

## **ARTICLE 11. DEFINITIONS**

11.1. General.

11.2. Defined terms.

## Town of Garner Unified Development Ordinance (UDO)

**11.1. General.**

For the purpose of this UDO certain words shall be interpreted as follows:

- A. *"Town"* means the Town of Garner, North Carolina.
- B. *"Governing authority"* means the Mayor and Town Council of the Town of Garner, North Carolina.
- C. *"Administrator"* means the Planning Director.
- D. *"Map"* or *"zoning map"* means the official zoning map of the Town of Garner, North Carolina.
- E. Words in the present tense include the future tense.
- F. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.
- G. The word *"person"* includes a firm, association, corporation, trust, and company as well as an individual.
- H. The word *"structure"* shall include the word "building."
- I. The word *"lot"* shall include the words, "plot," "parcel," or "tract."
- J. The words *"will"* and *"shall"* are always mandatory and not merely directory.

(Ord. No. 3558, § 2, 7-7-09)

**11.2. Defined terms.**

Unless otherwise provided, or unless clearly required by the context, the terms defined in this section shall have one meaning indicated when used in this UDO.

***Accessory building, residential district.*** In residential districts, an accessory building may be a detached garage, workshop, storage shed, hobby-type greenhouse or similar minor building.

***Accessory building or structure.*** A building or structure which is on the same zoning lot as, and detached from a principal building to which the use is incidental and subordinate.

***Accessory building.*** A minor building located on the same lot as a principal building and used incidentally to a principal building or housing an accessory use.

***Accessory dwelling unit.*** A separate and complete dwelling unit that is contained on the same lot as the structure of a single-family dwelling.

***Accessory use or structure.*** A use, building or structure that is subordinate to the principal use, building or structure on the lot, and used for purposes incidental to the main or principal use, building or structure.

**Adult cabaret.** Any place which features topless dancers, go-go dancers, strippers, male or female impersonator(s), or similar entertainers which are lawful under state law.

**Adult establishment.** An adult bookstore, adult motion picture theater, adult mini-motion picture theater, or other adult entertainment business or massage business as defined in G.S. 14-202-10.

**Agricultural use.** The use of waters for stock watering, irrigation and other farm purposes.

**Animal unit.** A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

**ANSI.** American National Standards Institute or its successor bodies.

**Antenna.** Equipment designed to transmit or receive radio or electronic signals.

**Approval authority.** The Town Council, Board of Adjustment or other Board or official designated by ordinance as being authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan.

**Automobile service center.** Any establishment where automobile parts sales or minor automobile service/repair activities occurs. Service/repair activities shall be limited to tuning or lubricating automobile engines, sales, repair or servicing of tires, mufflers or batteries. Major engine repair, transmission, or automobile body repair/paint shops are excluded activities under this use.

**A-weighted sound pressure level.** The sound pressure level as measured with a sound level meter using the A-weighting network. The symbol for this standard is dB(A).

**Base flood.** The flood having a one percent chance of being equaled or exceeded in any given year. Also known as the 100-year flood.

**Basement.** The lowest level or story of a building which has its floor subgrade on all sides.

**Best management practices (BMP).** A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

**Buffer.** An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

**Buffer (landscaping), perimeter.** The area of undisturbed land between adjacent incompatible uses. Performs the dual role of providing horizontal separation and vertical screening. The width and planting requirement varies according to the use classification of the subject and adjacent property.

**Buffer (landscaping), street.** The area of undisturbed land between incompatible uses across the street from each other. Provides horizontal separation only. The width varies according to the use classification of the subject and adjacent property.

**Buffer, stream.** The area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of the streams or rivers.

**Building.** A structure designed to be used as a place of occupancy, storage or shelter.

**Building coverage.** Building coverage refers to the area of a lot covered by buildings (principal and accessory) or roofed areas, as measured along the outside wall at ground level, and including all projections, other than open porches, fire escapes, canopies and the first two feet of a roof overhang.

**Built-upon area.** Built-upon areas shall include that portion of a development project that is covered by impervious improvements.

**Business complex.** A group of two or more office, industrial and/or other operations on an unsubdivided tract, operating under one name or presenting other elements of a unified image of identity to the public. A complex may or may not have a central core of attached businesses, (which a shopping center does have).

**Business frontage.** The distance that is occupied by a business or other activity measured along the outside wall of the building side on which the main entrance of the business or activity is located.

**Caliper.** Trunk diameter measurement for nursery grown stock taken six inches above grade of the rootball for trunks up to and including four inches, and 12 inches above grade of the rootball for trunks greater than four inches.

**Certified.** Whenever this UDO requires certification of the existence of some fact or circumstance to the Town, the Town may require that such certification be made in any manner that provides reasonable assurance of the accuracy of the certification. By way of illustration, the Town may accept certification by telephone from some agency when the circumstances warrant it, or may require that the certification be in the form of a letter or other document.

**Child care center.** A child care arrangement that is licensed by the state of North Carolina and located in a residence where full time care is provided for at least three children but, not more than 12 children for which a special use permit has been granted by the Board of Adjustment.

**Child care home.** A home for not more than nine orphaned, abandoned, dependent, abused or neglected children, together with not more than two adults who supervise such children, all of whom live together as a single housekeeping unit.

