



ARTICLE 3 REVIEW PROCEDURES

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3.1. PURPOSE

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

3.2. GENERAL

3.2.1. Interpretation

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

3.2.2. Effects on Successors

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

3.2.3. Permit Choice

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

3.2.4. Revocation

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

3.2.5. Development Moratoria

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

3.2.6. Types of Decisions

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

- A. Administrative

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 this Chapter or local government development regulations. These are sometimes referred to as ministerial decisions or

administrative determinations.

B. Legislative

The adoption, amendment, or repeal of a regulation under this Chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of this Chapter.

C. Quasi-judicial

A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.

3.2.7. Vested Rights and Expiration

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

A. Building Permits

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

B. Zoning Compliance Permits

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

C. Site Specific Vesting Plans, per G.S. § 160D-108.1

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

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

3.3. REVIEW AUTHORITY TABLE

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

Figure 3.3-A Review Authority Table

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

3.3: Review Authority Table

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

3.4. COMMON REVIEW PROCEDURES

3.4.1. Preapplication Conference

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

3.4.2. Application Requirements

- A. Applicant Eligibility
 - 1. The property owner or the property owner's authorized agent may submit the applications described in this Article. Agents must produce notarized documentation of permission from the property owner.
 - 2. Pursuant to G.S. § 160D-703, the Town Council may initiate rezonings through direction to the Planning Director.
- B. Application Completeness
 - 1. The Planning Director will determine the completeness of each application.
 - 2. Incomplete applications will not be accepted. Incomplete applications do not have the sufficient information or materials necessary for review and processing.

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

C. Content

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

3. Permits and Approvals from Outside Agencies

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

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

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

E. Deadline

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

3.4.3. Withdrawal

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

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

3.4.4. Resubmission

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

3.4.5. Neighborhood Meetings

- A. The purpose of a neighborhood meeting 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

At least one neighborhood meeting is required for

- a. Rezoning / Map Amendments
 - b. Conditional Zonings
 - c. Special Use Permits
 2. The neighborhood meeting shall be held after the pre-application conference and before the official application submittal.
 3. The applicant shall hold the neighborhood meeting within the town's ETJ in an accessible location that is proximate to the site or at a location that is centrally located within the town and at a time in the late afternoon or early evening that is convenient to most people that work daytime jobs.

4. Notification

See requirements for mailed notice, Section 3.4.6.

5. The applicant shall submit a meeting summary identifying all

issues raised and any resolution or explanation, a list of attendees, a list of addresses where notices were mailed, and a list of returned mail notices no later than ten (10) calendar days prior to the first reading or meeting of Planning Commission or Town Council.

3.4.6. Public Notice Requirements

A. Published

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

1. The general location (including a map 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.
9. A statement that substantial changes to the proposed action may occur following the hearing.

B. Posted

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

C. Mailed

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

Commentary (1/1/2021):
Note that NC GS §160D-602 requires posting a site 10-25 days before the hearing.

Commentary (1/1/2021):
When a mailed notice involves properties within a HOA, it is best practice to send a letter directly to the HOA also.

1. Pursuant to G.S. § 160D-602(b), if a mailed notice for a zoning map amendment hearing includes at least fifty individual owners of at least fifty individual properties, the Town may instead elect to publish notice of the hearing as specified in Section 3.4.5. In this case, each advertisement shall be at ½ of a newspaper page in size. Property owners outside of the newspaper's circulation area shall still be notified of the hearing via first class mail.
2. If a notice contains errors regarding the time, date, or location of the hearing or the location of the subject property, the notice shall be rendered inadequate. However, if a bona fide attempt resulted in any other minor or clerical defect in the notice, the notice shall remain valid. If questions of validity arise, the decision-making body shall make a formal finding of substantial compliance or lack thereof. If the decision-making body finds there is substantial compliance, it may then begin the proceedings for the case.

