

**LAND DEVELOPMENT ORDINANCE TEXT AMENDMENTS**  
**Round 27 (Items A-D and F-G)**  
**Town Council Meeting**  
**January 9, 2014**

**EXECUTIVE SUMMARY**

Staff has compiled a series of amendments to the Land Development Ordinance (LDO) in response to concerns raised by property owners, representatives of the development community, and staff. Town Council conducted a public hearing on the Round 27 LDO amendment items (Items A through G) on October 24, 2013. The Planning and Zoning Board discussed the proposed amendments at its work session on November 25, 2013. At its meeting on December 16, 2013, the Planning and Zoning Board recommended approval of Round 27 LDO Amendment Items A-D and F-G (including Option 1 under Item A.)

*Round 27 Item E-1 (Champion Trees – Interim Adjustment) was approved by Town Council on December 19, 2013. Item E-2 (Champion Trees – Comprehensive Revision) will move forward as a separate item at a later date.*

**OVERVIEW**

**SCHEDULE:** *(italicized dates are tentative)*

Planning and Development Committee	September 19, 2013
Advertisements in <i>The Cary News</i>	October 9 and 16, 2013
Public Hearing	October 24, 2013
Planning and Zoning Board Work Session	November 25, 2013
Planning and Zoning Board Meeting	December 16, 2013
Final Action by Town Council	<i>January 9, 2014</i>
Effective	Upon Adoption

**SUMMARY OF PROPOSED AMENDMENTS:**

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

**Item A Downtown Housing Options** - The proposed amendment would allow construction of new detached residential structures as a special use for land in the HMXD sub-district of the Town Center that is also within the Downtown Historic District.

**Item B Density Limits for Life Care** - The proposed amendment would revise how the density for life care communities is calculated in certain zoning districts.

**Item C Public Hearing Notification** - The proposed amendment would implement the NC General Assembly [Session Law 2008-5](#), ratified June 17, 2008, giving the Town of Cary the authority to use electronic means to provide notice for some public hearings.

**Item D Telecommunication Towers and Antennas** - The proposed amendment would bring the LDO into compliance with revised statutes requiring local governments to approve any “eligible facilities request” to co-locate on existing structures in a timely manner.

**Item F Building Setbacks in R-8 District** - The proposed amendments would provide greater flexibility in the required side yard setbacks in the R-8 zoning district.

**Item G Review Procedures - Technical Corrections** - The proposed revisions, inadvertently left out of LDO Amendments Round 26, Item H, related to Zoning Board of Adjustment procedures,

would give all persons with standing up to 30 days to appeal decisions made under the LDO, and update terminology to match the new legislation.

**FISCAL IMPACT:** Implementation of most of the proposed changes will be absorbed by existing staff during the review and approval process for various development applications and/or construction plan submittals. If council adopts Item C (Public Hearing Notification), the Town will realize a savings of about \$20,000 in its legal advertising budget (across all departments). The cost of publishing legally required non-public hearing advertisements in the newspaper may increase slightly due to the Town's overall decreased quantity of advertising with the newspaper.

**STAFF RECOMMENDATION:** Staff recommends approval of Round 27 LDO Amendment Items A-D and F-G, including Option 1 in Item A (Downtown Housing Options).

## **SUMMARY OF PROCESS AND ACTIONS TO DATE**

### **Town Council Public Hearing (October 24, 2013)**

The Town Council conducted a public hearing on the proposed Round 27 LDO Amendments on October 24, 2013. Council member Yerha indicated that he does not support the amendment pertaining to downtown housing options (Item A) due to concern that it may threaten the integrity of the historic district.

