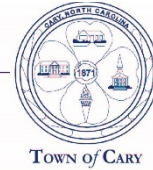


## Staff Report for Town Council

**Meeting Date:** March 30, 2017



### **Round 36 Land Development Ordinance Amendment**

**Purpose:** Consider action on proposed Round 36 LDO amendments

**Prepared by:** Mary Beerman, Planning

**Speaker:** Mary Beerman, Planning Department

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

- Allow staff action on development plans within the Central Transportation Zone regardless of size or the presence of a drive-through facility, provided the plan is not otherwise subject to action by Town Council or the Zoning Board of Adjustment
- Maintain a conforming status for detached dwellings that would otherwise be made non-conforming by dedication of additional right-of-way for existing streets.

**Staff Recommendation:** *That Council approve the proposed Land Development Ordinance amendment.*

**Planning and Zoning Board Recommendation:** The Planning and Zoning Board recommended approval of the proposed Round 36 LDO amendments by a vote of 9-0.

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## **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.

### **SUMMARY OF PROPOSED 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 Plan Approval Process in Central Transportation Zone**

The proposed amendment would allow staff approval of development plans that propose 100 or more residential units, 100,000 square feet or more of nonresidential floor area, or a drive-through facility in the Central Transportation Zone (inside of the Maynard Loop). Staff approval would be allowed town-wide for drive-through uses other than food service. All of the above types of development plans currently require action by Town Council after an evidentiary hearing.

<p><b>Public Hearing Comments</b></p>	<p><i>There were no speakers at the public hearing. Some council members expressed concern that council would no longer be the approval authority for some large development projects. Staff was asked to provide a worst case scenario if the amendment was adopted. Several council members expressed support for allowing, town-wide, administrative approval of drive-through facilities other than restaurants.</i></p> <p><i><u>Staff Response:</u> Additional discussion provided below under “DETAILS REGARDING PROPOSED LDO AMENDMENTS”.</i></p>
<p><b>Planning and Zoning Board Meeting</b></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 B Right-of-Way Dedication and Existing Dwellings**

The proposed amendment would allow existing dwellings to remain conforming where setbacks are reduced due to widening of existing right-of-way.

<p><b>Public Hearing Comments</b></p>	<p>There were no speakers at the public hearing and no concerns expressed by council members.</p>
<p><b>Planning and Zoning Board Meeting</b></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>

**FISCAL IMPACT:**

- Item B would remove a disincentive for dedication of public street right-of-way in some circumstances, which would in turn eliminate any future need for the Town to purchase that right-of way.
- Implementation of these amendments is expected to have a minimal impact on Town resources.

## DETAILS REGARDING PROPOSED LDO AMENDMENTS

### ITEM A - Plan Approval Process in Central Transportation Zone

#### Existing Approval Process Applicable to Certain Development Projects

Currently, development plans for the following require action by Council following an evidentiary hearing:

1. 100 or more residential units;
2. 100,000 square feet or more of nonresidential floor area; or
3. construction or expansion of a drive-through facility except where:
  - a rezoning for the property was approved within the prior two calendar years;
  - a traffic impact analysis was prepared for the rezoning; and
  - the plan is not otherwise subject to review by Town Council or the Zoning Board of Adjustment.

#### Background of Existing Approval Process

##### Long History of Requiring Transportation Improvements

Cary has required transportation improvements as a part of development at least since the 1950s and perhaps earlier. Improvements were established through zoning conditions, development approvals, and zoning for Planned Unit Developments. This process was used for decades until the late 1980s.

In 1987, a local bill was approved by the NC General Assembly, authorizing the Town's collection of a "transportation development fee" (TDF) on all new construction within the Town limits and extraterritorial jurisdiction. In 1989, the Town Council adopted an ordinance establishing transportation development fees and requiring traffic studies for large developments. Many of the components of the original TDF ordinance are still in place today.