**Child care institution.** An institutional facility housing more than nine orphaned, abandoned, dependent, abused, or neglected children.

**Circulation area.** That portion of the vehicle accommodation area used for access to parking or loading areas or other facilities on the lot. Essentially, driveways and

maneuvering areas (other than parking aisles) comprise the circulation area.

**Cluster development.** A residential development constructed on a tract of land of at least five acres, zoned residential cluster district, under single ownership, planned, designed and developed as an integral unit, intended to allow flexibility in lot shapes, reduce infrastructure networks, provide inter-connected open space primarily along rear lot lines and protect natural resources by concentrating dwellings in specific areas of an overall tract.

**Combination use.** A use consisting of a combination on one lot of two or more principal uses. In some instances, a second principal use may be regarded as accessory to the first, and thus a combination use is not established.

**Commercial boundary.** Outer marker or boundary lines encompassing a tract or parcel of land used or zoned for commercial use.

**Commercial subdivision (lease lots or separate parcels).** A group of two or more office, commercial or other operations in geographic proximity, which may or may not operate under one banner, sharing ingress and egress, but having each operation on a separate lot, either through lease arrangement or through bonafide subdivision into separate parcels. (Examples in Garner include Plaza 70 East and the large lot of which PD Quix is a part.) Commercial Subdivisions are not shopping centers or business complexes as defined herein.

**Community center.** Governmentally owned and operated building(s) and facilities which may provide a wide range of activities predominately indoors to the general community such as but not limited to the following use: recreational; cultural; dining; educational; social and general administrative office uses.

**Community park.** A community park usually comprises 14 to 40 acres designed primarily to serve the community park district pursuant to the adopted park and greenway plan, usually serving residents within a radius of approximately one to two miles. A community park district is usually comprised of two or more neighborhood park districts. In addition to the facilities provided in neighborhood parks, community parks are designed to include such amenities as a community center or other special facilities, such as a swimming pool.

**Composting facility.** A facility in which stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

**Conditional use zoning district.** This consists of a legislative rezoning and a separate conditional use permit following a trial-like quasi-judicial hearing by the Town Council.

**Conditional use permit.** This is issued in conjunction with a legislative rezoning and consists of a separate conditional use permit following a trial-like quasi-judicial hearing. It is a permit issued by the Town Council that authorizes the recipient to make use of property in accordance with the requirements of this UDO as well as any additional requirements imposed by the Town Council.

**Condominium.** (See unit ownership structure).

**Construction.** On-site erection, fabrication, installation, alteration, demolition or removal of any structure, facility, or addition thereto, including all related activities, including, but not restricted to, clearing of land, earthmoving, blasting and landscaping.

**Controlled access roadway.** A roadway with four or more lanes divided by a median with speed limits that would exceed 50 mph, where access to and from said road is by interchange only.

**Correctional facility.** A facility that houses persons in the custody of Wake County, the North Carolina Department of Correction or its agent as a result of conviction of a criminal offense or persons on parole.

**Council.** The Town Council of the Town of Garner.

**Critical area.** The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. In this UDO, the critical area consists of the Lake Benson Conservation District, as previously established and mapped, extending to the next property line or major landmark after a distance of 2,000 feet from the lake, plus the Watershed Conservation Buffer Areas as established at specified distances beyond the floodplain of Swift Creek and all other creeks flowing into Lake Benson, up to a distance of 5,000 feet.

**Critical root zone.** A circular area measured outward from a tree trunk where roots must remain undisturbed to ensure the tree's survival. Measured as one foot radial distance for every inch of tree DBH at a minimum of eight feet.

**Crown dripline.** A vertical line extending from the outer most surface of a tree's branch tips projected down to the ground.

**Cyclically varying noise.** Any sound which varies in sound level such that the same level is obtained repetitively at reasonably uniform intervals of time.

**dB(A).** A sound level in decibels determined by using the A-weighting network of a sound level meter.

**DBH.** Diameter-at-breast-height is a standard forestry measure of tree size, and is a tree trunk diameter measured in inches at a height of four and one-half feet above the ground. If a tree splits into multiple trunks below four and one-half feet, then each trunk is measured as a separate tree. A tree which splits into multiple trunks above four and one-half feet is measured as a single tree at four and one-half feet.

**Decibel (dB).** A unit of measure, on a logarithmic scale, of the ratio or magnitude of a particular sound pressure to a standard reference pressure, which, for purposes of this UDO, shall be 20 micropascals.

**Developer.** A person who is responsible for any undertaking that requires a site, special use, conditional use, or sign permit.

**Development.** Any land disturbing activity which (a) requires a soil and erosion permit, site permit, special use permit or sign permit, or (b) which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise

decreases the infiltration of precipitation into the soil.

***Disabled or handicapped home.*** A residential arrangement which does not meet the definition of group care home and consists of a single family dwelling unit with a single family kitchen facility housing up to six persons with a disability or handicap.

***Discharging landfill.*** A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.

***Driveway.*** That portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not part of the vehicle accommodation area.