3.4.7. Hearings

A. Modification of Application

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

B. Continuation

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

C. Evidentiary Hearings

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

1. Oaths

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

2. Parties

Pursuant to G.S. § 160D-1402(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.
- b. Competent evidence does not include the opinions of lay witnesses attesting to property value implications, traffic impacts, or other matters about which expert testimony would generally be admissible.

4. Meeting Record

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

3.4.8. Written Decision

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

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

requires these as a prerequisite to acting.

3.4.9. Extensions

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

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

3.4.10. Completing Developments in Phases

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

3.5: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - SUBDIVISIONS

3.5. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - SUBDIVISIONS

3.5.1. Subdivision in General

A. Applicability

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

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

B. No subdivision without plat approval

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

3.5: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - SUBDIVISIONS

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

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

3.5: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - SUBDIVISIONS

3.5.2. Minor Subdivision

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

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

3.5.3. Major Subdivision

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

3.5: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - SUBDIVISIONS

approvals and permits.

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

3.5.4. Final Plat

A. Applicability

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

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

C. Application

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

D. Approval

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

3.5: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - SUBDIVISIONS

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

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

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

3.6.1. Rezoning / Map Amendment

A. Applicability

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

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

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

C. Receipt of Application

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

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

E. Planning Commission

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

F. Approval Criteria

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

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

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

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

G. Public Hearing

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

H. Modification of Application

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

I. Time Lapse Between Similar Applications

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

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

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

J. Town Council

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

3.6.2. Conditional Zoning

A. Applicability

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

B. Underlying General Zoning District

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

C. Designation and Tracking

Any conditional zoning district shall be designated by the letters “CZ” followed by a unique number identifying the ordinance that created the district and followed by adding a numerical subscript to indicate the order in which such districts are created or revised. Thus, the first such district created might be designated CZ-4997-1. These designations shall be applied to the official zoning map as in the case of other amendments. All ordinances establishing a conditional district shall be referenced in Appendix B to this UDO. Ordinances are on file in the Planning Department.

D. Tiers

There are two tiers of conditional zoning districts.

1. Tier 1

Tier 1 conditional zoning requests identify a base district(s) and

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

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any uses in that base district's permitted uses which are excluded in the conditional zoning district. Dimensional standards of the base district remain intact and unchanged. Tier 1 conditional zoning requests do not require a 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 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 5, 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.

a. Master Plan

Tier 2 conditional zoning requests shall be accompanied by a master plan which shall be reviewed 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 5, and whether they are permitted or excluded.
- iii. The appropriate setbacks, dimensional standards, and other regulations for each zoning district, use, or area. Tier 2 conditional zoning requests shall include a table of dimensional standards. This shall be based on the general zoning district and updated to reflect altered dimensional standards. Any other information necessary to ensure that the master plan can meet the standards required by this Ordinance to execute a

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

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logical development plan.

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

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.

3.6.3. Text Amendment (aka Ordinance Amendment)

A. Initiation

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

B. Process

1. Petition forms are available at Town Hall and shall be filed with the Planning Director. Upon receipt of the form, any supporting materials, and associated review fees, the Planning Director shall review the application and determine if the proposed amendment should be treated as if it were initiated by the Town.

2. The Planning Director shall prepare a written report to be provided to the applicant, the Town Council, and the Planning Commission prior to the legislative hearing.

3. Citizen Comments

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

4. The Town Council shall refer the text amendment to the Planning Commission at the end of the hearing.

5. The Planning Commission shall review the proposed amendment and forward a recommendation to the Town Council for consideration. If the Planning Commission is not

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

prepared to issue a recommendation, it may request the Town Council delay or continue final action on the amendment until the Planning Commission is prepared to give a recommendation.

6. The Town Council may not take final action on the proposed amendment until it receives the recommendation from the Planning Commission or until sixty (60) days have passed since the proposal referral.