### **Planning and Zoning Board Work Session (November 25, 2013)**

- **Item A - Downtown Housing Options:** There was discussion regarding the purpose of the proposed amendment. Several board members expressed a preference to allow creation of flag lots as proposed, but not to allow detached dwellings as a special use in the HMXD sub-district (as originally proposed). Alternatively, several board members expressed a preference for the currently-available option of amending the Town Center Area Plan and rezoning the property to a Plan Designation and corresponding zoning sub-district that allows detached dwelling by right (*MXDR, MDR, LDR, or CB&R*). The proposed text has been modified to include this approach as "Option 2" for consideration. Thus, "Option 2" includes only the proposed changes to Section 8.2.6(C)(2), which would allow creation of flag lots for the purpose of enabling subdivision of lots containing recognized historic structures within the Downtown Historic District.
- **Item B – Density Limits for Life Care:** There were questions regarding parking requirements for life care facilities. Staff pointed out that the parking required for life care facilities is based on the number of residents (0.25 spaces per resident), while two parking spaces per unit are required for single-family dwellings, regardless of the number of residents in the household.
- **Item C – Public Hearing Notification:** A board member asked staff to review allowing the public to sign up for email alerts to receive public hearing notices. (*Staff will look into this as part of the web update process they're undergoing, to make the advertising page more robust and user friendly*).

### **Planning and Zoning Board Meeting (December 16, 2013)**

The board recommended approval of Round 27 LDO Amendment Items A-D and F-G (including Option 1 under Item A.)

- **Item A - Downtown Housing Options:** In response to questions from the board regarding Option 2, staff explained that applicants would continue to have the option to request rezoning to a Town Center sub-district that allowed detached dwellings by right. It was noted that rezoning would also entail amending the TCAP, as the plan designations in the TCAP matched the Town Center zoning sub-districts. There were also questions and discussion regarding the differences in the rezoning and special use permit processes and timeframes.

## DETAILS REGARDING PROPOSED LDO AMENDMENTS

### ITEM A – DOWNTOWN HOUSING OPTIONS

#### BACKGROUND

Staff received two inquiries (described below) from property owners in the Town Center's HMXD sub-district concerning the potential for allowing additional single-family residential development.

1. The owner of a parcel with an existing business would like to subdivide the parcel and construct a detached dwelling on a new lot that would be created behind the existing commercial building.
2. The owner of an existing parcel with a historic residence would like to develop 2 or 3 attached residences on the rear portion of the lot. The applicant would like to utilize a condominium form of ownership, such that the land would be owned in common by the owners of the residences

New detached residential dwellings are not currently permitted in the HMXD sub-district, which is focused on the downtown core area. Individual residential dwellings are not permitted as the Town Center Area Plan (TCAP) calls for a mix of commercial, office, and medium to high-density residential uses for that sub-district. It is stated in the TCAP that the focus of the HMXD is on "encouraging commercial uses that add to vibrancy in the downtown, and create a shopping, dining, and entertainment destination for the entire town, as well as serving local downtown needs".

Generally speaking, allowing new detached residential dwellings represents a fundamental, philosophical change to the existing provisions of the HMXD sub-district, and is inconsistent with the goals of the district, as expressed both in the Town Center Area Plan and in previous actions by Town Council. Implementation of the TCAP to date includes significant financial investment in downtown by the Town, as a catalyst for more independent private redevelopment in the future. Staff believes that in most cases, allowing the creation of more lower-intensity land uses or housing units would compromise the potential for land acquisition and/or assemblage for future redevelopment, thereby reducing the long-term economic return on the Town's investment.

However, staff's general concerns related to allowing detached dwellings in the HMXD sub-district do not apply to historic properties in the downtown area. Typically, property owners are generally not seeking to assemble or redevelop such properties. Allowing additional residential use at the rear of such lots may in fact contribute to the financial viability of maintaining and preserving the historic features of such properties. Increasing the number of dwelling units, coupled with preservation of historic properties, does meet the overall goal of providing more rooftops in the downtown.