***Driveway/intersection sight distance standards.*** All driveway and/or street intersections shall maintain sight triangles meeting the following minimums, within which nothing that may obstruct a motorist's or pedestrian's view of traffic on the street onto which the motorist or pedestrian will enter shall be permitted, including structures, signs, plant materials or earth berms.

***Driveway or residential or secondary street onto U.S. or N.C. primary road.*** See Section 7.7, Access standards.

***Dwelling unit.*** A building, or portion thereof, providing complete and permanent living facilities for one household.

***Eighty-five percent TSS removal stormwater quality control device.*** A constructed device or series of devices designed to achieve the removal of 85 percent of the total suspended solids from stormwater runoff. This may be a single device with a removal efficiency of 85 percent or multiple devices with a collective removal efficiency of 85 percent. Examples of single devices with a removal efficiency of 85 percent include retention ponds, and bioretention devices. Other devices and their associated removal efficiencies are subject to approval by the North Carolina Division of Environmental Management.

***Engineered stormwater control structure.*** Stormwater control structures designed by an engineer or landscape architect to control stormwater runoff. Such structures include but are not limited to wet retention ponds, detention ponds, etc.

***Existing development.*** Those projects that as of July 1, 1993, have been built or for which a permit has been issued, a subdivision plat has been recorded, or for which a vested right exists under Town ordinance or state law.

***Existing lot.*** A lot which is part of a subdivision, or a lot described by metes and bounds, a deed or plat of which has been recorded in the office of the register of deeds prior to the adoption of this UDO. Synonymous with lot of record.

***Existing manufactured home park or manufactured home subdivision.*** A parcel or parcels of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured home is to be affixed (including at a minimum the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of street(s) is completed before the

effective date of this UDO.

**Expenditure.** A sum paid out in return for some benefit or to fulfill some obligation. The term also includes binding, contractual commitments to make future expenditures, as well as any other substantial changes in position.

**Extraterritorial planning jurisdiction.** That portion of the Town's planning jurisdiction located outside the corporate boundaries of the Town.

**Family.** Two or more persons living together and occupying a single dwelling unit with a single kitchen facility, and who are related by blood, marriage, or adoption, or foster children, and including both a) a nuclear family consisting of one or two parents and any number of children and b) an extended family containing up to four adults and any number of children, but excluding from the definition of family a combination which consists of two or more nuclear families and more than four adults.

**Family care home.** A home for a limited number of residents and support or supervisory personnel (as limited by state definitional requirements) that provides room and board, personal care and rehabilitation services for handicapped persons in a family environment. According to GS 168-21, a handicapped person: is defined as a person with a temporary or permanent, physical, emotional, or mental disability. A family care home is a residential use of property and permissible by right in all residential districts, subject to additional requirements.

**Family child care home.** A child care arrangement that is licensed by the state of North Carolina and located in a residence where full time care is provided for at least three children but, not more than five children for which a site permit has been issued by the Planning Department.

**Flex space.** The sale, lease, or rental of space within a structure or multiple structures that will allow a combination of uses.

**Floating zone.** A zoning district whose requirements are fully described in this UDO but initially is unmapped. It is mapped in response to the approval of an applicant's request for a rezoning.

**Flood.** A general or temporary condition of partial or complete inundation of normally dry land areas from:

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

**Floodplain.** Any area susceptible to being inundated by water from the base flood. As used in this UDO, the term refers to that area designated as subject to flooding from the base flood on the flood boundary and the latest edition of the floodway map prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the Town Hall.

**Floodway.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. As used in this UDO, the term refers to

that area designated as a floodway on the flood boundary and the latest edition of the floodway map prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the Town Hall.

**Flood hazard boundary map.** An official map of a community issued by the federal emergency management agency, where the boundaries of the areas of special flood hazard have been defined in zone A.

**Flood insurance rate map.** An official map of a community on which the federal emergency management agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**Flood insurance study.** The official report provided by the federal management agency. The report contains flood profiles, as well as the flood boundary floodway map and the water surface elevation of the base flood.

**General use district.** A zoning district in which some uses are permissible with a site permit and others require a special use permit.

**Gross floor area.** The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

**Group care home.** A home where rehabilitation services are provided in a residential setting and family environment for up to nine persons at 200 square feet per occupant and one full bath per five occupants, including support and supervisory personnel who reside in the home. A group care home shall not include persons being housed in a correctional facility or mentally ill persons who are dangerous to others as defined in G.S. 122-3(11)b, as amended.

**Group care institution.** An institutional facility that provides rehabilitation services in a family environment for more than nine persons including support and supervisory personnel, and shall not include persons being housed in a correctional facility or mentally ill persons who are dangerous as defined in G.S. 122-3(11).

**Habitable floor.** Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or any combination thereof. A floor used only for storage is not a habitable floor.

**Handicapped or home disabled.** A residential arrangement which does not meet the definition of group care home and consists of a single family dwelling unit with a single family kitchen facility housing up to six persons with a disability or handicap.

**Handicapped or infirm institution.** An institutional facility housing and providing care or assistance for more than nine persons who are physically or mentally handicapped or infirm.

**Hazardous material.** Any substance listed as such in: SARA Section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

**High density development.** Development within the Lake Benson Swift Creek Watershed area that exceeds the amount of impervious area which is allowed without engineered stormwater control measures.

