

ARTICLE 2. DEVELOPMENT REVIEW BODIES

- 2.1. Town Council.
- 2.2. Planning Commission.
- 2.3. Board of Adjustment.
- 2.4. Planning Director.
- 2.5. Town Engineer.
- 2.6. Building Official.
- 2.7. Technical Review Committee.
- 2.8. Summary of review authority.

2.1. Town Council.

A. **Responsibility.** The Town Council shall be responsible for final action regarding the text of this UDO, the official zoning map, issuance of special use permits, conditional use permits and appointments to the Planning Commission and Board of Adjustment.

B. **Powers and duties.** The Town Council shall have the powers and duties as set forth in this UDO:

1. Appointments.

a. Planning Commission.

- (1) The Town Council shall appoint five members of the seven-member Planning Commission, who shall reside within the Town of Garner;
- (2) The Wake County Board of Commissioners shall appoint two regular members who shall reside within the Town's extra-territorial planning area. If the Wake County Commissioners fail to make these appointments within 90 days after receiving a written request from the Town Council, the Council may make the appointments; and
- (3) The Town Council shall remove any member for cause.

b. **Board of Adjustment.** The Town Council shall appoint four regular and two alternate members of the five member Board of Adjustment, who shall reside within the Town of Garner. The Wake County Board of Commissioners shall appoint one regular and one alternate member, who shall reside within the Town's extra-territorial planning area. If the Wake County Commissioners fail to make these appointments within 90 days after receiving a written request from the Town Council, the Council may make the appointments. The Town Council shall remove any member for cause.

2. **Text amendments.** The Town Council, acting in its legislative capacity, shall hear and approve, approve with modifications or deny proposed text amendments to this UDO in accordance with Section 3.11.

3. **Official zoning map amendments.** The Town Council, acting in its legislative capacity, shall hear and approve, approve with conditions or deny proposed official zoning map amendments for both general and conditional use district rezoning in accordance with Section 3.12.

4. **Special uses.** The Town Council shall review and approve or disapprove special use permit applications in accordance with Section 3.14.

5. **Conditional use district zoning.** Conditional use district zoning shall consist of a two-step process:

a. **Rezoning.** The Town Council shall first approve a rezoning request;

b. **Conditional use permit.** The Town Council shall then approve, approve with modifications or conditions or disapprove of a conditional use permit.

- 6. **Appeals of subdivision plats.** The Town Council shall be responsible for hearing and taking action on appeals of the Planning Director's decisions on major final plats and minor subdivision plats.
- 7. **Planned district review.** The Town Council shall review and hear, and approve, approve with conditions or deny PUD, PRD, MXD and TND applications through the conditional use district zoning process.
- 8. **[Financial impact of zoning map or text amendment.]** A Council member shall not vote any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.
- 9. **[Amendment consistent with Comprehensive Growth Plan and in the public interest.]** Prior to adopting or rejecting any zoning amendment (map or text), the Town Council shall adopt a statement describing whether its action is consistent with the adopted Comprehensive Growth Plan and explaining why the Council considers the action taken to be reasonable and in the public interest. Such statement is not subject to judicial review.
- 10. **[Impartial participation.]** A member of the Council shall not participate on any quasi-judicial matter in a manner that would violate a person's constitutional rights to an impartial decision maker.

(Ord. No. 3376, § 1, 1-17-06; Ord. No. 3558, § 2, 7-7-09)

Editor's note—Ord. No. 3558, § 2, adopted July 7, 2009, changed the title of section 2.1 from "Board of aldermen" to "Town council." The historical notation has been preserved for reference purposes.

2.2. Planning Commission.

- A. **Creation.** There shall be a permanent Planning Commission, established to serve as an advisory board on land use matters. The Town Council may also appoint temporary advisory commissions or committees from time to time.
- B. **Membership, terms and compensation.**
 - 1. **Number, appointment.** The Planning Commission shall consist of seven members.
 - a. **Composition.** Five members, appointed by the Town Council, shall reside within the Town. Two members, appointed by the Wake County Board of Commissioners, shall reside within the Town's extra-territorial planning area. If the Wake County Commissioners fail to make these appointments within 90 days after receiving a written request from the Town Council, the Council may make the appointments. At least three members shall have some training or experience in fields such as architecture, planning, development, landscaping, the arts or other fields related to urban design or appearance.

3. **Quorum.**
 - a. A quorum shall be a majority of the Planning Commission membership.
 - b. A quorum is necessary to take official action;
 - c. All actions of the Planning Commission shall be taken by majority vote of those present and voting; and
 - d. A roll call vote shall be taken upon the request of any member.
 - e. A member shall not vote any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.
4. **Rules of procedure.** The Planning Commission may adopt rules and regulations governing its procedures not inconsistent with the provisions of this UDO.
5. **Minutes.** The minutes shall be kept of all Planning Commission meetings and the vote of every member on each issue shall be recorded.