The proposed amendment addresses these requests as follows:

- "Detached multi-family dwelling" has been added as a new use in the Permitted Use Table for the Town Center, with dimensional standards for detached dwellings and detached multi-family dwellings being the same as is currently required for certain residential uses in the HDR sub-district of the Town Center.
- Detached dwellings and detached multi-family dwellings would be allowed in the portion of the HMXD sub-district also within the Downtown Historic District with approval of Special Use Permit by Town Council.

*Per Section 3.8.3 of the LDO, the following criteria must be met based on testimony provided at a quasi-judicial hearing, in order for a Special Use Permit to be approved.*

- (A) *The proposed use or development of the land will generally conform with the Comprehensive Plan, other official plans and manuals or documents adopted by the Town;*

- (B) *The proposed use or development of the land will not materially endanger the public health or safety;*
- (C) *The proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region;*
- (D) *The proposed use or development of the land will not substantially injure the value of adjoining or abutting property;*
- (E) *The proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;*
- (F) *The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and*
- (G) *The proposed use will not cause undue traffic congestion or create a traffic hazard or unsafe pedestrian pathway.*

- Property within both the HMXD sub-district and the Downtown Historic District could be subdivided using flag lots rather than requiring creation of new public streets.

*The proposed amendment was initiated at the request of property owners who would potentially like to utilize the options provided. However, it should be noted that both properties are contributing properties in a National Register Historic District. The State Historic Preservation Office (SHPO) would evaluate the impact on the historic district in response to any specific development request. Staff has forwarded the proposed amendment to SHPO for review and comments, and hopes to have additional information on impact to property owners in the event of additional development on or subdivision of properties within the district.*

## **PROPOSED TEXT – Option 1**

### **5.2.1 USE-SPECIFIC STANDARDS: Residential Uses**

#### **(M) Detached Dwelling**

- (1) Detached dwellings constructed in the Infill Area portion of the Corridor Transition District for the Walnut Street Corridor
- (2) Detached dwellings may be allowed in a Neighborhood Center provided the following standards are met:
- (3) Detached dwellings may be allowed in a Community Center provided the following standards are met:
- (4) Detached dwellings may be allowed in a Regional Center provided the following standards are met:
- (5) Detached dwellings may be allowed in the HMXD sub-district of the Town Center provided the following standards are met:
  - (a) Such uses shall obtain a Special Use Permit consistent with Section 3.8 of this Ordinance; and
  - (b) The property is located within the Downtown Historic District.
  - (c) Evidence of issuance of a Certificate of Appropriateness from the Wake County Historic Preservation Commission for any building or property designated as a Cary/Wake County Landmark shall be provided.

#### **(P) Detached Multi-family Dwellings**

- (1) Detached multi-family dwellings may be allowed in the HMXD sub-district of the Town Center provided the following standards are met:
  - (a) Such uses shall obtain a Special Use Permit consistent with Section 3.8 of this Ordinance; and
  - (b) The property is located within the Downtown Historic District.
  - (c) Evidence of issuance of a Certificate of Appropriateness from the Wake County Historic Preservation Commission for any building or property designated as a Cary/Wake County Landmark shall be provided.

**6.2.2 LOT MEASUREMENT AND REQUIREMENTS: General Lot Requirements**

**(B) Number of Principal Buildings or Uses Per Lot**

For uses that require site plan approval pursuant to Section 3.9 of this Ordinance, there shall be no limit on the number of principal or accessory buildings or uses on an individual lot provided such structures and uses meet the other requirements related to setbacks, buffers and impervious coverage limitations contained within this Ordinance. However, there shall be no more than one principal ~~single-family dwelling structure~~ detached dwelling per lot in all residential districts where such uses are allowed.