**Highest adjacent grade.** The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

**Home occupation.** A commercial activity in any residential district that: (i) is conducted by a person on the same lot where such person resides; and (ii) is not so insubstantial or incidental or is not so commonly associated with the residential use as to be regarded as an accessory use, but that can be conducted without any significantly adverse impact on the surrounding neighborhood.

**Household.** One or more persons occupying a single family dwelling unit with a single kitchen facility, including a family as defined in this ordinance, and including a group of not more than five persons living together as a housekeeping unit by joint agreement or non-profit cost sharing basis.

**Impacted area.** Areas of a site where the cultural, natural and visual resources will be effected by a proposed development and or land disturbance.

**Impervious surface.** Impervious surfaces are those natural or man-made structures, which prevent or restrict the infiltration of stormwater runoff into the underlying soil. For the purpose of impervious calculation, rooftops, gravel or paved driveways, sidewalk, gravel or paved streets, curb and gutter and like structures are considered to be impervious surfaces. Water impoundments, landscaped areas and wooden slatted decks are considered pervious.

**Impulsive sound.** Either a single pressure peak or a single burst (multiple pressure peaks) for a duration less than one second.

**In-home adult day care.** An adult day care arrangement that been issued a certificate to operate by the state of North Carolina and located in a residence where a day care program is provided for up to six adults which meets the standards of the UDO for which a zoning compliance permit has been issued by the Planning Department.

**Industrial boundary.** Outer marker or boundary lines encompassing a tract or parcel of land used or zoned for industrial use.

**Industrial development.** Any nonresidential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

**Intermediate care home.** A facility maintained for the purpose of providing accommodation for not more than seven occupants needing medical care at a lower level than that provided in a nursing care institution but at a higher level than that provided in institutions for the handicapped or infirm.

**Intermediate care institution.** An institutional facility maintained for the purpose of providing accommodations for more than seven persons needing medical care at a

lower level than that provided in a nursing care institution but at a higher level than that provided in institutions for the handicapped or infirm.

**Kenel.** A commercial operation that:

- (1) Provides food, shelter and care for animals for purposes not primarily related to medical care (a kennel may or may not be run by or associated with a veterinarian); or
- (2) Engages in the breeding of animals for sale.

**Land disturbing activity.** Any use of land in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. Sedimentation occurs whenever solid particulate matter, mineral or organic, is transported by water, air, gravity, or ice from the site of its origin, and is deposited elsewhere.

**Landfill.** A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the North Carolina General Statutes. For the purpose of this UDO this term does not include composting facilities.

**Landscaped area.** Areas of a site where groupings (more than one) of trees, shrubs and/or ground cover are proposed and are defined within a bed of mulch.

**Livestock.** All animals kept or raised on a farm, except however, that necessary working animals and pets are not included.

**Loading and unloading area.** That portion of the vehicle accommodation area used to satisfy the relevant requirements of this UDO.

**Logo.** A picture, pattern or way of writing its name that an establishment uses as its symbol and puts on its products or signs.

**Lot.** A parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or a recorded map, and which is recognized as a separate legal entity for purposes of transfer of title. The term tract is used interchangeably with the term lot.

**Lot area.** The area circumscribed by the boundaries of a lot, except that: (i) when the legal instrument creating a lot shows the boundary of the lot extending into a public street right-of-way, then the lot boundary for the purposes of computing the lot area shall be the street right-of-way line, or a line running parallel to and 30 feet from the center of the traveled portion of the street if the right-of-way line cannot be determined, and (ii) in a residential district, when a private road that serves more than three dwelling units is located along any lot boundary, then the lot boundary for purposes of computing the lot area shall be the inside boundary of the traveled portion of that road.

**Lower ratio of parking need to building square footage uses.** Uses, such as furniture stores, carpet stores, and major appliance stores, that sell items that are large and bulky, that need a relatively large amount of storage or display area for each unit offered for sale, and that therefore, generate less customer traffic per square foot of floor

space than stores selling smaller items.

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

**Major watershed variance.** A watershed variance that results in any one or more of the following:

- (1) The complete waiver of a management requirement;
- (2) The relaxation, by a factor of more than ten percent, of any management requirement that takes the form of a numerical standard; and
- (3) The relaxation of any management requirement that applies to a development proposal intended to exceed 12 percent impervious surface within the Lake Benson Conservation District or within the area subject to CUD-SB-C-22, CUD R-12-C53 or CUD-R-12 PR-C54 previously classified by the Swift Creek Land Management Plan as suburban new and those projects for which development would exceed 24 percent impervious surface for the balance of the watershed.

**Manufactured home.** A dwelling unit that:

- (1) Is composed of one or more components each of which was substantially assembled in a manufacturing plant and designed to be installed or assembled on the building site;
- (2) Exceeds 40 feet in length and eight feet in width;
- (3) Is constructed in accordance with the federal manufactured home construction and safety standards; and
- (4) Is constructed after June 15, 1976.

**Mean pool depth.** The cross-sectional area of a stream, pond or other body of water divided by the width of the water's free surface.

**Mini-parks.** A mini-park usually comprises one lot or less, and is designed primarily to serve the area contained on the final plat or approved site plan, and particularly to provide an area for play of younger children during daytime hours.

