

ARTICLE 3. DEVELOPMENT REVIEW PROCEDURES

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3.1. General approval procedures.

- A. **Conformity with Unified Development Ordinance.** Every official and employee of the Town of Garner, North Carolina vested with the duty or authority to issue a permit or license shall not issue a permit or license for any use, building, or purpose that conflicts with any provision of this UDO. Any permit or license or certificate issued in conflict with the provisions of this UDO shall be null and void.
- B. **Preapplication conference.**
1. **Optional.** An applicant or the Planning Director may request an optional preapplication consultation between the developer and the planning staff to discuss procedures, standards, or regulations required by this UDO for:
 - a. Minor subdivision applications;
 - b. Site plan review; or
 - c. Special use permits.
 2. **Mandatory.** The applicant shall request a mandatory preapplication conference to discuss procedures, standards, or regulations required by this UDO for:
 - a. Conditional use district zoning;
 - b. Major subdivision;
 - c. Planned Development (PUD, PRD, TND, MXD); or
 - d. Official map amendment (rezoning).
- C. **Application forms and fees.** The following regulations shall apply to all applications.
1. **Forms.** Applications required under this UDO shall be submitted on forms and in such numbers as required by the Town.
 2. **Fees.**
 - a. Filing fees shall be established from time to time by resolution of the Town Council to defray the actual cost of processing the application;
 - b. All required fees shall be made payable to "The Town of Garner"; and
 - c. An applicant who has paid an appropriate fee pursuant to the submission of an application, but who chooses to withdraw such application prior to any review or action taken, shall be entitled to a refund of the total amount paid upon written request to the Town. Once review has begun, no refund shall be available.

D. Who may submit applications.

1. All applications will be accepted only from persons having the legal authority to take action in accordance with the permit or plat approval. In general this means that applications should be made by the owners or lessees of property, their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this UDO, or the agents of such persons.
2. The Planning Director may require an applicant to present evidence of his authority to submit the application whenever there appears to be a reasonable basis for questioning this authority.

E. Applications to be complete.

1. All applications must be complete before the permit-issuing authority is required to consider the merits of the application.
2. An application is complete when it contains all of the information that is necessary for the permit-issuing authority to decide whether or not the development as proposed will comply with all of the requirements of this UDO.
3. Technical requirements and construction specifications are set forth in Appendix C. It is not necessary that the application contain this type of detailed construction drawings so long as the plans provide sufficient information to allow evaluation of the application in light of the substantive requirements of this UDO.
4. Whenever this UDO requires an element of a development to be constructed in accordance with these detailed requirements, no construction work on such element can begin until detailed construction drawings consistent with the preliminary plan have been submitted to and approved by the Town Engineer. Failure to observe this requirement may result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in Article 10, Enforcement.
5. The presumption is that all of the information required in the Town's application forms is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the permit-issuing authority may allow less information or require more information to be submitted according to the needs of the particular case. For applications submitted to the Town Council or Board of Adjustment, the applicant may rely on the recommendations of the Planning Director as to whether more or less information should be submitted.

F. Staff consultation after application submitted.

1. Upon receipt of a formal permit or plat approval application, the Planning Director shall review the application and confer with the applicant to ensure that he understands the applicable requirements of this UDO; that he has submitted all of the information that he intends to submit; and that the application represents precisely and completely what he proposes to do.

2. Once the applicant indicates that the application is as complete as he intends to make it, the application shall be placed on the agenda of the appropriate Board in accordance with standard procedures. However, if the Planning Director believes the application is incomplete, a recommendation to deny the application on that basis shall be provided to the Board.
- G. **Application deadline.** All applications shall be completed and submitted to the Planning Director in accordance with the published calendar on file in the Planning Department. These deadlines may be waived, however, when the Planning Director determines that no prejudice to any interested party will result from such waiver.
- H. **Notice of decision.** Within seven days after a decision is made by the Planning Director, copies of the decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.
- I. **Time limits for resubmission of applications.**
1. Once any application required under this UDO (except for an application for rezoning as described in Section 3.12.H) is denied or disapproved, an application for the same request shall not be re-filed. A new application may be accepted that is materially different from the prior application (e.g., proposes new uses, or a substantial decrease in proposed densities and intensities) as determined by the final decision-making authority involved in the prior denial or disapproval.
 2. The final decision-making authority may, upon petition by the applicant, permit re-filing of said application upon a determination that:
 - a. There is a substantial change in circumstances relevant to the issues and/or facts considered during review of the application that might reasonably affect the decision-making body's application of the relevant review standards to the development proposed in the application;
 - b. New or additional information is available that was not available at the time of the review that might reasonably affect the decision-making body's application of the relevant review standards to the development proposed;
 - c. A new application is proposed to be submitted that is materially different (e.g., proposes new uses, or a substantial decrease in proposed densities and intensities) from the prior application; or
 - d. The final decision on the application was based on a material mistake of fact.

- J. No occupancy, use or sale of lots until requirements fulfilled.**
1. If you want to subdivide your property. Where the subdivision provisions apply, no development or sale of lots shall be permitted prior to approval of a final plat for the site in accordance with Section 3.5 and the provisions of this UDO.
 2. If you want to develop on an existing lot. No occupancy or use shall be permitted prior to approval of one of the following permits and the provisions of this UDO:
 - a. Site plan;
 - b. Temporary use permit;
 - c. Special use permit; or
 - d. Where no other permit is required prior to the building permit, a certificate of zoning compliance.
 3. Issuance of any of the permits listed in paragraphs 1. and 2. above authorizes the recipient to commence the activity resulting in a change in use of the land, or, subject to obtaining a building permit, to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures, or to make necessary improvements to a subdivision. However, except as provided in paragraph K., below, and Section 8.6, Subdivision improvement guarantees, the intended use may not be commenced, no building may be occupied, and, in the case of subdivisions, no lots may be sold until all of the requirements of this UDO have been met.
- K. Completing developments in phases.**
1. Each phase of the proposed development shall include such infrastructure as required to allow the development to stand alone, without requiring development of any subsequent phases.
 2. The provisions of paragraph J., above, and Section 8.6, Subdivision improvement guarantees, shall apply to each phase of a development as if it were the entire development.
 3. As a prerequisite to taking advantage of these provisions, the developer shall submit plans that clearly show the various phases of the proposed development and the requirements of this UDO that will be satisfied with respect to each phase.
 4. If a phased development includes improvements designed to relate to or be used by the entire development (such as a swimming pool in a residential development), then, as part of his permit application, the developer shall submit a proposed schedule relating completion of such improvements to completion of each phase of the entire development. Once a schedule has been approved and made part of the permit by the permit-issuing authority, no land may be used, buildings occupied, or subdivision lots sold except in accordance with the schedule, provided

that:

- a. If the improvement is one required by this UDO then the developer may utilize the provisions of Section 8.6, Subdivision improvement guarantees.
- b. If the improvement is an amenity not required by this UDO or is provided in response to a condition imposed by the Council, then the developer may utilize the provisions of Section 8.6, Subdivision improvement guarantees.

L. Expiration of permits.

1. Unless otherwise expressly stated during the permit approval process, if work or activity authorized by a permit is not commenced within two years after issuance of any permits authorized by this UDO, the permit shall immediately expire unless automatically extended as a result of pending legal proceedings or unless the permit is granted a time extension according to the provisions of paragraph O below.
2. For purposes of this section, a permit is issued when a copy of the permit is delivered to the permit recipient, and delivery is accomplished when the permit is hand delivered or mailed to the permit recipient.
3. For purposes of this section, work is commenced when physical alteration of land occurs which is defined as completing a minimum of 50 percent of the required grading of a site in accordance with an approved soil and erosion permit from Wake County or Town authorized permit. In cases where there is no site grading associated with a Town approved permit, work is commenced when building foundation footings are completed in accordance with an approved building permit from the Town of Garner or if applicable other physical alteration to structures have started in accordance with an approved building permit
4. If the authorized work or activity is discontinued for 12 months after it has commenced, the permit shall immediately expire. However, expiration of the permit shall not affect the provisions of paragraph 6., below.
5. Notwithstanding any of the provisions of Article 1, Nonconformities, this section shall be applicable to permits issued prior to the date this section becomes effective.
6. If legal proceedings are initiated contesting the validity of a permit, the permit will be deemed automatically extended until said legal proceedings are resolved, settled, or the time for taking an appeal from any final order, judgment, or court decision in said legal proceedings affirming the permit has expired.

M. Effect of permit on successors and assigns.

1. Permits issued in accordance with this UDO authorize land and structures to be used in a particular way, and are transferable. However, so long as land, structures, or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:
 - a. No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit except in accordance with all the terms and requirements of that permit; and
 - b. The terms and requirements of the permit apply not only with respect to the permittee but also to all persons who subsequently obtain any interest in all or part of the covered property so long as such latter persons had actual or record notice.

N. Permit modifications.

1. The Planning Director shall determine whether the provisions of this section are applicable in any given case.
2. Insignificant deviations to approved permits are permissible with the approval of the Planning Director. A deviation is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
3. Minor design modifications in permits are permissible with the approval of the permit-issuing authority. Such permission may be obtained without a public hearing. Minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
4. All other requests for changes in approved plans will be processed as new applications. New conditions may be imposed on new applications in accordance with Section 3.13, Conditional use district zoning requests and Section 3.14, Special use permits. The applicant may reject such additional conditions by withdrawing his request for the change and may then proceed in accordance with the previously issued permit.

O. Permit time extensions.

1. The permit-issuing authority shall have the authority to grant time extensions to approved and unexpired conditional use permits associated with conditional use districts, special use permits and staff approved site plans according to the provisions of this subsection. In order to have an extension considered, a written request from the permittee must be filed with the Planning Director. Permit time extensions shall be limited to a period not to exceed 24 months from the date of the original permit expiration. An approved special use permit, conditional use permit or staff approved site plan shall be limited to two (2) time extensions only. Each time extension action by the permit issuing authority shall be limited to a twelve (12) month time period. Once a permit has expired a new application must be filed according to the applicable sections of the UDO. The burden of proof shall rest upon the permittee to demonstrate to the

permit-issuing authority why an approved permit should be granted a time extension. When reviewing a request for a permit time extension, the permit issuing authority shall utilize, but not be limited to, the following criteria to determine whether to grant an extension:

- a. The permit-issuing authority shall review present conditions in the vicinity of the location of the permit such as but not limited to traffic, recent new development or any other reasonably related matter concerning the location which may affect the issuance of a time extension of said permit..
- b. The permit-issuing authority shall determine if any amendments to the UDO have occurred since the original permit was issued that may impact the permit to an extent which requires the request to be considered according to the procedures outlined in paragraph N.4., above.
- c. The permit-issuing authority must conclude that the criteria of Section 3.13, Conditional use district zoning requests or Section 3.14, Special use permits, respectively, are satisfied in order to grant a permit time extension.

2. The permit-issuing authority shall respond in writing to the permittee notifying him or her of its decision within a reasonable period not to exceed 30 days from the date of the time extension request. When permit time extensions are granted, the time extension order shall be attached to the original permit.

- P. **Applications to be processed expeditiously.** The Town shall make every reasonable effort to process appeals and permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this UDO.

Q. **Hearing procedures.**

1. **Required hearings.** A public hearing shall be required for development review as shown in the table below:

Applications for Approval	Board of Adjustment	Planning Commission	Town Council
Amendment, Official Map (Rezoning)		*	X
Amendment, Text		*	X
Appeal of Administrative Decision	X		
Conditional Use District Zoning/Permit		*	X
Planned Development Designation (PUD, PRD, TND, MXD)		*	X
Planned Development Detailed Plan—Planning Director Referral		*	X
Site Plan Review—Planning Director Referral		*	X
Special Use Permit		*	X
Special Exception	X		
Subdivision Plat, Major—Planning Commission Referral			X
Variance	X		
Zoning Map Interpretation	X		
Special Exception – Reasonable Accommodation	X		

****Note: The Planning Commission is invited to attend public hearings conducted by the Town Council on any rezoning or text amendment. The Planning Commission's review of other designated applications is open to the public with limited public comment as deemed appropriate by the Commission.***

2. **Summary of notice required.** Notice shall be required for development review as shown in the table below:

Procedure	Published	Posted*	Mailed
Amendment, Official Map (Rezoning)	X	X	X
Amendment, Text	X		
Appeal of Administrative Decision	X	X	X
Conditional Use District Zoning	X	X	X
Planned Development (PUD, PRD, TND, MXD)	X	X	X
Planned Development Detailed Plan-Planning Director Referral	X	X	X
Site Plan Review-Planning Director Referral	X	X	X
Special Use Permit	X	X	X
Special Exception	X	X	X
Subdivision Review, Major—Planning Commission Referral	X	X	X
Variance	X	X	X
Special Exception – Reasonable Accommodation	X	X	X

****Note: Property will be posted when an application is under review by the Planning Director or Planning Commission only when those bodies have final approval authority over the application regardless of whether or not it is referred for Town Council approval (mailed notice shall only be required when the application is referred).***

3. **Public notice requirements.**

- a. **Published notice.** A distinctive advertisement (public hearing notice) shall be placed by the Planning Director through electronic means on the Town’s official internet web page once a week for two successive weeks, the first notice being published not less than ten days prior to the meeting for the purpose of notifying the public of all public hearing agenda items which may be considered or reviewed.
- b. **Posted notice.** When required, a notice of application sign shall be posted by the Planning Director not less than 14 calendar days

prior to the meeting at which the application will be reviewed. The sign shall be posted on the subject property in a location clearly visible from each street adjacent to the property.

c. **Mailed notice.**

- (1) Not later than ten days before the public hearing, written notice to the appellant or applicant and any other person who makes a written request; and
- (2) Not later than ten days before the hearing, written notice shall be given by mail to those persons who have listed for taxation real property located within 300 feet of the lot that is the subject of the application or appeal. In cases where such notice only includes lots that directly abut the subject property the notice shall be extended out to one lot beyond those lots directly abutting the subject property.
- (3) Mailed notice under this subsection is not required if a zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the Town elects to use the following expanded published notice requirements:
- (4) Publication once a week for two successive calendar weeks in a newspaper of general circulation in the area that shows the boundary of the area affected by the proposed amendment and explains the nature of the change. The advertisement shall be not less than one-half of a newspaper page in size. Mailed notice shall be required for any property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax rolls. In addition, the Town shall post one or more prominent signs on or immediately adjacent to the subject area.

4. **Content of notice.** The notices listed above shall contain the following specific information.

a. **Published or mailed notice.** A published or mailed notice shall provide at least the following information:

- (1) The general location of land that is the subject of the application, including where possible, a location map;
- (2) Reasonable identification of the subject property (the legal description or street address);
- (3) A description of the action requested including, where applicable, a general description of the proposed development, including the size of each element of the proposed development or a description of the subject matter of any proposed text amendment;

- (4) Where rezoning is proposed, the current and proposed zoning districts;
 - (5) The time, date and location of the public hearing;
 - (6) A phone number to contact the Town;
 - (7) A statement that interested parties may appear at the public hearing; and
 - (8) A statement that substantial changes to the proposed action may be made following the public hearing.
- b. **Posted notice.** Required posted notices shall indicate the following:
- (1) Type of application;
 - (2) The time, date and location of the public hearing; and
 - (3) A phone number to contact the Town.
5. **Constructive notice.** Minor defects in notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date and place of a hearing and the location of the subject property shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall make a formal finding regarding whether there was substantial compliance with the notice requirements of this UDO before proceeding with the hearing.
6. **Conduct of hearings.**
- a. **Modification of application at public hearing.**
- (1) The applicant may agree to modify his application, including the plans and specifications submitted, in response to questions or comments by persons appearing at the public hearing or to suggestions or recommendations by the Town Council, Planning Commission or Board of Adjustment.
 - (2) Unless such modifications are so substantial that the Board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the Board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the Planning Department.

- (3) Where deemed appropriate by the affected decision-making body, modifications may be referred back to the recommending body for review, prior to further consideration. The decision-making body shall choose one of the following options:
 - (a) Continue the hearing to a new date and time certain within 45 days in accordance with the provisions of below;
 - (b) Close the hearing and re-publish notice of any future hearing in accordance with this paragraph.
- b. **Continuing the hearing.** A public hearing may be continued without further notification, so long as the motion to continue such hearing, made in open session, specifies the date and time when the hearing will be continued.
- c. **Special requirements for quasi-judicial hearings.** A public hearing on a variance request, administrative appeal, conditional use permit or special use permit shall be considered a quasi-judicial hearing.
 - (1) A member of the Council shall not participate on any quasi-judicial matter in a manner that would violate a person's constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to:
 - (2) A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
 - (3) Undisclosed ex parte communication;
 - (4) A close family, business, or other associational relationship with an affected person;
 - (5) Or a financial interest in the outcome of the matter.

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

- d. **Evidence.**

Commentary: This section requires decision-makers to rely upon the evidence of experts first (professionals trained in a given field are assumed to provide "competent evidence," while anecdotal evidence such as the perceptions of neighbors does not normally meet the standard).

 - (1) All persons who intend to present evidence to the permit-issuing Board (rather than arguments only) shall do so on oath or affirmation.

