

ARTICLE 4. REVIEW PROCEDURES

4.1. PURPOSE

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

4.2. GENERAL

4.2.1. Interpretation

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

4.2.2. Effects on Successors

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

4.2.3. Permit Choice

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

4.2.4. Revocation

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

4.2.5. Development Moratoria

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

4.2.6. Types of Decisions

Pursuant to G.S. § 160D-102, all applicable definitions and regulations from that chapter apply, particularly the definitions below.

- A. **Administrative.** Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in G.S. Chapter 160D or local government development regulations. These are sometimes referred to as ministerial decisions or administrative determinations.
- B. **Legislative.** Decisions that include the adoption, amendment, or repeal of a regulation. A legislative hearing with public comment is required.

- C. **Quasi-judicial.** Decisions requiring evidentiary hearings and involving findings of fact regarding a specific application of a development regulation and competent, substantial, and material evidence, and are carried out according to G.S. § 160D-406 and all other specifications herein. Quasi-judicial cases are unique and as such require high-level scrutiny, subjective decision-making, and discretion.

4.2.7. Vested Rights and Expiration

Pursuant to G.S. § 160D-108, a vested right, once established, precludes any action by the Town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation(s), except where a change in state or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use.

A. Building Permits

1. As provided in G.S. § 160D-1111, building permits expire six months after issuance, if the permit work has not commenced.
2. Discontinuance of work for a period of 12 months shall render the permit expired.

B. Zoning Compliance Permits

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

C. Site-Specific Vesting Plans

1. Pursuant to G.S. § 160D-108.1, the appropriate decision-making body’s approval of a site-specific vesting plan establishes a vested right that runs with the land and authorizes the recipient to complete development as authorized by the approved plan or permit.
2. Site-specific vesting plans shall remain vested for two years, unless, upon applicant request, the Town Council grants a longer period of up to no more than five years total.
3. The right shall terminate at the end of the vesting period if the next requisite permits have not been procured for the project.
4. Deviation from the site-specific vesting plan shall result in forfeiture of the vested right.

Commentary:

Site specific vesting plans include planned developments, preliminary subdivision plats, site plans, preliminary or general development plans, special use permits, and conditional zoning districts.

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

4.3. REVIEW AUTHORITY TABLE

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

Figure 4.3-A: Review Authority Table

Process	Type	Review	Final Action	Appeal Process	Public Notice Level (See Public Notice Requirements 4.4.6)	Section
4.5 Subdivision						
Major Subdivision	Administrative	TRC	Planning Director	BOA	N/A	4.5.3
Minor Subdivision/ Final Plat	Administrative	TRC	Planning Director	BOA	N/A	4.5.2 4.5.4
4.6 Map and Text Amendments						
Rezoning (Map Amendment)	Legislative	Planning Commission	Town Council	Superior Court	A, B, C	4.6.1
Conditional Zoning District/ Conditional Rezoning	Legislative	Planning Commission	Town Council	Superior Court	A, B, C	4.6.2
Text Amendment	Legislative	Planning Director/ Planning Commission	Town Council	Superior Court	A, B, C	4.6.3
4.7 Permits						
Zoning Compliance Permit	Administrative	Planning Director	Planning Director	BOA	N/A	4.7.1
Sign Permit	Administrative	Planning Director	Planning Director	BOA	N/A	4.7.2
4.8 Site Plans and Administrative Review						
Site Plan	Administrative	TRC	Planning Director	BOA	N/A	4.8.1
Administrative Modification	Administrative	Planning Director	Planning Director	BOA	N/A	4.8.2
Determination of Vested Right	See Written Interpretation					
Written Interpretation	Administrative	Planning Director	Planning Director	BOA	N/A	4.9.2
4.9 Miscellaneous						
Administrative Appeal	Quasi-Judicial	Planning Director	BOA	Superior Court	A, B	4.9.3
Special Use Permit	Quasi-Judicial	TRC	Town Council	Superior Court	A, B, C	4.9.2
Traffic Impact Analysis	Administrative	TRC	Per primary development permit	Per primary development permit	Per primary development permit	4.9.1

