site of 20 percent or more, or 1,000 square feet, whichever is less.
    - b. Commercial district or use. Any increase in the gross floor area of the building, developed area or site by ten percent or more, or 1,000 square feet, whichever is less.
    - c. Industrial district or use. Any increase in the gross floor area of the building, developed area, or site by 20 percent or more, or 5,000 square feet, whichever is less.
  3. **Exemptions to the landscape/maintenance requirements.**
    - a. Improvements or repairs to the interior or exterior of structures or buildings that do not result in an expansion or change in use shall be exempt from the landscape planting requirements, but not the maintenance requirements.
    - b. A single detached dwelling on its own lot shall be exempt from landscape planting and maintenance requirements.
- C. **Landscape plans.**  
***Commentary: Landscape plans should be prepared with the appropriate mix of plant varieties and quantities necessary to meet the requirements of Section 7.1 of the UDO. In cases where overhead power or utility lines exist, selected landscape material located underneath said lines must be the appropriate plant type so as not to create future conflicts. Information regarding the types of trees and shrubs that can be planted near power or utility lines can be obtained from the Garner Planning Department.***  
 A registered landscape architect shall prepare landscape plans, except where expressly exempted by the Planning Director. The landscape treatment shall adequately detail the requirements of this section; planting, landscape and buffer treatments required by the Town of Garner Planting Manual contained in Appendix E; and all other applicable sections of this UDO.
1. **Required planting components.**
    - a. There are four required planting components that may need to be addressed for any site subject to this section, as follows:

- (1) Tree canopy cover;
  - (2) Tree preservation (if required);
  - (3) Buffers, yards, vehicular surface areas and street trees; and
  - (4) Screening of objectionable views.
- b. These subsections address the minimum planting requirements for plan submittals.
2. **Landscape plan required.** Landscape plans shall include the following.
- a. Any natural features that influence the site's design.
  - b. Elements of required landscaping including buffers, tree cover, street yards, side and rear yards, open space, greenways, site distance triangles and easements.
  - c. Proposed plant schedule to include plant types, botanical and common name, spacing, quantities, sizes (height and spread and container size) and quantities. Tree cover calculations adequate in detail to determine compliance with these standards.
  - d. Proposed drives, paving, decks, walks, pools and other man-made structures/elements which are to be introduced within the property.
  - e. Proposed grades on landscape plan shall be half-toned on the print so as not to conflict with the legibility of the planting scheme and labels.
  - f. Construction notes/details relating to hardscape elements, specific material and planting procedures, and seeding schedules.
  - g. A plant points table that indicates the calculation of required and proposed landscape plantings for the development, detailing the use of the existing plant material, and the new plantings that are to be applied toward the required buffers, yards and vehicular surface areas.
  - h. Show calculations for tree canopy cover requirements.
  - i. If underground irrigation is to be used, all double check or RPZ valves and controllers shall be located on the landscape plans submitted and shall be screened from view from adjacent right-of-way.
  - j. Sight line drawings may be required by the Planning Director for development that proposes inappropriate building scale, materials or architecture or has a substantial grade difference or proposes insufficient screening treatments.
- D. **Plant material installation requirements.** Plant material requirements are based on square footage area of the four required planting components, and may be based on sight line drawings. Credits are based on the size and height of existing or proposed material. Refer to the credit for retaining mature trees chart and the plant points table below. Also refer to the residential and non-residential development cover requirements in Sections I.2.c. and d.; the perimeter and street buffer charts in Sections K.6 and Sections K.8 and Sections L.2.c, L.3.b, and L.4.b.
1. **Conditions.**
- a. All plants material installed must meet standards set by American Association of Nurserymen, Inc., "Standards for Nursery Stock".
  - b. The minimum number of plants required, regardless of area calculations, is three trees and 20 shrubs.
  - c. A minimum of ten percent of the required landscape installation based on the total plant points for the entire site shall be installed next to the building.
  - d. For large-scale buildings a minimum of 25 percent of the area of the front wall and of the building shall be screened with large trees planted within 25 feet of the building.

2. **Credit for retaining mature trees.** In order to promote the retention of existing mature trees, the following schedule provides more credits for existing mature trees with diameter at breast height (DBH) sizes as noted than are awarded in the plant points table for installed trees with smaller trunks. Qualification requires that the trees be in good health and of good quality, as determined by the ~~Planning Director~~ a landscape architect licensed in NC or a certified arborist.

Points	Small Hardwoods	Large Hardwoods	Softwoods
40	2½ to 4 inches	6 to 9 inches	8 to 11 inches
50	5 to 8 inches	10 to 17 inches	12 to 17 inches
64	9 to 11 inches	18 to 24 inches	18 to 29 inches
96	12 inches or larger	24 inches or larger	30 inches or larger

3. **Plant points table.**

Plant Type	Height (feet)	Size Root/ Container	Caliper (inches)	Points
Large Canopy Tree (minimum 35 feet at maturity)	14	B&B	3 to 9	40
	12	B&B	2.5	32
	10	B&B	2	25
	9	B&B	1.5	15
	8	B&B	1.25	8
Small Canopy Tree (less than 35 feet at maturity)	9	B&B	1.5	32
	8	B&B	1.25	25
	6	B&B	1	15
	5	B&B	0.75	8
Shrubs	8	B&B	—	15
	6	15 gallon/B&B	—	12
	4	10 gallon	—	10
	3	7 gallon	—	8
	2	5 gallon	—	6
	18	3 gallon	—	3
	< 18	or 1 gallon	—	1

- E. **Protection of planting areas.** Planting areas shall be permanently protected from damage by vehicular traffic through the use of curbing and or wheel stops. Wheel stops shall be used in parking areas where:

1. Curbing has not been used or is less than six inches in height.
2. Proposed new trees and shrubs are planted within five feet from adjacent curbing or edge of vehicular surface area paving.

- F. **Completion of work/letters of credit.**

1. A certificate of occupancy shall be issued only when all plantings have been installed and all the work shown on the approved landscape plan has been completed. Substantial changes in plantings which have changed the intent of the approved plans and changed the credit totals used to meet the ordinance requirements shall be reviewed by the Town staff for compliance prior to the issuance of the certificate of occupancy.
2. An irrevocable letter of credit or bond for ~~150-125~~ percent of the cost of landscaping and uncompleted work, as determined by the executed



contract, will be accepted in lieu of installation where periods of adverse planting conditions prohibit the installation of the work or where the certificate of occupancy is required prior to the completion of the landscaping. ~~The Planning Director shall have the ability to increase the amount due should the cost to install the landscaping and uncompleted work exceed the amount of the 150 percent estimated rate.~~

**G. Tree preservation/protection.**

1. **Purpose and intent.** The purpose of this section to promote the preservation and protection of existing tree coverage on a site. Existing trees enhance and improve overall land values and aesthetics, contribute to the production of oxygen, reduction of carbon dioxide and water runoff while at the same time reducing the overall urban heat buildup and soil erosion.
2. **Exemptions for timbering and silviculture.** Normal forestry activities on property taxed under present-use value standard or conducted pursuant to a forestry management plan, prepared and approved by a forester registered according to ~~Chapter 89B of the North Carolina General Statutes~~ G.S. § 89B are exempt from tree preservation requirements.
  - a. No forestry activities may take place on property until the property owner or his representative has obtained a forestry permit from the Town of Garner Planning Department. Failure to obtain a permit shall subject the owner to a fine not to exceed \$500.00. Each day the violation continues shall be considered a new violation, subject to a new penalty.
  - b. Forestry activities are strongly encouraged to exclude all tree harvesting and thereby preserving all trees within following perimeter buffer areas:
    - (1) Fifty-five-foot wide buffers located along roadways or located adjoining developed properties; and
    - (2) Thirty-foot wide buffers located adjoining undeveloped properties.
  - c. In cases where all trees or substantially all trees are removed from the above referenced perimeter buffers, the Town will not grant site plan or subdivision plan approval for said property for a period of five years following the harvest of such trees. The five-year

waiting period may be waived if the Town Council, by a three-quarters vote, determines a project to be desirable and grants the right to immediate development on recently timbered land where no perimeter buffer was kept.

3. **Significant or specimen tree protection requirements.** ~~The permit-issuing authority may require any trees meeting the minimum DBH size listed below and or any trees of any diameter listed as r~~Rare species listed under the North Carolina Natural Heritage Program ~~shall~~be saved. Such trees shall be required to be saved ~~only when the permit-issuing authority~~unless the BOA concludes such trees do not significantly contribute to the Town's appearance and natural environment, and where retaining such trees ~~does not unreasonably burdens~~ development, as described below.

Tree Type	Tree Size
Overstory Hardwood Tree	24" DBH or greater
Evergreen Tree	30" DBH or greater
Understory Tree	10" DBH or greater
Evergreen Tree	" DBH or greater
Understory Tree	" DBH or greater

- a. When development is unreasonably burdened by retaining such trees, the following criteria is used ~~by the developer and staff to jointly~~ prioritize trees to be saved based on the following criteria.
- (1) Rareness of species;
  - (2) Evidence of disease/insects;
  - (3) Size and age of tree;
  - (4) Aesthetic value (i.e. flower, fruit, color, etc.);
  - (5) Expected longevity of species;
  - (6) Size at maturity; and
  - (7) Severity of slope.

H. **Stop work orders and violations/penalties.** See Article 10, Enforcement.

I. **Tree canopy cover.**

1. Purpose and intent. The objective of tree canopy cover standards is to preserve and maintain appropriate undisturbed tree cover, and where needed, require the provision of replacement tree cover on development sites within the Town of Garner zoning jurisdiction. Such standards support the reduction of soil erosion, air pollution, stormwater runoff and noise; moderate temperatures; and protect plant and wildlife habitat, which together assist in providing a healthier living environment for the citizens of the Town.
2. **Tree cover requirements.**
  - a. All new development must meet the tree cover requirements outlined in the tables below. These standards can be achieved by preserving existing trees on the site, or by planting replacement trees. Trees in required buffer yards and easements, and street trees may be credited towards the tree cover requirements. Preference is given to preserving existing trees, rather than preservation and planting, or exclusive planting, and this preference is reflected in the standards of the table.
  - b. Water surface areas of ponds, lakes or other surface water bodies (excluding stormwater control structures) shall be excluded from the

total land area for the purposes of calculating tree cover requirements.

c. Tree residential development cover requirements.

Preserved Tree Cover Area	Replacement Tree Cover Area	Minimum Total Tree Cover Area
12%	Plus 0% equals	12%
8.5%	Plus 4% equals	12.5%
5%	Plus 8% equals	13%
1.5%	Plus 12% equals	13.5%
0%	Plus 14% equals	14%

d. Non-residential development cover requirements.

Preserved Tree Cover Area	Replacement Tree Cover Area	Minimum Total Tree Cover Area
10%	Plus 0% equals	10%
7.5%	Plus 3% equals	10.5%
5%	Plus 6% equals	11%
2.5%	Plus 9% equals	11.5%
0%	Plus 12% equals	12%

e. Areas required to be undisturbed by other requirements of the Garner UDO shall be presumed to meet requirements of this section, provided applicable standards are met.

f. All preliminary major subdivision plans, site plans, final plats and other types of plans or permits as determined by the Planning Director shall clearly indicate all tree preservation and tree replacement areas.

g. Existing tree cover areas in new subdivisions are strongly encouraged to be located in common open space areas or protected buffers, where possible. Where this is not practical, perimeter buffer areas or conservation easement areas may be increased, provided the root zone of such trees can be protected during construction.

3. **Tree cover preservation area requirements.** Trees proposed to be preserved to meet the tree cover requirements above must also meet the following requirements for tree cover preservation areas.

a. Preservation of groups of trees must occur in areas of at least 1,000 square feet on sites greater than one acre with no dimension less than 15 feet. For sites of one acre or less, preservation areas for groups of trees shall be a minimum of 500 square feet in area with no dimension less than 15 feet.

b. Individual tree cover preservation area is defined by its root zone protection area, and must be minimum size of 200 square feet, even where the root zone protection area is smaller than this size. Where specimen trees are preserved outside of other required buffers, credit shall be granted at a rate of two times the square footage of the root zone protection area.

c. In order to receive credit as tree cover, the minimum size for trees in a tree preservation area shall be two and one-half-inch DBH (except where such trees are specimen trees).

d. In cases where there is uncertainty regarding the size and quality of trees proposed for preservation, the Planning Director shall have the authority to require submittal of a limited tree survey to substantiate that such areas meet the minimum standards.

**4. Replacement tree cover requirements.**

- a. Replacement trees are required to meet the standards listed in the table below.
- b. At least 50 percent of the replacement trees shall be two and one-half-inch DBH or larger.
- c. At least 50 percent of the replacement trees must be large hardwoods native to this region.
- d. ~~The permit issuing authority shall have the authority to~~ A Variance is required to approve replacement trees of different sizes or species when it determines that some flexibility is needed to better meet the purpose and intent of these regulations. ~~Additional credit may be given by the Planning Director, as deemed appropriate, for replacement trees larger than what is indicated in the table below.~~ For every one-half-inch caliper above what is listed below a credit of 25 square feet may be allowed (i.e. three-inch tree may receive a credit of 225 square feet).

DBH (inches)	Credit (square feet)
2½	200
2	175
1½	150
1	100
Less than 1	No credit

**5. Protection subsequent to plan approval.**

- a. **Fencing.** During the entire period of construction activity on the site, all protected trees shall be surrounded and protected by an orange Tensar geogrid fencing fabric or approved equal fencing. Tree protection fencing shall be installed a minimum of ten feet from the trunk of any protected tree or drip line, whichever is greater. For any tree greater than ten inches DBH, this distance shall be increased one foot for every one inch in DBH. Tree protection fencing shall be maintained until a final certificate of occupancy has been issued, unless expressly exempted by the Planning Director.

One sign shall be placed every 200 feet along fencing to read:

**"TREE PROTECTION AREA—DO NOT ENTER/  
PARA PROTECCION DE LOS ARBOLES—PROHIBIDO ENTRAR"**

- 6. **Soil disturbance.** Subsequent to plan approval and during the entire period of construction, there shall be no soil disturbance or compaction within areas designated for tree preservation and protection, and areas protected by tree protection fencing. This includes no stockpiling of construction or other material, and no bore sampling or other similar vehicular traffic. Failure to comply with this prohibition shall subject the owner to a fine in accordance with Section 10.3.

**7. Tree survey.**

***Commentary: Tree surveys are not mandatory, but may be required if landscape credit is requested for existing trees proposed for preservation when the location and size of said trees cannot easily be determined by the Planning Department.***

A tree survey when required by the Planning Director shall include:

- a. General significant area outline of existing trees to be saved and any individual trees meeting minimum requirements with species (abbreviated) and DBH next to each location;
- b. Any trees meeting the DBH standards in paragraph G.3., above; and
- c. Any existing tree eight inches DBH or greater within the first 15 feet of the portion of the buffer closest to the subject development.
- d. Specimen trees located within the following areas are not required to be surveyed:
  - (1) Floodway;
  - (2) Floodway fringe;
  - (3) Preserved wetlands;
  - (4) Stream buffers; and
  - (5) Undisturbed steep slopes.

**8. Tree preservation incentives.**

- a. The Planning Director ~~may~~ shall approve up to a 15-percent reduction in the required number of parking spaces if at least one significant tree for every three parking spaces is saved outside of the required buffers and floodways.
- b. Trees and shrubs retained on-site may be used to meet landscape requirements if the trees and shrubs meet the standards of the buffer or yard to which they are being applied, ~~and if determined appropriate by the Planning Director.~~
- c. Undisturbed areas may be counted towards nitrogen reduction requirements.

**J. Xeriscape landscape design and planting.**

1. **Purpose and intent.** Xeriscaping is a landscaping method that maximizes the conservation of water by the use of site appropriate plant material, adequate soil preparation, proper maintenance practices and efficient irrigation that conserves water and protects the environment. Implementing the seven principles of xeriscaping below reduces the use of fertilizers and chemicals, and can reduce water consumption and improve plant vigor.
2. **Reduction in buffer width for xeriscaping.** Where the applicant demonstrates that all seven of the xeriscaping principles in the paragraph below have been satisfied, a reduction of up to ten percent of a required perimeter buffer width ~~may~~ shall be allowed ~~by the Planning Director.~~
3. **Seven principles of xeriscaping.**
  - a. **Planning and design.** Analyze the site to take advantage of the existing conditions (i.e. solar orientation, existing vegetation etc.) that can facilitate the conservation of utility and water usage and over all maintenance costs to a site, locate and develop use areas to accommodate specific activities, identify zones of varying water requirements.
  - b. **Soil analysis and preparation.** Typical construction site soils lack desirable soil structure and available water or nutrients. Xeriscape methods encourage plants to develop deep root growth so that plants have access to moisture after soils dry out. This is accomplished by breaking up soil compaction and adding organic matter to keep soils porous, as well as chemically improving soils with nutrient additives. Both physical and chemical improvements are needed for deep root growth. A successful xeriscape plan includes soil test results of each water requirement zone with recommendations on correcting deficiencies in soil pH, nutrients, and amendments. If soil test is not available the following soil

improvements may be used as substitute:

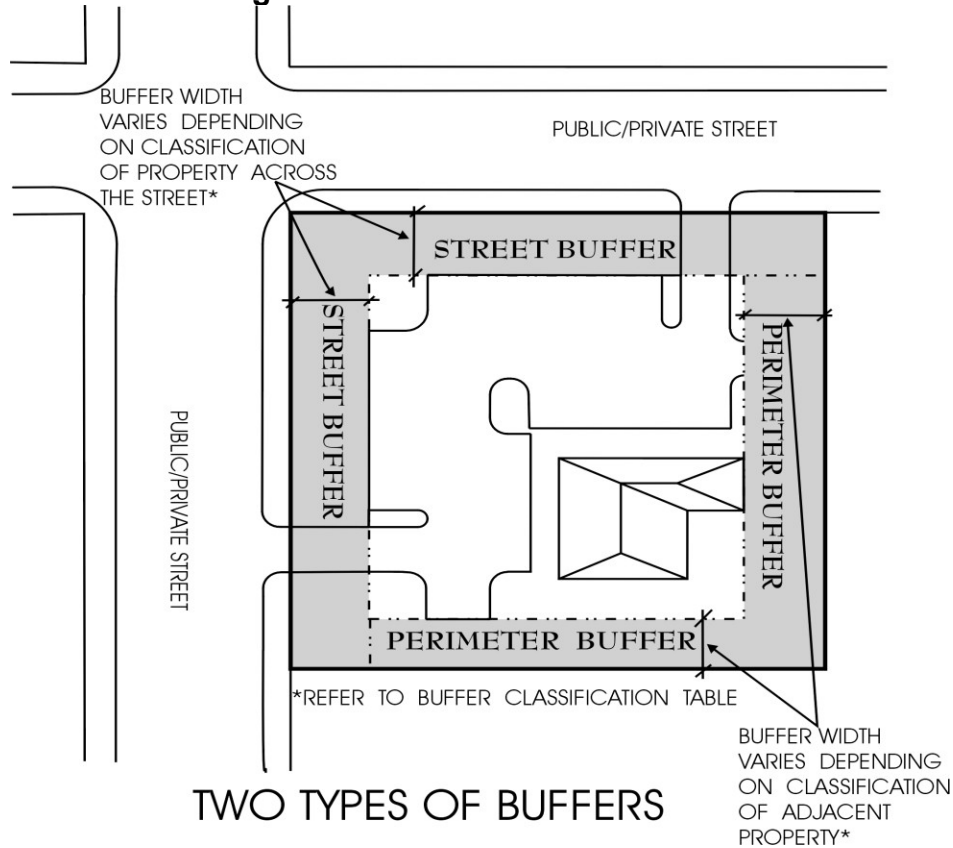
- (1) Till the soil to a depth of six inches to break up compaction; and
  - (2) Incorporate topsoil, add four inches of shredded or composted organic matter, lime 9, and a balanced fertilizer to the top two to four inches of soil.
- c. **Appropriate plant selection.** When deciding on plant material, it is important to select material that is not only compatible with the design but also well suited to the site, adaptable to the local environment, and grouped according to water needs.
  - d. **Practical turf areas.** To reduce maintenance and utility costs, it is important to design turf areas that are specific to a use (i.e. accent area in front of a doorway, entertainment zone, or play area for children) and reduce or eliminate other areas of turf grass.
  - e. **Efficient irrigation.** Zone the different plant materials by water requirements and provide the type of irrigation appropriate to the zone. Irrigate between the hours of 9:00 p.m. and 9:00 a.m. so as to decrease water loss due to evaporation. Use drip irrigation in beds that are mulched or on steep slopes to thoroughly soak the area without washing away the mulch or causing run-off. Wet the soil to a depth of six to eight inches to encourage deep root growth. Simply sprinkling mulched areas lightly can induce shallow root growth; shallow-rooted plants suffer in dry periods. If necessary, split water applications into two time blocks to allow the soil to absorb the water.
  - f. **Mulching.** Use two to four inches of fine-textured organic mulches (wood chips, composted leaves, shredded bark, pine straw) to conserve moisture and reduce the need for supplemental water. Do not use inorganic mulches, such as gravel, which accelerates water loss from plants and soil by absorbing and reradiating heat from the sun. Do not use plastic as a soil cover as it prevents oxygen exchange and encourages shallow root growth.
  - g. **Appropriate maintenance.** Maintain xeriscape planting by fertilizing less during dry periods so as not to dehydrate roots, prune lightly especially during dry periods to avoid production of new growth when water is scarce, test the soil pH and correct for deficiencies; water thoroughly at a rate that matches soil absorption to encourage deep root growth and reduce run-off; mow turf grass often and high to encourage deep root growth and to shade the soil thereby reducing water use; regularly maintain and adjust irrigation systems for maximum efficiency; and, aerate to correct soil compaction and to reduce weeds and pests.
4. **More information.** For more information on xeriscaping, refer to the Town of Garner Planting Manual (in Appendix E) for details.

**K. Buffers.**

1. **Purpose and intent.** Buffers are required where incompatible uses are adjacent to or directly across the street from each other. There are two types of buffers: perimeter buffers along side and rear lot lines and street buffers along lot lines adjacent to private or public streets. Perimeter buffers perform a dual role of providing both horizontal separation and vertical screening. Street buffers provide horizontal separation only. Both perimeter and street buffers shall retain all existing vegetation a minimum of four inches DBH or greater. The potential negative effect of the incompatible use of the subject property shall determine the required buffer width. No

land disturbing activities are allowed except where specified below. Minor clearing of underbrush is allowed in order to maintain or enhance public safety ~~with prior written approval from the Planning Director and shall not be unreasonably withheld.~~ Buffer requirements may be met with supplemental planting.

**Note: Image to follow**

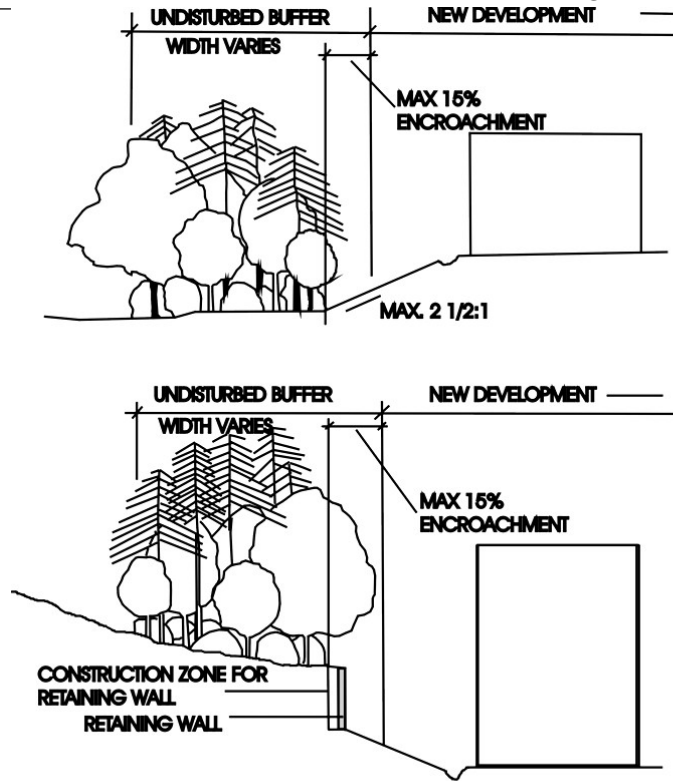


**TWO TYPES OF BUFFERS**

2. **Buffer vegetation requirements.** No land disturbing activities are permitted in buffers containing existing trees with a minimum caliper DBH of four inches except as provided below. A tree survey, in accordance with [Section 7.1] 1.7, Tree survey, may be required for buffers containing significant or specimen trees that meet the requirements set forth in Subsection G.3, Significant or specimen tree protection requirements. No land disturbing activities shall be permitted within the critical root zone of any retained significant or specimen trees. When development is unreasonably burdened by saving significant or specimen trees within buffer classifications 3 through 6, the developer and the Planning Director shall jointly determine which trees may be removed, and may file a Variance application with the BOA to determine what replanting and/or screening measures shall be implemented.

a. **Limited grading within buffers.** Limited grading within designated buffers may be permissible ~~only if authorized by the permit-issuing authority~~ according to the following limitations when grading encroachment is the only practical solution after all other reasonable alternatives have been exhausted.

**Note: Image to follow on next page.**



## LIMITED GRADING WITHIN BUFFERS

- (1) In cases where designated buffers completely lack existing trees and vegetation, grading within the buffer area ~~may be allowed by permit-issuing authority based upon evaluation of site conditions, analysis of sight line drawings and other information needed to conclude that such grading encroachment will not affect negatively adjacent properties~~ is permitted.
  - (2) In all other cases, grading encroachment is allowed only in buffers 35 feet wide or greater and is limited to a maximum of 15 percent into the development side of the buffer as illustrated by the above graphic. The length of the grading encroachment in the buffer area is limited to a maximum of 15 percent of the total length of the affected buffer.
  - (3) If retaining walls are used, grading shall not exceed a slope ratio of 2 1/2:1.
- b. **Existing vegetation.** Existing vegetation can be used to meet all or part of the requirements of this section where such vegetation meets the minimum standard for vertical screening under the appropriate classification. Where supplemental planting is required, the Planning Director shall have the authority to specify the location to account for and provide maximum screening in the



event of significant grade differences between properties to which the buffer standard applies.

c. **Proposed vegetation.** Where supplemental planting is required in buffers, the Planning Director shall have the authority to specify the location to account for and provide maximum screening in the event of significant grade differences between properties to which the buffer standard applies. Proposed vegetation shall adhere to the following buffer planting requirements:

- (1) Required planting shall use a mix of deciduous overstory trees, evergreen trees, deciduous understory trees/large shrubs, and small evergreen shrubs to provide vertical screening;
- (2) Monoculture plantings are not permitted;
- (3) The mix shall create a 100 percent screening buffer within two years of planting.
- (4) In calculating buffer planting requirements, areas of driveways and sight distance triangles shall be excluded; and
- (5) Deciduous overstory trees, small trees or large shrubs, evergreen shrubs and evergreen trees shall be distributed along the entire length of the buffer. Due to unique characteristics of a site, or design objectives, alternative designs that achieve the required screening may be approved by the Planning Director.

3. **Site-specific conditions.** At the time of site plan approval, the Planning Director may require additional berming, landscaping, or screen walls to satisfy buffer separation and screening requirements on a case-by-case basis.

- a. If berming is used, it shall not exceed a slope ratio of 2:1 feet. The berm must be vegetated with plant material that will accomplish a height of six feet including the berm within two years of planting.
- b. If an opaque fence or wall is to be used, the height shall be six feet with the finished side facing adjacent property or right-of-way.

4. **Buffers and clear sight triangles.** No screening or buffering shall interfere with the sight distance triangles required for safe traffic movements at driveway or street intersections.

**5. Land use buffer classifications.**

Class	Uses Included
1	Single-family detached, modular single family homes, manufactured homes, cemeteries*, public park (passive use only)
2	Townhomes, condominiums (less than 12 units in project), two-family dwelling, apartments (12 units or less per acre), multiplex units, manufactured home parks, family care homes, group care homes, intermediate care homes, library, museum, art gallery, art center, day care facility, continuing care facility, group care facility, handicapped institution, intermediate care institution, nursing home, child care home, adult care, bank, community center (less than 5,000 sq. ft.)

3	Apartments (13 units or greater per acre), townhomes and condominiums (more than 12 units or more in project), business schools, public or private schools, post office, medical clinic, mental health facility, public park (active use only), minor utility, restaurant, public swimming pool, public tennis courts, indoor entertainment facility, theater, medical office, convenience store (without gasoline sales), office, retail sales with no outdoor operations, personal service, community ctr. (greater than 5,000 sq. ft.), gym, spa, bed and breakfast, religious institutions, agriculture, golf course/country club, private swimming pool), private indoor/outdoor tennis court, Town hall, hospice, hospitals or ambulatory health/emergency care facilities without heliport operations
4	Bus passenger terminal, taxi/limousine operations or facility, trade/vocational schools, hospital, major utility, telecommunication facility, drive in/up restaurant, horse stable, extended stay facility, hotel/motel, convenience store (with gasoline sales), open air markets, indoor veterinarian/kennel facility, car wash, vehicular repair, vehicular sales and rentals, limited vehicular service, commercial parking lots, private outdoor athletic facility, water slide, outdoor entertainment, shopping center
5	College or university, ambulance service, rescue squad, fire station, police station, solar farms, bar, tavern, night club, outdoor veterinarian/kennel facility, retail with outdoor operation, self-service storage (inside or outside), railroad tracks
6	Military reserve, prison or jail, sexually oriented business, drive in theater, aviation service, light industrial flex space, manufacturing/production, mining/quarry operations, warehouse or freight storage, truck terminals, reclamation landfill, recyclable material collections, salvage yard, sanitary landfill, wholesale sales, industrial (outside), vehicle towing, greenhouse, hospitals or ambulatory health/emergency care facilities with heliport operations

**Note: Projects (new or expansion to existing ones) that abut an existing cemetery shall provide a minimum ten-foot wide buffer area with landscaping to achieve a 100 percent screen up to a height of six feet. New cemeteries or expansion to existing ones must meet required landscape and buffers requirements of this ordinance.**

6. **Buffer width charts.** The following tables provide requirements for buffers between two uses. To use the tables identify the appropriate classification numbers for the proposed use and adjacent property or street. The required buffer width is listed at the intersection of the respective row and column.

**a. Perimeter buffers adjacent to developed zoning district.**

Proposed Use Classification	Adjacent Developed Classification (width in feet)					
	1	2	3	4	5	6
1	0	15	25	25	35	45
2	25	15	15	15	25	35
3	35	25	15	15	25	25
4	45	35	25	15	15	15
5	55	45	35	25	15	15
6	65	55	45	35	25	15

**b. Perimeter buffers adjacent to undeveloped zoning district.**

Proposed Use Classification	Adjacent Undeveloped Zoning District (width in feet)					
	SF	MF	NC, NO	CR, CBD, SB	OI	I-1, I-2
1	0	15	25	25	25	35
2	15	15	15	15	15	25

3	25	15	15	15	15	25
4	25	20	15	15	15	15
5	35	25	15	15	15	15
6	45	25	15	20	20	15

- c. **Street buffers across from existing and proposed development.** The street buffer has only a horizontal separation requirement. For screening requirements, refer to Section L.4.b, Planting requirements in vehicle surface area, and Section M., Screening of objectionable views. Street buffers include land classifications across an adjacent street or railroad track. Refer to overlay districts for further landscaping requirements specific to thoroughfares.

Proposed Use Classification	Street Buffer Width (width in feet)			
	1	2	3 and 4	5 and 6
1	0	15	20	25
2	15	15	15	25

Proposed Use Classification	Street Buffer Width (width in feet)			
	1	2	3 and 4	5 and 6
3	20	15	15	15
4	25	25	15	15
5	25	25	15	15
6	25	25	15	15

7. **Buffer width reductions.**

- a. Where two adjacent properties, both in classifications 3 through 6, have planting requirements for perimeter buffers, the subject property may be allowed a 50% reduction in the required adjacent perimeter buffer width and planting, ~~at the discretion of the Planning Director.~~ If the adjoining property is developed and has a continuous planting of existing, mature evergreen shrubs along the entire length of the adjacent side property line the subject property may reduce the adjacent perimeter buffer by up to 50 percent and install only half the required side buffer planting requirements.
- b. If the adjoining property is undeveloped and has a planting requirement along the entire length of the adjacent side property line the subject property may reduce the adjacent perimeter buffer by up to 50 percent and install only half the required side buffer planting requirements.
- c. ~~Street buffers are allowed reductions at the discretion of the Planning Director.~~

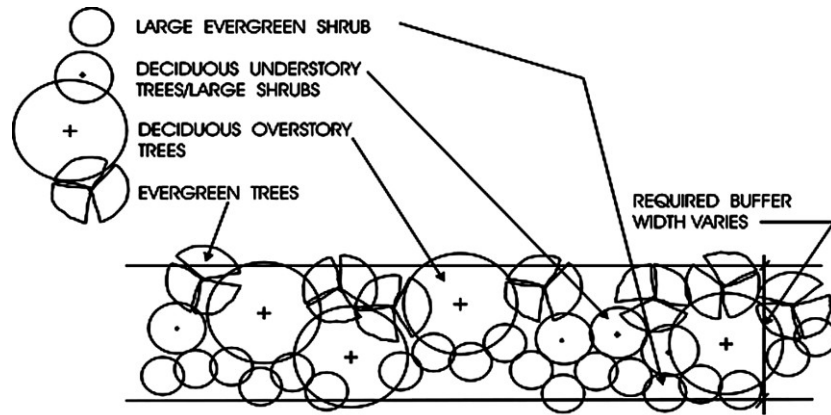
8. **Planting requirements.** Planting requirements shall apply only to screening for perimeter buffers. Planting requirements shall apply to all

classifications and shall be satisfied in accordance to this subsection.

a. **Trees.** Trees shall be evenly distributed along the entire length of the buffer. To calculate the required number of trees refer to Section K.5, Land use buffer classifications, and Section K.6, Buffer width charts, above. To calculate the spacing constraints for the respective trees/large shrubs and evergreen shrubs use the following applicable requirements:

**(1) Deciduous overstory trees.**

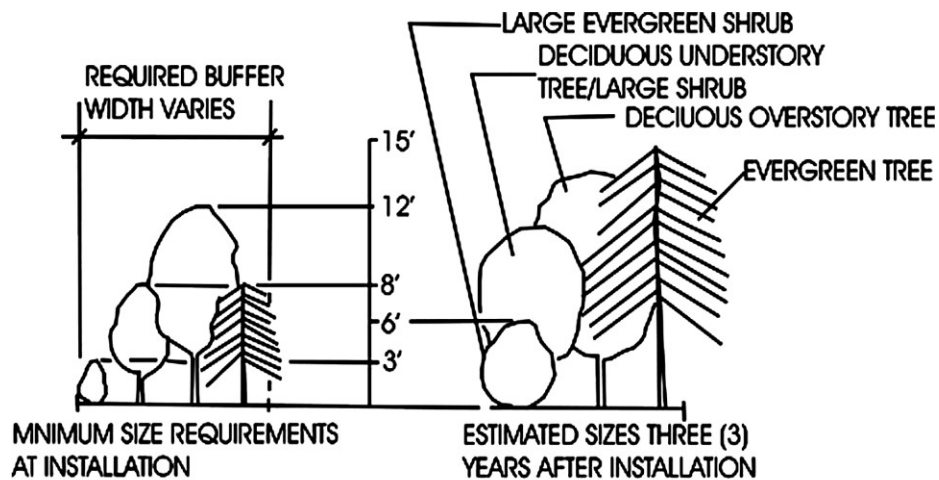
(a) No tree with a caliper less than two and one-half inches shall be permitted.



**PLANTING RATE NOTES:**

1. EVERGREEN TREES AT 50% REQUIRED NUMBER
  2. DECIDUOUS OVERSTORY TREES AT 20% - 30% REQUIRED NUMBER
  3. DECIDUOUS UNDERSTORY TREES/LARGE SHRUBS AT 20% - 30% OF REQUIRED NUMBER
  4. LARGE EVERGREEN SHRUBS AT 1.2 TO 4 TIMES TOTAL NUMBER TREES
- \*DISTRIBUTE THE VARIOUS PLANT TYPES ALONG LENGTH OF BUFFER

**PLAN VIEW - TYPICAL BUFFER**



**SECTION VIEW - TYPICAL BUFFER**

- (b) Of the total number of required trees, 20 to 30 percent shall be deciduous overstory trees.
- (c) The planting rate per square foot shall be calculated in accordance to the following table:

<b>BUFFER POINTS FOR TREES</b>	
<b>Buffer Width</b>	<b>One Tree per Square Feet of Buffer</b>
15 feet	200 square feet
25 feet	300 square feet
35 feet	350 square feet
45 feet	400 square feet
55 feet	475 square feet
65 feet and above	550 square feet

**(2) Deciduous understory trees/large shrubs.**

- (a) No deciduous understory tree/large shrub less than eight feet tall shall be permitted to be planted.
- (b) Of the total number of required trees, between 20 and 30 percent shall be deciduous understory trees/large shrubs.
- (c) The shrubs can be deciduous or evergreen.
- (d) If there is significant existing vegetation and/or significant site characteristics/design solutions that provide adequate screening, two smaller deciduous understory trees/large shrubs with a minimum height of four and half feet can, ~~at the discretion of the Planning Director,~~ be substituted for one required deciduous understory tree/large shrub.

**(3) Large evergreen trees.**

- (a) No large evergreen trees less than eight feet tall shall be permitted.
- (b) Of the total number of required trees, at least 50 percent shall be large evergreen trees.
- (c) If there is significant existing vegetation and/or significant site characteristics/design solutions that provide adequate screening, two smaller evergreen trees with a minimum height of four and half feet can, ~~at the discretion of the Planning Director,~~ be substituted for one required large evergreen tree.

**b. Evergreen shrubs.**

- (1) Evergreen shrubs shall be installed at a minimum height of 36 inches.
- (2) Evergreen shrubs shall reach six feet within two years of planting.
- (3) To calculate the required numbers of shrubs refer to Section K.5, Land use buffer classifications, and Section K.6, Buffer width charts.
- (4) Evergreen shrubs shall be evenly distributed along the entire length of the buffer at the following rates per square foot:

<b>BUFFER POINTS FOR SHRUBS</b>	
<b>Buffer Width</b>	<b>One Shrub per Square Feet of Buffer</b>
15 feet	50 square feet
25 feet	75 square feet
35 feet	125 square feet
45 feet	200 square feet
55 feet	300 square feet
65 feet and above	450 square feet

**9. Sight line drawings.**

- a. The Planning Director shall require sight line drawings to be submitted with landscape plans if the proposed development is adjacent to a residential district or use or in cases where the proposed development may have some impact on street views.
- b. The Planning Director may require sight line drawings to be submitted with landscape plans based on, but not limited to, the following criteria:
  - (1) Where existing vegetation or proposed vegetation and berming is not adequate;
  - (2) Where the first story finished floor elevation of the proposed development is a minimum six feet higher or lower than adjacent residential zoning or use;
  - (3) Where materials, character or architectural features for the proposed building are different from adjacent residential structures;
  - (4) Where the proposed building volume is five times or greater than adjacent residential building volume, and/or the height of the proposed building is three stories (or equivalent) or higher.
- c. Implications for site layout may include increased buffer width and standards, revision to building footprint dimension or location, revision to building orientation, revision to location of site support structures (dumpster, accessory buildings).

**L. Street trees, street yard, side and rear yard, vehicular surface areas.**

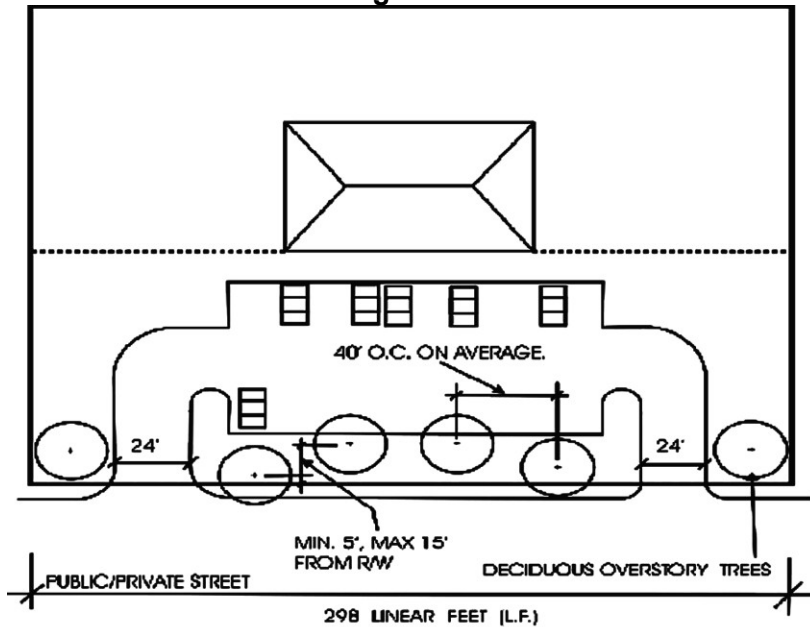
- 1. **Street trees.** Street trees shall create an environment that benefits from the aesthetic and environmental qualities of a consistent tree canopy along public and private streets and highways. Trees improve the overall appearance and provide shade, visual interest and reduce heat build up and run off.

- a. All new development and qualified expansion of existing

development, on both private and public street frontage, shall install at one overstory tree with a minimum caliper of two and one-half inches every 40 feet on average, or as close thereto as practicable. Planted trees shall be a minimum of five feet and maximum of 15 feet from the road right-of-way and shall be located within a public street tree easement. Variance from this spacing may be allowed to accommodate existing utilities or natural obstructions ~~at the discretion of the Planning Director.~~

- b. Street trees shall be deciduous overstory trees that reach a minimum height of 35 feet at maturity. Where overhead wiring exists, small ornamental trees shall be used.
- c. To avoid a monoculture-planting scheme, it is recommended that a variety of tree species be planted for more diversity along the roadways.
- d. Credit will be given, ~~at the discretion of the Planning Director,~~ for the preservation of existing overstory trees that are healthy and of good quality. The developer may be required to submit a tree survey of all existing trees to be preserved. A minimum of two-thirds of the land area within each tree's critical root zone must be preserved for such trees to receive credit.

**Note: Image to follow**



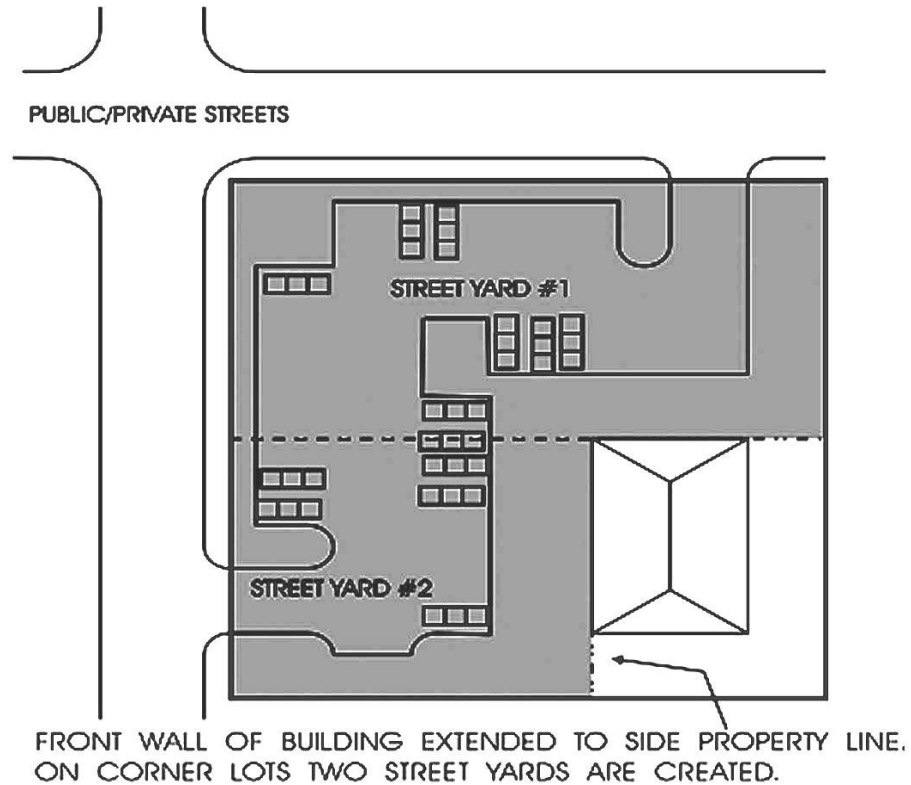
## STREET TREE REQUIREMENTS

298 L.F. - 48 L.F. (DRIVEWAYS) = 250 L.F.  
 250 L.F./40 = 6.25. i.e. 6. STREET TREES REQUIRED

- e. One hundred percent of the required street trees may be applied to the planting requirements of Section L.2, Street yards.
  - f. The ~~Planning Director~~BOA may waive strict compliance with this subsection if proposed alternative concepts would meet or exceed the visual impact provided by the deciduous overstory trees along the rights-of-way.
2. **Street yards.** A street yard is the protected landscape area contained by the existing or proposed street right-of-way and an imaginary line extending along the adjacent building facade or wall to the side property line (see illustrations on the next page). Street yards are intended to provide attractive vehicular and pedestrian views of the properties, to retain or supplement existing vegetation and to provide a visual and physical barrier

between transportation routes and other land uses. Refer also to the overlay districts for discussion on street yards. Street yard requirements do not apply to single-family residential districts or uses.