D. Powers and duties.

Commentary: Planning Commission acts on major subdivisions in two possible ways (1) approve or (2) refer to Town Council instead of denial.

The Planning Commission shall advise and comment on whether a proposed zoning amendment (map or text) is consistent with the adopted Comprehensive Growth Plan and any other applicable officially adopted plan and shall have the following powers and duties:

1. **Major subdivision preliminary plats.** The Planning Commission shall review and approve, approve subject to conditions, or refer each major subdivision preliminary plat application to the Town Council for final action;
2. **Master sign plan.** The Planning Commission shall review and approve all master sign plan applications;
3. **Text amendments.** The Planning Commission shall review and make recommendations to the Town Council on amendments to the text of this UDO;
4. **Official zoning map.** The Planning Commission shall review and make recommendations to the Town Council on amendments to the official zoning map;
5. **Special use permits.** The Planning Commission shall review and make recommendations to the Town Council on proposed special use permits;
6. **Conditional use district zoning.** The Planning Commission shall review and make recommendations to the Town Council on applications for a conditional use zoning district;

7. **Planned district review.** The Planning Commission shall review and make recommendations to the Town Council on planned district (PUD, PRD, MXD, TND) applications;
 8. **Growth recommendations.** The Planning Commission shall make recommendations to the Town Council concerning plans, goals and objectives relating to growth, regarding development and redevelopment within the planning jurisdiction;
 9. **Comprehensive Growth Plan administration.** The Planning Commission shall be responsible for the preparation of a Comprehensive Growth Plan and make recommendations to the Town Council on policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner;
 10. **Promoting Town beautification programs.** The Planning Commission shall initiate, promote and assist in the implementation of programs of general community beautification in the Town's planning jurisdiction;
 11. **Community design and appearance.** The Planning Commission shall provide leadership and guidance in matters of area or community design and appearance to individuals, and to public and private organizations and agencies;
 12. **Studies.** The Planning Commission shall prepare studies of the visual characteristics and problems of the planning jurisdiction, including surveys and inventories of an appropriate nature and shall recommend standards and policies of design for the entire area, any portion or neighborhood thereof or any project to be undertaken;
 13. **Plans.** The Planning Commission shall prepare plans for the improved appearance of the planning jurisdiction, setting forth desirable standards and goals for the aesthetic enhancement of the municipality; of any part thereof within its area of planning and zoning jurisdiction, including public ways and areas, open spaces and public and private buildings and projects; and
 14. **Other responsibilities.** The Planning Commission shall have any other duties assigned by the Town Council.
- E. **Staff.** The Planning Department shall serve as staff to the Planning Commission.
- (Ord. No. 3376, §§ 2, 3, 1-17-06; Ord. No. 3558, § 2, 7-7-09)

2.3. Board of Adjustment.

- A. **Creation.** Pursuant to North Carolina G.S. 160A-388, the Board of Adjustment is hereby established.
- B. **Membership, terms and compensation.**
 1. **Number, appointment.** There shall be a Board of Adjustment consisting of five members and three alternate members. Four regular and two alternate members, appointed by the Town Council, shall reside within

the Town of Garner. One regular and one alternate member, appointed by the Wake County Board of Commissioners shall reside within the Town's extra-territorial planning area; however, if there is an insufficient number of qualified residents of the extra-territorial planning area to meet membership requirements, the Wake County Board of Commissioners may appoint other residents of the county as necessary to make up the requisite number. If the Board of Commissioners fails to make these appointments within 90 days after receiving a written request from the Town Council, the Town Council shall make the appointments.

2. **Terms.** According to G.S. 160A-388, the Board of Adjustment members shall be appointed for three-year staggered terms, but members may continue to serve until their successors have been appointed.
3. **Current members.** Members of the Board of Adjustment on the effective date of this UDO shall continue to serve until their respective terms expire.
4. **Vacancies.** Vacancies may be filled for the unexpired terms only.
5. **Removal.**
 - a. Regular members may be removed by the appointing authority at any time for two consecutive unexcused absences from a Board of Adjustment meeting or for accumulating a total of unexcused absences within a 12-month period equal to 30 percent or more of the Board of Adjustment meetings within that 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.
 - b. Alternate members may be removed by the appointing authority for failure to respond on two consecutive occasions or, within any 12-month period, on 30 percent or more of the occasions when a timely request is made to such member to serve as an alternate. Regular or alternate members may also be removed by the appointing authority for other good cause related to performance of duties.