- (2) All findings and conclusions necessary to the permit or appeal decision (crucial findings) shall be based upon substantial competent evidence. Competent evidence means evidence admissible in a court of law, which includes evidence admitted without objection, and evidence which appears to be sufficiently trustworthy and is admitted under circumstances making it reasonable for the Council to rely on it (such as where the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed).
 - (3) Competent evidence does not include the opinion of lay witnesses as to any of the following: (1) that the use of property in a particular way would affect the value of other property, (2) that the increase in traffic resulting from a proposed development would pose a danger to the public safety, and (3) other matters about which expert testimony would generally be admissible under the rules of evidence. (Such matters typically involve opinions which require knowledge of facts known to experts but not the general public, or are based on a specific study by an expert, or based on facts which require special knowledge, training and experience to evaluate.) Specifically, as relates to an opinion as to impairment of the value of adjoining or abutting properties, the testimony must include factual background or data specific to the property in question.
- (e) **Record.**
- (1) A tape recording shall be made of all public hearings required by paragraph P above and such recordings shall be kept for at least two years. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.
 - (2) All documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record and shall be kept by the Town for at least two years, whenever practical.
- (f) **Written decision.**
- (1) Within 30 calendar days after a final decision is made by the Town Council, Planning Commission, Board of Adjustment or other review body under the requirements of this UDO, a copy of the written decision shall be sent to the applicant or appellant. A copy of the notice shall be filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

- (2) The written decision shall also state the review body's findings, conclusions, and supporting reasons or facts whenever this UDO requires these as a prerequisite to taking action.

R. Vested rights: Site specific development plan.

1. The Town Council determines that a special use permit or a conditional use permit shall be regarded as a "site specific development plan" under the provisions of G.S. 160A-385.1. Therefore, once a special use permit or conditional use permit has been issued, the permit recipient shall have a "vested right" to complete the development authorized by such permit in accordance with its terms, irrespective of subsequent amendments to this UDO, to the extent provided in G.S. 160A-385.1.
2. The Town Council further determines that certificates of zoning compliance and site plan approval should be entitled to the same protections as recipients of special or conditional use permits.
3. A vested right under this subsection commences upon the issuance of the permit in question.
4. A zoning right that has been vested as provided above shall remain vested for a period of two years, unless upon request by the applicant, the Town Council finds it appropriate to grant a longer vesting time period as allowed under G.S. 160A-385.1. This vesting shall not be extended by any amendments or modifications to a site-specific development plan that are not processed as new applications, unless expressly provided for by the approval authority at the time the amendment or modification is approved.
5. As provided in G.S. 160A-385.1(d)(6), a right that has been vested in accordance with this subsection shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.
6. Nothing in this subsection shall prohibit the revocation of a permit, and the vesting of rights provided for under this subsection shall be terminated upon such revocation.

- S. Vested rights: Building permits.** As provided in G.S. 160A-385, amendments, modifications, supplements, repeal or other changes in the regulations set forth in this UDO or zoning district boundaries shall not be applicable or enforceable without consent of the owner with respect to buildings and uses for which a building permit has been issued pursuant to G.S. 160A-417 prior to enactment of the ordinance making the change or changes, so long as the permit remains valid and unexpired pursuant to G.S. 160A-418 and un-revoked pursuant to G.S. 160A-422.

T. Revocation of permits.

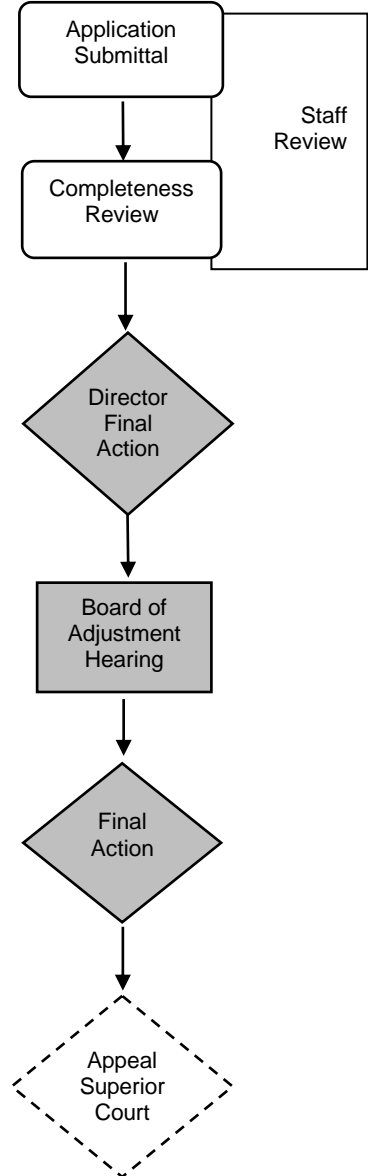
1. A permit described in this article may be revoked by the permit-issuing authority in accordance with this subsection if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this UDO, or any additional requirements lawfully imposed by the permit issuing authority.
2. Before a permit may be revoked, notice requirements equal to those imposed on the permit issuance shall be complied with. Such revocation shall require a public hearing, where one was required for the original approval. The notice shall also inform the recipient of the alleged grounds for the revocation.
3. The burden of presenting evidence sufficient to authorize the permit-issuing authority to conclude that a permit should be revoked shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.
4. A motion to revoke a permit shall include, to the extent practicable, a statement of the specific reasons or findings of fact that support the decision.
5. Before a permit which does not require a public hearing can be revoked, the Planning Director shall give the permit recipient ten days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of their right to obtain an informal hearing on the allegations. If the permit is revoked, the Planning Director shall provide to the permittee a written statement of the decision and the reasons for such decision.
6. No person may continue to make use of land or buildings in the manner authorized by any permit described in this article after such permit has been revoked in accordance with this subsection.

U. Development moratoria. The Town may adopt a moratorium on any development approval required by law provided it follows the requirements outlined in G.S. 160A-381(e) as amended.

(Ord. No. 3376, §§ 6, 16, 1-17-06; Ord. No. 3558, §§ 1, 2, 7-7-09; Ord. No. 3672, § 1, 10-1-12; Ord. No. 3694, §§ 2, 3, 5-21-13)

3.2. Written interpretations.

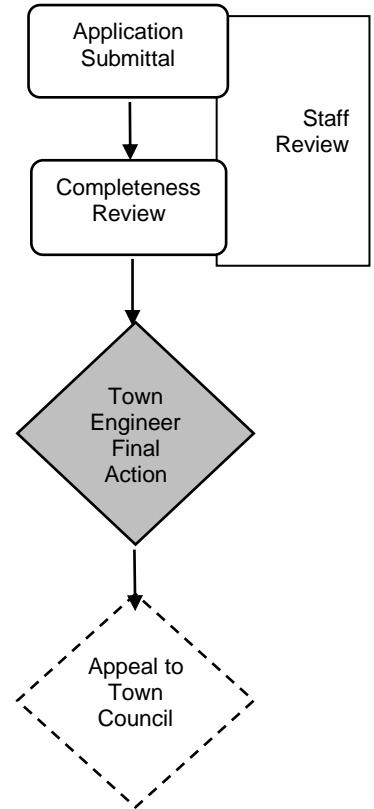
- A. **Authority.** The Planning Director shall have authority to make all written interpretations concerning the provisions of this UDO.
- B. **Request for interpretation.** A request for interpretation shall be submitted to the Planning Director in a form established by the Planning Director and made available to the public.
- C. **Interpretation by Planning Director.**
 - 1. The Planning Director shall:
 - a. Review and evaluate the request in light of the text of this UDO, the official zoning map, the Comprehensive Growth Plan and any other relevant information;
 - b. Consult with other staff, including the Town Attorney, as necessary; and
 - c. Render an opinion.
 - 2. The interpretation shall be provided to the applicant in writing by mail.
- D. **Official record.** The Planning Director shall maintain an official record of interpretations. The record of interpretations shall be available for public inspection during normal business hours.
- E. **Appeal.** Appeals of written interpretations made by the Planning Director shall be taken to the Board of Adjustment within 30 days of the decision, in accordance with the procedures found in Section 3.16.



3.3. Stormwater permit.

A. Stormwater permit requirements.

1. An application for a stormwater permit shall be filed with the Town Engineer. The application shall include documentation as prescribed by the Town Engineer. The stormwater permit may be issued by the Town Engineer, or in some circumstances as set forth below, by the Town Council sitting as the Watershed Review Board, or in the case of a major variance, by the Environmental Management Commission upon review from the Town Council.
2. Where a stormwater permit is issued along with any other permit which expires in two years, subject to certain extensions, the stormwater permit shall similarly expire in two years, and be extended in accordance with the same terms governing the extension of the other permit. This section shall apply to all such permits presently outstanding.
3. A stormwater permit for which vested rights are established pursuant to Section 3.1.S shall remain effective as set forth in that section and as noted on the face of the permit.
4. All other stormwater permits not described in paragraphs 2. or 3. above shall expire within 12 months from the date of issuance.
5. When construction pursuant to a stormwater permit has been completed, the applicant shall report the completion and request issuance of a watershed protection occupancy permit.
6. Where the stormwater permit application denotes only a change in use, rather than construction or authorization, the Town Engineer, upon review of the documentation, may issue a watershed protection occupancy permit simultaneous with the stormwater permit.
7. Where the stormwater permit requires construction of stormwater management facilities, the facility shall have been completed or adequately bonded prior to the occupancy of the watershed protection occupancy permit.
8. Where the stormwater permit waives construction of stormwater facilities by payment of a fee-in-lieu pursuant to Section 7.2, Stormwater Management, the applicant shall deposit 50 percent of the amount due for the retention pond fees prior to issuance of the stormwater permit. The balance of the retention pond fees, or a pro rata portion in the event of a subdivision, shall be paid prior to issuance of the watershed protection occupancy permit.



B. Watershed Occupancy Protection Permit.

1. Upon satisfaction of the relevant criteria by the applicant, the Town Engineer shall issue a watershed protection occupancy permit, in writing, or issue in writing a notice of denial of such watershed protection occupancy permit, or where appropriate shall issue an exemption certificate.
2. After the improvements have been completed, the applicant will notify the Town Engineer who will perform a field inspection and issue the watershed protection occupancy permit if appropriate.
3. In cases where the applicant wishes to appeal from the Town Engineer's ruling, as to either a stormwater permit or watershed protection occupancy permit, or where the matter is required by ordinance to be reviewed by the Watershed Review Board or by the Environmental Management Commission, the application will be heard in the same manner as a conditional use permit.

C. Permits issued.

1. The Town Engineer shall issue stormwater permits and watershed protection occupancy permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Town Engineer.
2. The Town Engineer shall state in writing the reasons for denial of a stormwater permit or a watershed protection occupancy permit. The Town Engineer shall keep records of all amendments to Section 7.2, Stormwater Management, and shall provide copies of all amendments upon adoption to the supervisor of the classification and standards group, water quality section, Division of Environmental Management.
3. The Town Engineer shall keep a record of variances to Section 7.2, Stormwater Management. This record shall be submitted to the supervisor of the classification and standards group, water quality section, Division of Environmental Management on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.
4. The Town Engineer shall undertake to monitor land use activities within the watershed areas to the extent reasonably practicable, to identify situations that may pose a threat to water quality, and report all significant findings to the Watershed Review Board.

- D. **Watershed Review Board.** The Board of Adjustment of the Town of Garner shall sit as the Watershed Review Board.
1. **Administrative review.** The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Town Engineer in the enforcement of Section 7.2, Stormwater Management. A party who wishes to appeal any such decision or determination shall give notice of such appeal in writing within 30 days. In cases where an appeal has been made to the Board of Adjustment it shall conduct a public hearing and follow the same procedures outlined in Section 3.16. If an appeal is related to a development plan application that requires a public hearing, the Board of Adjustment must take action on the appeal prior to the Town Council taking action on the development plan application.
 2. **Minor variances.** The Watershed Review Board may authorize, in specific cases, minor variances from the terms of Section 7.2 Stormwater Management, as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this UDO will result in practical difficulties or unnecessary hardship, so that the spirit of this UDO shall be observed, public safety and welfare secured, and substantial justice done. In cases where a minor variance been made to the Board of Adjustment it shall conduct a public hearing and follow the same procedures outlined in Section 3.15. If a minor variance is related to a development application that requires a public hearing, the Board of the Board of Adjustment must take action on the variance application prior to the Town Council taking action on the development plan application.
 3. **Major variances.** The Watershed Review Board may recommend major variances to the Environmental Management Commission. The recommendation of the Board shall be forwarded to the EMC, together with the record of such hearing as certified by the Town Clerk.
 4. **Watershed variance procedures.** No watershed variance shall be issued except after public hearing and based on written findings reflecting the criteria set forth in Section 3.15.F relating to other types of variances of the Town of Garner Unified Development Ordinance. In addition, prior to such public hearing, the Town Engineer shall give notice and description of the requested variance application and the public hearing thereon to each local government having jurisdiction in the watershed and to any other entity using the watershed for water consumption. Any such local government may present sworn testimony at the hearing which shall become a part of the record of the proceedings.

(Ord. No. 3558, § 2, 7-7-09)

3.4. Temporary use permit.

A. **Applicability.** Temporary uses operating for less than 90 days within a one-year time period shall obtain a temporary use permit from the Planning Director that outlines conditions of operations to protect the public, health, safety and welfare.

B. **Types of temporary uses.** Temporary uses shall be deemed to include short-term or seasonal uses that are not otherwise allowed by the zoning district regulations of this UDO. See Section 5.5, Temporary uses.

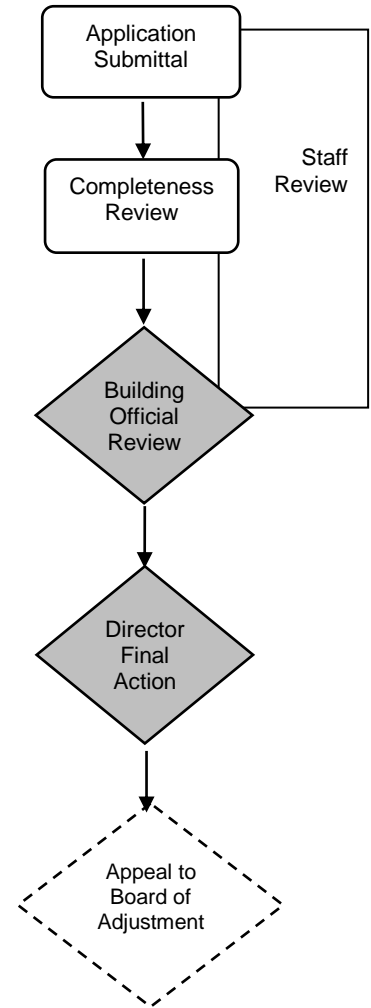
C. **Application.** An application for a temporary use permit shall include the following:

1. A written description of the proposed use or event, the duration of the use or event, the hours of operations, anticipated attendance, and any buildings/structures signs or attention-attracting devices used in conjunction with the event, as well as a response to each of the criteria established in paragraph F., below.
2. Written permission from the property owner of the site from which a temporary use or event will take place shall be obtained and submitted to the Planning Department; and
3. Any additional information deemed necessary by the Planning Director.

D. **Review and action by Building Official.** Building permits or approval by the Building Official and fire code inspector must be obtained for any temporary structure or tent. Also, any applicable approvals must be obtained in writing from State of North Carolina authorities, as well as the Wake County Health Department for any temporary use or event.

E. **Review and action by Planning Director.**

1. Application should be made at least ten working days in advance of the requested start date for a temporary use.
2. The Planning Director shall make a determination whether to approve, approve with conditions or deny the permit within ten working days after the date of application. Any applicant denied a permit by the Planning Director shall be notified in writing of the reasons for the denial and of the opportunity to appeal the denial to the Board of Adjustment.



- F. **Temporary use approval criteria.** Temporary uses shall comply with the following standards:
1. **Land use compatibility.** The temporary use must be compatible with the purpose and intent of this UDO and the zoning district in which it will be located. The temporary use shall not impair the normal, safe and effective operation of a permanent use on the same site. The temporary use shall not endanger or be materially detrimental to the public health, safety or welfare or injurious to property or improvements in the immediate vicinity of the temporary use.
 2. **Compliance with other regulations.** A building permit may be required before any structure used in conjunction with the temporary use is constructed or modified. All structures and the site as a whole shall meet all applicable building code, zoning district, and fire code standards and shall be promptly removed upon the cessation of the use or event. Upon cessation of the event or use, the site shall be returned to its previous condition (including the removal of all trash, debris, signage, attention attracting devices or other evidence of the special event or use).
 3. **Hours of operation and duration.** The duration and hours of operation of the temporary use shall be consistent with the intent of the event or use and compatible with the surrounding land uses. The duration and hours of operation shall be established by the Planning Director at the time of approval of the temporary use permit.
 4. **Traffic circulation.** The temporary use, as determined by the Town Engineer, shall not cause undue traffic congestion or accident potential given anticipated attendance and the design of adjacent streets, intersections and traffic controls.
 5. **Off-street parking.** Adequate off-street parking shall be provided for the temporary use, and it shall not create a parking shortage for any of the other existing uses on the site.
 6. **Appearance and nuisances.** The temporary use shall be compatible in intensity, appearance and operation with surrounding land uses in the area, and it shall not impair the usefulness, enjoyment or value of adjacent property due to the generation of excessive noise, dust, smoke, glare, spillover lighting, or other forms of environmental or visual pollution.
 7. **Signs.** The Planning Director shall review all signage in conjunction with the issuance of the temporary use permit for compliance with the sign requirements set forth in Section 7.5.
 8. **Other conditions.** The Planning Director may establish any additional conditions deemed necessary to ensure land use compatibility and to minimize potential adverse impacts on nearby uses, including, but not limited to, time and frequency of operation, temporary arrangements for parking and traffic circulation, requirements for screening/buffering, and guarantees for site restoration and cleanup following the temporary use.