**a. Design requirements.**

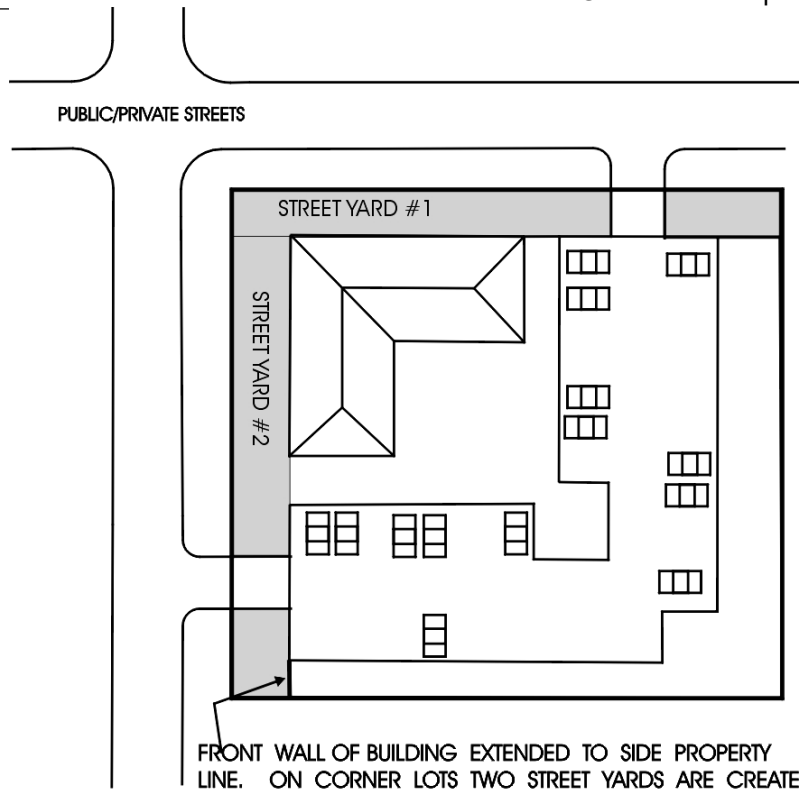


**STREET YARD AREA**

- (1) Landscaping within the right-of-way of state roads requires an encroachment agreement from North Carolina's Department of Transportation (NCDOT). Applicants must contact NCDOT for their approval and coordinate landscape installation with any existing or proposed utility easements or services in the right-of-way. Applicants must provide the Town of Garner Planning Department with a copy of an approved encroachment agreement prior to the issuance of a building permit.
- (2) Sight distance triangles must be maintained at all intersections (see Section K.4). Plantings must not create any visual obstruction between 30 inches and seven feet in height within this triangle.

**Note: Image to follow**





STREET YARD AREA

- (3) Refer to the plant point table in Section D.3 for point assignments specific to plant types and sizes. Refer to Section L.4.b, Planting requirements in vehicle surface area, for additional required screening of views of vehicles from the street right-of-way.
- (4) If two street yards cross, the street yard with the lesser width between the right-of-way and the building wall/facade shall be used in this area of overlap. Refer to overlay districts for additional requirements.

b. **Modification permitted in industrial subdivisions.** The landscaping requirements for industrial subdivision shall be met in a manner that enhances street appeal and maximizes screening of objectionable views. ~~At the Planning Director's discretion, up to~~ 75 percent of the required plantings in the side and rear yard area, and vehicular surface area plantings can be applied toward street yard areas for maximum street appeal. No reduction shall be allowed in side and rear yards where that yard is adjacent to existing residential uses or districts.

c. **Planting requirements.** The required tree and shrub installation is based on the total required points in street yards for the subject property.

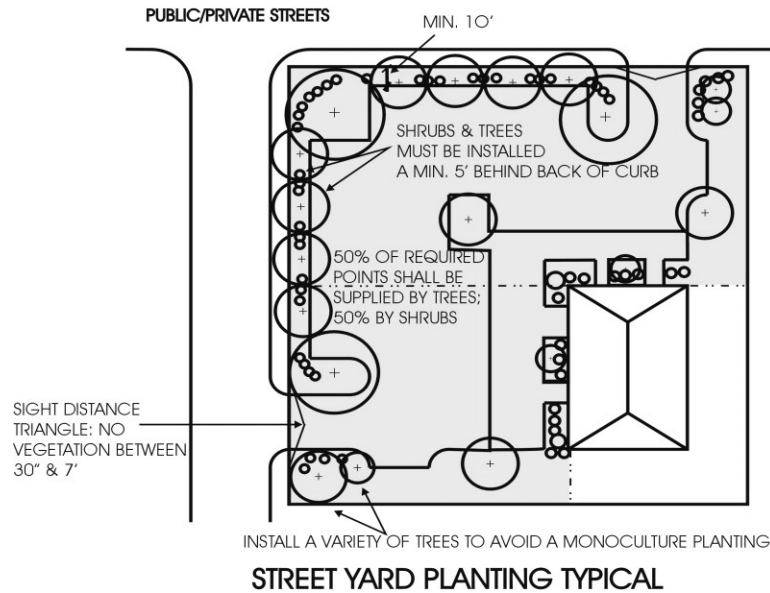
- (1) Calculate the required points by determining the area in street yard(s). Multiply that area by a factor specific to the subject property's zoning district as follows:

Proposed Use	Points per Square Foot of Street Yard
Residential and Multifamily	0.06

Office and Industrial	0.025
Commercial	0.025
Retail, up to 3 acres	0.025
Retail, 3 acres or greater	0.015

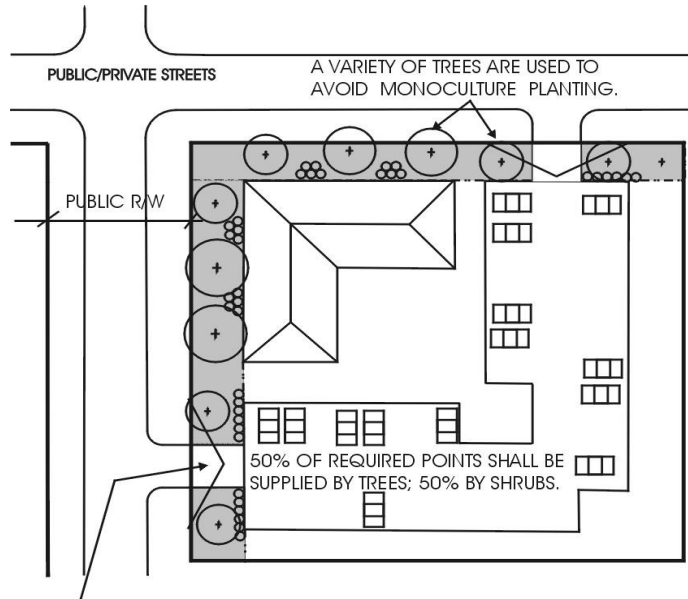
- (2) Reduction of total required points in street yards is allowed for large front setbacks according to the following percentages:
  - (a) Setbacks for commercial, office, and industrial districts up to 100 feet shall meet 100 percent of the total landscape credit requirements in the street yard for planting development.
  - (b) Setbacks for commercial, office, and industrial districts up to 200 feet shall meet 85 percent of the total landscape credit requirements in the street yard for planting development.
  - (c) Setbacks for commercial, office, and industrial districts greater than 200 feet shall meet 75 percent of the total landscape credit requirements in the street yard for their planting development.
- (3) Fifty percent of all required points in street yards shall be supplied by trees, and 50 percent of all required points in street yards shall be supplied by shrubs.
- (4) Required buffer plantings, required street trees, required street yard plantings, and required vehicular surface area (VSA) plantings may be credited at 100 percent towards street yard plant point requirements.

**Note: Images to follow on next page.**



**NOTES:**

1. SEE ALSO VEHICULAR SURFACE AREA (VSA) PLANTING REQUIREMENTS.
2. REQUIRED BUFFER PLANTINGS, AND REQUIRED VSA PLANTINGS MAY BE CREDITED AT 100% TOWARDS REQUIRED TREE COVER PLANTINGS.
3. SHOW ALL CALCULATIONS FOR REQUIRED PLANTINGS.

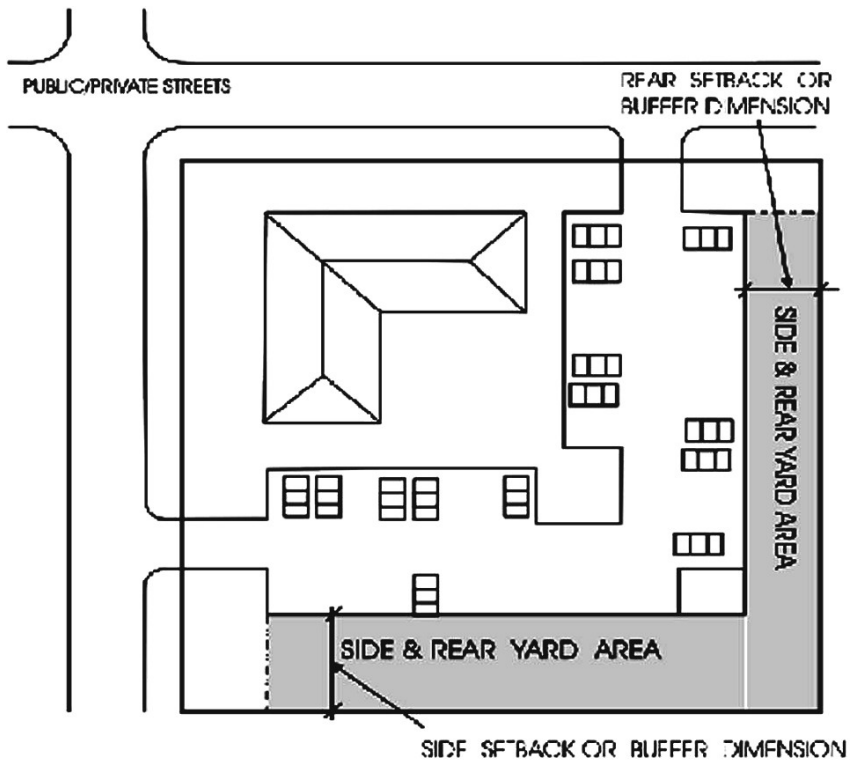


SIGHT DISTANCE TRIANGLE (TYP) - NO VEGETATION BETWEEN 30" & 7' ABOVE GRADE.

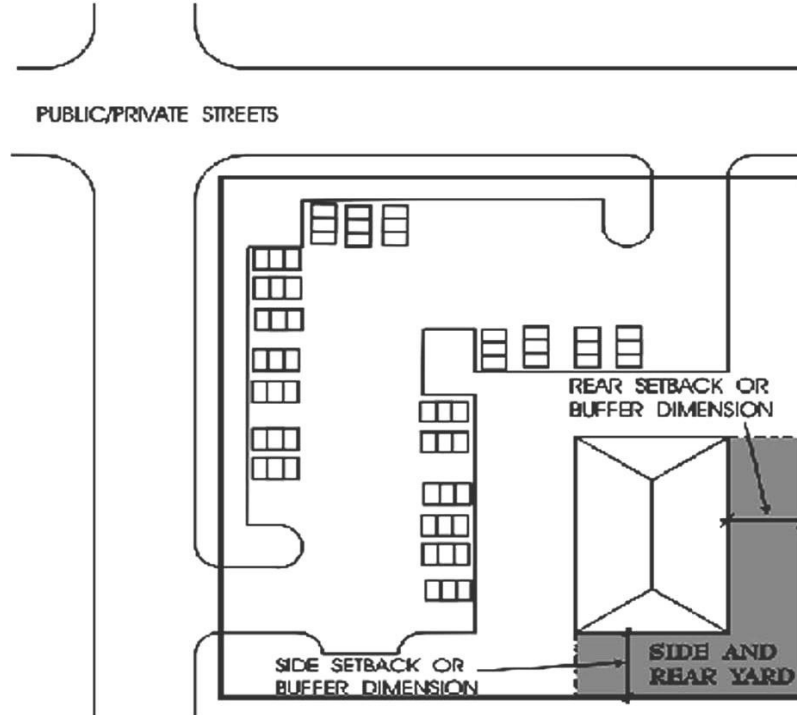
### STREET YARD PLANTING - TYPICAL

NOTES:

1. SEE ALSO VEHICULAR SURFACE AREA (VSA) PLANTING REQUIREMENTS.
  2. REQUIRED BUFFER PLANTINGS, REQUIRED STREET TREES, REQUIRED STREET YARD PLANTINGS, AND REQUIRED VSA PLANTINGS MAY BE CREDITED AT 100% TOWARDS REQUIRED TREE COVER PLANTINGS.
  3. SHOW ALL CALCULATIONS FOR REQUIRED PLANTINGS.
3. **Side and rear yards.** The side and rear yard is that part of the lot not in the street yard. Side and rear yard plant distribution shall occur throughout the entire side and rear yard. The side and rear yard area planting requirements shall be calculated by measuring the area bounded by the property line and the required side and rear building setbacks or the areas of required buffer, whichever area is greater.
- a. **Design requirements.**
- (1) Where the planting requirements are greater for the side and rear yard than the perimeter buffer then 100 percent of both requirements shall be installed.



**SIDE & REAR YARD AREA CALCULATION**  
Note: Image to follow on next page.



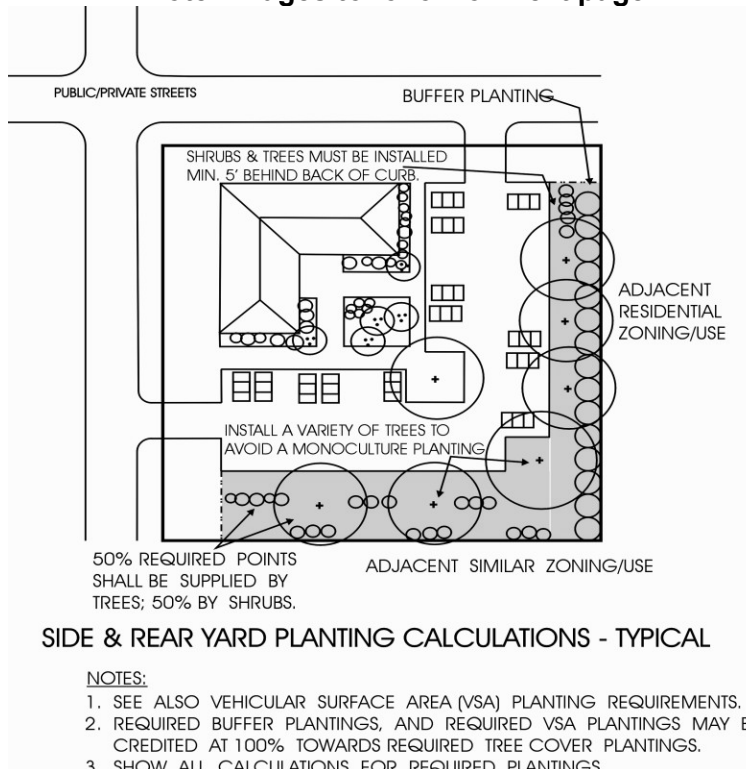
**SIDE & REAR YARD AREA CALCULATION**

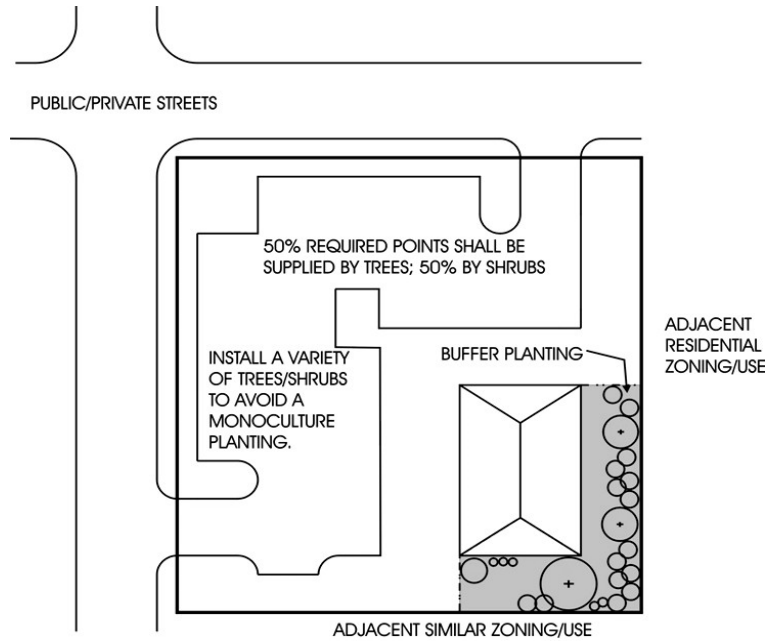
- (2) Where the planting requirements are greater for the perimeter buffer than the side and rear yard then only the buffer requirements shall be installed.
- b. **Planting requirements.** The required tree and shrub installation is based on the total required plant points in the side and rear yard for the subject property. The required plant points vary according to the UDO 7:34

zoning district of the subject property as listed on the following page. At least 50 percent of the plant points must be from trees, and the remainder must be from shrubs.

Proposed Use	Points per Square Foot of Side/Rear Yard
Residential and Multifamily	0.030
Office	0.020
Commercial	0.020
Retail, up to 3 acres	0.015
Retail, 3 acres or greater	0.010
Industrial	0.025

**Note: Images to follow on next page.**



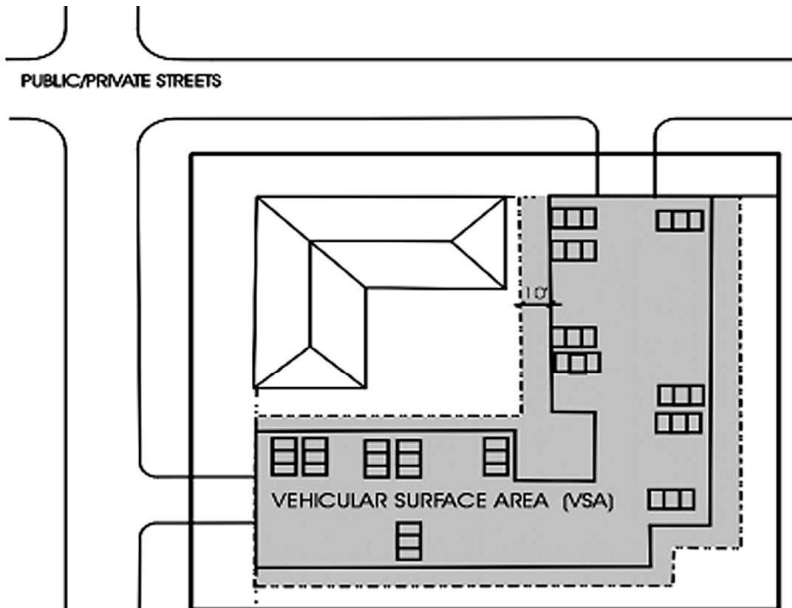


SIDE & REAR YARD PLANTING CALCULATIONS - TYPICAL

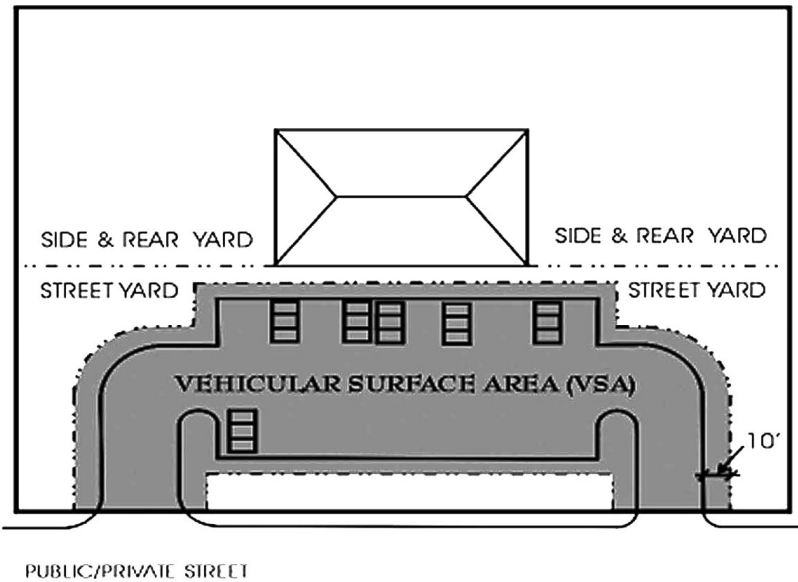
NOTES:

1. SEE ALSO VEHICULAR SURFACE AREA (VSA) PLANTING REQUIREMENTS
2. REQUIRED BUFFER PLANTINGS, AND REQUIRED VSA PLANTINGS MAY BE CREDITED AT 100% TOWARDS REQUIRED TREE COVER PLANTINGS.
3. SHOW ALL CALCULATIONS FOR REQUIRED PLANTINGS.

4. **Vehicular surface areas.** The purpose of this section is to provide visual relief from large expanses of pavement through the introduction of landscape plantings. Landscaping lessens the visual impact of parking areas while reducing heat, glare and pollution.



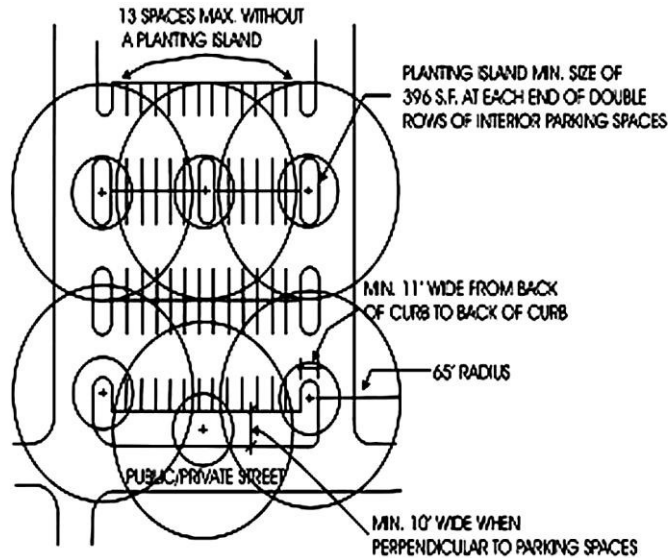
VEHICULAR SURFACE AREA  
IN SIDE AND REAR YARD



### VEHICULAR SURFACE AREA IN STREET YARD

- a. **Design requirements.** Vehicular surface areas may be located within the street, side and rear yards. Planting requirements are created for these vehicular surface areas based upon the yards they are within. Planting incorporated into these areas shall be designed using the following design guidelines and criteria.
- (1) Landscape islands shall be evenly distributed throughout the vehicular surface areas for maximum shade. No parking space shall be more than 65 feet from the trunk of a deciduous overstory tree. Trees are permitted to be planted in clusters provided that it exceeds all other planting requirements, but are planted further than the required 65 feet from the trunk of a deciduous overstory tree, may be permitted, at the discretion of the Planning Director.
  - (2) Plantings used to meet these requirements shall be located within the vehicular surface area or in plant beds within ten feet of the parking surface areas. Trees in the adjacent street or side and rear yard that are within ten feet from the vehicular surface area may be used to meet this requirement.
  - (3) Landscape islands within the vehicular surface area shall be a minimum of 198 square feet in area and 11 feet in width from back-of-curb to back-of-curb.
  - (4) Landscape planting areas adjacent to vehicular surface areas and perpendicular to parking spaces shall be a minimum of ten feet in width. Unless a parking space contains a specified wheel stop, trees and shrubs shall be a minimum of five feet from the edge of the pavement.

**Note: Image to follow on next page.**



### PARKING LOT TREE PLANTING REQUIREMENTS

**NOTES:**

1. EVERY PARKING SPACE SHALL FALL WITHIN A 65' RADIUS OF AN OVERSTORY TREE TRUNK
2. FOR EVERY PLANTING ISLAND AT THE END OF AN INTERIOR SINGLE PARKING ROW THAT IS A MINIMUM 324 S.F. (18 x 18) THERE MAY BE A REDUCTION OF UP TO 12% OF TOTAL REQUIRED PARKING SPACES IN PARKING LOTS 75,000 S.F. OR LARGER.
3. DO NOT INSTALL POLE-MOUNT LIGHTS IN THE SAME PLANTING ISLAND AS HOUSES AN OVERSTORY.

- (5) Planting areas at the end of parking space rows shall be required as follows:
  - (a) The maximum number of continuous parking spaces shall be 13.
  - (b) There shall be a planting island at least 198 square feet in size at the end of every row of perimeter parking spaces exceeding 13 parking spaces.
  - (c) There shall be a planting island at least 198 square feet in size at the end of every single row of interior parking spaces.
  - (d) There shall be a planting island at least 396 square feet in size at the end of every double row of interior parking spaces.
  - (e) Planting areas inside of parking islands shall contain positive drainage with no low spots that could trap water. All parking lot planting islands shall have curbing, pavement edging, or similar treatment ~~if approved by the Planning Director,~~ around the perimeter to protect plant material.

**b. Planting requirements.**

- (1) Screening of vehicular surface area from adjacent public rights-of-way or private streets is required. One hundred percent of the vehicular surface area requirements can be applied toward yard and buffer planting requirements if the planting used to meet specific yard and buffer planting requirements do not adequately provide the proper screening.
  - (a) Vehicular surface areas shall have a visually

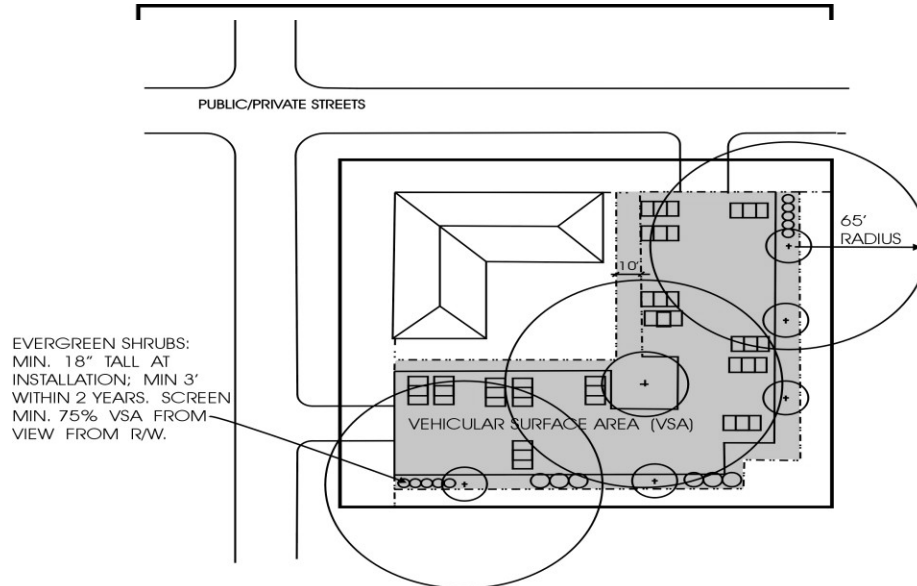


modifying year-round screen that screens a minimum of 75 percent of the vehicular surface area from the public right-of-way and private street. The screen shall have a minimum height of 18 inches at planting. The screening must reach a height of three feet within two years of planting.

- (b) The screen used may be composed of plant material, fences, walls, berms or any combination of these elements. Berms shall have a slope ratio no greater than 2 1/2:1 with a minimum crown width of at least two feet and shall be stabilized and predominantly covered with staggered clusters of shrub plantings an average six feet on center.
- (c) Fences and walls shall be compatible with the adjacent existing or proposed structures. Fence or walls shall be supplemented with plant material, which shall screen 25 percent of the fence or wall area within one year of plant installation.
- (d) The required area to be landscaped within and directly adjacent to the vehicular surface area is based on the total size in vehicular surface area as follows:

<b>Vehicular Surface Area</b>	<b>Required Landscaping</b>
Under 10,000 square feet	5 percent
10,000 to 40,000 square feet	6 percent
Over 40,000 square feet	8 percent

- (2) Verification of obstructions shall be the responsibility of the developer through the use of sections and details illustrating the site conditions.



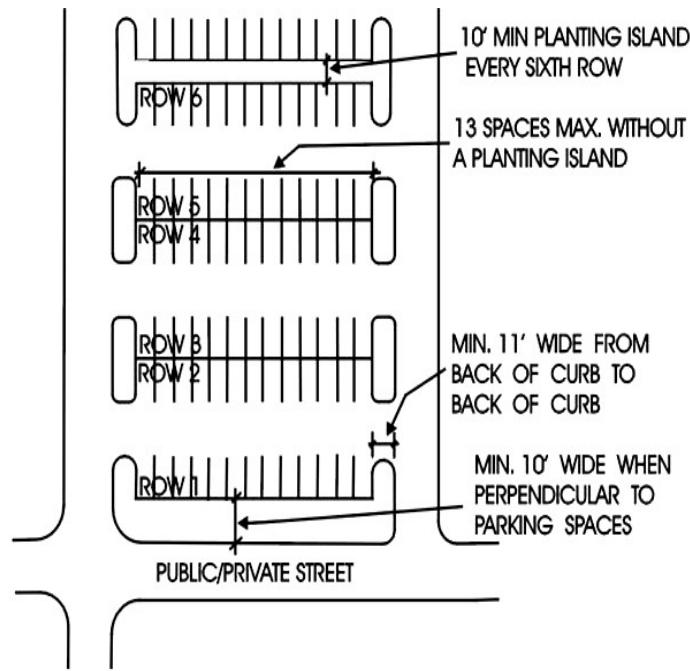
VEHICULAR SURFACE AREA IN SIDE AND REAR YARD - TYPICAL PLANTING

NOTES:

1. PLANTINGS USED FOR SIDE AND REAR YARD MAY ALSO BE CREDITED IN VSA IF INSTALLED WITHIN 10' OF PARKING LOT.
2. ALL PARKING SPACES MUST BE WITHIN 65' OF THE TRUNK OF AN OVERSTORY TREE.

**c. Parking lots equal to or greater than 75,000 square feet.**

- (1) A planting median is required in parking lots of all new development and qualified expansion of existing development. Parking lots equal to or greater than 75,000 square feet are required to provide a planting island a minimum of ten feet wide after every sixth single parking row.
- (2) The planting median shall contain at a minimum one shade tree for every 65 linear feet. A maximum of 30 percent of the island can be an impervious surface.
- (3) Existing, healthy trees protected in an island may be counted toward this requirement ~~if deemed healthy by the Planning Director~~ after completion of all construction in the adjacent area.



## MEDIAN AND ISLAND REQUIREMENTS FOR PARKING LOTS 75,000 S.F. OR GREATER.

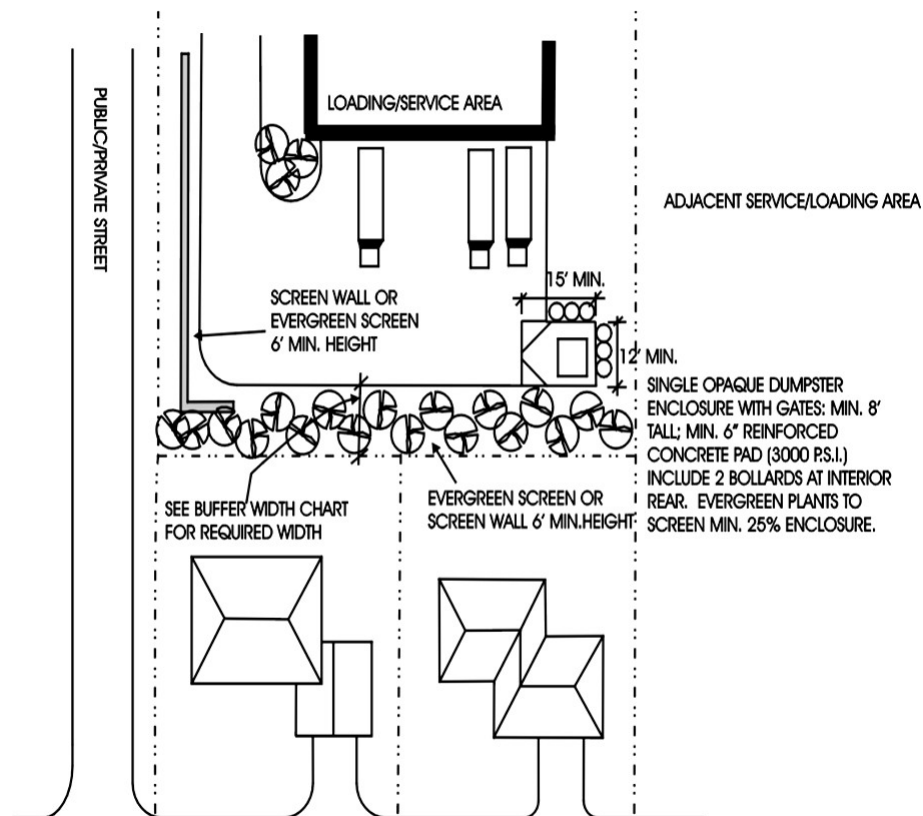
- (4) ~~At the discretion of the Planning Director, the~~ The installation of every planting island that is a minimum of 306 square feet in area at the end of a single or perimeter row or a minimum of 612 square feet at the end of every double row of interior parking spaces ~~shall~~ may result in the reduction of one required off-street parking space for a maximum of a 12 percent reduction in required off-street parking spaces.

### M. Screening of objectionable views.

1. **Trash container areas.** Trash container areas shall be subject to the following requirements:
  - a. ~~Trash container areas shall be located to provide the least amount of visual impact from public and private rights-of-way, and adjacent residential districts shall be separated at least 50' from residential districts or uses or uses as determined appropriate by the Planning Director.~~
  - b. Trash collection areas shall be fully enclosed with a fence or wall to a minimum height of eight feet to block 100 percent of the view into the enclosed area. The enclosure shall match the primary color and material of the building when viewed from public or private right-of-way and/or adjacent residential districts and uses. If the enclosure is not visible from a public or private right-of-way and/or adjacent residential district or use the enclosure panels and gate may be constructed of wood on metal posts/supports. The minimum eight-foot tall gate shall include a self-latching mechanism.
  - c. Plant material shall supplement berms, walls or fences. Planting material shall screen 25 percent of the dumpster wall area. Planting material shall consist of a minimum of six low branching evergreens shrubs a minimum of three feet in height at time of planting.
  - d. Standard dumpster enclosures shall be a minimum of 12 feet across by 12 feet deep for a single dumpster and 24 feet wide for a double dumpster. A six-inch thick reinforced concrete (3,000 psi)

pad shall be 12 feet wide by 15 feet deep per container.

2. **Service and loading areas.** Service and loading areas shall be subject to the following screening requirements:
  - a. Provide a minimum 100 percent year-round screen of all loading and service areas from the adjacent public and private right-of-way, and/or adjacent residential districts and uses.
  - b. This screen shall consist of berms, walls, fences, plant material or combination totaling eight feet in height at installation or completion of construction.
  - c. Wall or fence materials shall be compatible with the primary structure. Plantings shall be low branching evergreens and a minimum height of five feet at time of installation.
  - d. Where a service or loading area is located closer than 25 feet from a property line adjacent to a residential district, the minimum required height of the plantings shall be six feet at time of installation.



### SERVICE AND LOADING AREA REQUIREMENTS

3. **Stormwater devices.** All detention/retention ponds shall be screened on all sides with evergreen shrubs maintained at a minimum height of four feet. (Note: See also the general fencing requirements)
4. **Utility elements.** Utility elements shall be subject to the following requirements:
  - a. All utility devices visible from the public right-of-way or private street shall be screened with low branching evergreen shrubs a minimum of 30 inches tall at installation. Screening material shall be planted a minimum of ten feet from the access doors to provide room for service and utility maintenance activities.
  - b. Property owners shall follow the above requirements concerning utilities located on their property.

- c. Miscellaneous elements (air conditioning units, storage tanks, non-utility transformers, compactors, and other similar elements) shall be screened entirely from vehicular view from the public right-of-way and private streets. Access to elements shall be from a side other than side facing the right-of-way.
  - d. All roof-mounted elements shall be 100 percent screened from view from the public right-of-way and/or adjacent properties.
5. **Solar Farms.** In addition to the buffer requirements of Section 7.1K, solar farms shall be screened from view as follows:
- a. Where a solar farm area is visible from a public right-of-way or private street, an evergreen screen of low-branching trees/shrubs shall be provided. All screening material shall be installed adjacent to security fencing surrounding the solar farm area and be a minimum of six (6) feet in height with an expected minimum height at maturity of 10 feet.
  - b. Screening material required by subsection (1) shall be planted on center no more than 10 feet apart.
6. **Screening industrial properties.** Screening in industrial subdivisions shall be subject to the following requirements:
- a. Fencing, walls, hedges, landscaping, berms, natural areas or any combination of the above which is consistent with the requirements of this section shall be provided to obscure uses or portions of a specific use which by their nature have the potential to negatively impact the community and properties outside the subdivision.
  - b. The following specific uses shall be 100 percent screened from adjacent properties outside the subdivision and from view from public rights-of-way:
    - (1) Dumpsters and trash handling areas.
    - (2) Service entrances and utility facilities.
    - (3) Loading docks or spaces.
    - (4) Outdoor storage and any material stocks or equipment, including, but not limited to, motor vehicles, farm or construction equipment, or other similar items.
  - c. No buffer or screening is required in the side or rear yards between parcels with an industrial subdivision. The following standards shall apply where adjacent parcels are not within the industrial subdivision.
    - (1) **Buffer.**
      - (a) A minimum 15-foot evergreen vegetative buffer will be required adjacent to lots not within the subdivision unless buffer table dictates wider buffer requirements.
      - (b) Where lots adjacent to industrial subdivisions are vacant at the time the industrial subdivision receives site permit approval, then the minimum vegetative buffer shall be 15 feet unless the buffer table dictates wider buffer requirements.
    - (2) **Screening.**
      - (a) One hundred percent screening will be required in the 15-foot buffer area.
      - (b) Existing vegetation meeting the standards of this UDO can be used on a one-for-one basis in the areas where it meets the intent of the screening requirements and where credit is given by the

~~Planning Director after completion of all construction in adjacent areas.~~

**N. Maintenance requirements.**

1. **Owner/agent responsibility.** The owner/agent is responsible for the upkeep of their property with a regular and proper maintenance program. A proper program will reduce disease, insect problems, weed control, pruning and watering. For further details refer to the Town of Garner Planting Manual in Appendix E for landscape maintenance guidelines.
2. **Slope stabilization.** All disturbed areas shall be stabilized from soil erosion immediately upon planting and shall be permanently maintained. Slopes greater than three to one shall not be stabilized with turf grass and shall require the planting of groundcover to stabilize any disturbed soil.
3. **Replacement planting.** The owner is responsible for maintaining all required plant material in good health. Any dead, unhealthy or missing plants must be replaced in a manner consistent with the requirements contained in paragraph O., below (for replacement requirements where significant plant material has been lost due to catastrophe or natural causes).
4. **Re-inspection program.** The owner is responsible for maintaining all required plant material in good health for the duration of the use of the property. Any dead, unhealthy or missing plants must be replaced with locally adapted vegetation, which conforms to the initial planting standards of this UDO and the Town of Garner Planting Manual contained in Appendix E.
5. **Excessive tree pruning prohibited.** The owner is responsible for following accepted pruning practices for all required plant material and shall avoid excessive pruning of said material. Excessive pruning is defined as: removal of more than 25 percent of the crown or root system; failure to conform to standard pruning practices; or cutting other than for hazard, utility, or maintenance pruning. Illegally pruned trees must be replaced with trees proportional to the size of the tree damaged with the minimum replacement size of three inches caliper in a 200 square foot plant bed required. The applicable penalty provisions of ~~Section 10.3~~Article 10 ~~may~~ shall be applied to excessive pruning violations ~~if deemed appropriate by the Planning Director.~~

**O. Loss due to catastrophe.** Should significant amounts of landscaping used to meet the requirements of this section be lost due to unusual causes or catastrophe, the owner of the property shall submit a plan detailing his/her intent in replacing lost material. Replacement planting may occur on a phased basis as approved by the Planning Director. Maximum time allowed in the phasing program is two years from the submittal of plans to the Town.

**P. Flexibility in administration authorized.** The landscaping and tree protections requirements are established by the Town Council as standards that presumptively result in a better overall appearance of the built environment and protect the natural resources of the community. The Town Council recognizes that due to the particular nature of a tract, the nature of the proposed facilities, or other factors, the objectives of this article may be achieved even though the standards are not adhered to with mathematical precision.

1. The Planning Director ~~may~~ shall permit minor deviations of no more than 10 percent from the general landscape standards and up to a 30 percent buffer width reduction.
2. The ~~permit issuing authority~~ BOA may allow greater deviations only for situations where a building or development was constructed prior to the adoption of the UDO and the buffer landscape planting standards or buffer

width requirements cannot met without removing significant portions of an existing building or significantly altering the property.

3. Any deviation under this section may only be allowed when it is determined that:
  - (a) The objectives underlying these standards can be met without strict adherence to them.
  - (b) Because peculiarities in the developer's tract of land or the facilities proposed it would be unreasonable to require strict adherence to these standards.
4. Where deviations are authorized, the official record of action taken on the development application shall contain a statement of the reasons for the deviation.

(Ord. No. 3396, § 15, 4-3-06; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3656, § 4, 2-21-12; Ord. No. 3780, §§ 10, 11, 7-7-15; Ord. No. 3881, §§ 5, 6, 9-5-17)

## 7.2. Stormwater management.

***Commentary: The stormwater management provisions apply seven sets of rules, covering the areas of erosion control, stormwater quantity, conservation or protected buffers, nitrogen reduction, water supply, watershed protection, environmentally sensitive watershed protection and floodplain management. Often, more than one element will apply to an individual property. Questions about the application of these provisions should be discussed with the Town Engineer.***

### A. Application to existing development.

1. Existing structures which become nonconforming with respect to watershed regulation by the adoption of this UDO are not affected unless and until there is a repair or expansion of or reconstruction of such structure.
2. Existing structures which become nonconforming with respect to watershed regulation by the adoption of this UDO may be repaired or reconstructed without a stormwater permit or watershed protection occupancy permit provided that there is no net increase in impervious surface.
3. Existing structures, whether conforming or nonconforming, may be added to or expanded without a stormwater permit or watershed protection occupancy permit provided there is no net increase in impervious surface.
4. In determining whether there is additional impervious surface area, and in determining the best management practices to be utilized in watershed protection in connection with an addition or expansion to an existing structure, the built-upon area of the existing development is to be excluded from any density calculations which are required to be performed.

***Commentary: This means, for example, that the owner of an existing lot may build on up to 70 percent of the remaining pervious surface, rather than the 70 percent limitation being applied to the entire lot including pre-existing development.***

### B. Stormwater Compliance Permit Required

#### 1. Application

Stormwater compliance review materials shall be submitted to the Town Engineer for review and determination of completeness.

#### 2. Issuance

The Town Engineer, the Board of Adjustment sitting as the Watershed Review Board, or in the case of a variance, the Environmental Management Commission.

#### 3. Vested Rights.

See Article 3. All other stormwater compliance(s) shall expire within twelve (12) months of the date of issuance.

4. Watershed Protection Occupancy Permit.  
Upon completing construction, the applicant shall report to the Town and request issuance of a watershed protection occupancy permit described.
5. Variances
  - a. In the event of a deviation from the stormwater management standards outlined in this UDO, the variance process described in Article 3 shall apply with the Board of Adjustment acting as the Watershed Review Board.
  - b. Records shall be submitted to the supervisor of the classification and standards group, water quality section, and Division of Environmental Management on or before January 1st of the following year.

**B.C. Erosion and sedimentation control.**

1. A permit shall be obtained from the Wake County Erosion Control Inspector before a developer undertakes any land disturbing activity that would result in the uncovering of 40,000 square feet or more, and that no such permit may be issued for any development that would uncover 40,000 square feet or more until an erosion and sedimentation control plan is submitted and approved, provided, that this section does not apply to activity under the exclusive jurisdiction of the North Carolina Sedimentation Control Commission is exempt from these requirements.
2. No use permit may be issued or final plat approval be given for any development that would cause land disturbing activity subject to the jurisdiction of Wake County Erosion Control Inspector or the North Carolina Sedimentation Control Commission unless such inspector or agency has certified to the Town that:
  - a. Any permit required by such inspector or agency has been issued or any erosion control plan required by such inspector or agency has been approved; or
  - b. Upon examination of the preliminary plans for the development it appears that any required permit or erosion control plan can be approved upon submission by the developer of more detailed construction or design drawings. However, construction of the development may not begin until such inspector or agency issues any required permit or approves any required erosion control plan.