Process	Type	Review	Final Action	Appeal Process	Public Notice Level (See Public Notice Requirements 4.4.6)	Section
Variance	Quasi-Judicial	TRC	BOA	Superior Court	A, B, C	4.9.4
Temporary Use Permit	Administrative	TRC	Planning Director	BOA	N/A	4.9.5
4.10 Environmental						
Flood Mitigation Permit	Quasi-Judicial	Town Engineer (Floodplain Administrator)	BOA (acting as WRB)	Superior Court	Per Variance	4.10.1
Notes:						
TRC = Technical Review Committee, which also includes Planning Director						
BOA = Board of Adjustment						
WRB = Watershed Review Board						

4.4. COMMON REVIEW PROCEDURES

4.4.1. Pre-application Conference

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

4.4.2. Application Requirements

- A. Applicant Eligibility
 - 1. The property owner or the property owner's authorized agent may submit the applications described in this article. Authorized agents must produce notarized documentation of permission from the property owner.
 - 2. Pursuant to G.S. § 160D-703, the Town Council may initiate rezonings through direction to the Planning Director.
- B. Application Completeness
 - 1. The Planning Director determines the completeness of each application.
 - 2. A complete application contains all materials and requirements set forth on each application form as maintained and provided by the Planning Director.

3. The Planning Director may find that additional information is necessary to determine the sufficiency of a submitted application. The Planning Director is authorized to require the applicant to present this information for inclusion in the consideration of the application.
4. Incomplete applications do not have the sufficient information or materials necessary for review and processing.
5. No application will be considered complete without rendering of appropriate fees at submittal.
6. If an application is found to be incomplete, the Planning Director shall notify the applicant and provide a list of deficiencies or missing materials that need correcting.

C. Deadline

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

D. Refunds

The Town may fully refund application fees for withdrawn applications, provided review of the application has not begun.

E. Permits and Approvals from Outside Agencies

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

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

4.4.3. Withdrawal

A. Voluntary

1. An applicant may withdraw an application at any time, by filing a signed, written statement of withdrawal with the Planning Director.
2. The statement of withdrawal shall be signed by all persons who signed the application, or in the event of death or incompetence, by the estate's lawful personal representative or court appointed guardian or duly authorized power of attorney.

B. Administrative

1. Any application that has not provided any requested revisions or materials within 120 days of the request shall be administratively withdrawn by the Planning Director, with no refund of fees.
2. The applicant shall be notified of the pending withdrawal in writing or by email 90 days after requested revision, with the withdrawal effective 120 days after requested revision.

4.4.4. Resubmission

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

4.4.5. Neighborhood Meetings

- A. The purpose of a neighborhood meeting is to inform neighbors of the development proposal, receive their comments, and potentially resolve any conflicts or concerns prior to the official hearing.
 - 1. Applicability
A neighborhood meeting(s) is required for the following:
 - a. Rezoning / Map Amendments.
 - b. Conditional Zonings.
 - c. Special Use Permits.
 - 2. A pre-submittal neighborhood meeting is required for all of the preceding applications and shall be held following the pre-application conference and before the official application is submitted.
 - 3. A second neighborhood meeting is required for any of the preceding applications containing a site, subdivision, or master plan and shall be held after official application submittal and before the application may proceed to public hearing.
 - 4. The applicant shall hold the neighborhood meeting(s) within the town's ETJ in an accessible location that is proximate to the site or at a location that is centrally located within the town and at a time in the late afternoon or early evening that is convenient to most people that work daytime jobs.
- B. Notification
See requirements for mailed notice, Section 4.4.6.

- C. The applicant shall submit a meeting summary identifying all issues raised and any resolution or explanation, a list of attendees, a list of addresses where notices were mailed, and a list of returned mail notices no later than 10 calendar days prior to the public hearing.

4.4.6. Public Notice Requirements

A. Published

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

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

B. Posted

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

Commentary:
Note that NC GS §160D-602 requires posting a site 10-25 days before the hearing.

C. Mailed

1. Mailed notice shall be provided to all property owners and tenants within 1,000 feet of the affected parcel as reflected in the Wake County tax records at the time of submittal.
2. Where the tax records reflect a mailing address for an owner of property to be different than the address of the property owned, then notification shall also be mailed to the address of the property itself so that the tenant may be notified.
3. For zoning map amendments, properties shall be considered abutting even if separated by a street, railroad, or other transportation corridor or right-of-way. Mailed notices shall contain the same content as published notices outlined in subsection 4.4.6.A.

Commentary:
When a mailed notice involves properties within an HOA, it is best practice to send a letter directly to the HOA also.

