

## ARTICLE 2 REVIEW BODIES

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### 2.1. ADMINISTRATION

#### 2.1.1. Procedure

##### A. Rules of Procedure

Boards and Commissions set out in this article may adopt rules and regulations governing their procedures in consistency with the provisions of this UDO.

##### B. Minutes

Each Board shall maintain accurate minutes of each meeting set out in this Article, showing the vote of each member on each decision, or if absent or failing to vote, indicating such fact.

##### C. Meetings

All meetings of Boards and Commissions shall be open to the public, and an agenda shall be made public according to administrative procedures.

#### 2.1.2. Maintenance of the Public Trust

##### A. Oath of Office

Pursuant to G.S. § 160D-309, all members appointed to boards shall take the oath of office as required.

##### B. Conflict of Interest

Pursuant to G.S. § 160D-109, no elected or appointed board member or administrative staff shall make a final decision as required by this Ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on themselves or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other ~~associated~~ associational relationship.

## **2.2. TOWN COUNCIL**

### **2.2.1. Powers and Duties**

The Town Council shall have the power to appoint members of the Planning Commission and the Board of Adjustment (BOA) as well as those responsibilities enumerated in Article 3, Review ~~Authority Table~~Procedures. The Council may also appoint temporary advisory commissions or committees from time to time.

## 2.3. PLANNING COMMISSION

### 2.3.1. Creation

Pursuant to G.S. § 160D-301, there shall be a permanent Planning Commission (occasionally referred to herein as “Planning Board”) established to advise the Town Council on land use matters. The Planning Director shall oversee and facilitate the operations of the Planning Commission.

### 2.3.2. Membership and Terms

#### A. Number

Per G.S. § 160D-307, Planning Commission shall consist of seven members. The number of Planning Commission members representing in-Town members and extra-territorial jurisdiction (ETJ) area members shall be distributed proportionally using the most recent decennial Census.

#### B. Appointment

In-Town members shall be appointed by the Town Council and shall reside within the Town of Garner’s corporate limits. The Wake County Board of Commissioners shall appoint the remainder of the Planning Commission, all of whom shall reside within the Town's ETJ. If the Wake County Commissioners fail to make these appointments within ninety (90) days after receiving a written request from the Town Council, the Council shall make the appointments.

#### C. Terms

Members shall be appointed for two-year staggered terms. Members shall continue to serve until their successors have been appointed.

#### D. Term Limits

Planning Board members may be appointed for three consecutive 2-year terms.

#### E. Current Members

Members of the Planning Commission on the effective date of this UDO shall continue to serve until their respective terms expire.

#### F. Vacancies

A vacancy shall be filled for the unexpired term.

#### G. Removal

Members may be removed by the Town Council for failure to attend three consecutive meetings without having been excused, for failure to

attend thirty (30) percent of the meetings within any twelve-month period, or for other good cause related to performance of duties.

### **2.3.3. Rules of Procedure ~~Officers and Meetings~~**

A. The Planning Board shall elect officers and may set rules of procedure (consistent with G.S. § 160D-308), which are recorded in a separate document, maintained by the Planning Director.

~~H.B. Officers. Annually, at the first regular meeting during the month of July, the Planning Commission shall select from among its members a Chairperson and Vice Chairperson. The Chairperson and Vice Chairperson may be reelected for successive terms without limitation. A Secretary to the Planning Commission shall be designated by the Town Manager/Planning Director. The Planning Commission shall be subject to the following: The Chairperson shall preside over the Planning Commission's meetings, decide all points of order or procedure and transmit reports and recommendations of the Planning Commission to the Town Council. The Vice-Chairperson shall assume the duties of the Chairperson in his absence;~~

~~A.~~

~~B. The Chairperson and Vice-Chairperson shall take part in all deliberations and vote on all issues, unless absent or excused; and~~

~~C. The Planning Commission shall conduct its meetings in an informal manner designed to obtain necessary information and to promote the exchange of ideas.~~

~~D. Meetings. The Planning Commission shall establish a regular meeting schedule and shall meet at least monthly. The Planning Commission is encouraged to attend joint public hearings with the Town Council when zoning petitions and UDO amendments are presented.~~

### **2.3.4. Powers and Duties**

The Planning Commission shall have the powers and duties outlined below, in addition to those enumerated in Article 3, Review ~~Authority Table.~~ Procedures.