**Minor watershed variance.** A watershed variance that does not qualify as a major variance.

**Mobile home.** A dwelling unit that:

- (1) Was constructed before June 15, 1976 (pre-HUD requirements);
- (2) Is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the site on its own chassis; and

- (3) Exceeds 40 feet in length and eight feet in width.

**Modular home.** A dwelling unit that:

- (1) Is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the site on its own chassis;
- (2) Is constructed in accordance with the North Carolina Building Code (rather than HUD code) for single dwelling units.

**Neighborhood park.** A neighborhood park usually comprises three to ten acres serving the residents within the neighborhood park district as pursuant to the parks and greenway plan and primarily serving a radius of approximately three quarters of a mile. Typical facilities would include a meeting center, picnic areas, multi-use courts, ballfields, tot lots, tennis courts and special facilities as needed.

**Noise pollution.** The emission of sound that reasonably interferes with the enjoyment of life or with any lawful business or activity.

**Nonconforming lot.** A lot existing at the effective date of this UDO (and not created for the purposes of evading the restrictions of this UDO) that does not meet the minimum area requirements or the presumptive minimum lot width requirement of the district in which the lot is located.

**Nonconforming project.** Any structure, development, or undertaking that is incomplete at the effective date of this UDO and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

**Nonconforming situation.** A situation that occurs when any existing lot or structure, or use of an existing lot or structure, does not conform to one or more of the regulations applicable to the district in which the lot or structure is located on the effective date of this UDO. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this UDO, because signs do not meet the requirements of, or because land or buildings are used for purposes made unlawful by this UDO.

**Nonconforming use.** A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. For example, a commercial office building in a residential district may be a nonconforming use. The term also refers to the activity that constitutes the use made of the property. For example, all the activity associated with running a bakery in a residentially zoned area is a nonconforming use.

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

**Nonresidential development.** All development other than residential development,

agriculture and silviculture.

***Nursing care home.*** A facility maintained for the purpose of providing skilled nursing care and medical supervision at a lower level than that available in a hospital to not more than nine persons.

***Nursing care institution.*** An institutional facility maintained for the purpose of providing skilled nursing care and medical supervision at a lower level than that available in a hospital to more than nine persons.

***Outdoor storage.*** The storage of materials in an unenclosed area. Outdoor storage shall not include the temporary storage of vehicles at repair or sales facilities.

***Outparcel.*** A parcel, adjacent to or partially surrounded by a shopping center tract, which was either part of the original shopping center tract, or which, as determined by the Planning Director, acts (in the manner in which it operates and the way it blends into the image of the overall shopping center), like part of the shopping center. Such parcels have separate deeds or have been sectioned-off by the developer for purposes of leasing to one or more businesses. In no case shall an outparcel as defined herein be considered as a separate shopping center.

***Parking area aisles.*** That portion of the vehicle accommodation area consisting of lanes providing access to parking spaces.

***Parking space.*** A portion of the parking area set aside for the parking of one vehicle.

***Passive stormwater quality control device.*** A constructed device designed to achieve the removal of up to 40 percent of the total suspended solids from stormwater runoff. Examples of a passive device include grass swales and other devices approved by the North Carolina Division of Environmental Management.

***Person.*** An individual, executor, corporation, partnership or other entity acting as a unit.

***Pervious surface.*** Ground treatments which will allow the infiltration of water, air and nutrients to root systems of adjacent plant material which lie directly under the ground treatment.

***Planned Residential Development.*** A development constructed on a tract of at least five acres under single ownership, planned and developed as an integral unit, and consisting of a combination of single-family residential subdivision lots and multi-family residences.

***Planned Unit Development.*** A development constructed on a tract of at least 20 acres under single ownership, planned and developed as an integral unit, and consisting of a combination of principal uses that could be combined only in a Planned Unit Development District.

***Planning Director.*** See Section 2.4.

***Planning jurisdiction.*** The area within which the Town is authorized to plan for and regulate development pursuant to the authority granted in Article 19 of Chapter 160A of

the North Carolina General Statutes.

**Plat.** A map or plan of a parcel of land which is to be, or has been subdivided.

**Principal building.** The primary building on a lot, or a building that houses a principal use.

**Private service laterals for water and sewer.** These facilities are defined as beginning at the public street right-of-way or public utility easement and extending onto private property to a point necessary to serve said property, specifically for water this shall be beyond the water meter location; for sewer this shall be beyond the cleanout location.

**Project.** Any use requiring a permit from the building inspections and/or Planning Department. Such permits shall include, but not limited to a building permit and site permit.

**Public sewer and other utility system, municipally owned.** The existing Town of Garner or City of Raleigh owned water, storm sewer and sanitary sewer lines including all pipes, valves, valve boxes, hydrants and other fixtures, equipment and apparatus of the water main, storm sewer and sanitary sewer pipe lines and systems, and all appliances necessary and convenient thereto, and such lines built to the Town of Garner and City of Raleigh standards to be dedicated and accepted by the City of Raleigh or the Town of Garner. The utility lines dedicated to the City of Raleigh shall include only main distribution and collection lines and appurtenances in street right-of-way or dedicated recorded easements on private property. Such facilities shall be subject to the applicable provisions of this UDO and applicable sections of the Code of the Town of Garner.