**6.1.3 TABLES OF DENSITY AND DIMENSIONAL STANDARDS: Town Center District**

<i>(portion of)</i> <b>TABLE 6.1-2: TABLE OF DENSITY AND DIMENSIONAL STANDARDS - TOWN CENTER DISTRICT</b>									
Subdistrict	Minimum Lot Dimensions		Minimum Building Setbacks (ft)			Building Height (ft) <i>(NOTE: maximum building heights may not be exceeded regardless of setbacks.)</i>		Maximum Residential Density (units/ac)	Minimum Parking Requirements
	Area (sq.ft)	Width (ft)	Front	Side	Rear	Min. Bldg Ht [1 story = 15 feet]	Max. Building Ht		
HMxD: <u>detached dwelling</u> ; <u>detached multi-family dwelling</u>	N/A	20	10: 18 feet where parking provided in front	16 total; only one req'd	10	N/A	35	8	2 per <u>dwelling unit</u>
HMxD: <u>all other uses</u>	N/A	N/A	0	N/A	N/A	20 for new structures, 0 for existing	65 south of CSX RR, 75 west of N. West St., else 90	50	1 /du + 0.5 per add'l bedroom over 1, + 1 per 300 sf. non-res

**8.2.6 SUBDIVISION IMPROVEMENTS: Flag Lots**

**(C) Lots  
(2) Flag Lots**

The Town of Cary discourages and restricts the creation of flag lots. A flag lot shall be permitted if necessary to allow a property owner reasonable use and benefit of a parcel of land or to alleviate situations, which would otherwise cause extreme hardship for the owner. Flag lots are prohibited except:

- (a) Where necessary to eliminate access onto arterial streets or thoroughfares;
- (b) To reasonably utilize irregularly-shaped land;
- (c) To reasonably utilize land with severe topography;
- (d) To reasonably utilize land with limited sites suitable for septic tank nitrification fields and/or;
- (e) To provide for the protection of significant natural or cultural resources.
- (f) To enable subdivision of lots containing recognized historic structures within the Downtown Historic District.

Except within the Downtown Historic District, No flag lot will be allowed if it increases the number of access points onto a major thoroughfare. Existing subdivisions shall not be re-subdivided to create flag lots.

A note must be placed on any plat for recording flag lots noting that no public rear-yard garbage pickup will be provided for houses located more than one hundred twenty-five (125) feet from a public street.

Use of a single driveway, granted through an easement to serve adjoining flag lots or to serve a flag lot and an adjoining conventional lot, is permitted and encouraged to reduce access points on public streets.

**TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES**

**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**

Use Category	Use Type	HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR-12	CB&R	COM	CLI	OFC/INS	INS	OFC/IND	Use Specific Stds
<b>RESIDENTIAL USES</b>																
Household Living	Detached Dwelling	<u>S</u>			P		P	P	P	P						<u>5.2.1(M)</u>
Household Living	Detached Multi-Family Dwelling	<u>S</u>			<u>P</u>		<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>						<u>5.2.1(P)</u>

### 12.3.2 USE CLASSIFICATIONS: Residential uses

#### (B) Household Living

##### (4) Detached Dwelling

A building that is developed with open yards on all sides, contains one (1) dwelling unit not attached to any other building or dwelling unit, and is not on the same lot as any other dwelling unit. This shall not include a manufactured home.

##### (10) ~~[Reserved]~~ Detached Multi-Family Dwellings

Dwelling units, not including a manufactured home, located on a single lot that contains three (3) or more dwelling units, each developed with open yards on all sides, where none of the individual dwelling units are separated by property lines.

##### (12) Multi-Family Dwelling

A building, other than a townhouse, that contains three (3) or more individual dwelling units attached along and sharing one (1) or more common walls between any two (2) units and/or stacked one above the other, or one (1) or more dwelling units located in the same building as a non-residential use in a non-residential zoning district. None of the individual dwelling units within a multi-family dwelling are separated by property lines. This type of structure shall include any such building, regardless of the form of ownership (condominium or rental) of the individual dwelling units therein.

### 12.4 OTHER KEY TERMS DEFINED

#### CONDOMINIUM

A development containing individually owned dwelling units and jointly owned and shared areas and facilities that is subject to the North Carolina Unit Ownership Act (G.S. Ch. 47A) and/or the North Carolina Condominium Act (G.S. Ch. 47C).

