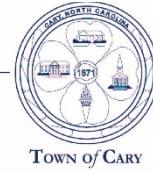


Staff Report for Town Council

Meeting Date: March 30, 2017



Round 38 Land Development Ordinance Amendments

Purpose: Consider action on proposed Round 38 LDO amendments

Prepared by: Mary Beerman, Planning

Speaker: Mary Beerman, Planning Department

Executive Summary: The proposed Round 38 Land Development Ordinance (LDO) amendments would:

- Provide greater flexibility regarding the location of freestanding garages on single-family lots 40,000 square feet or larger
- Provide an alternative to the required neighborhood meeting for widespread rezoning cases
- Allow a crematorium as a permitted use in the Industrial zoning district
- Clarify or modify various provisions related to perimeter buffers, setbacks for sidewalks, and time limits for submitting revisions to zoning conditions.

Staff Recommendation: *That Council approve the proposed Round 38 Land Development Ordinance amendments*

Planning and Zoning Board Recommendation: The Planning and Zoning Board recommended approval of the proposed Round 38 LDO amendments by a vote of 9-0.

PURPOSE AND IMPORTANCE OF LDO AMENDMENTS

Cary has long been recognized at the local, state and national level as an outstanding place to live, work, play and raise a family. Policies and regulations that guide growth and development are critical to maintaining the look and feel of our community, while creating new and vibrant neighborhoods, and business and employment opportunities. The Comprehensive Plan, including the Cary Community Plan and other guiding documents, lays out the vision for the future, developed through an extensive and collaborative community planning process. This vision is brought to life in part through the cumulative effect of new development and redevelopment. The Land Development Ordinance (LDO) ensures that this growth occurs in a way that supports and achieves our vision for the future, by consistently applying agreed-upon rules and regulations to individual developments and land-development related activities.

The Town continually strives to adjust and improve these regulations in response to changing needs and situations. Some of these changes are substantive in nature, affecting the type of development that can occur at a given location. Other changes are procedural in nature, affecting the process by which various decisions occur. Still others are minor or technical in terms of impact, yet may be important for consistency, clarity, efficiency, or other reasons. All amendments to the LDO occur through a public hearing process so that citizens, property owners, developers, and other interested persons have an opportunity to participate and offer comments and suggestions for Town Council to consider in making its decisions.

SCHEDULE

Public Hearing	January 5, 2017
Planning and Zoning Board Meeting	February 20, 2017
Final Action by Town Council	March 30, 2017
Effective	March 30, 2017

SUMMARY OF PROPOSED ROUND 38 AMENDMENTS

A brief description of each proposed amendment is provided below. More detailed background information is included in the section of this report entitled “DETAILS REGARDING PROPOSED LDO AMENDMENTS”.

ITEM A: Residential Garages – The proposed amendment would allow a residential accessory structure such as a detached garage to be located between the front of a residence and the street where the lot size is at least 40,000 square feet and the accessory building is located at least 100 feet from the front property line.

Public Hearing Comments	One citizen, the property owner whose 2016 request for a building permit prompted development and consideration of this amendment, spoke in support. One council member indicated support for a change to better address detached garages on larger lots.
Planning and Zoning Board Meeting	Following a brief discussion with several general questions for clarification, the Planning and Zoning Board recommended approval by a vote of 9-0.

ITEM B: Applicability of Neighborhood Meeting for Rezoning Cases – The amendment as presented at the public hearing proposed to eliminate the required neighborhood meeting for town-initiated rezoning requests. The proposal has since been revised to replace the neighborhood meeting requirement with an alternate means of community outreach for a rezoning where the geographic area is widespread, and the nature of the change is not for the purpose of obtaining entitlements for development of a particular property.

<p>Public Hearing Comments</p>	<p>Some Town Council members expressed concern with treating town-initiated rezonings differently than other rezoning cases. Staff proposed to bring forward options that would continue to provide an opportunity for citizens to hear about and fully understand any proposed rezoning prior to the actual public hearing.</p> <p>Staff Response: The proposed amendment has been revised to replace, in some cases, the neighborhood meeting currently required prior to a rezoning public hearing with an alternative form of community outreach, such as a public workshop or open house.</p> <ul style="list-style-type: none"> ▪ This alternative outreach would be applicable to widespread zoning changes initiated for the purpose of implementing the goals and policies of the Comprehensive Plan. Examples of such changes include the establishment and application of new types of zoning districts or widespread changes to the applicability of or location of existing zoning districts or overlay districts. ▪ The standard neighborhood meeting would continue to take place for all citizen-initiated rezoning requests and for all town-initiated rezoning requests for Town-owned property.
<p>Planning and Zoning Board Meeting</p>	<p>Following a brief discussion with several general questions for clarification, the Planning and Zoning Board recommended approval by a vote of 9-0.</p>