4. Pursuant to G.S. § 160D-602(b), if a mailed notice for a zoning map amendment hearing includes more than 50 individual owners of more than 50 individual properties, the Town may instead elect to publish notice of the hearing as specified in G.S. § 160D-602(a).
5. If a notice contains errors regarding the time, date, or location of the hearing or the location of the subject property, the notice shall be rendered inadequate. However, if any other minor or clerical defects are present, but time, date, and location of hearing and subject property are correct in the notice, the notice shall remain valid. If questions of validity arise, the decision-making body shall make a formal finding of substantial compliance or lack thereof. If the decision-making body finds there is substantial compliance, it may then begin the proceedings for the case.

4.4.7. Hearings

A. Modification of Application

1. The applicant may agree to application modifications in response to questions or comments by persons appearing at the public hearing or to recommendations by the Town Council, Planning Commission, or Board of Adjustment.
2. Unless such modifications are so substantial that the board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the Planning Department.
3. The decision-making body may refer the case back to the recommending body for review, prior to further consideration. The decision-making body shall choose one of the following options:
 - a. Continue the hearing to a new date and time certain within 45 days in accordance with the provisions below; or
 - b. Close the hearing and re-publish notice of any future hearing in accordance with this article.

B. Continuation

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

C. Evidentiary Hearings

Pursuant to G.S. § 160D-406, evidentiary hearings shall be required as specified in the Review Authority Table.

1. Oaths

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

2. Parties

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

3. Evidence

- a. All findings and conclusions shall be based on substantial, competent, and material evidence. All competent evidence must be admissible in a court of law except as provided by G.S. § 160D-1402(j)(3).
- b. Competent evidence does not include the opinions of lay witnesses attesting to property value implications, traffic impacts, or other matters about which only expert testimony would generally be admissible.

4. Meeting Record

Records of meetings shall be kept pursuant to state public record retention laws.

4.4.8. Written Decision

Within 30 calendar days after a final decision is made by the Town Council, Planning Commission, Board of Adjustment, Planning Director, or other review body under the requirements of this UDO, a copy of the written decision shall be sent to the applicant or appellant.

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

4.4.9. Extensions

The Planning Director shall grant time extensions to approved and unexpired special use permits and administrative development approvals according to the provisions of this subsection.

- A. To receive an extension, the permit holder must file a written request with the Planning Director.

- B. One extension is permitted per parcel per development approval.
- C. Permit time extensions shall be limited to a period not to exceed 24 months from the date of the original permit expiration.

4.4.10. Completing Developments in Phases

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

4.5. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - SUBDIVISIONS

4.5.1. Subdivision in General

A. Applicability

1. Pursuant to Article 8 of G.S. § 160D Article 8, subdivision approval shall be required before the division of land into two or more parcels.
2. In accordance with G.S. § 160D-802, the following types of subdivisions proceed directly to Final Plat (per Section 4.5.4.):
 - a. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resulting lots are equal to or exceed the standards of this UDO.
 - b. The division of land into parcels greater than 10.0 acres where no street right-of-way dedication is involved.
 - c. The public acquisition of land for water or sewer infrastructure or the widening or opening of streets or public transportation corridors.
 - d. The division of a tract in single ownership whose entire area is no greater than 2.0 acres into not more than three lots, where no street right-of-way dedication for new streets is involved and where the resultant lots are equal to or exceed the standards of this UDO.
 - e. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession, per G.S. § 29.
 - f. The division of a tract into plots or lots used as a cemetery.

Commentary:
These types of subdivisions were previously referred to as "exempt" subdivisions.

B. No Subdivision without Plat Approval

1. As provided in G.S. § 160D-807, no person may subdivide land except in accordance with all the provisions of this UDO. No subdivision may occur unless and until a final plat of the subdivision has been approved in accordance with the provisions of this section and recorded in the Wake County Registry. The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been approved or recorded in the Wake County Registry. Such arrangements shall strictly follow the provisions of G.S. § 160D-807.
2. As provided in G.S. § 160D-807, the Wake County Register of Deeds shall not record a plat of any subdivision within the Town's planning

jurisdiction unless the plat has been approved in accordance with the provisions of this UDO.

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

4.5.2. Minor Subdivision

- A. A minor subdivision is any subdivision that does not involve any of the following:
1. Creation of a total of five or more lots.
 2. Creation of any new public streets.