### **PROPOSED TEXT – Option 2**

### 8.2.6 SUBDIVISION IMPROVEMENTS: Flag Lots

#### (C) Lots

##### (2) Flag Lots

The Town of Cary discourages and restricts the creation of flag lots. A flag lot shall be permitted if necessary to allow a property owner reasonable use and benefit of a parcel of land or to alleviate situations, which would otherwise cause extreme hardship for the owner. Flag lots are prohibited except:

- (a) Where necessary to eliminate access onto arterial streets or thoroughfares;
- (b) To reasonably utilize irregularly-shaped land;
- (c) To reasonably utilize land with severe topography;
- (d) To reasonably utilize land with limited sites suitable for septic tank nitrification fields and/or;
- (e) To provide for the protection of significant natural or cultural resources.
- (f) To enable subdivision of lots containing recognized historic structures within the Downtown Historic District.

Except within the Downtown Historic District, No flag lot will be allowed if it increases the number of access points onto a major thoroughfare. Existing subdivisions shall not be re-subdivided to create flag lots.

A note must be placed on any plat for recording flag lots noting that no public rear-yard garbage pickup will be provided for houses located more than one hundred twenty-five (125) feet from a public street.

Use of a single driveway, granted through an easement to serve adjoining flag lots or to serve a flag lot and an adjoining conventional lot, is permitted and encouraged to reduce access points on public streets.

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## ITEM B – DENSITY LIMITS FOR LIFE CARE

### BACKGROUND

On May 9, 2013, Glenaire received approval of a rezoning request to change the allowable uses on a 0.76-acre portion of the Glenaire Retirement Community from 1-story cottages to a 3-story multi-family residential building with up to 18 dwelling units.

The applicant has indicated that this parcel will be integrated into the Glenaire retirement community from an ownership and management standpoint. However, the applicant has requested that the parcel be considered independently for the purpose of site plan approval, due to significant costs associated with stormwater requirements if approved as an expansion of the existing site plan for Glenaire. With the current density limit of 12 du/acre, only nine of the proposed 18 units could be developed assuming approval as an independent site plan.

Staff received a [request](#) from Paul Gregg, Executive Director of Glenaire, to increase the allowable density of life care facilities in the OI district from 12 to 25 units per acre. The density of Glenaire, if the parcel referenced above is included and 18 units are developed, would be 11.2 du/acre. If calculated separately, the density of the 0.76-acre site would be 23.7du/acre, and the density for the remainder of Glenaire would be 10.8 units per acre.

Life care communities may include several different types of units, including cottage-style independent living units, apartment-style independent living units, assisted living units, and nursing home beds, providing options for residents to age in place. The LDO currently treats each of these unit types the same as a detached dwelling for the purpose of determining the residential density of a life care facility. The actual impacts of such units, particularly traffic impacts, are considerably less than single-family development, due to the practical limitations on unit size, family size, and greater mobility limitations of residents. These characteristics are recognized in some communities by allowing the density for life care facilities to exceed the base density of the zoning district in which it is located. As an example, both Raleigh and Durham allow life care facilities in residential districts as a special use, and in several non-residential or mixed use districts by right (subject to certain use-specific standards), as summarized below:

#### Raleigh:

- In the R-6 and R-10 districts (*residential districts with maximum density of 6 and 10 du/acre, respectively*) the allowable density for life care facilities is 2 times the density otherwise allowed.
- In the R1, R2 and R4 districts (*residential districts with maximum density of 1, 2 and 4 dwelling units per acre, respectively*) the allowable density for life care facilities is the same as that for other residential uses.
- There is no specified density limit for life care facilities in non-residential/mixed use districts where the use is allowed.