ITEM C: Minor Amendments - The proposed minor amendments would:

- (a) Clarify existing LDO requirements for buffers between two Class 2 uses and eliminate related “Principles of Interpretation”
- (b) Eliminate 5-foot setback requirement for at-grade sidewalks on lots containing a detached dwelling
- (c) Require that an applicant submit any requested changes to proposed zoning conditions at least 20 days prior to any meeting of the Town Council or the Planning and Zoning Board at which the rezoning case is to be presented
- (d) Add crematorium to the list of permitted uses in the Industrial zoning district.

<p>Public Hearing Comments</p>	<p><i>(d) Add crematorium to the list of permitted uses in the Industrial zoning district.</i></p> <p>Council members questioned the need for this change, noting that the amount of land available for more traditional industrial uses was limited, and asked for additional information regarding the need for this change.</p> <p><u>Staff Response:</u> This change was initiated in response to a request from a property owner/developer representing the interests of the Hindu community, where cremation is a</p>
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	religious and cultural norm. Crematoria are often found in association with the related uses of cemeteries or funeral homes. The amendment request reflects a general increase in demand for cremation service, independent of any related uses. Crematoria are allowed in Industrial zoning districts in many jurisdictions, including Raleigh, Durham and Morrisville. Currently, Cary allows crematoria only in Mixed Use Overlay Districts and the OI and ORD zoning districts
Staff Comments	<p><i>(c) Require that an applicant submit any requested changes to proposed zoning conditions at least 20 days prior to any meeting of the Town Council or the Planning and Zoning Board at which the rezoning case is to be presented</i></p> <p>Since the public hearing, the text has been clarified to specify 20 <u>business</u> days.</p>
Planning and Zoning Board Meeting	Following a brief discussion with several general questions for clarification, the Planning and Zoning Board recommended approval by a vote of 9-0.

FISCAL IMPACT

Many of the proposed changes seek to update, clarify, and simplify existing text. No net fiscal impact is expected as result of these changes.

DETAILS REGARDING PROPOSED LDO AMENDMENTS

ITEM A – RESIDENTIAL GARAGES

LDO Section 5.3.2(D) currently prohibits locating residential accessory buildings such as detached garages between the front of a residence and the street. A garage can only extend in front of the dwelling if at least 50% of the side of the garage is attached to the residence.

LDO Amendment Approved in 2012 - This provision was added to the LDO in February 2012, following the construction of a detached garage in front of a residence on a 12,000 square-foot lot.

The residence is located about 73 feet from the edge of the street right-of-way. The garage is located about 28 feet from the right-of-way. *The intent of the amendment was to preserve the look and feel of residential neighborhoods in settings*

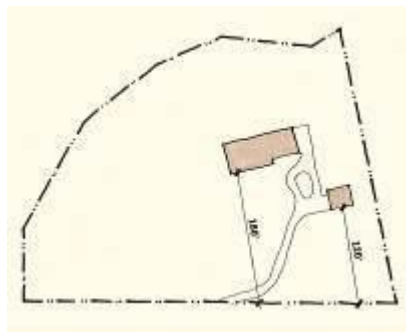


where homes are relatively close together and highly visible from the street.

The general design, style and appearance of an accessory building is not an issue. However its location relative to the principal structure and street can detract from the overall sense of cohesiveness in the neighborhood, creating an incongruous, dominating presence in the front yard.

Situation Prompting Further Refinement

In 2016, staff was contacted by the owner of a parcel zoned R-40, who wishes to construct a detached garage in front of his residence on a 3.67-acre parcel. The existing residence is about 180 feet from the edge of the street right-of-way. The proposed garage would be about 120 feet from the right-of-way as illustrated:

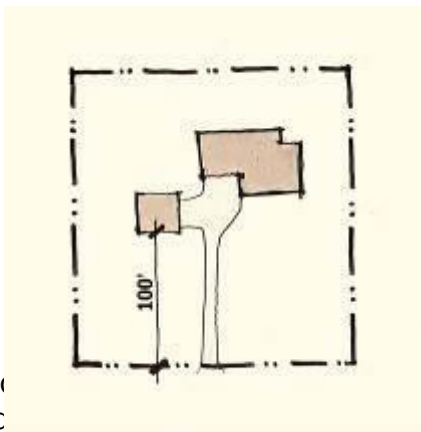


Unlike the previous example, here the existing neighborhood is characterized by lots in the R-40 zoning district (to the north and east) that range from about one to five acres, and lots in the R-20 zoning district (to the south and west) that range from about ½ to 1½ acres.

