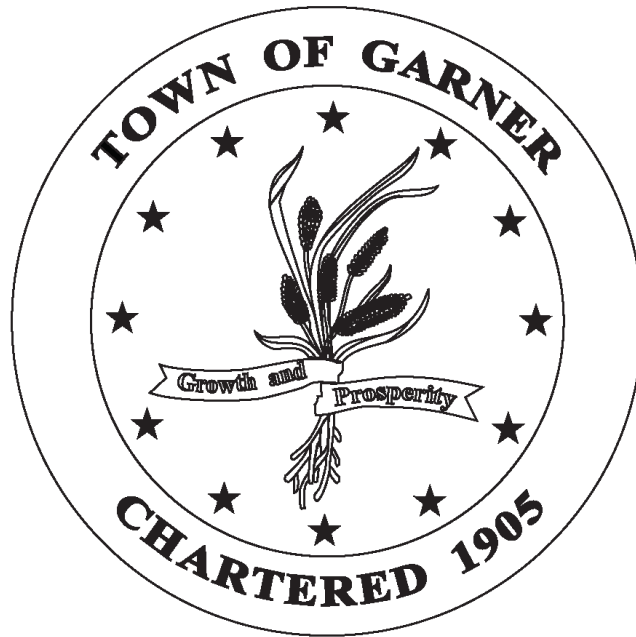


Town of Garner



Town Council Meeting January 3, 2022

Garner Town Hall
900 7th Avenue
Garner, NC 27529

Town of Garner
Town Council Regular Meeting Agenda
January 3, 2022

This regular meeting of the Council will be conducted at 7:00 p.m. in the Garner Town Hall located at 900 7th Avenue, Garner.

Seating Capacity: To comply with COVID-19 distancing requirements, audience seating in the Council Chambers is restricted to approximately 25 seats, with another 25 seats available in an overflow room upstairs. Once those seats are filled, visitors may be asked to wait outside until space is available in the building. The Mayor will attempt to provide time during the meeting for residents and visitors whose item has been heard to leave and make room for those with items still on the agenda.

Mask Policy: All staff and visitors, including people who are fully vaccinated, must wear face coverings while inside Town facilities and during Town Council meetings. The Town will provide masks to those who do not have them. All persons should practice social distancing, when possible, in Council Chambers.

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

The Council will call for a brief recess at 9:00 p.m.

- B. PLEDGE OF ALLEGIANCE: Council Member Phil Matthews

- C. INVOCATION: Council Member Phil Matthews

- D. PETITIONS AND COMMENTS

This portion of the meeting is to receive comments from the public on items not included in this agenda. Citizens should sign up with the Town Clerk to speak prior to the start of the meeting. The Board is interested in hearing your concerns but may not take action or deliberate on subject matter brought up during the Petitions and Comments segment. Topics requiring further investigation will be referred to the appropriate town officials or staff and may be scheduled for a future agenda.

- E. ADOPTION OF AGENDA

- F. PRESENTATIONS

- G. CONSENT

1. Budget Amendment – Legal Fees.....Page 4
Presenter: David Beck, Finance Director

Additional funds are needed for outside counsel assistance with pending litigation matters.

Action: Consider approving Ordinance (2022) 5088

2. Budget Amendment – Stormwater Repairs.....Page 6
Presenter: David Beck, Finance Director

Additional funding needed for stormwater repairs the Town is handling at the Lowe's facility.

Action: Consider approving Ordinance (2022) 5089

H. PUBLIC HEARINGS

1. Special Use Permit Major Modification # CUP-SP-18-07-M21-01, Timber (Bannister) Professional Park.....Page 8
Presenter: Jeff Triezenberg, Planning Director

Major modification requested by Rolly Bannister Jr Revocable Trust to an existing special use permit approval (CUP-SP-18-07) allowing four (4) office/retail professional buildings totaling approximately 42,000 square feet in area. The request is to modify the style of architecture and overall color palette from a more traditional look in reds and taupes to a modern style in grays and white. The site is located on the south side of Timber Drive East between NC 50 and White Oak Road and can be further identified as Wake County PINs 1720155339 & 1720159462.

Action: Consider approving CUP-SP-18-01-M21-01.

2. Special Use Permit with Site Plan # SUP-SP-21-04, Greenfield 27Page 19
Presenter: Alison Jones, Planner

Special use permit (SUP-SP-21-04) request with accompanying site plan submitted by Wigeon Capital, LLC to construct new warehouse/flex space on 27.25 +/- acres located at the intersection of S. Greenfield Parkway and Waterfield Drive (600 S. Greenfield Parkway) and may be further identified as Wake County PINs# 1720935714, 1720937908, 1720949398, 1720943105, and 1720942401.

Action: Consider approving SUP-SP-21-04.

I. NEW/OLD BUSINESS

1. Conditional Zoning Map Amendment with Plan #CZ-SP-21-01, 601 Tryon Multifamily.....Page 30
Presenter: David Bamford, Planning Services Manager

Conditional zoning map amendment with plan request (CZ-SP-21-01) submitted by Zimmer Development Company to rezone 27.41 +/- acres from Community Retail (CR) to Multifamily Residential Conditional (MF-2 C252) for the development of a multifamily residential community. The site is located at Broomfield Hunter Ln and Tyron Rd and may be further identified as Wake County PIN # 1702201920.

Action: Consider approving Ordinance (2021) 5090.

2. Compliance with SB300 - Criminal Penalty Amendments.....Page 53
Presenter: Terri Jones, Town Attorney

Second reading of proposed amendments to the Town Code of Ordinances to comply with Session Law 2021-138, Criminal Justice Reform, specifying criminal enforcement of Town ordinance violations by misdemeanor or infraction or civil penalties.

Action: Consider approving proposed ordinance amendments; Ordinance (2022) 5091.

3. Minimum Housing Ordinance Amendments.....Page 66
Presenter: Terri Jones, Town Attorney

Second reading of proposed amendments to the Town Code of Ordinances Chapter 7 in order to update references to North Carolina General Statutes Chapter 160D and to comply with Session Law 2021-138, Criminal Justice Reform.

Action: Consider approving proposed ordinance amendments; Ordinance (2022) 5092.

J. COMMITTEE REPORTS

K. MANAGER REPORTS

1. garner info
2. Special Council Session scheduled for January 13 to discuss Parks and Capital Projects.
3. MLK Celebration will be pre-recorded and be premiered on YouTube on January 16.

L. ATTORNEY REPORTS

M. COUNCIL COMMENTS

N. ADJOURN

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: January 3, 2022		
Subject: Budget Amendment - Legal Fees		
Location on Agenda: Consent		
Department: Finance		
Contact: David C. Beck, Finance Director		
Presenter: David C. Beck, Finance Director		
Brief Summary: Additional funds are needed for outside counsel assistance with pending litigation matters.		
Recommended Motion and/or Requested Action: Consider adopting Ordinance (2022) 5088		
Detailed Notes:		
Funding Source:		
Fund balance		
Cost: \$25,000	One Time: <input checked="" type="radio"/>	Annual: <input type="radio"/> No Cost: <input 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:	DCB	
Finance Director:	DCB	
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

ORDINANCE NO. (2022) 5088

ORDINANCE AMENDING ORDINANCE NO. (2021) 5041 WHICH ESTABLISHED THE OPERATING BUDGET

BE IT ORDAINED by the Town Council of the Town of Garner, North Carolina:

Section One. That the GENERAL FUND be amended as follows:

Revenue Amendment Request

ACCOUNT NUMBER	DESCRIPTION	PROJECT	CURRENT BUDGET	REVENUE CHANGE	REVISED BUDGET
10309000-496900	Appropriated Fund Balance		\$ 4,591,020	\$ 25,000	\$ 4,616,020

TOTAL REVENUE INCREASE (DECREASE) \$ 25,000.00

Expenditure Amendment Request

ACCOUNT NUMBER	DESCRIPTION	PROJECT	CURRENT BUDGET	EXPENDITURE CHANGE	REVISED BUDGET
10412000-524300	Contract Services		\$ 10,000	\$ 25,000	\$ 35,000

TOTAL EXPENDITURE INCREASE (DECREASE) \$ 25,000.00

Section Two. Copies of this ordinance shall be furnished to the Finance Director and the Town Clerk for their direction in the disbursement of the Town's funds and for public inspection.

Duly adopted this 3rd day of January 2022.

Ken Marshburn, Mayor

ATTEST:

Stella L. Gibson , Town Clerk

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: January 3, 2022		
Subject: Budget Amendment - Stormwater Repairs		
Location on Agenda: Consent		
Department: Finance		
Contact: David C. Beck, Finance Director		
Presenter: David C. Beck, Finance Director		
Brief Summary: Additional funding needed for stormwater repairs the Town is handling at the Lowe's facility.		
Recommended Motion and/or Requested Action: Consider adopting Ordinance (2022) 5089		
Detailed Notes:		
Funding Source:		
Fund balance		
Cost: \$30,000	One Time: <input checked="" type="radio"/>	Annual: <input type="radio"/> No Cost: <input 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:	DCB	
Finance Director:	DCB	
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

ORDINANCE NO. (2022) 5089

ORDINANCE AMENDING ORDINANCE NO. (2021) 5041 WHICH ESTABLISHED THE OPERATING BUDGET

BE IT ORDAINED by the Town Council of the Town of Garner, North Carolina:

Section One. That the GENERAL FUND be amended as follows:

Revenue Amendment Request

ACCOUNT NUMBER	DESCRIPTION	PROJECT	CURRENT BUDGET	REVENUE CHANGE	REVISED BUDGET
10309000-496900	Appropriated Fund Balance		\$ 4,616,020	\$ 30,000	\$ 4,646,020

TOTAL REVENUE INCREASE (DECREASE) \$ 30,000.00

Expenditure Amendment Request

ACCOUNT NUMBER	DESCRIPTION	PROJECT	CURRENT BUDGET	EXPENDITURE CHANGE	REVISED BUDGET
10481000-524300	Contract Services		\$ 90,994	\$ 30,000	\$ 120,994

TOTAL EXPENDITURE INCREASE (DECREASE) \$ 30,000.00

Section Two. Copies of this ordinance shall be furnished to the Finance Director and the Town Clerk for their direction in the disbursement of the Town's funds and for public inspection.

Duly adopted this 3rd day of January 2022.

Ken Marshburn, Mayor

ATTEST:

Stella L. Gibson , Town Clerk

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: January 3, 2022 		
Subject: Special Use Permit Major Modification # CUP-SP-18-07-M21-01, Timber (Bannister) Professional Park		
Location on Agenda: Public Hearings 		
Department: Planning		
Contact: Jeff Triezenberg, AICP, GISP; Planning Director		
Presenter: Jeff Triezenberg, AICP, GISP; Planning Director		
Brief Summary: Major modification requested by Rolly Bannister Jr Revocable Trust to an existing special use permit approval (CUP-SP-18-07) allowing four (4) office/retail professional buildings totaling approximately 42,000 square feet in area. The request is to modify the style of architecture and overall color palette from a more traditional look in reds and taupes to a modern style in grays and white. The site is located on the south side of Timber Drive East between NC 50 and White Oak Road and can be further identified as Wake County PINs 1720155339 & 1720159462.		
Recommended Motion and/or Requested Action: Consider approval of CUP-SP-18-01-M21-01.		
Detailed Notes: See attached vicinity map and staff report.		
Funding Source: n/a		
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:		



**Town of Garner
Planning Department**

**Site Plan Modification Application
CUP-SP-18-07-M21-01**



Project: Timber Drive Professional Park
Applicant: Bannister Properties, LLC
Owner: Bannister Properties, LLC
Location: 600 Timber Drive East
Pin #: 1720155339 and 1720159462

Proposed Use: Office / Retail
Current Zoning: Neighborhood Commercial
Conditional Use (NC C202)
Acreage: 5.97
Overlay: Timber Drive East Overlay

Planning Department Staff Report

TO: Honorable Mayor Marshburn and Members of the Town Council

FROM: Jeff Triezenberg, AICP, GISP; Planning Director

SUBJECT: *Special Use Permit Major Modification # CUP-SP-18-07-M21-01, Timber (Bannister) Professional Park*

DATE: January 3, 2022

I. PROJECT AT A GLANCE

Project Number: CUP-SP-18-07-M21-01, Timber Professional Park

Applicant: Bannister Properties, LLC (Justin Bannister)

Owner: Bannister Properties, LLC

Plan Prepared by:

General Description -

Proposed Use: Office/Retail

Project Location: 5.97 +/- acres located on the south side of Timber Drive East (600 Timber Drive East)

Wake Count PIN(s): 1720155339 & 1720159462

Zoning Classification: NC C202 (Neighborhood Commercial Conditional Use)

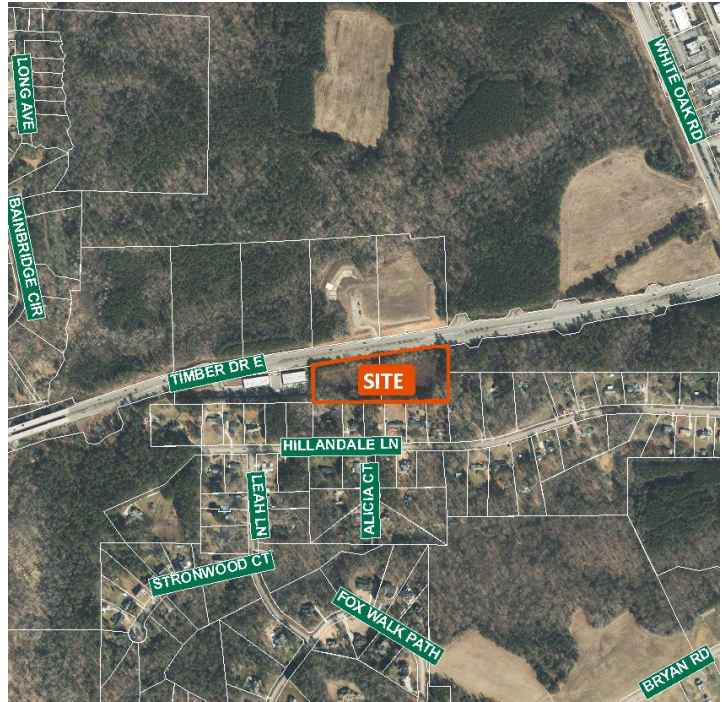
Overlay District: Timber Drive East

Key Meeting Dates –

Public Hearing: January 3, 2022

II. BACKGROUND / REQUEST SUMMARY

Major modification requested by Rolly Bannister Jr Revocable Trust to an existing special use permit approval (CUP-SP-18-07) allowing four (4) office/retail professional buildings totaling approximately 42,000 square feet in area. The request is to modify the style of architecture and overall color palette from a more traditional look in reds and taupes to a modern style in grays and white. The site is located on the south side of Timber Drive East between NC 50 and White Oak Road and can be further identified as Wake County PINs 1720155339 & 1720159462.



The original conditional (special) use permit was approved on September 4, 2018 by the Garner Town Council in conjunction with a rezoning from Single-Family Residential (R-20) to NC C202 (Neighborhood Commercial Conditional Use).

III. COMMUNITY INFORMATION

Overall Neighborhood Character: Timber Drive East is a major east – west thoroughfare. This area along Timber Drive East contains large tracts of undeveloped vacant/wooded lands. The predominant zoning in this area is Single-Family Residential (R-20) and Commercial Retail (CR). Development along this thoroughfare is increasing, especially with the extension of water and sewer to this area.

Traffic: No TIA required.

Neighborhood Meeting: Not required for modification of an existing approval; however, all properties within 300' have been sent a public hearing notification via first class mail.