#### **A. Growth Recommendations**

The Planning Commission shall make recommendations to the Town Council concerning plans, goals, and objectives relating to growth, development, and redevelopment within the planning jurisdiction;

#### **B. Comprehensive Growth Plan Administration**

When directed by the Town Council, the Planning Commission shall be responsible for the preparation of a Comprehensive Growth Plan and

| shall make a ~~recommendations~~ on it to the Town Council on issues related to policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner;

C. Other Responsibilities

The Planning Commission shall have any other duties assigned by the Town Council.

## **2.4. BOARD OF ADJUSTMENT**

### **2.4.1. Creation**

Pursuant to North Carolina G.S. § 160D-302, the Board of Adjustment (BOA) is hereby established. The Planning Director shall oversee and facilitate the operations of the Board of Adjustment.

### **2.4.2. Membership and Terms**

#### **A. Number**

The Board of Adjustment shall consist of five regular members and three alternate members. The number of both regular and alternate BOA members representing in-Town members and extra-territorial jurisdiction (ETJ) area members shall be distributed proportionally using the most recent decennial Census.

#### **B. Appointment**

In-Town members shall be appointed by the Town Council and shall reside within the Town of Garner's corporate limits. The Wake County Board of Commissioners shall appoint the remainder of the Planning Commission, all of whom shall reside within the Town's ETJ. If the Wake County Commissioners fail to make these appointments within ninety (90) days after receiving a written request from the Town Council, the Council shall make the appointments.

#### **C. Terms**

Members shall be appointed for three-year staggered terms, but members may continue to serve until their successors have been appointed.

#### **D. Current Members**

Members of the Board of Adjustment on the effective date of this UDO shall continue to serve until their respective terms expire.

#### **E. Vacancies**

Vacancies may be filled for the unexpired terms only.

#### **F. Removal**

1. Regular members may be removed by the Town Council at any time for two consecutive unexcused absences from a Board of Adjustment meeting or for a 30% unexcused absence rate in a twelve-month period. An unexcused absence is one without reasonably adequate notice to an appropriate alternate member, Chairperson of the Board of Adjustment, or the

Planning Director.

2. Alternate members may be removed by the Town Council for failure to respond on two consecutive occasions or, within any twelve-month period, on thirty (30) percent or more of the occasions when a timely request is made to such member to serve as an alternate.
3. Regular or alternate members may also be removed by the Town Council for other good cause related to performance of duties.

### **2.4.3. ~~Officers and meetings~~ Rules of Procedure**

A. The Board of Adjustment shall elect officers and may set rules of procedure (consistent with G.S. § 160D-308), which are recorded in a separate document, maintained by the Planning Director.

~~A. Officers.~~

- ~~1. Annually, at the first regular meeting after July 1, the Board of Adjustment shall select from among its members a Chairperson and Vice-Chairperson. The Chairperson and Vice-Chairperson may be selected for successive terms without limitation.~~
- ~~2. The Chairperson shall preside over the Board of Adjustment meetings and may administer oaths to witnesses coming before the Board of Adjustment. The Vice-Chairperson shall assume the duties of the Chairperson in his/her absence.~~

B. The Chairperson and Vice-Chairperson shall take part in all deliberations and vote on all issues, unless absent or excused.

C. Meetings

1. The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently so as to allow for expeditious processing of applications. The Board of Adjustment may provide in its by-laws for the calling of special meetings.
2. Pursuant to G.S. § 160D-406(g), the Board of Adjustment may issue subpoenas.