3. Extension of the public water or sewer system operated by the City of Raleigh.
 4. Installation of drainage improvements through one or more lots to serve one or more other lots.
- B. A preapplication conference with the City of Raleigh Public Utilities Department (CORPUD) is required prior to submission of an application to the Town.
 - C. After a preapplication conference and sketch plan review and approval by the TRC, the applicant may apply for final plat approval.
 - D. See Section 4.5.4. for approval criteria for minor subdivision final plats.

Commentary:
Approval of utility tap locations by CORPUD is required prior to final plat review by the Town.

4.5.3. Major Subdivision

- A. All other subdivisions of land not listed in Section 4.5.2. shall be considered major subdivisions.
- B. Review
 1. A major subdivision requires submission and review of a preliminary plat.
 2. The Town shall forward the preliminary plat to the Wake County Health Department and any other potentially affected agencies including, but not limited to, the North Carolina Department of Transportation (NCDOT) and the Wake County Board of Education.
 3. The TRC shall review the preliminary plat and application for consistency with the UDO. For preliminary plats that do not meet the standards of this Ordinance, a list of deficiencies shall be provided to the applicant, which may also include a list of potential options for bringing the preliminary plat into compliance.
 4. Upon a determination by the TRC that the preliminary plat meets the standards of this Ordinance, it shall be approved by the Planning Director.
- C. Action Following Preliminary Plat Approval
 1. Following preliminary plat approval, the applicant may proceed to comply with other requirements of this UDO including special use permits, construction plans, preparation of the final plat, and other approvals and permits as may apply.
 2. Preliminary plat approval does not guarantee the approval of the final subdivision plat.

4.5.4. Final Plat

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

- B. The final plat shall only constitute the portion of the approved preliminary plat that the subdivider proposes to record and develop at the time of submission. Approval shall be subject to the installation and completion of subdivision improvements described in this UDO.
- C. Application
1. The final subdivision plat shall be submitted in accordance with G.S. § 47-30 and with the requirements maintained by the Planning Director.
 2. Endorsements Required (See Appendix of Certificates)
 - a. Certificate of ownership.
 - b. Certificate of survey and accuracy.
 - c. Certificate of approval by the Planning Director.
 - d. Wake County Plat Review Officer's certificate.
 - e. Other endorsements as applicable:
 - i. Certificate of dedication.
 - ii. Certificate of approval by City of Raleigh Utilities.
 - iii. Wake County Environmental Health certificate of approval of non-municipal water supply and sewage disposal systems.
 - iv. NCDOT Division 5 of Highways District 1 Engineer certificate.
 3. When required by the federal government, all final plats shall contain a certificate for a federally funded project.
 4. No final plat showing lots served by private drives may be recorded unless the final plat contains a notation that: "Further subdivision of any lot shown on this plat as served by a private drive may be prohibited by the Town of Garner UDO."
- D. Approval
1. The Planning Director shall not approve a final subdivision plat until the TRC has certified that the final plat meets all applicable requirements of this Ordinance.
 2. When required improvements are not fully installed, the Planning Director shall not approve a final subdivision plat until sufficient financial security in the amount of 125 percent of the required, uninstalled improvements is furnished to the Town, guaranteeing the completion of the improvements.
 3. Additional approval criteria for minor subdivision final plats are as follows:

- a. The plat complies with the standards of Articles 8 and 9, Subdivision, design/improvements, and any other applicable requirements of this UDO.
- b. The plat is consistent with the approved preliminary plat, if applicable.
- c. The plat indicates that all subject lots will have frontage on existing, approved streets or such provision will be made.
- d. New or residual parcels will conform to the requirements of this UDO and other applicable regulations.
- e. No new streets (not including widenings of existing roads) or road extensions are required or are likely to be required for access to interior property, or they have been provided.
- f. No drainage or utility easements will be required to serve interior property, or they have been provided.
- g. No extension of public sewerage or water lines will be required, or they have been provided.
- h. All necessary right-of-way has been offered for reservation or dedication.
- i. The proposed subdivision will not adversely affect permissible development of the remainder of the parcel or of adjoining property.

4.6. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – MAP AND TEXT AMENDMENTS

4.6.1. Rezoning / Map Amendment

A. Initiation

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

B. Review

The Planning Director shall review the complete application and prepare a written report summarizing the nature of the request and its compliance with this Ordinance as applicable. The report and subsequent revisions shall be made available to the applicant, the Town Council, and the Planning Commission.