##### "Roads Ordinance" Adopted

In the late 1990s and into early 2000, changes occurred as to when a traffic study was required and which intersections were included in those traffic studies. In 1998, the Town adopted an "Adequate Public Facilities Planning and Development for Roads" ordinance ("Roads Ordinance") to work alongside the Town's existing TDF authority to help lessen the impacts of traffic and to help facilitate the provision of adequate roads in Cary. Under the Roads Ordinance, new development and rezoning proposals exceeding 100 new peak hour trips needed to show that necessary roadway facilities would be available to support the development.

##### "Roads Ordinance" Repealed

In March 2013, the Roads Ordinance was repealed in response to a shift in how the

judicial system appears to be interpreting state law authorizing zoning and development ordinances. In its place, the Town Council adopted an ordinance focusing on traffic studies at rezoning and requiring site or subdivision plans with high trip-generating potential to be reviewed in an evidentiary hearing before Town Council.

### **LDO Provisions that Replaced “Roads Ordinance”**

Specifically, the LDO was amended to establish the following procedural requirements currently required:

- Require preparation of a traffic study at the time of rezoning where trip generation was expected to exceed 100 peak hour trips; and
- Require an evidentiary hearing for projects proposing 100 or more residential units; 100,000 square feet or more of nonresidential floor area; or construction or expansion of a drive-through facility. *(Although a traffic study is not required for consideration of a development plan, council may take traffic impact into consideration when making its decision in an evidentiary hearing, and applicants may provide information on potential traffic impacts and offer to install improvements needed to mitigate such impacts).*

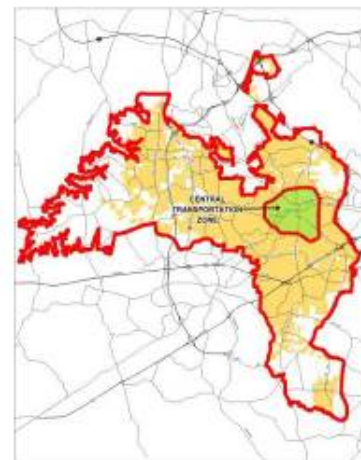
### **Proposed Changes To Existing Approval Process**

The proposed amendment would:

1. Allow staff approval of development plans within the Central Transportation District (interior of Maynard Loop) that propose 100 or more residential units; 100,000 square feet or more of nonresidential floor area; or construction or expansion of a drive-through facility.
2. Allow staff approval of development plans throughout Town that propose construction or expansion of any use containing a drive through window, with the exception of a new food service establishment.

### **Basis for Proposing Maynard Loop as Approval Authority Boundary**

A Level of Service standard of “D” has been established for the Base Transportation Zone (the area outside of the Maynard Loop), recognizing that additional road improvements beyond those required by the Town’s Comprehensive Transportation Plan (CTP) may be appropriate to mitigate potential traffic impacts from new development.



By contrast, A Level of Service standard of “F” has been established for the Central Transportation Zone (inside the Maynard Loop), recognizing that the

road network is largely built out, and additional traffic mitigations beyond those required by the Town’s CTP are generally not feasible to construct, even if recommended by a traffic study. In addition, LDO Section 7.11, which establishes the Base and Central Transportation Zones, states that the primary focus of the less-restrictive requirements of the Central Zone is to “encourage redevelopment and infill.”

**Table 1. Level of Service Criteria for Signalized Intersections**

Level of Service	Average Control Delay (seconds/vehicle)	General Description
A	≤10	Free Flow
B	>10 – 20	Stable Flow (slight delays)
C	>20 – 35	Stable flow (acceptable delays)
D	>35 – 55	Approaching unstable flow (tolerable delay, occasionally wait through more than one signal cycle before proceeding)
E	>55 – 80	Unstable flow (intolerable delay)
F <sup>1</sup>	>80	Forced flow (congested and queues fail to clear)

Source: *Highway Capacity Manual 2010*, Transportation Research Board, 2010.