IV. SITE PLAN PROJECT DATA

Original approved project information

Acreage: Total project +/- 5.97 acres

Building Size: There are four buildings being proposed on this site with a building height no greater than 35'. Each building is +/- 10,500 square feet. Total square footage for all the buildings is approximately 42,000 square feet.

Building Materials:



Landscape and Buffer Requirements: The plan as proposed meets the requirements of the Landscape Ordinance.

- **Tree Cover:** Requirements are met with a combination of existing vegetation and replacement plantings but as planned will exceed the requirement of 12 percent with a total of 13.4 percent tree coverage.
- **Street Buffers:** Buffers along Timber Drive East have met requirements by adding new plant material.
- **Perimeter Buffers:** Perimeter buffers vary from 15' to 35' depending on adjacent uses and zoning. The 15' buffer is adjacent to the existing community retail and neighborhood office zoning districts. The 35' buffers are adjacent to R-20 zoning district.

Parking Spaces: Parking is based on the medical office and retail requirement of one parking space per every 200 square feet.

- Required: 210 (7 accessible)
- Proposed: 215 (8 accessible)

Environmental Features:

This site does not contain a FEMA designated floodplain and slopes generally to the southwest.



Fire Protection:

The Inspections Department has reviewed the plan for fire protection and given their approval.

Infrastructure:

Water/Sewer – The project will connect to existing public water and sewer lines. Sewer extends to the site currently; however, the 16-inch water line will have to be extended to the property.



Stormwater Management – This site is located along Timber Drive East and is not located within the watershed protection area. The site is subject to stormwater quality regulations for nitrogen as well as stormwater quantity regulations for detention of the 1, 10 and 25-year storms. A wet retention area is proposed as a stormwater control measure that will handle stormwater quality and quantity

requirements at this site. The stormwater control measure will treat reduce the nitrogen below the allowable threshold (10 pounds per acre per year) for commercial development. It will also meet all the detention requirements. This development will also be required to make a nitrogen offset payment to reduce their nitrogen loading rate down to the 3.6 pounds per acre per year threshold.

Transportation/Access – The site has approximately 875 feet of road frontage on Timber Drive East. Timber Drive East is an 80-foot wide NCDOT-maintained facility within a 110-foot right of way. This road has curb and gutter and sidewalks. The site has one controlled access (right-in and right-out) along Timber Drive East.

Major Modification Request:

From -



To –



V. STAFF RECOMMENDATION

In the original case, the architectural requirements were adopted as part of the conditional use permit and not as part of the zoning amendment; therefore, the request is not in violation of any conditional zoning requirements. Additionally, the Timber Drive East overlay district zoning requirements are as follows:

- 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.

After review, staff finds that the modified request remains in compliance with all applicable requirements of the Unified Development Ordinance, including those of the Timber Drive East overlay district, so long as the original permit conditions remain in place:

1. The applicant shall complete the development strictly in accordance with the plans submitted to and approved by this Town Council, a copy of which is filed in the Town Hall. Any deviations from or changes in these plans must be pointed out specifically to the administrator in writing and specific written approval obtained as provided in the Unified Development Ordinance;
2. If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect;
3. All applicable permit approvals shall be obtained by the applicant;

4. That a 6 foot wooden fence be placed along the entire length of the rear property line;
and
5. Prior to Certificate of Occupancy, shields must be installed on light pole fixtures as shown on the site plan.

CUP-SP-18-07-M21-01, Timber (Bannister) Professional Park

Special Use Permit Motion Worksheet

Choose one of the following motions based on your Council findings:

**1. MEETS THE
SPECIAL USE
CRITERIA
AND
APPROVE**

"I find that application # CUP-SP-18-07-M21-01 continues to meet the Town's eight (8) criteria for special use permits as identified in Article 3.9.2.D.; therefore, I move that the Town Council approve CUP-SP-18-07-M21-01, Timber Professional Park with the original five (5) conditions to be listed on the amended permit that will be prepared by Staff.

Optional (conditions – mark, fill in and read all that applies): ...and including the following reasonable conditions necessary to address the impacts of the proposed development on:

- ☐ adjoining property,
- ☐ the existing natural and man-made features of the site,
- ☐ off-site and on-site traffic flow,
- ☐ public utilities,
- ☐ such other public services or goals of the Comprehensive Growth Plan or the Transportation Plan that may be negatively impacted by the proposed development (*enumerate plan services/goals*):

Condition #1:

Condition #2:

Condition #3, etc.:

**2. DOES NOT
MEET THE
SPECIAL USE
CRITERIA
AND DENY**

"I find that application # CUP-SP-18-07-M21-01 does not meet one or more of the Town's eight (8) criteria for special use permits as identified in Article 3.9.2.D:

(Check and read all that apply – include stated reason/evidence)

1. The proposed use **will** endanger the public health or safety
because/as evidenced by _____;
2. The proposed use **will** substantially injure the value of adjoining or abutting property
because/as evidenced by _____;
3. If completed as proposed, the development will **not** comply with all the requirements of this Ordinance
because/as evidenced by _____;
4. The proposed use is **not** consistent with the Town's adopted transportation plan(s), other relevant adopted plans and policies, and the stated purpose and intent of this UDO
because/as evidenced by _____;
5. The proposed use is **not** 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)
because/as evidenced by _____;
6. Any significant adverse impacts resulting from the use will **not** be mitigated or offset, including impacts on the natural environment.
because/as evidenced by _____;
7. The public safety, transportation and utility facilities and services will **not** be available to serve the subject property while maintaining sufficient levels of service for existing development
because/as evidenced by _____;
8. **Inadequate** assurances of continuing maintenance have been provided
because/as evidenced by _____;

therefore, I move that the Town Council deny CUP-SP-18-07-M21-01, Timber Professional Park.

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: January 3, 2022 		
Subject: Special Use Permit w/ Site Plan # SUP-SP-21-04, Greenfield 27		
Location on Agenda: Public Hearings 		
Department: Planning		
Contact: Alison Jones, Planner II		
Presenter: Alison Jones, Planner II		
Brief Summary: Special use permit (SUP-SP-21-04) request with accompanying site plan submitted by Wigeon Capital, LLC to construct new warehouse/flex space on 27.25 +/- acres located at the intersection of S. Greenfield Parkway and Waterfield Drive (600 S. Greenfield Parkway) and may be further identified as Wake County PINs# 1720935714, 1720937908, 1720949398, 1720943105, and 1720942401.		
Recommended Motion and/or Requested Action: Consider approval of SUP-SP-21-04.		
Detailed Notes: See attached vicinity map and staff report.		
Funding Source: n/a		
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:		



**Town of Garner
Planning Department**

**Special Use Permit Application
SUP-SP-21-04**



Project: *Greenfield 27*
Applicant: *Wigeon Capital, LLC*
Owner: *Greenfield 27 LLC*
Location: *600 Greenfield Pkwy, 4501 Waterfield Dr*
Pin #: *1720935714, 1720937908, 1720949398,
1720943105, and 1720942401*

Proposed Use: *Warehouse / Flex Space*
Current Zoning: *MXD-1*
Acreage: *27.25*
Overlay: *I-40 Overlay District*

Planning Department Staff Report

TO: Mayor and Town Council Members

FROM: Alison Jones, Planner II

SUBJECT: *Special Use Permit # SUP-SP-21-04, Greenfield 27*

DATE: January 3, 2022

I. PROJECT AT A GLANCE

Project Number:	SUP-SP-21-04, Greenfield 27
Applicant:	Wigeon Capital, LLC (Whit Brown)
Owner:	Greenfield 40 Associates, LLC
Plan Prepared by:	HagerSmith Design, PA
General Description -	
Proposed Use:	Warehouse and Flex Space
Project Location:	600 S. Greenfield Parkway
Wake Count PIN(s):	1720935714, 1720937908, 1720949398, 1720943105, & 1720942401
Zoning Classification:	Mixed Use District 1 (MXD-1)
Overlay District:	I-40 Overlay
Key Meeting Dates –	
Neighborhood Meeting:	October 25, 2021

II. BACKGROUND / REQUEST SUMMARY

Special use permit (SUP-SP-21-04) request with accompanying site plan submitted by Wigeon Capital, LLC to construct new warehouse/flex space on 27.25 +/- acres located at the intersection of S. Greenfield Parkway and Waterfield Drive (600 S. Greenfield Parkway) and may be further identified as Wake County PINs# 1720935714, 1720937908, 1720949398, 1720943105, and 1720942401.

There are three (3) buildings being proposed for this site. Building 600 will be 160,380 square feet, building 4101 will be 44,800 square feet and building 4501 will be 57,600 square feet; totaling 262,780 square feet in area for all three buildings.



III. COMMUNITY INFORMATION

Overall Neighborhood Character: The predominant uses in this area are industrial flex. This project is located within the Greenfield South industrial area.

Traffic: TIA thresholds were not expected to be triggered by this development. Additionally, this site is part of the Greenfield Industrial Park which was part of a previous comprehensive mixed use approval involving the buildout of the industrial streets, boulevards and interchange with Business 70.

Neighborhood Meeting: Staff identified approximately nine (9) properties within the notification radius as shown below and provided the list below to the applicant for first class mailed notices.

The neighborhood meeting was held remotely on Zoom at 5:30PM on December 1, 2020, with no attendees.



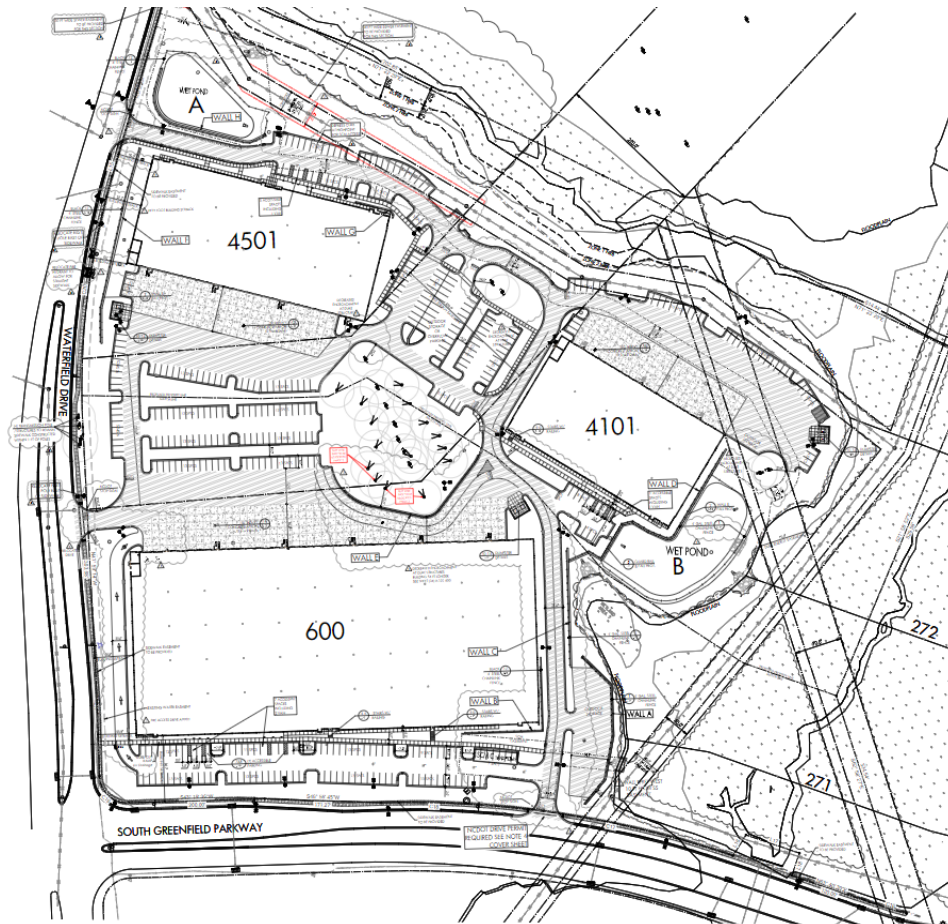
OWNER	ADDR1	ADDR2
B2 GARNER LLC	PO BOX 446	KERNERSVILLE NC 27285-0446
GREENFIELD 40 ASSOC LLC	2475 WENDELL BLVD	WENDELL NC 27591-6903
CRALYN HOLDINGS LLC	3301 BENSON DR STE 304	RALEIGH NC 27609-7362
GARNER DOGWOOD LLC	99 ALMADEN BLVD STE 565	SAN JOSE CA 95113-1600
SMP PROPERTY GROUP LLC	3708 CONQUEST DR	GARNER NC 27529-9486
PENSKE TRUCK LEASING CO LP	2675 MORGANTOWN RD	READING PA 19607-9676
WATERFIELD LLC	4900 FALLS OF NEUSE RD STE 150	RALEIGH NC 27609-5490
GARNER TOWN OF	PO BOX 446	GARNER NC 27529-0446
GREENFIELD 27 LLC	1001 COLLEGE CT	NEW BERN NC 28562-4972

Meeting Summary

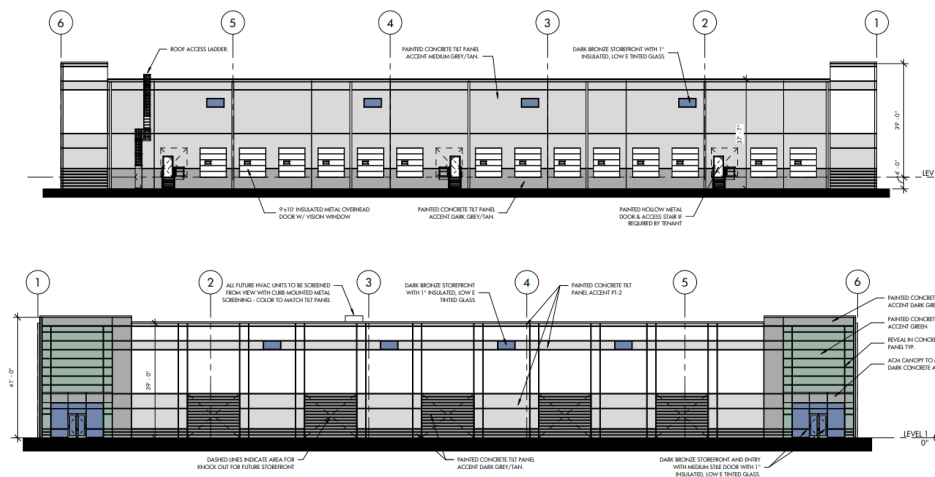
There were no attendees at the meeting.

IV. SITE PLAN PROJECT DATA

Acreage: 27.25 +/- acres



Building Material and Color: The building will be constructed of concrete tilt-up panels that will be painted.



**Minimum Lot
Size/Dimensions:**

- None

Setbacks:

Front – 30'
Rear – 0'
Side – 0'
Corner Side – 30'

**Landscape and
Buffer
Requirements:**

Tree Canopy Coverage:

- Minimum coverage required: 10%
- Accomplished with 2.86 acres of preservation. Additional canopy coverage provided with new plantings.