C. Public Hearing

At the conclusion of the preceding review, the Town Clerk shall establish a date for a public hearing and schedule and advertise a public hearing.

D. Citizen Comments

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

E. Planning Commission

1. At the conclusion of the public hearing, and in accordance with G.S. § 160D-604(b), the Council shall refer the case to the Planning Commission for review and recommendation.
2. Within 30 days of the referral, the Commission shall examine the request and forward a written recommendation to Town Council, including a statement on consistency with applicable adopted plans. After 30 days have passed from the date of referral, the Town Council may proceed towards a decision without the Commission's report.

F. Recommendations

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

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

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

G. Modification of Application

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

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, 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. Town Council

1. The Town Council may not take final action on a request until it has received the Planning Commission recommendation or 30 days have

Commentary:
Requesting to limit uses must be a condition on a conditional zoning or conditional rezoning application.

passed since the zoning map amendment was first referred to the Planning Commission.

2. Pursuant to G.S. § 160D-605, the Council shall approve statements regarding comprehensive plan consistency and reasonableness of the request.

4.6.2. Conditional Zoning

A. Applicability

Conditional zoning shall follow the same review and approval process as Section 4.6.1., with additional standards as described in this subsection. Where conflict occurs, these standards shall apply.

B. Underlying General Zoning District

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

C. Designation and Tracking

Any conditional zoning district shall be designated by the letters “CZ” followed by a unique number assigned chronologically. These designations shall be applied to the official zoning map as in the case of other amendments. Ordinances are on file in the Planning Department.

D. Tiers

There are two tiers of conditional zoning districts.

1. Tier 1

Tier 1 conditional zoning requests identify a base district(s) and any uses in that base district’s permitted uses which are permitted or excluded in the conditional zoning district. Dimensional standards of the base district remain intact and unchanged. Tier 1 conditional zoning requests do not require a master plan. Any uses in the underlying zoning district identified as requiring a special use permit will still require special use permit review if they are to be constructed.

2. Tier 2

Tier 2 conditional zoning requests identify a base district(s), any uses in that base district’s permitted uses which are permitted or excluded in the conditional zoning district, dimensional standards for each use permitted (either by-right or by other criteria such as Special Use Permit), and a master plan. Tier 2 specifications shall also apply to any uses requiring conditional zoning approval as outlined in Article 6, Use Regulations. Any uses in the underlying zoning district identified as requiring a special use permit will still require special use permit review if they are to be constructed.

Commentary:

Conditions may neither circumvent the intent of the established general district nor alleviate the regulations without providing a method of alternative compliance. Conditions may impose stricter regulations.

a. Master Plan

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

- i. The correct number of external, cross-access, and adjacent property stub-out access points, although the exact location may be modified through subsequent review.
- ii. The uses desired and their general location and intensity or density. Tier 2 conditional zoning requests shall include a table of permitted uses for the proposed district. It shall include all uses listed in the table of permitted uses in Article 6, and whether they are permitted or excluded.
- iii. The appropriate setbacks, dimensional standards, and other regulations for each zoning district, use, or area. Tier 2 conditional zoning requests shall include a table of dimensional standards. This shall be based on the general zoning district and updated to reflect altered dimensional standards. Any other information necessary to ensure that the master plan can meet the standards required by this Ordinance to execute a logical development plan. This may include preliminary description of utility, stormwater, and/or transportation conditions or connections.

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

- E. If the Town Council modifies any conditions or imposes new ones, the property owner or authorized agent must provide (or decline) written consent prior to any decision of approval.
- F. Addition of property to a conditional zoning district shall require a separate conditional rezoning. Previous conditional rezonings shall not be considered as precedent setting or entitle future additions to any specific development pattern, uses, or other entitlement.
- G. Entitlement, recordation, or construction of any or all portions of a conditional zoning district master plan shall not constitute any precedent or vesting of rights, design, development standards, uses, or otherwise, on any property that might be proposed for addition to a conditional zoning master plan in the future. The standards of this Ordinance in effect at the time of formal application of the property addition to a conditional zoning district master plan shall prevail.

4.6.3. Text Amendment (Ordinance Amendment)

A. Initiation

Amendments to the text of this Ordinance may be initiated by any citizen, by the Town Council, or proposed to Council by staff.