#### Durham:



- In the RS-M (Residential Suburban Multi-family), RU (Residential Urban) and RC (Residential Compact) zoning districts (*residential districts with maximum density of 10.5, 17.5 and 52.5 du/ acre, respectively*) the allowable density is 2 times the base density of the district, for facilities with on-site dining, recreation, healthcare and convalescent facilities, and 1½ times the base density for facilities that also include independent multi-family units.
- There is no specified density limit for life care facilities in districts where the use is allowed.

The proposed amendment would allow twice the base density of 12 units per acre for life care facilities in the O&I and ORD districts. This is consistent with the density increase allowed in Raleigh, and slightly greater than the increase allowed in Durham for facilities which also contain independent dwelling units. No increase is proposed for life care facilities located in residential zoning districts (*TR and RMF only*) so that impacts on existing neighborhoods will continue to be minimized.

**PROPOSED TEXT**

**5.2.1 USE-SPECIFIC STANDARDS: Residential Uses**

**(E) Life Care Community**

- (1) The life care community shall be for the sole residency of persons sixty-two (62) years old or older, and shall not exceed the density set forth in the following table, not including the number of persons occupying hospital or clinic beds

<b>TABLE 5.2-1: DENSITY FOR LIFE CARE COMMUNITIES</b>	
<b>District</b>	<b>Density (units/acre)</b>
TR	7
RMF	8
OI ORD	12*
TC Mixed Use Overlay	no density limit
* For the purpose of calculating residential density in the OI and ORD districts, dwelling units or rooming units in a structure housing three or more such units shall be equivalent to ½ dwelling unit.	

- (2) The number of persons who may be housed in non-independent rooms or apartments (not including hospital or clinic beds) shall not exceed the number of persons housed in independent dwelling units by a ratio of greater than three to one (3:1);
- (3) The number of hospital or clinic beds shall not be more than fifty (50) percent of the total number of permitted dwelling units;
- (4) All retail stores and personal service establishments located within the life care community shall be part of an existing building and may not exceed twenty (20) percent of the floor area of the building; and
- (5) The life care community shall provide open space and/or recreational facilities in the same amount and ratios as required in Section 8.3.2 of this Ordinance.

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## ITEM C- PUBLIC HEARING NOTIFICATION

### BACKGROUND

In the 2008 NC General Assembly session, council approved this issue on the Town's legislative agenda:

*Request: Provide local authority to the Town of Cary to advertise public hearings on the Town's Web site in lieu of newspaper advertising.*

Below is the background on which council based this recommendation:

*According to the Town's most recent, statistically valid, biennial survey, 96 percent of Cary residents have access to the Internet at home, work or both. This is significantly more citizens than those who read The Cary News, which makes providing information electronically not only a cost-effective approach, but potentially a more effective method of notifying citizens of upcoming public hearings. In addition to the substantial expense of newspaper advertising, the weekly publication schedule sometimes requires that Town business be delayed. While providing advertising electronically will be a cost savings to the Town, it will not be a reduction in service because of residents' access to electronic media, and because mailing of notices to surrounding property owners would continue as required both by state statute and Town ordinance.*

On June 17, 2008, the NC General Assembly ratified [Session Law 2008-5](#), giving the Town of Cary the authority to use electronic means to provide notice for some public hearings. At that time staff chose not to bring an ordinance to council to implement that authority. While staff was confident the intent was to allow the Town to use electronic means to advertise for public hearings in lieu of traditional publication methods, the Session Law did not specifically contain that language. Since that time staff has worked with the Town's lobbyist to seek a technical correction to Session Law 2008-5 to clarify the intent. During this time staff has continued advertising public hearings in the newspaper and on the Town's website.

On July 26, 2013, the NC General Assembly ratified [Session Law 2014-410](#), technical corrections to General Statutes and Session Laws. The Governor approved this Session Law on August 23, 2013. Section 42 of Session Law 2014-410 reads:

**"SECTION 42.** Section 1 of S.L. 2007-86, as amended by S.L. 2008-5, reads as rewritten:  
**SECTION 1.** The governing body of a city or town may adopt ordinances providing that notice of public hearings may be given through electronic means, including, but not limited to, the Town's Internet site. **Electronic notice may be in lieu of traditional publication methods.** Ordinances adopted pursuant to this section shall not supersede any State law that requires notice by mail to certain classes of people or the posting of signs on certain property and shall not alter the publication schedule for any public notice."