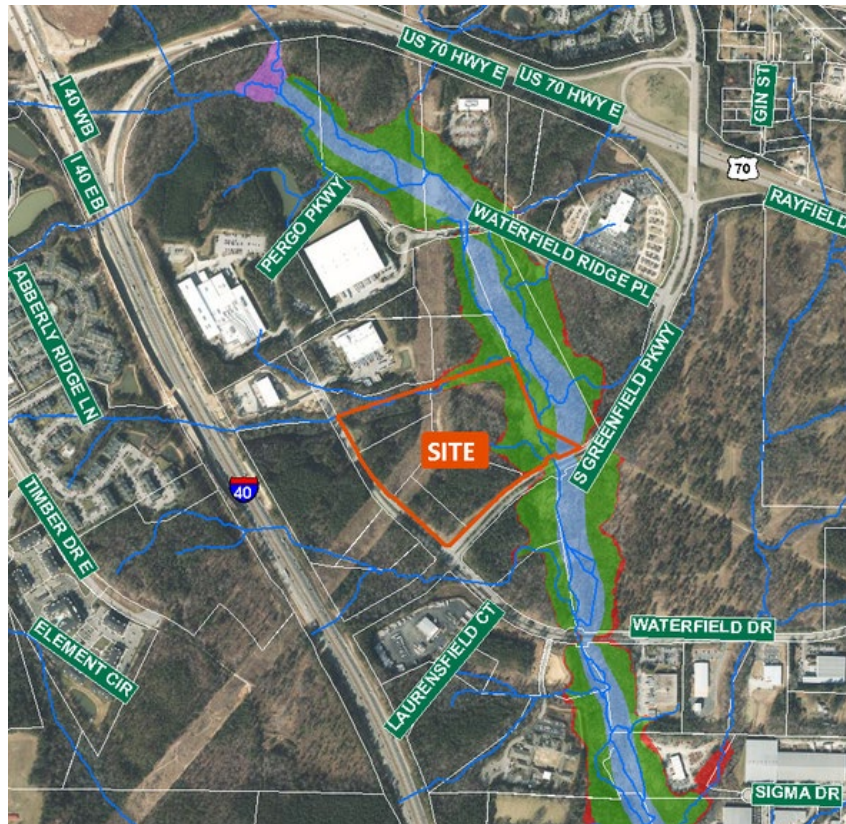
Street Buffers: A 15' street buffer is required along both Waterfield Drive and S. Greenfield Parkway.

Street Trees: Trees provided along both street frontages every 40 feet as required.

Perimeter Buffers: The perimeter buffers are 15 feet.

**Environmental
Features:**

The site does contain FEMA designated floodplain and Neuse River Buffer. No development is proposed within these areas. If impacted, permits from appropriate state/federal agencies would be required.



Parks and Open Space:	Park land and open space are not required for non-residential development.
Fire Protection:	The Inspections Department has reviewed the plan for fire protection and given their approval.
Lighting:	Site plan lighting meets both the requirements of the UDO and staff policy regarding LED fixtures.
Parking:	<p>Parking for flex space use 1 space per 500 square feet of floor area. While parking for warehouse is 1 space for every 2 employees on the maximum shift, but not less than 5,000 square feet of area devoted to use.</p> <ul style="list-style-type: none"> • <u>Required:</u> 382 • <u>Proposed:</u> 382
Infrastructure:	Water/Sewer - The parcels will be connected to the City of Raleigh public water and sewer systems.



Stormwater Management: Greenfield 27 is a commercial development that is not located within the watershed protection area. This site is subject to water quality requirements for nitrogen and water quantity requirements for the 1, 10 and 25 year storm events.

This plan proposes two wet retention ponds and a sand filter to satisfy all water quality and water quantity requirements for stormwater. A nitrogen offset buydown is not required for this project since one was paid for the development in 2007.

Streets and Access: There will be two driveways on Waterfield Drive and one driveway on S. Greenfield Parkway.

Frontage Improvements: Curb and gutter are existing; sidewalks will be installed along S. Greenfield Parkway and Waterfield Drive.

V. STAFF RECOMMENDATION

Following technical review and plan revisions, staff finds that this project, as now proposed, meets the regulations of the Unified Development Ordinance so long as the following project specific conditions are met:

1. Prior to issuance of building permit:
 - a. Annexation petition must be submitted to the Planning Department;
 - b. Lots must be lots of record;
 - c. Payment of Engineering Inspection Fees shall be paid to the Town of Garner; and
 - d. Payment of Public Utilities Fees shall be paid to the City of Raleigh;
2. Prior to issuance of a Certificate of Occupancy:
 - a. The Stormwater Control Measures maintenance plan and associated Memorandum of Agreement shall be approved and recorded with the Wake County Register of Deeds;
 - b. A cross access agreement for lots must be recorded with Wake County Register of Deeds office; and
 - c. Acceptance punch list for S. Greenfield Parkway to be completed and confirmation of completion from NCDOT District Office delivered to Town of Garner Planning Department.

SUP-SP-21-04, Greenfield 27

Special Use Permit Motion Worksheet

Choose one of the following motions based on your Council findings:

**1. MEETS THE
SPECIAL USE
CRITERIA
AND
APPROVE**

"I find that application # SUP-SP-21-04 meets the Town's eight (8) criteria for special use permits as identified in Article 3.9.2.D.; therefore, I move that the Town Council approve SUP-SP-21-04, Greenfield 27 with the seven (7) site-specific conditions to be listed on the permit that will be prepared by Staff.

Optional (conditions – mark, fill in and read all that applies): ...and including the following reasonable conditions necessary to address the impacts of the proposed development on:

- ☐ adjoining property,
- ☐ the existing natural and man-made features of the site,
- ☐ off-site and on-site traffic flow,
- ☐ public utilities,
- ☐ such other public services or goals of the Comprehensive Growth Plan or the Transportation Plan that may be negatively impacted by the proposed development (*enumerate plan services/goals*):

Condition #1:

Condition #2:

Condition #3, etc.:

<p>2. DOES NOT MEET THE SPECIAL USE CRITERIA AND DENY</p>	<p>"I find that application # SUP-SP-21-04 does not meet one or more of the Town's eight (8) criteria for special use permits as identified in Article 3.9.2.D:</p> <p><i>(Check and read all that apply – include stated reason/evidence)</i></p> <ol style="list-style-type: none"> 1. The proposed use will endanger the public health or safety <i>because/as evidenced by</i> _____; 2. The proposed use will substantially injure the value of adjoining or abutting property <i>because/as evidenced by</i> _____; 3. If completed as proposed, the development will not comply with all the requirements of this Ordinance <i>because/as evidenced by</i> _____; 4. The proposed use is not consistent with the Town's adopted transportation plan(s), other relevant adopted plans and policies, and the stated purpose and intent of this UDO <i>because/as evidenced by</i> _____; 5. The proposed use is not 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) <i>because/as evidenced by</i> _____; 6. Any significant adverse impacts resulting from the use will not be mitigated or offset, including impacts on the natural environment. <i>because/as evidenced by</i> _____; 7. The public safety, transportation and utility facilities and services will not be available to serve the subject property while maintaining sufficient levels of service for existing development <i>because/as evidenced by</i> _____; 8. Inadequate assurances of continuing maintenance have been provided <i>because/as evidenced by</i> _____; <p>therefore, I move that the Town Council deny SUP-SP-21-04, Greenfield 27.</p>
--	--

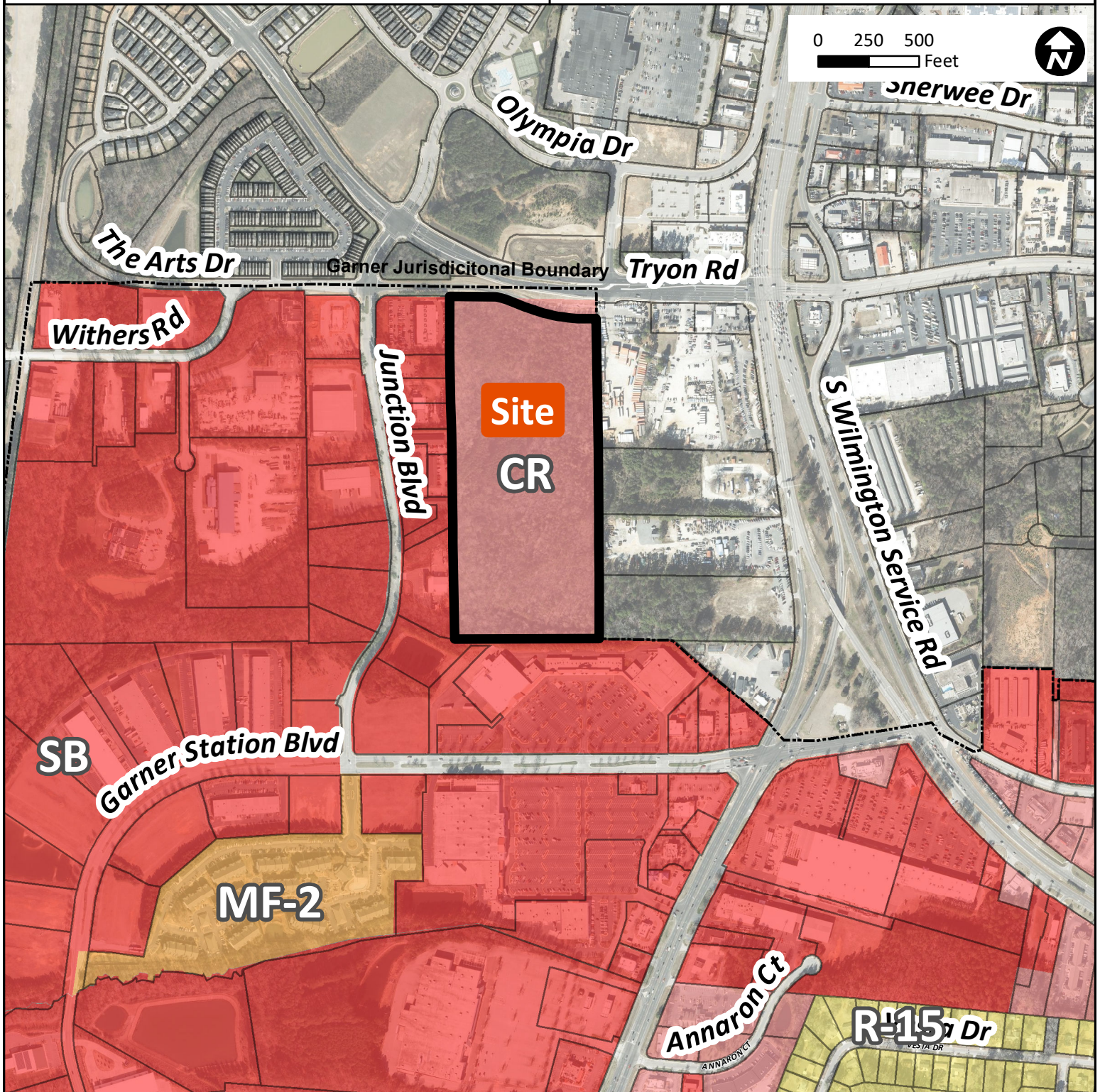
Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: January 3, 2022		
Subject: Conditional Zoning Map Amendment with Plan #CZ-SP-21-01, 601 Tryon Multifamily		
Location on Agenda: Old/New Business		
Department: Planning		
Contact: David Bamford, AICP; Planning Services Manager		
Presenter: David Bamford, AICP; Planning Services Manager		
Brief Summary: Conditional zoning map amendment with plan request (CZ-SP-21-01) submitted by Zimmer Development Company to rezone 27.41 +/- acres from Community Retail (CR) to Multifamily Residential Conditional (MF-2 C252) for the development of a multifamily residential community. The site is located at Broomfield Hunter Ln and Tyron Rd and may be further identified as Wake County PIN # 1702201920.		
Recommended Motion and/or Requested Action: Consider adoption of Ordinance (2021) 5090		
Detailed Notes: The site will accommodate over 100 multifamily units and would therefore be required to come back for a special use permit hearing before the Town Council at a subsequent date to be determined. Zoning conditions are proposed that restrict the range of MF-2 permissible uses. Conditions on amenities are also proposed. The neighborhood meeting was held in-person from 5:20 to 6:30 PM on October 14, 2021.		
Funding Source: n/a		
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:		



Town of Garner Planning Department

Conditional District Zoning Application CZ-SP-21-01



Project: 601 Tryon Apartments
Applicant: Zimmer Development Company
Owner: Broomfield LLC
Location: 601 Tryon Road
Pin #: 1702201920

Proposed Use: Multi-Family Residential
Current Zoning: CR - Community Retail
Proposed Zoning: MF-2 C252
Acreage: 27.41
Overlay: None

Planning Department Staff Report

TO: Mayor and Town Council

FROM: David Bamford, AICP; Planning Services Manager
Jeff Triezenberg, AICP, GISP; Planning Director

SUBJECT: ***Conditional District Zoning Map Amendment # CZ-SP-21-01, 601 Tryon Multifamily***

DATE: January 3, 2022

I. PROJECT AT A GLANCE

Project Number(s): Conditional Zoning Map Amendment # CZ-SP-21-01

Applicant: Zimmer Development Company

Owner(s): Broomfield LLC

General Description -

Project Area & Location: 27.41 +/- acres along Broomfield Hunter Ln / Tryon Rd

Wake Count PIN(s): 1702201920

Current Zoning: Community Retail (CR)

Requested Zoning: Multifamily Residential Conditional (MF-2 C252)

Proposed Use: See conditioned list

Overlay: None

Key Meeting Dates -

Public Hearing: November 16, 2021

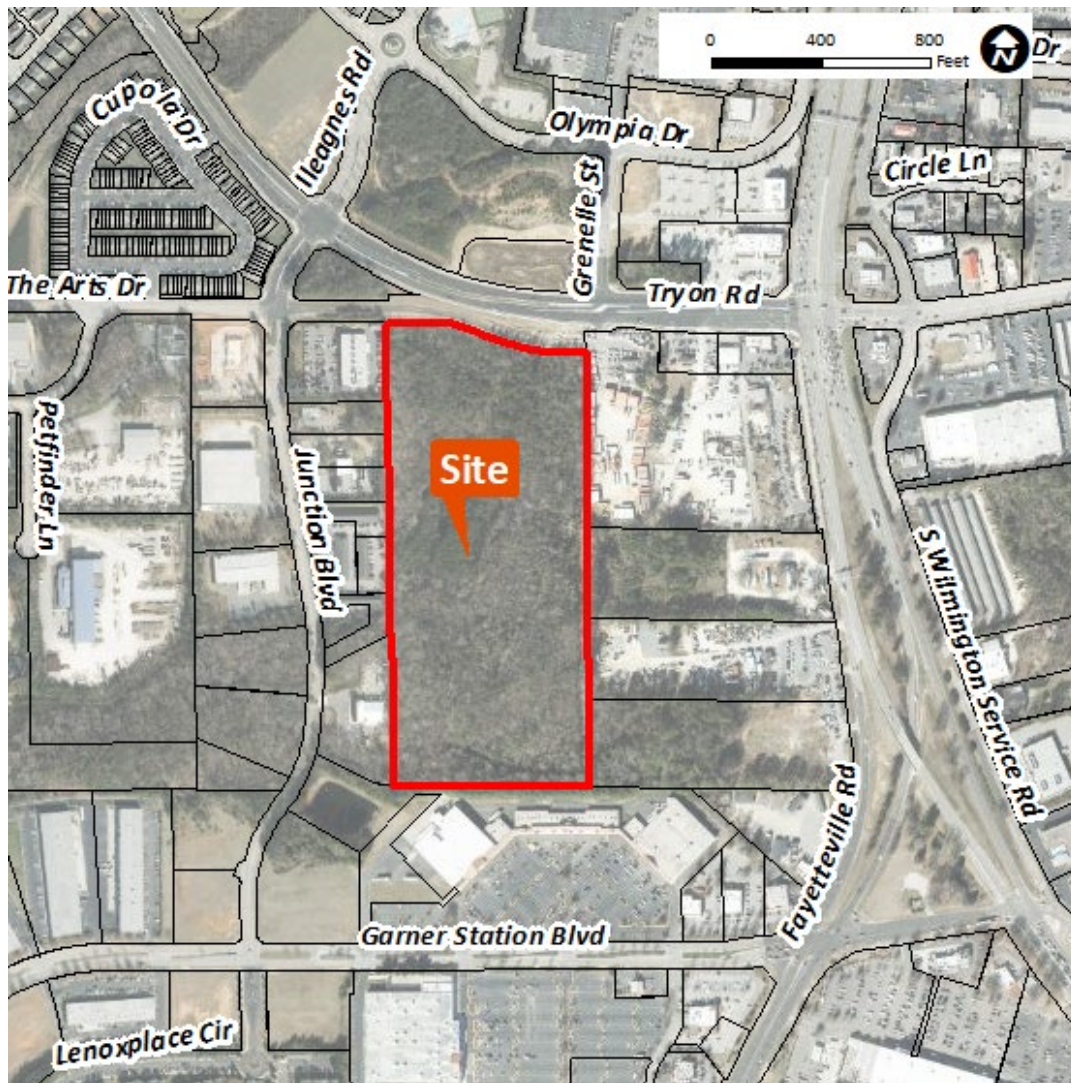
Planning Commission: December 13, 2021

Council Decision: January 3, 2022

II. BACKGROUND / REQUEST SUMMARY

Request: Conditional zoning map amendment with plan request (CZ-SP-21-01) submitted by Zimmer Development Company to rezone 27.41 +/- acres from **Community Retail (CR)** to **Multifamily Residential Conditional (MF-2 C252)** for the development of a multifamily residential community. The site is located at Broomfield Hunter Ln and Tyron Rd and may be further identified as Wake County PIN # 1702201920.