1. If the volume-to-capacity (v/c) ratio for a lane group exceeds 1.0 LOS F is assigned to the individual lane group. LOS for overall approach or intersection is determined solely by the control delay.

### Relevant Policies of Cary Community Plan

POLICY	ANALYSIS
<b>WORK Chapter</b>	
<p><b>Policy 5:</b> Attract New, High Value Businesses  <b>Policy 6:</b> Attract and Nurture Small Businesses  <b>Policy 7:</b> Ensure the Economic Growth and Vitality of Downtown  <b>Policy 8:</b> Support the Locational Needs of New and Expanding Firms</p> <p><b>How Will We Achieve Our Vision:</b> Relevant action items in support of policies</p> <p><b>2. Create a Business-Friendly Environment</b></p> <ul style="list-style-type: none"> <li>▪ References improvements to ordinances to foster a business-supportive environment</li> </ul>	<p>The predictability of outcome and the more streamlined process offered by administrative approval versus an evidentiary hearing makes a significant contribution toward creating a more business-friendly environment, and eliminates or reduces process considerations as a disincentive for development.</p>
<b>SHOP Chapter</b>	

<p><b>Policy 2:</b> Focus Commercial Uses within Commercial Mixed Use Centers, Destination Centers, Downtown, and Shopping Centers</p> <p><b>How Will We Achieve Our Vision:</b> Relevant action items in support of policies</p> <p><b>1. <i>Promote and Enable Revitalization of Existing Commercial Centers</i></b></p> <ul style="list-style-type: none"> <li>▪ Major action items include review all Town development regulations to identify and remove disincentives for redevelopment</li> </ul>	<p><i>See Analysis of WORK Chapter and Downtown Special Planning Area and Policies</i></p>
<p><b>SHAPE Chapter</b></p>	
<p><b>Policy 4:</b> Support and Facilitate Redevelopment and Infill Development</p> <p>Policy Intent: To support economic development policies, Cary will support and facilitate redevelopment and infill development, particularly within Commercial Mixed Use and Destination Centers, Downtown Cary, and core neighborhoods.</p>	<p><i>See Analysis of WORK Chapter and Downtown Special Planning Area and Policies</i></p>
<p><b>Downtown Special Planning Area Policies</b></p>	

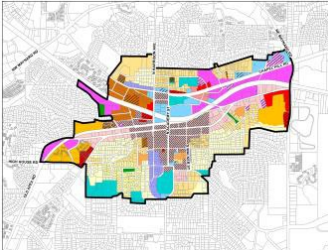
**Policy 5: Encourage Downtown Reinvestment and Redevelopment**

**How Will We Achieve Our Vision:** Relevant action items in support of policies

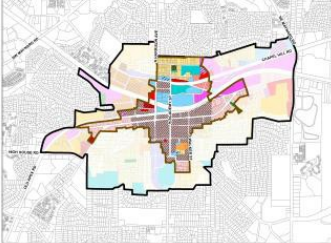
**4. Encourage Downtown Reinvestment and Redevelopment While Supporting a Range of Uses.**

- Includes streamlining of the permitting process a goal of new regulations
- Identifying and implementing strategies to maximize use of the BID is listed as a Major Action

**Town Center Zoning District**



**Enhanced Importance in Business Improvement District**



- Removing procedural barriers to new development would continue and strengthen the Town’s commitment to downtown.
- New private investment in this area can create a synergy that builds on the Town’s investment in public projects and public/private partnerships, that have included:
  - Downtown Park and Streetscape
  - Library
  - Cary Arts Center
  - Cary Theatre
  - Mayton Inn
  - Jones House
- The proposed change would remove a competitive disadvantage with other areas that also have the proper zoning (such as office parks). This factor is of enhanced importance in the Business Improvement District.
  - Zoning regulations within the Town Center, which comprises 15 sub-districts, are more fine-tuned than those in the remainder of the Town, better reflecting the Town’s preferences.