**Public sewer or water system, non-municipally owned.** A sewer or water system designed for and intended to provide services to users and is franchised by the North Carolina Utilities Commission. Such systems and all appurtenances shall be built to the Town of Garner and City of Raleigh standards and specifications according to the applicable provisions of this UDO and the Code of the Town of Garner.

**Pure tone.** Any sound that can be distinctly heard as a single pitch or a set of single pitches.

**Recreational vehicle.** A vehicular type accommodation, other than a manufactured home designed as temporary accommodations for travel, vacation, or recreation purposes, which is propelled by its own motive power or is mounted on or drawn by another vehicle.

**Recycling collection point.** An incidental use that is considered an accessory use to only the principal uses. Recycling collection points serve as a neighborhood drop-off point outside of a fully enclosed building for temporary storage of small amounts of recyclable materials.

**Recyclable material collection center.** Operations inside or outside of enclosed buildings for the collection of recyclable materials such as aluminum, copper, plastic, glass or paper materials which may be recycled for re-manufacture or reuse.

**Repetitive impulsive noise.** Any noise that is composed of impulsive noises that are repeated at sufficiently slow rates such that a sound level meter set at fast meter characteristics will show changes in sound pressure level greater than ten dB(A).

**Residence, duplex.** A residential use consisting of two dwelling units within a single building on a single lot.

**Residence, multifamily.** A residential use consisting of two dwelling units located in separate buildings on the same lot, three or more dwelling units located in one or more buildings on the same lot, or attached or detached units on separate lots at densities permitted only in multifamily zones.

**Residence, single-family.** A residential use consisting of a detached building containing one dwelling unit on a single lot.

**Residential boundary.** Outer marker or boundary lines a tract or parcel of land used or zoned for residential use.

**Restaurant.** An establishment providing food and food service, whereby at least 51 percent of the establishment's revenue is derived from such food sales.

**Restaurant, drive-in.** A restaurant where a substantial portion of the food service is to occupants of motor vehicles parked on the premises.

**R/W.** Right-of-way line of a public street.

**Road.** All private ways used to provide motor vehicle access to:

- (1) Two or more lots; or
- (2) Two or more distinct areas or buildings in unsubdivided developments.

**Satellite dish antenna.** A device capable of receiving radio or television signals from orbiting satellites and other extraterrestrial sources; and shall include all appurtenant components of the satellite dish antenna.

**Sewer or water facilities, individual.** A sewer or water system or facility designed for and intended for private use by one or more users, but not requiring a franchise from the North Carolina Utilities Commission, and not being a Municipally owned system. However, such facilities may require permit approvals by the Wake County Health Department as provided for in this UDO.

**Shopping center.** A building or group of buildings housing seven or more businesses (usually as in-line tenants) on a unified tract (i.e. not on a lease lot or parcel subdivided out of the original larger shopping center parcel), under one or multiple ownerships, and operating under one banner as a pedestrian movement, and/or common ingress and egress points. Its occupants provide or are intended to provide for the retail sale of goods and services (including postal services, etc.) to the public. However, expansions of shopping centers developed after the aforementioned date are required to conform to the uniform signage regulations applicable to the shopping center.

**Shrub, large.** A deciduous or evergreen shrub that matures at between six to 12 feet or

greater in height. Usually maintains branches from the ground up, and if evergreen, used as a screening material.

**Shrub, medium.** A deciduous or evergreen shrub that matures (or is maintained) at three to six feet in height. If evergreen it is used as a screening material.

**Shrub, small.** A deciduous or evergreen shrub that matures (or is maintained) at one to three feet in height. May be used inside sight triangle planting.

**Sight distance standards (triangle).** To ensure that landscape materials do not constitute a traffic hazard, a triangle will be observed at all intersections of driveways/streets with adjacent streets. These sight triangles shall be kept clear of any such visual obstructions between two and one-half feet and ten feet in height.

**Sign.** Any device that is sufficiently visible to persons not on the premises and designed to attract or direct the attention of such persons or to communicate information to them.

- (1) **Sign, canopy.** Any sign attached to or made a part of a canopy; a canopy being any rooflike structure supported by posts or suspended from a wall and extending over an area for the purpose of providing protection against the weather. A canopy sign may be considered a wall or freestanding sign the area of which shall be calculated into the maximum sign area and maximum number permitted as either a wall sign or freestanding sign. Such signs are limited to two sides of a canopy and may not extend above or below the canopy fascia or project any further than necessary for attachment, not to exceed 18.
- (2) **Sign, changeable copy.** A sign whose display area is designed so that the characters, letters, or illustrations can be changed or rearranged without otherwise altering the face or surface of the sign. In the context of this UDO, a changeable copy sign is defined as a permanent sign and erected only in combination with an identification sign; also locally known as a marquee sign.
- (3) **Sign, directory.** A sign located on the interior portion of a shopping center or other business complex, designed to convey the names of occupants of the complex to persons on site. Such signs are typically located near entrances or at strategic locations within the parking area of the complex.
- (4) **Sign, freestanding.** A sign that is not attached to, suspended from, erected on or supported by a building or other structure having a principal function other than the support of such sign but is instead supported by some structure, such as a pole or post, or is without supporting elements, such as an A-frame or monument base. Any sign on a fence located within the required building setback area shall be considered a freestanding sign, and canopy signs may be interpreted as either freestanding or wall signs.
- (5) **Sign, ground.** See freestanding sign and monument sign.
- (6) **Sign, monument.** A type of freestanding sign (often referred to as a ground sign, which has a low profile, typically below 36 feet in height, and is built of brick or other substantial material resembling a monument.