**C.D. Stormwater quantity.**

1. **Stormwater management; relation to adjacent properties.** No development shall unreasonably burden adjacent properties with surface waters as a result of such development, including specifically the following:
  - a. No development may be constructed or maintained so that such development unreasonably impedes the natural flow of water from higher to lower properties, thereby causing substantial damage to such higher properties; and
  - b. No development may be constructed or maintained so that surface waters from such development are unreasonably collected or diverted onto lower properties, thereby causing substantial damage to lower properties.
2. **Stormwater runoff design standards.**
  - a. To the extent practicable, all development shall conform to the natural contours and drainage patterns (watersheds) of the land, and retain existing patterns of flow;
  - b. To the extent practicable, lot boundaries shall be made to coincide with natural drainage ways within subdivisions to avoid the creation of lots that can be built upon only by altering such natural drainage



- ways;
- c. All developments shall have a drainage system adequate to prevent the undue retention of surface water on the development site. Surface water shall not be regarded as unduly retained if:
    - (1) The retention results from a deliberate approved sedimentation or storm water run-off control plan.
    - (2) The retention is not substantially different in location or degree than in the site's pre-development stage, unless such retention presents a danger to health or safety.
  - d. No surface water may be channeled or directed into a sanitary sewer;
  - e. Whenever practicable, drainage systems shall coordinate with and connect to drainage systems or drainage ways on surrounding properties or streets; and
  - f. Drainage swales in subdivisions are provided for in ~~Section 8.2~~ Article 8, Streets. Private roads and access ways within unsubdivided developments shall utilize curb and gutter and storm drains to provide adequate drainage if the grade of such roads or access ways is too steep to provide drainage in another manner or if other sufficient reasons exist to require such construction.
3. **Evaluation of detention needs.** Applicants for development approval shall evaluate detention needs for the development as follows:
- a. Except in certain situations, stormwater detention will be required on new development. The design standard for detention will be based upon peak flow reduction to predevelopment (existing) conditions for the 1-, 10-, 25-, and in some cases, the 100-year return frequency storm events.
  - b. Detention requirements may be reduced or eliminated by the Town Engineer upon a showing that installation of reduced or eliminated detention facilities will not create adverse downstream impacts.
4. **Stormwater control structure requirements.**
- a. All stormwater control structures and any modifications thereto, shall be designed and sealed by a North Carolina registered professional engineer, except such a structure may be designed by a registered land surveyor, where the runoff consists solely incidental drainage within a subdivision, as provided in ~~North Carolina General Statutes~~ G.S. § 89(c)-3(7); and
  - b. All water quality controls shall use retention ponds, bioretention areas or other approved devices, as a primary treatment system. All approved devices shall be designed for specific pollutant removal according to modeling techniques approved by the North Carolina Division of Environmental Management. Specific requirements for these systems shall be in accordance with the North Carolina Division of Environmental Management design criteria or otherwise as approved by the Town Engineer.
  - c. All water quantity controls shall use detention ponds, bioretention areas or other devices or systems as approved by the Town Engineer. Detention facilities shall be designed using the design procedures set forth in Elements of Urban Stormwater Design, Malcolm, or other design procedures as approved by the Town Engineer.
  - d. A maintenance and operations plan, acceptable to the Town Engineer, shall be developed for each water quantity and water

quality control structure proposed as part of the development.

**5. Maintenance of retention facilities and private streets.**

- a. All water quality controls and devices which are installed solely to provide 85 percent total suspended solid (TSS) removal in order to satisfy the water supply watershed protection section of the UDO shall be maintained by the Town of Garner. Such maintenance by the Town will be limited to the water quality treatment function of the stormwater control system. Maintenance activities not related to water quality such as aesthetics, nuisance control, etc. will not be the responsibility of the Town but shall be the responsibility of the owner. The developer shall deed, dedicate or grant sufficient easement or right-of-way to allow for the access and maintenance of the water quality control system.
- b. All water quality controls and devices which are installed to meet the nitrogen reduction requirements of this UDO shall maintained by the property owner or the person or persons responsible for the maintenance of the property. In the case of residential or commercial subdivisions, a home owners association or merchants association shall be established in order to identify the person or persons responsible for the maintenance of the property. The developer shall deed, dedicate, or grant sufficient easement or right-of-way to for the access and inspection of the water quality control system.
- c. All water quantity controls and devices shall maintained by the property owner or the person or persons responsible for the maintenance of the property. In the case of residential or commercial subdivisions, a home owners association or merchants association shall be established in order to identify the person or persons responsible for the maintenance of the property. The developer shall deed, dedicate, or grant sufficient easement or right-of-way to for the access and inspection of the water quality control system.

**D.E. Watershed Conservation Buffer Areas.**

**1. Areas defined.**

- a. The development on lots abutting or including Lake Benson or any of the streams identified in this section shall be limited by an adjacent buffer area.
- b. This section shall apply to the following streams and lakes, including all branches of the identified streams to the limit of the intermittent and perennial streams as defined by the Neuse River Riparian Buffer rule, and if a future extraterritorial expansion includes any stream having a designated 100-year floodplain, such stream shall automatically be included as if listed below:

Stream Name	
Adams Branch	Mahler's Creek
Bagwell Branch	Reedy Branch
Big Branch #1	Reedy Creek Tributary
Big Branch #2, Mill Creek	Swift Creek
Big Branch Tributary	Walnut Creek
Buck Branch	White Oak Creek (see c. below)
Echo Creek	Yates Branch

Hilliard Creek	
----------------	--

- c. The Watershed Conservation Buffer Area requirements for nonresidential development shall not apply for property located adjacent to White Oak Creek. This exemption shall not apply to residential development to adjacent to White Oak Creek. In such cases where residential development adjoins White Oak Creek, a Watershed Conservation Buffer Area shall be required according to the provisions of this section.

**2. Limitations on development in Conservation Buffer Areas.**

- a. Development is prohibited in both the floodplain and the Watershed Conservation Buffer Areas for streams described in paragraph 1., above.
  - (1) Development within and adjacent to the Watershed Conservation Buffer Areas shall be subject to the following criteria:
  - (2) Buffer width: Along the lakefront or streams within 5,000 feet of the Lake Benson shoreline, the buffer area shall include the 100-year floodplain plus an area whose width is proportional to its distance from Lake Benson, beyond the edge of the floodplain and parallel to the stream, as follows:

<b>Distance from Lake Benson</b>	<b>Buffer</b>
Lakefront and within 1,000 feet of lakefront	100 feet
100 to 2,000 feet from lake	90 feet
2,001 to 3,000 feet from lake	80 feet
3,001 to 4,000 feet from lake	70 feet
4,001 to 5,000 feet from lake	60 feet

- (3) Along other identified streams and along streams beyond 5,000 feet from the lakefront, the buffer area shall include the 100-year floodplain plus a 50-foot wide area beyond the edge of the floodplain and parallel to the stream; and
  - (4) If no floodplain exists on the portion of a stream in question, the buffer shall be considered to be the calculated 100-year storm high water mark based upon a built-out condition upstream.
  - (5) Application of a conservation buffer shall not diminish other riparian buffer requirements.
- b. Buffers from which the vegetation cover has been removed shall be provided with ground cover. Crossings by streets, bridges, utilities or other facilities shall be kept at a minimum and their negative impact minimized.
- c. Residential accessory buildings, on lots of record prior to March 1984, may encroach into designated conservation buffers provided that:
  - (1) Such buildings not exceed 25 percent of the area of the principal building served; and
  - (2) Such accessory building shall not be located in any designated floodway.
- d. Placement of an accessory building in a flood fringe area shall meet all applicable construction requirements; and the area of the lot

covered by impervious surfaces, including the accessory building, shall not exceed 25 percent.

- e. Buffers shall be protected by easements and shall remain, where possible, in private ownership.

**3. Land disturbance limits in Conservation Buffer Areas.**

- a. No land-disturbing activities (including agricultural uses) are permitted within the Conservation Buffer Areas, except for the following uses:

- (1) Street and associated facilities;
- (2) Greenways and pedestrian paths; and
- (3) Utility mains, pump stations and drainage facilities which comply with Town of Garner standards.

- b. ~~The permit issuing authority may allow~~ Community service facilities, educational facilities, government facilities, parks and open space uses or public or private water dependent structures (functionally dependent facilities) ~~to~~ may encroach into conservation buffer areas provided ~~it concludes~~ that:

- (1) The area of encroachment does not exceed ten percent of the total buffer area on the project site and a minimum of 40 feet of the buffer width remains undisturbed;
- (2) The area of encroachment is the minimum amount necessary in order to reasonably use the property;
- (3) No direct discharge of stormwater into the buffer from rooftops is allowed;
- (4) No vehicular parking/loading areas or driveways are allowed within the buffer;
- (5) The elevation of all finished floors of all structures located within the buffer shall be a minimum of two feet above the base flood elevation; and
- (6) No encroachment into the floodplain or floodway shall be allowed except for water dependent structures and then only in accordance with the requirements and restrictions contained within Subsection 7.2.H. of this article.

- c. Within areas of the Lake Benson Conservation District not constituting the Conservation Buffer Areas, site disturbance on existing lots of record as of March 1984, except for agricultural use, including the cutting of trees, shall be permitted only pursuant to a removal plan approved by the Planning Director and the cutting of trees shall not exceed five times the actual impervious surface area planned for each site.

- d. Throughout the Lake Benson Conservation District and Conservation Buffer Areas, strict compliance with the Wake County Erosion and Sedimentation Control Ordinance is required. No construction is allowed in classes of soils which have severe erosion potential, or are classified as being otherwise unsuitable for urban uses, under the Urban Suitability Soil Groups in the Planning Guide to the Wake County Soil Survey (1970), unless the developer can provide either of the following:

- (1) An independent (sealed) engineering study which documents that the soils to be developed are not in the stated erosion categories, or
- (2) Erosion prevention control measures that satisfy the Wake County Erosion and Sedimentation Control Ordinance.

**E.F. Nitrogen reduction.**

1. **Stormwater requirements for nitrogen control.** All new development shall meet the requirements of the "The Town of Garner Stormwater Program for Nitrogen Control." The major requirements that must be met by new development, as contained in the stormwater program, are as follows:
  - a. New development shall comply with the requirements for protecting and maintaining riparian buffers as specified in the Riparian Buffer Rule 15A NCAC 2B.0233.
  - b. As required by the Neuse Stormwater Rule 15A NCAC 2B.0235 the nutrient load contributed by new development activities is limited to 3.6 pounds per acre per year (lbs/ac/yr) of nitrogen loading. Development shall have the option of partially offsetting projected nitrogen loads by funding wetland or riparian area restoration through the North Carolina Wetland Restoration Program. However, the total nitrogen loading rate cannot exceed 6.0 lbs/ac/yr for residential development or 10.0 lbs/ac/yr for nonresidential development. Best management practices (bmps) provided for in the stormwater program must be used to reduce nitrogen loading to the 6.0 and 10.0 limits and may be used to reduce nitrogen loading to the 3.6 limit. Maintenance of any bmps installed will be the responsibility of the development.
  - c. Except in certain situations, stormwater detention will be required on new development. The design standard for detention will be based upon peak flow reduction to predevelopment (existing) conditions for the 1-, 10-, 25-, and in some cases, the 100-year return frequency storm events.

F.G. **Water supply watershed protection.** The water supply watershed protection areas described below are identified on the Town of Garner Watershed Protection Map.

1. **Water supply watershed protection areas.**
  - a. **Swift Creek Watershed Protection Area.** The Town of Garner Swift Creek-Lake Benson public water supply watershed protection area (also variously known as the Swift Creek Watershed, Lake Benson Watershed, or Watershed Protection Area) is that portion of the land area within the present Town of Garner zoning jurisdiction designated on the Town of Garner Watershed Protection Map.
  - b. **Lake Benson Conservation District.** This district constitutes what the state refers to as the critical area north of Lake Benson. Additional information is included in the zoning overlay district in Section 4.9 Article 4.
  - c. **Conditional use-zoning districts.** Conditional use-zoning district SB-C22 and conditional use-zoning district R-12-C53 and R1 2PR-C54. These constitute the portion of the Swift Creek critical area west of Lake Benson which is within the Town zoning limits.
2. **Exemptions.** The water supply watershed protection ordinances of the Town of Garner shall apply to the above-described land area, except, however that the watershed protection ordinances shall not apply to:
  - a. Existing development, although they shall apply to future additions, expansion, repair, or reconstruction of existing development which are of such nature to create additional impervious surface; or
  - b. To the development of a single existing lot for single-family residential purposes; although they shall apply to single-family residential development of multiple contiguous lots with common

ownership.

**3. Impervious surface limits.**

- a. **Swift Creek Watershed Protection Area.** Within the Garner Swift Creek Watershed, impervious limits may not exceed 12 percent of land area, per lot, except that impervious limits may be a maximum of 70 percent, known as the high density option, where the stormwater runoff from a one inch rainfall event is retained by retention ponds, or other approved devices designed to achieve 85 percent total suspended solids as approved by the North Carolina Division of Environmental Management and the Town of Garner, constructed in accordance with best management practices.
- b. **Lake Benson Conservation District.** Within that part of the Swift Creek Watershed Protection Area designated as the Lake Benson Conservation District, the impervious surface may not exceed six percent of land area per lot, except where runoff as described above is retained by retention ponds or other approved devices constructed pursuant to best management practices in which case it may not exceed, but may be a maximum of 35 percent. Performance standards are illustrated in the table captioned Lake Benson/Swift Creek Watershed Performance Standards.
- c. **Conditional use districts.** Within that area subject to CUD SB-C-22 or CUD R-L PR-C29, the impervious surface limits set therein, of 12 percent to 30 percent with retention ponds, or other approved devices, retaining the runoff as described and constructed pursuant to the best management practices in the area previously classified by the Swift Creek Land Management Plan as suburban new and 12 percent to 70 percent with retention ponds, or other approved devices, retaining the runoff as described above and constructed pursuant to the best management practices in the area classified in the Swift Creek Land Management Plan as urban new, shall apply pursuant to those Ordinances No. (1988) 2293 and (1989) 2370.
- d. **Watershed performance standards.** Watershed performance standards are contained in the table below.

Area	Maximum Impervious Surface			Maximum Residential Density
	Low Density Option	High Density Option*		
		Residential	Non-residential	
Swift Creek Watershed (except areas listed below)	12 percent	70 percent	70 percent	Controlled by underlying zoning
Lake Benson Conservation District (Critical Area)	6 percent	35 percent	35 percent	2.5 DU/Acre

Conditional Use District SB-C22 and R-12 PR-C29	12 percent	30 percent	70 percent	2.0 DU/Acre
Conservation Buffer Areas	See Section 4.8			

**\*Note: High density option requires construction of on-site retention ponds designed to retain runoff from a one-inch rainfall event or other approved devices.**

- e. **Front yards.** Impervious surface shall occupy no more than 40 percent of the required front yard ~~as established in.~~

**G.H. Swift Creek Conservation District.**

1. **Location.** This district constitutes an environmentally sensitive area located in the Swift Creek Watershed below Lake Benson as illustrated on the Town of Garner Official Zoning Map. Additional information is provided in ~~Section 4.13~~ **Article 4** regarding zoning overlay districts.
2. **Use regulations.** The uses permitted or prohibited in the Swift Creek Conservation District shall be those uses permitted or prohibited in the underlying zoning district that apply to a particular parcel of land.
3. **Exempt from regulations.** All parcels of land that fall within the boundaries of the Swift Creek Conservation District which are identified on the Town of Garner Official Zoning Map as being exempt properties, shall not be subject to provisions of this overlay district.
4. **Existing development, redevelopment, and expansions.** Existing development (residential or non-residential) is not subject to the requirements of this section; existing development shall be considered to be existing any impervious surfaces, or for which plan or permit approval has been officially granted; or where a vested right has been established, as of May 31, 2005. Redevelopment or expansion of any existing non-residential development shall be subject to the requirements of this section; however, the impervious surface coverage of the existing development is not required to be included when applying the impervious surface coverage limits of this section.
5. **Development standards.** The following standards shall apply for new residential and non-residential development in Swift Creek Conservation District:
  - (1) The standards of both the Swift Creek Conservation District and the underlying zoning district shall apply to each parcel. Where the standards of the Overlay District and the underlying district differ, the more restrictive standards shall control development in new projects created after effective date of the Swift Creek Conservation District which is May 31, 2005.
  - (2) The maximum impervious surface coverage of the new residential development projects and new non-residential development projects, which are defined as those projects approved or permitted after the effective date of the Swift Creek Conservation District are as follows:
    - a. New single family detached residential subdivision development projects shall be limited to a maximum of 30 percent total impervious surface area.
    - b. New multi-family residential development projects defined to include townhomes, condominiums, or apartments, ~~or other attached multi-family housing units as determined by the Planning Director,~~ shall be limited to a maximum of 50

percent total impervious surface area.

- c. New non-residential development projects shall be limited to a maximum of 70 percent of total of impervious surface area.

e-6. **Lake Benson and buffer area development standards.** All building footprints and front, rear, and side yard areas as required by this UDO shall be provided outside of conservation buffers protecting the watershed of Lake Benson or other officially designated protected buffer areas. Rear yard areas adjacent to a conservation buffer shall be reduced to a minimum of fifteen feet during the review of a subdivision. However, no reduction, waiver, or variance below this fifteen-foot minimum shall be permitted.

#### H.I. Floodplain management.

**Commentary:** *The stormwater management provisions apply seven sets of rules, covering the areas of erosion control, stormwater quantity, conservation or protected buffers, nitrogen reduction, water supply watershed protection, environmentally sensitive watershed protection and floodplain management. The Town of Garner adopted floodplain regulations to be consistent with federal and state requirements. However, Town regulations specifically prohibit development in the 100-year floodplain and in conservation or protected buffers areas except as noted in Section 7.2.D.1(c).*

*Often, more than one element of the stormwater provisions will apply to an individual property. Questions about the application of these provisions should be discussed with the Town Engineer.*

1. **Statutory authorization, findings of fact, purpose and objectives.**

A. **Statutory authorization.** The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental the responsibility units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Town Council of the Town of Garner North Carolina, does ordain the following findings of fact:

- (1) The flood prone areas within the jurisdiction of Town of Garner 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.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

B. **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:

- (1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;



- (3) Control the alteration of natural floodplains; stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

C. **Objectives.** The objectives of this ordinance are:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business losses and interruptions;
- (5) To 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;
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (7) To ensure that potential buyers are aware that property is in a special flood hazard area.

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. The definitions listed below apply to Section 7.2H only.

*"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.

*"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 to three 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.

*"Area of special flood hazard"* see "Special flood hazard area (SFHA)".

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

*"Base flood"* means the flood having a one 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 federal or state or other source using FEMA approved engineering methodologies. This

elevation, when combined with the "freeboard", establishes the "regulatory flood protection elevation".

"*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.

"*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.

"*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.

"*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, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

"*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) was completed before the original effective date of the floodplain management regulations adopted by the community.

"*Flood*" or "*flooding*" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

"*Flood boundary and floodway map (FBFM)*" means an official map of a community, issued by the federal emergency management agency, 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 federal emergency management agency, 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 federal emergency management agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

"*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 federal emergency management agency. 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".

*"Floodplain"* means 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.

*"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 which control development in flood-prone areas. 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.

*"Floodway"* means the channel of a river or other watercourse 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 foot.

*"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.

*"Freeboard"* means the height added to the base flood elevation (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, bridge openings, and the hydrological effect of urbanization on the watershed. The base flood elevation 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, such as 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 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 U.S. 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 U.S. 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.

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

*"Lowest floor"* means 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.

*"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.

*"Mean sea level"* means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

*"New construction"* means structures for which the "start of construction" commenced on or after the effective date of the original version of the community's flood damage prevention ordinance and includes any subsequent improvements to such structures.

*"Non-encroachment area"* means the channel of a river or other watercourse 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 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 for the area.

*"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 for the area.

*"Principally above ground"* means that at least 51 percent 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) Four hundred 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; and
- (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

*"Reference level"* is the top of the lowest floor for structures within special flood hazard areas designated as Zone A1--A30, AE, A, A99 or AO. (Alternative acceptable language for reference level) "Reference level" is the bottom of the lowest horizontal structural member of the lowest floor, excluding the foundation system, for structures within all special flood hazard areas.

*"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.

*"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.

*"Solid waste disposal facility"* means, as defined in NCGS 130A-290(a)(35), any facility involved in the disposal of solid waste.

*"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 or greater chance of being flooded in any given year, as determined in Section 7.2H(3)b 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. See definition of "substantial improvement". 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. (The last sentence is OPTIONAL but required for eligibility for increased cost of compliance (ICC) benefits for repetitive losses.)

*"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.

*"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 Sections 7.2H(3) and 7.2H(4) are presumed to be in violation until such time as that documentation is provided.

*"Water surface elevation (WSE)"* means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of

coastal or 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.

### 3. General provisions.

- a. **Lands to which this ordinance applies.** This ordinance shall apply to all special flood hazard areas within the jurisdiction, including extra-territorial jurisdictions (ETJs) if applicable, of Town of Garner and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.
- b. **Basis for establishing the special flood hazard areas.** The special flood hazard areas are those identified under the cooperating technical state (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying flood insurance rate maps (FIRM), for Wake County dated May 2, 2006, which are adopted by reference and declared to be a part of this ordinance.
- c. **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 Section 7.2(4)c of this ordinance.
- d. **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.
- e. **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.
- f. **Interpretation.** In the interpretation and application of this ordinance, all provisions shall be:
  - (1) Considered as minimum requirements;
  - (2) Liberally construed in favor of the governing body; and
  - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.
- g. **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 damages. This ordinance shall not create liability on the part of Town of Garner 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.
- h. **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 misdemeanor. Any person who violates this ordinance or fails to comply with any

of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Town of Garner from taking such other lawful action as is necessary to prevent or remedy any violation.

**4. Administration.**

a. **Designation of Floodplain Administrator.** The Town Engineer, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance.

b. **Floodplain development application requirements.**

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 7.2H(3)b 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 7.2H(3)b the boundary of the floodway(s) or non-encroachment area(s) as determined in Section 7.2H(3)b;
- (d) The base flood elevation (BFE) where provided as set forth in Section 7.2H(3)b; 7.2H(4)e(11 and 12) or 7.2H(5)d;
- (e) The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
- (f) 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 mean sea level of the proposed reference level (including basement) of all structures;
- (b) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be flood-proofed; and
- (c) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or



floodproofed;

- (3) If floodproofing, a floodproofing certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is 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);
  - (b) Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with Section 7.2H(5)(b)(4), when solid foundation perimeter walls are used in Zones A, AO, AE, and A1--30;
- (5) Usage details of any enclosed areas below the regulatory flood protection elevation.
- (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) Copies of all other local, state and federal permits required prior to floodplain development permit issuance (wetlands, endangered species, erosion and sedimentation control, riparian buffers, mining, etc.)
- (8) Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure Section 7.2H(5)(b)(6 and 7) 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.

c. **Permit requirements.** The floodplain development permit shall include, but not be limited to:

- (1) A description of the development to be permitted under the floodplain development permit.
- (2) The special flood hazard area determination for the proposed development per available data specified in Section 7.2H(3)b.
- (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, as applicable.
- (7) The flood openings requirements, if in Zones A, AO, AE or A1--30.

**d. Certification requirements.**

- (1) Elevation certificates.
  - (a) An elevation certificate (FEMA Form 81-31) 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 mean sea level. 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) A final as-built elevation certificate (FEMA Form 81-31) 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.
- (2) Floodproofing certificate. If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA Form 81-65), with supporting data and an operational plan, 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 floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. 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 and 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.
- (3) If a manufactured home is placed within Zone A, AO, AE, or A1--30 and the elevation of the chassis is more than 36

inches in height above grade, an engineered foundation certification is required per Section 7.2H(5)(b)3.

- (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 Zone A, AO, AE or A1--30, are exempt from the elevation/floodproofing certification requirements specified in item (a) of this subsection:
  - (a) Recreational vehicles meeting requirements of Section 7.2H(5)(b)(6)a;
  - (b) Temporary structures meeting requirements of Section 7.2H(5)(b)(7); and
  - (c) Accessory structures less than 150 square feet meeting requirements of Section 7.2H(5)(b)(8).

e. **Duties and responsibilities of the Floodplain Administrator.**

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

- (1) 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.
- (2) Advise permittee that additional federal or state permits (wetlands, endangered species, erosion and sedimentation control, riparian buffers, mining, etc.) may be required, and require that copies of such permits be provided and maintained on file with the floodplain development permit.
- (3) Notify adjacent communities and the North Carolina Department of Crime Control and 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).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 7.2H(5)e are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with Section 7.2H(4)d.
- (7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with Section 7.2H(4)d.

- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with Section 7.2H(4)d.
- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Section 7.2H(4)d and Section 7.2H(5)b(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the special flood hazard 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.
- (11) When base flood elevation (BFE) data has not been provided in accordance with Section 7.2H(3)b, obtain, review, and reasonably utilize any base flood elevation (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 7.2H(5)d(2)b, in order to administer the provisions of this ordinance.
- (12) When base flood elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Section 7.2H(3)b, 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.
- (13) When the lowest ground elevation of a parcel or structure in a special flood hazard area is above the base flood elevation, advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. Maintain a copy of the letter of map amendment (LOMA) issued by FEMA in the floodplain development permit file.
- (14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.
- (15) 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.
- (16) 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 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.

- (17) 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, or 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.
- (18) Make periodic inspections throughout all 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.
- (19) Follow through with corrective procedures of Section 7.2H(4)f.
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with Section 7.2H(2)b of this ordinance, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.
- (22) Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).

**f. Corrective procedures.**

- (1) **Violations to be corrected:** When the floodplain administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (2) **Actions in event of failure to take corrective action:** If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
  - (a) That the building or property is in violation of the flood damage prevention ordinance;
  - (b) That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments

and evidence pertaining to the matter; and,

- (c) That following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.
- (3) **Order to take corrective action:** If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the flood damage prevention ordinance, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60) calendar days, nor more than 180 calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.
- (4) **Appeal:** Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (5) **Failure to comply with order:** If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

**g. Variance procedures.**

- (1) The Board of Adjustment as established by the Town of Garner, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.
- (2) 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.
- (3) Variances may be issued for:
  - (a) 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;
  - (b) Functionally dependant facilities if determined to meet the definition as stated in Section 7.2H(2) of this ordinance, provided provisions of Section 7.2H(4)g(9)b and e have been satisfied, and such facilities are protected by methods that minimize flood damages and;
  - (c) Any other type of development, provided it meets the requirements stated in this section.

- 
- (4) 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:
- (a) The danger that materials may be swept onto other lands to the injury of others;
  - (b) The danger to life and property due to flooding or erosion damage;
  - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (d) The importance of the services provided by the proposed facility to the community;
  - (e) The necessity to the facility of a waterfront location as defined under Section 7.2H(2) of this ordinance as a functionally dependant facility, where applicable;
  - (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (g) The compatibility of the proposed use with existing and anticipated development;
  - (h) The relationship of the proposed use to the Comprehensive Growth Plan and floodplain management program for that area;
  - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (j) 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
  - (k) 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.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) 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 of this ordinance.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the base flood elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the federal emergency management agency and the State of North Carolina upon request.

- (9) Conditions for variances:
  - (a) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
  - (b) 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.
  - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (d) Variances shall only be issued prior to development permit approval.
  - (e) Variances shall only be issued upon:
    - i. A showing of good and sufficient cause;
    - ii. A determination that failure to grant the variance would result in exceptional hardship; and
    - iii. 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.
- (10) A variance may be issued for solid waste disposal facilities, 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.
  - (a) The use serves a critical need in the community.
  - (b) No feasible location exists for the use outside the special flood hazard area.
  - (c) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
  - (d) The use complies with all other applicable federal, state and local laws.
  - (e) The Town of Garner has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

**5. Provisions for flood hazard reduction.**

- a. **General standards.** In all special flood hazard areas the following provisions are required:
  - (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
  - (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  - (3) All new construction and substantial improvements shall be



- 
- constructed by methods and practices that minimize flood damages.
- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, etc.), hot water heaters, and electric outlets/switches.
  - (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
  - (6) 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.
  - (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
  - (8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.
  - (9) 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.
  - (10) 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 7.2H(4)g(10). 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 according to Section 7.2H(4)d of this ordinance.
  - (11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
  - (12) 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.
  - (13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure

- to flood hazards.
- (14) 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.
  - (15) Fill material located within any 100-year floodplain used for a proposed development shall require certification by a professional engineer, supported by appropriate documentation, that such fill material will not raise the 100-year floodplain elevation on any upstream property during a base flood event.
- b. **Specific standards.** In all special flood hazard areas where base flood elevation (BFE) data has been provided, as set forth in Section 7.2H(2), or Section 7.2H(4)e(11 and 12), the following provisions, in addition to Section 7.2H(5)a, are required:
- (1) **Residential construction.** New construction and substantial homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Section 7.2H(2) of this ordinance.
  - (2) **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 7.2H(1) of this ordinance. Structures located in A, AE and A1--30 Zones 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 impermeable 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 7.2H(5)g(2). A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 7.2H(4)d, along with the operational and maintenance plans.
  - (3) **Manufactured homes.**
    - (a) New or 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 7.2H(2) of this ordinance.
    - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by engineer certification, 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 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 36 inches in height, an engineering certification is required.

- (c) All enclosures or skirting below the lowest floor shall meet the requirements of Section 7.2H(3)b(4)(a), (b) and (c).
  - (d) 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.
- (4) **Elevated buildings.** Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
- (a) 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;
  - (b) Shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
  - (c) Shall include, in Zones A, AO, AE, and A1--30, 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:
    - i. A minimum of two flood openings on different sides of each enclosed area subject to flooding;
    - ii. The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;
    - iii. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
    - iv. The bottom of all required flood openings shall be no higher than one foot above the

adjacent grade;

- v. 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
- vi. 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.

**(5) Additions/improvements.**

- (a) 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:
  - i. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
  - ii. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (b) Additions to post-FIRM structures with no modifications 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.
- (c) 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:
  - i. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
  - ii. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (d) Where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

**(6) Recreational vehicles.** Recreational vehicles shall either:

- (a) Be on site for fewer than 180 consecutive days and 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); or

- (b) Meet all the requirements for new construction.
- (7) **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;
- (a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;
  - (b) The name, address, and phone number of the individual responsible for the removal of the temporary structure;
  - (c) 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);
  - (d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
  - (e) Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.
- (8) **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:
- (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 Section 7.2H(5)a(1);
  - (f) All service facilities such as electrical shall be installed in accordance with Section 7.2H(5)a(4); and
  - (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with Section 7.2H(5)b(4)(c).
  - (h) An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 7.2H(4)d.

c. **Reserved.**

- d. **Standards for floodplains without established base flood elevations.** Within the special flood hazard areas designated as approximate zone and established in Section 7.2H(3)b, where no base flood elevation (BFE) data has been provided by FEMA, the following provisions, in addition to Section 7.2H(5)(a and b), shall apply:
- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 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.
  - (2) The BFE used in determining the regulatory flood protection elevation shall be determined based on one of the following criteria set in priority order:
    - (a) If base flood elevation (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 Article 4, Section E(11 and 12).
    - (b) All subdivision, manufactured home park and other development proposals shall provide base flood elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. Such base flood elevation (BFE) data shall be adopted by reference per Section 7.2H(3)b to be utilized in implementing this ordinance.
    - (c) When base flood elevation (BFE) data is not available from a federal, state, or other source as outlined above, the reference level shall be elevated to or above the regulatory flood protection elevation, as defined in Section 7.2H(2).
- e. **Standards for Riverine Floodplains with BFE but without established floodways or non-encroachment areas.** Along rivers and streams where BFE data is provided 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 outlined in Section 7.2H(5)a and b; 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 foot at any point within the community.
- f. **Floodways and non-encroachment areas.** Areas designated as floodways or non-encroachment areas are located within the

special flood hazard areas established in Article 3, ~~Section B~~. 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 Section 7.2H(3)b, shall apply to all development within such areas:

1. Construction within floodways restricted.
  - a. No development, including structures, fences, fill or storage of materials or equipment, are permitted within a floodway or the conservation buffer areas of specified streams, as defined above, except the following:
    - (1) Pasture, forestry, wildlife sanctuary, game farm and similar agricultural, wildlife and related uses.
    - (2) Lawns, gardens, play areas, and similar areas. Golf courses, tennis courts, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space and similar private and public recreational uses, provided that golf courses must have retention ponds.
    - (3) Public water, stormwater or sewer infrastructure and highways.
    - (4) No artificial obstruction may be located within any floodway, except as provided above. For purposes of this section, an artificial obstruction is any obstruction, other than a natural obstruction, that can reduce the floodcarrying capacity of a stream, or may accumulate debris and thereby reduce the floodcarrying capacity of a stream. A natural obstruction includes any rock, tree, or analogous natural matter located within the floodway by a non-human cause.
    - (5) The use of fill materials within a floodway is prohibited unless certification by a registered professional engineer is provided demonstrating that no increase in flood levels during a base flood will result. Fill dirt within a floodplain shall be adequately stabilized to withstand the erosive force of the base flood.
    - (6) No new building construction or substantial improvement of an existing building may take place within any floodway.
2. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been demonstrated that:
  - (a) The proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, 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
- (b) A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained upon completion of the proposed encroachment.
3. If Section 7.2H(5)F(2)(e) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
  4. No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
    - (a) The anchoring and the elevation standards of Section 7.2H(5)(b)(3); and
    - (b) The no encroachment standard of Section 7.2H(5)F(2)(a).
- g. **Standards for areas of shallow flooding (Zone AO).** Located within the special flood hazard areas established in Section 7.2H(3)b, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Section 7.2H(5)a, all new construction and substantial improvements shall meet the following requirements:
1. 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 feet, above the highest adjacent grade; or at least two feet above the highest adjacent grade plus a freeboard of two feet if no depth number is specified.
  2. Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Section 7.2H(5)(g)(2) 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 as per Section 7.2H(4)d and Section 7.2H(5)(b)2.
  3. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

(Ord. No. 3397, § 1, 4-18-06; Ord. No. 3507, § 1, 4-22-08; Ord. No. 3558, § 2, 7-7-09)

### 7.3. Outdoor storage and display.

- A. **Limited outside display of seasonal merchandise.** In NC, CR and I-1, limited outside display of seasonal merchandise is permitted provided:
1. Fire lanes and vehicular accessways are not obstructed or encroached upon.
  2. If a pedestrian walkway exists along the entrance frontage of the business, a minimum four-foot wide pedestrian walkway is maintained.
  3. The total square footage of outside display area is ten percent or less of the business's interior sales square footage.
  4. Sales transactions take place inside the business building.



**7.4. Off-street parking and loading standards.**

**A. Number of parking spaces required.**

1. All developments shall provide a sufficient number of parking spaces to accommodate the number of vehicles likely to be attracted to the development. However, in an effort to minimize impervious surfaces that can cause stormwater quantity and quality problems, the number of parking spaces needed should not be based upon rare seasonal peak demands.
2. The presumptions established by this section are that:
  - a. A development must comply with the parking standards set forth in this section to satisfy the requirement stated in paragraph 1. above; and
  - b. Any development that does meet these standards is in compliance. However, the table of parking standards is only intended to establish a presumption and should be flexibly administered, as provided in paragraph C.
3. The table of parking standards represents both the typical minimum number of parking spaces required and the maximum number of parking spaces allowed. For those developments desiring additional parking beyond that required by the parking standards, the total number of parking spaces provided may be increased by up to ten percent above that recommended by the parking standards. If additional parking, above the ten percent increase, is still needed, the additional parking shall be constructed of permeable pavement or shall be drained directly to a bioretention area or other approved water quality BMP as approved by the Town of Garner.
4. Uses in the table of parking requirements are keyed to the ~~Section 5.1 use table~~ Article 5. If application of this table results in a fractional space, any fraction of one-half or less may be disregarded, while any fraction in excess of one-half be counted as one parking space.
5. The number of parking spaces in lots of ten or more spaces may be reduced by one if the developer provides a bicycle rack offering a secure parking area for at least five bicycles.
6. Accessible parking.
  - a. Accessible parking spaces shall be provided in compliance with the following table and shall be identified with above-ground signs as specified in General Statutes 20-37.6 and 136-30, the North Carolina Department of Transportation Manual on Uniform Traffic Control and Chapter 4 of the North Carolina Accessibility Code, as amended.

Total Spaces in Lot	Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8

401 to 500	9
501 to 1,000	Two percent of total
1,001 and over	20 plus 1 for each 100 over 1,000

- b. One in every eight (1 in 8) accessible parking spaces, or a minimum of one (whichever is the greater number), shall be van accessible and shall be identified [by] the words "van accessible" on an above-ground sign. Van accessible parking spaces shall be open to all vehicles properly identified in compliance with General Statute 20-37.6.
- 7. Whenever a building is constructed, in whole or in part, for low parking need uses, the building should be located so that sufficient usable space remains on the lot to add the additional parking spaces that would be required to convert the use of the building entirely to the new use classifications. Whenever a building is proposed for purposes that require a lesser number of parking spaces than other uses to which the building might well be put at some future date, the Planning Director should send to the developer a certified letter explaining that sufficient space should be left on the lot to add parking spaces at a later time if required.

B. **Table of parking requirements.** The Town Council recognizes that the table of parking requirements cannot cover every possible situation that may arise. Therefore, in cases not specifically covered, the ~~permit-issuing authority~~ Planning Director is authorized through Written Interpretation to determine the parking requirements, using this table as a guide.

<b>TABLE OF PARKING REQUIREMENTS</b>		
<u>Use Category</u>	<u>Specific Use</u>	<u>Requirement</u>
<b>Household Living</b>	Single-Family Detached	2 spaces per unit, plus 1 space per room rented
	Residential Cluster	2 spaces per unit, plus 1 space per room rented
	Two-Family Dwelling	2 spaces for each unit, except that one-bedroom units require only 1 space
	Townhouse (fee simple or condominium)	2 spaces for each unit, plus 1 additional space for every 4 uses in the development
	<del>Dwelling</del> <u>Multifamily Dwelling Residence</u>	1½ spaces for each one-bedroom unit; 2 spaces for each two-bedroom unit; 2 ½ spaces for each unit with three or more bedrooms, plus one additional space for every four units in the development.
	Upper-Story Residential	2 spaces per unit
	Manufactured Home	2 spaces per unit
	Modular Home	2 spaces per unit, plus 1 space per room rented
	Security or Caretaker's Quarters	2 spaces per unit

<b>Group Living</b>	Family Care Home	1 space per 3 beds
	Group Care Home	2 spaces for every 5 beds, except for uses exclusively serving children under 16, in which case 1 space for every 3 beds
	Intermediate Care Home	1 space for every two employees on maximum shift and 1 space for every 3 beds
	Other	1 space per 2 bedrooms and 1.5 spaces per employee
<b>Community Service</b>	Community Center	1 space per 300 square feet
	Library, Museum, Art Gallery, Art Center	1 space per 300 square feet
<b><u>TABLE OF PARKING REQUIREMENTS</u></b>		
<b><u>Use Category</u></b>	<b><u>Specific Use</u></b>	<b><u>Requirement</u></b>
	Other	1 space per 200 square feet of gross floor area
<b>Day Care</b>	Day Care Center	1 space per employee plus 1 space per 8 clients enrolled
<b>Educational Facilities</b>	Business Schools	5 spaces per classroom or office
	College/University	5 spaces per classroom or office
	Schools, Public/ Private	2 spaces per classroom or office in elementary schools; 5 spaces per classroom or office in high schools
	Trade/Vocational	5 spaces per classroom or office
<b>Government Facilities</b>	Ambulance Service, Rescue Squad, Police Station	1 space per 200 square feet of gross floor area
	Prison or Jail	1 per employee plus 1 visitor space per 10 inmates
	Other	1 space per 300 square feet of gross floor area
<b>Health Care</b>	Continuing Care Facility	1 space per employee on maximum shift plus 1 visitor space per 5 beds
	Hospital	2 spaces per bed
	Medical Clinic	1 space per 150 feet of gross floor area
	Other	1 space per 200 square feet of gross floor area
<b>Institutions</b>	Group Care Facility	1 per 3 beds

	Handicapped Institution	1 per 3 beds
	Intermediate Care institution	1 space for every two employees on maximum shift and 1 space for every 3 beds
	Mental Health Facility, Nursing Care Institution	1 space for every employee on maximum shift and 1 space for every 3 beds
	Other	1 space for every two employees on maximum shift and 1 space for every 3 beds
<b>Parks and Open Space</b>	Cemetery	1 space per 50 interment plots
<b><u>TABLE OF PARKING REQUIREMENTS</u></b>		
<b><u>Use Category</u></b>	<b><u>Specific Use</u></b>	<b><u>Requirement</u></b>
	Public Park	2 per acre, plus 1 per 250 square feet of developed park facility
	Public Swimming Pool, Tennis Courts, Golf Course	1 space for every 3 persons to be normally accommodated in the establishment, 5 per tennis court, and 4 per hole
	Other	2 per acre, plus 1 per 250 square feet of developed park facility
<b>Passenger Terminal</b>	Bus Passenger Terminal	1 per 300 square feet
	Taxicab or Limousine Operations or Facility	1 per employee, plus 2 visitor spaces
<b>Religious Institution</b>		1 space for every 4 seats or 1 space for every 40 square feet in the portion of the church building to be used for services
<b>Utilities</b>	Minor Utility	None
	Major Utility	1 per facility, plus 1 additional per 250 square feet of gross floor area and 1 per fleet vehicle
	Telecommunication Facility	1 for service vehicle
<b>Entertainment</b>	Golf Course or Country Club, Private	1 space per 200 square feet of area within enclosed building, plus 1 space for every 3 persons that the outdoor facilities are designed to accommodate when used to the maximum capacity
	Gym, Spa, Indoor Tennis Court or Pool, Private	1 space for every 3 persons that the facilities are designed to accommodate when fully utilized, plus 1 space per 200 square feet of gross floor area used in a manner not susceptible to such calculation
	Horse Stables	1 space per 2 horses at maximum capacity

Article 7. General Development Standards

	Electronic Gaming Centers	1 space for every 3 persons that the facilities are designed to accommodate when fully utilized (if they can be measured in such a fashion) plus 1 space per 200 square feet of gross floor area used in a manner not susceptible to such calculation
	Indoor Entertainment Facility	1 space for every 3 persons that the facilities are designed to accommodate when fully utilized (if they can be measured in such a fashion) plus 1 space per 200 square feet of gross floor area used in a manner not susceptible to such calculation

**TABLE OF PARKING REQUIREMENTS**

<b><u>Use Category</u></b>	<b><u>Specific Use</u></b>	<b><u>Requirement</u></b>
	Outdoor Athletic Facility, Private	1 per 3 fixed seats, plus 1 per 25 square feet of gross floor area of exhibit or portable seating space.
	Sexually Oriented Business	1 per 100 square feet of gross floor area, or 1 per each 4 permanent seats, plus 1 space per 200 square feet of gross floor area
	Theater	1 space for every four seats
	Theater, Drive-In	1 space per speaker outlet
	Water Slide	1 space for every 3 persons that the facilities are designed to accommodate when fully utilized
	Other	1 space for every 200 square feet of gross floor area
<b>Office</b>	Medical Office	1 space for every 200 square feet of gross floor area
	Other	1 space for every 300 square feet of gross floor area
<b>Overnight Accommodations</b>	Bed and Breakfast	1 space per room plus 1 space for every 2 employees on the maximum shift
	Extended Stay Facility	1 space per room plus 1 space for every 2 employees on the maximum shift
	Hotel/Motel	1 space per room plus 1 space for every 2 employees on the maximum shift
<b>Parking, Commercial</b>		1 space per employee on the maximum shift
<b>Restaurants</b>	Drive-In Restaurant	1 space per 100 square feet of gross floor area, plus 1.5 spaces for every 2 employees.
	Drive-Through Restaurant	1 space for each 3 seats, plus reserve lane capacity equal to 5 spaces per drive-up window
	Other	1 space plus 6 spaces per order delivery person on maximum shift

<b>Retail Sales and Service</b>	Bar, Nightclub, Taverns	1 space per 100 square feet of gross floor area
	Convenience Store	1 space per 200 square feet of gross floor area
<b><u>TABLE OF PARKING REQUIREMENTS</u></b>		
<b><u>Use Category</u></b>	<b><u>Specific Use</u></b>	<b><u>Requirement</u></b>
	Fuel Sales	1 space per 200 square feet of gross floor area of building devoted primarily to gas sales operation, plus sufficient parking area to accommodate 2 vehicles per pump without interfering with other parking spaces
	Open Air Market	1 space per 300 square feet of sales area
	Veterinarian/Kennel, Indoor	1 space per 200 square feet of gross floor area
	Veterinarian/Kennel, Outdoor	1 space per 200 square feet of gross floor area
	Other	1 space per 200 square feet of gross floor area
<b>Self-Service Storage</b>		1 per 5,000 square feet of area devoted to storage
<b>Vehicle Sales and Service</b>	Car Wash	1 space for every 3 employees on the maximum shift plus 3 spaces per stall
	Vehicle Repair	5 spaces per service bay plus 1 space for each employee
	Vehicle Sales, Rental	2 spaces per 300 square feet of gross floor area plus one space for every 2 employees on the maximum shift
	Vehicle Service, Limited	5 spaces per service bay plus 1 space for each employee
	Other	1 space per employee, plus one visitor space per 200 square feet of office
<b>Aviation Service</b>		1 space per employee, plus one visitor space per 200 square feet of office
<b>Light Industrial Service</b>	Flex Space	1 per 500 square feet of gross floor area
	Other	1 per 500 square feet of gross floor area, plus 1 additional per 1,000 square feet of gross floor area outdoor facility and 1 per 2,500 square feet of indoor storage area
<b>Manufacturing and Production</b>		1 space for every 2 employees on the maximum shift or 1 space per 200 square feet of gross floor area, as most appropriate

<b><u>TABLE OF PARKING REQUIREMENTS</u></b>		
<b><u>Use Category</u></b>	<b><u>Specific Use</u></b>	<b><u>Requirement</u></b>
<b>Resource Extraction</b>		1 space for every 2 employees on the maximum shift, plus 1 per 200 square feet of gross floor area indoor facilities
<b>Warehouse and Freight Movement</b>	Storage	1 space for every 2 employees on the maximum shift but not less than 1 per 5,000 square feet of area devoted to use (whether inside or outside)
	Truck Terminal	1 space per 2 employees on maximum shift
<b>Waste Related Service</b>	Reclamation Landfill	1 space per 2 employees on maximum shift plus 1 space per vehicle used in operation
	Recyclable Materials Collection	1 space per 2 employees on maximum shift plus 1 space per vehicle used in operation
	Salvage Yard	1 space per 2 employees on the maximum shift but not less than 1 per 5,000 square feet of area devoted to use, plus 1 space per vehicle use in operation
	Sanitary Landfill	1 space per 2 employees on maximum shift plus 1 space per vehicle used in operation
	Other	1 space per 2 employees on maximum shift plus 1 space per vehicle used in operation
<b>Wholesale Sales</b>		1 space for every 2 employees on maximum shift
<b>Agriculture</b>		1 space per 2 employees on maximum shift

**C. Flexibility in administration authorized.**

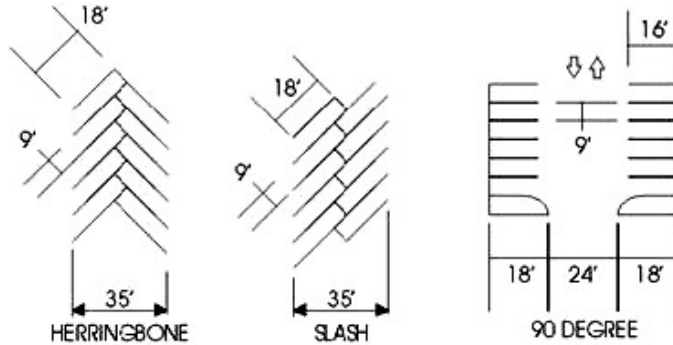
1. In recognition that inflexible application of the parking standards in paragraph B., above, may result inadequate or excessive parking requirements, the permit-issuing authority ~~may shall~~ permit deviations from the presumptive requirements of paragraph B. ~~of up to 25%, and may require more parking or allow less parking whenever it finds that such deviations are more likely to satisfy the standard set forth in paragraph A.1., above.~~
2. Any allowed or required deviation from the presumptive parking requirements set forth in paragraph B. above shall be entered on the permit ~~along with the reasons for allowing or requiring the deviation.~~
3. If the permit-issuing authority is the Planning Director, and the applicant does not wish to accept the Planning Director's decision and requirements, the applicant can request ~~that the application be handled as a special use permit~~ a Variance.