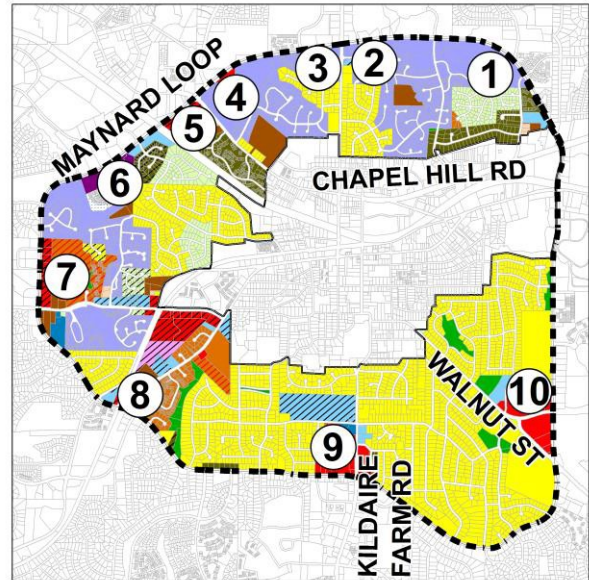
**Response To Council Comments at Public Hearing**

At the public hearing, some council members expressed concern with the proposed amendment and asked for information on the “worst-case” scenario if the LDO is amended as proposed, meaning, what type and intensity of development could be reviewed and approved by staff instead of council if the requirement for an evidentiary hearing is removed for projects within the Maynard Loop.

Most of the non-residential areas between the Town Center zoning district and the Maynard Loop are focused in the following areas as labeled on the map below:



1. Reedy Creek Plaza.
2. Cardinal Charter Academy, banks, office building, Jordan Hall
3. Northwoods Shopping Center (includes Walmart Neighborhood Market)
4. Lowe's Home Improvement and restaurants
5. Various non-residential uses, including State Employees Credit Union, Landmark Freewill Baptist Church, future mini-storage, and a vacant 5-acre parcel zoned for commercial use
6. Various non-residential uses including Life Storage and Taggart Autosport (which are part of Weatherfield Industrial Park), and office uses
7. Maynard Crossing Shopping Center
8. Various non-residential uses, including Sri Shirdi SaiBaba Temple, Mayfair Animal Hospital, Fortnight Brewery, Furry Feet Retreat Dog Boarding, and a 2.4-acre vacant parcel zoned OI
9. Mayfair Plaza
10. Village Square Shopping Center



Of these areas, staff believes Mayfair Plaza to be an area that would be of particular interest to council based on its size, prominent location and near- to intermediate-term potential for major redevelopment. Its current zoning designation is General Commercial. Therefore, if the site were to redevelop under its existing zoning (GC) and propose construction of over 100,000 square feet of non-residential space, with the LDO amendment in place staff would review and approve (if LDO requirements are met) the development plan, and council would not review the development plan in an evidentiary hearing.

However, the existing shopping center is designated as Commercial Center Mixed Use in the Cary Community Plan Growth Framework Map, which would allow a variety of both residential and non-residential use. Given property values and redevelopment costs, it is assumed that any potential developer will want and need to propose a more intensive multi-story mixed use development, as envisioned in the Cary Community Plan, to make such an undertaking cost-effective. Since the property is currently zoned General Commercial, the introduction of any residential component would require rezoning the property to the MXD zoning district. A traffic study and preliminary



development plan would be required through the rezoning process, with final action by council. Thus, council will in all likelihood maintain the opportunity to review a proposed preliminary development plan for the site and consider that plan in making its decision on the rezoning request. With the proposed amendment, council would not see the project again at the development plan stage, unless the developer asks for a modification to LDO standards that requires council action in an evidentiary hearing.