- G. **Expiration and lapse of approval.** If the use described in the temporary use permit has not begun within 90 days from the date of issuance, the temporary use permit shall expire and be of no further effect.

- H. **Appeal.** Appeals of temporary use permits denied by the Planning Director shall be taken to the Board of Adjustment within 30 days of mailing of the denial, in accordance with the procedures in Section 3.16.

3.5. Subdivision plat review.

- A. **Applicability.** Subdivision approval shall be required before the division of land (for any purpose) into two or more parcels.
- B. **Actions exempt from subdivision requirements.** The following shall not be considered "subdivision" in accordance with 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 or 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 this UDO;
 5. The division of a tract into plots or lots used as a cemetery.
- C. **No subdivision without plat approval.**
1. As provided in G.S. 160A-375, no person may subdivide his land except in accordance with all of the provisions of this UDO. In particular, no subdivision may occur unless and until a final plat of the subdivision has been approved in accordance with the provisions of this Section and recorded in the Wake County Registry. The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been approved or recorded in Wake County Registry. Such arrangements shall strictly follow the provisions of G.S. 160A-375(b) and (c).
 2. As provided in G.S. 160A-373, the Wake Register of Deeds shall not record a plat of any subdivision within the Town's planning jurisdiction unless the plat has been approved in accordance with the provisions of this UDO.
 3. As provided in G.S. 160A-376, not all divisions of land constitute subdivisions that are subject to regulation under this UDO. However, to ensure that such divisions are in fact exempt from the requirements of this UDO, all plats creating a division of land shall be presented to the Planning Department before recordation in the Wake County Registry and the planning staff shall indicate on the face of the plat that the division is exempt from the provisions of this UDO if that is the case.

4. There are a variety of requirements for differing levels of watershed protection in Section 7.2, Stormwater Management, which must be met prior to the subdivision of land.
- D. **Delegation of authority.** The Town Council shall delegate review and approval authority for all minor subdivisions and major subdivision final plats to the Planning Director, with review by the Technical Review Committee.
- E. **Unlawful to record plat without final or minor plat approval.** It shall be unlawful to offer and cause to be recorded any major or minor subdivision plan, plat or replat of land within the Town limits of Garner with the Wake County Register of Deeds unless the same bears the endorsement and approval of the Planning Director or Town Clerk.
- F. **Definitions.**
1. **Minor subdivision.** A minor subdivision is any subdivision that **does not involve any of the following:**
 - a. Creation of a total of more than five lots;
 - b. Creation of any new public streets;
 - c. Extension of the water or sewer system operated by the City of Raleigh; or
 - d. Installation of drainage improvements through one or more lots to serve one or more other lots.
 2. **Major subdivision.** All other divisions of land not exempted in paragraph B. above or listed in paragraph F.1. above shall be considered major subdivisions.
- G. **Staff consultation before formal application.**
1. To minimize development planning costs, avoid misunderstanding or misinterpretation, and ensure compliance with the requirements of this UDO, preapplication consultation between the developer and the planning staff is required for any major subdivision.
 2. During the staff consultation, a determination of any other regulatory approvals that may be necessary shall be made.
- H. **Minor plat approval.**
1. **Applicability.**
 - a. Minor subdivisions are defined in paragraph F., above.
 - b. The expedited review and approval procedures of this section shall apply to minor subdivisions. The procedures for approval of minor subdivisions are intended to simplify processing of routine small subdivisions with due regard to protection of the public interest. The difference between the minor and major subdivision processes is that minor subdivisions do not require a preliminary plat.

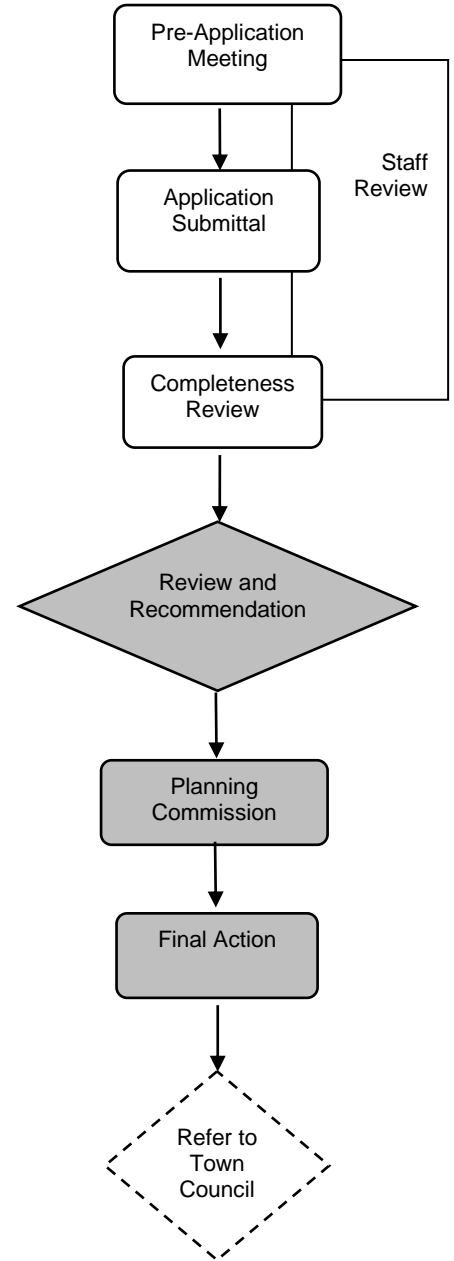
- c. No more than a total of five lots may be created out of one tract using the minor subdivision plat approval process, regardless of whether the lots are created at one time or over an extended period of time.
- d. After completion of a preapplication conference and sketch plan review as described above, the applicant may apply directly for approval of a final plat. A minor subdivision plat shall only be approved when it meets all of the approval criteria in paragraph J., below.

2. **Procedure.**

- a. **Staff consultation.** In accordance with paragraph G., above, the applicant for minor subdivision plat approval shall submit a sketch plan to the Planning Director for a determination of whether the approval process authorized by this section can and should be utilized. The Planning Director may require the applicant to submit whatever information is necessary to make this determination, including, but not limited to, a copy of the tax map showing the land being subdivided and all lots created out of that tract of land within the previous five years.
- b. **Final plat.** A final plat for a minor subdivision shall be approved in accordance with paragraph J., below.

I. **Preliminary plat approval (major subdivisions only).**

1. **Applicability.** A preliminary plat shall be required for all subdivision that do not meet the definitions of a minor subdivision set forth in paragraph F., above.
2. **Staff consultation.** Prior to submitting a preliminary plat, the applicant shall submit a sketch plan during a staff consultation meeting as outlined in paragraph G., above.
3. **Procedure.**
 - a. **Application requirements.** The preliminary subdivision plat shall be submitted in accordance with the requirements in Appendix D and the application schedule published from time to time by the Planning Department. No application shall be reviewed until it is deemed complete in accordance with Section 3.1.E.
 - b. **Fees.** The subdivider shall, at the time of submission of the preliminary plat, pay a filing fee as established in Section 3.1.
 - c. **[Special use permit.]** When the Planning Director finds that the proposed subdivision would have an extraordinary or unanticipated impact on neighboring properties or the general public, or where site-specific conditions are required, preliminary subdivision plan approval should be accomplished with a public hearing. In such instances, the Town shall follow the process established in Section 3.14 and the application shall be treated as a special use permit.
 - d. **Plat review by other agencies.** The Town shall forward the preliminary plat to the Wake County Health Department and any other affected agencies as determined by the Planning Director for review and comments.
 - e. **Review by the Technical Review Committee.** Within 15 days of submission of a complete application, the Technical Review Committee shall review the preliminary subdivision plat and associated application for consistency with the requirements of this UDO.



- f. **Planning Director report and recommendation.** The Planning Director shall prepare a staff report based on the comments provided by the Technical Review Committee. The staff report and the Planning Director's recommendation shall be forwarded to the Planning Commission for their review and action.
- g. **Action by Planning Commission.** The Planning Commission shall approve the preliminary plat, with or without conditions, within 30 days after receiving the application for initial review, or refer the application to the Town Council for a final decision. The Commission may grant approval with conditions only to the extent that such conditions specify the actions necessary to bring the application into complete compliance with this UDO. Unless this time limit is extended by mutual agreement, failing to act within the time limit constitutes approval of the subdivision plat. If a proposed subdivision is determined by the Planning Commission to be in conformance with all applicable provisions of this section, the Planning Commission shall approve the subdivision and shall advise the applicant in writing: (1) the conditions of such approval, if any; (2) certification on the plat by the Secretary of the Planning Commission, and (3) the date on which the Planning Commission granted approval. A determination by the Planning Commission that all applicable provisions have not been satisfied shall result in referral of the subdivision to the Town Council and notice of such referral shall be given to the applicant in writing. The Planning Commission shall express in writing its reasons therefore. The action of the Commission shall be recorded in the minutes of the Planning Commission meeting, and the subdivider shall be duly notified.
- h. **Referral to Town Council.** Where the Planning Commission has referred the subdivision plat to the Town Council, the Council shall approve, approve with conditions, or disapprove the subdivision plat. A determination by the Town Council that all applicable provisions have not been satisfied shall result in disapproval of the subdivision and notice of such disapproval shall be given to the applicant in writing.
- i. **Actions following approval of preliminary plat.**
- (1) Approval of a preliminary subdivision plat shall not constitute approval of the final subdivision plat. Application for approval of the final (record) plat will be considered only after the requirements for final plat approval as specified herein have been fulfilled and after all other specified conditions have been met.

- (2) Upon approval of the preliminary subdivision plat, the subdivider may proceed to comply with the other requirements of these regulations, including construction plan approval, preparation of the final subdivision plat, and all other required approvals and permits.
- j. **Modification of construction standards.** Notwithstanding the approval of a preliminary plat, the Town shall have the authority to apply any revised construction standards to future plats at the time of application for final plat approval. The Town Engineer shall determine the maximum extent to which such new standards may feasibly apply.

J. **Final plat approval (major and minor subdivisions).** The final plat shall constitute only that portion of the approved preliminary plat (if required) that the subdivider proposes to record and develop at the time of submission. Approval of the final plat shall be subject to the installation of the improvements designated in Article 8, Subdivision design/improvements, or certified evidence from the Town that said improvements shall be installed in accordance with these regulations.

1. **Applicability.** A final plat shall be required for all subdivision of land in the Town of Garner and its extraterritorial jurisdiction.

2. **Procedure.**

a. **Application requirements.** The final subdivision plat shall be submitted in accordance with the requirements in Appendix D. No application shall be reviewed until it is deemed complete in accordance with Section 3.1.E.

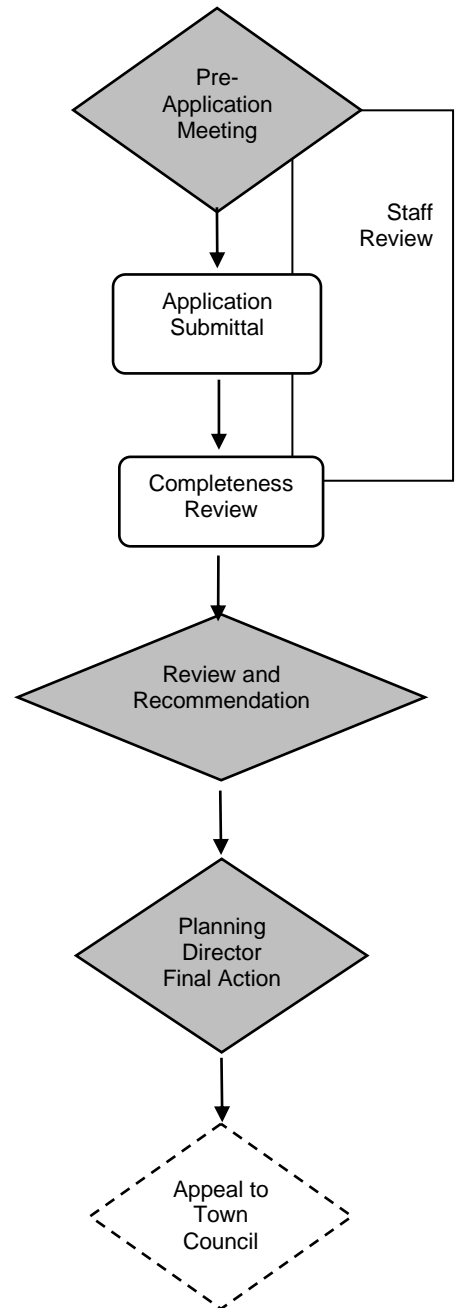
b. **Endorsements on final subdivision plats.**

(1) **Minor plats.**

- (a) Certificate of ownership;
- (b) Certificate of approval by the Planning Director;
- (c) A certificate of survey and accuracy; and
- (d) Wake County Plat Review Officer's Certificate.

(2) **Major plats.**

- (a) All major subdivision final plats shall contain the following certificates:
 - (i) Certificate of ownership and dedication;
 - (ii) Certificate of survey and accuracy;
 - (iii) Certificate of approval by the Planning Director or Town Clerk, as applicable;
 - (iv) Certificate of approval by City of Raleigh Utilities; and
 - (v) Wake County Plat Review Officer's Certificate.
- (b) All final plats located outside the corporate limits of the Town, but within the planning jurisdiction, shall



contain the following certificates:

- (i) Division of Highways District Engineer certificate; and
- (ii) Certificate of approval of non-municipal water supply and sewage disposal systems.

- (c) When required by the federal government, all final plats shall contain a certificate for a federally funded project.

c. **Approval by Planning Director.**

- (1) The Planning Director, after Technical Review Committee review, is authorized to approve a final subdivision plat unless the plat fails to comply with one or more of the requirements of this UDO. As provided in Section 8.6, Subdivision improvement guarantees, final plat approval of a subdivision prior to installation of all improvements is authorized in some cases when sufficient security is furnished to guarantee completion of such improvements.
- (2) If the final plat is disapproved by the Planning Director, the applicant shall be furnished with a written statement of the reasons for the disapproval.

d. **Minor subdivision plat approval criteria.** Minor subdivision plats shall be approved only when the Planning Director, after Technical Review Committee review, finds that all of the following conditions exist:

- (1) The plat complies with the standards of Article 8, Subdivision design/improvements, and any other applicable requirements of this UDO;
- (2) The plat indicates that all subject lots will have frontage on existing approved streets;
- (3) New or residual parcels will conform to the requirements of this UDO and other applicable regulations;
- (4) No new streets are required or are likely to be required for access to interior property;
- (5) No drainage or utility easements will be required to serve interior property;
- (6) No extension of public sewerage or water lines will be required;
- (7) The proposed subdivision will not adversely effect permissible development of the remainder of the parcel or of adjoining property; and

- (8) All necessary drainage easements have been provided.
- e. **Major final plat approval criteria.** Major subdivision plats shall be approved only when the Planning Director, upon Technical Review Committee recommendation, finds that all of the following conditions exist:
- (1) The plat substantially complies with the approved preliminary plat.
 - (2) The plat complies with the standards of Article 8, Subdivision design/improvements, and the other applicable requirements of this UDO;
 - (3) New and residual parcels will conform to the requirements of this UDO and other applicable regulations;
 - (4) The proposed subdivision will not adversely affect permissible development of the remainder of the parcel or of adjoining property;
 - (5) All necessary right-of-way has been offered for reservation or dedication; and
 - (6) All necessary drainage easements have been provided.
- f. **Notice of decision.** Within 15 days after a decision is made by the Planning Director, copies of the decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.
- K. **Subdivision containing floodplains, floodways, or buffer areas.**
1. An applicant for major subdivision or minor subdivision approval shall be informed by the Planning Department of the use and construction restrictions contained in Section 7.2, Stormwater Management, if any portion of the land to be subdivided lies within a floodway, floodplain, conservation buffer area, lake conservation district, or other riparian buffer.
 2. Final plat approval for any subdivision containing land that lies within a floodway or floodplain may not be given unless the plat shows the boundary of the floodway and/or floodplain, the minimum lowest floor elevation on each lot affected by the floodway or floodplain, and contains in clearly discernible print the following statement:
"Use of land within a floodway or floodplain is substantially restricted by Section 7.2, Stormwater Management, of the Garner Unified Development Ordinance."
 3. All building footprints and front, rear and side yard areas as required by Article 6 shall be provided outside of conservation buffers protecting the watershed of Lake Benson or other officially designated protected buffer areas. Rear yard areas adjacent to a conservation buffer may be reduced

to a minimum of 15 feet during the review of a subdivision, however, no reduction, waiver or variance below this 15-foot minimum shall be permitted.