The site will accommodate over 100 multifamily units and would therefore be required to come back for a special use permit hearing before the Town Council at a subsequent date to be determined. Zoning conditions are proposed that limit the range of MF-2 uses. Also included are conditions offering amenities and prohibiting vinyl as a primary exterior siding material.



III. ZONING ANALYSIS

Existing: The existing zoning of the 27.41-acre site is **Community Retail (CR)**. CR zoning districts are designed to accommodate commercial, retail, office, and service activities that serve the entire community. Outdoor operations, outdoor storage and outdoor retail sales are not permitted in the CR district. Uses are only permitted within an enclosed building.

The following is a list of generally permitted uses in the CR district:

- | | |
|--|---|
| 1. Townhouse or Condominium | 30. Bars and nightclubs |
| 2. Upper-Story Residential | 31. Private golf or country club |
| 3. Community Center | 32. Private gym, spa, indoor tennis, pool |
| 4. Library, museum, art center | 33. Indoor entertainment facility |
| 5. Other Community service | 34. Electronic gaming center |
| 6. Lodges and fraternal clubs | 35. Movie Theaters |
| 7. Adult Day Care | 36. Bank, financial institution |
| 8. Day Care Center | 37. Medical office, individual |
| 9. Business School, college or university satellite | 38. Other office |
| 10. College/university | 39. Bed and breakfast |
| 11. Trade/vocational schools | 40. Hotel and motels |
| 12. Music, dance art instruction | 41. Commercial Parking |
| 13. Funeral home crematorium | 42. Restaurant, indoor with seating only |
| 14. Ambulance, rescue squad, police, fire station | 43. Restaurant with drive-through window |
| 15. Government office | 44. Restaurant take out only or walk up |
| 16. Hospice | 45. Convenience store without fuel sales |
| 17. Hospital | 46. Convenience store with fuel sales |
| 18. Emergency Care Facility | 47. Repair oriented use indoor only |
| 19. Medical Clinic | 48. Personal service use indoor only |
| 20. Mental Health facility | 49. Hair and beauty salons |
| 21. Group Care Facility | 50. Sales oriented use (indoor operations only) |
| 22. Handicapped Institution | 51. Veterinarian/kennel indoor |
| 23. Intermediate care institution | 52. Vehicle service-limited |
| 24. Nursing Care Institution | |
| 25. Cemetery | |
| 26. Parks, swimming pools, tennis courts, golf courses | |
| 27. Religious institutions | |
| 28. Minor utility, elevated water tank | |
| 29. Telecommunication facility | |

Proposed: The proposed zoning of the 27.41-acre site is **Multifamily Residential (MF-2 C252)**

Conditional. The MF-2 district is designed to create and maintain higher density residential neighborhoods composed primarily of multifamily dwellings. For MF-2 zoning districts 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 surrounding properties. Use restrictions are proposed as part of this request.

The following is a list of generally permitted uses in the MF-2 District:

- | | |
|--|---|
| 1. Residential Cluster | 13. Ambulance Service, Police or Fire Station (SUP) |
| 2. Two-Family Dwelling | 14. Continuing Care, Retirement Facility (SUP) |
| 3. Townhouse | 15. Hospice |
| 4. Condominium | 16. Cemetery |
| 5. Multifamily (triplex and higher, including apartment) | 17. Public Park, Swimming Pool, Tennis Court, Golf Course (SUP) |
| 6. Family Care Home | 18. Religious Institution |
| 7. Group Care Home | 19. Minor Utility, Elevated Water Storage Tank |
| 8. Intermediate Care Home | 20. Golf Course or Country Club, Private (SUP) |
| 9. Community Center (SUP) | 21. Bed and Breakfast (SUP) |
| 10. Other Community Service (SUP) | |
| 11. Child Day Care (up to 3 as home occupation) | |
| 12. School, Public or Private (SUP) | |

The applicant has proposed the following conditions for the MF-2 C252 conditional district:

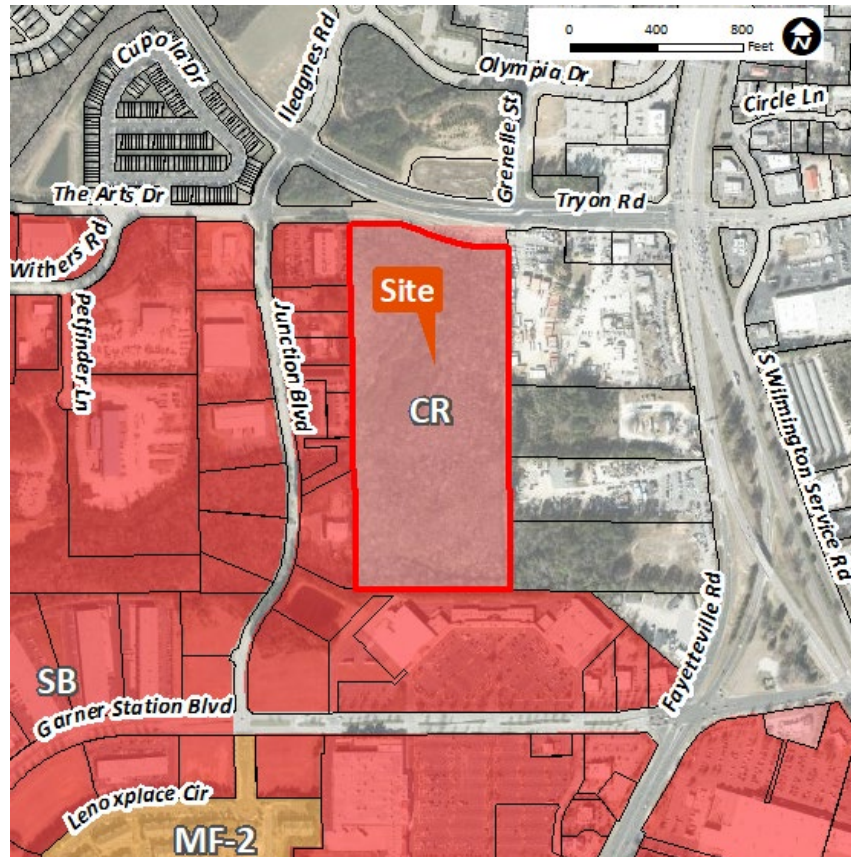
1. Permitted use table:

Use Category	Specific Use	MF-2 C252
Household Living	Condominiums	P*
	Multi-family including apartments	P*

- Any form of group living protected by state or federal statute for use in single-family dwellings shall be permitted according to the specific use standards of the Garner Unified Development Ordinance.
- The use of vinyl siding as the primary exterior building material is prohibited.
- A clubhouse will be provided with a minimum square footage of 5000 sf.
- A pool deck will be provided with a minimum square footage of 8000 sf.
- A dog park will be provided with a minimum square footage of 1500 sf.
- A playground will be provided with a minimum square footage of 1500 sf.
- A pool cabana will be provided with a minimum square footage of 1000 sf.
- Development of this site shall be completed in conformance with the approved site plan. (See Section V.)

Adjacent Zoning and Land Use:

North:	PD	Renaissance Park (City of Raleigh)
South:	SB & MF-2	Retail/Restaurant and Apartments
East:	IX-3 (Industrial)	Heavy Commercial (City of Raleigh)
West:	SB	Commercial, flex space, auto service



Zoning History: The Planning Department’s rezoning database contains the following rezoning cases in the vicinity of this property:

Case	Applicant	Location	Zoning Change
Z-88-08	J.K. Sherron	North / South Station	SB and I-1 to SB C19 and C20
CUD-Z-94-02	South Station Limited Partnership	South Station	SB C19 to SC C49
CUD-Z-94-04	Stuart Sneed	Mechanical Blvd and US 70 W (Lowe’s Home Improvement)	CB to SB C51
CUD-Z-98-09	Parker-Raleigh Development XXXI LLC	Lennoxplace Apartments	SB C20 to MF-2 C83

Case	Applicant	Location	Zoning Change
Z-17-04	Broomfield LLC	Rezoning Site	I-1 to CR

IV. COMMUNITY INFORMATION

Overall Neighborhood Character: This area in the vicinity of Tryon Road, Junction Blvd, and Broomfield Hunter Ln contains mostly commercial (retail, restaurant and contractor/office) and mixed density residential uses.

Traffic: For this rezoning, the expected level of residential development did require the submittal of a Traffic Impact Analysis. Given the recent realignment of Tryon Road and associated improvements, there were no offsite recommended improvements. For reference, the NCDOT historical average daily traffic counts along Tryon Road and S Wilmington Street are as follows:

Tryon Road

2009 – 13,000	2015 – 15,000
2011 – 13,000	2017 – 15,000
2013 – 14,000	2019 – 17,500

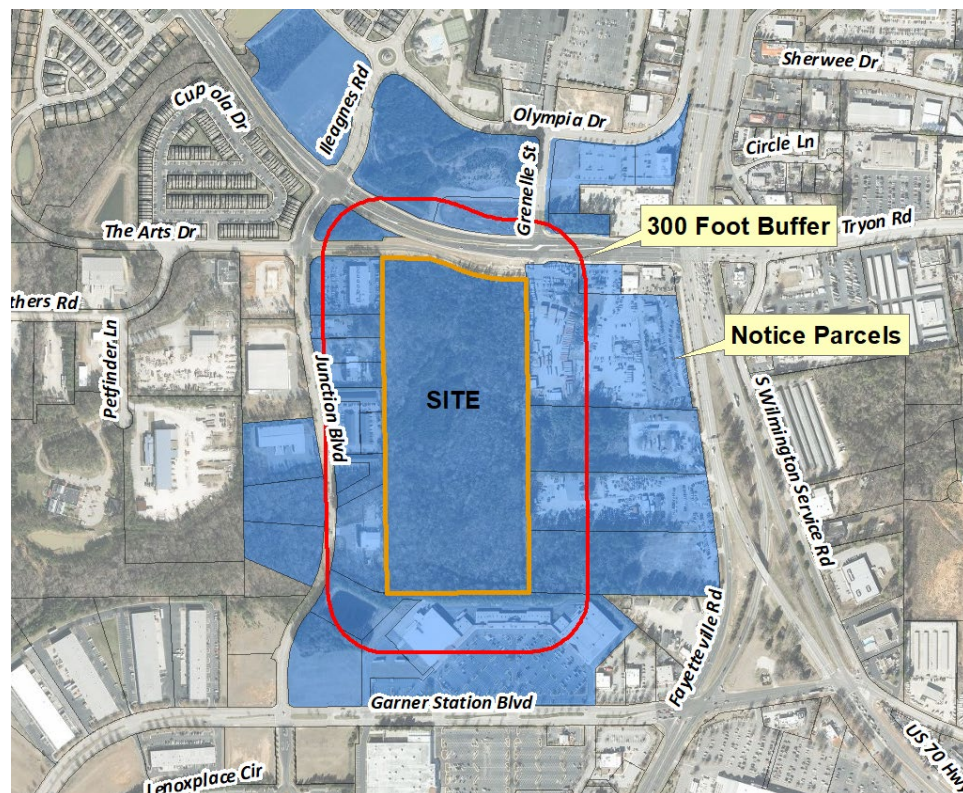
South Wilmington Street

2009 – 65,000	2015 – No Data
2011 – 55,000	2017 – 61,000
2013 – 57,000	2019 – 66,000

Neighborhood Meeting: Staff identified 18 unique property owners within the notification radius and provided the list below to the applicant for first class mailed notices. The neighborhood meeting was held in-person on October 14, 2021, from 5:30 to 6:30 PM at Heather Hills Club. No one from the public attended the meeting and the meeting was adjourned at 6:30 pm.

OWNER	ADDR1	ADDR2
8401 MICHIGAN ROAD LLC	3611 14TH AVE STE 552	BROOKLYN NY 11218-3750
BROOMFIELD LLC	831 EDGEHILL RD S	CHARLOTTE NC 28207-1881
CREASY, MICHAEL L JR	1801 CLEAN CT	RALEIGH NC 27603-3096
FAYETTEVILLE RD #3804 LTD	PO BOX 769	GARNER NC 27529-0769
GUERRA, ESAU DE JESUS VELASQUEZ,		
MARJORIE ANTONELA	9017 BRITT FARM DR	RALEIGH NC 27603-9181
ISLAMIC ASSOCIATION OF RALEIGH	3020 LIGON ST	RALEIGH NC 27607-5308
JOJEN LLC	2021 FAIRVIEW RD	RALEIGH NC 27608-2315
MAC 2008 LLC	6300 SWALLOW COVE LN	RALEIGH NC 27614-7161
PBC PROPERTIES LLC	PO BOX 28749	RALEIGH NC 27611-8749
PLAZA EL TORO LLC	3609 JUNCTION BLVD	RALEIGH NC 27603-3636
RALEIGH DURHAM MSA LMTD PRTRNSP THE	PO BOX 2549	ADDISON TX 75001-2549

OWNER	ADDR1	ADDR2
RENAISSANCE PARK COMMERCIAL CENTER EAST ASSN INC	448 VIKING DR STE 220	VIRGINIA BEACH VA 23452-7331
SKYWATER GARNER LLC	1 RE MICHEL DR	GLEN BURNIE MD 21060-6408
THE YOUNG GROUP INC DBA OLYMPIA ONE INC	800 W BROAD ST STE 333	FALLS CHURCH VA 22046-3146
TILLET, JULIA NEWSOME	3621 JUNCTION BLVD	RALEIGH NC 27603-3636
WAYNE ENTERPRISES LLC	2509 RUNNER STONE WAY	RALEIGH NC 27603-5197
WEST STATION TRADE CENTER CONDO	1253 COLONY DR	NEW BERN NC 28562-4156
WILMINGTON STREET VENTURES LLC	4904 IVERCROFT PL	FUQUAY VARINA NC 27526-8691



Public Hearing Summary: The Town Council conducted a public hearing at their meeting on Tuesday, November 16, 2021.