### **2.4.4. Quasi-judicial Decisions and Judicial Review**

A. The Board of Adjustment shall make and report decisions pursuant to G.S. § 160D-406(j). The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly

~~authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Planning Department. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.~~

- B. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. § 160D-1402. A petition for review shall be filed with the ~~clerk of superior court~~ by the later of thirty (30) days after the decision is effective or after a written copy thereof is ~~given in accordance with subdivision (1) of this subsection~~ delivered. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

#### **2.4.5. Powers and Duties**

The Board of Adjustment shall have the powers and duties outlined below, in addition to those enumerated in Article 3, Review ~~Authority Table~~ Procedures.

- A. Watershed Review Board

The Board of Adjustment shall act as the Watershed Review Board.

- B. Other Responsibilities

The Board of Adjustment shall have any other matter the Board of Adjustment is required to act upon by any Town ordinance.

## **2.5. PLANNING DIRECTOR**

### **2.5.1. Designation**

The Town Manager shall designate the Planning Director for the Town of Garner. ~~Where this UDO assigns a responsibility, power, or duty to the Planning Director, the Planning Director may delegate that responsibility.~~

### **2.5.2. Responsibility**

Except as otherwise specifically provided, primary responsibility for administering and enforcing this UDO ~~may be assigned to one or more individuals by the Town Manager~~ is the responsibility of the Planning Director. Where this UDO assigns a responsibility, power, or duty to the Planning Director, the Planning Director may delegate that responsibility, although the Planning Director shall be ultimately responsible for any decisions or actions made through that delegation of responsibility. The person or persons to whom these functions are assigned shall be referred to in this UDO as the "Planning Director".



### **2.5.3. Powers and Duties**

The Planning Director shall have the powers and duties outlined below, in addition to those enumerated in Article 3, Review Procedures.

#### **A. Administration and Enforcement**

The Planning Director shall administer and enforce the provisions of this UDO.

#### **B. Interpretation**

The Planning Director shall make written interpretations of this UDO setting forth the reasons and explanation therefore, and shall forward same to the Town Attorney.

#### **C. Technical Review Committee**

The Planning Director shall serve as the chairperson for and be responsible for all final decisions of the Technical Review Committee.

#### **D. Other Duties**

The Planning Director shall perform other duties imposed under the provisions of the Garner UDO, as amended from time to time.

## **2.6. OTHER OFFICIALS**

### **2.5.4.2.6.1. Town Engineer**

#### A. Designation

The Town Manager shall designate the Town Engineer for the Town of Garner.

#### B. Powers and Duties

In addition to those powers and duties enumerated in Article 3, ~~Review Authority Table~~Procedures, the Town Engineer shall monitor land use activities within the watershed areas to the extent reasonably practicable, identify situations that may pose a threat to water quality, and report all significant findings to the Watershed Review Board.

### **2.5.5.2.6.2. Building Official**

#### A. Designation

The Town Manager shall designate the Building Official for the Town of Garner.

#### B. Powers and Duties

The Building Official shall have those powers and duties enumerated in Article 3, ~~Review Authority Table~~Review Procedures.

### **2.5.6.2.6.3. Technical Review Committee**

#### A. Designation

~~The Town Manager~~Planning Director shall designate a Technical Review Committee (TRC) consisting of the Planning Director (acting as chairperson), the Town Engineer, the Building Official, ~~the Town Manager~~and any other Town professional or outside agency representative the Planning Director deems necessary for the professional review of land use and development proposals, ~~with the requirement that the Executive, Planning and Engineering Divisions are represented. The Planning Director shall serve as Chair of the Committee and be responsible for all final decisions of the Committee.~~

#### B. Powers and Duties

The Technical Review Committee shall have those powers and duties enumerated in Article 3, ~~Review Authority Table~~Review Procedures.