**D. Parking space dimensions.** Each parking space shall contain a rectangular area at least 18 feet long and nine feet wide, except as follows:

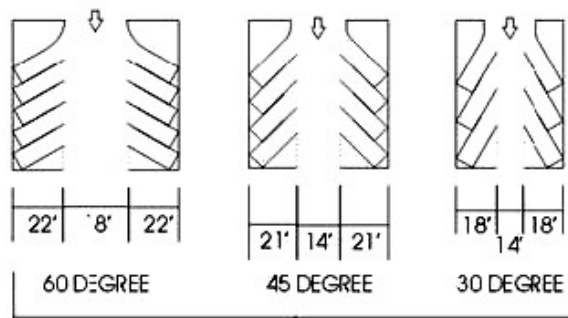
1. Handicapped spaces shall be consistent with the requirements of Chapter 4 of the North Carolina Accessibility Code, as amended and shall be

located as closely and conveniently as practical to building entrances (see Appendix F).

2. Parallel parking spaces shall have a rectangular area of not less than 24 feet in length and nine feet in width.
3. Angled parking spaces shall conform with the dimensions illustrated below. Alternative designs may be allowed by the ~~Planning Director~~ Town Engineer provided it is consistent with the recommended dimensions contained in



Note: Minimum 15 Degree Turning Radii  
Direction of Traffic Flow ⇨



Note: Parking Stalls 18'x9'

- 4.

the latest edition of the Traffic Engineering Handbook published by the Institute of Traffic Engineers.

**E. Required widths of parking area aisles and driveways.**

1. Parking area aisle widths shall conform to the following table, which relates aisle widths to parking angles.

Parking Angle	Width: One Row Sharing Aisle	Width: Two Rows Sharing Aisle
90 degrees	42 feet	60 feet
60 degrees	40 feet	62 feet
45 degrees	35 feet	56 feet

2. Driveways shall be not less than ten feet in width for one-way traffic and 18 feet in width for two-way traffic, except that ten feet wide driveways are permissible for two-way traffic when:
  - a. The driveway is not longer than 50 feet;
  - b. It provides access to not more than six spaces;
  - c. Sufficient turning space is provided so that vehicles need not back into a public street;
  - d. The use is a low traffic volume use and the public right-of-way has a low traffic volume.



~~The permit issuing authority can deviate~~ A Variance may provide relief from this requirement. Any deviations and the reason(s) for such deviations shall be entered on the permit.

~~3. For uses proposed adjacent to U.S. 70, 401 or N.C. 50, see Sections 8.2.C and 8.2.D.~~ Article 8.

**F. General design requirements.** Vehicle accommodation areas shall be designed so that:

1. Vehicles may exit such area without backing onto a public street. This requirement does not apply to driveways serving one or two dwelling units.
2. Vehicles cannot overhang property lines, public rights-of-way, or public sidewalks, or tend to bump against or damage any wall, vegetation or other obstruction.
3. Vehicles can move without posing a danger to pedestrians or other vehicles and without interfering with parking areas.

**G. Vehicle accommodation area surfaces and standards.**

1. It is strongly recommended that vehicle accommodation areas with lanes for drive-in windows or ten or more parking spaces, and that are used at least five days per week, be graded and surfaced with asphalt, concrete or other material that will provide equivalent protection against potholes, erosion, and dust. Appendix C contains specifications for surfaces meeting this standard.
2. Vehicle accommodation areas not permanently surfaced shall be graded and surfaced with crushed stone, gravel or other suitable material (as provided in the specifications set forth in the Town of Garner Standard Construction Details in Appendix B) to stabilize the area and reduce dust and erosion. The perimeter of such parking areas shall be defined by bricks, stones, railroad ties, or similar devices. This section shall not apply to uses required to have only one or two parking spaces.
3. Vehicle accommodation areas shall provide a minimum five feet or perimeter space between the right-of-way line or property line and the edge of the vehicle accommodation area, and shall be landscaped in plantings or other appropriate manner. When adjacent to residential uses and/or districts, plantings, hedge or a solid fence to a height of at least four feet shall provide a screen.
4. Parking spaces shall be demarcated in a practical and appropriate manner.
5. Vehicle accommodation areas shall be properly maintained. In particular, vehicle accommodation area surfaces shall be kept in good condition and parking space demarcations shall be kept clearly visible and distinct.
6. Parking spaces shall be separated from walkways so that at least a 4-foot walkway width is unobstructed.

**H. Joint use of required parking space.**

1. One parking area may contain required spaces for several uses, but, except as provided in paragraph 2. below, the required space assigned to one use may not be credited to any other use.
2. To the extent that developments that wish to make joint use of the same parking spaces operate at different times, the same spaces may be credited to both uses. For example, if a parking lot is used in connection with an office building on Monday through Friday but is generally 90 percent vacant on weekends, another development that operates only on weekends could be credited with 90 percent of the spaces on that lot. Or, if a church parking lot is generally occupied only to 50 percent of capacity on days other than Sunday, another development could make use of 50 percent of the church lot's spaces on those other days.
3. If the joint use of the same parking spaces by two or more principal uses

involves satellite parking spaces, then the provisions of paragraph I. below are also applicable.

**I. Satellite parking.**

1. If the required number of off-street parking spaces cannot reasonably be provided on the same lot as the use they are serving then spaces may be provided on nearby lots in accordance with the provisions of this section. These off-site spaces are referred to as satellite parking spaces.
2. Satellite parking spaces (except spaces intended for employee use) must be located within 400 feet of the use associated with such parking.
3. Satisfactory written evidence of permission by the owner(s) of the area to be used for satellite parking spaces must be provided by the developer. The developer must also sign an acknowledgment that the continuing validity of his permit depends upon his continuing ability to provide the requisite number of parking spaces.
4. For developments where:
  - a. The building(s) pre-existed this UDO;
  - b. A change in use that does not involve any structural enlargement is proposed; and
  - c. The parking requirements cannot be satisfied on such lot, then the developer need only comply with the requirements of paragraph A. of this section to the extent that parking space is available on the lot where the development is located, and satellite parking space is reasonably available as provided in paragraph F of this section. It shall be a continuing condition of the permit authorizing development on such lot that the developer obtain satellite parking when it does become reasonably available.
5. Satellite parking areas are required to satisfy the general design requirements of paragraphs F. and G. of this section.

**J. Loading and unloading areas.**

1. Whenever normal business operations require routine deliveries to or shipments from a development, sufficient off-street loading and unloading area must be provided in accordance with this section to accommodate the delivery or shipment operations in a safe and convenient manner.
2. The loading and unloading area must be of sufficient size to accommodate the numbers and types of vehicles that are likely to use this area. The following table indicates the number and size of spaces that, presumptively, satisfy the standard set forth in this subsection. However, the permit-issuing authority ~~may require~~ shall approve more or less loading and unloading area if ~~reasonably necessary to satisfy the foregoing standard~~ numerical justification is signed and sealed by an engineer licensed in NC.

Gross Floor Area of Building	Number of Spaces with Maximum Dimensions of 12' X 25' and Overhead Clearance of 14' From Street Grade
0—39,999	1
40,000—99,999	2
100,000—159,999	3
160,000—239,999	4

Gross Floor Area of Building	Number of Spaces with Maximum Dimensions of 12' X 25' and Overhead Clearance of 14' From Street Grade
240,000—319,999	5
320,000—399,000	6
400,000 and over	6 spaces plus one space for each additional 90,000 square feet over 400,000 square feet or fraction thereof

3. Loading and unloading areas shall be so located and designed that the vehicles intended to use them:
  - a. Can maneuver safely and conveniently to and from a public right-of-way; and
  - b. Complete the loading and unloading operations without obstructing or interfering with any public right-of-way or any parking space or parking lot aisle.
4. No area allocated to loading and unloading facilities may be used to satisfy requirements for off-street parking and Vice-versa.
5. Loading areas within the lots of industrial subdivisions shall be self contained and capable of handling its own truck maneuvering and docking requirements. The maneuvering, staging and docking areas shall not be in conflict with the required parking spaces, lots and their isle/maneuvering areas. The use of public streets for commercial vehicle staging and/or maneuvering is prohibited. Loading areas shall be located either to the rear or the side of the industrial structures(s) to alleviate unsightly appearances often created by loading facilities. Where such locations are not feasible, loading docks and doors shall be screened as detailed in Section 7.1.M.2.

(Ord. No. 3396, § 13, 4-3-06; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3673, § 4, 10-1-12; Ord. No. 3749, § 3, 10-6-14)

## 7.5. Sign regulations.

**Commentary:** Signs are permitted throughout the Town according to these sign regulations. Different areas of the community are subject to different sign regulations. In particular, the I-40, Timber Drive and U.S. 70/401 corridors have separate regulations in the following material.

Some signs are allowed without a permit (see D. below).

General sign requirements are set forth in G. below. Details about construction and location of specific types of signs are set forth in H. below.

Timber Drive regulations are set forth in J. below, and U.S. 70/401 regulations are set forth in K. below.

~~A master sign plan is required for any multi-tenant site (shopping center, office, etc.) or nonresidential subdivision (see N. below).~~

A. **Purpose and intent.** These sign regulations are intended to:

1. Encourage the effective use of signs as a means of communication for businesses, organizations and individuals in the Town of Garner;
2. Encourage the effective use of signs as a means to improve pedestrian and traffic safety and to promote safe way-finding in Garner by establishing minimum standards for visibility and legibility of signs;
3. Require that all signs that, because of their location, are within the view of drivers in active traffic, meet minimum standards of visibility, legibility and conspicuity standards, and to differentiate these signs from those signs that are not within the view of drivers in active traffic but that may provide information to them while they remain in their cars but out of active traffic;
4. Maintain and enhance the pleasing look of Garner and preserve Garner as a community that is attractive to business;
5. Minimize the possible adverse effects of signs on nearby public and private property;
6. Implement the provisions of the Comprehensive Growth Plan, as updated from time to time;
7. Create cohesive sign regulations that create a recognizable context in Garner; and
8. Prohibit all signs on private property not expressly permitted under this section.

B. **Sign regulations:** Height, number and size of signs. Unless otherwise provided, the total surface area of all signs on any lot shall not exceed the limitations set forth in this section, and all signs, except temporary signs and those excluded from regulation under this section shall be included in this calculation.

C. **Prohibited signs.** The following signs are prohibited in all districts.

1. Any non-government sign which by its location, shape, size, message, color or operation would tend to obstruct the view of or be confused with official traffic or railroad signs, signals or devices or other signs erected by governmental agencies;
2. Any sign which, at its proposed location, would interfere with the view necessary for motorists, bicyclists or pedestrians to proceed safely through intersections or to enter onto or exit from public streets or private roads or driveways;
3. Any sign, subject to paragraph D.1. below, placed or shaped so as to interfere with or obstruct any window, door, fire escape, stairway, walkway, opening intended to provide light, air, ingress or egress for any building or with vehicular movement on public streets or drives;
4. Any sign, or portion thereof, which, to attract attention, moves, rotates, flutters or appears to move in any way, whether by natural, electrical or mechanical means, including banners, flags, propellers and similar devices except where noted in paragraph I. of this section;

5. Any sign which contains or is illuminated by flashing or intermittent lights, lights of changing degrees of intensity, or rotating lights, except signs indicating time and/or temperature or electronic message signs as regulated in Subsection I(2)(e);
6. Balloons, blimps or similar types of lighter-than-air objects, except those which are subject to Federal Aviation Administration regulations;
7. Portable signs, including any sign displayed on or painted on vehicles or trailers used primarily for the purpose of attracting attention, except signs painted or permanently attached to a commercial vehicle shall be allowed provided:
  - a. The vehicle is road worthy and is regularly used as part of the business operation;
  - b. The vehicle displays a current license that is registered to said vehicle and;
  - c. The vehicle displays any required North Carolina inspection decal;

**Commentary: The intent subsection 7 above is to prohibit the use of commercial vehicles that are used strictly for signage purposes in cases where there is no regular use of the vehicle in the business operation (i.e. the vehicle is not operable and is parked in one location and is not moved on any regular basis). Commercial vehicles that are regularly used as part of business are not restricted under this section.**

8. Any commercial sign not located on the premises for which it advertises, except as specifically permitted;
9. Any temporary sign or banner, except as specifically permitted;
10. Any sign or portion thereof placed into or overhanging any right-of-way, except as specifically permitted; and
11. Any sign extending above or placed upon any roof surface except as provided in paragraph H.1. of this section.

**D. Signs allowed without a permit.** The following signs may be erected and maintained in all districts without a permit.

1. Directional real estate signs no more than four square feet in size and posted only from Friday at 6:00 p.m. until Sunday at 8:00 p.m. Such signs shall be located no less than four feet from the back of curb, and shall not interfere with clear sight triangles at driveways or intersections.
2. Signs on interior window glass, regardless of number, size or coverage. Signs on glass doors are limited to 30 percent coverage of the glass area and enough clear area shall be maintained to allow adequate vision to ensure safe use of the doors by people of all sizes;
3. Un-illuminated temporary signs which advertise the sale, rental or lease of the premises upon which the sign is located, limited to five square feet in total area for residential uses, and 32 square feet in total area for commercial or industrial properties. Any such sign shall not be placed within any right-of-way or situated so as to interfere with sight distance, shall be limited to one sign per street frontage and six feet in height and shall be removed within ten days of the sale, lease or rental of the property advertised or within five days of the date the sold sign is added or affixed;
4. Signs directing and guiding traffic on private property that do not exceed two square feet in surface area or two feet in height and that bear no advertising matter;
5. Signs and displays, including lighting erected in connection with the observance of holidays. Such signs shall be removed within ten days following the holiday;
6. Changes in the moveable lettering of any permitted signs;

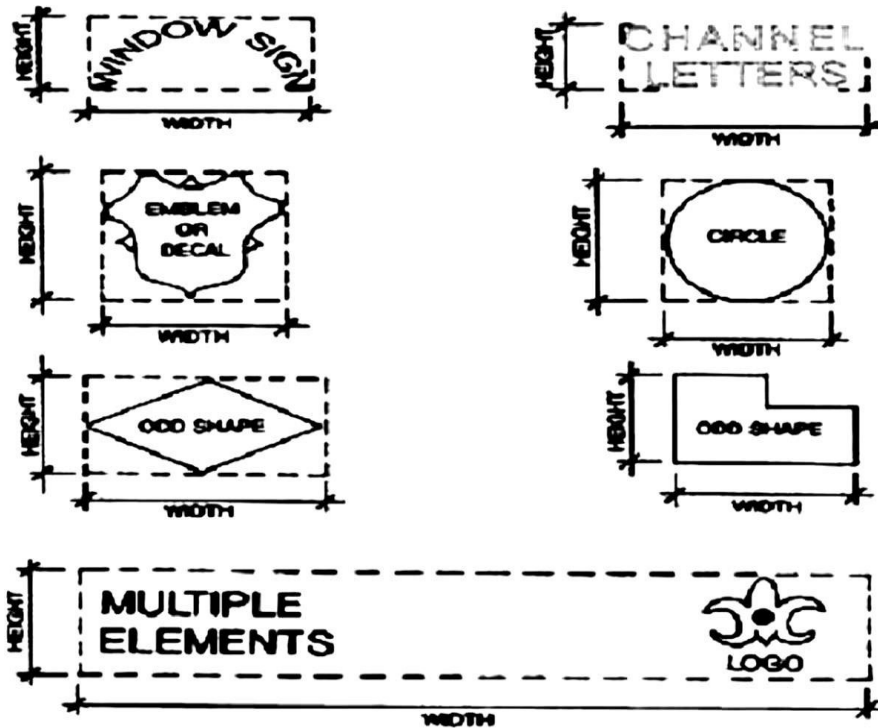
7. Signs advertising a special event such as a fair, carnival, circus, fish fry, garage sale or other similar happening provided the following conditions are met:
  - a. Signs are not erected more than two weeks before the event, and shall be removed not later than three days after the event.
  - b. Signs shall be placed no closer than ten feet back from the curb line or edge of pavement.
  - c. Signs shall not be placed on any existing official governmental signs, including legal notices, identification and informational signs and traffic, directional or regulatory signs.
  - d. Signs shall not be placed on any utility poles, trees on public right-of-way, or street medians.
  - e. Signs shall not exceed three feet in height and nine square feet in total area.
8. Political signs erected in connection with elections or political campaigns are permitted under the following conditions:
  - a. Political signs in the vicinity of a polling place for a period not exceeding 24 hours preceding the opening of the local polls; such signs shall be removed within 24 hours following the closing of local polls.
  - b. All political signs shall be removed from the public street right-of-way within seven days after the election day. A political sign shall not be permitted in a sight distance triangle as specified in Article 11.2.
  - c. Except as noted in a. above, political signs shall not be erected or posted until the candidate filing deadline date for the applicable national, state, or local office, including primary elections. Prior to the erection of any political sign, the candidate, or authorized representative shall post a bond or cash deposit in the amount of \$200.00 with the Planning Department to guarantee the private removal of political signs. The bond or cash deposit may be returned only upon satisfactory removal of such signs according to the time requirements as specified herein. All political signs shall be removed from the public street right-of-way within seven days after the election day.
  - d. Signs shall be placed no closer than ten feet off the curb or ditch.
  - e. Signs shall not be placed on any utility poles, tree on public property, or in any street median.
  - f. No sign shall exceed 32 square feet in total area or more than eight feet in height.
  - g. Such signs on private property shall conform to this section.
9. Uses selling gasoline are allowed the following signs:
  - a. Price, self-service and/or credit card signs located at and secured to each pump island and not exceeding nine square feet in aggregate per pump island or one square foot per side per pump.
  - b. Brand name, grade of gasoline and informational signage directly related to the gasoline being dispensed (i.e. pump usage directions, etc.) not exceeding nine square feet in aggregate per pump island or one square foot per side per pump.
10. One North Carolina automobile inspections sign located on the building or on a permitted freestanding sign, and not exceeding ten square feet; and
11. Signs sponsored by government, school, recreational or civic clubs providing rules for the use of developments and sites, such as a pool, or schedules, are permitted on the same site as the organization or use,

- limited to 16 square feet per side, 32 square feet in aggregate area.
12. Signs on residential structures, premises or mailboxes giving the names and/or address of the occupants and signs posted on property relating to private parking or warning the public against trespassing or danger from animals, provided any such sign shall not exceed two square feet in area; there shall be not more than two such signs per lot.
  13. Signs erected by, on behalf of, or pursuant to the authorization of a governmental body, including legal notices, identification and informational signs, and traffic, directional, and regulatory signs.
  14. Official signs of a noncommercial nature erected by public utilities, such as signs denoting the location of underground utilities.
  15. Flags, pennants or insignia of any governmental, civic or non-profit organization when not displayed in connection with a commercial venture or an advertising device and when located on the same site as the organization provided the maximum height for such does not exceed 30 feet or the height of the tallest principle building on the site whichever is greater; and the maximum size does not exceed 32 square feet.
  16. Signs proclaiming religious, political, or other noncommercial messages (other than those regulated by Section 280) that do not exceed one per abutting street and 16 square feet in area and that are not internally illuminated.

**E. Computation.**

**1. Sign area.**

- a. **Area to be included.** The area of a sign shall include all lettering, wording, designs and symbols, together with the background, whether open or enclosed, on which they are displayed. The supporting structure or bracing of a sign shall be omitted in measuring the area of the sign unless such structure or bracing is made part of the message or face of the sign.



**Signs attached to walls.** Where a sign consists of individual letters, words or symbols attached to a surface, building, canopy, awning, wall or window, the sign area shall be the area of the smallest rectangle which completely encompasses all such letters, words or symbols and any accompanying

background of a color different than the natural color of the wall.

b. **Gas sales or convenience store with gas sales.** The registered trademark of the brand of gas sold shall not be considered in the number of wall signs allowed, but the area of such trademarks shall be included in the maximum sign area permitted by lot.

2. **Computation of height.** The height of a sign shall be computed as the distance from the base of the sign at a computed grade to the top of the highest attached component of the sign. The computed grade shall be the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the lot, whichever is lower.

**F. Schedule of general sign requirements.**

Zoning District	Sign Type	Maximum Sign Area Per Lot	Maximum Signs	Maximum Height
<b>Residential Zones:</b> All Residential Districts (R-40, R-20, R-15, R-12, R-9, RMH, MF-1, MF-2 and Planned Development Residential Uses)	Freestanding: Residential Use Other Permissible Use	4 square feet 32 square feet	1	4 feet
	Wall: Churches, schools, or other residential uses permitted in all residential zones	24 square feet	1	5 feet
	Residential Entrance Signs	See Section 7.5 (1)(2)(a)	1	None
<b>I-40:</b> All Business or Industrial Districts (NO, OI, NC, CR, SB, I-1, I-2)	Freestanding:	100 square feet	1 per street frontage, 2 maximum	12 feet
	Wall: Building up to 100,000 square feet floor area	Greater of 60 square feet or 7% of wall frontage	3 wall	None
	Wall: Building over 100,000 square feet	Lesser of 100 square feet or 10% of wall frontage	3 wall	None
<b>U.S. 70 &amp; U.S. 401:</b> All Business or Industrial Districts (NO, OI, NC, CR, SB, I-1, I-2)	Freestanding:	100 square feet	1 per street frontage, 2 maximum	12 feet
	Wall: Building up to 100,000 square feet floor area	Greater of 60 square feet or 7% of business wall frontage	3 wall	
	Wall: Building over 100,000 square feet floor area	Lesser of 100 square feet or 10% of wall frontage	4 wall	
<b>OI Districts:</b> All NO and OI Districts not on Timber Dr., U.S. 70, U.S. 401 or I-40	Freestanding (monument only): 100 square feet maximum total all freestanding and wall signs	48 square feet	1 per street frontage, 2 maximum	6 feet
	Wall: Building up to 100,000 square feet floor area	Greater of 60 square feet or 7% of wall frontage	3	N/A
	Wall: Building over 100,000 square feet	Lesser of 100 square feet or 10% of wall frontage	4	N/A

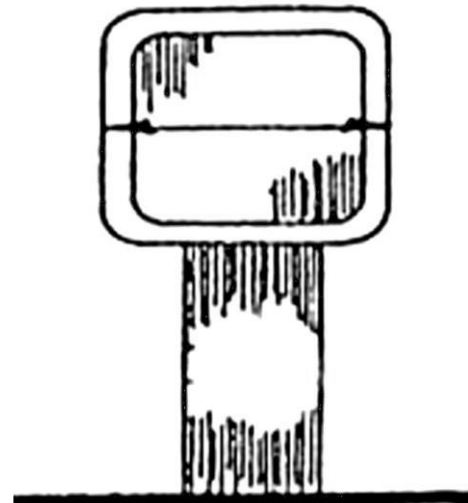


Article 7. General Development Standards

<b>Business Districts:</b> All Business Districts (NC, CR, SB, I-1, I-2) not on	Freestanding: 100 square feet maximum total all freestanding and wall signs	60 square feet	1 per street frontage, 2 maximum	12 feet
<b>Zoning District</b>	<b>Sign Type</b>	<b>Maximum Sign Area Per Lot</b>	<b>Maximum Signs</b>	<b>Maximum Height</b>
Timber Dr., U.S. 70, U.S. 401 or I-40	Wall: Building up to 100,000 square feet floor area	Greater of 60 square feet or 7% of wall frontage	3	None
	Wall: Building over 100,000 square feet	Lesser of 100 square feet or 10% of wall frontage	4	None

G. **General sign location and construction standards.** The following regulations shall apply to signs in all districts.

1. **Not in right-of-way.** No sign or portion thereof may be placed into or overhang any right-of-way.
2. **Sign located substantially below street.** Where a business is located substantially below the elevation of the street (as determined by the Planning Director) such that the allowable maximum sign height creates unreasonable hardship in terms of limited visibility, an exception to the usual maximum height requirements may be granted by the Planning Director through the sign permit process via a Variance. This exception shall allow only for the minimum height beyond that normally granted necessary to provide reasonable visibility for the sign from the street upon which the business fronts having the highest traffic count. (Unless conflicting with other provisions of this UDO, the sign shall be located at the point on the site along said frontage at which reasonable visibility from said street is first achieved within the allowable maximum height.) Regardless of location, and in no case after making this exception shall the sign be allowed at a height above said street which exceeds the maximum permitted height in this section.
3. **Sign materials.** All materials used for signs shall be those that, as determined by the Planning Director, maintain their original appearance well over a long period of time durable. Examples of materials which do not endure include particle board and plywood. Additionally, the external painting of signs using methods that are not durable are not allowed. Enamels must be baked on so as to help retain a new look, and proper sealing from the weather is required. All signs should be fully encased or skirted at a minimum width that is one-half of the width of the sign face so as to present an appearance of pillars or other substantial supports.
4. **Sign lighting.** Illumination of signs is allowed in accordance with the following provisions:
  - a. No illuminated sign shall be permitted within 50 feet of any



residential district. Church bulletin boards are exempt from this provision.

- b. No sign within 300 feet of a residential zone may be illuminated between the hours of 12:00 midnight and 6:00 a.m., unless the impact of such lighting beyond the boundaries of the lot where the sign is located is entirely inconsequential.
  - c. Lighting directed toward a sign shall be shielded so that it illuminates only the face of the sign and does not shine directly into a public right-of-way or residential premises.
  - d. All lighted signs shall comply with state and local building and electrical codes, and shall bear the label of Underwriters Laboratories, Inc. All wiring to freestanding signs or to associated lighting equipment shall be underground, unless it is impracticable to do so.
  - e. Poles and other supporting structures shall not be internally illuminated.
5. **Changeable copy.** A changeable copy or marquee sign shall be erected only in combination with an identification sign and shall be included in the computation of sign area.

**H. Sign standards by sign type.**

**1. Wall signs.**

- a. No sign may project more than 18 inches from the building wall.
- b. No wall sign shall project above the roofline.
- c. A sign may extend down from a roof or porch or walkway overhang not more than 18 inches (to the bottom of the sign), provided however that a minimum clearance of seven feet between the bottom of the sign and the walking surface shall be maintained.
- d. Displays on roofs of residential structures erected in connection with holiday observance are not included in this prohibition.
- e. Roof surfaces constructed at an angle of 75 degrees or more from horizontal shall be regarded as wall space for the purposes of this section.

**2. Freestanding signs.**

- a. Freestanding signs shall be securely fastened to the ground so that there is virtually no danger that the sign may be moved by wind or other forces of nature and cause injury to persons or property. All applications for a freestanding sign permit shall be accompanied by an engineer's sealed footing drawing and calculations testifying to the ability of the sign to withstand 100 mile-per-hour winds.
- b. No freestanding sign shall encroach into any right-of-way.
- c. The Town encourages the use of the specific information signing program (LOGO Program) along I-40.
- d. Where physically possible and to the greatest extent possible, all freestanding signs (including multi-tenant signs) shall be located so as to produce an aesthetically pleasing separation (as determined by the Planning Director) between such signs along road frontages. Where possible, the distance should be separated by a distance of at least 150 feet from the next nearest sign along the frontage.
- e. All freestanding outparcel signs shall be located on-site only, and shall be separated by a minimum distance of 100 feet.
- f. The base of every permanent freestanding sign that requires a sign permit shall be landscaped. The size of the planted

landscape area shall be determined by multiplying the height of the sign (measured from the ground to the upper most part of the sign) by the width of the sign (widest dimension), divided by two, but in no case shall the planted area be less than 50 square feet, unless restricted by the amount or size of land upon which the sign is situated that is owned or controlled by the applicant. The planted landscape area shall contain materials such as, but not limited to: vegetative ground covers, perennials, shrubs, ornamental trees and mulch, but excluding paving and artificial plant materials. A sketch plan of the landscaped area with the name, quantity and spacing of plants shall be ~~presented to the Planning Director as part of applying~~ included in the application for sign permit.

- g. Poles and other supporting structures shall not be internally illuminated.

**3. Off-premises advertising signs.**

- a. Off-premises advertising signs are permitted only in I-1 or I-2 zones; no off-premises advertising signs are permitted except along and facing U.S. 70 or U.S. 401, as set forth in paragraph of this section. No off-premises advertising signs shall be permitted along and facing the 1-40 corridor.
- b. Off-premises advertising signs shall be spaced a minimum of 2,500 feet apart, measured between signs facing the same street.
- c. Where the structural support is visible from any street, the display shall be constructed on a steel single pole.
- d. The immediate premises shall be kept free from debris or undergrowth. Appropriate landscaping shall be placed and maintained at the base of the structural support of every off-premise advertising sign erected.
- e. All displays shall be maintained in a state of good repair. The backs and supporting structures of all off-premise advertising signs shall be kept painted in a neutral color to blend with the natural environment.
- f. While minor repairs, maintenance and the posting of new messages on off-premise advertising signs made nonconforming by this UDO are permitted, no changes in the size of construction of the sign shall be permitted except to make the sign comply with the requirements.
- g. Off premises advertising signs may be placed back-to-back or in a v-type construction. Not more than one face is allowed on each side of the display.
- h. Size, height and setback requirements are as follows:

<b>Standard</b>	
Maximum Surface Area	150 square feet
Minimum Setback	50 feet
Maximum Height	25 feet

**4. Multi-tenant signs.**

- a. All multi-tenant signs, including but not limited to shopping center identification signs, multiple business signs, directory signs and all wall signs, shall meet the standards in the following table. For locations within the Timber Drive Overlay District, see paragraphs J., below.

Multi-Tenant Sign Type	Maximum Sign Area	Maximum Number	Maximum Height
Freestanding Project Signs: Development up to 300,000 square feet	100 square feet	1 per street frontage, 2 maximum	10 feet
Development over 300,000 square feet and up to 500,000 square feet	120 square feet	2 per street frontage, 3 maximum	15 feet
Development over 500,000 square feet	When project qualifies for 4 freestanding signs: 1 @ 180 square feet; 3 @ 120 square feet	Maximum of 4 when project has frontage on 3 or more public streets, no more than 2 per public street frontage*	When project qualifies for 4 freestanding signs: 1 @ 15 feet* 3 @ 12 feet*
	For projects that do not qualify for 4 freestanding signs the maximum area per sign is 120 square feet	For projects that do not qualify for 4 signs, a maximum of 3 allowed with no more than 2 per public street frontage	For projects that do not qualify for 4 signs, sign height may be up to 15 feet*
Freestanding community identification or directional sign (Applies only to Development over 500,000 square feet)	20 square feet	Maximum of 4 signs regardless of sign type, no more than 2 at any one location	4 feet
On-Premise Directional sign: Development up to 300,000 square feet	20 square feet	1 per entrance or internal intersection, 2 maximum	5 feet monument only
Development over 300,000 and up to 500,000 square feet	20 square feet	1 per entrance or internal intersection, 3 maximum	5 feet, monument only
Development over 500,000 square feet	20 square feet	1 per entrance, or other internal location (maximum of 4) <del>approved as part of master sign plan</del>	5 feet monument only
Multi-Tenant Sign Type	Maximum Sign Area	Maximum Number	Maximum Height
Outparcel: Freestanding monument sign (development up to 300,000 square feet)	32 square feet	1 per outparcel	4 feet
Freestanding monument sign (development over 300,000 and up to 500,000 square feet)	32 square feet	1 per outparcel	4 feet

Article 7. General Development Standards

Freestanding monument (Development over 500,000 square feet)	32 square feet	1 per outparcel	4 feet
Wall: (including canopy face) Development up to 100,000 square feet	Greater of 60 square feet or 10% of frontage wall area	1 per business frontage & 1 per public street, max. of 3	None
Development over 100,000 square feet and up to 500,000 square feet	Greater of 60 square feet or 7% of frontage wall area	1 per business frontage & 1 per public street, max. of 3	None
Development over 500,000 square feet	Greater of 60 square feet or 7% of business frontage wall area	1 per business frontage & 1 per public street, max. of 3	No signs above roofline
For 100,000 square foot major individual tenant in a shopping center	Greater of 60 square feet or 7% of business frontage wall	1 per business frontage & 1 per public street, max. of 4	No signs above roofline
Canopy Underhang: Projects of any size	4 square feet	1 per business	Bottom of sign maximum 18 inches below bottom of canopy face

**Note: All freestanding signs in multi-tenant developments shall be located so as to produce an aesthetically pleasing separation as determined by the Planning Director between such signs along road frontages. Where possible the separation should be separated by 300 feet between freestanding project signs and 100 feet between outparcel freestanding signs.**

- b. Multi-tenant sign standards. All multi-tenant signs, including but not limited to shopping center identification signs, multiple business signs, directory signs and all wall signs, shall conform to the following criteria and standards. (Wall signs and freestanding signs on existing outparcels, regardless of the number of businesses on those parcels, are not required to meet the following criteria and standards, but are encouraged to do so to better achieve the purpose stated above.)

Criteria and Standards for Multi-Tenant Signs		
Criteria	Wall Signs	Freestanding Signs
<b>Locations</b>	Uniform vertical and horizontal positions on storefront	N/A
<b>Type</b>	Similar style encouraged; logos allowed; maximum of 2 lines per sign	N/A
<b>Materials</b>	Uniform; compliment building facade materials	
<b>Colors</b>	Same 3 matching colors (maximum) on each sign encouraged; pattern or scheme required. Garish schemes not allowed.	

<b>Logos</b>	Maximum 20 percent of approved sign area	
<b>Illumination</b>	Signs may be illuminated or not, but all illumination must be the same type and intensity of light	
<b>Poles</b>	N/A	One pole preferred for signs other than multi-business signs. Minimum skirt width of 4 feet for single pole. Maximum of 2 poles per sign. Poles may not be illuminated.

**5. Nonresidential subdivision signs.**

- a. Nonresidential subdivision signs shall meet the standards in the following table:

Sign Type	Maximum Sign Area	Maximum Signs	Maximum Height
Freestanding: Subdivision identification or a freestanding multi-tenant sign (monument sign preferred)	72 square feet	1 per exterior road frontage, 2 maximum	12 feet for pole sign with minimum 7-foot wide base, 8 feet for monument
Monument Signs for individual parcels and lease lots	60 square feet	1 per parcel or lease lot	6 feet
Sign Type	Maximum Sign Area	Maximum Signs	Maximum Height
Wall: Including canopy face	Lesser of 72 square feet or 15% of business frontage wall area	1 per business frontage and one per public street, 3 maximum	None
Canopy Sign:	4 square feet	1 per business	Bottom of sign maximum 18 inches below bottom of canopy face

- 6. Nonresidential subdivision sign standards.** All commercial subdivision identification signs, multiple business signs, freestanding signs for individual businesses, and all wall signs shall conform to the following criteria and standards and the standards of paragraph N.

Criteria and Standards for Nonresidential Subdivision Signs		
Criteria	Wall Signs	Freestanding Signs
<b>Locations</b>	Uniform vertical positions; all centered on storefront or to one side of storefront	N/A
<b>Type</b>	Similar style encouraged; logos allowed	
<b>Materials</b>	Similar style; compliment building facade materials	
<b>Colors.</b>	Same 3 matching colors (maximum) on each sign encouraged; pattern or scheme required. Garish schemes not allowed	

<b>Logos</b>	Maximum of 20 percent of sign area	
<b>Illumination</b>	Signs may be illuminated or not, but all illumination must be the same type and intensity of light	
<b>Poles</b>	N/A	One pole preferred for signs other than multi-business signs. Maximum of 2 poles per sign. Poles may not be illuminated.

I. **Miscellaneous temporary and permanent signs.** The following temporary and permanent signs are permitted in addition to any allowed in above, and all require a sign permit.

1. **Temporary signs.**

a. Construction site identification signs, naming the project, developer, contractors and others connected with the construction, sale or lease of structures, and related information, are permitted. Not more than one such sign may be erected per site, and it may not exceed 32 square feet in area or six feet in height. Permits for such signs shall be limited to one-year, with a one year permit renewable option. Permits for such signs shall be limited to a maximum of two years, which includes the original permit period, provided:

- i. such signs are not erected prior to site, Special Use or Conditional Zoning ~~or Conditional Use~~ approval of the project identified;
- ii. that such permits have not expired and;
- iii. the signs are maintained in good condition ~~and appearance as determined by the Planning Director~~ with no visible deterioration, flaking paint, cracks, etc.

Any such sign shall be removed within ten days after the issuance of the final occupancy permit or where a site, Special Use Conditional Use permit or Conditional Zoning approval has expired. ~~One year permit renewals beyond the two (2) year maximum time period may be granted only in limited instances if the Planning Director finds conditions such as extreme financial hardships, changes in project ownership status or similar issues are preventing the sale or completion of the project.~~

- b. Signs or banners advertising special events must be on private property and shall not be permitted within public rights-of-way. Permits for such banners or signs shall be limited to 30 days and no more than three times each year. Any such banner or sign shall be removed within ten days after the event was advertised.
- c. Signs or banners advertising the initial opening of a business establishment may be permitted on private property. Not more than one such sign or banner per site is permitted at any one time; such sign or banner shall not exceed 32 square feet in area and shall meet all other requirements. Permits shall be limited to 30 days from the date of issue.
- d. Signs on private property directing the public to a subdivision or multifamily development are permitted, provided that the property owner's written permission for such use of his land accompanies the permit request, that the sign does not exceed 32 square feet in surface area or six (6) feet in height. The sign shall bear only the

name of and direction to the development. Permits for such signs are limited to one year with a one year permit renewal option. Permits for such signs shall be limited to a maximum of two (2) years which includes the original permit time period, provided such signs are maintained in good condition and appearance with no visible deterioration, flaking paint, cracks, etc. as determined by the Planning Director. Any such sign shall be removed within ten days after the issuance of the final occupancy permit or upon expiration of the sign permit. ~~One-year permit renewals beyond the two (2) year maximum time period may be granted only in limited instances if the Planning Director finds conditions such as extreme financial hardships, changes in project ownership status or similar issues are preventing the sale or completion of the project.~~

- e. Signs providing direction to a U-pick farm operation or agricultural market are permitted. Any such sign shall not exceed 32 square feet in area. Permits shall be limited to a maximum of 60 days from the date of issue and require the written permission of the property owner or his agent for such use of his land.
- f. The application for a permit under the above noted sections and the enjoyment of the rights to display signage pursuant to this section constitute an authorization by the owner of the sign that the town may remove and destroy the sign if the owner fails to remove the sign within 10 days of the expiration of the last permit issued for the sign.

If the sign is located on private property, the application for the permit for the sign and the enjoyment of the right to display such signage constitutes authorization for the Town to enter upon such private property to remove the sign pursuant to the above noted sections.

**2. Permanent signs.**

**a. Residential subdivision signs.**

(1) Each individual residential subdivision or multifamily development is permitted the option of having one freestanding monument sign to be located at the major entrance to the development with a single side of the sign not to exceed 32 square feet in area or five feet in height, or two freestanding monument signs with single faces not to exceed 16 square feet and five feet in height. ~~The permit issuing authority may allow deviations from the dimensional requirements of this section if it finds that such deviation will maintain an appropriate appearance and will not impact public safety. The maximum deviation permissible under this section is 30 percent and requires a~~ Variance.

(2) All other entrances for each distinct phases of a residential subdivision or multifamily development are permitted one freestanding monument sign having a maximum single side surface area of 16 square feet and four feet in height. A single sign may be located within a median of a public right-of-way, at the major entrance to the development if such entrance is divided by a median with dimensions of minimum length of 50 feet and minimum width of ten feet. A sign located in the median of a public right-of-way shall



be located a minimum of ten feet from the end of the median radius and shall not exceed 3.5 feet. ~~The permit issuing authority may allow deviations from the dimensional requirements of this section if it finds that such deviation will maintain an appropriate appearance and will not impact public safety.~~ The maximum deviation permissible under section is 30 percent and requires a Variance.