4. Unless the developer demonstrates to the satisfaction of the Planning Director that the proposed lots are not intended for sale as residential building lots, no final plat approval for any subdivision may be given if:
 - a. The land to be subdivided lies within a zone where residential uses are permissible and it reasonably appears that the subdivision is designed to create residential building lots; and
 - b. Any portion of one or more of the proposed lots lies within a floodway or floodplain; and
 - c. It reasonably appears that one or more such lots could not practicably be used as a residential building site because of the restrictions set forth in Section 7.2, Stormwater Management.

L. Traffic impact analysis.

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

1. Applicability.

- a. A traffic impact study shall be required for applications for preliminary plat or projects that are anticipated to generate 100 or more peak hour vehicle trips, based on trip generation rates from the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual.
- b. A traffic impact study may be required for applications for preliminary plat, projects, or rezoning that are anticipated to generate 1,000 or more average daily trips (ADT), based on trip generation rates from the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual.

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

- a. **Type of study.** A letter report, full traffic impact analysis report, or special report (such as a sight distance survey) may be required.
- b. **Definition of impact area.** The points of access and key streets and intersections that may be affected by development of the subject tract constitute the impact area. Traffic recorder and turning movement assessment locations shall also be determined.

- c. **Period of analysis.** The period of analysis shall be for both the morning and afternoon peak hour.
 - d. **Analysis scenarios.** Scenarios for analysis shall include existing conditions, and opening year with and without development, and may include five or ten years after opening with or without development.
 - e. **Assumptions.** Trip generation and distribution assumptions including trip generation categories, diversion assumptions and distribution assumptions. Assumed rate of growth in background traffic, and developments in the area that have been approved or are under review shall also be included.
 - f. **Duration of study.** The duration of traffic studies (the time period for which they are considered a valid basis for approvals) for large projects, particularly Planned Developments, will be evaluated on a case-by-case basis as part of the application review process.
3. **Traffic study elements.** Where required during the scoping meeting, the following details shall be required.
- a. **Existing condition survey.**
 - (1) **Street system description.** The street system shall be described, including geometric features, lane usage, traffic control, signage, sight distances, and adjacent uses and curb cuts.
 - (2) **Traffic volumes.** Existing traffic volumes shall be provided for the impact area, including both average annual daily traffic (AADT) and peak hour volumes. AADT may be derived from current counts of the North Carolina Department of Transportation (NCDOT), where available, and peak hour volumes shall be provided from field counts. Data shall be adjusted for daily and seasonal variations. Turning movement counts for peak hour shall be provided for critical intersections.
 - (3) **Capacity analysis.** Existing capacity of signalized and unsignalized intersections.
 - (4) **Other details.** Other details may be required at the discretion of the Town Engineer or Planning Director depending upon the type and scale of the project. These may include, but are not limited to, queue length analysis, pedestrian counts, accident data, traffic speeds (both 50th and 85th percentile), and stopping distances.
 - b. **Future without development.** Capacity analysis shall be based on the Highway Capacity Manual or other methodology approved in advance by the Town Engineer.

- c. **Future with development.**
 - (1) Projections of peak hour traffic generation shall be made using the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual, unless the Town Engineer determines that locally-derived data will provide more accurate forecasts. Data from similar facilities may be used where the information is not available from ITE.
 - (2) Special analysis may be required to determine the need for signalization, minimum safe sight distances, gap analysis, turning radius requirements, queue length analysis, turning lane length analysis, curb cut locations or similar requirements.
- 4. **Mitigation plan.** Where the analysis indicates that the project will create deficiencies in the impact area, improvements shall be recommended, along with projected cost estimates. The design of improvements shall be in accordance with the Town of Garner or the North Carolina Department of Transportation (NCDOT), as appropriate. Where a mitigation plan is not adequate to address the traffic impacts of the project, it may serve as a basis for denial of the rezoning, preliminary plat, site plan or Planned Development request.
- 5. **Consultants.** The Planning Director or the Town Engineer may require that an independent consultant be hired by the Town to perform the required studies, or to review all or part of a study prepared by the applicant's consultant. The Planning Director or Town Engineer are authorized to administer the contract for any such consultant.
 - a. The Town shall determine the scope of services to be performed by the independent consultant and receive a cost estimate of such services.
 - b. The applicant shall provide an amount equal to the estimate to the Town, who shall deposit the amount in an escrow or other special account set up for this purpose. Any funds not used shall be returned to the applicant in a timely manner, without interest.
 - c. The Town may require additional funds for independent review where a decision-making body expands the scope of the required review; the applicant substantially amends the application; additional meetings involving the consultant are requested by the applicant; or the consultant's appearance is requested at public or affected agency meetings beyond those anticipated in the original scope of services.
- M. **Environmental impact assessment.**
 - 1. In any matter involving a major development project or one in an area of environmental concern because of potentially detrimental impacts on sensitive natural areas, such as watersheds and streams, or noise levels, traffic handling capabilities, or pollutant release or creation, the permit-

issuing body may require, under authority of the North Carolina Environmental Policy Act of 1971, and in order to promote the objectives of this ordinance, a statement of anticipated environmental impact. Prior to the issuance of any permit related to said project, the private or governmental developer may be required to submit a detailed statement setting forth to the fullest extent possible:

- a. The environmental impact of the proposed project;
 - b. Any significant environmental effects which will occur should the project be implemented;
 - c. Measures proposed to mitigate negative effects that may occur; and
 - d. Alternatives to the proposed action.
2. A major development shall include shopping centers, subdivision and other housing projects, and industrial, commercial, institutional or public works projects. The term environmental impact shall include any changes, positive or negative, in the social, economic, or natural surroundings of the Town which may result from implementation of this project.
- N. **Recordation.** Approval of a major subdivision final plat or minor subdivision plat is contingent upon the plat being recorded within 90 days after the date the certificate of approval is signed by the Planning Director.

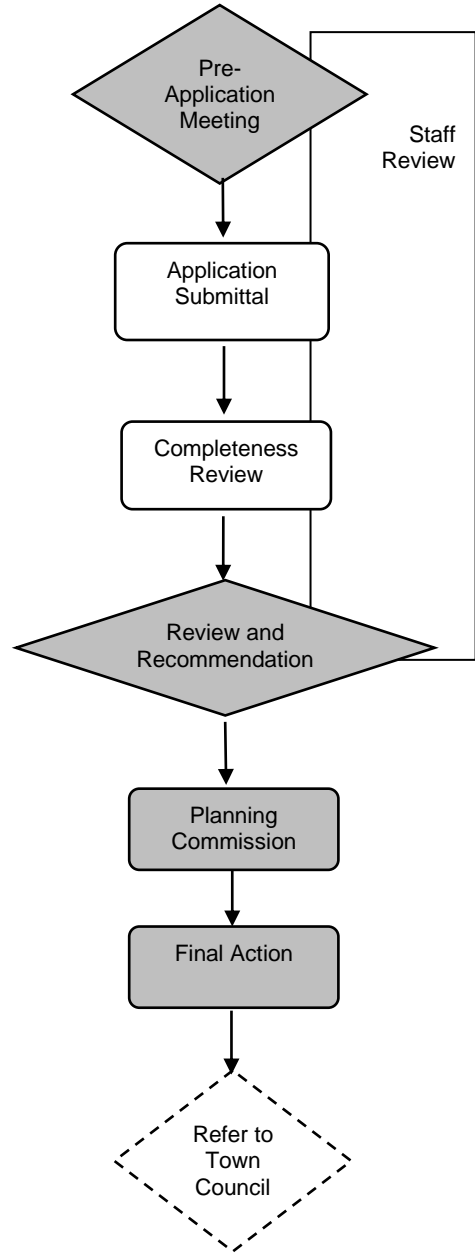
Town of Garner Unified Development Ordinance (UDO)

O. **Appeals.**

1. The applicant may appeal a preliminary subdivision plat application denied by the Town Council to the Wake County Superior Court by filing with the Clerk of the Court a petition for a Writ of Certiorari within 30 days of written notification.

2. The applicant may appeal a final plat application denied by the Planning Director to the Town Council for further review. Such appeal must be provided in writing to the Town Clerk within 30 days of the date the applicant received written notice of the Planning Director's decision and shall state the reasons for the appeal. Following its review of the appeal, the Town Council may reverse, modify, or affirm the Planning Director's decision, in accordance with the procedures found in Section 3.16.

(Ord. No. 3376, § 14, 1-17-06; Ord. No. 3523, § 3, 8-4-08; Ord. No. 3558, § 2, 7-7-09)



3.6. Site plan review.

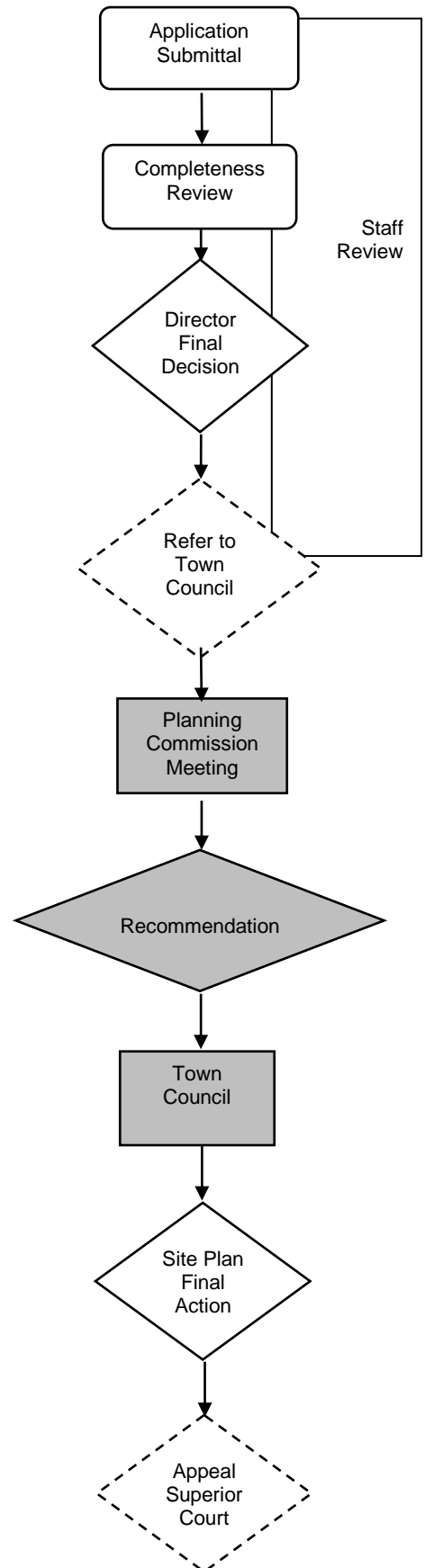
- A. **Applicability.** Once a site plan application is determined complete, all proposed development shall be subject to site plan review. The Planning Director, upon recommendation of the Technical Review Committee, shall approve all site plans, with or without conditions. Where a site plan does not meet the requirements of this UDO, the Planning Director shall refer said site plan to the Planning Commission and the Town Council for their review.

- B. **Preapplication conference.** Prior to the submission of an application for site plan approval, all potential applicants are strongly encouraged to request a preapplication conference with Town staff. The purpose of the conference is to respond to any questions which the applicant may have regarding any application procedures, standards, or regulations required by this UDO. Upon receipt of such request, the Town staff shall afford the potential applicant an opportunity for such a preapplication conference at the earliest reasonable time. The Planning Director has the authority to require a preapplication conference based on anticipated impacts the project may have on surrounding properties.

- C. **Application requirements.**
 - 1. **General requirements.** A site plan application shall be submitted in accordance with the requirements in Appendix D and the application schedule published from time to time by the Planning Department. No application shall be reviewed until it is deemed complete in accordance with Section 3.1.E.

 - 2. **Waiver of application requirements.** The Planning Director shall have the authority to waive any of the application requirements when he determines that the requisite information is not necessary to understand the application and the application complies with this UDO.

- D. **Approval process.**
 - 1. **Approval by Planning Director.** Site plans submitted for review under this section shall be processed and the applicant notified in



writing of such approval, approval with conditions or referral to the Planning Commission and the Town Council. The Planning Director may grant approval with conditions only to the extent that such conditions specify the actions necessary to bring the application into complete compliance with this UDO. If the proposed site plan is determined to be consistent with all applicable provisions of this UDO, the Planning Director shall approve the site plan and so advise the applicant in writing. A determination that all such requirements and provisions have not been satisfied shall result in referral of the site plan and notice of such referral shall be given to the applicant in writing.

2. Referral to Planning Commission. Where the Planning Director has referred the site plan, the Planning Commission shall first review the site plan and provide a recommendation to the Town Council. If the Commission is not prepared to make a recommendation to the Town Council within the time frame listed in paragraph 3. below, they may request the Council not take action on the matter until the Commission can present its recommendation.
 3. Referral to Town Council. The Town Council shall not take action on the site plan referral until it has received a recommendation from the Planning Commission or until 30 days has passed since the matter was first reviewed by the Commission. Where the Planning Director has referred the site plan to the Town Council, the Council shall approve, approve with conditions, or disapprove the site plan at a public hearing held in accordance with Section 3.1. A determination by the Town Council that all applicable provisions have not been satisfied shall result in disapproval of the site plan and notice of such disapproval shall be given to the applicant in writing.
- E. **Traffic impact analysis.** A traffic impact analysis may be required in accordance with Section 3.5.L.
- F. **Environmental impact analysis.** An environmental impact analysis may be required in accordance with Section 3.5.M.
- G. **Additional notice.** If the Planning Director determines that the development for which a site plan review is requested will have or may have substantial impact on surrounding properties, owners or occupants of such properties shall be notified, by any means reasonably calculated to give notice to affected persons, that:
1. An application has been filed for a permit authorizing the site to be used in a specified way;
 2. Anyone wishing to comment on the application should contact the Planning Director by a certain date; and
 3. Anyone wishing to be informed of the outcome of the application should send a written request to the Planning Director.

- H. **Special use permit required.** When the Planning Director finds that the proposed use would have an extraordinary or unanticipated impact on neighboring properties or the general public, or where site-specific conditions are required, site plan approval should be accomplished with a public hearing. In such instances, the Town shall follow the process established in Section 3.14 and the application shall be treated as a special use permit.

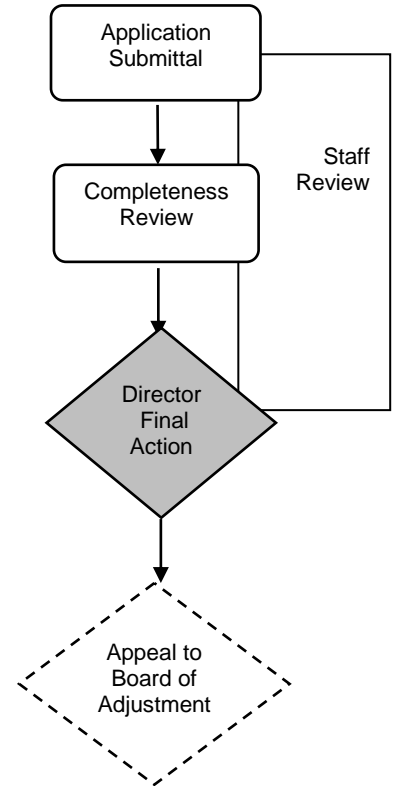
 - I. **Expiration of approval.** An approved site plan shall expire two years from the date of approval unless the proposed development is pursued as set forth below:
 - 1. A complete building permit application has been submitted or, if no building permit is required, a certificate of occupancy has been issued; or

 - 2. In case of projects where more than one building is to be built, the applicant may submit a series of building permit applications. The first application must be submitted within two years from the date that site plan approval is granted. Each subsequent application must be submitted within 180 days from the date of issuance of certificate of occupancy for the previous building.

 - J. **Appeals.** Appeals of site plan denials made by the Town Council shall be taken in accordance with Section 10.5, Judicial review.
- (Ord. No. 3558, § 2, 7-7-09)

3.7. Zoning compliance permits.

- A. **Required.** Any activity for which a site plan approval, special permit or conditional use permit has been issued shall have met the requirements of this section automatically. Where no site plan, special use permit or conditional use permit is required for activity set forth in the applicability provision of paragraph B. below, a zoning compliance permit issued in accordance with this section shall be required.
- B. **Applicability.** It shall be unlawful to begin grading, excavation for construction, the moving, alteration, or repair, except ordinary repairs, of any building or other structure, including an accessory structure until the Planning Director has issued for such work a zoning compliance permit. Also, it shall be unlawful to change the type of use of land, or to change the type of use or type of occupancy of any building, or to extend any use or any lot on which there is a nonconforming use, until the Planning Director has issued for such intended use a zoning compliance permit, including a determination that the proposed use does, in all respects, conform to the provisions of this UDO.
- C. **Timing of application.** In all cases where a building permit is required, application for a zoning compliance permit shall be made coincidentally with the application for a building permit. In all other cases, application shall be made before initiating any of the activities that trigger compliance with this section.
- D. **Application filing.** Zoning compliance permit applications shall be made in writing to the Planning Director on forms provided for that purpose and available in the Planning Department. The Planning Director shall keep a record of all such applications on file.
- E. **Contents of application.** Every application for a zoning compliance permit for site clearance, excavation, grading, filling, construction, moving, alteration, or change in type of use or type of occupancy, shall be accompanied by a written statement and plans or plats, drawn to scale, showing the following in sufficient detail to enable the Planning Director to ascertain whether the proposed work or use is in conformance with the provisions of this UDO:
 1. The actual shape, location, and dimensions of the lot; if the lot is not a lot of record, sufficient data to locate the lot on the ground;
 2. The shape, size and location of all buildings or other structures to be erected, altered or moved and of any other buildings, or other structures already on the lot;
 3. The existing and intended use of the lot and of all structures upon it; and
 4. Such other information concerning the lot, adjoining lots, or other matters



as may be essential for determining whether the provisions of this UDO are being observed including parking, landscaping, screening, buffering, signage, flood hazards and floor areas.