Timing and predictability are of paramount importance to developers, involving a variety of

factors. Removing additional vetting processes as proposed could be the difference from a timing perspective that could gain a 100,000 SF commercial development or lose one, which could mean a gain or loss of property tax and/or jobs. Ultimately, staff believes that without the proposed LDO amendment, there is the potential for the Town to lose private redevelopment opportunities, a concern of particular importance in the Town Center, including the Business Improvement District, as indicated in the above analysis.

#### PROPOSED TEXT:

### 3.9.2 Common Procedures for Review and Approval of Subdivisions and Site Plans

#### (F) Approval Authority

##### ~~(1) Approval by Town Council or Zoning Board of Adjustment~~

~~The Town Council shall have final decision-making authority on the following types of site and/or subdivision plans, which shall be reviewed using the procedure set forth in this Section, except for properties owned by the Town, which shall be reviewed in accordance with Section 3.9.2(F)(2), except as otherwise noted:~~

~~(a) [Reserved]~~

~~(b) Plans for uses that require approval of a Special Use (see Section 3.8), except for properties owned by the Town for which the Zoning Board of Adjustment shall have final decision-making authority; and~~

~~(c) Plans that seek reductions or deviations from the minimum required setbacks for telecommunications facilities, except for plans for certain telecommunications facilities for which the Zoning Board of Adjustment shall have final decision-making authority [see Section 5.2.4(D)]; and~~

~~(d) Plans that propose one hundred (100) residential units or more, or that would construct one hundred thousand (100,000) square feet of nonresidential floor area or more, or that would construct a new drive through facility or expand an existing drive through facility; excepting plans meeting all of the following criteria, which plans shall be reviewed by the Planning Director:~~

~~1. A rezoning for the property was approved within the two (2) calendar years prior to the date of application for the site or subdivision plan and a traffic impact analysis (TIA) was~~

~~prepared for the rezoning in accordance with Section 3.4.1(D)(3); and,~~

- ~~2. The plan is not otherwise subject to review by Council or the Zoning Board of Adjustment pursuant to Section 3.9.2(F)(1)(a), (b), or (c).~~

~~(2) **Approval by Planning Director**~~

~~The Planning Director shall have final decision making authority on all site and/or subdivision plans not subject to review by the Town Council or Zoning Board of Adjustment. Such plans shall be reviewed for compliance with all requirements of this Ordinance and applicable Town specifications.~~

*Sections (1) and (2) above have been rewritten and reorganized into Sections (1), (2) and (3) below to improve clarity. Substantive changes are underlined.*

**(1) Approval by Town Council**

The Town Council shall have final decision-making authority on the following types of development plans after conducting a quasi-judicial hearing:

**(a) Applicable Plans**

- (i) Plans for uses that require approval of a Special Use (see Section 3.8);
- (ii) Plans that seek reductions or deviations from the minimum required setbacks for telecommunications facilities, except plans for stealth telecommunications towers between 150 and 175 feet in height on vacant land or residentially-zoned land used for residential purposes (see Section 5.2.4(D)); and
- (iii) Plans for property located in the Base Transportation Zone as identified in Section 7.11.6 that propose: one hundred (100) residential units or more; construction of one hundred thousand (100,000) square feet or more of nonresidential floor area; or construction of a new drive-through facility for food service; or expansion of an existing drive-through facility. This Section 3.9.2(F)(1)(a)(iii) shall not apply where a rezoning for the property was approved within the two (2) calendar years prior to the date of application for the development plan and a traffic impact analysis (TIA) was prepared for the rezoning in accordance with Section 3.4.1(D)(3).

**(b) Exceptions to Applicable Plans**

Town Council shall not review any development plans for property owned by the Town. Such plans shall be reviewed by the Planning Director unless the use is a special use, in which case the plan shall be reviewed by the Zoning Board of Adjustment (see Section 3.9.2(F)(2)).