B. Review

1. Upon receipt of an application, any supporting materials, and associated review fees, the Planning Director shall review the application and determine if the proposed amendment should be treated as if it were initiated by the Town.
2. The Planning Director shall review the request and prepare a written report summarizing the nature of the request and its compliance with this Ordinance as applicable. The report and subsequent revisions shall be made available to the applicant, the Town Council, and the Planning Commission.

C. Public Hearing

At the conclusion of the preceding review, the Town Clerk shall establish a date for a public hearing and schedule and advertise a public hearing.

D. Citizen Comments

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

E. Planning Commission

1. At the conclusion of the public hearing, and in accordance with G.S. § 160D-604(b), the Council shall refer the case to the Planning Commission for review and recommendation.
2. Within 30 days after referral, the Commission shall examine the request and forward a written recommendation to Town Council, including a statement on consistency with applicable adopted plans. After 30 days have passed from the date of referral, the Town Council may proceed towards a decision without the Commission's report.

F. Recommendations

In making recommendations regarding amendments to the text of this Ordinance, the following criteria may be considered:

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.

G. Town Council

1. The Town Council may not take final action on a request until it has received the Planning Commission recommendation or 30 days have passed since the text amendment was first referred to the Planning Commission.
2. Pursuant to G.S. § 160D-605, the Council shall approve a statement regarding comprehensive plan consistency.

4.7. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - PERMITS

4.7.1. Zoning Compliance Permit

A. Applicability

Zoning compliance permits are required for all activities that do not require special use permits (Section 4.7.4) or site plans (Section 4.8.1).

B. Effect

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

C. Application Submittal

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

D. Review

The Planning Director shall review the application for conformity with the requirements of this Ordinance and shall approve, approve with conditions, or deny the permit request. The Planning Director may grant approval with conditions only to the extent that such conditions specify the actions necessary to bring the application into compliance with the applicable standards of this UDO.

E. Expiration

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

4.7.2. Sign Permit

It is the purpose of this subsection to permit and regulate signs and their placement (Article 12) 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.

A. Applicability

Sign permits are a type of Zoning Compliance Permit and follow the same review and approval process as outlined in Section 4.7.1.

B. Effect

Except as otherwise provided in this UDO, no sign may be erected, moved, enlarged, or altered except in accordance with and pursuant to an approved sign permit.

C. Other Permits Required

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

4.7.3. Temporary Use Permit

A. Applicability

Temporary uses operating for up to 90 days within a one-year period shall obtain a temporary use permit from the Planning Director that outlines conditions of operations to protect the public health, safety, and welfare. Such uses include short-term or seasonal uses that are not otherwise permanently allowed in the zoning district regulations.

B. Application Submittal

The application should be submitted at least 30 days prior to the requested start date. Applications submitted late may not be approved.

C. Review

1. The TRC shall evaluate temporary uses based on the following standards:

a. Land Use Compatibility

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

b. Review by Building Official

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

c. Hours of Operation and Duration

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

d. Traffic Circulation

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

e. Off-street Parking

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

f. Appearance and Nuisances

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

g. Signs

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

2. In regard to timely applications, the Planning Director shall request additional materials or revisions to the application, approve, approve with conditions, or deny the permit at least 10 business days in advance of the requested start date.

D. Other Conditions

The applicant must adhere to conditions specified by the TRC. These conditions may include, but are not limited to, provisions for screening and buffering, site restoration, and clean-up, as well as conditions that ensure compliance with the standards described above.

E. Expiration

If the temporary use has not commenced within 90 days of the requested event start date, the permit shall expire.

4.7.4. Special Use Permit

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

A. Applicability

In addition to the other special uses listed in the use table in Article 6, Use Regulations, the following development types have significant city-wide impacts and require special use permits:

1. Any nonresidential or mixed-use development encompassing 100,000 or more square feet of gross floor area or more.
2. Any residential development or subdivision involving 200 dwelling units or more.

B. Staff Review

Upon receipt of the application and determination of completeness, the Planning Director shall prepare a written report for the Town Council summarizing the nature of the request.

C. Public Hearing

At the conclusion of the preceding review, the Town Clerk shall establish a date for a public hearing and schedule and advertise a public hearing.