Effect of Proposed Amendment

The proposed amendment would continue to prohibit construction of a detached garage in front of the residence on lots smaller than 40,000 square feet (0.92 acre).

On larger lots, a garage could be placed between the residence and the street provided the garage is located at least 100 feet from the front property line, as illustrated.



Staff believes the proposed amendment will continue to achieve the intent of the 2012 amendment while avoiding unnecessary restriction on larger lots in a less dense setting.

PROPOSED TEXT

5.3.2 ACCESSORY USES AND STRUCTURES General Standards and Limitations

(D) Location of Accessory Buildings, Structures, or Vehicles

(1) Definition of Attached Accessory Structure

If an accessory structure other than a garage or similar structure is located closer than five (5) feet to the principal structure, the accessory structure shall be deemed attached to the principal structure.

(2) General Location Restrictions

~~Unless otherwise specified, an a~~Accessory structures or vehicles shall not be located within the following areas:

- (a) a required front setback, ~~the~~ or corner side setback, ~~or~~
- (b) within five (5) feet of the rear or side lot lines, ~~;~~
- (c) ~~Any accessory structure shall be located at least within~~ five (5) feet from the edge of a required buffer, ~~or,~~
- (d) ~~Accessory uses and structures may not encroach into~~ within any easements, ~~but may directly abut easements.~~

(3) Additional Location Restrictions Applicable to Boats, Trailers and

Vehicles Storage or parking of all boats, recreational vehicles, and utility or travel trailers, or other vehicles allowed by this Section shall be located as follows:

- (a) within a side yard (not including corner side yards) such that they are not closer to the front of a lot or the street than the principal structure;
- (b) within a rear yard (not including rear yards adjacent to a public street); or
- (c) within a corner side yard, or rear yard that is between the principal structure and an adjacent public street, where screened from the view of the street by an opaque fence with a minimum height of six (6) feet, plus additional opaque fencing (up to a height of eight (8) feet) and/or evergreen trees sufficient to obscure the full height of the boat, recreational vehicle, or trailer. Storage of such boats, vehicles or trailers shall not occur within a front yard (defined as the yard between the façade with the front door and the street) or within a side or rear building setback.

(4) Additional Location Restrictions for Garages and Similar Structures

~~Detached accessory structures on residential lots, with the exception of detached carports, shall not be closer to the front of a lot than the principal structure.~~

~~Garages, and similar structures, located between the minimum front setback and the setback of the front of a dwelling must be attached to the principal structure by at least fifty (50) percent of the attached side of the garage or accessory structure.~~

~~If the garage or similar structure is detached, it must be located at the same setback distance of the existing structure or greater and not be closer than five (5) feet to the principal structure.~~

- (a) Except as provided in Section (b) below, garages and similar accessory structures shall be located no closer to the front of a lot than the principal structure, except where such accessory structure is attached to the principal structure by a minimum of 50% of the length of attached side of the accessory structure.
- (b) Section (a) above shall not apply to garages and similar accessory structures located on lots 40,000 square feet or larger, provided that the accessory structure is located a minimum of 100 feet from the front property line.

This section (4) shall not apply to carports or other structures which are open on three or more sides.

(E) Size of Residential Accessory Buildings and Structures

- (1) For structures accessory to residential uses, the combined floor area of all detached accessory structures shall occupy an area equal to no more than thirty-three (33) percent of the total heated floor area of the principal structure, unless otherwise allowed in this Ordinance.

This requirement shall not apply to roofed structures without walls (such as carports) provided such structures are not located within the minimum required setbacks for the principal structure on the lot.

For lots forty thousand (40,000) square feet or greater in area:

- a) the combined floor area of all detached accessory structures shall not exceed five percent (5%) of the total lot area;
- b) No single detached structure shall exceed seventy percent (70%) of the total heated floor area of the principal structure, excluding accessory structures for agricultural purposes (e.g. barn).
- c) All detached accessory structures that exceed fifty percent (50%) of the total heated floor area of the principal structure shall meet the minimum required setbacks for the principal structure, regardless of their location on the lot in relation to the principal structure.