**(2) Approval by Zoning Board of Adjustment**

The ZBOA shall have final decision-making authority on the following types of development plans after conducting a quasi-judicial hearing:

**(a) Applicable Plans**

- (i) Plans for property owned by the Town for which a special use is required; and
- (ii) Plans for stealth telecommunications towers between 150 and 175 feet in height on vacant land or residentially-zoned land used for residential purposes (see Section 5.2.4(D)) that seek reductions or deviations from the minimum required setbacks.

**(3) Approval by Planning Director**

The Planning Director shall have final decision-making authority on all development plans not subject to review by the Town Council or Zoning Board of Adjustment pursuant to sections (1) and (2) above. Such plans shall be reviewed for compliance with all requirements of this Ordinance and applicable Town specifications.

**ITEM B - Right-of-Way Dedication and Existing Dwellings**

**BACKGROUND:**

The LDO currently provides that the enlargement, expansion, alteration, or repair of a nonconforming structure requires special use approval by council, unless the structure is a detached dwelling that was made nonconforming by the construction of a road or other property line adjustments by a governmental entity. The LDO also requires a nonconforming structure that has been destroyed to an extent greater than 50% of its replacement value to meet current ordinance requirements if it is rebuilt, unless the structure is a detached dwelling made nonconforming by the construction of a road or other property line adjustments by a governmental entity or by a change in street classification on the Comprehensive Transportation Plan. A property owner who dedicates right-of-way for a future road widening project and thereby creates a nonconforming structure (ie, a house that no longer meets setback requirements) is not able to take advantage of these provisions, and could be required to obtain a special use permit to enlarge an existing house or could be prohibited from rebuilding. The proposed

amendment would remove this disincentive to dedicate additional right-of-way for an existing street in situations where such dedication would render an existing detached dwelling non-conforming. If the proposed amendment is approved, an existing dwelling could be rebuilt in its current location without meeting current setback requirements if destroyed. This provision would remove an obstacle to the widening of right-of-way on exempt subdivision plats in situations where property owners would otherwise be unwilling to make such dedication.

**Town Council Public Hearing (*October 27, 2016*)**

There were no speakers at the public hearing and no concerns expressed by council members.

**PROPOSED TEXT:**

**10.1.6 Damage or Destruction**

If a nonconforming use, structure containing a nonconforming use, nonconforming structure, or nonconforming sign is destroyed by any means to an extent greater than fifty (50) percent of its replacement cost at the time of destruction, then such use, structure, or sign shall not be re-established unless it is made to conform to the requirements of this Ordinance, except as provided below.

**(A) Exception for Setbacks for Detached Dwellings**

If destroyed by any means to an extent greater than fifty (50) percent of its replacement cost at the time of destruction, detached dwellings with setbacks made nonconforming by either of the following shall be required to meet the lesser of current required building setbacks or building setbacks that were required at the time of subdivision or site plan approval:

- ~~(a-1)~~ the installation of roadways or other easements/property line adjustments created or enacted by a governmental entity,;
- (2) the dedication of public right-of-way in conformance with the Comprehensive Transportation Plan for an existing street; or
- ~~(b-3)~~ a change to the street classification in the Comprehensive Transportation Plan that increases the width of the right-of-way from which the setback is measured.

**10.1.8 Enlargement, Expansion, Alteration, or Major Repair**

**(H) Exception for Setbacks for Detached Dwellings**

- (1) Detached dwellings with setbacks made nonconforming by the adoption of this Ordinance are exempt from the requirements of this section if the following findings can be made:
  - (a) The proposed addition or alteration will either meet current setback requirements or will not encroach any further into the

- required setback than the existing structure; and
- (b) If the proposed alteration or addition is located on the side of the existing dwelling, there is a minimum distance of fifteen (15) feet between the side of the existing structure and the nearest dwelling on the adjoining property.
- (2) Detached dwellings with setbacks made nonconforming by the installation of roadways or other easements/property line adjustments created or enacted by a governmental entity, or by the dedication of public right-of-way in conformance with the Comprehensive Transportation Plan for an existing street are also exempt from the requirements of this Section, and shall not be required to address the findings in (H)(1) above.

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