D. Town Council

1. Findings of Fact

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

- a. The proposed use will not endanger the public health or safety.
- b. The proposed use will not substantially injure the value of adjoining or abutting property.
- c. If completed as proposed, the development will comply with all requirements of this Ordinance.
- d. The proposed use is consistent with the Town's adopted transportation plan(s), other relevant adopted plans and policies, and the stated purpose and intent of this UDO (the fact that the use is permitted under certain circumstances in the zoning district creates a rebuttable presumption that the proposed use is in harmony with the intent of the UDO as relates to the general zoning plan).
- e. The proposed use is compatible with adjacent uses and proximate neighborhood in terms of building scale, site design, buffering and screening, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts).
- f. Any significant adverse impacts resulting from the use will be mitigated or offset, including impacts on the natural environment.
- g. 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.
- h. Adequate assurances of continuing maintenance have been provided.

2. Conditions of Approval

- a. Without limiting the foregoing, the permit-issuing authority may attach a condition limiting the permit to a specified duration or

- may otherwise impose such reasonable conditions as necessary to address the impacts of the proposed developments on:
- i. Adjoining property.
 - ii. The existing natural and man-made features of the site.
 - iii. Off-site and on-site traffic flow.
 - iv. Public utilities, infrastructure, and services.
 - v. Such other public services or goals of the Comprehensive Growth Plan, adopted plans, or the Transportation Plan that may be negatively impacted by the proposed development.
- b. All additional conditions or requirements shall be recorded on the permit and shall be deemed to have been consented to by the applicant unless the decision is properly appealed in accordance with G.S. § 160D-406(k).
 - c. 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.
 - d. A vote may be taken on additional conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth above. The applicant must give written consent to any conditions for the permit to be valid.

4.8. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – SITE PLANS AND MODIFICATIONS

4.8.1. Site Plan

A. Applicability

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

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

B. Review

The TRC shall review site plans for consistency with this UDO and adopted Town plans and specifications.

C. Decision

1. Upon certification by the TRC that the site plan meets (or will meet) all applicable standards of this Ordinance and other Town ordinances, the Planning Director shall approve the site plan with or without conditions. Approval with conditions may only be permitted to the extent that such conditions specify the actions necessary to bring the application into complete compliance with this UDO.
2. Should the TRC make a final determination that all such requirements and provisions have not been (nor will be) satisfied, the Planning Director shall deny the application.

4.8.2. Design Modifications

A. Applicability

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

B. Design-related modifications to approved plans, permits, or development approvals shall be approved according to the following standards:

1. Major Modifications

- a. Major modifications require review according to the appropriate review procedure per the Review Authority Table (Figure 4.3-A).

- b. Major modifications include:
 - i. Removal of a new vehicular access point to an existing street, road, or thoroughfare.
 - ii. Modification of special performance criteria, design standards, or other conditions or requirements specified in the original entitlement.
 - iii. An increase or decrease in the total number of residential dwelling units by 10 percent or greater.
 - iv. An increase in total floor area by 10 percent or greater or a decrease in total floor area by 20 percent or greater.
 - v. Any increase in number of parking spaces of greater than 10 percent.
 - vi. Any increase greater than 20 percent or decrease of greater than 10 percent in open space.
 - vii. Any increase greater than 10 percent in the amount of public right-of-way or utilities, provided that any change in location or reduction in amount must also be reviewed and approved by TRC.

2. Minor Modifications

All other design-related modifications shall be considered minor, except that if cumulative minor modifications would result in a significant deviation from the original entitlement, or if review of a minor modification requires the application of subjective review criteria or standards, the modification request shall be considered major and subject to the appropriate review process.

a. Review

The TRC shall review minor modifications for consistency with this UDO and adopted Town plans and specifications.

b. Decision

- i. Upon certification by the TRC that the modification meets (or will meet) all applicable standards of this Ordinance and other Town ordinances, the Planning Director shall approve the modification with or without conditions. Approval with conditions may only be permitted to the extent that such conditions specify the actions necessary to bring the application into complete compliance with this UDO.
- ii. Should the TRC make a final determination that all such requirements and provisions have not been (nor will be) satisfied, the Planning Director shall deny the application.

4.9. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - MISCELLANEOUS

4.9.1. Traffic Impact Analysis

A. Applicability

1. A Traffic Impact Analysis (TIA) shall be required for projects that are anticipated to generate 100 or more peak hour vehicle trips, based on the latest edition of the Institute of Transportation Engineers (ITE) Traffic Generation Manual.
2. A TIA shall be required for projects that are anticipated to generate 1,000 or more average daily trips (ADT), based on the latest edition of the ITE Traffic Generation Manual.
3. A TIA may also be required, at the discretion of the Planning Director, Town Engineer and/or the decision-making body in the following instances:
 - a. Major or minor thoroughfares near the site are experiencing significant delays.
 - b. Traffic safety issues or high vehicle crash history exist at intersection(s) served by the proposed development.
 - c. The site is located in a highly congested area (where volume-to-capacity ratios are greater than 1.0).
 - d. An associated or proposed rezoning to a more intensive district would create more intensive trip generation than the current Comprehensive Plan anticipates.