- (7) **Sign, multiple-business.** A sign of major significance designed to inform persons off the premises of the businesses which comprise a shopping center or business complex. It may or may not bear the name of the complex but must list the entities within the complex.
- (8) **Sign, off-premises.** A commercial sign which directs attention to or communicates about a business, service, commodity, attraction or other activity that is conducted sold or offered at a location other than the premises on which the sign is located.
- (9) **Sign, political.** A sign advertising a ballot measure or candidate for public office.
- (10) **Temporary sign.** A sign that is designed for short-term use or is used in connection with a circumstance or event expected to take place or be completed within a reasonably short period of time. (If a sign display area is permanent but the message is subject to periodic change, that sign shall not be regarded as temporary.)

**Significant trimming.** Any pruning and/or trimming of a tree which removes more than one-third of the branching of the tree and/or results in the loss of more than one-third of the tree's overall form and shape.

**Sign permit.** A permit issued by the Planning Director that authorizes the recipient to erect, move, enlarge or substantially alter a sign.

**Single-family residential.** Any development where (1) no building contains more than one dwelling unit, (2) every dwelling unit is on a separate lot, and (3) where no lot contains more than one dwelling unit.

**Site permit.** A permit issued by the land use Planning Director that authorizes the recipient to make use of property in accordance with the requirements of this UDO.

**Site specific development plan.** A plan of land development submitted to the Town for purposes of obtaining one of the following zoning or land use permits or approvals: subdivision plat, site permit, conditional use permit, special use permit, special exception, conditional use zoning district or variance; provided, notwithstanding the foregoing that neither a variance, a plat nor any other document that fails to describe with reasonable certainty that type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

**Sound.** An oscillation in pressure in air.

**Sound level.** In decibels, a weighted sound pressure level, determined by the use of metering characteristics and frequency weightings specified in ANSI S1.4-1971 Specifications for Sound Level Meters.

**Sound level meter.** An instrument, including a microphone, amplifier, EMS detector and integrator, time average, output-meter and/or visual display and weighting networks, that is sensitive to pressure fluctuations. The instrument reads sound pressure level when properly calibrated and is of type I or better as specified in American National Standards Institute Publication S1.4-1971 or its successor publication.

**Sound pressure level.** In decibels, 20 times the logarithm to the base ten of the ratio of the magnitude of a particular sound pressure to the standard reference pressure. The standard reference pressure is 20 micropascals.

**Special scenic corridor.** An area parallel to the right-of-way of existing and proposed major and minor thoroughfares and other designated highways on the adopted or amended Garner Transportation Plan, that are subject to overlay district regulations to preserve natural scenic beauty and aesthetic character, promote design quality, to protect and enhance the public and private investment in and along said highways, and to enhance trade, tourism, capital investment and the general welfare.

**Special use permit.** A permit issued by the Board of Adjustment that authorizes the recipient to make use of property in accordance with the requirements of this UDO as well as any additional requirements imposed by the Board of Adjustment.

**Start of construction.** Substantial improvement, which means the date the building permit was issued, providing the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

**Steady-state noise source.** One that exhibits a sound level whose variation is within plus or minus five dB(A) over any one ten-minute period in a 24-hour day.

**Stormwater.** The runoff generated by rainfall during a storm event.

**Stream.** A perennial body of water running over the earth's surface in a channel or bed and also shown by a single blue line on the most recent version of the U.S. Geological Survey 1:24,000 scale (7.5 minute) topographic maps; or as delineated by the most recent Town of Garner study.

**Street.** A public street or a street with respect to which an offer of dedication has been made.

**Street wall.** The building facade and or wall which is facing the right-of-way line and the street.

**Structure.** Anything constructed or erected, including but not limited to buildings, which requires location on the land.

**Subdivider.** Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

**Subdivision.** The divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets, but the following shall not be included within this definition nor be subject to the regulations authorized by this UDO:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resulting lots are equal to or exceed the standards of this UDO;
- (2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for water or sewer infrastructure the widening or opening of streets;
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the this UDO; and
- (5) The division of a tract into plots or lots used as a cemetery.

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

**Substantial improvement.** Any combination of repairs, reconstruction, alteration or improvements to a structure, taking place within any consecutive 12-month period in which the cumulative cost equals or exceeds 50 percent of the present market value of the structure. The market value should be:

- (1) The appraised value of the structure before the initial repair or improvement;  
or
- (2) In case of damage, the value of the structure prior to the damage occurring.

**Tenth percentile sound level.** The A-weighted sound pressure level that is exceeded ten percent of the time in any measurement period (such as the level that is exceeded for one minute in a ten minute period) and is denoted L10.