C. Officers, meetings, quorum.

1. **Officers.**
 - a. 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.
 - b. 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 absence.
 - c. The Chairperson and Vice-Chairperson shall take part in all deliberations and vote on all issues.

2. Meetings.

- a. The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with Section 3.1.P., Applications to be processed expeditiously. The Board of Adjustment may provide in its by-laws for the calling of special meetings.
- b. The Board of Adjustment shall conduct its meetings in accordance with the quasi-judicial procedures set forth in this UDO.
- c. All meetings of the Board of Adjustment shall be open to the public, and whenever feasible the agenda for each Board meeting shall be made available in advance of the meeting.

3. Quorum. A quorum for the Board of Adjustment shall consist of five members. A quorum is necessary for the Board of Adjustment to take official action. A member who has withdrawn from the meeting without being excused as provided in paragraph 4. below shall be counted as present for purposes of determining whether a quorum is present.**4. Participating and voting.**

- a. The concurring vote of four members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Planning Director or other administrative official, or to decide in favor of the applicant any matter upon which the Board of Adjustment is required to pass under this UDO, including (but not limited to) the issuance of variances or special use permits. For purposes of this voting requirement, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternatives available to the place of such members.

In all other matters, actions of the Board of Adjustment shall be taken by majority vote, a quorum being present.

- b. Once a member is physically present at a Board of Adjustment meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with paragraph c. below or has been allowed to withdraw from the meeting in accordance with paragraph d below.
- c. A member of the Board shall not participate on any quasi-judicial matter in a manner that would violate a person's constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to:
 - (1) A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
 - (2) Undisclosed ex parte communication;

- (3) A close family, business, or other associational relationship with an affected person and;
- (4) Or a financial interest in the outcome of the matter.

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

- d. A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.
- e. A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.
- f. All members may participate in and vote on all issues before the Board of Adjustment regardless of whether the property involved is located within the Town or within the extra-territorial area.

- 5. **Rules of procedure.** The Board of Adjustment may adopt by-laws governing its procedures and operations not inconsistent with the provisions of this UDO.
- 6. **Minutes.** The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact.

D. **Powers and duties.** The Board of Adjustment shall have the following powers and duties:

- 1. **Administrative appeals.** The Board of Adjustment shall hear and decide appeals from any order, decision, requirement, or interpretation made by the Planning Director or other administrative official where it is alleged there is an error in any order, requirement, decision, interpretation, or determination in the enforcement of this UDO;
- 2. **Official zoning map.** The Board of Adjustment shall interpret the intent of the official zoning district map where uncertainty exists, including disputed district boundary lines and lot lines on the zoning district map;
- 3. **Variances.** The Board of Adjustment shall hear and decide requests for variance from the requirements of this UDO when strict application of the provisions of the UDO would result in unnecessary hardship;
- 4. **Other responsibilities.** The Board of Adjustment shall have any other matter the Board of Adjustment is required to act upon by any Town ordinance.

E. **Staff.** The Planning Department shall serve as staff to the Board of Adjustment.

(Ord. No. 3376, §§ 4, 5, 1-17-06; Ord. No. 3558, § 2, 7-7-09)

2.4. Planning Director.

- A. **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.
- B. **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. The person or persons to whom these functions are assigned shall be referred to in this UDO as the Planning Director.
- C. **Powers and duties.** The Planning Director shall have the following powers and duties:
 - 1. **Administration and enforcement.** The Planning Director shall administer and enforce the provisions of this UDO;
 - 2. **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;
 - 3. **Zoning compliance permit.** The Planning Director shall approve or disapprove zoning compliance permit applications;
 - 4. **Site plan review.** The Planning Director, as Chair of the Technical Review Committee, shall review and approve, approve with conditions or disapprove site plans;
 - 5. **Sign permits.** The Planning Director shall approve, approve with conditions or disapprove sign permit applications;
 - 6. **Temporary use permit.** The Planning Director shall approve, approve with conditions or disapprove temporary use permit applications;
 - 7. **Technical Review Committee.** The Planning Director shall be responsible for all final decisions of the Technical Review Committee;
 - 8. **Minor subdivision plats.** The Planning Director, as Chair of the Technical Review Committee, shall approve, approve with conditions or deny minor subdivision plats.
 - 9. **Final plats.** The Planning Director, as Chair of the Technical Review Committee, shall approve, approve with conditions or deny major subdivision final plats.
 - 10. **Major subdivision preliminary plats.** The Planning Director shall review and make recommendations on major subdivision preliminary plats;
 - 11. **Major site plan review.** The Planning Director shall review and make recommendations on major site plans;
 - 12. **Variances.** The Planning Director shall review variance requests;
 - 13. **Special use review.** The Planning Director shall review special use requests;

14. **Text amendments.** The Planning Director shall review amendments to the text of this UDO;
15. **Official zoning map amendments (rezoning).** The Planning Director shall review amendments to the official zoning map;
16. **Conditional use district zoning.** The Planning Director shall review conditional use district zoning applications;
17. **Planned development review.** The Planning Director shall review Planned Development (PUD, PRD, MXD, TND) applications; and
18. **Other duties.** The Planning Director shall perform other duties imposed under the provisions of the Garner UDO, as amended from time to time.