F. Planning Director's review and action.

1. If the proposed excavation, construction, moving, alteration or use of land, as set forth in an application for a zoning compliance permit, is in conformity with the provisions of this UDO, the Planning Director shall issue a zoning compliance permit, provided that all of the following conditions shall apply:
 - a. Issuance of a zoning compliance permit shall in no case be construed as waiving any provisions of this UDO;
 - b. The Planning Director shall not grant any exceptions to the actual meaning of any clause, standards, or regulation contained in this UDO to any person making application to excavate, construct, move, alter or use buildings, structures or land;
 - c. The Planning Director shall issue a permit when the imposed conditions of this UDO are complied with by the applicant regardless of whether the use of the permit would violate contractual or other arrangements (including, but not by way of limitation, restrictive covenants) among private parties; and
 - d. The zoning compliance permit shall include a determination that plans, specifications and the intended use of such structure and land do, in all respects, conform to the provisions of this UDO. Prior to the issuance of a zoning compliance permit, the Planning Director shall consult with all applicable departments.
2. If the proposed excavation, construction, moving, alteration or use of land, as set forth in an application for a zoning compliance permit, is not in conformity with the provisions of this UDO, the Planning Director shall not issue a zoning compliance permit. If an application for a zoning compliance permit is disapproved, the Planning Director shall state in writing the cause of such disapproval and provide written notice to the applicant.

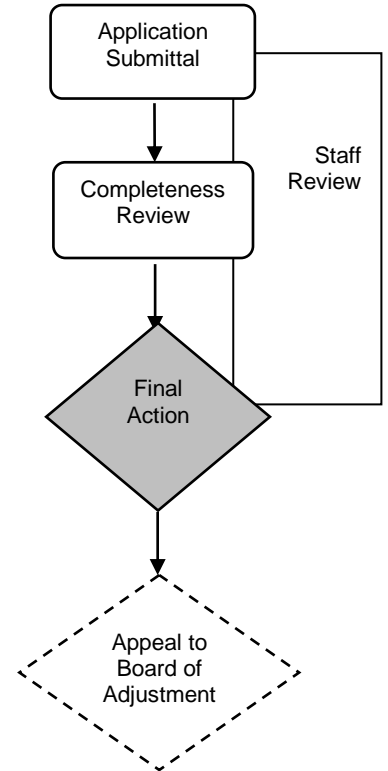
G. Expiration. Once a zoning compliance permit has been issued, all activities pursuant to such permit shall be commenced within two years. If the proposed excavation, construction, moving, alteration or use of land, as set forth in an application for a zoning compliance permit, is discontinued for a period of one year or more, the zoning compliance permit shall lapse and be of no further force and effect.

H. Appeals. Appeals of a zoning compliance permit application denied by the Planning Director shall be taken to the Board of Adjustment within 30 days of the decision, in accordance with the procedures found in Section 3.16.

(Ord. No. 3558, § 2, 7-7-09)

3.8. Sign permit.

- A. **Purpose.** It is the purpose of this section to permit and regulate signs and their placement in such a way as to support and complement the land use objectives set forth in this UDO and in other Town Council declarations of policy; to avoid endangering the public safety, and not confuse or mislead a driver or obstruct the vision necessary for traffic safety; and to advance the economic stability, preservation and enhancement of property values, and the visual impact and image of the Town. The Town Council recognizes and subscribes to the right of business operators to promote their business, and has determined that the following provisions are the least burdensome regulations that will carry out and advance these purposes.
- B. **Signs excluded from regulation.** Those signs that are excluded from regulation or permitted without a permit are set forth in Section 7.5.D, Sign regulations.
- C. **Permit required for signs.** Except as otherwise provided in Section 7.5, Sign regulations, no sign may be erected, moved, enlarged, or altered except in accordance with and pursuant to a sign permit. No sign permit shall be issued unless the plans and information submitted demonstrate that the sign will conform to all applicable requirements of this section.
- D. **Application.** A sign permit application shall be submitted in accordance with the requirements in Appendix D. No application shall be reviewed until it is deemed complete in accordance with Section 3.1.E.
- E. **Review and action by the Planning Director.** The Planning Director must review each sign permit application in light of this UDO and act to approve, approve with conditions or deny the permit. The Planning Director may grant approval with conditions only to the extent that such conditions specify the actions necessary to bring the application into complete compliance with this UDO. A sign may also require separate building and electrical permits from the Town.
- F. **Expiration of approval.** Any permit issued for the erection of a sign shall become invalid unless the work authorized by it shall have been commenced within six months after its issuance.
- G. **Appeals.** Appeals of sign permit applications denied by the Planning Director shall be taken to the Board of Adjustment within 30 days of the decision, in accordance with the procedures found in Section 3.16.



(Ord. No. 3558, § 2, 7-7-09)

3.9. Master sign plan.

A. **Applicability.** All existing and newly proposed shopping centers, business complexes, commercial subdivisions, and mixed use residential subdivisions shall be required to submit a master sign plan of sufficient design quality to satisfy the requirements of Section 7.5, Sign regulations.

B. **Purpose.**
1. The purpose of the master sign plan is to detail the standards for uniformity which the development proposes to live up to, and to state the manner in which the design criteria and standards for uniform signage set forth in this section shall be met.

2. All signs shall conform to the approved master sign plan on file at the Town. It shall be the responsibility of the owner of the development to ascertain that the most updated version is on file for purposes of this UDO.

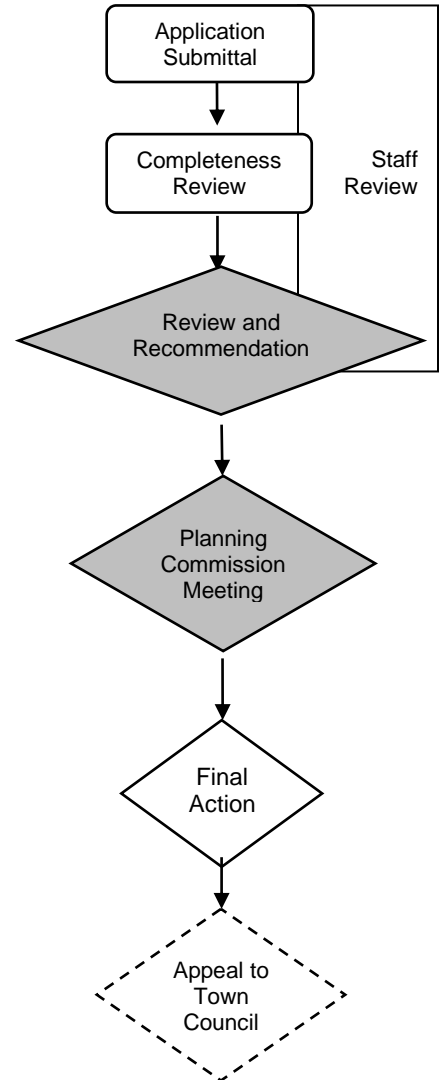
C. **Application requirements.** A master sign plan application shall be submitted in accordance with the requirements in Appendix D. No application shall be reviewed until it is deemed complete in accordance with Section 3.1.E.

D. **Review and action by the Planning Commission.**
1. All master sign plans shall be complete, as determined by the Planning Department, prior to submission to the Planning Commission for approval consideration.

2. The Planning Commission shall have the authority to approve all master sign plans and amendments as provided for herein

E. **Amendments to approved master sign plans.**
1. The Planning Director shall determine whether paragraphs 2. or 3. below are applicable in any given case. All changes to an existing master plan require a formal application with all required information, as determined by the Planning Department, to enable the staff and the Planning Commission to properly evaluate the requested change.

2. Insignificant deviations from approved master sign plans are permissible with approval from the Planning Director. A deviation is insignificant if it results in only minor changes to the master sign plan and to the overall appearance of the development (minor changes are defined as, but not limited to, sign size, letter styles, materials, etc.).



3. Modifications of an approved master sign plan greater in scope than what is described in the previous paragraph are permissible only with the approval of the Planning Commission.

F. Sign permits for individual businesses.

1. Sign permits for individual businesses within the shopping center (therefore subject to the master sign plan) shall be approved by the Planning Director, following master sign plan approval.
2. Any change in a sign by any tenant from the approved master sign plan that will cause a uniform change shall require the applicant to obtain a statement from the Planning Director which assesses the extent to which the variation from the plan is in keeping with the intent and goals of the plan, and the extent to which the change is acceptable to the master sign plan applicant.
3. Such proposed changes shall be submitted to the Planning Director who shall determine whether they are "substantive" or "non-substantive" changes to the master sign plan. Non-substantive changes may be approved by the Planning Director; substantive changes require an amendment to the master sign plan be submitted to the Planning Commission.

- G. Appeal.** Appeals of the master sign plan applications denied by the Planning Commission shall be taken to the Town Council within 30 days of mailing of the denial, in accordance with the procedures in Section 3.16.

(Ord. No. 3558, § 2, 7-7-09)

3.10. Planned Development.

A. **Purpose and intent.** Planned Development is a concept that is intended to encourage innovative land planning and site design concepts that achieve a high level of environmental sensitivity, aesthetics, high quality development, and other community goals by:

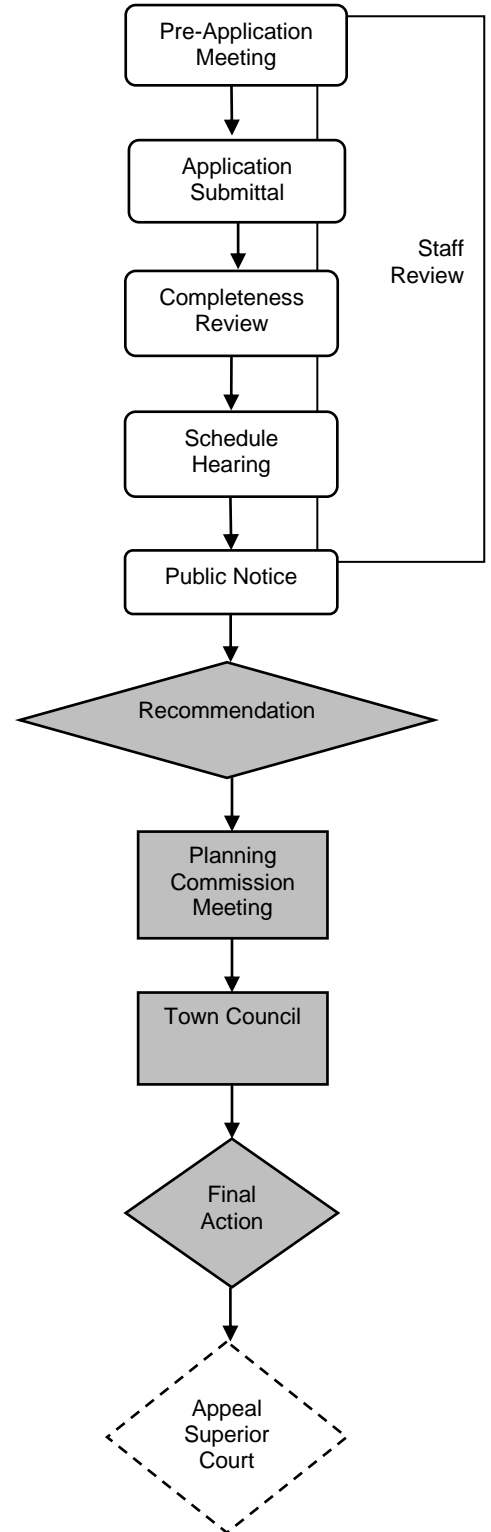
1. Reducing or eliminating the inflexibility that sometimes results from strict application of zoning standards that were designed primarily for individual lots;
2. Allowing greater freedom in selecting the means to provide access, open space and design amenities; and
3. Promoting quality urban design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations and land uses.

B. **Applicability.**

1. The requirements of this section shall apply to all proposed Planned Unit Development (PUD), Planned Residential Development (PRD), Traditional Neighborhood Development (TND) and Mixed Use Development (MXD). The PUD, PRD, TND and MXD are established as floating zones in this UDO. These Planned Developments shall be affixed to the official zoning map only as conditional use districts in accordance with the procedures in Section 3.13 when an application for the respective development, meeting the requirements of this section, is approved.
2. Planned Development Districts shall meet the minimum acreages for the selected district as set forth in Article 4.

C. **Submission requirements.** In order to qualify for a Planned Development zoning classification, a proposed development must first meet the following requirements:

1. The site must meet the requirements in Article 4 and the criteria established in Article 6 for the specified district;
2. The area proposed shall be in one ownership, or, if in several ownerships,



the application for amendment to this UDO shall be filed jointly by all of the owners of the properties included in the plan;

3. A preapplication conference shall be required in accordance with Section 3.1.B;
 4. An application form for a rezoning and simultaneous conditional use permit shall be submitted according the application submission calendar as published by the Planning Director and appropriate fee as required by Section 3.1.
- D. **Two-stage approval process.** Approval of a Planned Development requires a two-stage process.
1. The first stage is approval by the Town Council of a rezoning and a conditional use permit approving a conceptual master plan for the project.
 2. The second stage requires approval of a detailed development plan by the Planning Director in compliance with the previously-issued conditional use permit and master plan.
- E. **PD district approval process.** Any request pertaining to the establishment of a PD district shall be considered an amendment to this UDO and shall be administered and processed in accordance with the following requirements. The master plan itself shall be approved as a conditional use permit.
1. **Staff review and report.** The Planning Director shall prepare a staff report that reviews the proposed rezoning, conditional use permit and master plan in light of the Comprehensive Growth Plan and the general requirements of this UDO. A copy of the report shall be provided to the Planning Commission, the Town Council and the applicant before the scheduled public hearing.
 2. **Planning Commission review.**
 - a. The Planning Commission shall review the conditional use permit application at the same time it considers the applicant's rezoning request. The Commission may consider the two applications together during its review, but make shall its recommendation by separate vote on the rezoning application and the CUP application for the master plan.
 - b. The Planning Commission shall consider both applications in a timely fashion and shall forward a written recommendation to the Town Council for its consideration within the time frame listed under paragraph 3.a., below.
 - c. In response to suggestions made by the Planning Commission, the applicant may revise the rezoning and/or the conditional use permit application before it is submitted to the Town Council.