- (3) For all entrance signs, the height limitation shall apply to the sign as well as any support devices such as but not limited to a wall, monument, fence, etc., or similar architectural features.
- b. **Promotional signs.** Promotional signs advertising commercial business or goods are allowed on the interior surface of fences of private, public or semi-public ballfields.
- c. **Schedule and sponsor sign.**
  - (1) A schedule and sponsor sign may be erected on school property at a school ballfield provided no adverse impact on traffic safety or neighborhood character, as determined by the permit-issuing authority, will result. The sign may be erected according to the following:
    - (a) Zero--50 feet from road right-of-way, unlighted, maximum 50 square feet of face area;
    - (b) Fifty-one--150 feet from road right-of-way, unlighted, maximum of 150 square feet of face area; or
    - (c) Greater than 150 feet from right-of-way, 300 square feet maximum face area.
  - (2) The sign may list a schedule of dates and locations of play, and may list sponsors, by name only. Advertisements beyond the name of the sponsor(s) is not permitted. No part of this sign shall be higher than 25 feet above grade.
- d. **Bulletin boards.** Bulletin boards not over 12 square feet in area for public, charitable or religious institutions and located on the same premises as the institution being served is permitted.
- e. **Time and/or temperature signs in OI, CR, SB districts.** One freestanding or wall time and/or temperature sign not exceeding 18 square feet in aggregate surface area is permitted on any lot in an OI, CR or SB district. Such sign may be illuminated and animated to the extent necessary to display time or temperature or both, but shall not otherwise flash, blink or rotate.
- f. **Farm product signs.** Signs advertising the sale of farm products on-site, limited to a maximum of 24 square feet per face, are permitted. Not more than one such sign may be erected per site.
- g. **Community service signs.** A welcome sign, or a sign incorporating the insignias of more than one civic, governmental and/or non-profit organizations may be permitted. Any such sign shall not exceed 100 square feet, nor exceed 12 feet in height. Location within a right-of-way may be permitted with state and Town approval, as applicable. Such signs may be either on-premise or off-premise.
- h. **Electronic message signs.**
  - (1) Signs that have an electronic changeable copy message are allowed as part of a permanent freestanding

monument sign. Such sign shall not be permitted to be on a wall sign. All electronic message signs must meet the following criteria:

- (a) The square footage of the electronic message area and the primary sign area together shall not exceed the total allowable sign area for that use or zoning district;
  - (b) The electronic message sign area cannot exceed 40 percent of the total sign area;
  - (c) The electronic message sign must be physically attached to the primary sign;
  - (d) The electronic message sign area may contain up to three horizontal rows of information;
  - (e) The total electronic sign message, defined as both sides of the sign, or any portion thereof may change only one timer per hour over a 24-hour period of time. This restriction does not apply to signs displaying emergency information during publicly declared local, state, or national emergencies or disasters; and
  - (f) Gas sales or convenience stores with gas sales displaying digital gas prices must comply with the requirements of this section and all other applicable sign requirements, except gas price changes are not restricted to one time per day. In cases where a freestanding [sign] does not exist for the business, digital gas price wall signs may be allowed to locate on a canopy or its support columns subject to all applicable sign ordinance requirements.
- (2) Electronic message signs are not permitted to have scrolling, moving, rotating, fluttering, blinking, or flashing elements. In addition, such signs are not permitted to have any animation, video or audio elements.
  - (3) The color of any digital message text or display shall be red. No background colors are allowed.
  - (4) Electronic message signs are prohibited on off-premises advertising signs.
  - (5) Illumination of electronic signs shall be in accordance with the requirements of Subsection G.4.
  - (6) Electronic message signs that are part of multitenant signs including, but not limited to, shopping center identification signs or multiple business signs shall comply with the requirements of this section. ~~Such signs will not be permitted until operational guidelines on how the electronic message sign will be used have been approved by the Town of Garner as part of a project's master sign plan.~~
  - (7) Violation of the electronic sign ordinance shall be punishable as follows:
    - (a) A civil penalty of \$100.00 for each day of the first violation and \$500.00 each day for subsequent violations;
    - (b) Injunctive relief;
    - (c) Upon issuance of a violation notice, the electronic sign must be turned off and remain turned off until



- (d) Upon issuance of a second or subsequent violation, citation or notice, the sign permit shall be automatically terminated;
- (e) Any illumination of the sign following permit termination shall be punishable by a fine of \$1,000.00 per day;
- (f) The sign may not lawfully be illuminated following such termination except upon reapplication and issuance of a subsequent sign permit, and payment of all fees and fines; and
- (g) Issuance of a subsequent sign permit following such termination and reapplication shall be consummated only after the applicant has posted a cash bond in the amount of \$2,500.00, to be available for possible future fines.

**J. Timber Drive Overlay District sign regulations.**

1. **Signage for individual building.** Signs on an individual building shall meet the standards in the following table.

Sign Type	Maximum Sign Area Per Lot	Maximum Number	Maximum Height (Freestanding)
<b>Freestanding: (monument only)</b>	48 square feet	1 per street frontage, 2 maximum	5 feet, monument sign only
<b>Wall:</b>	Lesser of 60 square feet or 10% of business frontage wall area	1 per business frontage and 1 per street frontage, 3 maximum	No sign above roofline
<b>Combined:</b>	125 square feet		

**Note: Freestanding signage for all buildings with build-to option shall be limited to 36 square feet in sign area, one freestanding sign per lot not to exceed a height of four feet measured at grade.**

2. **Multi-tenant signs.** All multi-tenant signs, including but not limited to shopping center identification signs, multiple business signs, directory signs and all wall signs, shall meet the standards in the following table.

Sign Type	Maximum Sign Area	Maximum Number	Maximum Height
Freestanding shopping center sign or freestanding multi-business sign	48 square feet	1 per street frontage, 2 maximum	5 feet, monument sign only
On-premise freestanding directory sign	20 square feet	internal location only, 2 maximum	5 feet, monument sign only
Freestanding outparcel sign	40 square feet	1 per outparcel	5 feet, monument sign only
Wall (includes canopy face)	Lesser of 72 square feet or 10% of business frontage wall area	1 per business frontage and 1 per public street, 3 maximum	No sign above roofline

Wall for 100,000 square foot building, business complex or major tenant in a shopping center	Greater of 60 square feet or 7% of business frontage wall	4	No sign above roofline
Canopy Underhang	4 square feet	1 per business	Bottom of sign maximum 18 inches below bottom of canopy face

3. **Nonresidential subdivision signs.** Nonresidential subdivision signs shall meet the standards in the following table:

Sign Type	Maximum Sign Area	Maximum Number	Maximum Height
Directional sign: Development up to 300,000 square feet	20 square feet	1 per entrance or internal intersection, 2 maximum	5 feet
Development over 300,000 square feet	20 square feet	1 per entrance or internal intersection, 4 maximum	5 feet, monument only
Freestanding subdivision identification sign or freestanding multi-business sign (monument signs preferred)	48 square feet	1 per exterior road frontage, 2 maximum	5 feet, monument sign only
Freestanding signs for individual parcels & lease lots	48 square feet	1 per parcel or lease lot	5 feet, monument sign only
Sign Type	Maximum Sign Area	Maximum Number	Maximum Height
Wall (including canopy face)	Lesser of 72 square feet or 15% of business frontage wall area	1 per business frontage and 1 per public street, 3 maximum	No sign above roofline
Canopy Sign	4 square feet	1 per business	Bottom of sign maximum 18 inches below bottom of canopy face

K. **U.S. 70/401 Thoroughfare Overlay District signage requirements.** Shopping centers, business complex signs, and commercial subdivision signs shall meet the requirements in the following table (for shopping center development greater than 300,000 square feet, see paragraph H of this Section).

Sign Type	Maximum Sign Area	Maximum Number	Maximum Height
Directory: Development up to 300,000 square feet	20 square feet	1 per entrance or internal intersection, 2 maximum	5 feet monument only

<p>Freestanding shopping center sign or freestanding multi-business sign</p> <p>OR</p> <p>When a development has a minimum of 100 feet of frontage along 2 major thoroughfares the following applies:                  2 signs @ 100 square feet in area                  12 feet tall (1 sign per street frontage)                  1 sign @ 100 square feet in area                  6 feet tall (100 foot separation from other signs)</p>	<p>100 square feet</p> <p>100 square feet (all signs)</p>	<p>1 per street frontage, 2 maximum</p> <p>Two 12' signs (1 per street)</p> <p>One 6'tall sign (100' separation from other signs)                  3 maximum</p>	<p>12 feet, monument sign only</p> <p>2 @ 12 feet, monument only</p> <p>1 @ 6 feet, monument only</p>
<p>Freestanding shopping sign or freestanding multi-business sign for development that has a minimum 100,000 square feet of GLA and a minimum property frontage of 100 feet along each public street.</p>	<p>100 square feet</p>	<p>1 per street frontage, 3 maximum</p>	<p>12 feet, monument only</p>
<b>Sign Type</b>	<b>Maximum Sign Area</b>	<b>Maximum Number</b>	<b>Maximum Height</b>
<p>On-premise freestanding directory sign</p>	<p>20 square feet</p>	<p>Internal location only, 2 maximum</p>	<p>5 feet, monument sign only</p>
<p>Freestanding outparcel sign</p>	<p>32 square feet</p>	<p>1 per outparcel</p>	<p>4 feet, monument sign only</p>
<p>Wall (includes canopy face)</p>	<p>Lesser of 72 square feet or 10% of business frontage wall area</p>	<p>1 per business frontage and 1 per public street, 3 maximum</p>	
<p>Wall for 100,000 square foot building, business complex or major tenant in a shopping center</p>	<p>greater of 60 square feet or 7% of business frontage wall</p>	<p>4</p>	
<p>Canopy underhang</p>	<p>4 square feet</p>	<p>1 per business</p>	<p>Bottom of sign maximum 18 inches below bottom of canopy face</p>

**L. Removal or repair of signs.**

1. Whenever use of a building or premises by a specific business or activity is discontinued for that business or activity for a period of 60 days, signs pertaining to that business or activity shall be immediately removed by the owner. Failure to do so shall constitute abandonment of the sign and is sufficient grounds to order the sign's removal.
2. Every sign and sign structure shall be maintained in good condition at all times. The Planning Director shall have the authority to order painting, repair, alteration or removal of any sign or sign structure which

constitutes, by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, a public nuisance or hazard to safety, health, or public welfare. Permits for any such sign may be revoked in accordance with Article 10, Enforcement.

3. Procedures for handling violations are contained in Article 10, Enforcement.

M. **Nonconforming signs.** See ~~Article 9~~Section 9.6, ~~Nonconforming signs,~~  
~~Nonconformities.~~

N. ~~**Master sign plan.** The purpose of this section is to set forth design criteria and standards for signage in particular types of development so as to produce a coordinated and complimentary graphic image that achieves consistency and harmony among signs. Shopping centers, business complexes, commercial subdivisions and mixed use residential subdivisions are required to meet the requirements of this section.~~

~~1. **Master sign plan required.**~~

~~a. Master sign plans shall be required for the following types of development:~~

~~(1) All existing and newly proposed multi-tenant complexes.~~

~~(2) All existing and newly proposed commercial subdivisions. Refer to sections H., I. and J. for requirements regarding dimensional and number requirements.~~

~~b. The purpose of this plan is to detail the standards for uniformity which the development proposes to live up to, and to state the manner in which the design criteria and standards for uniform signage set forth in this section shall be met.~~

~~c. Sign permits for individual businesses within the development (and therefore subject to the master sign plan) shall be approved by the Planning Director, following master sign plan approval.~~

~~d. All signs shall conform to the approved master sign plan on file with the Town. It shall be the responsibility of the owner of the development to ascertain that the most updated version is on file for purposes of this UDO.~~

~~2. **Review of master sign plans.**~~

~~a. All master sign plans shall be complete, as determined by the Planning Department, prior to submission to the Planning Commission for approval consideration. The Planning Commission shall have the authority to approve all master sign plans and amendments as provided for herein.~~

~~b. One copy of the master sign plan shall be submitted to the Planning Department for staff review at the time of initial submittal.~~

~~c. At the completion of the review period, the applicant shall be responsible for providing 13 complete copies incorporating any staff revisions.~~

~~3. **Appeals.** The applicant may appeal the Planning Commission's decision regarding a master sign plan to the Town Council, provided such appeal is furnished in writing to the Planning Department within 30 days of the Commission's decision. The applicant must clearly state the reasons for appealing the matter to Town Council. Upon receipt of a proper appeal notice from the applicant, the Planning Department will place the matter before the Town Council at its next available meeting for consideration. The Town Council may uphold, reverse, or modify the Commission's decision. The Town Council's decision on the appeal is final.~~

~~4. **Amendments to approved master sign plans.**~~

~~a. The Planning Director shall determine whether paragraph b below~~

is applicable in any given case. All changes to an existing master plan require a formal application with all required information, as determined by the Planning Department, to enable the staff and the Planning Commission to properly evaluate the requested change.

- b. Non-substantive deviations from approved master sign plans are permissible with approval from the Planning Director. A deviation is insignificant if it results in only minor changes to the master sign plan and to the overall appearance of the development (minor changes are defined as, but not limited to, sign size, letter styles, materials, etc.). Decisions shall be made on a case-by-case basis.
- c. Substantive modifications of an approved master sign plan greater in scope than what is described in paragraph b above are permissible only with the approval of the Planning Commission.

**5. Master sign plan requirements.**

- a. The master sign plan is a document combining text descriptions of the physical properties of all property signage and typical color graphics. Logo limited to 20 percent of the approved sign area. The master sign plan shall provide at least the following elements:
  - (1) A design review function is to be performed on behalf of the owner of the multi-tenant center. This may be achieved by designating an architect, landscape architect, or graphic designer as the official review person to which all proposed signage must be submitted by the tenants, prior to application for sign permits. Include the name, address, telephone and fax number for the designated review person. Written approval of the official reviewer shall be required in order to receive the individual sign permit.
  - (2) Color graphics and text description of the shopping center facade showing wall sign locations.
  - (3) Color graphics and text description of a wall sign, presenting the types of materials, colors, type style, minimum and maximum dimensions, and type of illumination.
  - (4) Color graphics and text description of each of the type styles and logos that comprise the chosen graphic theme or image that the shopping center is attempting to project.
  - (5) Color graphics and text description of any freestanding identification or multiple business sign, indicating the locations, actual materials, colors, type style, logos, dimensions, manner of attachment, and type of illumination, support walls with decorative caps, etc.
  - (6) A map indicating the location of all proposed signs. A section addressing the procedure each tenant must follow in order to secure a sign permit from the Town Planning Department.
  - (7) A section addressing changes and updates to the master sign plan.
  - (8) A text list of the types of prohibited signs.
  - (9) A statement that:

"Any change in a sign by any tenant from the approved master sign plan will cause a uniform change or will require the applicant to obtain a statement from the official review person which assesses the extent to which the variation



Article 7. General Development Standards

~~from the plan is in keeping with the intent and goals of the plan, and the extent to which the change is acceptable to the owner."~~

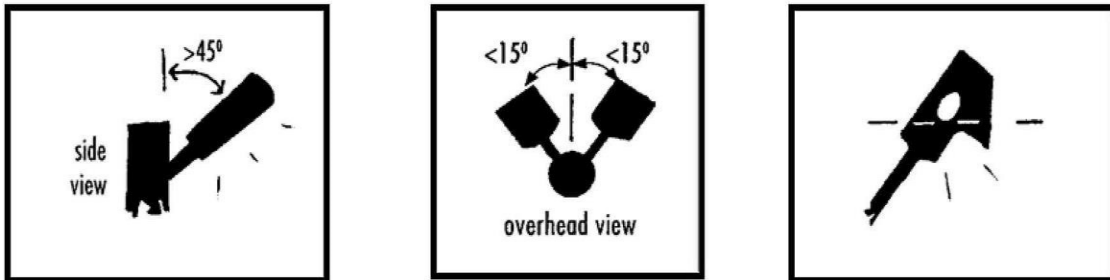
- ~~b. Proposed changes shall be submitted to the Planning Director, who shall determine whether they are "substantive" or "non-substantive" changes to the master sign plan. Non-substantive changes may be approved by the Planning Director; substantive changes require an amendment to the master sign plan submitted to the Planning Commission.~~

(Ord. No. 3376, § 17, 1-17-06; Ord. No. 3515, §§ 2, 3, 6-2-08; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3576, § 1, 3-1-10; Ord. No. 3618, § 1, 5-2-11; Ord. No. 3675, § 1, 10-1-12; Ord. No. 3714, § 1, 10-22-13; Ord. No. 38-01, § 5, 12-7-15)

**7.6. Outdoor lighting standards.**

- A. **Applicability.** The standards of this section shall not apply to:
1. Individual residential lighting that is not part of a site plan or subdivision plan.
  2. Lighting associated with temporary uses that have been permitted.
  3. Seasonal lighting that is part of customary holiday decorations and annual civic events.
  4. Lighting associated with sign illumination as set forth in Article 8.
  5. Municipal lighting installed for the benefit of public health, safety, and welfare.
- B. **Lighting plan.** Any proposed development requiring a site plan or subdivision plan shall include, as part of site plan or subdivision plan submission, a detailed exterior lighting plan. This plan shall include:
1. Specifications for the lighting fixtures such as: type of unit (cutoff, non-cutoff, glare shields, etc.), lamps (wattage, etc.), electrical load requirements, utility company involved, method of wiring, routing/location of lines, location of lights, and mounting heights.
  2. An iso-footcandle plan that shows typical foot-candle contours or a point photometric grid that indicates foot-candle levels measured at grade across the site. Other information such as: maximum, average, and minimum site foot-candles, uniformity ratio (average/minimum), and depreciation factors should also be included.
- C. **Final acceptance.** Before certificates of occupancy are released, the owner/builder must supply the Town with a final letter of certification from the lighting engineer, lighting manufacturer, or authorized lighting contractor verifying that all site lighting is installed according to Town standards, the approved plans, and any applicable conditions.
- D. **Street lighting.**
1. **Street lighting required.** All streets and sidewalks shall be sufficiently illuminated to ensure the security of the street right-of-way and safety of persons using such areas. To comply with this provision, the applicant shall coordinate with the utility company and the Town to see that all necessary facilities for the eventual installation of street lights are put in place.
  2. **Town responsibility.** The Town shall be responsible for requesting the utility company to install street lights. Such lights shall be consistent with the Town's standard street light package with regard to fixture type, intensity, pole type, length, and spacing.
  3. **Developer responsibility.** The developer shall be responsible for the placement and operation of necessary lighting in common areas not dedicated to public use. The developer shall also be responsible for the placement and operation of any streets lights placed in the public right-of-way that are not consistent with the Town's standard lighting package. Such lights shall be approved by the Town Engineer.
- E. **Site lighting design requirements.** All lighting fixtures designed or placed so as to illuminate any portion of a site shall meet the following requirements:
1. **Fixture (luminaire).** The light source shall be completely concealed within an opaque housing and shall not be visible from any street right-of-way. ~~The Planning Director may approve, at his or her discretion, alternative fixture types that have an opaque housing if it is designed to reduce/prevent light trespass and glare from being projected into adjoining properties or street rights-of-way. Additionally the Planning Director may allow the use of f~~Floodlights may be used in the rear of non-residential buildings that are not adjacent to residential uses or

residentially zoned properties and are not visible from public or private roadways ~~when it is determined thereif there~~ are not measurable impacts ~~to impacts that result to neighboring properties.~~ If floodlights are permitted, in addition~~al~~ to meeting the locational restrictions noted above, they shall be installed such that the fixture shall be aimed down at least 45 degrees from vertical. Flood lights and display lights shall be positioned such that any such fixture with a side-to-side horizontal aiming tolerance not to exceed 15 degrees from perpendicular to the right-of-way. Glare shields must be added to reduce glare ~~when specified by the Town of Garner Planning Director.~~



2. **Light source (lamp).** Only incandescent, LED, florescent, metal halide, or induction lighting may be used. High pressure sodium lighting may be used if approved by the permit issuing authority. The same type must be used for the same or similar types of lighting on any one site throughout any master-Planned Development. ~~The Planning Director is authorized to allow minor deviations from this requirement solely at his or her discretion based upon individual site conditions.~~
- 2.3. **Mounting.** Fixtures shall be mounted in such a manner that the cone of light directly under the fixture does not cross any property line of the site.
  - a. All outdoor lighting fixtures shall be located a minimum of ten feet from a property or right-of-way line, and should be kept out of and at least two feet away from any required perimeter or streetscape buffer, and tree save area. If forward throw fixtures are used the minimum setback distance may be reduced to a minimum of five feet from a property or right-of-way line ~~if such setback reduction is deemed appropriate by the Planning Director.~~
  - b. Lighting for outdoor display areas, such as auto dealerships, must be located inside the illuminated area or no more than ten feet away from the outside edge of the illuminated area so that the amount of direct glare and the visual field of view does not present a safety hazard to the passing motorist.
- 3.4. **Mounting heights.** Outdoor lighting fixtures shall be designed, located and mounted at heights no greater than:
  - a. Thirty feet above grade for non-cutoff lights; and
  - b. Thirty-seven feet above grade for cutoff lights.
  - c. Mounting height is measured from the finished grade or surface and includes the total height of the fixture, pole, and any base or other supporting structure required to mount the lights.
  - d. All wall packs must be full cut-off.
- 4.5. **Architectural/site compatibility.** Lighting fixtures shall be off a design and size compatible with the principal building of a development and adjacent areas, and shall be designed to be an integral part of the entire development site.
- 5.6. **Illumination levels.** All site lighting shall be designed so that the level of illumination as measured in foot-candles (fc) at any one point meets the

standards in the table below. The minimum light level for all illuminated areas shall be no less than 0.2 foot-candles maintained. Average level is a not to exceed value calculated using only the area of the site intended to receive illumination. It is recognized that the site lighting of some land uses may need to be evaluated on a case by case basis, therefore the ~~permit issuing authority~~BOA, via Variance, may allow deviations from these standards if it concludes that the objectives underlying these standards can be met without strict adherence to them, provided there are no excessive measurable impacts to adjoining properties that result and it finds that such deviations are more likely to satisfy the standards listed below.

**Note: Tables to follow on next page.**

Level of Activity	Horizontal Illumination (maintained f.c.)		
	Maximum	Average	Uniformity Ratio(average/minimum)
<b>HIGH:</b> Major athletic, cultural and civic facilities Regional retail Retail with drive-thru	9.0	3 to 5	4 to 1
<b>MEDIUM:</b> Cultural, civic and recreational facilities Residential complex Commercial, general	6.0	2 to 4	4 to 1
<b>LOW:</b> Neighborhood retail Industrial facilities Educational facilities Churches	5.0	1.5 to 3	4 to 1
Location	Horizontal Illumination (average)	Uniformity Ratio (initial foot-candles)	
Active entrances and vital locations (security)	5.0	4 to 1	
Inactive entrances	1.0	4 to 1	
Private sidewalks (residential)	0.3	4 to 1	
Private sidewalks (nonresidential)	0.8	6 to 1	
Vehicular use area (service areas, approach ways, private access roads, etc.)	1.0	4 to 1	
Storage yards (active)	5.0	6 to 1	
Storage yards (inactive)	1.0	6 to 1	
Loading docks and platforms	15.0	2 to 1	
Vehicle sales and display	20.0	2 to 1	

Recreational areas (fields, playgrounds, courts)	20.0	4 to 1
--	------	--------

**F. Lighting required for specific uses.**

1. Roads, driveways, sidewalks and parking lots. All roads, driveways, sidewalks and parking lots shall be sufficiently illuminated to ensure the security of property and safety of persons using such areas and facilities. Where such roads, driveways, sidewalks or parking lots fall on private property, the responsibility for lighting such areas shall fall upon the developer.
2. Entrances and exits in nonresidential and multifamily projects. All entrances and exits in buildings used for nonresidential purposes and open to the general public, along with all entrances and exits in multifamily residential buildings containing more than four units, shall be adequately lighted to ensure the safety of persons and the security of the building.
3. Canopy area lighting. All development that incorporates a canopy area over fuel sales, automated bank machines, or similar installations shall use recessed a lens cover is flush with the bottom surface of the canopy that provides a cutoff or shielded light distribution. Areas under a vehicular canopy shall have an average of 12 foot-candles as measured at ground level at the inside of the outside edge of the canopy.

**G. Roof lighting.**

**Commentary: Many businesses use tasteful roof lighting not only to increase the visibility of their establishments, but to add visual structure to the nighttime sky of the Town. This section is intended to prevent gaudy, harsh, glaring, loudly contrasting and otherwise distasteful roof lighting within the Garner planning jurisdiction.**

1. Application.
  - a. An application for a permit authorizing a project including the use of roof lighting shall include a roof lighting plan containing sufficient information to determine whether the roof lighting, if installed as proposed, will meet the standards and intent of this section.
  - b. Whenever a roof lighting plan is submitted pursuant to this section, it may be referred to the Planning Commission to obtain the Commission's recommendation on the compliance of the plan with this section.
2. Roof lighting standards.
  - a. All bulbs or tubing shall be encased so that the bulb is not naked and that direct glare is prevented.
  - b. Complete outlining of the roof is not permitted.
  - c. Lights shall not run along the highest peak of a roof line, except that perimeter lighting around the top of a flat roof is allowed.
  - d. Roof lighting that qualifies as a sign under this UDO is prohibited.

**H. Excessive illumination.**

1. Lighting within any lot that unnecessarily illuminates and substantially interferes with the use or enjoyment of any other lot is prohibited. Lighting unnecessarily illuminates another lot if it clearly exceeds the requirements of this section, or if the standard could reasonably be achieved in a manner that would not substantially interfere with the use or enjoyment of neighboring properties.
2. Lighting shall not be oriented so as to direct glare or excessive

illumination onto streets in a manner that may distract or interfere with the vision of drivers on such streets.

3. Illumination using bare illuminated tubing or strings of lights that completely outline or define property lines, sales areas, roofs, doors, windows or similar areas in a manner that is not primarily for safety purposes is prohibited.

**I. Special requirements in the Timber Drive Overlay District.**

1. A site lighting plan must be provided as part of any development plan submittal for property within the overlay district and shall contain the following information:
  - a. Lighting plan shall be superimposed on the site plan with the location of all poles and fixtures and reference for the height of each fixture, including a specification detail; and
  - b. The distribution and intensity levels of illumination for each fixture producing a contour diagram of the light intensity delineated in foot-candle measurements must be indicated.
2. The following are lighting standards for new development within the Timber Drive Overlay District.

Standard	
<b>Type of fixture</b>	High Pressure Sodium, <u>LED</u> , or alternative authorized by the permit- issuing authority with cut-off (no glare on streets or outside boundaries of the lot is permissible)
<b>Height</b>	Maximum of 37 feet
<b>Foot-candle</b>	Not to exceed 250 watts ( <u>incandescent light equivalent</u> ) at perimeter of lot; average foot-candle on interior lot areas not to exceed an average of three foot- candles

3. ~~The permitting authority BOA, via Variance, may approve deviations from these presumptive standards if it concludes that objectives underlying these standards can be met without strict adherence to them, provided there are no excessive measurable impacts to adjoining properties and it finds that such deviations are more likely to satisfy the above noted standards.~~
4. ~~Any exterior lighting planned on a building must be approved by the permit issuing authority and shall exclude excessive and garish lighting schemes as determined by the permit issuing authority.~~

**J. Special requirements in the U.S. 70/401 Thoroughfare Overlay.**

1. A site lighting plan must be provided as part of any development plan submittal for property within the overlay district. Such plan and shall meet the following information.
  - a. A lighting plan shall be superimposed on the site plan with the location of all poles and fixtures and reference for the height of each fixture, including a specification detail.
  - b. The distribution and intensity levels of illumination for each fixture producing a point-by-point foot-candle plan at intervals no greater than 20 feet.
  - c. The plan should include average foot-candles maintained and the average to minimum ratio.
2. The following lighting standards for new development shall apply within the U.S. 70/401 Thoroughfare Overlay District.

Standard	
----------	--

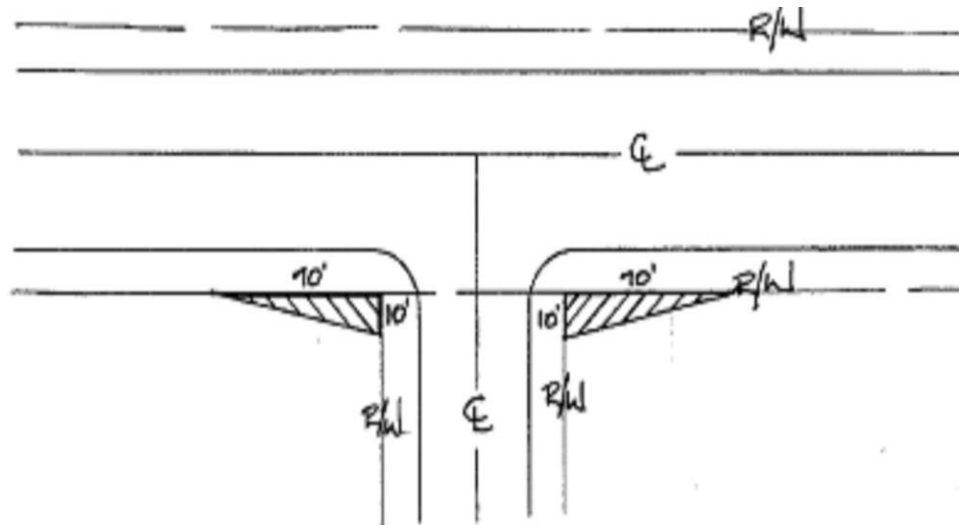
<b>Type of fixture</b>	Cut-off Control Fixtures Recommended; Semi-cutoff Fixtures may be considered if appropriate
<b>Height</b>	Maximum of 37 feet
<b>Foot-candle</b>	Average maintained foot-candle not to exceed an average of 5 foot-candles; average to minimum ratio 4:1 to maintain uniformity; spill over adjacent property not to exceed .2 foot-candles

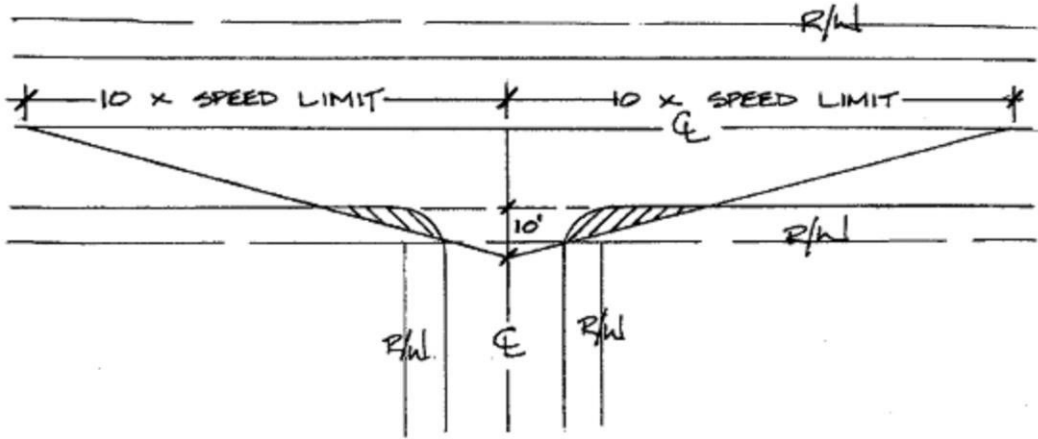
3. The permitting authority may approve deviations from these presumptive standards if it concludes that the objectives underlying these standards can be met without strict adherence to them, and that there are no excessive measurable impacts to adjoining properties, and it finds that such deviations are more likely to satisfy the above noted standards.
4. ~~Any exterior lighting planned on a building must be approved by the permit issuing authority and shall exclude excessive and garish lighting schemes as determined by the permit issuing authority.~~

(Ord. No. 3396, § 14, 4-3-06)

**7.7. Access standards.**

- A. **On N.C. DOT streets (both sides).** From right-of-way line of street, along right-of-way of driveway or street to a point ten feet from the intersection of the right-of-way; from same point, along right-of-way 70 feet; with remaining side connecting these two points. These sight triangles shall be kept clear of any such visual obstructions between two and one-half feet and ten feet in height.
- B. **On all streets.** From right-of-way line of street, along centerline of driveway or street to a point ten feet from the intersection of the centerline and the back of curb; from same point, along the center of travel lane a distance of ten times the posted speed limit; with remaining side connecting these two points. These sight triangles shall be kept clear of any such visual obstructions between two and one-half feet and ten feet in height.







## 8.1. APPLICABILITY OF ARTICLE

This article shall apply to all development within the Town's planning jurisdiction.

## 8.2. STREETS.

### 8.2.1. Street classification.

- A. In all new subdivisions, streets that are dedicated to public use shall be classified as provided in ~~paragraph 2.~~ subsection B, below.
1. The classification shall be based upon the projected volume of traffic to be carried by the street, stated in terms of the number of trips per day or during the peak hour of the day;
  2. The number of dwelling units to be served by the street may be used as a useful indicator of the number of trips but is not conclusive; and
  3. Whenever a subdivision street continues on an existing street or it is expected that a subdivision street will be continued beyond the subdivision at some future time, the classification of the street will be based upon the street in its entirety, both within and outside of the subdivision.
- B. Street types:
1. Major thoroughfare. A street serving the principal network for high volumes of traffic or high speed traffic as shown on the Town of Garner Transportation Plan. This street type consists of at least two travel lanes in each direction. A major thoroughfare shall be designated where the anticipated average daily volume exceeds 10,000 vehicles. Residences should not front on a major thoroughfare.
  2. Minor thoroughfare. A street designed primarily to collect and distribute traffic between local streets or areas and the major thoroughfare network as shown on the Town of Garner Transportation Plan. This street type generally consists of more than one travel lane in each direction. A minor thoroughfare shall be designated where the anticipated average daily volume ranges exceeds 6,000 vehicles. Residences should not front on a minor thoroughfare.
  3. Collector street. A street whose principle function is to carry traffic between local streets and major and minor thoroughfare streets but that may also provide direct access to abutting properties. This street type generally consists of one travel lane in each direction and may include on-street parking. A collector street shall be designated where the anticipated average daily volume exceeds 2,000 vehicles. Residences may front on a collector street. The Town may require a collector street to meet continuation, connectivity or spacing requirements.
  4. Local streets. A street whose primary function is serving adjacent land users. This street type generally consists of one travel lane in each direction and may include on-street parking. A local street generally carries an anticipated average daily volume that exceeds 500 vehicles. Residences should front on a local street.
  5. Cul-de-sac. A short local street having one end open to traffic and the other permanently terminated by a vehicular turn-around.

6. Service drive (alley). A public vehicular way used for providing service access along rear or side property lines of lots which are also served by one of the previously listed street types. Alleys are not intended to accommodate through traffic.
7. Access easement. An access easement is intended to provide connections to landlocked properties created prior to the adoption of land use ordinance requirements in the Town in 1984. It may also, in rare cases, be used to provide access for a new subdivision not to exceed three lots.
8. Frontage road. A street that is parallel to and adjacent to a major or minor thoroughfare street and that is designed to provide access to abutting properties.

### 8.2.2. Access to public streets in general.

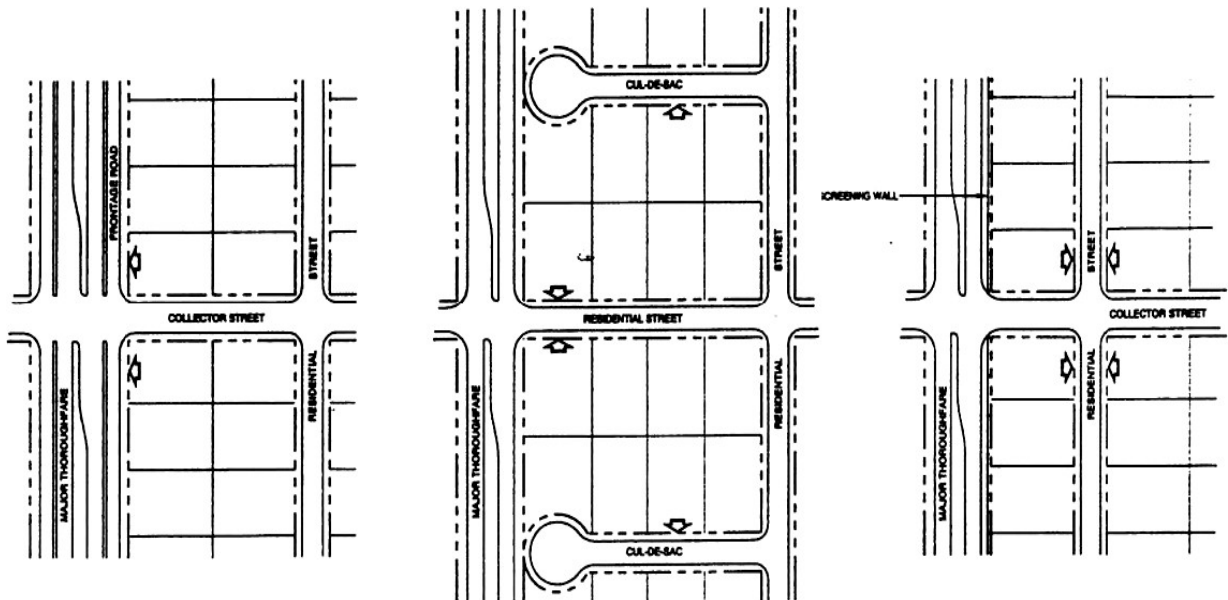
- A. Every lot shall have either direct or indirect access to a public street. A lot has direct access to a public street if a sufficient portion of a boundary of the lot abuts the public street right-of-way so that an access way meeting the criteria set forth in ~~paragraph 2~~ this section ~~below~~ can be established. A lot has indirect access if it connects to a public street by means of one or more private roads that are of sufficient size to meet the criteria for a public access easement. A sufficient portion of a boundary is 20 feet; however, this is a presumptive standard and greater or lesser frontage may be necessary to meet the criteria of ~~paragraph 2 below~~ this section and the provisions of ~~Article 6~~ this UDO.
- B. Access must provide a reasonable means of ingress and egress for emergency vehicles as well as for all those likely to need or desire access to the property in its intended use.

### 8.2.3. Access to major thoroughfares.

- A. Whenever a subdivision that involves the creation of one or more new streets borders on or contains an existing or proposed thoroughfare street, no direct driveway access may be provided from lots within the subdivision onto this street.
- B. When a lot or development borders on or contains an existing or proposed thoroughfare as delineated by the Transportation Plan access to the thoroughfare may be limited by one of the following means:
  1. Driveway access between the lot and the thoroughfare shall be located not closer than 400 feet to the nearest centerline of any other proposed or existing driveway access along the same side of the thoroughfare.
  2. Lots shall be subdivided so as to provide access onto a frontage road or reverse frontage road. The centerline of the frontage or reverse frontage road where it intersects the thoroughfare shall be no closer than 800 feet to the centerline of the nearest proposed or existing driveway access or road.
  3. Approval of driveway access between a lot and the thoroughfare at an interval less than those specified herein may be granted only by review and recommendation of the Town Engineer and the Division of Highways of the North Carolina Department of Transportation.
  4. Driveway access closure may be required for any change in use of a lot based upon review and recommendation of the Town Engineer and the Division of Highways of

the North Carolina Department of Transportation.

5. Road widening and right-of-way dedication shall be required to be consistent with the recommendations of the adopted CAMPO Transportation Plan or Garner Transportation Plan.
  6. Notwithstanding any other provisions of this section, the driveway access provisions shall not be applicable to any subdivision lot where:
    - a. The effect of such application would be to deprive the lot of reasonable access; or
    - b. The size of the tract being subdivided, or lack of frontage on the thoroughfare makes the alternatives above not feasible.
- C. No building permit shall be issued until submitted site development plans have been approved as complying with the major thoroughfare access requirements of this UDO.
- D. No certificate of compliance may be issued until the major thoroughfare access requirements of this UDO have been complied with in full.
- A. **Access to minor thoroughfares.** All access to minor thoroughfares shall occur in accordance with the following illustrations.
1. **Provision of a frontage road.** Lots may take direct access onto a frontage road.
  2. **Provision of cul-de-sac.** Lots may take indirect access by fronting on cul-de-sac.
  3. **Change of lot orientation.** Lots may front on a parallel residential street.



**B. DRIVEWAYS AND OTHER ENTRANCES TO STREETS.**

1. All driveway entrances and other openings onto streets within the Town's

planning jurisdiction shall be constructed so that:

- a. Vehicles can enter and exit from the lot in question without posing any substantial danger to themselves, pedestrians, or vehicles traveling in abutting streets; and
  - b. Interference with the free and convenient flow of traffic in abutting or surrounding streets is minimized.
2. As provided in G.S. 136-93, no person may construct any driveway entrance or other opening onto a state maintained street except in accordance with a permit issued by the North Carolina Department of Transportation.
  3. All commercial or industrial development shall require a paved driveway.
  4. The design of entrance drives in industrial subdivisions shall be based upon the development standards detailed in Chapter 2 of Policy on Geometric Design of Highways and Streets by AASHTO (American Association of State Highway and Transportation Officials), dated 1984.
  5. For lots within industrial subdivisions with access onto existing, anticipated or proposed collector streets, the entrance drives shall be developed so turning movements will not encroach onto opposing travel lanes on the collector roadway or the drive through the property.

#### **8.2.4. Coordination with surrounding streets.**

- A. The street system of a subdivision shall be coordinated with existing, proposed and anticipated streets outside the subdivision (hereinafter, surrounding streets) as provided in this section.
- B. Collector streets shall intersect with surrounding collector or thoroughfare streets at safe and convenient locations.
- C. In order to accommodate emergency and service vehicles, the following standards shall apply.
  1. Any subdivision of greater than 75 lots shall include at least two access points to the collector and thoroughfare street network via public streets or private streets built to public standards.
  2. No more than 75 certificates of occupancy may be issued within the subdivision until the required secondary access has been constructed or bonded for construction.
  3. Subdivisions of 250 or more lots shall provide three separate access points. Where three or more access points are required, the Town Engineer may waive the requirement for immediate construction of more than two access points, provided that subdivision phasing and design illustrates the additional required connections.
  4. For those subdivisions large enough to require a third access, a stub-out street may be credited as a required access if the two functioning access roads are both connected to a collector road.

5. Where acceptable to the Town of Garner Fire Official, secondary private access points may be gated.
  6. A waiver of these standards may be allowed by the permit issuing authority during approval of the preliminary subdivision plat or site plan only in extreme cases where limited frontage, natural features (slope, topography), or similar circumstances preclude the required connections and there is no substantial impact noted regarding emergency service delivery.
- D. Local residential streets shall connect with surrounding streets where necessary to permit the convenient movement of traffic, or to facilitate access to neighborhoods by emergency service vehicles, or for other sufficient reasons, but connections shall be designed to avoid the use of such streets by substantial through traffic.
  - E. Whenever connections to anticipated or proposed surrounding streets are required by this section, the right-of-way shall be extended and the street developed to the property line of the subdivided property (or to the edge of the remaining undeveloped portion of a single tract) at the point where the connection to the anticipated or proposed street is expected. A sign at the end of the street stub describing the street extension and Type III barriers may be required by the Town Engineer. ~~The permit-issuing authority may also require t~~Temporary turn-arounds are required to be constructed at the end of such streets pending their extension when such turn-arounds appear necessary to facilitate the flow of traffic or accommodate emergency or service vehicles. Notwithstanding the other provisions of this subsection, no temporary dead-end street in excess of 1,000 feet may be created unless no other practicable alternative is available.
  - F. The street system of the industrial subdivision shall be designed to connect into existing, proposed or anticipated streets outside the subdivision. In cases where the connections to an anticipated or proposed surrounding street are called for but the streets are not designated for immediate construction, then the right-of-way shall be extended to the property line of the subdivided property (or to the edge of the remaining undeveloped portion of the tract) at the point where the connection to the anticipated or proposed street is expected. In lieu of the actual construction of the connection street, ~~the Planning Director may require temporary turn-arounds t~~temporary turn-arounds may be constructed at a location which facilitates the flow of traffic inside the subdivision and accommodates emergency and service vehicles. No temporary dead-end streets in excess of 1,000 feet may be created unless no other practical alternative is available.

#### 8.2.5. Relationship of streets to topography.

- A. Streets shall be designed to relate appropriately to the topography of a site. In particular, streets shall be designed to facilitate the drainage and stormwater runoff objectives in ~~this Article~~Subsection O., and, subject to the design requirements relating to maximum grades ~~set forth in paragraph 2. Below~~, street grades shall conform as closely as practicable to the original topography.
- B. The maximum grade for street construction shall meet design requirements of the North Carolina Department of Transportation. However, in no case may streets be

constructed with grades that, in the professional opinion of the Town Engineer, create a substantial danger to the public safety or cause any substantial degradation to the street or drainage system.

- C. Construction standards and specifications. Construction standards and specifications shall be determined by the Town Engineer. The geometric layout of all streets shall meet or exceed N.C. DOT requirements.

**8.2.6. Right-of-way and street width standards.**

- A. General intent. Streets and rights-of-way within the Town of Garner are intended for multi-purpose use, as follows:
  - 1. To carry motor vehicle traffic, and, in some cases, allow on-street parking;
  - 2. To provide a safe and convenient passageway for pedestrian traffic; and
  - 3. To serve as an important link in the Town's drainage system.
- B. Right-of-way standards by type of development. Street widths shall be measured from back of curb to back of curb.

Street Type	Right-of-Way	Width (Back of Curb)	Gutter	Sidewalk
Access Easement Landlocked Parcel (1 lot)	20 feet	10 feet	--	--
New Subdivision (max. 3 lots)	20 feet	16 feet	2-foot shoulder, each side	--
Alley	20 feet	12 feet		--
Local (and cul-de-sac)	55 feet	29 feet	2 feet	5 feet, one side
Collector	60 feet	32 feet	2 feet	5 feet, both sides

Lake Benson Conservation District::				
Street Type	Right-of-Way	Width (Back of Curb)	Gutter	Sidewalk
Collector	60 feet	26 feet	Roll Type	5 feet, both sides
Local	50 feet	26 feet		5 feet, one side
Rural Streets*	60 feet	20 feet (no curb)	6-foot shoulder,	--

			each side	
Minor/Major Thoroughfare	Build to NCDOT standards. No driveway access for lots in a residential subdivision.			

\* Note: Rural street type shall not be used where public water or wastewater utility service is available.