**Townhouse or townhome.** The townhouse is a form of single-family attached dwelling in which units share common side walls and are often designed in rows (although good design attempts to de-emphasize the lined-up appearance). Units are purchasable on a fee-simple basis on small individual parcels of land, fronting on either a public or private street. Yards are typically small, and privacy requires careful protection.

**Tower.** A structure whose principal function is to support an antenna with the exception of a satellite dish antenna (see definition of satellite dish antenna).

**Toxic substance.** Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

**Travel trailer.** A structure that is (i) intended to be transported over the streets and highways either as a motor vehicle, or attached to or hauled by a motor vehicle, and (ii) is designed for temporary use as sleeping quarters, but that does not satisfy one or more of the definitional criteria of a mobile home.

**Tree, ornamental.** A small to medium-sized tree growing to 15 to 35 feet in height at maturity, planted for aesthetic purposes such as colorful flower, interesting bark, or interesting fall foliage.

**Tree, overstory.** A large tree growing to 35 feet in height or spread or greater at maturity, usually deciduous, planted to provide a canopy of shade.

**Tree, screening.** Medium to large evergreen tree, 12 feet or greater in height at maturity, that keeps branches from the ground up. Examples include Thuga 'Green Giant', Virginia Pine, Cedar, Leyland Cypress, some Hollies, or vertical growing Junipers.

**Tree, street.** A deciduous overstory tree, installed at a minimum two and one-half-inch caliper size, planted a minimum five feet and a maximum of 15 feet from the road right-of-way. Where overhead lines exist an ornamental tree shall be used.

**Unit ownership structure (condominium).** Any building or structure in which unit ownership has been created by the owners or co-owners by an express declaration of intent under the Unit Ownership Act of Chapter 47A, North Carolina General Statutes.

**Use.** The activity or function that actually takes place or is intended to take place on a lot.

**Utility facilities.** Any above-ground structures or facilities, other than buildings, (unless such buildings are used for storage incidental to the operation of such structures or facilities) owned by a governmental entity, a nonprofit organization, corporation, or any entity defined as a public utility for any purpose by Section 62.3 of the North Carolina General Statutes and used in connection with the production, generation, transmission, delivery, collection or storage of water, sewage, electricity, gas, oil or electronic signals. Excepted from this definition are utility lines and supporting structures.

**Utility facilities, community or regional.** All utility facilities other than neighborhood facilities.

**Utility facilities, neighborhood.** Utility facilities that are designed to serve the immediately surrounding neighborhood and that must, for reasons associated with the purpose of the utility in question, be located in or near the neighborhood where such facilities are proposed to be located.

**Variance.** A grant of permission by the Board of Adjustment that authorizes the recipient to do that which, according to the strict letter of this UDO, he could not otherwise legally do.

**Vehicle accommodation area.** That portion of a lot that is used by vehicles for access, circulation, parking, and loading and unloading. It comprises the total of circulation areas, loading and unloading areas and parking areas.

**Vehicular surface area.** The paved or non-paved area intended for vehicular circulation or storage. Square footage calculations shall include the total of all vehicular surface areas located in the street yard and in the rear yard. This section does not apply to single-family residential use or parking structures. Any vehicular surface area, or portions thereof, built after the adoption of this section, which area is expanded by 25 percent or more, shall be landscaped as required.

**Vested right.** A right pursuant to G.S. 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan after public notice and hearing.

**Water dependent structure.** Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

**Watershed.** The entire land area contributing surface drainage at a water supply intake.

**Watershed administrator.** An official or designated person of the Town of Garner responsible for administration and enforcement of the watershed provisions of this UDO.

**Watershed record.** An official record or file of all development requests within the watershed and the actions taken. This record will be maintained by the watershed Planning Director.

**Wholesale sales.** On-premises sales of goods primarily to customers engaged in the business of reselling the goods.

**Yard, front.** The portion of a lot bounded by a street right-of-way, side lot lines, and the front line of the principle building, structure or use, in the absence of a principle building or structure

**Yard, rear.** The portion of a lot bounded by side lot lines, the rear lot line or street right-of-way, and the rear line of the principle building, structure or use, in the absence of a principle building or structure.

**Yard, side.** The portion of a lot bounded by side lot line(s) and the side line of a principle building, structure or use in the absence of a principle building or structure, extending the full length of the building, structure or use and not including any front or rear yard (See diagram below).

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**Yard, cornerside.** The portion of a lot bounded by a street right-of-way and the side line of a principle building, structure or use in the absence of a principle building or structure extending the full length the building, structure or use and not including any front or rear yard.

**Yard, side and rear (applies to landscaping compliance only).** All of the required yard area within the interior side and rear yards as established in each underlying zone, that does not fall within the defined street yard.

**Yards, street (applies to landscaping compliance only).** The area of a lot that lies between the public right-of-way line abutting a street and the line created from the street wall/facade facing the right-of-way of a building that is extended toward the adjacent side or rear property lines. If the two street yards cross, the yard with the smaller distance between the right-of-way and the building wall/facade shall be used in this area of overlap.

**Zero-lot-line dwelling.** A group of two or three attached units with a common wall situated on a property line.

(Ord. No. 3376, § 15, 1-17-06; Ord. No. 3558, § 2, 7-7-09)