3. **Town Council public hearing.**
 - a. Following published, posted and mailed notice in accordance with Section 3.1, the Town Council shall hold a public hearing on the application. However, the Council may not conduct a public hearing or take action on the applications until it has received a recommendation from the Planning Commission, or until 60 days has passed since the Commission first reviewed the request.
 - b. The Town Council may consider the rezoning application and conditional use permit application concurrently at a single public hearing. If the Town Council chooses to conduct a single public hearing, it shall conduct that hearing according to the same procedures applicable to other conditional use permit applications.
Commentary: If a single public hearing is used, the hearing must be conducted as a quasi-judicial hearing.
 - c. The Council shall vote separately on the rezoning application and the CUP application adopting the master plan. The Town Council shall make a written finding and give its approval; approval with modifications or conditions; or disapproval.
 - d. If the PD district is approved by the Town Council, all information pertaining to the proposal shall be adopted as a conditional use permit. Where the district is not approved, no further consideration of the proposal shall occur.
 - e. Nothing in this section is intended to limit the discretion of the Town Council to deny an application to rezone property to any PD district if the Council determines that the proposed rezoning is not in the public interest.
 - f. Following Town Council action, the applicant shall be notified in writing within seven days of the decision.
 4. **Planned Development review criteria and standards.** All Planned Development (PUD, PRD, TND or MXD) shall meet the standards set forth in both Section 4.7, Planned Development Districts, and Section 6.12 through Section 6.12 containing the Planned Development standards.
- F. **Master plan.** A suitable master plan shall be submitted by the applicant for review by the Planning Director and the Planning Commission, and approval by the Town Council. Specifically, such plan shall include the following elements, where applicable:
1. **Master plan.** The master plan (drawn to scale by a registered civil engineer, registered landscape architect, or registered architect) on sheet(s) no larger than 24 × 36 inches shall include the following elements:
 - a. The exact dimensions of the parcel of land under consideration including total acreage and current zoning classifications;

Town of Garner Unified Development Ordinance (UDO)

- b. Zoning and current use classifications of adjacent properties and the identification of adjacent property owners;
 - c. A schematic representation of general types and locations of land uses including parcel boundaries with acreage;
 - d. The general density and intensity of the proposed uses including maximum gross density of the entire Planned Development and maximum and net densities of individuals parcels within the Planned Development;
 - e. Building setbacks for all parcels (both residential and nonresidential);
 - f. Proposed open spaces or parks and common open spaces with acreage delineations;
 - g. Storm drainage plan showing conceptual storm drainage system plan;
 - h. Utility plan showing conceptual water and wastewater system plan;
 - i. Phasing plan showing conceptual delineation of areas to constructed in phases or sections and the sequential order that will be followed in the development;
 - j. Hydrology plan showing streams, wetlands, floodplains, stream corridor buffers, proposed water bodies or impoundment areas.
 - k. Landscape concept plan and design guidelines for the development;
 - l. Vehicular and pedestrian circulation plan showing primary and secondary traffic circulation patterns with traffic volumes analysis, and all proposed sidewalk or greenways planned for the development; and
 - m. Any other information required by the Planning Director during the preapplication conference.
2. **Written report.** A written report shall be submitted by the developer for review by the Planning Director and the Planning Commission, and approval by the Town Council. Such report shall explain in general the type, nature, intent, and characteristics of the proposed development, and shall specifically include, where applicable:
- a. A general description of the proposal;
 - b. A detailed legal description of the location of the site;
 - c. A proposed development program, including number of residential units and proposed densities, square feet of other nonresidential

- uses and generalized intensities;
 - d. General plan for the provision of utilities, including water, sewer, and drainage facilities;
 - e. Tables showing the total number of acres in the proposed development and the percentage designated for each proposed type of land use, including public facilities;
 - f. A statement of how the proposed development is consistent with the Comprehensive Growth Plan;
 - g. Exceptions or variations from the requirements of this UDO if any are being requested; and
 - h. Written design guidelines clearly illustrating unity of development themes for the overall project including, but not limited to, architectural treatments, building materials and colors, site landscaping, signage and other relevant elements deemed appropriate by the applicant or Planning Director.
 - i. Any other relevant information requested by the Planning Director during the pre-application conference.
- G. **Detailed development plan.** Following the establishment of a Planned Development zoning district and approval of a conditional use permit and master plan, a detailed development plan shall be reviewed and approved by the Planning Director in accordance with the procedures and requirements for the site plan process as set forth in Section 3.6, and the following additional requirements.
1. **Detailed development plan contents.** A detailed development plan shall contain the same information required for a site plan or major subdivision plan, as set forth in Appendix D.
 2. **Written report.** A written report shall be submitted by the developer for review by the Planning Director. Such report shall explain in detail the type, nature, intent, and characteristics of the proposed development, and shall specifically include, where applicable:
 - a. A general description of the proposal;
 - b. A detailed legal description of the location of the site;
 - c. Proposed standards for development, including restrictions on the use of property, density standards and yard requirements and restrictive covenants;
 - d. Proposed dedication or reservation of land for public use, including streets, easements, parks and school sites;
 - e. Plan for the provision of utilities, including water, sewer, and drainage facilities;

- f. Tables showing the total number of acres in the proposed development and the percentage designated for each proposed type of land use, including public facilities;
- g. Plans for parking, loading, access ways, signs, and means of protecting adjacent areas from lightning and other potentially adverse effects;
- h. A statement defining the manner in which the Town Council is to be assured that all improvements and protective devices, such as buffers, are to be installed and maintained;
- i. Tabulations showing the total number of dwelling units by type, if any, and other data that the Planning Director, Planning Commission and the Town Council may require;
- j. A statement of how the proposed development is consistent with the Comprehensive Growth Plan;
- k. A phasing plan, where appropriate; and
- l. Other relevant information as may be requested by the Planning Director.

3. Subdivision consistency required.

- a. The subdivision of lots shall be consistent with the terms of the conditional use permit.
- b. If the conditional use permit establishes density, floor area, impervious surface, or similar limitations, the subdivision final plat that creates lots out of any portion of the tract so encumbered shall indicate on the face of the plat with respect to each lot such limitations or restrictions as are necessary to ensure compliance with the CUP.

Commentary: For example, if the CUP for a Mixed Use Development shows a ten-acre portion of the tract approved for office development with a maximum floor area of 100,000 square feet, then if that ten-acre area is subdivided, each lot so created shall show on the face of the plat the maximum building floor area that can be constructed on that lot--with the cumulative floor area for all lots within the entire ten-acre tract not exceeding the approved floor area maximum of 100,000 square feet.

- H. **Minor changes to conditional use permit or detailed development plan.** The Planning Director is authorized to approve minor changes to a CUP or detailed development plan issued pursuant to this section. Minor changes include those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development. All other changes are major changes and can only be approved by the Town Council pursuant to the provisions applicable to the issuance of the original CUP. Without limiting the

generality of the foregoing, changes in phasing schedules are minor changes, while the following constitute major changes:

1. Any proposed increase in density, floor area, or impervious surface area limitations;
2. Any changes in uses authorized under the CUP;
3. Changes in the number of parking spaces authorized or required under the permit;
4. Substantial changes in pedestrian or vehicular access or circulation plans;
5. Substantial changes in stormwater drainage plans;
6. Increases in building height limitations or decreases in building setback limitations.

I. Development in a PD district.

1. Following approval of the detailed development plan, any lot that is subdivided may be developed in accordance with the provisions of the CUP and other applicable provisions of this UDO upon issuance of a certificate of zoning compliance. Notwithstanding the provisions of Section 3.6, no site plan review shall be required.
2. All further development shall conform to the standards adopted for the district regardless of any changes in ownership. Any proposed changes in the district shall be treated as amendments to this UDO and must be considered in accordance with procedures set forth in this section for initial establishment of the district.
3. In any event where it is determined by the Town Council that development in the PUD, PRD, TND or MXD district is not in accordance with the standards adopted for that district, the Town Council shall be empowered to amend the official zoning map to place parts or all of the property in the PUD, PRD, TND or MXD district in another zoning classification deemed by the Town Council to be more appropriate.

- J. Performance guarantee.** Before approval of a PUD, PRD, TND or MXD district, the Town Council may require a contract with safeguards satisfactory to the Town Attorney guaranteeing completion of the development plan in a period to be specified by the Town Council, but which period shall not exceed five years unless extended by the Town Council for due cause shown. Such guarantee may include the submission of a performance bond in an amount as set by the Town Council.

K. **Expiration of approval.** The Town Council shall have the right to review a conditional use permit and associated master plan approved as part of a PUD, PRD or TND when no building permits have been issued in the past five years, and may choose not to issue further permits within the PUD, PRD or TND until a revised master plan has been approved by the Council.

L. **Appeals.**

1. Appeals of rezoning decisions made by the Town Council shall be taken in accordance with Section 10.5, Judicial review.
2. Appeals of decisions regarding detailed development plans shall follow the appeal procedures for site plans set forth in Section 3.6.J.

(Ord. No. 3558, § 2, 7-7-09)

3.11. Text amendment.

A. **General.** Amendments to the text of this UDO shall be made in accordance with the provisions of paragraph C., below. If, for any reasons, any condition imposed pursuant to these regulations is found to be illegal or invalid such condition shall be null and void and of no effect.

B. **Initiation of text amendment.**

1. Whenever a request to amend the text of this UDO is initiated by the Town Council, the Planning Commission, the Board of Adjustment or the Town administration, the administration shall draft an appropriate ordinance and present that ordinance to the Town Council so that a public hearing may be set. This does not preclude the Town Council from holding public hearings for purposes of gathering information to make such a request.

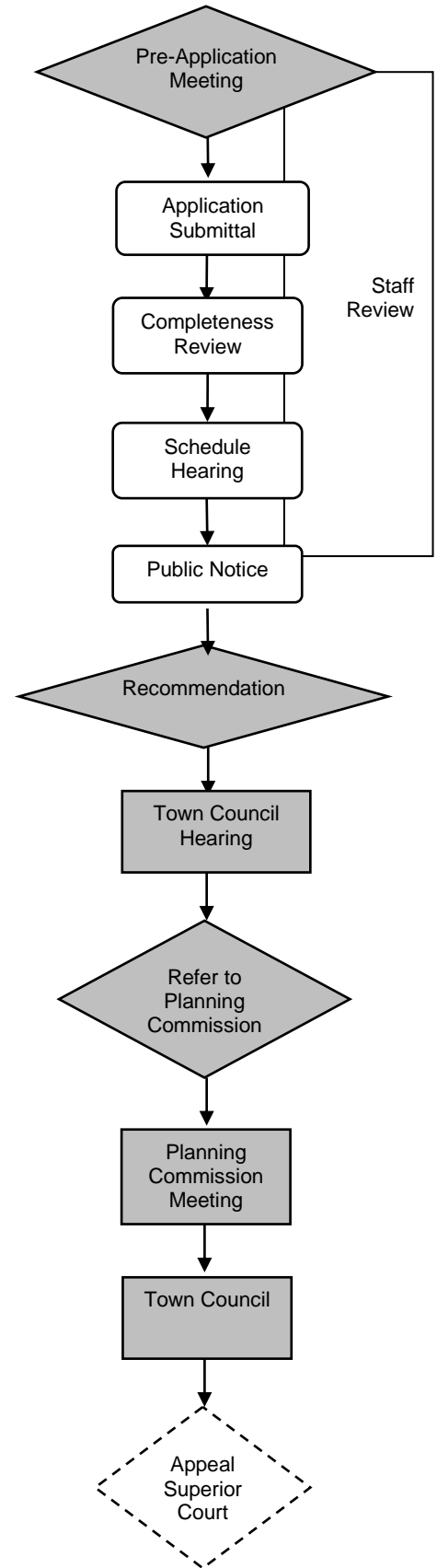
2. An owner or a duly authorized agent or representative may petition the Town Council for amendment of the text of this UDO. The petition shall be filed with the Planning Director and shall include, at a minimum:

- a. The name, address and phone number of the applicant;
- b. In case of a proposed change in the text of this UDO, a description of the specific objective of the proposed change; and
- c. A concise statement of the reasons why the petitioner believes the proposed amendment would be in the public interest.

C. **Approval process.** Requests to amend this UDO shall be processed in accordance with the following requirements:

1. **Receipt of text amendment application.** Upon receipt of a petition for a text amendment, the planning staff shall either:

- a. Treat the proposed amendment as one initiated by the Town administration if it believes that the



- proposed amendment has significant merit and would benefit the general public interest;
- b. Forward the petition to the Town Council, with or without written comment, for a determination of whether an ordinance should be drafted and a public hearing set in accordance with paragraph C., below; or
 - c. Upon receipt of a proposed ordinance, the Town Council shall establish a date for a public hearing and the planning staff shall schedule and advertise a joint public hearing before the Town Council and the Planning Commission.
2. **Application procedure.** Application forms for a text amendment request shall be obtained from the Planning Director. Completed forms, together with an application fee as required by Section 3.1 to cover administrative costs, plus any additional information the applicant feels to be pertinent, shall be filed with the Planning Director. Any communication purporting to be an application for an amendment shall be regarded as a mere notice to seek relief until it is made in the form required.
 3. **Staff review and report.** The Planning Director shall prepare a staff report that reviews the proposed text amendment request in light of the Comprehensive Growth Plan and the general requirements of this UDO. A copy shall be provided to the Planning Commission, Town Council and the applicant before the scheduled public hearing.
 4. **Town Council consideration of proposed amendments.**
 - a. **Public hearing required.** No amendment to this UDO may be adopted until a public hearing has been held on the proposed amendment.
 - b. **Joint public hearing.** A public hearing shall be held by the Town Council, with the Planning Commission in attendance where practicable. At the end of the public hearing, the Town Council shall refer the text amendment to the Planning Commission or other advisory boards.
 - c. **Recommendation.**
 - (1) The Planning Commission and Town Council may review proposed text amendments referred to them by the Town Council and forward a recommendation to the Town Council for its consideration.
 - (2) The Planning Commission and other selected advisory boards shall review proposed amendments in a timely fashion so that such recommendations that it may have, can be presented to the Town Council for its consideration. If the Planning Commission or other selected advisory board is not prepared to make recommendations to the Town Council for its consideration, it may request the

Town Council to delay or continue final action on the amendment until such time as the Planning Commission or other selected advisory board can present its recommendation.

(3) The Town Council may not take final action on the proposed amendment until it has received the Planning Commission's written recommendation regarding whether the proposed amendment is consistent with the adopted Comprehensive Growth Plan or other applicable officially adopted plan or the selected advisory board recommendation, or until 60 days have passed since the ordinance was referred to the Planning Commission or selected advisory board, whichever occurs first.

5. **Town Council action.**

- a. The Town Council is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practical.
- b. Voting on text amendments shall require a simple majority of the Council.

6. **Citizen comments.** In addition to comments provided in person at public hearings and public meetings, any resident or property owner in the town may submit a written statement regarding a proposed general zoning map amendment to the Town Clerk at least two (2) business days prior to the proposed vote on such change. If submitted according to the preceding condition, the Town Clerk shall submit said written statement(s) to the Town Council at any time prior to the vote.

D. **Criteria for evaluating text changes.** In evaluating any proposed amendment of the text of this UDO, the Town Council shall consider the following:

1. The extent to which the proposed text amendment is consistent with the remainder of the UDO, including, specifically, any purpose and intent statements.
2. The extent to which the proposed text amendment represents a new idea not considered in the existing UDO, or represents a revision necessitated by changing circumstances over time.
3. Whether or not the proposed text amendment corrects an error in the UDO.
4. Whether or not the proposed text amendment revises the UDO to comply with state or federal statutes or case law.

E. **Ultimate issue before Town Council on text amendments.** In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Town Council is whether the proposed amendment advances the public health, safety or welfare and is consistent with the Town's Comprehensive

Growth Plan and the specific intent of this UDO. All other issues are irrelevant and may be declared so by the mayor.

F. **Appeals.** Appeals of text amendment decisions made by the Town Council shall be taken in accordance with Section 10.5, Judicial review.
(Ord. No. 3376, § 7, 1-17-06; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3801, § 2, 12-7-15)

3.12. Official zoning map amendment (rezoning).

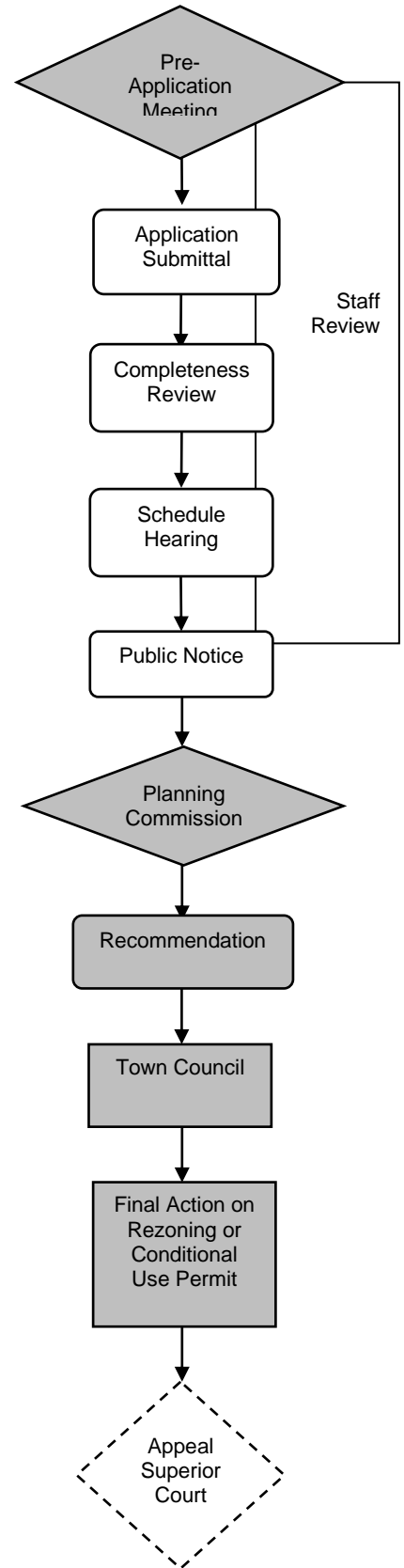
A. **General.** Amendments to the official zoning map of the Town of Garner shall be made in accordance with the provisions of paragraph C., below. If, for any reasons, any condition imposed pursuant to these regulations is found to be illegal or invalid such condition shall be null and void and of no effect and proceedings shall be instituted to rezone the property to its previous zoning classification.

B. **Initiation of official zoning map amendment.**

1. Whenever a request to amend the official zoning map is initiated by the Town Council, the Planning Commission or the Town administration, the administration shall draft an appropriate ordinance and present it to the Town Council for consideration of whether or not to set a public hearing to review the ordinance. This does not preclude the Town Council from holding public hearings for purposes of gathering information to make such a request.