**8.2.7. Other right-of-way standards.**

A. Access easements.

1. A recorded access easement option is available for existing landlocked lots only; nothing in this section is intended to allow approval of new lots with easement frontage and access only.
2. In RMH districts, every lot or rental space shall have at least 20 feet of frontage on either a public street or a private drive, measured at the street right-of-way line or private drive "reserved area" limit.
3. The minimum acceptable access easement width shall be 20 feet.
4. The access easement shall be paved with, at minimum, gravel three to six inches in depth and 16 feet in width running down the center of the easement.
5. A full shoulder and ditch section shall be required on the subject property.

B. Arterials and thoroughfares. Arterial and thoroughfare right-of- way widths shall be as determined by the Town in consultation with N.C. DOT. The geometric layout shall meet or exceed N.C. DOT standards.

**8.2.8. Curb and gutter.**

- A. All public streets within the Town or its extra-territorial zoning jurisdiction shall be constructed with curb and gutter section as provided for in this ordinance and the Town of Garner Standard Construction Details.
- B. The Town Council may allow non curb and gutter street construction in residential projects developed at rural densities of one dwelling unit per 30,000 square feet or greater without the provision of sidewalks or in non- residential projects under the following conditions:
  1. Such project is located outside of the Town limits but within the Towns extraterritorial jurisdiction;
  2. There is no connection to municipal water or sewer proposed;
  3. This type of alternative street construction will not create significant storm water drainage impacts to surrounding areas;
  4. It may be applied only to local streets or cul-de-sac where the grade does not exceed eight percent;
  5. Streets with non curb and gutter sections shall have a minimum right-of-way width of 60 feet and;

6. Streets with non curb and gutter sections shall have a minimum pavement width of 20 feet with eight- foot wide shoulders with drainage swales on each side. All non curb and gutter streets shall be constructed in accordance with the specifications in Appendix C. The non curb and gutter street construction provisions of this subsection shall not apply to streets in cluster developments, instead all streets in cluster development shall have curb and gutter construction as provided for in Article 6.

#### **8.2.9. Major or minor thoroughfare dedication.**

- A. Whenever a subdivision is developed in an area through which a proposed major or minor thoroughfare passes, according to the officially adopted CAMPO Transportation Plan or Garner Transportation Plan, then the developer shall dedicate to the Town a right-of-way as set forth in such plan and shall construct within such right-of-way a street meeting the specifications set forth in this section for a collector street.
- B. Whenever a subdivision or new development fronts along an existing major or minor thoroughfare, the development shall dedicate one-half of the right-of-way required for the appropriate street type and build at least one-half of the recommended cross-section as shown in the CAMPO Transportation Plan or the Garner Transportation Plan unless the subdivision or development does not propose street or driveway access to said thoroughfare. When the total peak hour trip generation according to the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual does not exceed a total of 50 trips for a project, the permit issuing authority may require only that a deceleration lane without curb and gutter construction be installed in lieu of full widening.

#### **8.2.10. General layout of streets.**

- A. Local residential streets shall be laid out so as to avoid conformity of lot appearance.
- B. Cul-de-sac streets shall be laid out only in limited instances where they are required to provide access to land which cannot be served by a loop or other street design solution.
- C. Traffic calming measures, including improved street network design and other technical solutions such as traffic circles and other natural calming measures may be used to limit cut-through traffic if approved by the Town Engineer.
- D. To the extent practical, driveway access to collector streets shall be minimized to facilitate the free flow of traffic and avoid traffic hazards.
- E. Half streets (i.e., streets of less than the full required right-of-way and pavement width) shall not be permitted.
- F. Streets shall intersect as nearly as possible at right angles, and no two streets may intersect at an angle of less than 80 degrees. Not more than two streets shall intersect at any one point, ~~unless the permit issuing authority concludes, based on engineering review, that such an intersection can be constructed with no extraordinary danger to public safety.~~
- G. Whenever possible, proposed intersections along one side of a street shall coincide with existing or proposed intersections on the opposite side of such street. In any



event, where a centerline offset (jog) occurs at an intersection, the distance between centerlines of the intersecting streets shall be not less than 150 feet unless the Town Engineer concludes that a shorter distance will not adversely affect public safety.

- H. No two streets may intersect with any other street on the same side at a distance of less than 400 feet measured from centerline to centerline of the intersecting street. When the intersected street is a major thoroughfare, the distance between intersecting streets shall be at least 1,000 feet wherever practicable.
- I. Local circulation systems and land development patterns should not detract from the efficiency of adjacent major streets.
- J. To discourage excessive speeds, residential streets should be designed with curves, changes in alignment and short lengths. Residential streets should not be designed to be wider than is necessary.

### 8.3. DETAILED DESIGN OF STREETS.

#### 8.3.1. Local streets.

Local streets shall be designed to provide parking unless an alley is provided. Streets shall be laid out so that residential blocks do not exceed 1,000 feet, unless no other practicable alternative is available.

#### 8.3.2. Cul-de-sac streets.

- A. All permanent dead-end streets, as opposed to temporary dead- end streets, shall be developed as cul-de-sac in accordance with the standards set forth in the table below.
- B. ~~The permit issuing authority may require a~~ A minimum 30' wide pedestrian or bikeway connection with sidewalk is required through a cul-de-sac when the following criteria occur:
  - 1. the cul-de-sac is within 350' of the street to which the connection will provide access, and
  - ~~B.2. the cul-de-sac is within ½ mile straight-line distance of~~ helps provide a connection to a pedestrian traffic generator such as a school, public park or open space, library or recreation facility, or a shopping, office or governmental facility or district.
- C. The minimum right-of-way for cul-de-sac turnarounds shall be 100 feet in conventional subdivisions and 80 feet in cluster developments. Two types of cul-de-sac are permitted:
  - 1. A standard fully paved turn-around shall have a minimum pavement diameter of 80 feet in conventional subdivisions and 60 feet in cluster developments both measured back of curb to back of curb.
  - 2. Turn-arounds with one way travel lanes and unpaved centers shall have a minimum travel lane pavement width of 24 feet in conventional subdivisions and 20 feet in cluster developments. Unpaved centers of turn-arounds in all types of developments shall be landscaped.
- D. Streets shall be laid out so that residential blocks do not exceed 1,000 feet, unless no

other practicable alternative is available. Cul-de-sac requirements are set forth in the table below. The ~~permit-issuing authority~~BOA, via Variance, may allow cul-de-sac lengths in residential developments to exceed the maximum length allowable when there is no other practical alternative available due to steep slopes or other environmental restrictions (floodplains, buffer areas, etc.) In no case shall the length exceed 500 feet.

Type Subdivision	Type Street	Max. Length Cul-de-Sac	R/W Width Turn-Around	Pavement Width	Curb Type
Industrial	Curb & Gutter	580 ft.	100 ft.	80 ft. back to back	90 degrees
	Ditch Section		120 ft.		8 ft. shoulders & swales
Conventional	Curb & Gutter	200 ft.	100 ft.	80 ft. back to back	90 degrees
	Ditch Section		120 ft.		8 ft. shoulders & swales
Cluster	Curb & Gutter	200 ft.	80 ft.	60 ft. back to back	90 degrees
	—		80 ft.		8 ft. shoulders & swales
Lake Benson Conservation District	Curb & Gutter	200 ft.	100 ft.	80 ft. back to back	Roll Type
	Ditch Section		120 ft.		8 ft. shoulders & swales

**8.3.3. Exceptions to street standards.**

- A. Only standard 90-degree curb shall be used in conventional subdivisions located outside the Lake Benson Conservation District.
- B. Roll type curb and gutter construction may be allowed in lieu of a ditch section as an option in the Lake Benson Conservation District in developments where all street surface runoff is diverted to permanent retention ponds constructed in accordance with the provisions of Article 7.

- C. In cluster developments, the type of curb and gutter section shall be standard 90-degree curb unless an alternative curb and gutter section which adequately provides for proper drainage, access and maintenance needs is approved by the Town Engineer.
- D. Within the Lake Benson Conservation District all roads shall be constructed and paved to the Town of Garner standards. No unimproved or gravel roads are permitted, with the exception of farm roads.
- E. The entrance of unpaved residential driveways shall be graveled for an area of 30 feet in length and ten feet in width, with a six-inch depth of stone. Roads, streets and driveways shall be designed to avoid direct runoff into streams through dispersion onto grassed and vegetated areas wherever possible.

#### 8.3.4. Private roads.

- A. Except as provided in this section, all streets in subdivisions shall be constructed according to Town of Garner public street standards and shall be offered as a public street dedication to the Town. Unless the recorded plat of a subdivision clearly indicates a street to be private, the recording of such plat shall constitute an offer of dedication of such streets.
- B. A new subdivision shall be served by a private road where it contains three lots or less. A private road serving greater than three lots shall be built in accordance with public street standards. The Town shall have the discretion to require a public street connection for safety or access purposes.
- C. No final plat that shows lots served by private roads may be recorded unless the final plat contains the following notations:
  - 1. Further subdivision of any lot shown on this plat as served by a private road may be prohibited by the Town of Garner UDO.
  - 2. The policy of the Town of Garner is that, if the Town improves streets:
    - a. That were never constructed to the standards required in the Town of Garner Unified Development Ordinance for dedicated streets or its precedent; and
    - b. On which 75 percent of the dwelling units were constructed after July 1,1981; 100 percent of the costs of such improvements shall be assessed to abutting landowners.
- D. The recorded plat of any subdivision that includes a private road shall clearly state that such road is a private road. Further, the initial purchasers of a newly-created lot served by a private road shall be furnished by the seller with a disclosure statement outlining the maintenance responsibilities for the road, in accordance with the requirements set forth in G.S. 136-102.6. The intention of this subsection is to afford the same protection to purchasers of lots on private roads within the Town as is provided to purchasers of lots outside the Town by G.S. 136-102.6.
- E. All private roads shall be maintained in accordance with Town of Garner standards.
- F. Where private roads are later made public through dedication to the Town, such roads shall be brought up to public standards, including maintenance, prior to their acceptance by the Town.

### 8.3.5. Sidewalks.

- A. Sidewalks required.
- B. The developer of any subdivision with frontage on any street identified as meeting the criteria set out in ~~paragraph 2~~this section. below shall provide for the construction of public sidewalks in accordance with the Town standards across the entirety of such frontages. Subdivision exemptions are excluded from this requirement.
- C. Sidewalks shall be constructed to allow easy continuation by adjacent properties and to form a safe and convenient network for users.

### 8.3.6. Criteria for sidewalks.

The developer shall be responsible for constructing a sidewalk in the public right-of-way, or, where required by topography or other circumstances in duly obtained public easements approved by the Town Council, and along every street upon which the property fronts and along every new street within the development according to the following criteria:

- A. Public sidewalks shall be constructed on both sides of a road or street with four or more lanes; and
- B. Public sidewalks shall be constructed on one side of a road or street designated as a local street, cul-de-sac, and both sides of a street designated as a collector.

### 8.3.7. Fee-in-lieu of sidewalk construction.

For streets meeting any combination of the categories in ~~paragraph 2. Above~~the previous section, the developer may propose to pay a fee in lieu of sidewalk construction, based on the then current estimated per-foot cost of construction, if a particular street frontage qualifies under one or more of the following:

- A. Extenuating circumstances, documented by the developer and mutually acceptable to the Town which makes sidewalk construction along a particular frontage impractical or unreasonable at the time of the development's construction;
- B. A capital improvements program schedule that calls for the installation of sidewalk improvements by the Town along a particular frontage; or
- C. The Town Council has made a decision that sidewalks are only to be provided along the opposite side of the street. Such fees shall be held by the Town in a restricted sidewalk construction account.

### 8.3.8. Previously constructed sidewalks.

Where the sidewalk which a developer would otherwise be required to construct, or pay a fee-in-lieu of constructing pursuant to other sections in this UDO, has previously been constructed by the Town, the permitting authority shall determine during site plan review whether the developer's compliance with this subsection shall be accomplished by a re-design and reconstruction of said sidewalk, or by the payment of a fee-in-lieu in accordance with the then current Town schedule of fees.

**8.3.9. Sidewalk width.**

Public sidewalks in all developments shall be at least five feet in width.

**8.3.10. Construction standards.**

Sidewalks and walkways required by this section shall be constructed according to the specifications of the Town of Garner Standard Construction Details except that the ~~permit issuing authority~~ Town Engineer may permit sidewalks and walkways to be constructed with other materials when it concludes that:

- A. Such sidewalks would serve the residents of the development as adequately as concrete sidewalks;
- B. Such sidewalks would be more environmentally desirable or more in keeping with the overall design of the development; or
- C. Such sidewalks could be maintained as adequately as concrete sidewalks.
- D. Whenever the permit-issuing authority finds that a means of pedestrian access is necessary from the subdivision to schools, parks, playgrounds or other facilities within ½ mile distance, or roads within 350 feet distance, and that such access is not conveniently provided by sidewalks adjacent to the streets, the developer shall be required to provide an unobstructed easement of at least ten feet in width and a sidewalk through the easement to provide such access.

**8.3.11. Unpaved roads to be paved prior to annexation.**

Where a property that is annexed after the effective date of this UDO uses nonconforming gravel roads to provide access, such roads shall be paved at the landowner's expense in accordance with Town specifications within 30 days of annexation. This requirement shall not apply to any roads permitted to be gravel by this section.

**8.3.12. Road and sidewalk requirements in unsubdivided developments.**

- A. Within unsubdivided developments, all private roads and access ways shall be designed and constructed to facilitate the safe and convenient movement of vehicular and pedestrian traffic. Width of roads and use of curb and gutter shall be determined based on the density, size and type of development. The Town Engineer shall determine appropriate road widths and paving specifications based on the street classification system in Section 8.2. To the extent not otherwise covered in the articles, and to the extent that the requirements set forth in this article may be relevant to the roads in unsubdivided developments, the requirements of this article may be applied to satisfy the standard set forth in the first sentence of this subsection.
- B. Whenever a road in an unsubdivided development connects two or more collector, or major thoroughfare streets in such a manner that any substantial volume of through-traffic is likely to make use of this road, such road shall be constructed in accordance with the standards applicable to subdivision streets and shall be dedicated. In other cases when roads in unsubdivided developments within the Town are constructed in accordance with the specifications for subdivision streets, the Town may accept an

offer of dedication of such streets.

- C. Whenever a development fronts along an existing major or minor thoroughfare, the development shall dedicate one-half of the right-of-way required for the appropriate street type and build at least one-half of the recommended cross-section as shown in the CAMPO Transportation Plan or the Garner Transportation Plan unless the development does not process street or driveway access to said thoroughfare.
- D. The developer(s) of any land in a location which meets the criteria established in ~~paragraph N.~~ of this section shall provide for the construction of sidewalks or, ~~as per paragraph N.,~~ pay a fee in lieu of construction, in accordance with Town standards across the entirety of such frontages and along any new streets within the development. The residential development of one duplex or single-family dwelling on an existing lot is excluded from this requirement, unless sidewalks about the property line, in which case, sidewalks shall be required.
- E. In all unsubdivided multifamily residential developments, private walkways shall be provided linking dwelling units with other dwelling units with the public street frontage and with on-site activity centers such as parking areas, laundry facilities and recreational areas and facilities. Such walkways shall not be required for developments of 25 or fewer units in which all units have direct access to an interior private drive or public street.
- F. Whenever the permit-issuing authority finds that a means of pedestrian access is necessary from an unsubdivided development to schools, parks, play-grounds or other facilities within ½ mile distance, or roads within 350 feet, and that such access is not conveniently provided by sidewalks adjacent to the roads, the developer shall be required to provide an unobstructed easement of at least ten feet and construct a sidewalk to provide such access.
- G. The public sidewalks required in ~~paragraph N.~~ of this subsection shall be at least five feet wide and those private walkways required in ~~paragraph N.~~ this subsection shall be at least four feet wide, except for walkways constructed along the back of parking bays which shall be at least six feet in width in order to accommodate vehicle overhang, unless wheel stops are placed at the ends of these parking spaces, in which case sidewalks shall be at least four feet in width.
- H. Sidewalks and walkways required by this subsection shall be constructed according to the specifications set forth in Appendix B, except that the ~~permit-issuing authority~~ Town Engineer may permit sidewalks and walkways to be constructed with other materials when it concludes that:
  1. Such sidewalks would serve the residents of the development as adequately as concrete sidewalks;
  2. Such sidewalks would be more environmentally desirable or more in keeping with the overall design of the development; or
  3. Such sidewalks could be maintained as adequately as concrete sidewalks.

**8.3.13. Attention to handicapped in street and sidewalk construction.**

- A. As provided in G.S. § 136-44.14, whenever curb and gutter construction is used on

public streets, wheelchair ramps for the handicapped shall be provided at intersections and other major points of pedestrian flow. Wheelchair ramps and depressed curbs shall be constructed in accordance with published standards of the North Carolina Department of Transportation, Division of Highways.

- B. In unsubdivided developments, sidewalk construction for the handicapped shall conform to the published standards of the North Carolina Department of Transportation, Division of Highways.

**8.3.14. Public utility easements.**

- A. All public utility easements shall meet the requirements of the City of Raleigh as set forth in the City of Raleigh Public Utility Department Handbook.
- B. The City of Raleigh may allow deviations from the standards outlined above that may be less or more restrictive whenever it finds that such deviations are more likely to satisfy the public utility needs of the Town of Garner.

**8.3.15. Street names, street markers and house numbers.**

- A. Street names shall be assigned by the developer subject to the approval of the permit-issuing authority. Proposed streets that are obviously in alignment with existing streets shall be given the same name. Newly created streets shall be given names that neither duplicate nor are phonetically similar to other streets within Wake County;
- B. The developer shall bear the costs of the fabrication and installation of street markers on all streets within or intersecting the development in accordance with the standards of the Town; and
- C. Building numbers shall be assigned by the Town.
- D. All street makers shall be in accordance with the Town of Garner standard street number installation. If a development wishes to use an alternative street maker, such maker shall be maintained by the development and approved by the Town Engineer.

**8.3.16. Bridges.**

All bridges shall be constructed in accordance with the standards and specifications of the North Carolina Department of Transportation, except that bridges on roads not intended for public dedication in unsubdivided developments may be approved if designed by a licensed architect or engineer.

- A. Fee-in-lieu of street construction. In lieu of required street construction, a developer may be required to provide funds that the Town will use solely for the construction of roads to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. "Required street construction" as used in this subsection means either street construction required by existing provisions of the UDO or improvements required by a TIA where a consensus between the developer, the developer's traffic consultant and the Town Planning Department that said improvements are necessary to mitigate adverse traffic conditions resulting from the proposed development as reflected in a development agreement.

- B. Capital fund. The Town will establish a capital fund or funds dedicated to roadway improvements. All monies in said capital fund or funds shall be used only for the development of roads - including design, land acquisition and construction - which serve the occupants, residents or invitees of the subdivision or development being created by the entity providing the funds; and/or for roads in the vicinity which serve more than one subdivision or development within the area.
1. All monies received by the Town pursuant to this subsection shall be deposited in the capital fund created herein.
  2. All monies to be paid into the aforesaid capital fund shall be paid prior to issuance of building permits relating to the proposed development.
  3. The Town may require a combination of partial payment of money and partial dedication of constructed streets when the Town Council determines that a combination is in the best interests of the citizens of the area to be served.
- C. Fee amount determination. The amount of any fee-in-lieu shall be determined as follows:
1. The amount of any fee-in-lieu of completing roadway construction otherwise required by existing provisions of the UDO shall be established as a condition in the applicable permit. The developer shall initially provide an engineering estimate for staff review and discussion with the developer.
  2. Such engineering estimates shall at a minimum reflect the consideration of design and permitting costs, land acquisition costs, construction costs and a cost escalator based on known and reasonably anticipated construction cost increases; if the likely date of construction is not readily subject to estimation, the escalation factor shall be limited to ten years.
  3. The amount of any fee-in-lieu established in a Development Agreement shall be in an amount resulting from consensus involving the developer, the developer's traffic and other consultants, the Town Engineering and Planning departments, and shall be reflected by an executed Development Agreement between the developer and the Town.
  4. Any formula which may be adopted in a future ordinance to determine the amount of funds the developer should pay in lieu of required street construction shall be based on the trips generated from the subdivision or development.
- D. Use of capital funds. The Town may undertake such design, land acquisition and construction by itself or in conjunction with the North Carolina Department of Transportation.

(Ord. No. 3532, § 2, 11-4-08; Ord. No. 3558, § 2, 7-7-09; Ord. No. XXXXX, § XXXX, 11-19-19)

## **8.4. SEWAGE DISPOSAL FACILITIES, WATER SUPPLY AND UTILITIES.**

### **8.4.1. General.**

- A. Utility ownership and easement rights. In any case in which a developer installs or causes the installation of water, sewer, electric power, telephone or cable television



facilities and intends that such facilities shall be owned, operated or maintained by a public utility or any entity other than the developer, the developer shall transfer to such utility or entity the necessary ownership or easement rights to enable the utility or entity to operate and maintain such facilities.

#### 8.4.2. Lots served by publicly-owned water and sewer lines.

- A. Whenever it is legally possible and practicable in terms of topography to connect a lot with a publicly-owned water or sewer line by running a connecting line not more than 300 feet from the lot to the Town line, then no use requiring water or sewage disposal service may be made of such lot unless that connection is made.
- B. Connection is not legally possible if it is necessary to run the connecting line over property not owned by the owner of the property to be served by the connection, and after diligent effort, the easement necessary to run the connecting line cannot reasonably be obtained.
- C. A lot is served by public water or sewer system if connection is required by this section.
- D. No requirements or provisions of this subsection are intended to supersede the requirements for utility extensions for a new development as provided for in the Town Garner Utility Extension Policy.

#### 8.4.3. Certification require prior to certificate of occupancy.

The project engineer shall certify that the water and/or sewer system has been constructed according to plans and specifications approved by the Town prior to receipt of any certificate of occupancy.

#### 8.4.4. Sewage disposal facilities.

- A. Sewage disposal facilities required.
- B. Every principal use and every lot within a subdivision shall be served by a sewage disposal system that:
  - A. Is adequate to accommodate the reasonable needs of such use or lot; and
  - B. Complies with applicable health regulations.

#### 8.4.5. Determining compliance.

- A. Primary responsibility for determining compliance with the standards ~~in paragraph B.~~ above, often lies with an agency other than the Town, and the developer must comply with the standards and specifications of such other agency. ~~These agencies are listed in subsection (b).~~ Whenever any such agency requires detailed construction or design drawings before giving its official approval to the proposed sewage disposal system, the Town may rely upon a preliminary review by such agency of the basic design elements of the proposed sewage disposal system to determine compliance with ~~paragraph B.~~ this section. However, construction of such system may not be commenced until the detailed plans and specifications have been reviewed and any appropriate permits issued or approvals given by such agency.
- B. In the following table, the column on the left describes the type of development and the column on the right indicates the agency that must certify to the permit-issuing

authority whether the proposed sewage disposal system complies with the standard set forth in paragraph B., above.

Type of Development	Permit-Issuing Authority Action
<p>(1) The use is located on a lot that is served by the Town sewer system or a previously approved, privately owned package treatment plant, and the use can be served by a simple connection to the system (as in the case of a single-family residence) rather than the construction of an internal collection system (as in the case of a shopping center or apartment complex).</p>	<p>No further certification is necessary.</p>
<p>(2) The use (other than a subdivision) is located on a lot that is served by the Town sewer system but service to the use necessitates construction of an internal collection system (as in the case of a shopping center or apartment complex); and,</p> <p>(a) The internal collection system is to be transferred to and maintained by the Town</p> <p>.The internal collection system is to be privately maintained</p>	<p>The Town Engineer must determine that the proposed collection system is adequate and conforms to the Town of Garner Utility Extension Policy.</p>
<p>(3) The use (other than a subdivision) is not served by the Town system, but is to be served by a privately operated sewage treatment system (that has not previously been approved) with 3,000 gallons or less design capacity, effluent from which does not discharge into surface waters.</p>	<p>The Wake County Health Department (WCHD) must certify to the Town that the proposed system complies with all applicable state regulations. If the proposed use is a single- family dwelling other than a mobile home, the developer must present to the Town a certificate of completion from the WCHD.</p>
Type of Development	Permit-Issuing Authority Action
<p>(4) The use (other than a subdivision) is to be served by a privately operated sewage treatment system (not previously approved) that has a design capacity of more than 3,000 gallons or that discharges effluent into surface waters.</p>	<p>The City of Raleigh must certify to the Town that the proposed system complies with all applicable state regulations. A "Permit to Construct" and a "Permit to Discharge" must be obtained from the City of Raleigh. The Town Engineer must also approve the system for future addition to the Town system.</p>
<p>(5) The proposed use is a subdivision, and</p> <p>(a) Lots within the subdivision are to be served by simple connection to existing Town lines or lines of a previously approved private system.</p>	<p>No further certification is necessary.</p>

<p>(b) Lots within the subdivision are to be served by the Town system, but the developer will be responsible for installing the necessary additions to the Town system.</p>	<p>The Town Engineer must determine that the proposed collection system is adequate and conforms to the Town of Garner Utility Extension Policy.</p>
<p>(c) Lots within the subdivision are to be served by a sewage treatment system that has not been approved that has a capacity of 3,000 gallons or less, and that does not discharge into surface waters.</p>	<p>The Wake County Health Department must certify that the proposed system complies with applicable state and local health regulations. If each lot within the subdivision is to be served by a separate on-site disposal system, the WCHD must certify that each lot shown on a major subdivision preliminary plat can probably be served, and each lot on a major or minor subdivision final plat can be served by an on-site disposal system.</p>
<p>(d) Lots within the subdivision are to be served by a privately operated sewage treatment system (not previously approved) that has a design capacity in excess of 3,000 gallons or that discharges effluent into surface waters.</p>	<p>The City of Raleigh must certify that proposed system complies with all applicable state regulations. A Permit to Discharge must be obtained from the City of Raleigh. The Town Engineer must also approve the system for future addition to the Town system</p>

**8.4.6. Water supply.**

- A. Water supply system required. Every principal use and every lot within a subdivision shall be served by a water supply system that:
  - 1. Is adequate to accommodate the reasonable needs of such use or lot; and
  - 2. Complies with all applicable health regulations.

**8.4.7. Determining compliance.**

- A. Primary responsibility for determining compliance with the standards in ~~the section paragraph 1.~~ above, often lies with an agency other than the Town, and the developer must comply with the standards and specifications of such other agency. These agencies are listed in the table below. Whenever any such agency requires detailed construction or design drawings before giving its official approval to the proposed water supply system, the Town may rely upon a preliminary review by such agency of the basic design elements of the proposed water supply system to determine compliance with ~~paragraph 1,~~ the section above. However, construction of such system may not be commenced until the detailed plans and specifications have been reviewed and any appropriate permits issued by such agency.
- B. In the following table, the column on the left describes the type of development and the column on the right indicates the agency that must certify to the Town whether the proposed water supply system complies with the standard set forth in ~~paragraph 1,~~ the section above.

Type of Development	Permit-Issuing Authority Action
<p>(1) The use is located on a lot that is served by the Town water system or a previously approved, privately owned public water system and the use can be served by a simple connection to the system (as in the case of a single-family residence) rather than the construction of an internal distribution system (as in the case of a shopping center or apartment complex).</p>	<p>No further certification is necessary.</p>
<p>(2) The use (other than a subdivision) is located on a lot that is served by the Town water system but service to the use necessitates construction of an internal distribution system (as in the case of a shopping center or apartment complex); and</p> <p>(a) The internal distribution system is to be transferred to and maintained by the Town.</p>	<p>The Town Engineer must determine that the proposed collection system is adequate and conforms to the Town of Garner Utility Extension Policy.</p>
<p>(b) The internal distribution system is to be privately maintained.</p>	<p>The Town Engineer must certify that the proposed distribution system is adequate. A Permit to Construct must also be obtained from DHS.</p>
Type of Development	Permit-Issuing Authority Action
<p>(3) The use (other than a subdivision) is located on a lot not served by the Town system or a previously approved, privately owned public water supply system; and</p> <p>(a) The use is to be served by a privately owned public water supply system that has not previously been approved.</p>	<p>The Division of Health Services of North Carolina Department of Human Resources must certify that the proposed system complies with all applicable state and federal regulations. A Permit to Construct must be obtained from DHS. The City of Raleigh must also approve the plans if the water source is a well and the system has a design capacity of 100,000 gallons per day or greater or is located in certain areas designated by the city. The Town Engineer must also approve the system for possible future addition to the Town system.</p>
<p>(b) The use is to be served by some other source (such as an individual well).</p>	<p>The Wake County Health Department must certify that the proposed system meets all applicable state and local regulations.</p>
<p>(4) The proposed use is a subdivision; and</p> <p>(a) Lots within the subdivision are to be served by simple connection to existing Town lines or lines of a previously approved public water supply system;</p>	<p>No further certification is necessary.</p>

Article 8. Subdivision Design / Improvements

<p>(b) Lots within the subdivision are to be served by the Town system but the developer will be responsible for installing the necessary additions to the Town systems.</p>	<p>The Town Engineer must certify that the proposed system meets the necessary additions to the Town's standards and will be accepted by the Town. A Permit to Construct must also be obtained from the Division of Health Services of the North Carolina Department of Human Resources.</p>
<p>(c) Lots within the subdivision are to be served by a privately owned public water supply system that has not been previously approved.</p>	<p>The Division of Health Services of North Carolina Department of Human Resources must certify that the proposed system complies with all applicable state and federal regulations. A Permit to Construct must be obtained from DHS. The City of Raleigh must also approve the plans if the water source is a well and the design capacity of 100,000 gallons per day or greater or is located within certain areas designated by the City. The Town Engineer must also approve the system for possible future addition to the Town system.</p>
<p>(d) Lots within the subdivision are to be served by individual wells.</p>	<p>The Wake County Health Department must certify to the Town that each lot intended to be served by a well can be served in accordance with applicable health regulations</p>

### 8.4.8. Fire hydrants.

- A. Every development, subdivided or unsubdivided, shall include a system of fire hydrants sufficient to provide adequate fire protection for a building or buildings located or intended to be located within a development.
- B. All fire hydrants shall be installed on a minimum six inch water line. Only one fire hydrant may be installed on a dead-end six inch water line.
- C. The spacing and general location of hydrants shall be as follows:
  1. In all zoning districts, there shall be at least one fire hydrant at each public or private street intersection;
  2. In residential districts, the maximum distance between fire hydrants, measured along street centerlines, shall be 500 feet.
  3. In nonresidential zoning districts, the maximum distance between fire hydrants, measured along street centerlines, shall be 300 feet.
  4. In applying paragraphs (2) and (3) above ~~the previous sections~~, fire hydrants located on the opposite side of any major thoroughfare with four or more travel lanes, any U.S. or N.C. designated routes, divided highway, or railroad track shall not be counted when determining the fire hydrant coverage or locational requirements of this subsection; and
  5. All premises subject to the state building code where buildings or portions of buildings are located more than 500 feet from a fire hydrant system shall be provided with approved on-site fire hydrants and water mains capable of supplying the fire flow required by the Fire Official. The location and number of on-site hydrants shall be as designated by the Fire Official consistent with the criteria in ~~paragraph of~~ the section below where practicable, with the minimum arrangement being so as to have a hydrant available for distribution of hose to any portion (including public hydrants) of any building on the premises at distances not exceeding 500 feet but in no case shall hose lengths be greater than 500 feet; provided, however that this subsection does not apply to one and two family dwellings with or without attached or detached accessory structures used exclusively by the owner and not subject to use by the public.
- D. The Town Fire Official shall approve the specific location of all fire hydrants, in accordance, where practicable, with the following design criteria:
  1. Relative location to streets: Streets with curb and gutter two to four feet behind back of curb; streets with ditch section--one foot inside right-of-way;
  2. Clear space: Four feet on all sides free of any structures, utility poles, landscaping planting, or other permanent objects;
  3. Minimum distance from nonresidential buildings: 40 feet;
  4. Construction standards and specifications: City of Raleigh Utilities Department, except that the nozzles still have national standard threads;
  5. Adequate fire flow and coverage for nonresidential buildings: Coverage from two hydrants generally required; and

6. Maximum distance from a hydrant to any portion of a building: 500 feet (as measured along the hose laying route).
- E. Provided, however, that the permit-issuing authority may apply either more restrictive or less restrictive fire hydrant location criteria when it finds that such deviations are more likely to accomplish the provision of sufficient fire protection for all buildings within a development.
- F. Whenever the permit-issuing authority allows or requires a deviation from the presumptive requirements, the reasons for doing so and the requirements imposed shall be listed on the permit.

## **8.5. OTHER UTILITIES.**

### **8.5.1. Electric power.**

Every principal use, and every lot within a subdivision shall have available to it a source of electric power adequate to accommodate the reasonable needs of such use and every lot within such subdivision. Compliance with this requirement shall be determined as follows:

- A. If the use is not a subdivision and is located on a lot served by an existing power line, and the use can be served by a simple connection (as opposed to a more complex distribution system, such as would be required in an apartment complex or shopping center), then no further certification is needed; and
- B. If the use is a subdivision or is not located on a lot served by an existing power line or a substantial internal distribution system, then the electric utility company must review the proposed plans and certify to the Town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

### **8.5.2. Telephone service.**

Every principal use and every lot within a subdivision must have available to it a telephone service cable adequate to accommodate the reasonable needs of such use or lot. Compliance with this requirement shall be determined as follows:

- A. If the use is not a subdivision and is located on a lot that is served by an existing telephone line and the use can be served by a simple connection to such line, then no further certification is necessary; and
- B. If the use is a subdivision, or is not located on a lot served by an existing telephone line, or will require a substantial internal distribution system, then the telephone company must review the proposed plans and certify to the Town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

### **8.5.3. Underground utilities.**

- A. All electric power lines, (not to include transformers or enclosures containing electrical equipment such as switches, meters, and capacitors, which may be pad mounted), telephone, gas distribution, and cable television lines in subdivisions developed after the effective date of this UDO shall be placed underground in accordance with the

specifications and policies of the respective utility companies and located in accordance with Town of Garner Standard Construction Details.

- B. Whenever an unsubdivided development is hereafter constructed on a lot that is undeveloped on the effective date of this UDO, then all electric power, telephone, gas distribution, and cable television lines shall run underground from the point of connection with the main lines to any structures on the lot served by those lines. Such lines shall be placed underground in accordance with the specifications and policies of the respective utility companies.

#### **8.5.4. Utilities to be consistent with internal and external development.**

- A. Whenever it can reasonably be anticipated that utility facilities constructed in one development will be extended to serve other adjacent or nearby developments, such utility facilities (e.g., water or sewer lines) shall be located and constructed so that extensions can be made conveniently and without undue expense or service duplication.
- B. All utility facilities shall be constructed in such a manner as to minimize interference with pedestrian or vehicle traffic and to facilitate maintenance without undue damage to improvements or facilities located within the development.

#### **8.5.5. As-built drawings required.**

- A. Whenever a developer installs or causes to be installed a utility line in any public right-of-way or easement, the developer shall, as soon as practical after complete installation furnish the Town with a permanent copy of a drawing that shows the exact location of such utility lines. Such drawings must be verified as accurate by an appropriately licensed designer and shall bear a certificate on the drawing to that effect. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing such development.
- B. If any utility line in any right-of-way is installed by a utility company, the company shall maintain accurate as-built drawings and shall make these available to the Town upon request. The Town will maintain as-built drawings furnished by the developer of all other utilities.

### **8.6. OPEN SPACE AND RECREATIONAL FACILITIES.**

#### **8.6.1. Open space.**

- A. The Town Council finds that, when land is developed for residential purposes, the public health, safety, and welfare are best served if a portion of the land so developed remains as common open space. The preservation of such open space areas serves the following important objectives, to the benefit of the residents of such developments as well as the general public:
  1. Preservation of open vistas, providing relief from an urban landscape;
  2. Preservation of environmentally sensitive lands;
  3. Preservation of habitat for wildlife;
  4. Preservation of historically or archaeologically significant areas; and



5. Provision of areas for passive recreation, such as walking or jogging.
- B. For purposes of this section:
  1. Open space refers to an area that:
    - a. Is not encumbered with any substantial structure;
    - b. Is not exclusively devoted to use as a roadway, parking area, or sidewalk;
    - c. Is not part of any privately owned lot that is used or intended for use for residential purposes;
    - d. Is private, is legally and practicably accessible to the residents of the subdivision or development it is designed to serve; and
    - e. If publicly dedicated, is legally and practicably accessible to the general public.
  - C. Narrow strips of common area that separate lots within a development from each other, from streets, or from adjoining tracts shall generally not be regarded as open space within the meaning of this section unless such areas:
    1. Are at least 50 feet in width and capable of functioning as a substantial visual buffer; or
    2. Are configured and improved in a manner acceptable to the permit issuing authority (e.g. through the installation of trails) in such a way as to be conducive to actual use for passive recreational purposes (i.e. walking or jogging) by residents of the development where located.
  - D. The following areas shall be regarded as open space where such areas satisfy the criteria set forth a.(1), a.(2) and a.(3) of this section:
    1. Utility easements located outside of street rights-of-way;
    2. Cemeteries located on a tract prior to its development;
    3. Areas used for the growing of crops, such as hay, corn, or vegetables, if and to the extent that such uses occur within an area that is subject to the control of a homeowners association and the homeowners association approves such uses; and
    4. Golf courses as private open space.
  - E. The term "primary conservation areas" shall mean:
    1. Areas shown as greenways on the adopted Garner Open Space and Greenways Plan or other applicable policies or plans;
    2. Wetlands as defined pursuant to Section 404 of the Clean Water Act;
    3. Floodplains;
    4. Lakes and ponds; or
    5. Areas containing slopes greater than 25 percent.
  - F. The term "secondary conservation areas" shall mean:
    1. Areas containing slopes greater than 15 percent but not more than 25 percent;
    2. Other areas containing unique vistas or unusual natural features (such as major rock

- formations); or
3. Other environmentally, historically or archaeologically significant or unique areas.
- G. Except as otherwise provided herein, every residential development shall be developed so that at least ten percent of the total area of the development remains permanently as open space.
1. The Town Council recognizes that, the smaller the development, the less practical value open space areas set aside under this section may have. Therefore, developments of less than one acre in overall size shall be exempt from the open space provisions of this section.
  2. For purposes of this section, the term "development" refers to the entire project developed on a single tract or contiguous multiple tracts under common ownership or control, regardless of whether the development is constructed in phases or stages.
- H. If a tract where a residential development is proposed contains any areas defined above as primary or secondary conservation areas, then such areas shall be designated as open space, subject to the following:
1. In no case shall the developer be required to set aside as open space more than the minimum required percentage of open space specified in this section~~subsection 3,~~  
~~above.~~
  2. If the development tract contains primary or secondary conservation areas, then the specific areas to be set aside as open space shall be determined by the permit issuing authority, with priority given to primary conservation areas over secondary conservation areas.
  3. If the total of primary and secondary conservation areas on a development tract is less than the minimum required percentage of open space specified in this  
~~subsection 3,~~ then the choice of additional open space areas to be set aside to satisfy this minimum percentage shall remain with the developer, provided the location ~~is acceptable to the permit issuing authority~~meets the standards of this  
UDO.
- I. Notwithstanding the other provisions of this section, where a developer agrees to dedicate land to the Town that is intended to be used by the Town for open space purposes such dedication shall be credited to the developer in satisfaction of the open space requirements.

#### **8.6.2. Park land dedication and fee in-lieu requirement.**

- A. Purpose.
1. The Town Council finds that all new residential development places a demand on existing Town park and recreational facilities and creates the need for the expansion of existing park and recreation facilities and the development of new park and recreation facilities.
  2. The Council further concludes that the need for such new or expanded parks and recreation facilities is directly related to the number of persons expected to reside

in such new development and is also affected by the housing type (single-family detached or multifamily and all other residential units) as well as the extent to which such developments provide their own recreational facilities.

3. The Council concludes that it is appropriate for such new developments to contribute to the cost of such new or expanded parks and recreational facilities in a manner that is roughly proportional to the need generated by such developments either through public dedication of land or by the payment of fees in-lieu- of dedication.

#### **8.6.3. Use of fees.**

- A. The Town Council hereby establishes a park and recreational facilities capital improvement fund that is distinct from the general fund of the Town, the purpose of which shall be to accumulate the fees generated by this section.
- B. The park and recreational facilities capital improvement fund shall contain only those funds collected pursuant to this section plus any interest which may accrue from time to time on such amounts.
- C. The monies in such fund shall be used only for the acquisition of additional park land or for the construction of new recreational facilities in areas that will benefit the residents of the development that contributed to the fund. The Town Council may consider granting a credit against required fee-in-lieu of parkland dedication when a developer constructs public recreation facilities dedicated for public use and ownership as part of an approved residential development provided such facilities are designed and constructed a manner that is approved by the Town.
- D. The Town Council may establish more than one fund, and divide the Town into districts, each served by a separate fund, if the Council concludes that the establishment of such multiple districts and multiple funds will best serve the objectives of this section.

#### **8.6.4. Dedication or fee in-lieu.**

The procedure for determining if a subdivider is to dedicate land or pay a fee in-lieu of dedication shall be as follows:

- A. Subdivider. At the time of filing any subdivision plan, the subdivider shall, as part of such submission, indicate whether dedication of the property for park and recreational purposes is proposed, or whether the subdivider proposes to pay a fee in-lieu thereof. If the subdivider proposes to dedicate land for this purpose the subdivider shall designate the area thereof on the master subdivision plan as submitted.
- B. Action of Town. At the time of the subdivision plat review, the parks and recreation advisory Committee shall recommend and the Planning Commission shall determine as a part of its subdivision plat approval, whether to require a dedication of land within the subdivision, payment of a fee in-lieu thereof or a combination of both. In cases where there is any disagreement on the question of dedication or fee in-lieu, the Planning Commission shall refer the matter to the Town Council for a final decision.

**8.6.5. Park land dedication.**

Where it is determined that park land dedication is appropriate to satisfy the recreational requirements of the UDO, the amount of the park land to be dedicated shall be as follows:

Housing Type	Acres/Unit
Single-family detached	0.0354
All other residential	0.0287

- A. Acceptance of dedicated park land. The parks and recreation advisory Committee and the Planning Commission shall have the opportunity to review the proposed land dedication and recommend on its acceptability within the guidelines of this UDO and Town plans, and on the preferability of land dedication or payment of a fee-in-lieu of dedication.
- B. Standards for dedicated park land. All park land proposed for dedication shall meet the following criteria:
  - 1. Unity. The dedicated park land shall form a single parcel of land except where the parks and recreation advisory Committee recommends, and the Town Council finds, that two parcels or more would be in the public interest. Where two or more parcels exist, any connecting path or strip of land shall not be less than 30 feet in width.
  - 2. Shape. The shape of the dedicated parcel of land shall be a shape to be sufficiently usable for recreational activities generally associated with a public recreation park.
  - 3. Location. The dedicated land shall be located so as to reasonably serve the recreation area needs of the development and surrounding area for which the dedication was made.
  - 4. Access. Public access to the dedicated land shall be provided either by adjoining street frontage or public easement at least 30 feet in width.
  - 5. Topography. Slope on areas dedicated for parks shall not exceed five percent.
  - 6. Utility. The dedicated land shall be usable for active recreation, or could be improved so as to be so usable without exceeding the amount of the fee in-lieu.
  - 7. Consistency with adopted plans. The acceptance of dedication shall be consistent with the officially adopted open space and greenway plan, parks and recreation master plan or other applicable policies or plans.

**8.6.6. Fee-in-lieu of dedication.**

- A. Where determined appropriate, all residential development shall pay a fee-in-lieu of dedication to the Town in an amount equal to the fee set annually by the Town Council in the miscellaneous fees and charges schedule based on the number of dwelling units in the proposed development.
- B. The amount of the fee-in-lieu shall not exceed the cost per acre to acquire new park

land multiplied by the acreage demand per housing unit, as set forth in Article 8.4.B.4.

- C. Fees-in-lieu are payable at the time of building permit issuance.

#### **8.6.7. Prerequisites for approval of final plat.**

- a. Where park land dedication is required, such dedication shall be shown on the final plat for the subdivision submitted for approval.
- b. Where a fee in-lieu is required, the fee in-lieu shall be deposited with the Town prior to the recording of the final plat for subdivision.
- c. Covenants for private open space areas shall be submitted to the Town prior to approval of the final plat and shall be recorded with the final plat.

#### **8.6.8. Refunds.**

Any monies in the park and recreational facilities capital improvement fund that have not been spent within ten years after the date on which such fee was paid shall be returned to the current owners with any accumulated interest since the date of payment.

- A. Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property within 30 days of the date the refund becomes due. The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.
- B. The refund shall be made on a pro rata basis, and shall be paid in full within 90 days of the date certain upon which the refund becomes due.