12.4 RULES OF CONSTRUCTION, USE CLASSIFICATIONS AND DEFINITIONS: Other Key Terms Defined

BUILDING, ACCESSORY

A building or structure that is on the same lot as, and of a nature customarily incidental and subordinate to, another building or structure, and the use of which is clearly incidental and subordinate to that of the other building or structure.

BUILDING, PRINCIPAL

A building in which is conducted the principal use of the lot on which it is situated. A multi-occupant property may have more than one principal building, but only structures regularly used for human occupancy may be considered principal buildings. Not an accessory building.

STRUCTURE

Any improvement upon land that requires more or less permanent location on the ground or attachment to something having a permanent location on the ground. This includes buildings (~~walled and roofed buildings~~), sheds or carports with one or more open sides, signs, decks and enclosed decks, manufactured homes, a gas, liquid, or liquefied gas storage tank that is principally above ground, and impervious surfaces. Building setbacks shall not apply to certain structures which do not require issuance of a building permit, and/or which ~~must~~ may by necessity pass through or encroach into setbacks, including driveways, walkways, sidewalks, fences, private recreational equipment like swing sets or basketball goals, fences and retaining walls less than eight (8) feet in height, greenways, and similar features.

ITEM B – APPLICABILITY OF NEIGHBORHOOD MEETING FOR REZONING CASES**SUMMARY OF PROPOSED AMENDMENT**

The proposed amendment would allow, for certain rezoning cases, an alternative means of conducting public outreach, such as one or more open houses, as an alternative to the standard neighborhood meeting currently required prior to the public hearing for a rezoning case. Such an alternative would be applicable only to widespread zoning changes initiated for the general purpose of implementing the goals and policies of the Comprehensive Plan. Examples of such changes include the establishment and application of new types of zoning districts or widespread changes to the applicability of or location of existing zoning districts or overlay districts.

The Town would provide outreach and input opportunities as needed to ensure that citizens have an opportunity to ask questions and understand the proposed rezoning prior to the public hearing. Notification to the public would include posting on the Town's web site, and, based on the nature of the change and the number of parcels affected, either mailing of a notice to individual property owners affected, or publication of a ½ page ad in a local newspaper. The current neighborhood meeting format would continue to take place for both town- and citizen-initiated rezoning requests sought for the purpose of obtaining entitlements for development of a specific property.

This amendment is proposed at this time in anticipation of and preparation for future town-initiated changes to zoning districts or overlay districts that will follow adoption of the Cary Community Plan. Staff believes the current neighborhood meeting format will not be effective when applied to more widespread town-initiated changes that could potentially involve hundreds or even thousands of parcels.

The proposed amendment as presented at the public hearing would have simply exempted all town-initiated rezonings from this neighborhood meeting requirement. In response to comments and concerns from council members and a speaker at the public hearing, the amendment has been modified to require an alternative form of outreach which is more consistent with past practices and the Town's long-standing commitment to keeping its citizens informed and engaged.

BACKGROUND OF EXISTING NEIGHBORHOOD MEETING REQUIREMENT:

The following steps are currently required for all proposed rezoning requests:

- Submittal of Application
- Neighborhood Meeting
- Town Council Public Hearing
- Planning and Zoning Board Recommendation
- Action by Town Council

Prior to March 1, 2015, the LDO required an applicant to meet with neighboring property owners prior to submittal of a rezoning application. There was concern that Council members and Town staff were not aware of a potential rezoning request at the time of this neighborhood meeting, and were thus unable to effectively respond to questions from citizens. Another concern was the lack of staff presence at these meetings to ensure that accurate information regarding town standards and procedures was provided.

To address these concerns, the LDO was revised effective March 1, 2015 to require that neighborhood meetings be held after submittal of the rezoning application and prior to the Town Council public hearing, with staff in attendance. The meetings are held on a monthly basis at Town Hall, and begin with a staff overview of the rezoning process in Cary and opportunities for public input during that process. Following this overview, separate concurrent meetings are held for each rezoning case. These individual meetings, conducted by the applicant and attended by a least one staff member, provide an opportunity for the applicant, typically a developer or property owner, to provide information on the request, hear concerns of neighborhood residents, and respond to questions.