2. Any person may petition the Town Council to rezone property according to the provisions herein. In cases where the petition has been submitted by someone other than the property owner or a duly authorized agent or representative, said petition shall be forwarded to the Town Council for a Council determination as whether a public hearing will be set to consider the change. The petition shall be filed with the Planning Director and shall include, at a minimum:

- a. The name, address and phone number of the applicant;
- b. A description of the land affected that is sufficient to clearly identify the boundaries of the property to be included within the proposed amendment, as well as a description of the proposed change in zoning districts.
- c. A concise statement of the reasons why the petitioner believes the proposed amendment would be in the public interest; and
- d. Mapping analysis and information required for special use permit



applications.

3. **Conditional use zoning district.** The zoning classification of any particular lot or lots may be changed to a conditional use zoning district classification only if a petition requesting such a change has been submitted by or on behalf of the owner or owners of such lot or lots. Conditional use zoning districts shall follow the procedures in Section 3.13.
 4. **Receipt of official zoning map amendment application.** Upon receipt of a petition for a zoning map amendment (both general use and conditional use zoning district), the Planning Director shall establish a date for a public hearing and the Planning Staff shall schedule and advertise a Public Hearing before the Town Council with the Planning Commission invited to attend.
- C. **Approval process.** Requests to amend the official zoning map shall be processed in accordance with the following requirements:
1. **Application procedure.** Application forms for rezoning requests shall be obtained from the Planning Director. Completed forms, together with an application fee as required by Section 3.1 to cover administrative costs, plus any additional information the applicant feels to be pertinent, shall be filed with the Planning Director. Any communication purporting to be an application for an amendment shall be regarded as a mere notice to seek relief until it is made in the form required. Prior to the submission of an application for an official zoning map amendment, all applicants shall request a preapplication conference in accordance with Section 3.1.B. A traffic impact analysis in accordance with Section 3.5.L may be required by the Planning Director.
 2. **Staff review and report.** The Planning Director shall prepare a staff report that reviews the proposed rezoning request in light of the Comprehensive Growth Plan and the general requirements of this UDO. The report shall include analysis regarding the reasonableness of the proposed rezoning. A copy shall be provided to the Planning Commission, Town Council and the applicant before the scheduled public hearing.
 3. **Public hearing.**
 - a. **Public hearing required.** No map amendment may be adopted until a public hearing has been held by the Town Council on the request with the Planning Commission invited to attend.
 - b. **Planning Commission review.** After the public hearing on a proposed map amendment has been closed by the Town Council, the matter shall be automatically referred to the Planning Commission for review and recommendation.
 4. **Planning Commission recommendation.**
 - a. The Planning Commission shall review all proposed rezoning requests and forward a written recommendation to the Town

Council for its consideration. The Planning Commission's recommendation shall include a comment on whether a proposed zoning map amendment is consistent with the adopted Comprehensive Growth Plan and any other applicable officially adopted plan.

- b. The Planning Commission and other selected advisory board shall review proposed amendments in a timely fashion so that such recommendations that it may have, can be presented to the Town Council for its consideration. If the Planning Commission or other selected advisory board is not prepared to make recommendations to the Town Council for its consideration, it may request the Town Council to delay or continue final action on the amendment until such time as the Planning Commission or other selected advisory board can present its recommendation.
5. **Action by Town Council.** The Town Council may not take final action on proposed amendment until it has received the Planning Commission recommendation, or until 60 days have passed since the map amendment was referred to the Planning Commission, whichever occurs first.
6. **Review criteria.** In making recommendations regarding amendments to the official zoning map, the Planning Commission shall consider and make findings on the following matters regarding the proposed amendment:
 - a. Consistency (or lack thereof) with the Comprehensive Growth Plan;
 - b. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood;
 - c. Suitability of the subject property for uses permitted by the current versus the proposed district;
 - d. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town; and
 - e. Availability of sewer, water and stormwater facilities generally suitable and adequate for the proposed use.
7. **Town Council action.** The Town Council is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practical. Prior to adopting or rejecting any zoning map amendment, the Town Council shall adopt a statement describing whether its action is consistent with the adopted Comprehensive Growth Plan and explaining why the Council considers the action taken to be reasonable and in the public interest. Such statement is not subject to judicial review. Voting on map amendments shall occur in accordance with G.S. 160A-75. (This requires special voting margins.)

- D. **Ultimate issue before Town Council on amendments.** When considering proposed official zoning map amendments:
1. The Town Council shall not consider any representations that, if the change is granted, the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. The Town Council shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.
 2. The Town Council shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.
 3. The Town Council shall avoid any action that would constitute arbitrary and discriminating treatment of particular properties, known as spot zoning.
- E. **Citizen comments.** In addition to comments provided in person at public hearings and public meetings, any resident or property owner in the town may submit a written statement regarding a proposed general zoning map amendment to the Town Clerk at least two (2) business days prior to the proposed vote on such change. If submitted according to the preceding condition, the Town Clerk shall submit said written statement(s) to the Town Council at any time prior to the vote.
- F. **Modification of application.**
1. An applicant in a zoning matter may reduce the geographic scope and range of permitted uses or propose a district of lower density or intensity from that requested in the application by filing a statement of the same with the Planning Director.
 2. If the application is limited by excluding certain enumerated land uses, either in the original application or in the amendment thereto, the application shall be treated as for a conditional use zoning district. Any amendment which converts a zoning application into an application for a conditional use zoning district, and any amendment thereto, shall be signed by all the owners of all properties which are the subject of the application or amendment. A conversion to a conditional use zoning district requires full compliance with Section 3.13, including the submission a conditional use permit for a specific use.
- G. **Withdrawal of zoning application.**
1. An applicant may withdraw a rezoning application at any time, by filing a statement of withdrawal with the Planning Director.
 2. The statement or withdrawal shall be signed by all persons who signed the application, or in the event of death or incompetence by the estate's lawful personal representative.

3. If a valid zoning protest petition shall have been filed, the zoning application may be withdrawn, only if the statement of withdrawal is filed no later than five working days prior to the date of the Town Council meeting date upon which the matter is to be returned for action by the Council. Thereafter, the application may be withdrawn only by leave of the Town Council, by majority vote.

H. **Time lapse between similar applications.**

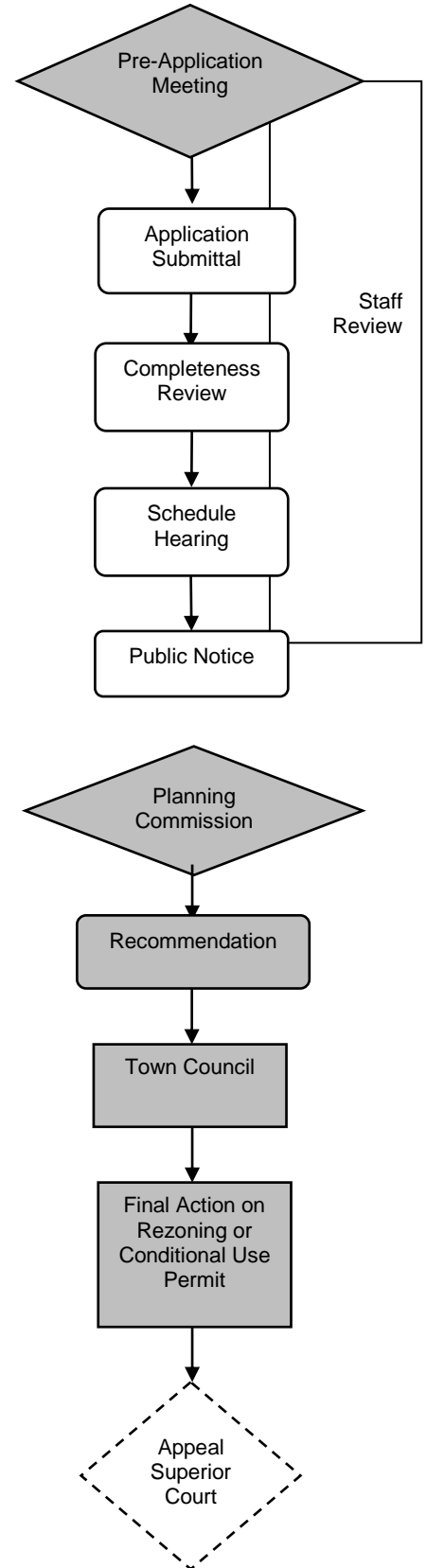
1. In the event of a withdrawal of an application prior to action by the Town Council on the merits, no application may be filed requesting the rezoning of any parcel contained in the withdrawn application prior to the expiration of a minimum period of six months from the withdrawal of the application.
2. When the Town Council has voted on a zoning application and the proposed rezoning has either been denied or has failed to be adopted by the vote required in the event of a valid protest petition, then the application shall be deemed to have expired.
3. No subsequent application requesting a zoning change for any parcel contained in an application which has expired may be made prior to the expiration of a minimum period of six months from the date of expiration.
4. No subsequent application requesting the same zoning category for any parcel contained in an application which has expired may be filed prior to the expiration of a minimum period of one year from the expiration.
5. The Town Council, by a three-fourths-majority vote, may waive the time-lapse requirements of this section if the Council deems it to be in the public interest to do so.

- I. **Appeals.** Appeals of rezoning decisions made by the Town Council shall be taken in accordance with Section 10.5, Judicial review.

(Ord. No. 3376, §§ 8--11, 1-17-06; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3801, § 3, 12-7-15)

3.13. Conditional use district zoning.

- A. **Purpose.** It is the purpose and intent of this section to permit the Town of Garner to create conditional use zoning districts in which limited uses are permitted following approval by the Town Council.
- B. **Two-step process.** Conditional use district zoning shall include a two-step process consisting of a legislative rezoning and a separate conditional use permit following a quasi-judicial hearing. An application for the rezoning of a tract of land to a conditional use zoning district shall be treated the same as a standard rezoning, in accordance with the procedures established in Section 3.12. An application for the conditional use permit shall be treated the same as a special use permit, in accordance with the procedures established in Section 3.14.
- C. **Application.** Prior to the submission of an application for a conditional use district, all applicants shall request a pre-application conference in accordance with Section 3.1.B. If the applicant elects to petition for conditional use district zoning, the applicant must specify the actual use or uses, any additional conditions on the use of the property that the applicant may propose being attached to approval of the rezoning and accompanying conditional use permit and all other development regulations authorized by state law, which are intended for the property specified in the application. The intended use or uses and development regulations must be permitted in the corresponding general use district. The Town Council shall approve or disapprove the petition on the basis of the specific use or uses and development regulations requested.
- D. **Approval process.**
 - 1. **Submittal.** Subject to the application submittal requirements set forth in Section 3.1, the applicant shall concurrently submit a rezoning request and an application for a conditional use permit to the Planning Department. The rezoning request to a new zoning district shall not have any automatically permitted uses. The request shall include the signature of the owner or a power of attorney for the owner in a form acceptable to the Town.



2. **Legally independent decisions.** The Town Council shall treat the rezoning request and the conditional use permit request as legally independent, separate decisions. However, the Town Council shall hear and decide the rezoning request simultaneously with a conditional use permit application.
3. **Planning Director review.** The Planning Director shall process the rezoning request and the conditional use permit application at the same time for review by the Planning Commission and the Town Council.
4. **Planning Commission review.**
 - a. The Planning Commission shall review the rezoning request, subject to the requirements of Section 3.12, and the conditional use permit application subject to the requirements of Section 3.14 at the same time. The Commission shall vote on each application separately with the vote on the rezoning request first and the vote on the conditional use permit second.
 - b. The Planning Commission shall forward a separate written recommendation on each application (the rezoning request and the conditional use permit) to the Town Council for its consideration in a timely fashion according to the provisions of Sections 3.12 and 3.14, respectively.
5. **Public hearing and action by the Town Council.**
 - a. A two-part public hearing shall be held to review the rezoning request, subject to the requirements of Section 3.12, and the conditional use permit application subject to the requirements of Section 3.14 at the same time.
 - b. Once the public hearing has been conducted, the Town Council shall review the rezoning request, make a written finding and give its approval; approval with modifications or conditions; or disapproval. Where the rezoning request is denied, no further action shall be required.
 - c. Following Town Council approval of the rezoning request, the Town Council shall review the conditional use permit and make a written finding and give its approval; approval with modifications or conditions; or disapproval.
6. **Citizen comments.** In addition to comments provided in person at public hearings and public meetings, any resident or property owner in the town may submit a written statement regarding a proposed conditional use district zoning map amendment to the Town Clerk at least two (2) business days prior to the proposed vote on such change. If submitted according to the preceding condition, the Town Clerk shall hold the comments and submit only the names and addresses of the individuals providing written comment to the Town Council prior to the public hearing.

E. **Modification of application.**

1. An applicant in a zoning matter may reduce the geographic scope and range of permitted uses, propose a district of lower density or intensity, or adopt a more restrictive condition from that requested in the application by filing a statement of the same with the Planning Director. Once a condition has been proposed and reviewed at a public hearing, only more restrictive conditions shall be permitted.
2. An application for rezoning to a conditional use zoning district shall not be converted into an application for rezoning to a general use district at any point in the application review process. The applicant must submit a new application for rezoning to a general use district in accordance with the requirements of Section 3.12, Zoning map amendments (rezoning).

F. **Appeal.** Appeals of rezoning decisions made by the Town Council shall be taken in accordance with Section 10.5, Judicial review.

(Ord. No. 3396, § 1, 4-3-06; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3801, § 4, 12-7-15; Ord. No. 3881, §§ 1, 2, 9-5-17)

3.14. Special use permit.

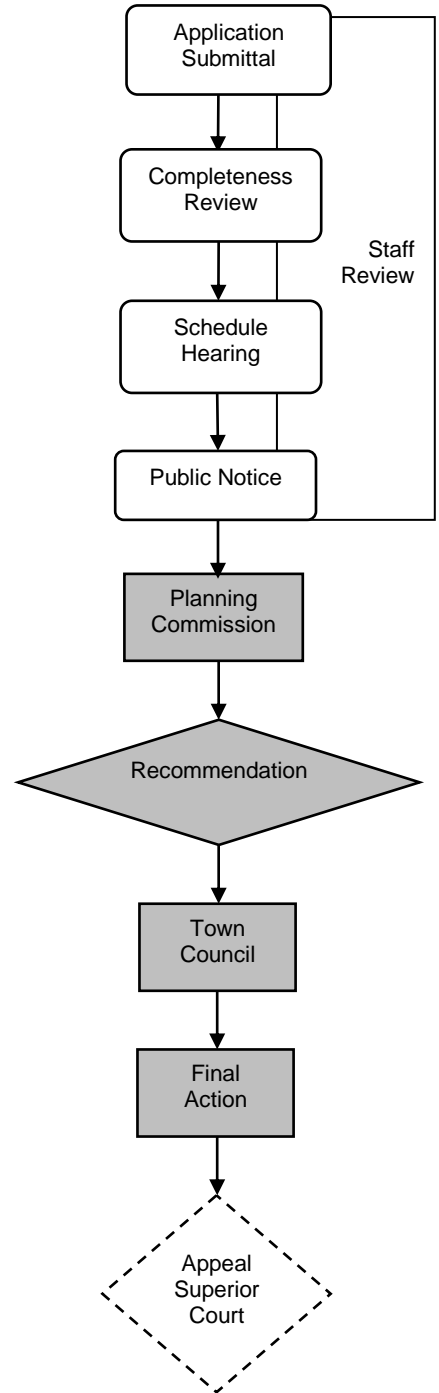
A. **Purpose.** Special use permits allow specified uses by special exception subject to the terms and conditions set forth for such uses in this UDO. A special use permit may be approved, approved with special conditions or denied by the Town Council after a quasi-judicial public hearing which is subject to state law and Section 3.1 of this UDO related to a fair and impartial hearing, ex parte communications and competent evidence. Prior to the hearing, the application is reviewed by the Town staff and the Planning Commission.

B. **Applicability.**

1. A special permit use ordinarily has city-wide impacts, and includes the following:
 - a. Any mixed use, commercial or industrial development encompassing 100,000 or more square feet of gross floor area;
 - b. Any office use encompassing 20,000 or more square feet of gross floor area;
 - c. Any single-family residential subdivision of 200 or more lots;
 - d. Any multifamily residential development of 100 or more units; and
 - e. All other special uses listed on the use table in Section 5.1.

2. **Staff review and report.**

- a. An application for a special use permit shall be filed with the Planning Department and will be presented to the Planning Commission only when it is deemed to be complete.
- b. A report setting forth the Planning Director's findings regarding the application's compliance with all ordinance requirements and any staff recommendations shall be presented at the public hearing. To the extent disclosed to the staff prior to preparation of any staff report, the staff report shall contain a statement identifying all expert witnesses likely to testify at the hearing, including the subject area of their testimony.
- c. If the staff proposes a finding or conclusion that the applicant fails to comply with the requirements of this UDO, it shall identify the



requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

- d. The report may be presented to the Planning Commission and to the Town Council for special use permits at the respective meeting or with the agenda for the applicable meeting that is delivered in advance.