C. Approval Criteria

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

3.7. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - PERMITS

3.7.1. Zoning Compliance Permit

A. Applicability

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

B. Effect

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

C. Application

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

2. Contents

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

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

D. Review

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

E. Expiration

3.7: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - Permits

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

3.7.2. Sign Permit

A. Purpose

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

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

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

D. Applicability

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

E. Application

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

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

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

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

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

3.8.1. Site Plan

A. Applicability

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

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

B. Review

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

3.8.2. Administrative Modifications

A. Applicability

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

B. The Planning Director shall make administrative design modifications to approved plans, permits, or development approvals according to the following standards.

C. Any design modifications not identified as “major” shall be considered minor design modifications.

D. Minor Design Modifications

1. Minor design modifications to approved permits are permissible with the approval of the Planning Director.

3.8: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - Site Plans and Administrative Review

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

3.8.3. Written Interpretation

A. Applicability

When uncertainty exists and unless otherwise specified, the Planning

3.8: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - Site Plans and Administrative Review

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

B. Application Requirements

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

C. Action

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

D. Official Record

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

3.9. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – MISCELLANEOUS

3.9.1. Administrative Appeals

A. Applicability

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

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

B. Effect of Appeal

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

C. Enforcement and Fines

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

D. Process

1. Application

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

2. Record of Administrative Decision

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

3. Public Notice

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

4. Witnesses

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

5. Decision

3.9: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – Miscellaneous

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

6. Notice of Decision

See Section 3.4.8.

7. Appeals

Appeals of decisions of the Board of Adjustment shall be directed to the Superior Court.

3.9.2. Special Use Permit

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

B. Applicability

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

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

C. Staff Review

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

D. Special Use Review Criteria

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

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

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

3.9: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – Miscellaneous

appealed in accordance with G.S. 160D-406(k).

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

3.9.3. Traffic Impact Analysis

A. Applicability

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

B. Scope

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

a. Type of Study

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

b. Definition of Impact Area

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

c. Period of Analysis

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

d. Analysis Scenarios

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

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

e. Assumptions

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

f. Duration of Study

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

2. Study Elements

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

i. Existing Conditions Survey

(a) Street System Description

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

(b) Traffic Volumes

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

(c) Capacity Analysis

Existing capacity of signalized and unsignalized intersections.

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(d) Other Details

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

ii. Future without Development

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

iii. Future with Development

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

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

iv. Mitigation Plan

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

v. Consultants

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

3.9: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – Miscellaneous

study prepared by the applicant's consultant. The Planning Director or Town Engineer are authorized to administer the contract for any such consultant.

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

3.9.4. Variance

A. Applicability

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

B. Burden of Proof

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

C. Process

- 1. Variance applications shall be submitted to the Planning Director for review and determination of completeness. The Planning Director shall prepare a written report to be provided to the applicant prior the Board of Adjustment meeting.

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2. Public notice shall be provided in accordance with Section 3.4.6.
3. The Board of Adjustment shall hold a public hearing to review the matter. Pursuant to G.S. § 160D-705(d), the Board may grant variances which meet the following findings of fact:
 - a. Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - b. That the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the public, may not be a basis for granting a variance.
 - c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - d. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved. A variance shall be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
4. Upon Board review and the public hearing, the Board of Adjustment shall make one of the following determinations:
 - a. Approval
 - b. Approval with Conditions or Modifications

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

5. Written Decision

The written decision shall be provided to the applicant.

3.9.5. Temporary Use Permit

A. Applicability

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

B. Types

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

C. Application

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

D. Review by Technical Review Committee

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

E. Approval Criteria

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

1. Land Use Compatibility

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

2. Review by Building Official

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

3. Hours of Operation and Duration

Hours of operation and duration shall be approved by the Planning

3.9: SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS – Miscellaneous

Director at the time of permit issuance.

4. Traffic Circulation

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

5. Off-street Parking

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

6. Appearance and Nuisances

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

7. Signs

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

F. Other Conditions

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

G. Expiration

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

3.10. SPECIFIC REVIEW PROCEDURES AND DEVELOPMENT APPROVALS - ENVIRONMENTAL

3.10.1. Flood Mitigation

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

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

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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.