Neighborhood meetings for 57 rezoning cases have been held at 21 monthly meetings since April 2015. These 57 meetings were attended by a total of about 900 citizens. This results in an average attendance of about 16 citizens per rezoning case. For some cases, there were very few, or even no citizens in attendance. At the other extreme, there have been several cases where attendance has been in the range of 75 to 150 or more. Rezoning requests typically involve one to five parcels of land, though occasionally such requests can involve an assemblage of more lots. Staff believes this meeting format is ineffective when applied to more widespread changes that could potentially involve hundreds or even thousands of parcels.

PROPOSED TEXT

3.4.1 REZONINGS: Rezoning Generally

(D) Procedure

(4) Neighborhood Meeting

(a) Applicability

This section 3.4.1(D)(4) shall apply to all rezoning applications filed and accepted as complete with exception of Town initiated rezonings.

(b) Procedure

Neighborhood meetings for all applicable complete rezoning applications filed and accepted as complete within a given month shall be held concurrently, within approximately four (4) weeks of the published submittal deadline for rezoning applications, with the meeting date, time and location established and scheduled by staff. At the neighborhood meeting, each applicant shall conduct a meeting with any attendee interested in that proposed rezoning. The purpose of this neighborhood meeting is to ensure that nearby property owners are aware of the request and have an opportunity to inform the applicant of issues and concerns prior to the public hearing.

A general orientation meeting shall be conducted by staff for all applications at the beginning of each neighborhood meeting.

(c) Alternative Outreach for Certain Rezoning Cases

An alternative means of conducting public outreach, such as one or more open houses, may be utilized in lieu of the neighborhood meeting for widespread zoning changes initiated for the general purpose of implementing the goals and policies of the Comprehensive Plan. Examples of such changes include the establishment and application of new types of zoning districts or widespread changes to the applicability of or location of existing zoning districts or overlay districts. The Town shall provide outreach and input opportunities as needed to ensure that citizens have an opportunity to ask questions and understand the proposed rezoning prior to the public hearing. Notification shall include posting on the Town's web site, and, based on the nature of the change and the number of parcels affected, either mailing of a notice to individual property owners affected, or publication of a ½ page ad in a local newspaper.

The standard neighborhood meeting shall be required for all citizen- initiated rezoning requests and all town-initiated rezoning requests for Town-owned property.

Proposed minor changes would:

- Clarify LDO requirements for buffers between two Class 2 uses and eliminate related “Principles of Interpretation.” *This change incorporates comments found in the “Principles of Interpretation” table into standard ordinance, thus improving clarity by simplifying text and eliminating duplication.*
- Eliminate 5-foot setback requirement for at-grade sidewalks on lots containing a detached dwelling. *Residential driveways are currently allowed adjacent to the property line. The proposed amendment provides this same flexibility to sidewalks on single-family lots.*
- Require that an applicant submit any requested changes to proposed zoning conditions at least 20 days prior to any meeting of the Town Council or the Planning and Zoning Board at which the rezoning case is to be presented. *Currently, revised zoning conditions can be submitted up to 10 days prior to the meeting. Changing this deadline to 20 days provides adequate time for staff to review the proposed changes and include them in the rezoning staff report being prepared for the P&Z Board or Town Council meeting.*
- Add crematorium to the list of permitted uses in the Industrial District. *This use is currently permitted as a principal use, or accessory use to a funeral home, in the GC, O&I, and Mixed Use Overlay Zoning Districts. Crematorium is also allowed as an accessory use to cemetery, which requires approval of a Special Use Permit in all districts where allowed. In response to a growing demand for a crematorium as a principal use independent of associated funeral services or interment, staff recommends that the use also be allowed by right in the Industrial zoning district.*

PROPOSED TEXT

7.2.2 LANDSCAPING, BUFFERING, SCREENING AND TREE PROTECTION: Requirements for Perimeter Buffers and landscape Areas

(B) Type and Width of Required Buffer

Proposed Use Class	IF DEVELOPED Adjacent Use Class							IF VACANT Adjacent Property Zoning District			
	1	2	3	4	5	6	7	Residential Zones (See [D][2] below for exceptions)	CT TC OI PDD	GC	ORD I
	1	0	20 B	20 B	20 B	25 B	35 B	45 B	20 B	25 B	35 B
2	20 B	20 B*	30 B	40 A	50 A	65 A	80 A	20 B	50 A	65 A	80 A
3	20 B	30 B	20 B	30 A	40 A	50 A	65 A	30 B	40 B	50 A	65 A
4	20 B	40 A	30 A	20 B	30 B	40 B	50 A	40 A	30 B	40 A	50 A
5	25 B	50 A	40 A	30 B	20 C	20 C	30 B	50 A	20 C	20 C	30 B
6	30 A	65 A	50 A	40 B	20 C	20 C	25 B	65 A	20 C	20 C	25 C
7	45 B	80 A	65 A	50 A	30 B	25 B	20 C	80 A	30 B	30 B	20 C