C. Approval process.

1. **Review by Planning Commission.** The Planning Commission shall forward a written recommendation on the special use permit application to the Town Council for its consideration in a timely fashion.
2. **Action by Town Council.**
 - a. The Town Council shall not conduct the public hearing or take action on the special use permit application until it has received the Planning Commission recommendation, or until 60 days has passed since the Planning Commission first reviewed the application.
 - b. The hearing shall be conducted as follows:
 - (1) The Mayor shall open the hearing and call upon the planning staff and then the applicant and then the opponents, if any, to present their testimony and exhibits. Mayor as used in the UDO related to SUP's means the presiding officer.
 - (2) During or following the applicant's presentation, any Council member may request additional evidence from the applicant on any of the specific SUP criteria as to which there has been evidence, and/or on any SUP criteria as to which there has been no evidence presented.
 - (3) The applicant must present competent evidence, and must carry the burden, as to those particular SUP criteria which are genuine issues in the proceeding by virtue of either having been identified in the Staff report, having been an issue on which a Council member requests additional information, or having been an issue on which an opponent presents competent evidence.
 - (4) The applicant is not required to present testimony on any SUP criteria not identified as a genuine issue by one of the three means set forth above, and is relieved of any obligation to present evidence on or carry the burden on those SUP criteria, notwithstanding any other provision of this ordinance.
 - (5) If any party has not had notice of the intention of another party to present competent evidence on any of the SUP criteria within sufficient time prior to the hearing to attempt

to secure testimony on that particular issue, the Council may by majority vote recess the hearing for a reasonable time such as 60 days, within which the party may attempt to secure such testimony.

3. **Decision Process**

a. Following the close of the hearing, the Council shall consider the application.

(1) Prior to a motion and vote approving or denying the application, the Council may by majority vote, recess the proceeding for further evidence or other proceedings at a later and/or table deliberations in order to allow the parties an opportunity to discuss possible accommodations, propose additional conditions, and undertake efforts to resolve disputes between the parties.

(2) The Council may, by majority vote, approve or deny the application based on the special use criteria. All required findings should be stated in the motion (see below as to when detailed findings are required.)

b. The written order as entered approving or denying the application must be based upon specific findings of fact arising from the evidence, provided that the Council is not required to make detailed findings on criteria as to which there was no issue raised by the Staff report, or by a question from Council, or by evidence from the opponents, if any.

c. In those cases where it is necessary to prepare a detailed fact-finding order granting or denying the application, the formal issuance of the order shall be deferred until a draft order shall have been prepared by staff and/or the Town attorney to be returned to the Council for review and issuance of the order.

D. **Special use review criteria.** Special use applications may be approved by the Town Council if it finds that all of the following criteria have been met:

1. The proposed use will not endanger the public health or safety;
2. The proposed use will not substantially injure the value of adjoining or abutting property;
3. The proposed use complies with all applicable provisions of this UDO;
4. If completed as proposed, the development will comply with all requirements of this section;
5. The proposed use will be compatible with the proximate area in which it is to be located;
6. The proposed use is consistent with the Transportation Plan, other relevant adopted plans and policies, and the stated purpose and intent of

this UDO (the fact that the use is permitted under certain circumstances in the zoning district creates a rebuttable presumption that the proposed use is in harmony with the intent of the UDO as relates to the general zoning plan);

7. The proposed use is compatible with adjacent uses 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);
8. Any significant adverse impacts resulting from the use will be mitigated or offset, including impacts on the natural environment;
9. The public safety, transportation and utility facilities and services will be available to serve the subject property while maintaining sufficient levels of service for existing development; and
10. Adequate assurances of continuing maintenance have been provided.

E. Conditions of approval.

1. Without limiting the foregoing, the permit-issuing Council may attach a condition limiting the permit to a specified duration. The Town Council may impose such reasonable conditions, as necessary to address the impacts of the proposed developments on:
 - a. Adjoining property;
 - b. The existing natural and man-made features of the site;
 - c. Off-site and on-site traffic flow;
 - d. Public utilities; and
 - e. Such other public services or goals of the Comprehensive Growth Plan or the Transportation Plan that may be negatively impacted by the proposed development.
2. All additional conditions or requirements shall be entered on the permit.
 - a. All additional conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirements of this UDO.
 - b. A vote may be taken on additional conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in paragraph E., above.

- F. Performance bond to ensure compliance with special use permit.** There may be cases when it would be unreasonable to require the permit recipient to comply with all UDO requirements before commencing the intended use of the property or occupying any buildings or selling lots in a subdivision, such as weather conditions or other factors beyond the control of the permit recipient (exclusive of financial hardship). In these cases, the Planning Director may

Town of Garner Unified Development Ordinance (UDO)

authorize such commencement or occupancy or sale if the permit recipient provides a performance bond or other security in accordance with Section 8.6, Improvement guarantees.

(Ord. No. 3376, § 12, 1-17-06; Ord. No. 3396, § 2, 4-3-06; Ord. No. 3558, § 2, 7-7-09; Ord. No. 3694, § 1, 5-21-13)

3.15. Variance.

A. **Applicability.** The Board of Adjustment is authorized to grant variances from the zoning district dimensional standards and off-street parking and loading standards of this UDO that will not be contrary to the public interest or the spirit of this UDO where, owing to special conditions, a strict enforcement of the provisions of this UDO would result in unnecessary physical (not economic) hardship to the property owner.

Commentary: No sign or landscaping variances permitted.

B. **Application.** An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Planning Director.

C. **Approval process.**

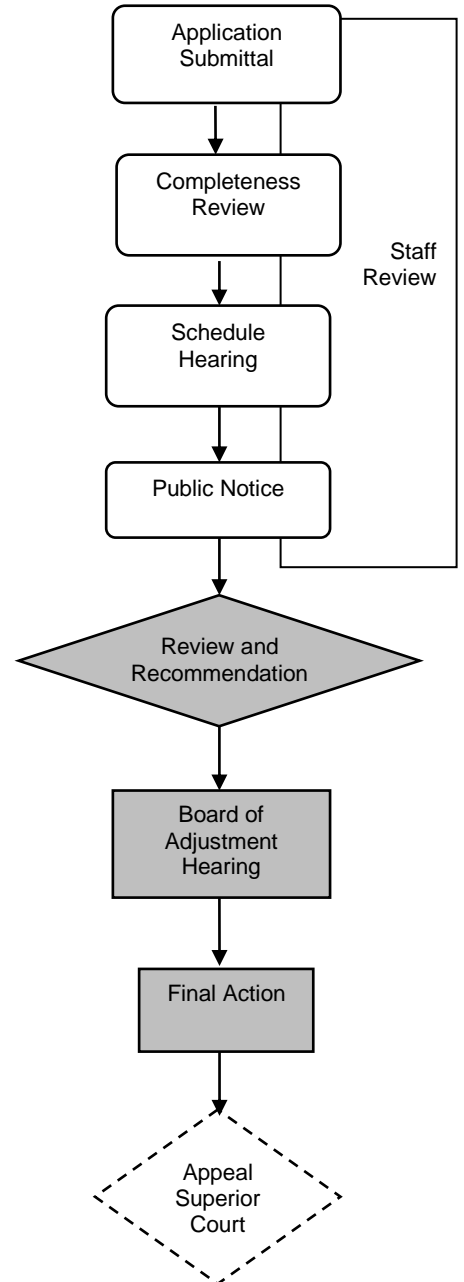
1. **Staff review and report.** The Planning Director shall prepare a staff report which shall be provided to the applicant or appellant before the Board of Adjustment meeting at which the application is scheduled to be reviewed.

2. **Public hearing notice.** Following mailed and posted notice in accordance with Section 3.1, Approval procedures, the Board of Adjustment shall hold a public hearing.

3. **Action by the Board of Adjustment.**

a. After review of the variance application and the public hearing, the Board of Adjustment shall make a written finding and give its approval; approval with modifications or conditions; or disapproval.

b. Before taking action on a variance, the Board of Adjustment shall discuss and review each of the criteria set forth in paragraph F. below and evaluate their relevance to the variance case using information and testimony provided during the hearing. After this review is completed, the Board by one motion may grant the variance unless the Board, by majority vote, requires that a separate vote for an affirmative finding on each of the aforementioned criteria is necessary in order to properly evaluate the case. Insofar as practical, a motion to make an affirmative finding to grant a variance shall include a statement of the specific reasons or findings of fact supporting such motion.



- c. A motion to deny a variance may be made on the basis that any one or more of the criteria is not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board of Adjustment's decision if supported by at least two members.
- D. **Requests to be heard expeditiously.** As provided in Section 3.1, the Board of Adjustment shall hear and decide all such matters as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Section 3.1, and obtain the necessary information to make sound decisions.
- E. **Burden of proof in variances.** The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below as well as the burden of persuasion on those issues.
- F. **Approval criteria.** The Board of Adjustment may grant a variance if it concludes that:
 1. **Extraordinary conditions.** There are practical difficulties or unnecessary hardships in carrying out the strict letter of this UDO. In order to support this finding, the applicant must prove:
 - a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - b. That the hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public may not be a basis for granting a variance
 - c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - d. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
 2. **Compatibility.** The variance, if granted, would be in harmony with the general purpose of the Comprehensive Growth Plan and intent of this UDO and preserve its spirit. The Board of Adjustment may reach this conclusion if it finds that the following conditions are present:
 - a. The variance will not result in the extension of a nonconforming situation in violation of Article 9, Nonconformities; and

- b. The variance will not result in a use variance, that is, allowing a non-permitted use to be permitted.

3. Flood mitigation.

Commentary: This paragraph applies only to variance relief from the stormwater provisions.

- a. No variance shall be issued within any designated floodway or floodplain unless the Board of Adjustment finds the following:
 - (1) The proposed use is not likely to cause any increase in flood levels during the base flood discharge; and
 - (2) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- b. In evaluating a variance application, the Board of Adjustment shall consider all technical evaluations and all relevant standards specified in other sections of this UDO. Additionally, the Board shall assess:
 - (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger of life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of waterfront location, where applicable;
 - (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed uses;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the Comprehensive Growth Plan and floodplain management program for that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

- (10) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

G. Conditions.

1. In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.
2. A variance may be issued for an indefinite duration or for a specified duration only. In either case, the variance shall expire as set forth in paragraph H. below unless construction has commenced.
3. The nature of the variance and any attached conditions shall either be entered on the face of the zoning compliance permit or the zoning compliance permit may note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this UDO.

H. Expiration of approval. Variances are granted for a period of two years from the date of the letter informing the applicant of the decision of the Board. If construction of the project has not commenced within this period, the variance shall expire. Notice that the variance will expire within two years shall be conveyed to the applicant in writing as part of notification of approval of same.

I. Appeal. Appeals of variance decisions made by the Board of Adjustment shall be taken in accordance with Section 10.5, Judicial review.

(Ord. No. 3720, § 2, passed 12-2-13)

3.16. Administrative appeal.

Commentary: *In general, only an aggrieved party (one whose rights or interests are injuriously affected) may bring an appeal.*

A. Applicability. An appeal by any person who has standing under G.S. 160A-393(d) that is aggrieved by a final order, interpretation or decision of the Planning Director, Building Official or other administrator of the Town may be taken to the Board of Adjustment. The officer from whom the appeal is taken shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

B. Application. An appeal is taken by filing with the Town Clerk a written notice of appeal specifying the grounds for the appeal. A notice of appeal shall be considered filed when delivered to the Town Clerk and the date and time of filing shall be entered on the notice by the staff.

C. Deadline for submission of application.

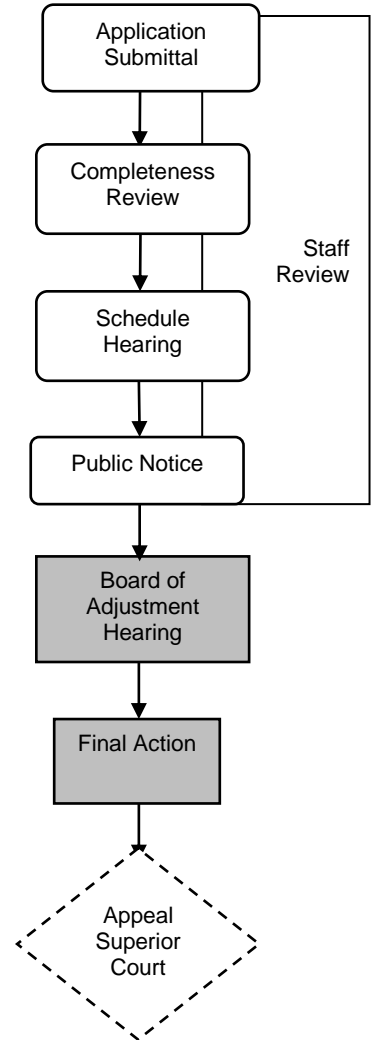
1. An appeal from any final decision of the Town Council, Planning Commission and the Board of Adjustment shall be taken in accordance with Section 10.5, Judicial review.

2. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

3. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

4. The landowner or applicant has the option to provide constructive notice of a decision to all persons with standing to appeal from the date the sign is posted containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision. Such sign must be prominently posted on the property that is the subject of the decision must remain on the property for at least 10 days. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.

D. Record of administrative decision. The Planning Director shall transmit to the Board of Adjustment all the papers constituting the record upon which the action



appealed from was taken. The Planning Director shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

E. Effect of appeal.

Commentary: An appeal does not stop action lawfully approved by the Town (including construction activities authorized by a building permit). Only actions presumed in violation of this UDO are stayed.

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

F. Public hearing notice. Published and mailed notice of the Board of Adjustment's hearing shall be provided in accordance with Section 3.1.

G. Requests to be heard expeditiously.

1. The Board of Adjustment shall hear and decide all such matters as expeditiously as is practicable, consistent with the need to follow regularly established agenda procedures, provide notice and obtain the necessary information to make sound decisions.
2. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

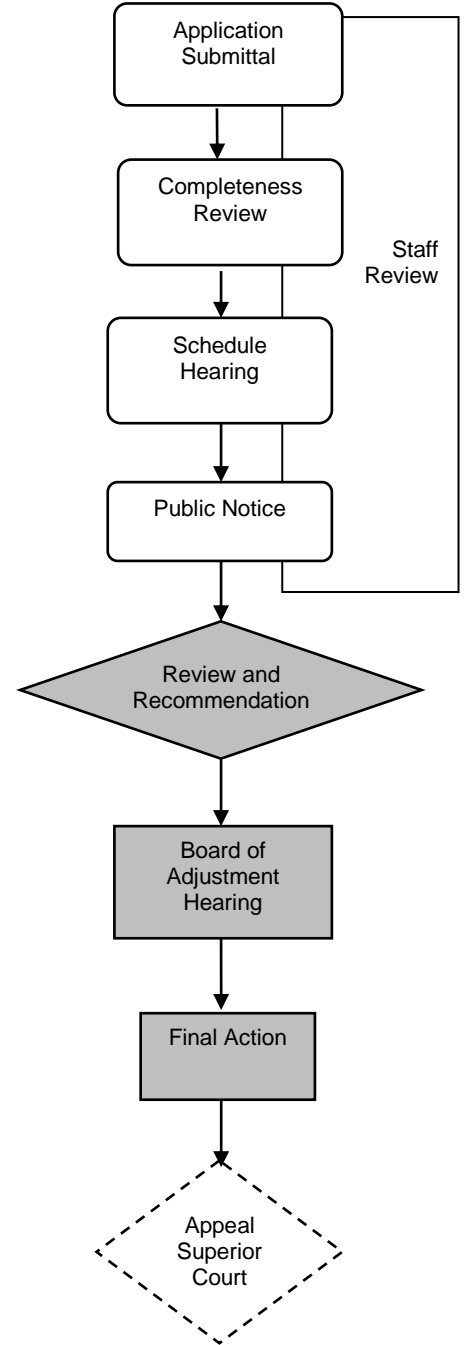
H. Action by Board of Adjustment.

1. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

2. A motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion. A majority of the members shall be required to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
 - I. **Notice of decision.** See Section 2.3 Quasi-Judicial Decisions and Judicial review.
 - J. **Appeals.** Appeals of decisions made by the Board of Adjustment shall be taken in accordance with Section 10.5, Judicial review.
(Ord. No. 3558, § 2, 7-7-09; Ord. No. 3720, § 3, 12-3-13)

3.17. Special Exceptions.

- A. **Applicability.** The Board of Adjustment is authorized to grant special exceptions for the special circumstances set forth in this section to allow for a reasonable accommodation under the Federal Fair Housing Act.
- B. **Application.** An application for a special exception under this section shall be submitted to the Board of Adjustment by filing a copy of the application with the Planning Director. No filing fee shall be required for such application.
- C. **Approval process.** The procedures set forth in Section 3.15.C for variances shall apply to Staff Review and Report, Public Hearing Notice and Action of the Board of Adjustment.
- D. **Approval criteria.** The Board of Adjustment shall grant a special exception to any provision of this ordinance as a reasonable accommodation under the Federal Fair Housing Act if the Board finds by the greater weight of the evidence that the proposed special exception is:
 - i. **"Reasonable."** An accommodation will be determined to be reasonable if it would not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the Town and/or constitute a substantial of fundamental alteration of the Town's ordinance provisions); and
 - ii. **"Necessary."** An accommodation will be determined to be necessary if it would provide direct or meaningful therapeutic amelioration of the affects of the particular disability or handicap), and would afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts in the Town.



(Ord. No. (2010) 3605, § 2,12-21-10)

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