- Mr. Singleton asked a question about the Bus Rapid Transit (BRT) project and how the future alignment would work with Grenelle Street and the 2-lane proposed road along the eastern boundary of the site south of Tryon Road. He also asked about the site's current access only out to Junction Boulevard
- Mr. Dellinger asked about the latest info on the BRT route and noted that CAMPO's published draft does not show Grenelle Street as the preferred alternative. Mr. Hodges reminded Council that Raleigh and Garner have both endorsed the Grenelle Street alternative and noted staff would follow up with CAMPO regarding that correction.

- Mr. Dellinger expressed concerns about Raleigh's jurisdiction and control east of the site.
- Mr. Vance asked if EMS and Fire were ok with access to the project site. Staff noted that Fire Department personnel are included as members of the TRC and have given approval.
- Mr. Singleton expressed concern about the uncertainty of when the BRT will happen and that the site effectively only has a single access point.
- Mr. Dellinger expressed concern about not having an economic analysis to compare future revenue generation between commercial and residential development as that is an impact of this rezoning decision.
- Mr. Thomas Johnson, attorney representing the applicant, spoke in favor of the project and explained it will support the existing commercial that is already in the area. He noted that the project will be in compliance with the 2 access point requirements of the UDO as acceptable to Planning and Fire. He also noted that commercial will not work at this time due to the limited access and the natural environmental features on the site.
- Mr. Dellinger asked about rental price points and had concern that the project will not be suitable for teachers (not workforce housing). Mr. Johnson stated it will be 2 years before this project would be built so there is no price point info at this time. Rents will be market driven. Mr. Matthews stated that Garner is sensitive to affordable housing, but cannot dictate what a project can be sold or rented for.
- Mr. Singleton expressed concern that the Garner Fire Department will have a difficult time accessing the site with Raleigh's jurisdiction in close-proximity (Garner Fire having to possibly travel through Raleigh to get to the site). Mr. Johnson and Mr. Triezenberg noted mutual aid agreements allowing Raleigh Fire to respond first if closer.
- Council voted 4 to 1 to forward to the Planning Commission.

V. SITE PLAN PROJECT DATA

Acreage: 27.41 +/- acres

Lot and Setbacks:	5,000 square feet of land for first unit, an additional 3,000 square feet of land for each additional unit. This conditional plan – not to exceed 339 units.
--------------------------	--

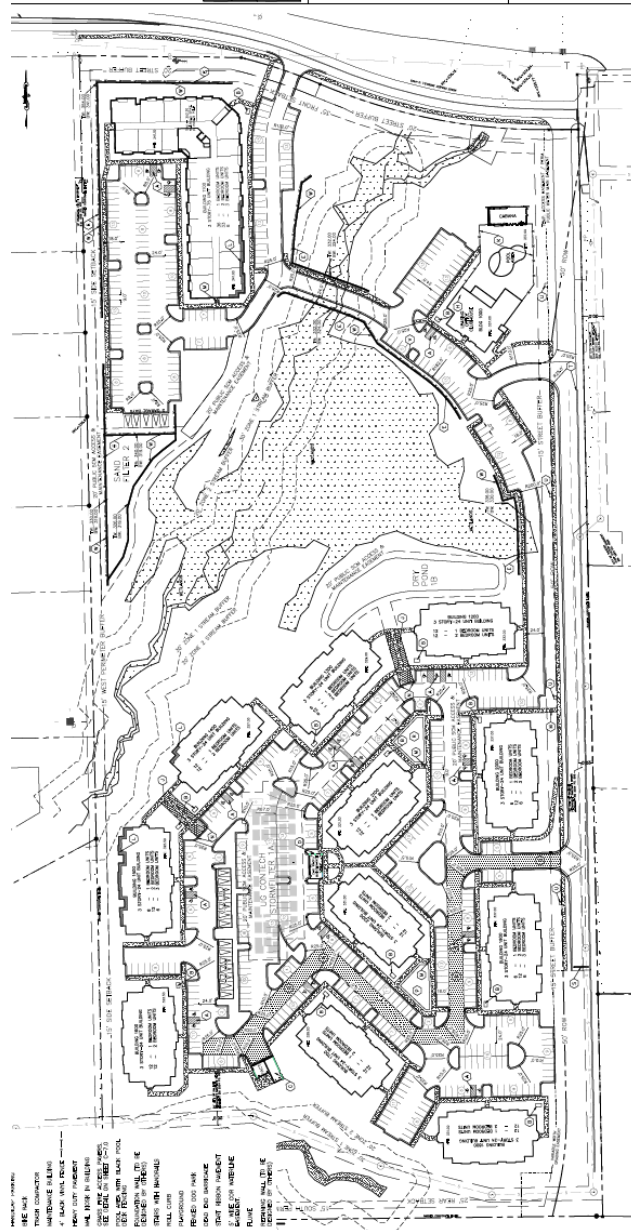
Front: 35'

Side: 15' (30' between buildings or triangulation method)

Rear: 15'

Corner Side: 25'

Site Plan:



**Landscape and
Buffer
Requirements:**

Tree Cover: Sliding scale from 12-14% (rule at time of submittal) is met. Total preservation is 22.6%.

Perimeter Buffers – *all proposed uses are the same:*

- 15' buffer calculated along southern perimeter. Preservation of existing vegetation to be maximized and supplemented as needed.
- 15' buffer calculated along southern perimeter. Preservation of existing vegetation to be maximized and supplemented as needed.

Street Buffers – *all proposed uses are the same:*

- Broomfield Hunter Ln. – 20'
- Grenelle Street – 15'

Street Trees: Must be provided approximately every 40 feet along all roadways – existing trees may be counted where they occur and qualify.

**Parks and Open
Space:**

Open Space –

- Required: 10% (2.74 acres)
- Proposed: Exact unknown at this time, but exceeded with existing wetlands and riparian buffer. Active recreation also being provided.

Open space areas will be owned and maintained by an HOA or rental property owner. The areas will be made up of environmentally-sensitive areas, active recreation areas, and passive recreation areas.

Parking:

Preliminarily, parking appears to be well-distributed throughout the site. Staff notes that while areas of the plan will likely meet the full parking table requirements, the southern end of the site will likely be under-parked by table standards. Parking will be re-evaluated in greater detail as part of the Special Use Permit process. Any proposed reduction will require a traffic engineer certification presented to the permit issuing authority (Town Council).

Environmental Features:

There is no FEMA designated floodplain on the site, but the site is impacted by riparian buffers along streams. These are shown on the plan.



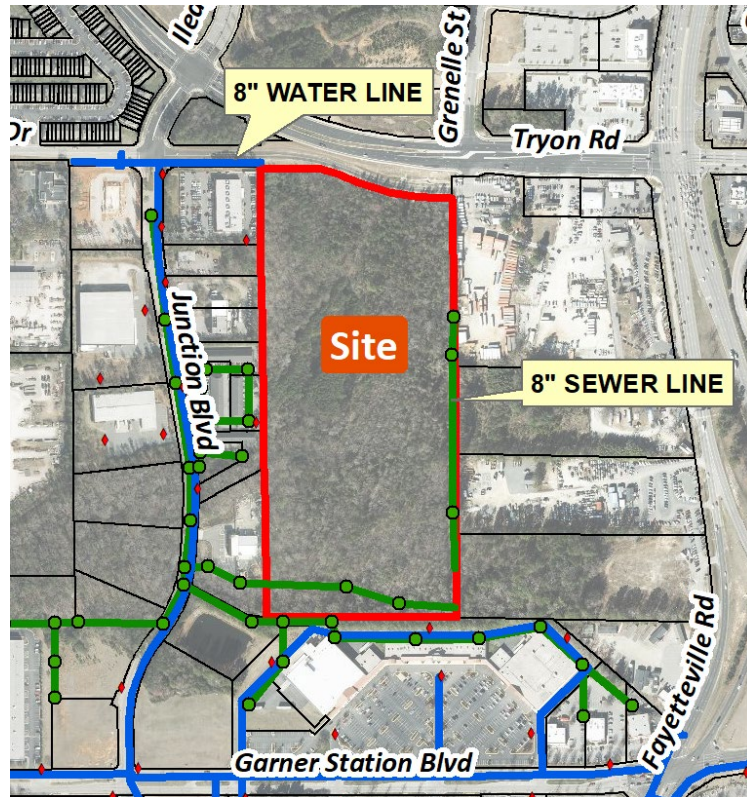
Fire Protection: The Inspections Department has reviewed and given their preliminary approval.

Lighting: Street and site lighting are being provided to UDO lighting level standards and staff equivalency policies for LED lighting.

Infrastructure: **Stormwater Management** – Tryon Road Mutlifamily is a development site that is located within the watershed protection area. This site is subject to stormwater water quality requirements for nitrogen and 85% TSS removal as well as water quantity requirements for the 1, 10 and 25 year storm events. This development plan proposes an underground detention system with Contech Storm Filter, a dry detention pond and a sand filter to treat impervious surface from the development. These devices will satisfy all water quality and water quantity requirements at this site for nitrogen, 85% TSS removal and will detain the 1, 10, and 25 year storm events. A nitrogen offset payment will also be required as part of this development.

Water/Sewer – The site will be served by City of Raleigh water and sewer infrastructure. Water lines are planned to be extended along all adjacent public rights-of-way (Broomfield Hunter Lane and Grenelle Street) with a

connection on Broomfield Hunter Lane. A fee-in-lieu will be accepted along the portion of Grenelle Street that cannot be built at this time. Connections to existing sewer lines are planned along the southern margin of the property and with the existing line in the future Grenelle Street right-of-way.



Transportation/Access – A median divided Broomfield Hunter Lane is required from Junction Boulevard to the first project entrance off of Broomfield Hunter Lane in order to provide the required two points of access for over 75 dwelling units.

One half of the future 4-lane median divided Grenelle Street is being provided in accordance with the Town's adopted transportation plans. Fee-in-lieu will be accepted for portions that cannot be built at this time or will be realigned at a later time. Studies were conducted to ensure adequate right-of-way and future connectivity to known points of intersection with Tryon Road and Garner Station Blvd are possible. Future BRT service is called for along Grenelle Street.

The site itself will be accessed by one entrance off Broomfield Hunter Lane and 2 entrances off of Grenelle Street. Sidewalks will be installed along all permanent frontages (the remainder in fee-in-lieu), and internal connections to the public sidewalk system include 3 along Grenelle Street and one along Broomfield Hunter Lane. The closest external public

sidewalks are along Tryon Road and at the intersection of Broomfield Hunter Lane and Junction Blvd.

VI. CONSISTENCY OF REQUEST

When considering a rezoning request, the Planning Commission is required by state statute to make a written recommendation regarding the consistency of the zoning proposal with the Town's current Comprehensive Plan and other applicable adopted plans. Specifically, a comprehensive plan is only advisory in nature and has no independent regulatory effect; nor does it expand, diminish or alter the scope of the Town of Garner UDO. A determination of inconsistency with the Plan does not preclude a rezoning request from being found to be reasonable. In those cases where the request is deemed inconsistent yet reasonable, an amendment to the Comprehensive Plan is automatically made upon approval of the request. Staff offers that the Planning Commission shall review consistency with the following plans:

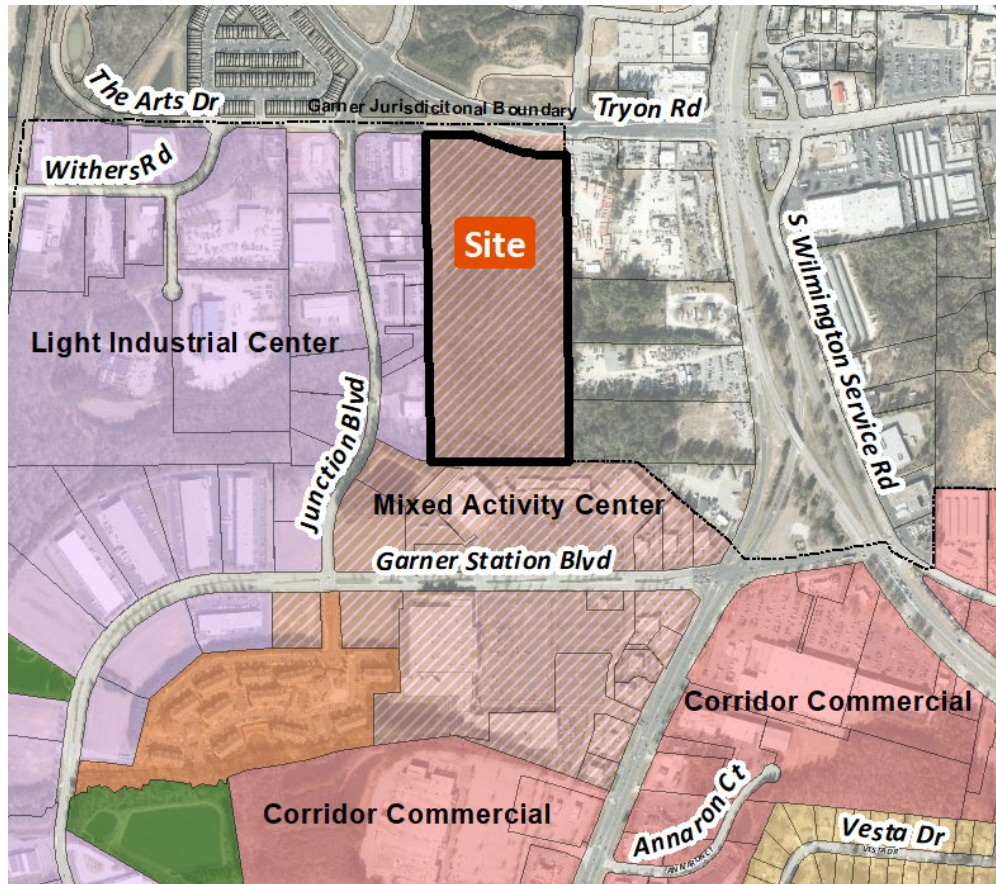
- 2018 Garner Forward Comprehensive Plan
- 2010/18 Garner Transportation Plan
- Parks, Recreation, Greenways and Cultural Resources Master Plan

Relevant Land Use Plan Analysis:

2018 Garner Forward Plan – CONSISTENT:

The site of the request is designated as **Mixed Activity Center (MAC)**. The Mixed-Activity Center emphasizes complementary land uses that collectively create a comprehensive, connected lifestyle approach to living, working, and shopping in close-proximity. The development of these land uses has integrated sidewalk and pedestrian networks. Premium transit (e.g., bus rapid transit or passenger rail service) may support more intense developments from four to six stories in height (if at least one full-depth floor is at least 75% dedicated to retail or office uses); without access to premium transit (bus rapid transit on dedicated travel-way or passenger rail services) height restrictions are set at 1-3 stories.

The proposed apartment site would be complimentary to the existing commercial development already in the area around Tryon Road and S Wilmington Street. It would also help to provide a better mix of uses in the area by adding more residential to what has been primarily a non-residential. Lenoxplace Apartments off Garner Station Boulevard are the only other multi-family development in the vicinity. The future BRT plans were also consulted as part of this project with the inclusion of the eastern access road that is positioned to be widened and retrofitted in the future as the BRT corridor.



2010/18 Garner Transportation Plan – *CONSISTENT:*

The transportation plans call for the extension of Grenelle Street, and subsequent planning has also identified and endorsed this corridor for Bus Rapid Transit. By constructing half of a future 4-lane divided roadway along the eastern property line and paying a fee-in-lieu for the portions that are impractical to construct at this time, this plan can be considered consistent with Garner’s Transportation Plans.

