

10.1. VIOLATIONS

Pursuant to G.S. § 160D Article 4, any violation of the standards, procedures, and regulations of this UDO shall be subject to the enforcement remedies and penalties provided by this Article and by state law. The following are violations of this UDO, including but not limited to:

10.1.1. Development without Permit

To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this UDO without all required permits, certificates, or other forms of authorization as set forth in this UDO.

10.1.2. Development Inconsistent with Permit

To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.

10.1.3. Violation by Act or Omission

To violate, by act or omission, any term, variance, modification, condition, or qualification of any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

10.1.4. Use in Violation

To erect, construct, reconstruct, alter, repair, convert, maintain, or use any building or structure or to use any land in violation or contravention of this UDO or any other regulation made under the authority conferred thereby.

10.1.5. Subdivide in Violation

To subdivide land in violation of this UDO or transfer or sell land by reference to, exhibition of, or any other use of a plat or map showing a subdivision of the land before the plat or map has been properly approved under this UDO and recorded in the office of the county register of deeds. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from violation of this UDO.

10.1.6. Continue a Violation

To continue any of the above violations is a separate and distinct offense.

10.2. ENFORCEMENT BY PLANNING DIRECTOR

The Planning Director is responsible for investigating, inspecting, and enforcing the standards of this UDO.

10.2.1. Complaints Regarding Violations

- A. Whenever the Planning Director receives a written complaint alleging a violation of this UDO, he/she shall investigate the complaint, take such action as is warranted, and inform the complainant in writing what actions have been or will be taken.
- B. The Planning Director may investigate violations of this UDO on their own initiative or upon receipt of complaints (oral, written, or otherwise).

10.2.2. Procedures upon Discovery of Violations

- A. If any provision of this UDO is being violated, a written notice of violation shall be issued, pursuant to G.S. § 160D-404, indicating the nature of the violation, ordering the action necessary to correct it, and associated deadlines and penalties.
- B. The final written notice of violation (and the initial written notice may be the final notice) shall state what action is intended if the violation is not corrected and shall advise that the order may be appealed to the Board of Adjustment, pursuant to G.S. §160D-405. A civil penalty may not be appealed to the Board of Adjustment if the offender was sent a final notice and did not take an appeal to the Board of Adjustment within the prescribed time.
- C. If the owner or occupant of a property does not appeal and fails to correct the violation or if the owner or occupant of a property fails to correct the violation after a final Board of Adjustment decision upholding the administrative action, the owner or occupant shall be subject to such remedies and penalties as authorized in Section 10.3.
- D. Notwithstanding the foregoing, in cases where delay would seriously threaten the effective enforcement of this UDO or pose a danger to the public health, safety, or welfare, the Planning Director may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section 10.3.

10.3. PENALTIES FOR VIOLATION

10.3.1. Persons Liable

The owner, tenant or occupant of any building, land or part thereof and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates or maintains any situation contrary to the requirements of this UDO may be held responsible for the violation, suffer the penalties and be subject to the remedies herein provided.

10.3.2. Penalties and Remedies for Violation

- A. A violation or failure to comply with any of the provisions or requirements of the UDO, including a violation of any of the conditions and safeguards established in connection with grants of variances or special use permits, shall constitute a misdemeanor punishable as provided in G.S § 14-4.
- B. Violation or failure to comply with any of the provisions or requirements of this UDO, including a violation of any conditions and safeguards established in connection with the grants of variances or special use use permits, shall also subject the offender to a civil penalty of \$50.00 for the first violation. If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the Town in a civil action in the nature of debt.
- C. Each day a violation continues after notification by the Planning Director that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this article.
- D. If a civil penalty is assessed after January 1, 2003, for an offense or series of related offenses as described above, and the property is brought into compliance with this UDO, but the same person, firm, or corporation repeats the offending activity, the civil penalty shall be increased to \$100.00 for the second violation, \$200.00 for the third violation, and \$500.00 for the fourth and each succeeding violation.
- E. This UDO may also be enforced by any appropriate equitable action. Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this UDO. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

10.3.3. Permit Revocation

- A. A permit issued under this UDO shall be revoked if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this UDO, or any additional requirements lawfully imposed by the permit-issuing authority.
- B. Before a permit may be revoked, all of the notice, hearing, and other requirements of Article 3, shall be met. The notice shall inform the permit recipient of the alleged grounds for the revocation.
- C. The burden of presenting evidence sufficient to allow the permit-issuing authority to conclude that a permit should be revoked shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.
- D. A motion to revoke a permit shall cite, insofar as practical, the specific reasons or findings of fact that support the motion. Such motion is adopted if passed by a majority vote, a quorum being present.
- E. No person may continue to make use of land or buildings in the manner authorized by any permit authorized by this UDO after such permit has been revoked.