#### **8.6.9. Private ownership and maintenance.**

- A. Recreational facilities or open space not dedicated to the Town shall remain under the ownership and control of the developer (or his successor) or a homeowners' association or similar organization. Such recreational facilities and open space shall be made available to all residents of the development where they are located under reasonable rules and regulations established to encourage and govern the use of such facilities and open space by the residents without payment of separate optional fees or charges other than membership fees in a homeowners' association. Such facilities and open space may be made available to a limited extent on a fee basis to persons who are not residents of the development where such facilities or open space are located, so long as such use does not become so extensive as to remove the facilities and open space from the category of an accessory use to a residential development and transform the use to a separate principal use classification.
- B. The person or entity identified in subsection 1. as having the right of ownership and control over such recreational facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same.
- C. Homeowners' associations or similar legal entities that are responsible for the maintenance and control of common areas, including recreational facilities and open

space, shall be established in such a manner that:

1. Provisions for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;
2. The association or similar legal entity has clear legal authority to maintain and exercise control over such common areas and facilities;
3. The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas and facilities; and
4. The association will establish a capital fund for the maintenance and upkeep of common areas and facilities and a method of contributing to that fund which will spread the costs of said maintenance and upkeep to the residents over a number of years.

(Ord. No. 3558, § 2, 7-7-09; Ord. No. 3723, § 1, 12-17-13; Ord. No. 3801, § 7, 12-7-15; Ord. No. XXXXX, § XXXX, 11-19-19)

## **8.7. SUBDIVISION DEDICATION REQUIREMENTS.**

### **8.7.1. Plat approval does not constitute acceptance of dedication offers.**

Plat approval does not constitute acceptance by the Town of the offer of dedication of any public facilities shown on a plat. However, the Town may accept any such offer of dedication by resolution of the Town Council or by actually exercising control over and maintaining such facilities.

### **8.7.2. Protection against defects.**

- A. Whenever occupancy, use or sale is allowed prior to completion of all publicly dedicated facilities and improvements, the performance bond or surety posted pursuant to ~~Section~~section 8.6.A shall guarantee correction by the developer of any defects in such improvements or facilities that appear within one year.
- B. Whenever all publicly dedicated facilities and improvements are installed before occupancy, use, or sale is authorized, then the developer shall post a performance bond or other sufficient surety to guarantee that he will correct all defects in such facilities or improvements that occur within one year after use, occupancy or sale is authorized.
- C. An architect or Engineer retained by the developer shall certify to the Town that all facilities and improvements to be dedicated to the Town have been constructed in accordance with the requirements of the ordinance. This certification shall be a condition precedent to acceptance by the Town of the offer of dedication of such facilities or improvements.
- D. For purposes of this section, the term defects refers to any condition that requires the Town to make repairs in such facilities over and above the normal amount of maintenance that they would require. If such defects appear, the guaranty may be enforced regardless of whether the facilities or improvements were constructed in accordance with the requirements of this UDO.

### 8.7.3. Maintenance of dedicated areas until acceptance.

All facilities and improvements with respect to which the owner makes an offer of dedication to public use shall be maintained by the owner until such offer is accepted by the appropriate public authority.

(Ord. No. 3558, § 2, 7-7-09)

## 8.8. IMPROVEMENT GUARANTEES.

### 8.8.1. Performance guarantee to ensure compliance with subdivision or other approval.

- A. There may be cases when it would be unreasonable to require the permit recipient to comply with all UDO requirements before commencing the intended use of the property or occupying any buildings or selling lots in a subdivision, such as weather conditions or other factors beyond the control of the permit recipient (exclusive of financial hardship). In these cases, the Town of Garner may authorize such commencement or occupancy or sale if the permit recipient provides a performance guarantee or other security of ~~up to~~ 125 percent of the costs of the remaining improvements satisfactory to the Town to ensure that all of these requirements will be fulfilled within not more than one year.
- B. When the Town of Garner imposes additional requirements upon the developer or when the permittee proposes to install amenities beyond those required by this UDO, the Town may authorize the permittee to commence the intended use, occupy any building, or sell any subdivision lots before the additional requirements are fulfilled or the amenities installed if it specifies a date or a schedule by which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:
  1. A commercial letter of credit, or a certified check satisfactory to the Town of Garner is furnished;
  2. A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when application for renewal is made; and
  3. The nature of the requirements or amenities is such that sufficient assurance of compliance is given by Article 10, ~~Enforcement~~.
- C. With respect to subdivisions in which the permittee is selling only undeveloped lots, the Planning Director may authorize final plat approval before all of the requirements of this UDO are fulfilled if the permittee provides a commercial letter of credit or certified check satisfactory to the Town of Garner to ensure that all of these requirements will be fulfilled within not more than 12 months after final plat approval.
- D. In no case shall an improvement guarantee that reduces public safety be approved in place of the actual improvement.
- E. The final plat for a single phase subdivision (i.e. a plat that is recorded as a single unit and is not one that will be recorded in multiple phases) shall have a minimum of 10 lots withheld from plat recordation until such time as all remaining improvements have

been satisfactorily installed in a manner acceptable to the Town of Garner. The last final plat of a multiple phase subdivision shall be withheld from plat recordation until such time as all remaining improvements have been satisfactorily installed in a manner acceptable to the Town of Garner.

### **8.8.2. Performance guarantee.**

There may be cases when it would be unreasonable to require the applicant to comply with all of the requirements of this UDO prior to commencing the intended use of the property or occupying any buildings, such as weather conditions or other factors beyond the control of the permit recipient (exclusive of financial hardship). In these cases, the Planning Director may authorize commencement of the intended use or occupancy of buildings if the permit recipient provides a commercial letter of credit or certified check of ~~up to~~ 125 percent of the cost of the remaining improvement satisfactory to the Planning Director to ensure that all UDO requirements will be fulfilled within not more than 12 months.

### **8.8.3. Roads intended to be accepted by N.C. DOT.**

Any road intended to be accepted by the North Carolina Department of Transportation (N.C. DOT) shall meet the following requirements:

- A. An encroachment agreement with N.C. DOT for all utilities is required prior to the Town issuing a building permit for any more than 25 percent of the lots in the phase of the subdivision currently under construction.
- B. The road must be accepted by N.C. DOT prior to the Town issuing a building permit for any more than 70 percent of the lots in the phase of the subdivision currently under construction.

### **8.8.4. As-built and engineers' certificates submittals.**

For projects that involve infrastructure construction or stormwater best management practices (BMPs), as-built construction surveys and engineer's certification of the infrastructure and stormwater BMPs are required. Submittal of acceptable as-built surveys and engineer's certificate, as determined by the Town Engineer, shall conform to the following schedule:

- A. Water and/or sewer as-builts and an engineer's certificate must be submitted and accepted prior to the Town issuing a building permit for any more than 70 percent of the lots in the phase of a subdivision currently under construction.
- B. Water and/or sewer as-builts and an engineer's certificate must be submitted and accepted prior to the Town issuing any certificate of occupancy.
- C. Streets and/or stormwater as-builts and an engineer's certificate must be submitted and accepted prior to the Town issuing a building permit for any more than 70 percent of the lots in the phase of a subdivision currently under construction.
- D. For single building site plans, stormwater as-builts and an engineer's certificate must be submitted and accepted prior to the Town issuing a certificate of occupancy.
- E. For multiple building site plans, stormwater as-builts and an engineer's certificate must be submitted and accepted prior to the Town issuing a certificate of occupancy for



more than 70 percent of the buildings shown on the site plan.

(Ord. No. 3376, § 13, 1-17-06; Ord. No. 3502, § 3, 3-3-08)

**9.1. PURPOSE AND INTENT**

There exist within the Town of Garner uses of land, structures, lots, site elements, and signs that were lawfully established prior to the date of adoption of this UDO, but that no longer conform to the standards of this UDO. It is the intent of this UDO to move nonconformities in the direction of conformity (wherever possible), permit ~~these~~ nonconformities to continue until they are removed (where necessary), ~~but and~~ not to encourage their survival except under the limited circumstances established in this article. The Planning Director may require conformance with specific provisions of this UDO where deemed necessary to resolve immediate or pending public safety concerns. The intent of this Article in resolving and bringing uses, structures, and activities into conformance with this UDO is to protect the public health safety and welfare.

---

## **9.2. DEFINITIONS**

For the purposes of this Article and discussing nonconformities, the following definitions shall apply:

### **9.2.1. Abandoned**

To cease, either intentionally or unintentionally, from actively using land, structures, or any premises for the intended or previous use, but excluding temporary periods of inactivity due to remodeling, maintaining, or otherwise improving a facility. Abandonment is often referenced to a specified time period.

This definition includes “abandon”, “abandonment”, and any other tense or version of the word “abandoned.”

### **9.2.2. Discontinued**

To quit or cease, either intentionally or unintentionally, operation or activity associated with a use of land, structures, or any premises from their intended or previous use or to replace the previous use with a new use of a different kind or class. A change of occupancy, owner, or tenant does not constitute a discontinuance or change of use.

This definition includes “discontinue”, “discontinuance”, “ceased” (as it refers to a use, and any other tense or version of the word “discontinued.”

### **9.2.3. Other Clarification**

An “intent to resume” a use, operations, or activities may be demonstrated through continuous operation of a portion of the facility, by the maintenance of water, sewer, electric, and other utility service (as appropriate), or by other outside documentation such as proof of deliveries.

### **9.2.9.3. NONCONFORMING USES**

#### **9.2.1.9.3.1. Normal Maintenance and Repair**

Normal maintenance or repair of structures where nonconforming uses are located may be performed in any consecutive twelve-month period, to an extent not exceeding ~~fifteen (15) percent~~ 33% of the current assessed value of the structure. Such maintenance and repair shall not be allowed to increase the usable space of the structure occupied by the nonconforming use, except pursuant to this section.

#### **9.2.2.9.3.2. Extension or Alteration**

A. A nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this UDO, was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.

B. 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 involving the removal of natural materials (e.g., a quarry) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming if ten percent or more of the earth products had already been removed at the effective date of this UDO.

~~B.C.~~ For full description of standards for alterations or additions, see Figure 9.6-A.

#### **9.2.3.9.3.3. Change in Use**

A nonconforming use may be changed, modified, or expanded to any permitted use(s) in the subject district. The affected property may not then revert to a nonconforming use.

#### **9.2.4.9.3.4. Single-Family Residential Nonconforming Uses**

A structure used for a single-family residence and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as new nonconformities or an increase in the extent of existing nonconformities, such as parking requirements, are not created.

#### **9.2.5.9.3.5. Continuation of Accessory Use**

No use that is accessory to a principal nonconforming use shall continue after such principal use ~~shall have~~ has discontinued, ceased, been abandoned, or terminated unless it conforms to all provisions of this UDO.

#### **9.2.6.9.3.6. Discontinuance and Abandonment**

A. A nonconforming use shall be presumed to be discontinued and abandoned, shall lose its nonconforming status, and shall not be

reestablished or resumed and thereafter be used only for conforming purposes, when any of the following has occurred:

1. The owner has indicated intent to abandon the use, delivered in writing to the Planning Director.
2. When a nonconforming use is abandoned or discontinued for a consecutive 180-day period or for a total of (180) calendar days in a 12-month period.
- ~~3.~~ At the point when the electric meter is pulled off or water service or other public utility service is terminated on a structure or lot due to any reason, provided that it is not replaced or reactivated within the 180-day period immediately following.

~~C.B.~~ When a use or use of land made nonconforming by adoption of this UDO is vacant or discontinued at the effective date of this UDO, the 180-day period begins to run at that date.

~~D.C.~~ All of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole in determining whether a right to continue a nonconforming situation is lost pursuant to this section. However, 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.

Commentary: For example, the failure to rent one apartment in a nonconforming apartment building 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 as whole is continuously maintained.

### **9.3.9.4. NONCONFORMING STRUCTURES**

#### **9.3.1.9.4.1. Normal Maintenance and Repair**

Normal maintenance or repair of nonconforming structures may be performed in any consecutive twelve-month period, to an extent not exceeding ~~fifteen (15) percent~~33% of the current assessed value of the structure. Such maintenance and repair shall not be allowed to increase the usable space of the structure, except pursuant to this section.

#### **9.3.2.9.4.2. Alteration or Additions**

Alterations or additions to a nonconforming building or structure may be permitted as long as the alterations or additions do not increase the nonconformity of the structure related to the building setback line, height limitations, yard or other provisions regulating the size and placement of buildings and structures for the district in which the nonconforming structure is located. For full description of standards for alterations or additions, see Figure 9.7-A: Required Site Element Upfits.

#### **9.3.3.9.4.3. Reconstruction**

##### **A. Nonresidential Structures**

1. If a nonresidential building or structure, including any accessory structures, is damaged by reason of fire, flood, explosion, earthquake, or other extraordinary circumstance, may be repaired, reconstructed, and used as before if the damage does not exceed 50 percent of its replacement value as determined by the Building Official, and if the repairs and reconstruction are done within twelve (12) months from the time such damage occurred. Notwithstanding the foregoing, no illegal use shall be re-established.
2. If a nonresidential building or structure, including any accessory structures, is damaged and if such damage is greater than 50 percent of its replacement value as determined by the Building Official, such building or structure may only be reconstructed to conform with the standards in the district in which it is situated.

##### **B. Residential Structures**

1. If a residential building or structure, including any accessory structures, is damaged by reason of fire, flood, explosion, earthquake, or other extraordinary circumstance, it may be repaired, reconstructed, and used as before if the damage does not exceed fifty (50) percent of its replacement value as determined by the Building Official, and if the repairs and reconstruction are done within twelve (12) months from the time such damage occurred.

2. If a residential building or structure (including any accessory structure) is damaged greater than fifty (50) percent of its replacement value as determined by the Building Official, such building or structure may be repaired, reconstructed, and used as before if the repairs and reconstruction are done within twelve (12) months from the time such damage occurred. ~~The Planning Director may require conformance with specific provisions of this UDO where deemed necessary to resolve public safety concerns.~~ Notwithstanding the foregoing, no illegal use shall be re-established.

#### **9.3.4.9.4.4. Unsafe Building or Structure**

If a nonconforming building or structure or portion thereof is declared to be an unsafe structure per G.S. § 160D-1119, it shall thereafter be rebuilt only in conformance with the standards of this UDO and the building code.

#### **9.3.5.9.4.5. Discontinuance and Abandonment**

- A. When a structure made nonconforming by this UDO is vacant or discontinued at the effective date of this UDO, the 180-day period begins to run at that date.
- B. If such nonconforming structure on a property is abandoned for a period of 180 consecutive days, any subsequent use of that property shall conform to current zoning district regulations. See 9.2.6.A. for full definition of abandonment.
- ~~B. If the principal activity on property where a nonconforming structure exists is discontinued for a consecutive period of 180 days then that property may thereafter be used only in conformity with all of the regulations applicable to the pre-existing use. This permit may be issued if the permit-issuing authority finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.~~
- C. All of the buildings, activities and operations maintained on a lot are generally to be considered as a whole in determining whether a right to continue a nonconforming situation is lost pursuant to this section.

## **9.4.9.5. NONCONFORMING LOTS OF RECORD**

### **9.4.1.9.5.1. Applicability**

This section applies only to undeveloped nonconforming lots of record. A lot is undeveloped if it has no substantial structures upon it. A change in use of a developed nonconforming lot may be accomplished in accordance with Section 9.2.3.

### **9.4.2.9.5.2. Uses**

When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum set forth in Article 6, then the lot may be used just as if it were conforming. However, no use that requires a greater than minimum lot size for a particular zone ~~(e.g., a duplex)~~ is permissible on a nonconforming lot.

### **9.4.3.9.5.3. Setback Requirements**

When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements located in Article 6 cannot reasonably be complied with, then the entity authorized to issue a permit for the proposed use may allow deviations from the setback requirements if it finds that:

- A. The property cannot reasonably be developed for the use proposed without such deviations;
- B. These deviations are necessitated by the size or shape of the nonconforming lot; and
- C. The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.

### **9.4.4.9.5.4. Setback Hardship**

For purposes of Section 9.4.3, compliance with applicable building setback requirements is not reasonably possible if a building serving the minimal needs of the proposed use cannot practicably be constructed and located on the lot in conformity with setback requirements. Financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

### **9.5.5. Governmental Acquisition of Land**

A lot, established under the provisions of this or previous town zoning ordinance, that is reduced in size by governmental action, such as acquisition for a right-of-way or other governmental use, shall not render the lot nonconforming.

### **9.4.5.9.5.6. Contiguous Nonconforming Lots**

If, on the effective date of this UDO, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots

Commentary: The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the way the existing neighborhood has been developed.



under the same ownership, then the provisions of this section cannot be taken advantage of and the undeveloped lots shall be considered as one lot. This shall not apply if a majority of the developed lots on either side of the street and within 500 feet of the undeveloped lot are also similarly nonconforming. \_

## ~~9.5. ABANDONMENT AND DISCONTINUANCE OF NONCONFORMING SITUATIONS.~~

### ~~9.5.1. Time Limit~~

~~When a nonconforming use is discontinued for a consecutive 180-day period, the property involved may thereafter be used only for conforming purposes.~~

### ~~9.5.2. Applicability~~

~~All of the buildings, activities and operations maintained on a lot are generally to be considered as a whole in determining whether a right to continue a nonconforming situation is lost pursuant to this section.~~

## 9.6. NONCONFORMING SIGNS

It is the intent of this section to provide a reasonable time for the elimination of nonconforming signs and sign structures. The provisions of this section shall apply to nonconforming signs. Nonconforming signs may remain in use, subject to the regulations of this section and all other applicable requirements.

### 9.6.1. Normal Maintenance and Repair

- A. Nonconforming signs may be repaired or renovated as long as the cost of such work does not exceed, within a twelve-month period, ~~fifty (50) percent~~33% of the value of such sign. A permit for such renovation or repair is required. Proof of value is required at the time of permit.
- B. The message of a nonconforming sign (sign face) may be changed, so long as a change in use has not occurred. If a change in use occurs, the sign must be brought into full conformity with this UDO.

### 9.6.2. Enlargement or Alteration

- A. No nonconforming sign shall be enlarged or altered in any manner that results in a greater degree of nonconformity.
- B. No modification of the structure of any nonconforming sign shall be permitted, except to bring the sign into conformity.
- C. Illumination may not be added to a nonconforming sign that previously was unilluminated.

### 9.6.3. Discontinuance of Business

If a nonconforming sign other than a billboard advertises a business, service, commodity, accommodation, attraction or other enterprise or activity no longer operating or being offered or conducted, that sign shall be considered abandoned and shall be removed within 90 days after such abandonment by the sign owner, property owner or other person having control of the property.

**9.6.4. Billboards on Federal Aid Highways**

Billboards on federal aid highways are protected by the State and Federal Highway Beautification Acts and cannot be amortized and can be removed only upon payment of just compensation as defined by those Acts. \_\_\_\_\_

## 9.7. NONCONFORMING SITE ELEMENT

A nonconforming site element is a site improvement that is required as part of an approval but does not exist, or was existing or lawfully established prior to this UDO being adopted or amended. Site elements include, but are not limited to access, parking, pedestrian amenities, landscaping, signage, and lighting.

### 9.7.1. Reduction of Nonconformity

No nonconforming site element shall be erected, replaced, or modified except to reduce or eliminate the nonconformity. Repair and maintenance of nonconforming site elements is permitted.

### 9.7.2. Applicability Matrix

Notwithstanding other portions of this Article, the following table summarizes the minimum requirements that shall be met when there are changes to existing nonconforming development and/or to nonconforming structures or uses. A ✓ indicates that compliance with all applicable standards of this UDO is required.

Commentary: Previous interpretations have ruled that upper floor additions to structures can be constructed within the building footprint, provided all other criteria are met.

Figure 9.7-A: Required Site Element Upfits

	Dimensional Standards	Building Design Standards	Sidewalks, Street Trees, & Curb-and-gutter	Tree Protection & Landscaping	Bufers & Screening	Parking Lot Landscaping	Outdoor Lighting
<b>Existing Development</b>							
Change of Use (from residential to nonresidential or mixed use)		✓	✓	✓	✓	✓	✓
<b>Parking Area Expansion</b>							
Less than 12 Spaces or < 40% of Paved Area <sup>(a)</sup>			✓	✓	✓	✓	✓
Expansion of ≥ 40% of Paved Area or 12 Spaces or More			✓	✓	✓	✓	✓
<b>Building Expansion and/or Reconstruction</b>							
< 50% of Existing Floor Area	✓(a,b)	✓(a)					✓(a)
≥ 50% of Existing Floor Area	✓(a,b)	✓(c)	✓	✓	✓	✓	✓
<b>Notes:</b>							
<sup>(a)</sup> For expanded/reconstructed portion only. For sidewalks and curb-and-gutter, this includes any areas of abutting right-of-way.							
<sup>(b)</sup> Exception: Maximum front setback should be met to the extent practical as							

determined by the Board of Adjustment.

(c) For expansions, reconstruction areas and all other walls facing public streets.

~~9.6.5.~~

**9.7.3. Compliance**

(4) — If all site elements cannot be brought into compliance with the current requirements of this Chapter for reasons which include, but are not limited to site layout, space limitations, tree preservation, or other natural features, the Board of Adjustment may approve a Variance to deviate from site element dimensional requirements so long as the modifications to the elements are moving in the direction of conformity with the provisions of this Chapter.

### **10.1. VIOLATIONS**

Pursuant to G.S. § 160D Article 4, any violation of the standards, procedures, and regulations of this UDO shall be subject to the enforcement remedies and penalties provided by this Article and by state law. The following are violations of this UDO, including but not limited to:

#### **10.1.1. Development without Permit**

To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this UDO without all required permits, certificates, or other forms of authorization as set forth in this UDO.

#### **10.1.2. Development Inconsistent with Permit**

To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.

#### **10.1.3. Violation by Act or Omission**

To violate, by act or omission, any term, variance, modification, condition, or qualification of any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

#### **10.1.4. Use in Violation**

To erect, construct, reconstruct, alter, repair, convert, maintain, or use any building or structure or to use any land in violation or contravention of this UDO or any other regulation made under the authority conferred thereby.

#### **10.1.5. Subdivide in Violation**

To subdivide land in violation of this UDO or transfer or sell land by reference to, exhibition of, or any other use of a plat or map showing a subdivision of the land before the plat or map has been properly approved under this UDO and recorded in the office of the county register of deeds. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from violation of this UDO.

#### **10.1.6. Continue a Violation**

To continue any of the above violations is a separate and distinct offense.

## **10.2. ENFORCEMENT BY PLANNING DIRECTOR**

The Planning Director is responsible for investigating, inspecting, and enforcing the standards of this UDO.

### **10.2.1. Complaints Regarding Violations**

- A. Whenever the Planning Director receives a written complaint alleging a violation of this UDO, he/she shall investigate the complaint, take such action as is warranted, and inform the complainant in writing what actions have been or will be taken.
- B. The Planning Director may investigate violations of this UDO on their own initiative or upon receipt of complaints (oral, written, or otherwise).

### **10.2.2. Procedures upon Discovery of Violations**

- A. If any provision of this UDO is being violated, a written notice of violation shall be issued, pursuant to G.S. § 160D-404, indicating the nature of the violation, ordering the action necessary to correct it, and associated deadlines and penalties.
- B. The final written notice of violation (and the initial written notice may be the final notice) shall state what action is intended if the violation is not corrected and shall advise that the order may be appealed to the Board of Adjustment, pursuant to G.S. §160D-405. A civil penalty may not be appealed to the Board of Adjustment if the offender was sent a final notice and did not take an appeal to the Board of Adjustment within the prescribed time.
- C. If the owner or occupant of a property does not appeal and fails to correct the violation or if the owner or occupant of a property fails to correct the violation after a final Board of Adjustment decision upholding the administrative action, the owner or occupant shall be subject to such remedies and penalties as authorized in Section 10.3.
- D. Notwithstanding the foregoing, in cases where delay would seriously threaten the effective enforcement of this UDO or pose a danger to the public health, safety, or welfare, the Planning Director may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section 10.3.

## 10.3. PENALTIES FOR VIOLATION

### 10.3.1. Persons Liable

The owner, tenant or occupant of any building, land or part thereof and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates or maintains any situation contrary to the requirements of this UDO may be held responsible for the violation, suffer the penalties and be subject to the remedies herein provided.

### 10.3.2. Penalties and Remedies for Violation

- A. A violation or failure to comply with any of the provisions or requirements of the UDO, including a violation of any of the conditions and safeguards established in connection with grants of variances or special use permits, shall constitute a misdemeanor punishable as provided in G.S § 14-4.
- B. Violation or failure to comply with any of the provisions or requirements of this UDO, including a violation of any conditions and safeguards established in connection with the grants of variances or special use use permits, shall also subject the offender to a civil penalty of \$50.00 for the first violation. If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the Town in a civil action in the nature of debt.
- C. Each day a violation continues after notification by the Planning Director that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this article.
- D. If a civil penalty is assessed after January 1, 2003, for an offense or series of related offenses as described above, and the property is brought into compliance with this UDO, but the same person, firm, or corporation repeats the offending activity, the civil penalty shall be increased to \$100.00 for the second violation, \$200.00 for the third violation, and \$500.00 for the fourth and each succeeding violation.
- E. This UDO may also be enforced by any appropriate equitable action. Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this UDO. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.



### 10.3.3. Permit Revocation

- A. A permit issued under this UDO shall be revoked if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this UDO, or any additional requirements lawfully imposed by the permit-issuing authority.
- B. Before a permit may be revoked, all of the notice, hearing, and other requirements of Article 3, shall be met. The notice shall inform the permit recipient of the alleged grounds for the revocation.
- C. The burden of presenting evidence sufficient to allow the permit-issuing authority to conclude that a permit should be revoked shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.
- D. A motion to revoke a permit shall cite, insofar as practical, the specific reasons or findings of fact that support the motion. Such motion is adopted if passed by a majority vote, a quorum being present.
- E. No person may continue to make use of land or buildings in the manner authorized by any permit authorized by this UDO after such permit has been revoked.

### 10.3.4. Stop Work Order

Whenever there is a land disturbing activity and/or a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this UDO, the Planning Director may order the specific part of the work in violation of this UDO to be immediately stopped. See G.S. § 160D-404(b) for full procedures regarding stop work orders.

- A. A stop work order issued under this section shall be in writing, directed to the person doing the work and shall state the specific work to be stopped, the specific reasons therefore, and the conditions under which the work may be resumed. A copy of the stop work order shall also be sent forthwith to the owner of the property where the work is taking place and the developer, if different from the owner.
- B. Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order to the Board of Adjustment pursuant to Article 3. However, an appeal shall not stay the operation of the stop work order except as provided in the following paragraph of this section.
- C. The Board of Adjustment shall meet and act upon the appeal within 15 working days after the receipt of the appeal notice. If the Board

fails to comply with this requirement, the stop work order shall be stayed automatically beginning on the day following the expiration of the 15- working-day period, and the stay shall remain in effect until the Board of Adjustment meets and acts on the appeal.

- D. The notice of hearing requirements set forth in Article 3 shall not apply to appeals of stop work orders. However, the staff shall notify the applicant of the date, time and place of the hearing as soon as it has been scheduled and shall send to the appellant a written confirmation of this notice as soon as possible.
- E. Neither the person whom a stop work order is served nor an owner or developer served with a copy under paragraph 1. above, may thereafter cause, suffer, or permit a violation of the order while it remains in effect, except during a period in which the operation of the order is stayed under paragraph 3., above.

## **10.4. SPECIAL ENFORCEMENT OF LANDSCAPING REQUIREMENTS**

### **10.4.1. Completion of Work prior to Certificate of Occupancy Required**

Pursuant to G.S. § 160D-804(g), prior to issuance of a certificate of zoning compliance or a certificate of occupancy, all required landscape plantings and site elements must be installed and related work completed as indicated on the final, approved landscape and/or site plan. In periods of adverse weather conditions, a performance guarantee for 125 percent of the cost of installation of landscaping and other uncompleted site work or site elements, determined by the executed contract, will be accepted to allow the certificate of zoning compliance to be issued. Completion of the work must be completed by a prescribed time or the performance guarantee shall be called and the work completed by the Town of Garner or by a designated contractor. This optional means of temporary compliance shall not be available if the site is substandard in terms of any life safety, emergency services, or fire safety concerns or does not have adequate parking or pedestrian ingress/egress.

### **10.4.2. Procedures and Penalties Regarding Replacing Dead Plant Material**

- A. Upon notice by certified mail from the Planning Department regarding replacement of dead plant material, an offender shall have 10 business days to respond with a plan of action that includes a replacement planting plan designating the numbers, types, sizes and locations of replacement plants; an estimated date of completion of plant installation; and an agreed-upon date for a site inspection of the completed work.
- B. Failure by the offender to respond to the written notice from the Town within the aforementioned 10-day period may result in a \$100.00 per tree and \$50.00 per shrub per day of violation commencing on the eleventh day.
- C. Replacement plantings shall be inch for inch replacement with the smallest tree allowable being 2 ½-inch diameter-at-breast-height (DBH). If there is not enough land area available without destroying or endangering existing healthy and savable plants or if there is not a suitable location on site which can be agreed upon by the Town and the offender, then a payment in lieu may be made by the offender. This payment will be based upon current market price for materials installed and warranted as determined by the Town of Garner.
- D. Replacement vegetation as required by this UDO shall be installed by the offender within 30 days after the date the replacement

planting plan is approved by the Planning Department. Failure to comply with this requirement subjects the offender to these penalty provisions. If the 30-day period falls between May 15 and October 1, the offender may be allowed to delay replanting to the next acceptable planting season. Such an arrangement must have prior written approval by the Planning Department. Failure to comply with this alternative planting time arrangement subjects the offender to these penalty provisions retroactively back to the original violation date.

- E. A fine of \$250.00 per caliper inch for each tree removed in violation of an approved tree protection zone or buffer protection zone.
- F. The violator shall be required to install replacement trees at a rate of one caliper inch for every three DBH inches of tree removed. For trees removed that are greater than 30 DBH inches, the replacement rate shall be at one caliper inch per every five DBH inches.

~~10.5. Judicial review.~~

~~A. Every decision of the Town Council granting or denying a conditional use permit and every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Wake County by proceedings in the nature of certiorari.~~

~~B. The petition for the writ of certiorari must be filed with the Wake County Clerk of Court within 30 days after both of the following have been accomplished:~~

- ~~1. A written copy of the Board's decision, subject to the requirements of Section 3.1.Q.7.c(3), has been filed in Town Hall.~~
- ~~2. A written copy of the Board's decision, subject to the requirements of Section 3.1.Q.7.c(3), has been delivered to the applicant or appellant by personal service or certified mail.~~

*Editor's Note: this text has been struck as it already state law and is not specific to Garner.*

**11.1. General.**

For the purpose of this UDO certain words shall be interpreted as follows:

- A. "Town" means the Town of Garner, North Carolina.
- B. "Governing authority", "Town Council", and "Council" means the Mayor and Town Council of the Town of Garner, North Carolina.
- C. "Administrator" means the Planning Director.
- D. ~~"Map" or "zoning"~~ "Zoning map" means the official zoning map of the Town of Garner, North Carolina.
- E. Words in the present tense include the future tense.
- F. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.
- G. The word "person" includes a firm, association, corporation, trust, and company as well as an individual.
- H. The word "structure" shall include the word "building."
- I. The word "lot" shall include the words, "plot," "parcel," or "tract."
- J. The words "will" and "shall" are always mandatory and not merely directory.
- ~~J.K.~~ The word "may" is optional or discretionary, but "may not" is mandatory.

(Ord. No. 3558, § 2, 7-7-09)

**11.2. Defined terms.**

Unless otherwise provided, or unless clearly required by the context, the terms defined in this section shall have one meaning indicated when used in this UDO.

**Accessory building, residential district.** In residential districts, an accessory building may be a detached garage, workshop, storage shed, hobby-type greenhouse or similar minor building.

**Accessory building or structure.** A building or structure which is on the same zoning lot as, and detached from a principal building to which the use is incidental and subordinate.

**Accessory building.** A minor building located on the same lot as a principal building and used incidentally to a principal building or housing an accessory use.

**Accessory dwelling unit.** A separate and complete dwelling unit that is contained on the same lot as the structure of a single-family dwelling.

**Accessory solar energy system.** A collection of solar panels and related equipment designed to convert sunlight into electrical power for direct consumption by the principal on-site use; accessory solar energy systems may be ground-mounted, roof-mounted or integrated into the building design, and are small and/or limited in scale.

**Accessory use or structure.** A use, building or structure that is subordinate to the principal use, building or structure on the lot, and used for purposes incidental to the main or principal use, building or structure.

**Adult cabaret.** Any place which features topless dancers, go-go dancers, strippers, male or female impersonator(s), or similar entertainers which are lawful under state law.

**Adult establishment.** An adult bookstore, adult motion picture theater, adult mini-motion picture theater, or other adult entertainment business or massage business as defined in G.S. 14-202-10.

**Agricultural use.** The use of waters for stock watering, irrigation and other farm purposes.

**Ambulatory health/emergency care facility.** A stand-alone emergency department which operates under the governance of a hospital operator: (a) is licensed by the State of North Carolina pursuant to the Hospital Licensure Act as amended. A heliport may be considered an accessory use for this type of health care facility provided all applicable sections of the UDO are met.

**Animal unit.** A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

**ANSI.** American National Standards Institute or its successor bodies.

**Antenna.** Equipment designed to transmit or receive radio or electronic signals.

**Approval authority.** The Town Council, Board of Adjustment or other Board or official designated by ordinance as being authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan.

**Automobile service center.** Any establishment where automobile parts sales or minor automobile service/repair activities occurs. Service/repair activities shall be limited to tuning or lubricating automobile engines, sales, repair or servicing of tires, mufflers or batteries. Major engine repair, transmission, or automobile body repair/paint shops are excluded activities under this use.

**A-weighted sound pressure level.** The sound pressure level as measured with a sound level meter using the A-weighting network. The symbol for this standard is dB(A).

**Base flood.** The flood having a one percent chance of being equaled or exceeded in any given year. Also known as the 100-year flood.

**Basement.** The lowest level or story of a building which has its floor subgrade on all sides.

**Best management practices (BMP).** A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

**Buffer.** An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

**Buffer (landscaping), perimeter.** The area of undisturbed land between adjacent incompatible uses. Performs the dual role of providing horizontal separation and vertical screening. The width and planting requirement varies according to the use classification of the subject and adjacent property.

**Buffer (landscaping), street.** The area of undisturbed land between incompatible uses across the street from each other. Provides horizontal separation only. The width varies according to the use classification of the subject and adjacent property.

**Buffer, stream.** The area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of the streams or rivers.

**Building.** (Per S.L. 2019-111 §1.17) Any structure used or intended for supporting or sheltering any use or occupancy

**Building coverage.** Building coverage refers to the area of a lot covered by buildings (principal and accessory) or roofed areas, as measured along the outside wall at ground level, and including all projections, other than open porches, fire escapes, canopies and the first two feet of a roof overhang.

**Built-upon area.** Built-upon areas shall include that portion of a development project that is covered by impervious improvements.

**Business complex.** A group of two or more office, industrial and/or other operations on an unsubdivided tract, operating under one name or presenting other elements of a unified image of identity to the public. A complex may or may not have a central core of attached businesses, (which a shopping center does have).

**Business frontage.** The distance that is occupied by a business or other activity measured along the outside wall of the building side on which the main entrance of the business or activity is located.

**Caliper.** Trunk diameter measurement for nursery grown stock taken six inches above grade of the rootball for trunks up to and including four inches, and 12 inches above grade of the rootball for trunks greater than four inches.

**Certified.** Whenever this UDO requires certification of the existence of some fact or

circumstance to the Town, the Town may require that such certification be made in any manner that provides reasonable assurance of the accuracy of the certification. By way of illustration, the Town may accept certification by telephone from some agency when the circumstances warrant it, or may require that the certification be in the form of a letter or other document.

**Child care center.** A child care arrangement that is licensed by the state of North Carolina and located in a residence where full time care is provided for at least three children but, not more than 12 children for which a special use permit has been granted by the Board of Adjustment.

**Child care home.** A home for not more than nine orphaned, abandoned, dependent, abused or neglected children, together with not more than two adults who supervise such children, all of whom live together as a single housekeeping unit.

**Child care institution.** An institutional facility housing more than nine orphaned, abandoned, dependent, abused, or neglected children.

**Circulation area.** That portion of the vehicle accommodation area used for access to parking or loading areas or other facilities on the lot. Essentially, driveways and maneuvering areas (other than parking aisles) comprise the circulation area.

**Cluster development.** A residential development constructed on a tract of land of at least five acres, zoned residential cluster district, under single ownership, planned, designed and developed as an integral unit, intended to allow flexibility in lot shapes, reduce infrastructure networks, provide inter-connected open space primarily along rear lot lines and protect natural resources by concentrating dwellings in specific areas of an overall tract.

**Combination use.** A use consisting of a combination on one lot of two or more principal uses. In some instances, a second principal use may be regarded as accessory to the first, and thus a combination use is not established.

**Commercial boundary.** Outer marker or boundary lines encompassing a tract or parcel of land used or zoned for commercial use.

**Commercial subdivision (lease lots or separate parcels).** A group of two or more office, commercial or other operations in geographic proximity, which may or may not operate under one banner, sharing ingress and egress, but having each operation on a separate lot, either through lease arrangement or through bonafide subdivision into separate parcels. (Examples in Garner include Plaza 70 East and the large lot of which PD Quix is a part.) Commercial Subdivisions are not shopping centers or business complexes as defined herein.

**Community center.** Governmentally owned and operated building(s) and facilities which may provide a wide range of activities predominately indoors to the general community such as but not limited to the following use: recreational; cultural; dining; educational; social and general administrative office uses.

**Community park.** A community park usually comprises 14 to 40 acres designed primarily to serve the community park district pursuant to the adopted park and greenway plan, usually serving residents within a radius of approximately one to two miles. A community park district is usually comprised of two or more neighborhood park districts. In addition to the facilities provided in neighborhood parks, community parks are designed to include such amenities as a community center or other special facilities, such as a swimming pool.

**Composting facility.** A facility in which stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

**Conditional use zoning district.** This consists of a legislative rezoning and a separate conditional use permit following a trial-like quasi-judicial hearing by the Town Council.

**Conditional use permit.** This is issued in conjunction with a legislative rezoning and consists of a separate conditional use permit following a trial-like quasi-judicial hearing. It is a permit issued by the Town Council that authorizes the recipient to make use of property in accordance with the requirements of this UDO as well as any additional

requirements imposed by the Town Council.

**Condominium.** (See unit ownership structure).

**Construction.** On-site erection, fabrication, installation, alteration, demolition or removal of any structure, facility, or addition thereto, including all related activities, including, but not restricted to, clearing of land, earthmoving, blasting and landscaping.

**Controlled access roadway.** A roadway with four or more lanes divided by a median with speed limits that would exceed 50 mph, where access to and from said road is by interchange only.

**Correctional facility.** A facility that houses persons in the custody of Wake County, the North Carolina Department of Correction or its agent as a result of conviction of a criminal offense or persons on parole.

**Council.** The Town Council of the Town of Garner.

**Critical area.** The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. In this UDO, the critical area consists of the Lake Benson Conservation District, as previously established and mapped, extending to the next property line or major landmark after a distance of 2,000 feet from the lake, plus the Watershed Conservation Buffer Areas as established at specified distances beyond the floodplain of Swift Creek and all other creeks flowing into Lake Benson, up to a distance of 5,000 feet.

**Critical root zone.** A circular area measured outward from a tree trunk where roots must remain undisturbed to ensure the tree's survival. Measured as one foot radial distance for every inch of tree DBH at a minimum of eight feet.

**Crown dripline.** A vertical line extending from the outer most surface of a tree's branch tips projected down to the ground.

**Cyclically varying noise.** Any sound which varies in sound level such that the same level is obtained repetitively at reasonably uniform intervals of time.

**dB(A).** A sound level in decibels determined by using the A-weighting network of a sound level meter.

**DBH.** Diameter-at-breast-height is a standard forestry measure of tree size, and is a tree trunk diameter measured in inches at a height of four and one-half feet above the ground. If a tree splits into multiple trunks below four and one-half feet, then each trunk is measured as a separate tree. A tree which splits into multiple trunks above four and one-half feet is measured as a single tree at four and one-half feet.

**Decibel (dB).** A unit of measure, on a logarithmic scale, of the ratio or magnitude of a particular sound pressure to a standard reference pressure, which, for purposes of this UDO, shall be 20 micropascals.

**Developer.** A person who is responsible for any undertaking that requires a site, special use, conditional use, or sign permit.

**Development.** Any land disturbing activity which (a) requires a soil and erosion permit, site permit, special use permit or sign permit, or (b) which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

**Disabled or handicapped home.** A residential arrangement which does not meet the definition of group care home and consists of a single family dwelling unit with a single family kitchen facility housing up to six persons with a disability or handicap.

**Discharging landfill.** A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.

**Driveway.** That portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not part of the vehicle accommodation area.

**Driveway/intersection sight distance standards.** All driveway and/or street intersections shall maintain sight triangles meeting the following minimums, within which nothing that may obstruct a motorist's or pedestrian's view of traffic on the street onto which the motorist or pedestrian will enter shall be permitted, including structures, signs,



plant materials or earth berms.

***Driveway or residential or secondary street onto U.S. or N.C. primary road.*** See Section 7.7 Article 7, Access standards.

***Dwelling.*** (Per S.L. 2019-111 §1.17) A building that contains one or two dwelling units used, intended, or designed to be used, rented, leased, let, or hired out to be occupied for living purposes.

***Dwelling unit.*** ~~A building, or portion thereof, providing complete and permanent living facilities for one household.~~ (Per S.L. 2019-111 §1.17) A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation

***Eighty-five percent TSS removal stormwater quality control device.*** A constructed device or series of devices designed to achieve the removal of 85 percent of the total suspended solids from stormwater runoff. This may be a single device with a removal efficiency of 85 percent or multiple devices with a collective removal efficiency of 85 percent. Examples of single devices with a removal efficiency of 85 percent include retention ponds, and bioretention devices. Other devices and their associated removal efficiencies are subject to approval by the North Carolina Division of Environmental Management.

***Electronic gaming centers.*** A business enterprise, as a principle use or as an accessory use where persons utilize more than six (6) electronic machine(s), including, but not limited to computers and gaming terminals, to conduct games including but not limited to sweepstakes, lotteries games, and or games of chance, and where cash, merchandise, or items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds, which have a finite pool of winners. The term includes, but is not limited to internet sweepstakes, video sweepstakes or cybercafes. This definition does not include any lottery endorsed, approved or sponsored by the State of North Carolina or arcade games of skill.

***Engineered stormwater control structure.*** Stormwater control structures designed by an engineer or landscape architect to control stormwater runoff. Such structures include but are not limited to wet retention ponds, detention ponds, etc.

***Existing development.*** Those projects that as of July 1, 1993, have been built or for which a permit has been issued, a subdivision plat has been recorded, or for which a vested right exists under Town ordinance or state law.

***Existing lot.*** A lot which is part of a subdivision, or a lot described by metes and bounds, a deed or plat of which has been recorded in the office of the register of deeds prior to the adoption of this UDO. Synonymous with lot of record.

***Existing manufactured home park or manufactured home subdivision.*** A parcel or parcels of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured home is to be affixed (including at a minimum the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of street(s) is completed before the effective date of this UDO.

***Expenditure.*** A sum paid out in return for some benefit or to fulfill some obligation. The term also includes binding, contractual commitments to make future expenditures, as well as any other substantial changes in position.

***Extraterritorial planning jurisdiction.*** That portion of the Town's planning jurisdiction located outside the corporate boundaries of the Town.

***Family.*** Two or more persons living together and occupying a single dwelling unit with a single kitchen facility, and who are related by blood, marriage, or adoption, or foster children, and including both a) a nuclear family consisting of one or two parents and any number of children and b) an extended family containing up to four adults and any number of children, but excluding from the definition of family a combination which consists of two or more nuclear families and more than four adults.

**Family care home.** A home for a limited number of residents and support or supervisory personnel (as limited by state definitional requirements) that provides room and board, personal care and rehabilitation services for handicapped persons in a family environment. According to GS 168-21, a handicapped person: is defined as a person with a temporary or permanent, physical, emotional, or mental disability. A family care home is a residential use of property and permissible by right in all residential districts, subject to additional requirements.

**Family child care home.** A child care arrangement that is licensed by the state of North Carolina and located in a residence where full time care is provided for at least three children but, not more than five children for which a site permit has been issued by the Planning Department.

**Flex space.** The sale, lease, or rental of space within a structure or multiple structures that will allow a combination of uses.

**Floating zone.** A zoning district whose requirements are fully described in this UDO but initially is unmapped. It is mapped in response to the approval of an applicant's request for a rezoning.

**Flood.** A general or temporary condition of partial or complete inundation of normally dry land areas from:

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

**Floodplain.** Any area susceptible to being inundated by water from the base flood. As used in this UDO, the term refers to that area designated as subject to flooding from the base flood on the flood boundary and the latest edition of the floodway map prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the Town Hall.

**Floodway.** The channel of a river or other watercourse 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 foot. As used in this UDO, the term refers to that area designated as a floodway on the flood boundary and the latest edition of the floodway map prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the Town Hall.

**Flood hazard boundary map.** An official map of a community issued by the federal emergency management agency, where the boundaries of the areas of special flood hazard have been defined in zone A.