Parks, Recreation, Greenways and Cultural Resources Master Plan – *CONSISTENT:*

The site is not designated as a park land search area; nor are there any recommended greenway paths in the vicinity of this site; therefore, this plan can be considered consistent with the PRCR Master Plan.

Planning Commission Summary: The Planning Commission reviewed this request at their meeting on December 13, 2021.

- Staff presented the case and gave an overview of the zoning map amendment request and the proposed multi-family site plan.
- Ms. Fullerton asked if they are proposing to go to only 3 stories. Staff responded yes.

- Ms. Fullerton asked about the Grenelle Street extension along the eastern boundary of the site and if 2 lanes will be built instead of 4. Staff responded yes.
- Ms. Fullerton asked about pedestrian facilities.
- Ms. Fullerton asked if there is a plan to eventually connect Grenelle Street. Staff responded the future plan is to connect Grenelle Street south to Garner Station Blvd through North Station.
- Mr. Blasco asked about the BRT 's plans to take out part of that shopping center and if something could cause a roadblock? Staff responded both Raleigh and Garner have endorsed this corridor and been in communication.
- Ms. Fullerton asked about accessing Tryon Road and Grenelle Street? Staff responded the main access to Tryon Road is by Junction Blvd from Broomfield Hunter Lane.
- Mr. Blasco asked if the intent of the median is to satisfy emergency response vehicles? Staff responded yes.
- Mr. Voiland commented about the efforts to preserve the wetlands area and asked about the purpose of the dry pond. Applicant responded it pond provides extra storage to underground detention system.
- Mr. Jefferson asked if Broomfield Hunter Lane is the entrance to the site and if the site had access to Tryon Road. Staff responded Tryon Road is accessed from Junction Blvd, and that the current access to Tryon Road at the eastern adjoining property is private.
- Mr. Jefferson asked who would be in charge of planting the median. Applicant responded they would be responsible.
- Mr. Jefferson commented about the graphic showing what the site will look like with trees.
- Mr. Blasco asked about the proposed median on Broomfield Hunter Lane and if pedestrian improvements will extend to Junction Blvd. He was concerned that it appeared there would be a gap in the pedestrian access to Junction Blvd.
- Mr. Blasco asked if there could be a secondary access directly to Junction Blvd. Applicant responded there is no opportunity to connect vehicular access to Junction Blvd but Broomfield Hunter Lane does offer that connection.
- Mr. Blasco asked about how this proposed use would relate to adjoining uses and had some concern about heavy industrial to the east in Raleigh's jurisdiction.
- Mr. Blasco asked if there was a buffer on those adjoining properties or if there would be a buffer installed on the multi-family site from the adjoining industrial uses and storage yards. Applicant responded that they arranged the buildings away from the industrial areas.

- Mr. Blasco suggested looking at opportunities for vegetation and evergreen plantings to screen the industrial uses. He also asked that Ligustrum be removed from the landscape plan as an invasive species.
- Mr. Jefferson appreciated the clubhouse being in north east corner to keep residents away from industrial uses. He commented about trees growing to their full height to screen and beautify the area, and evergreens can be particularly effective.
- There were no comments from the public.

On a vote of 7-0 and with a condition that the access resolution be documented, the Planning Commission unanimously accepted the Consistency Statement below as their own written recommendation regarding the consistency of the request with the Town's adopted land use plans and recommended approval of CZ-SP-21-01 to the Town Council.

Consistency Statement: This request to rezone 27.41 +/- acres from **Community Retail (CR)** to **Multifamily Residential Conditional (MF-2 C252)** may be considered consistent with adopted land use plans as it incorporates the extension of Grenelle Street in anticipation of a future Bus Rapid Transit route as well as further diversifying the zoning mix within the Mixed Activity Center future land use area designation.

VII. REASONABLENESS

In addition to approving a statement regarding plan consistency upon the advice of the Planning Commission, the Town Council must also approve a statement of reasonableness when making their decision. Sources of reasonableness may include other sections of the 2018 *Garner Forward Comprehensive Plan* providing guidance on keeping the Town's character, living spaces, working places, recreation opportunities and transportation. Other adopted Town plans and policies providing guidance on parks, greenways, cultural resources and more may serve as sources as well. The Town Council may find that a rezoning request furthers the efforts to achieve specific goals and objectives stated within these plans and policies; and thereby render said request a reasonable one. The converse may also apply.

VIII. RECOMMENDATIONS

Staff Recommendation: Staff supports CZ-SP-21-01 as amended and reflected in Section III of this report, recommends Town Council approval of the Planning Commission's statement of consistency as amended in Section VI of this report, and further recommends approval of the zoning amendment request as a reasonable one – see following motion worksheet.

CZ-SP-21-01, 601 Tryon Multi-Family

Zoning Amendment Motion Worksheet

Choose one of the following motions (*staff recommendation highlighted*):

**1. CONSISTENT
AND
REASONABLE**

"I move that the Town Council accept the Planning Commission's written statement regarding consistency of the zoning amendment request with adopted land use plans, detailed in Section VI of the staff report, as our own; and I further move that the Town Council adopt Ordinance No. (2022) 5090 approving rezoning **CZ-SP-21-01**, as the request is reasonable and in the public interest because it will likely (select all applicable reasonableness options and/or provide your own reasoning)."

**2. CONSISTENT
BUT NOT
REASONABLE**

"I move that the Town Council accept the Planning Commission's written statement regarding consistency of the zoning amendment request with adopted land use plans, detailed in Section VI of the staff report, as our own; however, I also move that the Town Council deny rezoning **CZ-SP-21-01** as the request is not reasonable nor in the public interest because it will likely not (select all applicable reasonableness options and/or provide your own reasoning)."

**3. INCONSISTENT
YET
REASONABLE**

"I move that the Town Council accept the Planning Commission's written statement regarding consistency of the zoning amendment request with adopted land use plans, detailed in Section VI of the staff report, and find the request inconsistent due to (cite and insert land use plan evidence); yet, I also move that the Town Council adopt Ordinance No. (2022) 5090 approving rezoning **CZ-SP-21-01**, as the request is still reasonable and in the public interest because it will likely (select all applicable reasonableness options and/or provide your own reasoning)."

**4. INCONSISTENT
NOR
REASONABLE**

"I move that the Town Council accept the Planning Commission's written statement regarding consistency of the zoning amendment request with adopted land use plans, detailed in Section VI of the staff report, and find the request inconsistent due to (cite and insert land use plan evidence); and I further move that the Town Council deny rezoning **CZ-SP-21-01**, as the request is not reasonable nor in the public interest because it will likely not (select all applicable reasonableness options and/or provide your own reasoning)."

See next page for reasonableness options...

Select all applicable reasonableness options (<i>staff suggestions highlighted</i>):	
✓	Promote multi-family housing in select areas
	Be of an overall design that keeps within the Town's character and improves property values.
	Encourage redevelopment and reuse of existing sites and building that are complimentary to the surrounding area.
	Invest significantly in outdoor spaces and/or promote natural features such as major trees, streams, hills and woodlands.
	Provide attractive and pedestrian-friendly streetscapes that communicate small-town feel and a human-scaled environment.
	Create attractive and unique gateways to Garner; thereby attracting new visitors and encouraging people to return.
	Attract both younger and older populations.
✓	Be located and designed to create good multi-family places with quality exterior materials, open spaces and facades.
	Refocus development on our centers – including Downtown and North Garner.
	Allow/encourage shared-use and mixed-use developments.
	Support more 55+ housing opportunities.
	Emphasize new housing styles in walkable, mixed-use locations identified for growth.
	Mix housing types in infill areas in harmony with adjoining, older neighborhoods.
	Create better neighborhood appearance by rear-loading driveways and using alleys, promoting walking in front of homes and allowing trash removal to be kept out of sight.
	Cluster townhomes, ancillary units, single-family attached and detached homes with similar design characteristics where they can live compatibly.
	Align the development code with the Town's desired ends.
	Support work-in-place trends.
	Require all or a high percentage of parking to be at the side or rear of buildings and allow for the creation of enclosed pedestrian spaces.
	Allow a mix of smaller, leaner and cleaner manufacturing and industry with office and/or ground-floor retail; even housing.
	Connect the community internally with open spaces.
	Enhance the surrounding transportation network by providing interconnectivity, constructing proposed greenway trails, improving intersections and/or filling sidewalk gaps.
	Improve Garner's position as a community that is a successful candidate for more fixed route transit services.
	Reflect a significant change in conditions or support a public policy established by the Town since the adoption of applicable land use plans.
	Achieve substantial improvement in the quality of life for Town residents.
	Increase the ability to achieve other goals of the Comprehensive Plan or improve Town operations.
	Other: _____
	Other: _____

Return to:
Stella Gibson
900 7th Avenue
Garner, NC 27529

ORDINANCE NO. (2021) 5090

AN ORDINANCE AMENDING THE TEXT OF THE GARNER UNIFIED DEVELOPMENT ORDINANCE TO CREATE A NEW CONDITIONAL ZONING DISTRICT AND TO AMEND THE OFFICIAL ZONING MAP TO APPLY THE NEW ZONING CLASSIFICATION

WHEREAS, the Town Council has received a petition requesting that a new conditional zoning district be established and that this new district classification be applied to the applicant's property; and

WHEREAS, the Town Council finds this request to rezone 27.41 +/- acres from **Community Retail (CR)** to **Multifamily Residential Conditional (MF-2 C252)** for the development of a multifamily residential community consistent with adopted land use plans as it incorporates the extension of Grenelle Street in anticipation of a future Bus Rapid Transit route as well as further diversifying the zoning mix within the Mixed Activity Center future land use area designation; and

WHEREAS, the Town Council further finds the request is reasonable and in the public interest because it will promote multi-family housing in select areas; and create good multi-family places with quality exterior materials, open spaces and facades; and

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF GARNER ORDAINS:

Section 1. That the Official Zoning Map of the Town of Garner and Extraterritorial Jurisdiction be amended by changing the zoning classification of the property described below from its present zoning to that requested by Zimmer Development Company in Zoning Map

Amendment Application No. CZ-SP-21-01 (MF-2 C252).

Section 2. That there is hereby created a new conditional zoning district, to be known as the Multi-Family 2 Conditional District (MF-2 C252); within this district, all of the regulations that apply to property within the MF-2 C252 district shall be applicable subject to the following conditions:

1. Permitted use table:

Use Category	Specific Use	MF-2 C252
Household Living	Condominiums	P*
	Multi-family including apartments	P*

2. Any form of group living protected by state or federal statute for use in single-family dwellings shall be permitted according to the specific use standards of the Garner Unified Development Ordinance.
3. The use of vinyl siding as the primary exterior building material is prohibited.
4. A clubhouse will be provided with a minimum square footage of 5000 sf.
5. A pool deck will be provided with a minimum square footage of 8000 sf.
6. A dog park will be provided with a minimum square footage of 1500 sf.
7. A playground will be provided with a minimum square footage of 1500 sf.
8. A pool cabana will be provided with a minimum square footage of 1000 sf.
9. Development of this site shall be completed in conformance with the approved site plan. *(See Section V.)*

Section 3. The official Zoning Map of the Town of Garner is amended by changing the zoning classification of the property identified below and as shown on a map in application file:

Owner(s)	Tract No.	Existing Zoning	New Zoning
Broomfield LLC	1702201920 / 601 Tryon Road	Community Retail (CR)	Multifamily Residential Conditional (MF-2 C252)

Section 4. The Planning Department shall change the Official Zoning Map displayed for the public to reflect this change immediately following adoption of this ordinance. In addition, a copy of this ordinance shall be filed in the Planning Department.

Section 5. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 6. That the Town Clerk shall cause a duly certified copy of this ordinance to be recorded in the office of the Wake County Register of Deeds.

Section 7. This ordinance shall become effective upon adoption.

Duly adopted this 3rd day of January 2022.

Ken Marshburn, Mayor

ATTEST: _____
Stella L. Gibson, Town Clerk

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: January 3, 2022 		
Subject: Compliance with SB300 - Criminal and Civil Penalty Amendments		
Location on Agenda: Old/New Business 		
Department: Legal		
Contact: Terri Jones, Town Attorney		
Presenter: Terria Jones, Town Attorney		
Brief Summary: Second reading of proposed amendments to the Town Code of Ordinances to comply with Session Law 2021-138, Criminal Justice Reform, specifying criminal enforcement of Town ordinance violations by misdemeanor or infraction or civil penalties.		
Recommended Motion and/or Requested Action: Recommend adoption of proposed ordinance amendments; Ordinance (2022) 5091		
Detailed Notes: Session Law 2021-138 became effective December 1, 2021, changing the presumption that all local ordinances may be enforced criminally and prohibiting criminal enforcement of certain local ordinances. In order to impose a criminal penalty on ordinance violations, it must be specifically stated in the ordinance. Based on feedback from Council, proposed amendments to the civil penalty provisions are also included.		
Funding Source: n/a		
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:	TJ	
Finance Director:		
Town Attorney:	TJ	
Town Manager:	RD	
Town Clerk:		

ORDINANCE NO. (2022) 5091

AN ORDINANCE AMENDING THE TOWN CODE
RELATING TO ENFORCEMENT OF ORDINANCES BY CRIMINAL PENALTIES
AND OTHER CORRECTIONS

WHEREAS, pursuant to Session Law 2021-138, North Carolina General Statutes (G.S.) Section 160A-175 was amended to change the presumption that all local ordinances may be enforced by criminal penalties as provided in G.S. 14-4;

WHEREAS, pursuant to G.S. 14-4, a violation of a municipal ordinance is punishable as a Class 3 misdemeanor with a maximum fine of fifty dollars (\$50.00) and imprisonment of 30 days or less, unless expressly specified in the ordinance;

WHEREAS, certain ordinances may not be enforced by criminal penalties, including ordinances regulating planning and development (except for unsafe buildings), stream-clearing programs, certain businesses and trades, outdoor advertising, solar collectors, cisterns and rain barrels, taxis, building setback lines, curb cut regulations, and trees;

WHEREAS, the Town of Garner seeks to encourage compliance with Town ordinances through a combination of criminal and civil penalties; and

WHEREAS, the Town of Garner seeks to comply with Session Law 2021-138 and also updates and corrects certain obsolete provisions or references by amending the following provisions of the Town Code of Ordinances.

NOW THEREFORE, BE IT ENACTED by the Garner Town Council as follows:

Section One. That the following sections of the Town Code shall be amended by deleting the language set forth in strike-outs and by adding the language set forth in underlined text below:

Sec. 1-8. General penalty.

- (a) ~~It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this Code or of the ordinances of the Town.~~ (a) Unless otherwise expressly specified in the ordinance, any person who violates any provision of this Code or of the ordinances of the Town shall be assessed a civil penalty of one hundred dollars (\$100.00). The civil penalty shall be increased to two hundred dollars (\$200.00) for the second violation, three hundred dollars (\$300.00) for the third violation, and five hundred dollars (\$500.00) for the fourth and each succeeding violation in the same twelve (12) months.
- (b) ~~If specified as such in the ordinance, violation of a provision of this Code shall be a misdemeanor or infraction as provided in General Statutes, Section 14-4 and Section 160A-175. Where no specific penalty is provided in any provision of this Code or in any ordinance of the town, each person convicted for the violation of any such provision may be punished by a fine of not more than fifty dollars (\$50.00) or by imprisonment for not more than thirty (30) days.~~
- (c) ~~In addition to all other punishment herein provided for~~ Where an ordinance specifies enforcement of a violation by a criminal penalty, any person found guilty of violating any of the ordinances or provisions thereof, of the town may be required to pay the court costs, or any portion thereof, in the discretion of the court.