2.5. Town Engineer.

- A. **Designation.** The Town Manager shall designate the Town Engineer for the Town of Garner.
- B. **Powers and duties.** The Town Engineer shall have the following powers and duties:
 1. **Subdivision plats.** As a member of the Technical Review Committee, the Town Engineer shall review and comment on all preliminary and final plats, both minor and major; and
 2. **Stormwater development permits.** The Town Engineer, acting as the Watershed Administrator, shall issue all stormwater permits and watershed protection occupancy permits. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours. The Town Engineer shall undertake to monitor land use activities within the watershed areas to the extent reasonably practicable, to identify situations that may pose a threat to water quality, and report all significant findings to the Watershed Review Board.
 3. **Site plan review.** The Town Engineer shall review and make recommendations on major and minor site plans;
 4. **Special use review.** The Town Engineer shall review special use requests;
 5. **Official zoning map amendments (rezoning).** The Town Engineer shall review amendments to the official zoning map;
 6. **Conditional use district zoning.** The Town Engineer shall review conditional use district zoning applications;
 7. **Planned Development review.** As a member of the Technical Review Committee, the Town Engineer shall review all Planned Development (PUD, PRD, TND, MXD) applications.

2.6. 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 the following powers and duties:
1. **Temporary use permits.** The Building Official shall review and make recommendations on temporary use permit applications;
 2. **Subdivision plat review.** As a member of the Technical Review Committee, the Building Official shall review and comment on all plats;
 3. **Building permits.** The Building Official shall issue building permits; and
 4. **Certificate of occupancy.** The Building Official shall issue certificates of occupancy.

2.7. Technical Review Committee.

- A. **Designation.** The Town Manager shall designate a Technical Review Committee consisting of the Planning Director, the Town Engineer, the Building Official, the Town Manager and any other Town professional the Manager deems necessary for the professional review, so long as 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 (through its Chair, the Planning Director) has the following powers and duties:
1. **Minor subdivision plats.** The Technical Review Committee, through its Chair, the Planning Director, shall approve, approve with conditions or deny minor subdivision plats.
 2. **Final plats.** The Technical Review Committee, through its Chair, the Planning Director, shall approve, approve with conditions or deny major subdivision final plats.
 3. **Site plan approval.** The Technical Review Committee, through its Chair, the Planning Director, shall approve, approve with conditions or deny site plans.

2.8. Summary of review authority.

Procedure	Town Engineer	Building Official	Planning Director	Board of Adjustment	Planning Commission	Town Council	Superior Court
Stormwater Permit	Decision					Appeal	
Building Permit	Review	Decision	Review				
Certificate of Occupancy	Review	Decision	Review				
Planning Director Decisions							
Final Plat, Major	Review	Review	Decision			Appeal	
Minor Plat	Review	Review	Decision			Appeal	
Ordinance Enforcement			Decision	Appeal			
Sign Permit			Decision	Appeal			
Site Plan Review	Review	Review	Approval			Referral	Appeal
Temporary Use Permit		Review	Decision	Appeal			
Written Interpretation			Decision	Appeal			
Zoning Compliance Permit			Decision	Appeal			
Planned Development Detailed Plan	Review		Approval			Referral	Appeal
Board of Adjustment Decisions							
Administrative Appeal				Decision*			Appeal
Variance			Review	Decision*			Appeal
Zoning Map Interpretation			Review	Decision*			Appeal
Special Exceptions			Review	Decision*			Appeal
Planning Commission Decisions							
Master Sign Plan			Review		Decision	Appeal	
Preliminary Plat, Major	Review		Review		Approval	Referral	Appeal
Town Council Decisions							
Conditional Use District Zoning	Review		Review		Review	Decision*	Appeal
Official Map Amendment (Rezoning)	Review		Review		Review	Decision*	Appeal
Planned Development, Designation	Review		Review		Review	Decision*	Appeal
Planned Development Detailed Plan—Planning Director Referral						Decision*	Appeal
Preliminary Plat, Major—Planning Commission Referral						Decision*	Appeal
Site Plan Review—Planning Director Referral						Decision*	Appeal
Special Use Permit	Review		Review		Review	Decision*	Appeal
Text Amendment			Review		Review	Decision*	Appeal

Key: * = Public Hearing Required.
 (Ord. No. 3558, § 2, 7-7-09)