**Flood insurance rate map.** An official map of a community on which the federal emergency management agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**Flood insurance study.** The official report provided by the federal management agency. The report contains flood profiles, as well as the flood boundary floodway map and the water surface elevation of the base flood.

**General use district.** A zoning district in which some uses are permissible with a site permit and others require a special use permit.

**Gross floor area.** The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

**Group care home.** A home where rehabilitation services are provided in a residential setting and family environment for up to nine persons at 200 square feet per occupant and one full bath per five occupants, including support and supervisory personnel who reside in the home. A group care home shall not include persons being housed in a correctional facility or mentally ill persons who are dangerous to others as defined in G.S. 122-3(11)b, as amended.

**Group care institution.** An institutional facility that provides rehabilitation services in a family environment for more than nine persons including support and supervisory personnel, and shall not include persons being housed in a correctional facility or mentally

ill persons who are dangerous as defined in G.S. 122-3(11).

**Habitable floor.** Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or any combination thereof. A floor used only for storage is not a habitable floor.

**Handicapped or home disabled.** A residential arrangement which does not meet the definition of group care home and consists of a single family dwelling unit with a single family kitchen facility housing up to six persons with a disability or handicap.

**Handicapped or infirm institution.** An institutional facility housing and providing care or assistance for more than nine persons who are physically or mentally handicapped or infirm.

**Hazardous material.** Any substance listed as such in: SARA Section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

**Heliport.** A formalized helicopter landing area that offers some or all of the following services: fueling, maintenance, passenger building, hanger facilities and support services.

**High density development.** Development within the Lake Benson Swift Creek Watershed area that exceeds the amount of impervious area which is allowed without engineered stormwater control measures.

**Highest adjacent grade.** The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

**Home occupation.** A commercial activity in any residential district that: (i) is conducted by a person on the same lot where such person resides; and (ii) is not so insubstantial or incidental or is not so commonly associated with the residential use as to be regarded as an accessory use, but that can be conducted without any significantly adverse impact on the surrounding neighborhood.

**Household.** One or more persons occupying a single family dwelling unit with a single kitchen facility, including a family as defined in this ordinance, and including a group of not more than five persons living together as a housekeeping unit by joint agreement or non-profit cost sharing basis.

**Impacted area.** Areas of a site where the cultural, natural and visual resources will be effected by a proposed development and or land disturbance.

**Impervious surface.** Impervious surfaces are those natural or man-made structures, which prevent or restrict the infiltration of stormwater runoff into the underlying soil. For the purpose of impervious calculation, rooftops, gravel or paved driveways, sidewalk, gravel or paved streets, curb and gutter and like structures are considered to be impervious surfaces. Water impoundments, landscaped areas and wooden slatted decks are considered pervious.

**Impulsive sound.** Either a single pressure peak or a single burst (multiple pressure peaks) for a duration less than one second.

**In-home adult day care.** An adult day care arrangement that been issued a certificate to operate by the state of North Carolina and located in a residence where a day care program is provided for up to six adults which meets the standards of the UDO for which a zoning compliance permit has been issued by the Planning Department.

**Industrial boundary.** Outer marker or boundary lines encompassing a tract or parcel of land used or zoned for industrial use.

**Industrial development.** Any nonresidential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

**Intermediate care home.** A facility maintained for the purpose of providing accommodation for not more than seven occupants needing medical care at a lower level than that provided in a nursing care institution but at a higher level than that provided in institutions for the handicapped or infirm.

**Intermediate care institution.** An institutional facility maintained for the purpose of providing accommodations for more than seven persons needing medical care at a lower level than that provided in a nursing care institution but at a higher level than that provided in institutions for the handicapped or infirm.

**Kennel.** A commercial operation that:

- (1) Provides food, shelter and care for animals for purposes not primarily related to medical care (a kennel may or may not be run by or associated with a veterinarian); or
- (2) Engages in the breeding of animals for sale.

**Land disturbing activity.** Any use of land in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. Sedimentation occurs whenever solid particulate matter, mineral or organic, is transported by water, air, gravity, or ice from the site of its origin, and is deposited elsewhere.

**Landfill.** A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the North Carolina General Statutes. For the purpose of this UDO this term does not include composting facilities.

**Landscaped area.** Areas of a site where groupings (more than one) of trees, shrubs and/or ground cover are proposed and are defined within a bed of mulch.

**Livestock.** All animals kept or raised on a farm, except however, that necessary working animals and pets are not included.

**Loading and unloading area.** That portion of the vehicle accommodation area used to satisfy the relevant requirements of this UDO.

**Logo.** A picture, pattern or way of writing its name that an establishment uses as its symbol and puts on its products or signs.

**Lot.** A parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or a recorded map, and which is recognized as a separate legal entity for purposes of transfer of title. The term tract is used interchangeably with the term lot.

**Lot area.** The area circumscribed by the boundaries of a lot, except that: (i) when the legal instrument creating a lot shows the boundary of the lot extending into a public street right-of-way, then the lot boundary for the purposes of computing the lot area shall be the street right-of-way line, or a line running parallel to and 30 feet from the center of the traveled portion of the street if the right-of-way line cannot be determined, and (ii) in a residential district, when a private road that serves more than three dwelling units is located along any lot boundary, then the lot boundary for purposes of computing the lot area shall be the inside boundary of the traveled portion of that road.

**Lower ratio of parking need to building square footage uses.** Uses, such as furniture stores, carpet stores, and major appliance stores, that sell items that are large and bulky, that need a relatively large amount of storage or display area for each unit offered for sale, and that therefore, generate less customer traffic per square foot of floor space than stores selling smaller items.

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

**Major watershed variance.** A watershed variance that results in any one or more of the following:

- (1) The complete waiver of a management requirement;
- (2) The relaxation, by a factor of more than ten percent, of any management requirement that takes the form of a numerical standard; and
- (3) The relaxation of any management requirement that applies to a development

proposal intended to exceed 12 percent impervious surface within the Lake Benson Conservation District or within the area subject to CUD-SB-C-22, CUD R-12-C53 or CUD-R-12 PR-C54 previously classified by the Swift Creek Land Management Plan as suburban new and those projects for which development would exceed 24 percent impervious surface for the balance of the watershed.

**Manufactured home.** A dwelling unit that:

- (1) Is composed of one or more components each of which was substantially assembled in a manufacturing plant and designed to be installed or assembled on the building site;
- (2) Exceeds 40 feet in length and eight feet in width;
- (3) Is constructed in accordance with the federal manufactured home construction and safety standards; and
- (4) Is constructed after June 15, 1976.

**Mean pool depth.** The cross-sectional area of a stream, pond or other body of water divided by the width of the water's free surface.

**Mini-parks.** A mini-park usually comprises one lot or less, and is designed primarily to serve the area contained on the final plat or approved site plan, and particularly to provide an area for play of younger children during daytime hours.

**Minor watershed variance.** A watershed variance that does not qualify as a major variance.

**Mobile home.** A dwelling unit that:

- (1) Was constructed before June 15, 1976 (pre-HUD requirements);
- (2) Is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the site on its own chassis; and
- (3) Exceeds 40 feet in length and eight feet in width.

**Modular home.** A dwelling unit that:

- (1) Is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the site on its own chassis;
- (2) Is constructed in accordance with the North Carolina Building Code (rather than HUD code) for single dwelling units.

**Neighborhood park.** A neighborhood park usually comprises three to ten acres serving the residents within the neighborhood park district as pursuant to the parks and greenway plan and primarily serving a radius of approximately three quarters of a mile. Typical facilities would include a meeting center, picnic areas, multi-use courts, ballfields, tot lots, tennis courts and special facilities as needed.

**Noise pollution.** The emission of sound that reasonably interferes with the enjoyment of life or with any lawful business or activity.

**Nonconforming lot.** A lot existing at the effective date of this UDO (and not created for the purposes of evading the restrictions of this UDO) that does not meet the minimum area requirements or the presumptive minimum lot width requirement of the district in which the lot is located.

**Nonconforming project.** Any structure, development, or undertaking that is incomplete at the effective date of this UDO and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

**Nonconforming situation.** A situation that occurs when any existing lot or structure, or use of an existing lot or structure, does not conform to one or more of the regulations applicable to the district in which the lot or structure is located on the effective date of this UDO. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this UDO, because

signs do not meet the requirements of, or because land or buildings are used for purposes made unlawful by this UDO.

**Nonconforming use.** A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. For example, a commercial office building in a residential district may be a nonconforming use. The term also refers to the activity that constitutes the use made of the property. For example, all the activity associated with running a bakery in a residentially zoned area is a nonconforming use.

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

**Nonresidential development.** All development other than residential development, agriculture and silviculture.

**Nursing care home.** A facility maintained for the purpose of providing skilled nursing care and medical supervision at a lower level than that available in a hospital to not more than nine persons.

**Nursing care institution.** An institutional facility maintained for the purpose of providing skilled nursing care and medical supervision at a lower level than that available in a hospital to more than nine persons.

**Outdoor storage.** The storage of materials in an unenclosed area. Outdoor storage shall not include the temporary storage of vehicles at repair or sales facilities.

**Outparcel.** A parcel, adjacent to or partially surrounded by a shopping center tract, which was either part of the original shopping center tract, or which, as determined by the Planning Director, acts (in the manner in which it operates and the way it blends into the image of the overall shopping center), like part of the shopping center. Such parcels have separate deeds or have been sectioned-off by the developer for purposes of leasing to one or more businesses. In no case shall an outparcel as defined herein be considered as a separate shopping center.

**Parking area aisles.** That portion of the vehicle accommodation area consisting of lanes providing access to parking spaces.

**Parking space.** A portion of the parking area set aside for the parking of one vehicle.

**Passive stormwater quality control device.** A constructed device designed to achieve the removal of up to 40 percent of the total suspended solids from stormwater runoff. Examples of a passive device include grass swales and other devices approved by the North Carolina Division of Environmental Management.

**Person.** An individual, executor, corporation, partnership or other entity acting as a unit.

**Pervious surface.** Ground treatments which will allow the infiltration of water, air and nutrients to root systems of adjacent plant material which lie directly under the ground treatment.

**Planned Residential Development.** A development constructed on a tract of at least five acres under single ownership, planned and developed as an integral unit, and consisting of a combination of single-family residential subdivision lots and multi-family residences.

**Planned Unit Development.** A development constructed on a tract of at least 20 acres under single ownership, planned and developed as an integral unit, and consisting of a combination of principal uses that could be combined only in a Planned Unit Development District.

**Planning Director.** See Section 2.4.

**Planning jurisdiction.** The area within which the Town is authorized to plan for and regulate development pursuant to the authority granted in ~~Article 19 of Chapter 160A of~~ the North Carolina General Statutes.

**Plat.** A map or plan of a parcel of land which is to be, or has been subdivided.

**Principal building.** The primary building on a lot, or a building that houses a principal use.

**Private service laterals for water and sewer.** These facilities are defined as beginning at the public street right-of-way or public utility easement and extending onto private property to a point necessary to serve said property, specifically for water this shall be beyond the water meter location; for sewer this shall be beyond the cleanout location.

**Project.** Any use requiring a permit from the building inspections and/or Planning Department. Such permits shall include, but not limited to a building permit and site permit.

**Public sewer and other utility system, municipally owned.** The existing Town of Garner or City of Raleigh owned water, storm sewer and sanitary sewer lines including all pipes, valves, valve boxes, hydrants and other fixtures, equipment and apparatus of the water main, storm sewer and sanitary sewer pipe lines and systems, and all appliances necessary and convenient thereto, and such lines built to the Town of Garner and City of Raleigh standards to be dedicated and accepted by the City of Raleigh or the Town of Garner. The utility lines dedicated to the City of Raleigh shall include only main distribution and collection lines and appurtenances in street right-of-way or dedicated recorded easements on private property. Such facilities shall be subject to the applicable provisions of this UDO and applicable sections of the Code of the Town of Garner.

**Public sewer or water system, non-municipally owned.** A sewer or water system designed for and intended to provide services to users and is franchised by the North Carolina Utilities Commission. Such systems and all appurtenances shall be built to the Town of Garner and City of Raleigh standards and specifications according to the applicable provisions of this UDO and the Code of the Town of Garner.

**Pure tone.** Any sound that can be distinctly heard as a single pitch or a set of single pitches.

**Recreational vehicle.** A vehicular type accommodation, other than a manufactured home designed as temporary accommodations for travel, vacation, or recreation purposes, which is propelled by its own motive power or is mounted on or drawn by another vehicle.

**Recycling collection point.** An incidental use that is considered an accessory use to only the principal uses. Recycling collection points serve as a neighborhood drop-off point outside of a fully enclosed building for temporary storage of small amounts of recyclable materials.

**Recyclable material collection center.** Operations inside or outside of enclosed buildings for the collection of recyclable materials such as aluminum, copper, plastic, glass or paper materials which may be recycled for re-manufacture or reuse.

**Repetitive impulsive noise.** Any noise that is composed of impulsive noises that are repeated at sufficiently slow rates such that a sound level meter set at fast meter characteristics will show changes in sound pressure level greater than ten dB(A).

**Residence, duplex.** A residential use consisting of two dwelling units within a single building on a single lot.

**Residence, multifamily.** A residential use consisting of two dwelling units located in separate buildings on the same lot, three or more dwelling units located in one or more buildings on the same lot, or attached or detached units on separate lots at densities permitted only in multifamily zones.

**Residence, single-family.** A residential use consisting of a detached building containing one dwelling unit on a single lot.

**Residential boundary.** Outer marker or boundary lines a tract or parcel of land used or zoned for residential use.

**Restaurant.** An establishment providing food and food service, whereby at least 51 percent of the establishment's revenue is derived from such food sales.

**Restaurant, drive-in.** A restaurant where a substantial portion of the food service is to occupants of motor vehicles parked on the premises.

**R/W.** Right-of-way line of a public street.

**Road.** All private ways used to provide motor vehicle access to:

- (1) Two or more lots; or

(2) Two or more distinct areas or buildings in unsubdivided developments.

**Satellite dish antenna.** A device capable of receiving radio or television signals from orbiting satellites and other extraterrestrial sources; and shall include all appurtenant components of the satellite dish antenna.

**Sewer or water facilities, individual.** A sewer or water system or facility designed for and intended for private use by one or more users, but not requiring a franchise from the North Carolina Utilities Commission, and not being a Municipally owned system. However, such facilities may require permit approvals by the Wake County Health Department as provided for in this UDO.

**Shopping center.** A building or group of buildings housing seven or more businesses (usually as in-line tenants) on a unified tract (i.e. not on a lease lot or parcel subdivided out of the original larger shopping center parcel), under one or multiple ownerships, and operating under one banner as a pedestrian movement, and/or common ingress and egress points. Its occupants provide or are intended to provide for the retail sale of goods and services (including postal services, etc.) to the public. However, expansions of shopping centers developed after the aforementioned date are required to conform to the uniform signage regulations applicable to the shopping center.

**Shrub, large.** A deciduous or evergreen shrub that matures at between six to 12 feet or greater in height. Usually maintains branches from the ground up, and if evergreen, used as a screening material.

**Shrub, medium.** A deciduous or evergreen shrub that matures (or is maintained) at three to six feet in height. If evergreen it is used as a screening material.

**Shrub, small.** A deciduous or evergreen shrub that matures (or is maintained) at one to three feet in height. May be used inside sight triangle planting.

**Sight distance standards (triangle).** To ensure that landscape materials do not constitute a traffic hazard, a triangle will be observed at all intersections of driveways/streets with adjacent streets. These sight triangles shall be kept clear of any such visual obstructions between two and one-half feet and ten feet in height.

**Sign.** Any device that is sufficiently visible to persons not on the premises and designed to attract or direct the attention of such persons or to communicate information to them.

- (1) **Sign, canopy.** Any sign attached to or made a part of a canopy; a canopy being any rooflike structure supported by posts or suspended from a wall and extending over an area for the purpose of providing protection against the weather. A canopy sign may be considered a wall or freestanding sign the area of which shall be calculated into the maximum sign area and maximum number permitted as either a wall sign or freestanding sign. Such signs are limited to two sides of a canopy and may not extend above or below the canopy fascia or project any further than necessary for attachment, not to exceed 18.
- (2) **Sign, changeable copy.** A sign whose display area is designed so that the characters, letters, or illustrations can be changed or rearranged without otherwise altering the face or surface of the sign. In the context of this UDO, a changeable copy sign is defined as a permanent sign and erected only in combination with an identification sign; also locally known as a marquee sign.
- (3) **Sign, directory.** A sign located on the interior portion of a shopping center or other business complex, designed to convey the names of occupants of the complex to persons on site. Such signs are typically located near entrances or at strategic locations within the parking area of the complex.
- (4) **Sign, freestanding.** A sign that is not attached to, suspended from, erected on or supported by a building or other structure having a principal function other than the support of such sign but is instead supported by some structure, such as a pole or post, or is without supporting elements, such as an A-frame or monument base. Any sign on a fence located within the required building setback area shall be considered a freestanding sign, and canopy signs may be interpreted as either freestanding or wall signs.



- (5) **Sign, ground.** See freestanding sign and monument sign.
- (6) **Sign, monument.** A type of freestanding sign (often referred to as a ground sign, which has a low profile, typically below 36 feet in height, and is built of brick or other substantial material resembling a monument.
- (7) **Sign, multiple-business.** A sign of major significance designed to inform persons off the premises of the businesses which comprise a shopping center or business complex. It may or may not bear the name of the complex but must list the entities within the complex.
- (8) **Sign, off-premises.** A commercial sign which directs attention to or communicates about a business, service, commodity, attraction or other activity that is conducted sold or offered at a location other than the premises on which the sign is located.
- (9) **Sign, political.** A sign advertising a ballot measure or candidate for public office.
- (10) **Temporary sign.** A sign that is designed for short-term use or is used in connection with a circumstance or event expected to take place or be completed within a reasonably short period of time. (If a sign display area is permanent but the message is subject to periodic change, that sign shall not be regarded as temporary.)

**Significant trimming.** Any pruning and/or trimming of a tree which removes more than one-third of the branching of the tree and/or results in the loss of more than one-third of the tree's overall form and shape.

**Sign permit.** A permit issued by the Planning Director that authorizes the recipient to erect, move, enlarge or substantially alter a sign.

**Single-family residential.** Any development where (1) no building contains more than one dwelling unit, (2) every dwelling unit is on a separate lot, and (3) where no lot contains more than one dwelling unit.

**Site permit.** A permit issued by the land use Planning Director that authorizes the recipient to make use of property in accordance with the requirements of this UDO.

**Site specific development plan.** A plan of land development submitted to the Town for purposes of obtaining one of the following zoning or land use permits or approvals: subdivision plat, site permit, conditional use permit, special use permit, special exception, conditional use zoning district or variance; provided, notwithstanding the foregoing that neither a variance, a plat nor any other document that fails to describe with reasonable certainty that type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

**Sound.** An oscillation in pressure in air.

**Sleeping Unit.** (Per S.L. 2019-111 §1.17) A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities, but not both. Such rooms and spaces that are also part of *dwelling unit* are not sleeping units.

**Solar farm.** An entire tract or portion of a tract that contains a collection of ground-mounted solar panels and related equipment designed to convert sunlight into electrical power for direct on-site consumption or for interconnection with the power grid system for off-site consumption; the size of a solar farm may vary from a few acres to hundreds of acres.

**Sound level.** In decibels, a weighted sound pressure level, determined by the use of metering characteristics and frequency weightings specified in ANSI S1.4-1971 Specifications for Sound Level Meters.

**Sound level meter.** An instrument, including a microphone, amplifier, EMS detector and integrator, time average, output-meter and/or visual display and weighting networks, that is sensitive to pressure fluctuations. The instrument reads sound pressure level when properly calibrated and is of type I or better as specified in American National Standards Institute Publication S1.4-1971 or its successor publication.

**Sound pressure level.** In decibels, 20 times the logarithm to the base ten of the ratio of

the magnitude of a particular sound pressure to the standard reference pressure. The standard reference pressure is 20 micropascals.

**Special scenic corridor.** An area parallel to the right-of-way of existing and proposed major and minor thoroughfares and other designated highways on the adopted or amended Garner Transportation Plan, that are subject to overlay district regulations to preserve natural scenic beauty and aesthetic character, promote design quality, to protect and enhance the public and private investment in and along said highways, and to enhance trade, tourism, capital investment and the general welfare.

**Special use permit.** A permit issued by the Board of Adjustment that authorizes the recipient to make use of property in accordance with the requirements of this UDO as well as any additional requirements imposed by the Board of Adjustment.

**Start of construction.** Substantial improvement, which means the date the building permit was issued, providing the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, 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.

**Steady-state noise source.** One that exhibits a sound level whose variation is within plus or minus five dB(A) over any one ten-minute period in a 24-hour day.

**Stormwater.** The runoff generated by rainfall during a storm event.

**Stream.** A perennial body of water running over the earth's surface in a channel or bed and also shown by a single blue line on the most recent version of the U.S. Geological Survey 1:24,000 scale (7.5 minute) topographic maps; or as delineated by the most recent Town of Garner study.

**Street.** A public street or a street with respect to which an offer of dedication has been made.

**Street wall.** The building facade and or wall which is facing the right-of-way line and the street.

**Structure.** Anything constructed or erected, including but not limited to buildings, which requires location on the land.

**Subdivider.** Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

**Subdivision.** The divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets, but the following shall not be included within this definition nor be subject to the regulations authorized by this UDO:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resulting lots are equal to or exceed the standards of this UDO;
- (2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for water or sewer infrastructure the widening or opening of streets;
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way

dedication is involved and where the resultant lots are equal to or exceed the standards of the this UDO; and

- (5) The division of a tract into plots or lots used as a cemetery.

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

**Substantial improvement.** Any combination of repairs, reconstruction, alteration or improvements to a structure, taking place within any consecutive 12-month period in which the cumulative cost equals or exceeds 50 percent of the present market value of the structure. The market value should be:

- (1) The appraised value of the structure before the initial repair or improvement;  
or
- (2) In case of damage, the value of the structure prior to the damage occurring.

**Tenth percentile sound level.** The A-weighted sound pressure level that is exceeded ten percent of the time in any measurement period (such as the level that is exceeded for one minute in a ten minute period) and is denoted L10.

**Townhouse or townhome.** The townhouse is a form of single-family attached dwelling in which units share common side walls and are often designed in rows (although good design attempts to de-emphasize the lined-up appearance). Units are purchasable on a fee-simple basis on small individual parcels of land, fronting on either a public or private street. Yards are typically small, and privacy requires careful protection.

**Tower.** A structure whose principal function is to support an antenna with the exception of a satellite dish antenna (see definition of satellite dish antenna).

**Toxic substance.** Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

**Travel trailer.** A structure that is (i) intended to be transported over the streets and highways either as a motor vehicle, or attached to or hauled by a motor vehicle, and (ii) is designed for temporary use as sleeping quarters, but that does not satisfy one or more of the definitional criteria of a mobile home.

**Tree, ornamental.** A small to medium-sized tree growing to 15 to 35 feet in height at maturity, planted for aesthetic purposes such as colorful flower, interesting bark, or interesting fall foliage.

**Tree, overstory.** A large tree growing to 35 feet in height or spread or greater at maturity, usually deciduous, planted to provide a canopy of shade.

**Tree, screening.** Medium to large evergreen tree, 12 feet or greater in height at maturity, that keeps branches from the ground up. Examples include Thuga 'Green Giant', Virginia Pine, Cedar, Leyland Cypress, some Hollies, or vertical growing Junipers.

**Tree, street.** A deciduous overstory tree, installed at a minimum two and one-half-inch caliper size, planted a minimum five feet and a maximum of 15 feet from the road right-of-way. Where overhead lines exist an ornamental tree shall be used.

**Unit ownership structure (condominium).** Any building or structure in which dwelling unit ownership has been created by the owners or co-owners by an express declaration of intent under the Unit Ownership Act of Chapter 47A, North Carolina General Statutes.

**Use.** The activity or function that actually takes place or is intended to take place on or in a building, structure, or lot, including everything that is done to, on, or in a building, structure, or lot.

**Utility facilities.** Any above-ground structures or facilities, other than buildings, (unless such buildings are used for storage incidental to the operation of such structures or facilities) owned by a governmental entity, a nonprofit organization, corporation, or any entity defined as a public utility for any purpose by Section 62.3 of the North Carolina General Statutes and used in connection with the production, generation, transmission, delivery, collection or storage of water, sewage, electricity, gas, oil or electronic signals. Excepted from this definition are utility lines and supporting structures.

**Utility facilities, community or regional.** All utility facilities other than neighborhood facilities.

**Utility facilities, neighborhood.** Utility facilities that are designed to serve the immediately surrounding neighborhood and that must, for reasons associated with the purpose of the utility in question, be located in or near the neighborhood where such facilities are proposed to be located.

**Variance.** A grant of permission by the Board of Adjustment that authorizes the recipient to do that which, according to the strict letter of this UDO, he could not otherwise legally do.

**Vehicle accommodation area.** That portion of a lot that is used by vehicles for access, circulation, parking, and loading and unloading. It comprises the total of circulation areas, loading and unloading areas and parking areas.

**Vehicular surface area.** The paved or non-paved area intended for vehicular circulation or storage. Square footage calculations shall include the total of all vehicular surface areas located in the street yard and in the rear yard. This section does not apply to single-family residential use or parking structures. Any vehicular surface area, or portions thereof, built after the adoption of this section, which area is expanded by 25 percent or more, shall be landscaped as required.

**Vested right.** A right pursuant to G.S. 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan after public notice and hearing.

**Water dependent structure.** Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

**Watershed.** The entire land area contributing surface drainage at a water supply intake.

**Watershed administrator.** An official or designated person of the Town of Garner responsible for administration and enforcement of the watershed provisions of this UDO.

**Watershed record.** An official record or file of all development requests within the watershed and the actions taken. This record will be maintained by the watershed Planning Director.

**Wholesale sales.** On-premises sales of goods primarily to customers engaged in the business of reselling the goods.

**Yard, front.** The portion of a lot bounded by a street right-of-way, side lot lines, and the front line of the principle building, structure or use, in the absence of a principle building or structure

**Yard, rear.** The portion of a lot bounded by side lot lines, the rear lot line or street right-of-way, and the rear line of the principle building, structure or use, in the absence of a principle building or structure.

**Yard, side.** The portion of a lot bounded by side lot line(s) and the side line of a principle building, structure or use in the absence of a principle building or structure, extending the full length of the building, structure or use and not including any front or rear yard (See diagram below).

**Yard, cornerside.** The portion of a lot bounded by a street right-of-way and the side line of a principle building, structure or use in the absence of a principle building or structure

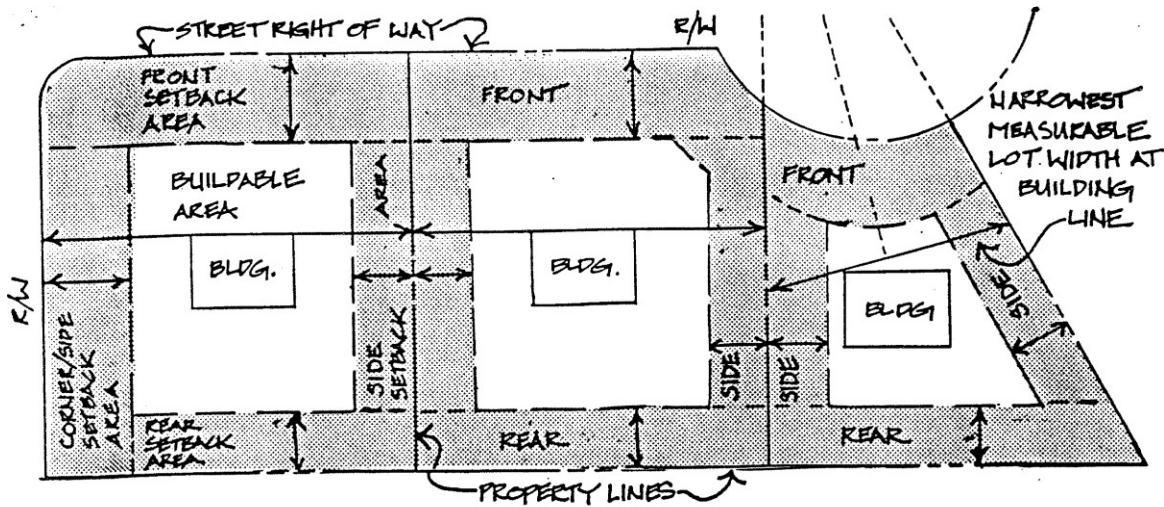
extending the full length the building, structure or use and not including any front or rear yard.

**Yard, side and rear (applies to landscaping compliance only).** All of the required yard area within the interior side and rear yards as established in each underlying zone, that does not fall within the defined street yard.

**Yards, street (applies to landscaping compliance only).** The area of a lot that lies between the public right-of-way line abutting a street and the line created from the street wall/facade facing the right-of-way of a building that is extended toward the adjacent side or rear property lines. If the two street yards cross, the yard with the smaller distance between the right-of-way and the building wall/facade shall be used in this area of overlap.

**Zero-lot-line dwelling.** A group of two or three attached dwelling units with a common wall situated on a property line.

(Ord. No. 3376, § 15, 1-17-06; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3656, § 5, 2-21-12; Ord. No. 3673, § 1, 10-1-12; Ord. No. 3780, § 12, 7-7-15)



\* POINT OF PROPOSED STRUCTURE CLOSEST TO THE FRONT YARD SETBACK LINE.

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: August 25, 2020		
Subject: Update on Park Land Fee In Lieu Calculation		
Location on Agenda: Discussion		
Department: Administration		
Contact: Mike Franks, Budget & Special Projects Manager		
Presenter: Mike Franks, Budget & Special Projects Manager		
<p><b>Brief Summary:</b></p> <p>In response to Council feedback during the FY 2021 budget process, staff has updated the fee in lieu calculation for park land. Staff will discuss a draft version of the fee calculation and propose a process for adoption of the new fee.</p>		
<p><b>Recommended Motion and/or Requested Action:</b></p> <p>Discussion and feedback from Council.</p>		
<p><b>Detailed Notes:</b></p>          		
<p><b>Funding Source:</b></p> <p>N/A</p>		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
<p><b>Manager's Comments and Recommendations:</b></p>          		
<p>Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/></p>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	MR	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

A large, thick, black L-shaped graphic is positioned on the left and bottom right sides of the page, framing the central text. The top horizontal bar of the 'L' is on the left, and the right vertical bar is on the right side.

# PARK LAND FEE IN LIEU CALCULATION

# Presentation Overview

- Summary of enacting legislation and restrictions
- Overview of current fee and comparison to other Wake County localities
- Summary of staff recommendation



# Fee in Lieu of Park Land Overview

- State legislation - [NCGS 160A-372\(E\)](#) - indicates that “a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this subsection shall be used only for the acquisition or development of recreation, park, or open space sites.”
- It also requires that “Any formula enacted to determine the amount of funds that are to be provided under this subsection shall be based on the value of the development or subdivision for property tax purposes.”

# Fee in Lieu of Park Land Overview

- In addition to state legislation, Section 6.6 of the Town Charter (Sess. Laws 1985, Ch. 252, § 1) grants separate authority to charge this fee
- “The town council may establish a fund into which payments from developers or property owners may be deposited for the purpose of providing recreational areas or facilities and from which appropriations shall be made exclusively for the purpose of acquiring or improving recreational areas or facilities that are reasonably expected to benefit or serve the residents of the development generating such funds. The council may provide in its land use ordinance that all developers or developers of certain types of projects shall either provide recreation areas or facilities according to standards set forth in the ordinance or pay a fee in accordance with a town-established schedule to the town's recreational areas and facilities fund. The council may also provide in its land use ordinance that under specified circumstances such fees shall be required in lieu of reservation or dedication of recreation areas or facilities.”

# Fee in Lieu of Park Land in Garner

- The Town's methodology for calculating Fee in Lieu of Park Land rates has not been updated for several years
- As part of the FY 2020 - 2021 Budget, staff compared the Town's rates to several other localities and determined an update may be required

# Regional Comparison

Locality	Rate
Garner	Single Family Detached \$1,147 per unit Multi Family (townhome/apartment) \$895 per unit
Fuquay-Varina	Single Family Detached \$1,000 per unit Multi Family \$25,000 per acre
Morrisville	Single Family Detached 1/35 of an Acre Times the Number of Dwelling Units Multi Family \$2,172 per unit
Wake Forest	Single Family Detached \$3,281 per unit Single Family Attached & Multi Family \$1,958 per unit
Holly Springs	Single Family Detached \$4,705 per unit Single Family Attached \$4,555 per unit Multi Family Attached \$4,420 per unit
Apex	Single Family Detached \$3,447 per unit Single Family Attached \$2,322 per unit Multi Family Attached \$2,044 per unit

# Revised Methodology

- Staff prepared a revised methodology based on the Parks and Cultural Resources Comprehensive Plan, American Community Survey (Census) and GIS data
- The PRCR Comp Plan provides data on how many parks and greenways the Town should have per person
- The American Community Survey provides information on the average number of residents in various housing types. This allowed staff to determine the amount of parkland/greenways required for each residential unit
- GIS data on the cost of vacant land was utilized to determine the cost of acquiring land for parks/greenways

# Revised Rates

- The revised methodology produced a fee more in line with other Wake County localities
  - *Single Family Detached - \$2,912 per unit*
  - *Single Family Attached - \$1,969 per unit*
  - *Multi-Family - \$2,041 per unit*
  
- If approved, the revised rates are projected to generate approximately \$600,000 - \$700,00 in additional revenue annually at the current rate of development

# Implementation

- Review draft fee changes with Parks and Rec Advisory Committee in September
- Formal Council vote in October
- Share changes with development community
- Implement new rates on January 1, 2021
- It is important to note that only developments submitted after January 1, 2021 would be required to pay the revised fees. All developments submitted prior to this date would pay the current fees

Questions?



## DRAFT Park Land Fee In Lieu Calculation - Single Family Detached

Data Inputs	Value	Source	Notes
People per household - SF Detached	2.81	American Community Survey	Southern Wake area - Garner, Fuquay-Varina
People per household - SF Attached	1.90	American Community Survey	Southern Wake area - Garner, Fuquay-Varina
People per household - Multi-Family	1.97	American Community Survey	Southern Wake area - Garner, Fuquay-Varina
Acres of park land per person	0.0105	PRCR Comp Plan	Plan states 10.5 acres per 1,000 population
Miles of greenway per person	0.0010	PRCR Comp Plan	Plan states 1 mile per 1,000 population
Easement width (feet) for greenways	15	TOG Staff	10' paved greenway with 2.5' each side for maint.
Conversion - feet per mile	5,280		
Conversion - square feet per acre	43,560		
Conversion - acres per greenway mile	1.818		
2020 average value of raw land	45,408	Wake County Tax Records	Average value for large vacant parcels in Garner

### Acres of Park Land Required Per SF Detached Unit

Park Acres Per Person	0.01050
x People Per Household	2.81
= Park Acres Per Household	0.02951

### Acres of Greenway Required Per SF Detached Unit

Greenway Miles Per Person	0.00100
Greenway SF Per Person	79.20
Greenway Acres Per Person	0.00182
x People Per Household	2.81
= Greenway Acres Per Household	0.00511

### Value of Park and Greenway Acreage Per SF Detached Unit

Per Acre Tax Value for Vacant Land	45,408
x Park Acres Per Household	0.02951
= Required Fee Per Unit - Parks	1,340

Per Acre Tax Value for Vacant Land	45,408
x Park Acres Per Household	0.03461
= Required Fee Per Unit - Greenway	1,572

<b>Fee Per Unit For Both</b>	<b>2,912</b>
------------------------------	--------------

## DRAFT Park Land Fee In Lieu Calculation - Single Family Attached

Data Inputs	Value	Source	Notes
People per household - SF Detached	2.81	American Community Survey	Southern Wake area - Garner, Fuquay-Varina
People per household - SF Attached	1.90	American Community Survey	Southern Wake area - Garner, Fuquay-Varina
People per household - Multi-Family	1.97	American Community Survey	Southern Wake area - Garner, Fuquay-Varina
Acres of park land per person	0.0105	PRCR Comp Plan	Plan states 10.5 acres per 1,000 population
Miles of greenway per person	0.0010	PRCR Comp Plan	Plan states 1 mile per 1,000 population
Easement width (feet) for greenways	15	TOG Staff	10' paved greenway with 2.5' each side for maint.
Conversion - feet per mile	5,280		
Conversion - square feet per acre	43,560		
Conversion - acres per greenway mile	1.818		
2020 average value of raw land	45,408	Wake County Tax Records	Average value for large vacant parcels in Garner

### Acres of Park Land Required Per SF Attached Unit

Park Acres Per Person	0.01050
x People Per Household	1.90
= Park Acres Per Household	0.01995

### Acres of Greenway Required Per SF Attached Unit

Greenway Miles Per Person	0.00100
Greenway SF Per Person	79.20
Greenway Acres Per Person	0.00182
x People Per Household	1.90
= Greenway Acres Per Household	0.00345

### Value of Park and Greenway Acreage Per SF Attached Unit

Per Acre Tax Value for Vacant Land	45,408
x Park Acres Per Household	0.01995
= Required Fee Per Unit - Parks	906

Per Acre Tax Value for Vacant Land	45,408
x Park Acres Per Household	0.02340
= Required Fee Per Unit - Greenway	1,063

Fee Per Unit For Both	1,969
-----------------------	-------

## DRAFT Park Land Fee In Lieu Calculation - Multi-Family

Data Inputs	Value	Source	Notes
People per household - SF Detached	2.81	American Community Survey	Southern Wake area - Garner, Fuquay-Varina
People per household - SF Attached	1.90	American Community Survey	Southern Wake area - Garner, Fuquay-Varina
People per household - Multi-Family	1.97	American Community Survey	Southern Wake area - Garner, Fuquay-Varina
Acres of park land per person	0.0105	PRCR Comp Plan	Plan states 10.5 acres per 1,000 population
Miles of greenway per person	0.0010	PRCR Comp Plan	Plan states 1 mile per 1,000 population
Easement width (feet) for greenways	15	TOG Staff	10' paved greenway with 2.5' each side for maint.
Conversion - feet per mile	5,280		
Conversion - square feet per acre	43,560		
Conversion - acres per greenway mile	1.818		
2020 average value of raw land	45,408	Wake County Tax Records	Average value for large vacant parcels in Garner

### Acres of Park Land Required Per Multi-Family Unit

Park Acres Per Person	0.01050
x People Per Household	1.97
= Park Acres Per Household	0.02069

### Acres of Greenway Required Per Multi-Family Unit

Greenway Miles Per Person	0.00100
Greenway SF Per Person	79.20
Greenway Acres Per Person	0.00182
x People Per Household	1.97
= Greenway Acres Per Household	0.00358

### Value of Park and Greenway Acreage Per Multi-Family Unit

Per Acre Tax Value for Vacant Land	45,408
x Park Acres Per Household	0.02069
= Required Fee Per Unit - Parks	939

Per Acre Tax Value for Vacant Land	45,408
x Park Acres Per Household	0.02427
= Required Fee Per Unit - Greenway	1,102

Fee Per Unit For Both	2,041
-----------------------	-------

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: August 25, 2020		
Subject: 2021 Holiday Schedule		
Location on Agenda: Discussion		
Department: Administration		
Contact: Rodney Dickerson, Town Manager		
Presenter: Rodney Dickerson, Town Manager		
Brief Summary:  The Town offers employee holidays on the same schedule as the State of North Carolina and this Resolution sets those dates.		
Recommended Motion and/or Requested Action: Discussion and feedback from Council		
Detailed Notes:		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations:		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	RD	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

## 2021 State Holiday Schedule

<b>Holiday</b>	<b>Observance Date</b>	<b>Day of Week</b>
New Year's Day	January 1, 2021	Friday
Martin Luther King, Jr. Birthday	January 18, 2021	Monday
Good Friday	April 2, 2021	Friday
Memorial Day	May 31, 2021	Monday
Independence Day	July 5, 2021	Monday
Labor Day	September 6, 2021	Monday
Veterans Day	November 11, 2021	Thursday
Thanksgiving	November 25 & 26, 2021	Thursday & Friday
Christmas	December 23, 24 & 27, 2021	Thursday, Friday & Monday

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: August 25, 2020		
Subject: Review Agenda Preparation Process		
Location on Agenda: Discussion		
Department: Administration		
Contact: Rodney Dickerson, Town Manager		
Presenter: Rodney Dickerson, Town Manager		
<p><b>Brief Summary:</b></p> <p>In response to questions and comments from Council members, staff has prepared an overview of the Town's agenda preparation process. Understanding the current process will be helpful when discussing potential changes to the process.</p>		
<p><b>Recommended Motion and/or Requested Action:</b></p> <p>Discussion and feedback from Council.</p>		
<p><b>Detailed Notes:</b></p>          		
<p><b>Funding Source:</b></p> <p>N/A</p>		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
<p><b>Manager's Comments and Recommendations:</b></p>          		
<p>Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/></p>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	MR	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		



# Agenda Preparation Process

# Goals of the Agenda Process

- Council has the information it needs to make decisions
- Council receives information far enough in advance to read it
- Staff has time to prepare high quality materials for Council
- Clerk has time to convert staff materials into finished document
- Timeliness of agenda items meets external deadlines or expectations
- Agenda information is available to the public



# Survey of Other Municipalities

- Informal survey via Clerk's listserv, 14 responses
- Jurisdictions of all sizes across NC, many in Wake County
- All have council meetings on Mondays or Tuesdays
- Two provide materials the Wednesday before the meeting
- Eight provide materials the Thursday before the meeting
- Four provide materials the Friday before the meeting

# Current Agenda Process

- Staff submit agenda items
- Clerk's Office prepares draft agenda for staff discussion at first agenda review meeting
- Staff makes additional changes as needed
- Clerk's Office makes final edits and formats adjustments
- Town Manager's Office completes final review of documents
- Clerk's Office merges documents into single PDF file
- Clerk's Office posts agenda for electronic retrieval by Council, or delivers hard copy to homes
- Clerk's Office posts to Town website and sends to media

# July 2020

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
28	29	30	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	1

Agenda Prep Meeting: 20-21, 24-25, 27-28

Council Meetings: 21, 28

Planning Commission: 24-25

# August 2020

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
26	27	28	29	30	31	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31	NOTES				

Agenda Review Meeting: 10-11, 17-18, 24-25

Agenda Prep Meeting: 3-4, 10-11, 17-18, 24-25

Council Meetings: 3, 10, 17, 24

Planning Commission: 10-11, 17-18, 24-25

Work Session: 10-11, 17-18, 24-25

First Meeting: 10-11, 17-18, 24-25

Second Meeting: 10-11, 17-18, 24-25

# August 2020

SUNDAY MONDAY TUESDAY WEDNESDAY THURSDAY FRIDAY SATURDAY

26 27 28 29 30 31 1

2 3 4 5 6 7 8

Agenda Prep Meeting

9 10 11 12 13 14 15

Agenda Review Meeting

16 17 18 19 20 21 22

Agenda Review Meeting

23 24 25 26 27 28 29

Agenda Review Meeting

30 31

**NOTES**

Planning Items		Council Meetings	
First Meeting		Planning Commission	
Second Meeting			
Work Session			

# July 2020

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
28	29	30	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
Agenda Prep Meeting						
26	27	28	29	30	31	1
Agenda Prep Meeting						



# Council Input

- How could we change the agenda process to better achieve our collective goals?
- Any changes needed to meeting schedule to better achieve our collective goals?
- Other thoughts and comments?



# Next Steps

- Share Council feedback with department heads and staff
- Complete evaluation of technology tools to improve agenda workflow and reduce document assembly time
- Review proposed changes with department heads and staff
- Share proposed changes with Council

**Agenda Packet Survey**

<b>Municipality</b>	<b>Meeting Schedule</b>	<b>Agenda Packets Sent Out</b>
Greensboro	Meets 1st & 3rd Tuesday/month	Thursday prior to meeting
Clayton	Meets 1st & 3rd Monday/month	Thursday prior to meeting
Wendell	Meets 2nd & 4th Monday/month	Wednesday prior to meeting
Red Oak	Meets 2nd Monday/month	Thursday prior to meeting
Rocky Mount	Meets 2nd and 4th Monday/month	Thursday prior to meeting
Sedalia	Meets 1st Monday/month	Friday prior to meeting
Knightdale	Meets 1st Monday/month & 3rd Wednesday/month	Friday prior to meeting
Wake Forest	Meets 1st & 3rd Tuesday/month	Agenda only sent Wed/Thurs prior to meeting - info sent separately
Holly Springs	Meets 1st & 3rd Tuesday/month	Thursday prior to meeting
Apex	Meets 1st & 3rd Tuesday/month	Thursday prior to meeting
Cedar Point	Meets 4th Tuesday/month	Friday prior to meeting
Fuquay-Varina	Meets 1st Monday/month & Tuesday following 3rd Monday/month	Friday prior to meeting
Raleigh	Meets 1st & 3rd Monday/month	Thursday prior to meeting
Zebulon	Meets 1st Monday/month	Thursday prior to meeting