- (d) Unless otherwise expressly provided, each day's violation of a provision of this Code or other ordinance of the town shall constitute a separate offense.
- (e) Civil penalties may be assessed by citation issued by the Town Manager or designee and recovered by the town in a civil action in the nature of a debt.

Sec. 3-9. Bird sanctuary.

* * *

(e) A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 3-25. Imposition of penalties for violations of chapter.

* * *

(j) Violations of section 3-9 or section 3-24 shall constitute a ~~Class-2~~ misdemeanor as provided under General Statutes Section, 160A-175 and General Statutes, Section 14-4.

* * * *

Sec. 4-4. Prohibition and control of open burning.

It shall be unlawful for any person to burn or cause to be burned any outside or open fire within the town, except fires used for outdoor cooking or recreation, without first obtaining a written permit disclosing the person authorized to burn a fire, the lot or place of the fire, the duration of the permit and any additional information necessary for an adequate review of the permit as determined by the permit-issuing authority. The chief of the fire department is authorized to issue permits for open burning subject to the provisions of section 4-5 of this article. The fire chief, or his designated agent, is also responsible for any investigations to determine whether open burnings are conducted in compliance with this section. If the fire chief determines that an open burning constitutes a hazard or nuisance, he/she may seek assistance from the chief of police for the enforcement of this section and section 4-5. A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 4-15. Enforcement of compliance with the North Carolina Fire Code.

* * *

(c) A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 4-37. Violations; enforcement.

- (a) Violations of this ~~article~~ chapter shall be a misdemeanor as provided under General Statutes, Section 160A-175 and General Statutes, Section 14-4. Each day's continuing violation shall constitute a separate offense as provided by General Statutes, Section ~~160-175g~~ 160A-175(g).
- (b) The municipality may also seek injunctive relief and other appropriate equitable remedies to ensure compliance with this ~~article~~ chapter.

* * * *

Sec. 5-3.1. When small containers are permitted.

* * *

- (b) When mobile containers have been determined by the director of public works to be permissible pursuant to section 5-3(e), the refuse generators (e.g., occupants), shall pay the user fee for a mobile refuse container as set forth in the ~~Town Fees and Charges Ordinance~~adopted fee schedule. The charge shall be payable at the time of issuance of a privilege license, where such license is required, or within ten (10) days of receipt of written notice from the town. Shared storage of mobile containers is permissible on the same basis as shared storage of large volume refuse containers as set forth in section 5-3(b), and each user shall be responsible for removal of refuse in conformance with section 5-3.

Sec. 5-5. Residential garbage collection.

* * *

- (f) There shall be a user fee, as set out in the ~~Fees and Charges Ordinance~~adopted fee schedule, providing for the mobile refuse container for each new residential unit or other unit of building construction, where the use of a mobile refuse container will be used as specified in paragraph (a) of this section, payable upon issuance of a building permit for said unit of construction.

Sec. 5-6. Residential refuse collection.

- (a) In addition to residential garbage collection as described in section 5-5, subject to schedule adjustments resulting from holidays, residents of the town shall be entitled to weekly curbside refuse collection of up to one (1) truckload (six (6) cubic yards) of trash and yard waste and sixty (60) pounds of bulky waste. The cost of such collection to be paid from the general tax revenues of the town.

Residents receiving collection of more than one (1) truckload of refuse per week shall pay a special collection fee for each additional truckload or portion thereof, as set out in the ~~Fees and Charges Ordinance~~adopted fee schedule.

- (b) In order to receive refuse collection service, residents shall prepare refuse for collection as follows:

* * *

(8) It shall be the responsibility of residents or property owners who place residential trash or bulky waste at the curb or street edge for special collection by the town as set forth in paragraph (a) to notify the town of their need for special collection service and to arrange for payment of the applicable fees within one (1) working day after placing the trash or bulky waste at the curb or street edge. Where trash or bulky waste remains at the curb or street edge for more than one (1) working day without request to the town for special collection service, the town shall be authorized to collect said trash or bulky waste and to bill the resident or property owner for the collection in accordance with the ~~Fees and Charges Ordinance~~adopted fee schedule.

Sec. 5-6.1. Special collections of residential refuse.

- (a) Residential property owners or occupants receiving curbside trash collection and disposal service shall pay a fee to the town, as set forth in the ~~Fees and Charges Ordinance~~adopted fee schedule, or as set by contractor, depending on who makes the pick up, for each six-cubic-yard truckload or portion of such truckload of trash collected in excess of one (1) truckload per week. Special collection does not refer to improperly prepared trash or yard waste.

- (b) Residential property owners or occupants receiving special curbside collection of bulky waste weighing more than sixty (60) pounds shall pay a fee to the town as set out in the ~~Fees and Charges Ordinance~~adopted fee schedule or as set by the contractor, depending on who makes the pick up.

Sec. 5-11. Penalty for violation.

Violation of this chapter shall be punishable ~~either as a general misdemeanor pursuant to section 1-9 of the code of the town or by imposition of a civil penalty of twenty-five dollars (\$25.00) as specified in section 1-8 per day for each day the violation continues, or pursuant to article VII-1 of the Town Land Use Ordinance,~~ or by injunctive relief, or by a combination of remedies.

Sec. 6-19. Nuisance abatement inspection fee.

~~Pursuant to General Statutes, section 160A-414, a~~A fee for inspecting nuisances defined in this article shall be charged to the owner of such lot or parcel of land. It shall be the duty of the tax collector to mail a statement of such fee to the owner or other person in possession of such premises with instructions that such fee is due and payable within thirty (30) days from the receipt thereof.

- (1) *Fees enumerated.* The fee for such inspections is set out in the adopted fee schedule ~~Fees and Charges Ordinance.~~
- (2) *Extra inspections.* The fee referenced above entitles the permittee to an initial inspection plus one (1) additional inspection for the corrected work. For each inspection in excess of these, there shall be an additional charge.

Sec. 6-26. Civil penalty provided.

- (a) A violation of any provision of this ~~section [article]~~ chapter shall constitute a misdemeanor punishable as provided in section 1-8 or a civil penalty as set forth below.
- (b) A violation of any provision of this ~~section [article]~~ chapter shall subject the offender to a civil penalty in the amount of one hundred fifty dollars (\$150.00) for the first offense, plus the cost of abating the nuisance. No penalty for the first offense after January 1, 2003 shall be imposed if the offender abates the nuisance within ten (10) days of notice of the violation. A second or subsequent violation of any provision of this ~~section [article]~~ chapter shall subject the offender to a civil penalty in the amount of three hundred dollars (\$300.00) plus costs of abatement.

* * *

- (e) In accordance with G.S. 160A-193, the costs of abatement constitute a lien on the land or premises where the nuisance occurred with the same priority as unpaid ad valorem taxes.

Sec. 6-27. Alternative nuisance abatement.

In addition to other enforcement procedures set forth herein, nuisances may be abated and violations enforced as set forth below.

* * *

- (6) When any property within the town is allowed by the occupant and/or owner to be in a condition constituting a nuisance as defined in section 6-17, the violation exists separately and independently on the part of the occupant and any non-occupant owner of the premises. A non-occupant owner who is an offender under this section [article] shall, to the extent practicable, be subjected to the penalties, recovery of abatement costs, and misdemeanor prosecution in

accordance with section 1-8, as well as an occupant, provided that while a civil penalty may be recovered or a misdemeanor prosecution in accordance with section 1-8, may be had against both ~~occupant~~owner and non-owner occupant for the same nuisance condition, if the town shall have recovered the abatement costs from one (1) party, it may not recover the same cost from a second party.

Sec. 6-29. Boarding up residential structures by owners.

* * *

(e) The application fee for a boarding-up permit, or for an extension of such a permit, shall be twenty dollars (\$20.00) or as otherwise established in the town's ~~fees and charges~~ ordinance adopted fee schedule.

* * * *

Sec. 9-40. Itinerant merchants, peddlers, transient vendors and solicitors.

* * *

(f) *Misdemeanor.* ~~(1)~~ A violation of this section shall be punishable as a class 3 misdemeanor by a fine of two hundred fifty dollars (\$250.00) for the first offense and five hundred dollars (\$500.00) for the second offense and subsequent offenses.

* * * *

Sec. 9-41. Begging, solicitation or vehicle interference.

* * *

(c) *Penalty.* Begging, panhandling or pedestrian interference in any form is a misdemeanor, which may be punished by a fine of not to exceed ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00) or by imprisonment for not more than thirty (30) days.

Sec. 10-77. Enforcement.

Unless otherwise prohibited by State law, violations of Article III, Operation, shall be punishable as infractions pursuant to General Statutes, Section 14-4.

Sec. 10-79. Civil enforcement of parking provisions.

* * *

(e) *Penalty fee.* The fee or penalty to be paid to the town for any one violation of a parking law or ordinance as above set out is hereby fixed as noted. Offenses denominated a misdemeanor pursuant to North Carolina General Statutes § 14-4 shall be punishable as infractions; offenses not denominated as misdemeanors under the state's penal laws (offenses numbered (1)—(8) above) are not punishable as misdemeanors under the Town Code, but are subject to fines collected only as civil penalties in accordance with Section 1-8. Any parking penalty or fee not paid within thirty (30) days from the date of issuance will double. Any such fees or penalties received by the town shall be applied toward the cost of enforcing and administering traffic and parking laws and ordinances within the town.

* * * *

Sec. 10-113. Enforcement.

Unless otherwise prohibited by State law, violations of Article IV, Stopping, Standing and Parking, shall be punishable as infractions pursuant to General Statutes, Section 14-4.

Sec. 10-130. Unlawful removal of impounded vehicle.

It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the town any vehicle which has been impounded pursuant to the provisions of this article unless or until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid. A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 10-131. - Civil penalty provided.

- (a) Any violation of Sections [10-117](#) and [10-118](#) of this article shall subject the offender to a civil penalty in the amount in accordance with Section 1-8 of fifty dollars (\$50.00). No penalty shall be imposed if the offender removes the motor vehicle from the property or meets the location and concealment requirements of [Section 10-118\(e\)](#) within seven (7) days of the date of the pretowing notice has been given by the town pursuant to [Section 10-120](#). If the offender does not remove the motor vehicle from the property or meet the location or concealment requirements within seven (7) days of the pretowing notice, the penalty may be imposed for each day the vehicle is permitted to remain on the property commencing with the date the pretowing notice was given and terminating on the date of the removal of the vehicle, with each day's violation constituting a separate offense. Violation of Sections [10-117](#) and [10-118](#) shall not be prosecuted as a misdemeanor.

* * * *

Sec. 11-2. Disorderly conduct at public meetings.

It shall be unlawful for any person to be disorderly at any exhibition or public meeting in the town, or in any way to annoy or disturb the audience. A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 11-3. Unlawful to breach peace, engage in riotous, disorderly conduct.

It shall be unlawful for any person to commit any breach of the peace or engage in any riotous or disorderly conduct within the limits of the town. A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 11-4. Selling, delivering, releasing gasoline to intoxicated persons.

It shall be unlawful for any person within the corporate limits of the town to sell, deliver or release any amount of gasoline to any person under the influence of any intoxicating liquor or drugs. A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 11-5. Leaving abandoned iceboxes, etc., accessible to children.

* * *

- (c) A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 11-6. Writing, painting, drawing, carving, cutting obscenities in public places.

It shall be unlawful for any person to write, paint, draw, carve or cut any obscene word, letter or device in any public place in the town. A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 11-7. Posting of ~~outdoor~~ advertising.

It shall be unlawful for any person to inscribe or post any ~~outdoor~~ advertising matter upon any public street or sidewalk or any post, tree, standard or other structure on the streets or public alleys of the town; provided, however, this section shall not prohibit the posting of signs in an effort to raise funds for a public charitable purpose. A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 11-8. Defacing, damaging public property.

It shall be unlawful for any person to paint, cut, carve or in any way mark upon any building, structure or property of the town any letters, symbols, devices or marks of any character, or in any manner to deface or damage any of such property; provided, that this section shall not apply to painting, carving or marking upon such property performed by any employee or agent of the town under proper authority and supervision. A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 11-10. Use of town property.

It shall be unlawful for any person to make any use of any property belonging to the town, except for those purposes which shall be necessary to carry out the governmental activity of the town, except where short-term rental of space in town parks for non-profit and for-profit fitness classes and other group activities is permitted of town property in accordance with adopted town park-use policies. This section specifically prohibits the use of any equipment or the appropriation of any funds for the benefit of any private person, charity, firm or corporation, unless such person, charity, firm or corporation shall be employed to carry out a governmental function of the town. A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 11-11. Littering streets and other town property.

* * *

- (c) A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 11-13. - Playing games, throwing, missiles on streets, sidewalks, using, erecting and maintaining recreational devices in streets and rights-of way.

* * *

- (g) Amount, collection of penalty:

(1) The enforcement of this section shall be carried out jointly by the Town of Garner Planning, Inspections, and Police Departments. ~~Any penalties under this section are a civil violation.~~

(2) Any violation of this section shall be punishable by a civil penalty in accordance with Section 1-8. ~~The civil penalty for a first violation of this section shall be twenty-five dollars (\$25.00). A second violation by the same person shall incur a civil penalty of fifty dollars (\$50.00). A third or subsequent violation shall result in a penalty of one hundred dollars (\$100.00) for each violation.~~

(3) If the person responsible for the violation has not reached the age of eighteen (18) years, that person's parent, guardian or custodian shall be responsible for any civil penalty incurred by the person as the result of a violation of this section.

* * * *

Sec. 11-14. Throwing missiles to injury or annoyance of others.

The throwing of stones or other missiles by beanshooters or otherwise in private lots or public places to the injury or annoyance of others is prohibited. A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 11-15. Loud, disturbing and unnecessary noises.

* * *

(c) *Penalty.* Violation of this section, or any part thereof, shall be punishable as a misdemeanor by a fine of not more than ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00), or imprisonment for not more than thirty (30) days.

Sec. 11-16. Massages for hire or reward which include touching genitals prohibited; exceptions; penalties.

* * *

(c) Any person who shall violate the provisions of this section shall, upon conviction of a misdemeanor thereof, be fined not more than ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00), or imprisoned for not more than thirty (30) days.

Sec. 11-17. Consumption of alcoholic beverages.

* * *

(c) A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 11-18. Model aircraft and unmanned aircraft on town property.

* * *

(d) Any violation of this section shall be punishable by a ~~fine~~ civil penalty in accordance with section 1-8 ~~of not more than fifty dollars (\$50.00).~~

Sec. 11-19. Closing of public parks.

All public parks shall close at dark, except that activities authorized by the town may be conducted beyond that time. Notice of public park and/or authorized public activity closing times shall be prominently posted. Any violation of this section shall be punishable by a ~~fine~~civil penalty in accordance with section 1-8 of not more than fifty dollars (\$50.00).

Sec. 11-43. Penalty for violation.

Any person violating any prohibition or restriction imposed by a proclamation authorized by this article shall be guilty of a misdemeanor, punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00) as provided in Section 1-8 of this Code.

Sec. 11-57. Enforcement.

- (a) The failure of any person required to do so to remove graffiti shall constitute a violation of this article, punishable by a civil penalty as set forth in ~~section 6-25~~sections 1-8 of the Town Code.
- (b) Alternatively, the existence of graffiti on public or private real property in violation of this article is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this article and ~~as otherwise in the Town Code~~in Chapter 6.