- (1) No buffer is required between shared public uses (e.g., a park adjacent to a school, library, or other shared public facility).
- (2) Required landscaping areas to be provided between two Class 2 uses are not subject to the ownership restrictions applied to other buffers, and may be located within the platted portion of a lot.
- (3) Once a detached dwelling has been constructed and occupied, in instances where the landscaping area (planted to a Type B standard) between two type 2 uses is located within the individual building lot, the landowner(s) may remove or supplement vegetation on the lot.

PRINCIPLES OF INTERPRETATION

The landscaping area between two type 2 uses is not required to be individually platted, and may be located within individual building lots.

In cases where the landscaping area between two type uses is intended to be located within individual building lots, the landscape area is intended to be left in its natural state during construction, and the retention of significant existing vegetation is encouraged.

The Type B buffer standard is listed only as a suggestion (not a requirement) in cases where the landscaping area between two type 2 uses is left within individual buildings lots. Landowners may remove or supplement vegetation as appropriate following construction.

The Town will not enforce any planting standards inside landscaping areas between two type 2 uses which have been included within individual building lots.

6.3.2 SETBACK MEASUREMENT AND REQUIREMENTS: Setback

Requirements

Portion of TABLE 6.3-1: PROJECTIONS PERMITTED INTO REQUIRED SETBACKS	
Feature That May	Limitation
Encroach Into Setback	
At-grade sidewalks; and steps, ramps, handrails, and supporting elements	May project into a required roadway setback where making a connection to another sidewalk or a street, May project into a required side or rear setback, but no closer than five (5) feet to the property line. <u>On a lot containing a detached dwelling, no setback is required for at grade sidewalks.</u>

3.4.2 Rezoning to Conditional Use Districts

(C) Conditions

- (5) The applicant shall make no changes to proposed zoning conditions within 20 business days of a meeting of the Town Council or the Planning and Zoning Board at which the rezoning case is scheduled for a hearing, recommendation or decision. Changes to proposed zoning conditions received after publication of the notice of the initial public hearing must be more restrictive than the conditions initially advertised. A revised affidavit meeting the requirements of Section 3.4.2(C)(5) which includes the revised conditions must be received by the Planning Department prior to the meeting at which the rezoning request is to be presented.

~~After the Town has published the notice of public hearing for the application, the applicant shall make no changes in the conditions that are less restrictive than those stated in the application, including, but not limited to, smaller setbacks; more dwelling or rooming units; greater height; more access points; new uses; and fewer improvements. However, more restrictive conditions or additional conditions may be added to the application if such conditions are received by the Planning Department in writing and signed by all owners of the property, together with a revised affidavit meeting the requirements of Section 3.4.2(C)(5), at least ten (10) working days before the date scheduled for final Town Council action on the application.~~

Portion of TABLE 5.1-1: TABLE OF PERMITTED USES - GENERAL USE DISTRICTS (EXCEPT PDD, TC & CT) AND MIXED USE OVERLAY DISTRICT

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

¹ Where the base zoning district is Mixed Use District (MXD), a use listed herein as Special Use shall instead be a Permitted Use, subject to the same use-specific standards, provided that the use is represented on the approved Preliminary Development Plan component of the MXD district. ² Neighborhood Activity Center, as delineated on the Town-wide Land Use Plan. ³ Community Activity Center, as delineated on the Town-wide Land Use Plan. ⁴ Regional Activity Center, as delineated on the Town-wide Land Use Plan.

Use Category	Use Type and [Use Class]	RESIDENTIAL						NON-RESIDENTIAL				MIXED USE OVERLAY DISTRICT ¹			Use-Specific Standards			
		R80	R40	R20	R12	R18	T8R	RMF	RRI	OGC	OR	I	NC ²	CC ³		RC ⁴		
COMMERCIAL USES																		
Retail Sales and Service	Crematorium [6]											P	P		P	P	P	

#2231

#2319