10.3.4. Stop Work Order

Whenever there is a land disturbing activity and/or a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this UDO, the Planning Director may order the specific part of the work in violation of this UDO to be immediately stopped. See G.S. § 160D-404(b) for full procedures regarding stop work orders.

- A. A stop work order issued under this section shall be in writing, directed to the person doing the work and shall state the specific work to be stopped, the specific reasons therefore, and the conditions under which the work may be resumed. A copy of the stop work order shall also be sent forthwith to the owner of the property where the work is taking place and the developer, if different from the owner.
- B. Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order to the Board of Adjustment pursuant to Article 3. However, an appeal shall not stay the operation of the stop work order except as provided in the following paragraph of this section.
- C. The Board of Adjustment shall meet and act upon the appeal within 15 working days after the receipt of the appeal notice. If the Board

fails to comply with this requirement, the stop work order shall be stayed automatically beginning on the day following the expiration of the 15- working-day period, and the stay shall remain in effect until the Board of Adjustment meets and acts on the appeal.

- D. The notice of hearing requirements set forth in Article 3 shall not apply to appeals of stop work orders. However, the staff shall notify the applicant of the date, time and place of the hearing as soon as it has been scheduled and shall send to the appellant a written confirmation of this notice as soon as possible.
- E. Neither the person whom a stop work order is served nor an owner or developer served with a copy under paragraph 1. above, may thereafter cause, suffer, or permit a violation of the order while it remains in effect, except during a period in which the operation of the order is stayed under paragraph 3., above.

10.4. SPECIAL ENFORCEMENT OF LANDSCAPING REQUIREMENTS

10.4.1. Completion of Work prior to Certificate of Occupancy Required

Pursuant to G.S. § 160D-804.1, prior to issuance of a certificate of zoning compliance or a certificate of occupancy, all required landscape plantings and site elements must be installed and related work completed as indicated on the final, approved landscape and/or site plan. In periods of adverse weather conditions, a performance guarantee for 125 percent of the cost of installation of landscaping and other uncompleted site work or site elements, determined by the executed contract, will be accepted to allow the certificate of zoning compliance to be issued. Completion of the work must be completed by a prescribed time or the performance guarantee shall be called and the work completed by the Town of Garner or by a designated contractor. This optional means of temporary compliance shall not be available if the site is substandard in terms of any life safety, emergency services, or fire safety concerns or does not have adequate parking or pedestrian ingress/egress.

10.4.2. Procedures and Penalties Regarding Replacing Dead Plant Material

- A. Upon notice by certified mail from the Planning Department regarding replacement of dead plant material, an offender shall have 10 business days to respond with a plan of action that includes a replacement planting plan designating the numbers, types, sizes and locations of replacement plants; an estimated date of completion of plant installation; and an agreed-upon date for a site inspection of the completed work.
- B. Failure by the offender to respond to the written notice from the Town within the aforementioned 10-day period may result in a \$100.00 per tree and \$50.00 per shrub per day of violation commencing on the eleventh day.
- C. Replacement plantings shall be inch for inch replacement with the smallest tree allowable being 2 ½-inch diameter-at-breast-height (DBH). If there is not enough land area available without destroying or endangering existing healthy and savable plants or if there is not a suitable location on site which can be agreed upon by the Town and the offender, then a payment in lieu may be made by the offender. This payment will be based upon current market price for materials installed and warranted as determined by the Town of Garner.
- D. Replacement vegetation as required by this UDO shall be installed by the offender within 30 days after the date the replacement

planting plan is approved by the Planning Department. Failure to comply with this requirement subjects the offender to these penalty provisions. If the 30-day period falls between May 15 and October 1, the offender may be allowed to delay replanting to the next acceptable planting season. Such an arrangement must have prior written approval by the Planning Department. Failure to comply with this alternative planting time arrangement subjects the offender to these penalty provisions retroactively back to the original violation date.

- E. A fine of \$250.00 per caliper inch for each tree removed in violation of an approved tree protection zone or buffer protection zone.
- F. The violator shall be required to install replacement trees at a rate of one caliper inch for every three DBH inches of tree removed. For trees removed that are greater than 30 DBH inches, the replacement rate shall be at one caliper inch per every five DBH inches.

~~10.5. Judicial review.~~

~~A. Every decision of the Town Council granting or denying a conditional use permit and every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Wake County by proceedings in the nature of certiorari.~~

~~B. The petition for the writ of certiorari must be filed with the Wake County Clerk of Court within 30 days after both of the following have been accomplished:~~

- ~~1. A written copy of the Board's decision, subject to the requirements of Section 3.1.Q.7.c(3), has been filed in Town Hall.~~
- ~~2. A written copy of the Board's decision, subject to the requirements of Section 3.1.Q.7.c(3), has been delivered to the applicant or appellant by personal service or certified mail.~~

Editor's Note: this text has been struck as it is already state law and is not specific to Garner.