Sec. 15-30. Failure to abate nuisance upon notice to constitute an offense.

Any person who shall maintain or permit any such public nuisance as defined in this article and who shall fail, refuse or neglect to remove, destroy or otherwise eliminate such condition or conditions constituting the public nuisance within a period of ten (10) days after written notice to do so from the chief of police shall be guilty of a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 15-72. - Installation of drainage pipe.

* * *

- (b) Any violation of this section shall be punishable as a misdemeanor by a fine of not more than ~~fifty dollars (\$50.00)~~one hundred dollars (\$100.00) nor more than thirty (30) days' imprisonment, and each day a pipe not installed in conformity with this section is permitted to remain beneath any driveway or street connecting any private property with any public street shall be deemed a distinct and separate violation of this section.

Sec. 15-88. Prohibited conduct.

The following acts or activities, when performed or undertaken in conjunction with or as a part of any parade, picket line or group demonstration, or by a "small group" exemption from the permit requirements are hereby prohibited and declared unlawful, and are punishable as a Class 2 misdemeanor with a maximum fine of one hundred dollars (\$100.00):

- (1) The carrying on or about the person of any firearm, or any weapon or article, including but not limited to, blackjacks, nightsticks or flashlights, which by their use might constitute a deadly weapon.
- (2) The taking or keeping or any dog or other vicious animal, whether leashed or unleashed.

Sec. 15-91. Interference with parades, picket lines and demonstrations.

No person shall hamper, obstruct, impede or interfere with any parade, picket line or group demonstration being conducted under authority of a permit duly issued by the chief of police. The violation of this section shall be punishable as a Class 2 misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 16-17. Enforcement.

The police department is hereby given the authority and is instructed to watch and observe the conduct of holders and taxicab drivers operating under this article. Upon discovering a violation of the provisions of this article, the police department shall take appropriate action to address the violation as allowed by ~~this chapter~~ Section 1-8 and North Carolina General Statutes.

Sec. 16-44. Unlawful to hire taxicab with intent to defraud driver.

It shall be unlawful for any person to hire any taxicab with the intent to defraud the person from whom it is hired of the value of such service. A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 16-45. Unlawful to refuse to pay fare.

It shall be unlawful for any person to refuse to pay the legal fare of any taxicab after having hired the same. A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 17-3. Connecting, disconnecting, bypassing, adjusting, regulating, controlling water meters.

(a) *Connecting, disconnecting, bypassing.* Where water-measuring meters have been installed on the town's water systems, such meters are the property of the town or City of Raleigh. It shall be unlawful for any person other than a duly authorized agent or employee of the town to connect, disconnect or bypass the water meters belonging to the town or City of Raleigh.

(b) *Adjusting, regulating, bypassing or controlling.* It shall be unlawful for any person, without authority of the town or City of Raleigh, to regulate, adjust, bypass or control the water meters of the town or City of Raleigh.

(c) *Violations declared misdemeanors.* Any person violating the provisions of either paragraph (a) or (b) of this section shall be guilty of a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

(d) *Additional fee for service following certain violations.* In addition to any other applicable disconnection fees and charges by the town, any person violating paragraph (a) of this section by turning on the water service of the town after the same has been disconnected by an authorized agent or employee of the town for nonpayment of a water bill or who turns on water service without first notifying the town and receiving authorization from an employee or agent of the town shall be required to pay a fee as set out in the adopted fee schedule ~~Fees and Charges Ordinance~~ before the water service is made available to such person.

Sec. 17-16. Enforcement.

Except where otherwise specified, a violation of this Article shall be subject to issuance of a civil penalty in accordance with section 1-8.

Sec. 17-89. Enforcement.

A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 17-97. Enforcement.

* * *

(d) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this article, rule, regulation, order duly adopted or issued pursuant to this article shall be guilty of a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment for not longer than thirty (30) days. Each violation shall be a separate offense.

Sec. 18-1. Discharge of firearms; seizure of firearms; applicability of section.

- (a) It shall be unlawful for any person to shoot or discharge within the corporate limits of the town or on any town-owned property any gun, pistol or other firearm, or air rifle, pellet gun, BB gun, or similar device, by whatever name, for throwing a metal projectile by use of spring action or compressed air. A violation of this subsection (a) is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

* * * *

Sec. 18-2. Weapons prohibited on town property.

* * *

- (i) Any person in violation of this section shall be guilty of a misdemeanor and upon conviction shall be fined five hundred dollars (\$500.00) or imprisoned for six (6) months or both.

* * * *

Sec. 18-13. Sale prohibited.

It shall be unlawful for any person to sell or offer for sale within the corporate limits of the town any firecrackers, cannons, Roman candles, skyrockets or other fireworks, except in compliance with General Statutes, Chapter 14, Article 54.

Sec. 18-14. Discharge within town prohibited; applicability of section; penalty.

- (a) It shall be unlawful to discharge, shoot, fire off or explode any firecrackers, cannons, Roman candles, skyrockets or other fireworks or explosives within the limits of the town.
- (b) The provisions of this section shall not be construed to prohibit the exhibition of fireworks upon any occasion of public celebration upon permission of the mayor or the town council, and nothing herein shall prohibit the use of explosives necessary in construction or fire prevention upon permission of the mayor or the town council and in compliance with General Statutes, Chapter 14, Article 54.

Sec. 19-44. Willful noncompliance with orders unlawful.

It shall be unlawful for any person to willfully fail or refuse to comply with any final order or direction of the building inspector or town council made by virtue and in pursuance of this division. A violation of this section is punishable as a misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Sec. 19-125. Enforcement and penalties. [subsection (b) Criminal penalties]

* * *

(b) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this article, or rule or order adopted or issued pursuant to this article, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, is guilty of a class 2 misdemeanor with a maximum fine of one hundred dollars (\$100.00).

Section Two. Sec. 4-3, Giving false alarms, is repealed in its entirety, as this conduct is prohibited under State law pursuant to General Statutes, Section 14-286.

Section Three. Sec. 9-65, Violations, is repealed in its entirety, as this conduct is prohibited under State law pursuant to General Statutes, Section 14-118.5.

Section Four. Sec. 19-100, Residential rental registration, is repealed in its entirety, as the Town is prohibited from adopting or enforcing this type of ordinance pursuant to General Statutes, Section 160D-1207.

Section Five. This Ordinance is effective upon adoption after the second reading.

Adopted this the ____ day of _____, 2022.

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: January 3, 2022 		
Subject: Minimum Housing Ordinance Amendments		
Location on Agenda: Old/New Business 		
Department: Legal		
Contact: Terri Jones, Town Attorney		
Presenter: Terri Jones, Town Attorney		
Brief Summary: Second reading of proposed amendments to the Town Code of Ordinances Chapter 7 in order to update references to North Carolina General Statutes Chapter 160D and to comply with Session Law 2021-138, Criminal Justice Reform.		
Recommended Motion and/or Requested Action: Recommend adoption of proposed ordinance amendments; Ordinance (2022) 5092		
Detailed Notes: Chapter 7, Minimum Housing, of the Town Code of Ordinances was adopted pursuant to the authority in General Statutes Chapter 160A Article 19 which has been recodified as Chapter 160D Article 12. Session Law 2021-138 prohibits criminal enforcement of certain local ordinances including those adopted pursuant to Chapter 160D, except ordinances related to unsafe buildings. The Department of Inspections recommends that Chapter 7 be enforced by civil penalties, except where criminal enforcement is specifically provided in State law such as for occupying unsafe buildings. A public hearing was held on December 21, 2021, after the required public notice period.		
Funding Source: n/a		
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:	TJ	
Finance Director:		
Town Attorney:	TJ	
Town Manager:	RD	
Town Clerk:		

ORDINANCE NO. (2022) 5092

AN ORDINANCE AMENDING THE TOWN CODE
RELATING TO MINIMUM HOUSING

WHEREAS, pursuant to Session Law 2019-111, Session Law 2020-3, and Session Law 2020-25, a new Chapter 160D was added to the North Carolina General Statutes;

WHEREAS, Article 19 of Chapter 160A which authorized local governments to adopt minimum housing ordinances is now codified as Article 12 of Chapter 160D;

WHEREAS, the Town of Garner adopted Ordinance No. 1639 on January 22, 1980, which was codified in the Town Code of Ordinances as Chapter 7 Minimum Housing;

WHEREAS, pursuant to Session Law 2021-138, North Carolina General Statutes (G.S.) Section 160A-175 was amended to change the presumption that all local ordinances may be enforced by criminal penalties as provided in G.S. 14-4;

WHEREAS, certain ordinances may not be enforced by criminal penalties, including ordinances regulating planning and development (except for unsafe buildings);

WHEREAS, the Town of Garner seeks to comply with the above referenced Session Laws by amending the following provisions of the Town Code of Ordinances; and

WHEREAS, notice of a public hearing was posted on the Town's website on December 10, 2021, and a public hearing was held on December 21, 2021, in accordance with G.S. 160D-601.

NOW THEREFORE, BE IT ENACTED by the Garner Town Council as follows:

Section One. That the following sections of the Town Code shall be amended by deleting the language set forth in strike-outs and by adding the language set forth in underlined text below:

Sec. 7-1. Findings; purpose.

- (a) Pursuant to General Statutes, Section ~~160A-441~~160D-1201, it is hereby found and declared that there exist in the town dwellings which are unfit for human habitation due to dilapidation, defect increasing the hazards of fire, accidents and other calamities, lack of ventilation, light and sanitary facilities, and due to other conditions rendering such dwellings unsafe or unsanitary, and dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of the residents of the town.
- (b) In order to protect the health, safety and welfare of the residents of the town as authorized by ~~Part 6 of Article 19, Chapter 160A~~Article 12, Chapter 160D of the General Statutes, it is the purpose of this chapter to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as expressly authorized by General Statutes, Section ~~160A-444~~160D-1205.

Sec. 7-2. Definitions.

The following shall apply in the interpretation and enforcement of this chapter:

Basement shall mean a portion of a building which is located partly underground, having direct access to light and air from windows located above the level of the adjoining ground.

Board shall mean the board of adjustment, which shall hear appeals from orders of the chief code official, and shall have the duties specified in General Statutes, Section 160D-1208.

* * * *

Dwelling shall mean any building which is wholly or partly used or intended to be used for living or sleeping by human occupants, subject to the restriction of General Statutes, Section 160D-706(b).

Dwelling unit shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating, subject to the restriction of General Statutes, Section 160D-706(b).

* * * *

Whenever the words "dwelling," "dwelling unit," "roominghouse," "rooming unit," "premises" are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof." Whenever the word "board" is used in this chapter, it shall mean the ~~minimum housing appeal board of the town~~ the board of adjustment, as the designated housing appeals board pursuant to General Statutes, Section 160D-305.

Sec. 7-16. Enforcement procedures.

- (c) *Appeals from orders of chief code official.* An appeal from any decision or order of the chief code official may be taken by any person aggrieved thereby. Any appeal from the chief code official shall be taken within ten (10) days from the rendering of the decision of service of the order, and shall be taken by filing with the chief code official and with the board of adjustment a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the chief code official shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the chief code official refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When an appeal is from a decision of the chief code official requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the chief code official certifies to the board, after the notice of appeal is filed with him, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant) a suspension of his requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one (1) days' written notice to the chief code official by the board or by a court of record upon petition made pursuant to General Statutes, Section ~~160A-446(f)~~ 160D-1208 and paragraph (d) of this section.

The board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end, it shall have all the powers of the inspector, but the concurring vote of four (4) members of the board shall be necessary to reverse or modify any decision or order of the inspector. The board shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, to

adapt the application of the ordinance to the necessities of the case, to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within fifteen days (15) of the decision of the board, but not otherwise.

- (d) *Petition to superior court by owner.* Any person aggrieved by order issued by the inspector or a decision rendered by the board shall have the right, within thirty (30) days after issuance of the order or rendering of the decision, to petition the superior court for a temporary injunction restraining the inspector pending a final disposition of the cause, as provided by General Statutes, Section ~~160A-446(f)~~160D-1208.

Sec. 7-18. In personam remedy for failure to comply with order.

If the owner of any deteriorated dwelling or dwelling unit shall fail to comply with an order of the chief code official to repair, alter or improve the same within the time specified therein, or if the owner of a deteriorated or dilapidated dwelling shall fail to comply with an order of the inspector to vacate and close, and remove or demolish the same within the time specified therein, the chief code official shall submit to the town council, at its next regular meeting, a resolution directing the town attorney to petition the superior court for an order directing such owner to comply with the order of the inspector, as authorized by General Statutes, Section ~~160A-446(g)~~160D-1208(e).

Sec. 7-19. In rem action by inspector, placarding for failure to comply with orders.

- (a) After failure of an owner of a dwelling or dwelling unit to comply with an order of the chief code official issued pursuant to the provisions of this chapter, and upon adoption by the town council of an ordinance authorizing and directing him to do so, as provided by General Statutes, Section ~~160A-443(5)~~160D-1203 of this chapter, the inspector shall proceed to cause such dwelling or dwelling unit to be repaired, altered or improved to comply with the minimum standards of fitness established by this chapter, or to be vacated and closed and removed or demolished, as directed by the ordinance of the town council, and shall cause to be posted on the main entrance of such dwelling or dwelling unit a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a misdemeanor pursuant to General Statutes, Section 160D-1203(4).
- (b) Each such ordinance shall be recorded in the office of the register of deeds in the county wherein the property is located, and shall be indexed in the name of the property owner in the grantor index, as provided by General Statutes, Section ~~160A-443(5)~~160D-1203.

Sec. 7-20. Costs of repairs, etc., by chief code official to constitute a lien on premises.

As provided by General Statutes, Section ~~160A-443(6)~~160D-1203, the amount of the cost of any repairs, alterations or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the chief code official pursuant to Section 7-19 of this chapter shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, have the same priority and be enforced and the costs collected as provided by Article 10, Chapter 160A of the General Statutes of North Carolina.

Sec. 7-21. Alternative remedies.

Neither this chapter nor any of its provisions shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this ordinance ~~by criminal process~~ as authorized by General Statutes, Chapter 160D and Section 14-4160A-175 and Section 7-227-23 of this chapter; and the enforcement of any other remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.

Sec. 7-23. Violations; penalties.

It shall be unlawful for the owner of any dwelling or dwelling unit to fail, neglect or refuse to repair, alter or improve the same, or to vacate and close and remove or demolish the same, upon order of the chief code official duly made and served as herein provided within the time specified in such order, and each day that any such failure, neglect or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any dwelling or dwelling unit, with respect to which an order has been issued pursuant to Section 7-16 of this chapter, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration or improvement or its vacation and closing, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense. ~~The violation of any provision of this chapter shall constitute a misdemeanor, as provided by General Statutes, Section 14-4~~Except for criminal penalties as authorized in General Statutes, Chapter 160D, the violation of any provision of this chapter shall subject the offender to the issuance of civil penalties as provided by Section 1-8 of this Code.

Section Two. This Ordinance will become effective upon adoption.

Adopted this the ____ day of _____, 2022.

REPORTS

Garner Info

Id	Title	Description	Current Status	Address	Date Created	Comments
11168219	Get a Copy of an Accident Report		SUBMITTED		11/23/2021	
11290499	Dead Animal Pickup	opossum, between Hwy 70 and Grovemont Dr, at the curb, going away from Hwy 70	SUBMITTED	2586 Timber Dr	12/23/2021	
11290549	Graffiti	Graffiti on the back side of the Office Max building.	SUBMITTED	2580 Timber Dr	12/23/2021	