Commentary:

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

B. Scope

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

1. Type of Study

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

2. 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.

3. Period of Analysis

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

4. Analysis Scenarios

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

5. 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.

6. Duration of Study

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

C. Study Elements

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

1. Existing Conditions Survey

a. Street System Description

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

b. Traffic Volumes

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

c. Capacity Analysis

Existing capacity of signalized and unsignalized intersections.

d. Other Details

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

2. Future without Development

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

3. Future with Development

- a. Projections of peak hour traffic generation shall be made using the latest edition of the ITE Trip Generation Manual, unless the Town Engineer determines that locally derived data will provide more accurate forecasts. Data from similar facilities may be used where the information is not available from ITE.
- b. Special analysis may be required to determine the need for signalization, minimum safe sight distances, gap analysis, turning radius requirements, queue length analysis, turning lane length analysis, curb cut locations or similar requirements.

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 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, or site plan request.

D. 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.

1. The Town shall determine the scope of services to be performed by the independent consultant and receive a cost estimate of such services.
2. 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.

3. 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.

4.9.2. Written Interpretation

A. Applicability

When uncertainty exists and unless otherwise specified, the Planning Director shall be authorized to make all interpretations concerning the provisions of this Ordinance and the review of administrative decisions taken in accordance with this Ordinance, including determination of existing vested rights of property in accordance with Section 4.2.7.

B. Review

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

C. Official Record

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

4.9.3. Administrative Appeals

A. Applicability

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

Commentary:
In general, only an applicant or aggrieved party may bring an appeal.

B. Effect

1. Generally

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

2. Enforcement and Fines

Pursuant G.S. § 160D-405, enforcement action and accrual of fees and fines shall be stayed from the filing of the appeal until the time of decision unless an affidavit is filed certifying that a stay would cause imminent peril to life or property or seriously interfere with enforcement of the development regulation.

C. Application Submittal

The aggrieved party must file a petition with the Town Clerk within 30 days of the written decision described in Section 4.4.8. Any other party with standing must file a petition with the Town Clerk within 30 days of actual or constructive notice of the disputed decision.

D. Public Hearing

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

2. Witnesses

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

3. Decision

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

E. Appeals

Appeals of decisions of the BOA shall be directed to the Superior Court.

4.9.4. Variance

A. Applicability

1. Where, owing to special conditions, a strict enforcement of the provisions of this UDO would result in unnecessary hardship to the property owner, the BOA is authorized to grant variances from standards of this UDO in accordance with the public interest or the spirit of this UDO.
2. A variance shall be granted administratively by the Planning Director when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

B. Burden of Proof

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

C. Review

The Planning Director shall prepare a written report summarizing the nature of the request. The report shall be made available to the applicant prior the BOA meeting.

D. Public Hearing

1. The BOA shall hold a public hearing to consider the matter. Pursuant to G.S. § 160D-705(d), the Board may grant variances which meet the following findings of fact:
 - a. Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - b. That the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the 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 regulation, such that public safety is secured, and substantial justice is achieved.
2. Upon Board consideration and closing of the public hearing, the BOA shall make one of the following determinations:
 - a. Approval
 - b. Approval with Conditions or Modifications

The BOA may impose reasonable conditions to ensure compatibility with surrounding property. Such conditions shall be included in the written decision and shall be deemed to have been consented to by the applicant unless the decision is properly appealed in accordance with G.S. §160D-406(k).
 - c. Denial

4.10. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - ENVIRONMENTAL

4.10.1. Flood Mitigation Permit

- A. No stormwater variance and subsequent flood mitigation permit shall be issued within any designated floodway or regulatory floodplain unless the BOA (acting in its capacity as the Watershed Review Board) 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 stormwater 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 stormwater variance application, the BOA shall consider all technical evaluations and all relevant standards specified in other sections of this UDO. Additionally, the Board shall assess the following:
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.

Commentary:

The term "variance" as used in this subsection only applies to relief from the stormwater provisions of this Ordinance.