With this technical correction, staff seeks council's authority to move forward with the required Charter, Town Code and Land Development Ordinance (LDO) amendments to implement this authority. The LDO amendment requires a public hearing and planning and zoning board recommendation.

The 2008 biennial survey told us that 96 percent of our citizens had internet access either at home, work or both. Staff believes that percentage has increased since the 2008 survey. Staff will include a question on the 2014 biennial survey to assess our citizens' level of internet access to ensure our advertising method is cost effective and meets the needs of our citizens. Public internet access is also available at the Wake County Public Libraries, including the two branches in Cary.

If the Town Council approves the ordinance amendments, then staff will begin placing public hearing advertisements on the Town's website instead of in the newspaper. Additionally, staff will include an advertisement in the local newspaper for the duration of Fiscal Year 2014 advising the public to visit the Town's website to see the Town's public hearing advertisements. Staff will continue mailing notices and posting signs on properties as required by statutes and Town ordinances.

Staff will continue publishing legally required non-public hearing advertisements in the newspaper, since the Session Law only pertains to public hearing advertising.

## **PROPOSED LDO TEXT AMENDMENTS**

### **3.1.6 Notice Requirements**

#### **(B) Published Notice**

When the provisions of this Ordinance or law require that notice be published, the Planning Director shall cause a notice to be published on the Town's website pursuant to the procedures of Section 2-2 of the Town of Cary Code of Ordinances as required by law. The notice shall be published once a week for two (2) successive calendar weeks, and shall be published for the first time at least ten (10) days and not more than twenty-five (25) days before the scheduled hearing date. In computing such period, the day of publication shall not be counted, but the day of the hearing shall be counted.

### **3.4.2 Rezoning to Conditional Use Districts**

#### **(C) Conditions**

(4) After the Town has ~~delivered to the newspaper~~ 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.

### **3.4.3 Rezoning to Planned Development Districts**

#### **(G) Submission of Conditions**

Conditions proposed by the applicant in the master plan are limited to those that address conformance of the development and use of the site to ordinances and officially adopted plans, and those that address the impacts reasonably expected to be generated by the development and use of the site. After the Town has ~~delivered to the newspaper~~ published the notice of public hearing for the application, the applicant shall make no changes to 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 at least ten (10) working days before the date scheduled for final Town Council action on the application.

## **PROPOSED CHARTER AMENDMENT**

### **APPENDIX 2. INCORPORATION OF LOCAL ACTS INTO CHARTER**

#### **App. 2.15. Electronic public notice for certain public hearings.**

The governing body of a city or town may adopt ordinances providing that notice of public hearings may be given through electronic means, including, but not limited to, the Town's internet site. The governing body of a city or town may adopt ordinances providing that notice of public hearings may be given through electronic means, including, but not limited to, the Town's Internet site. Electronic notice may be in lieu of traditional publication methods. Ordinances adopted pursuant to this section shall not

supersede any State law that requires notice by mail to certain classes of people or the posting of signs on certain property and shall not alter the publication schedule for any public notice.

## **PROPOSED CODE AMENDMENTS**

### **CHAPTER 2 ADMINISTRATION ARTICLE I. IN GENERAL**

#### **Sec. 2-1. Notices; service and proof....**

#### **Sec. 2-2. Electronic notice of public hearings.**

- (a) Authority: Session Law 2014-410 authorizes the Town to give notice of public hearings through electronic means, including, but not limited to, the Town's Internet site. This ordinance states the Town's intent to provide legal notice of Town of Cary public hearings electronically by publishing such notice on the Town's website in lieu of publishing such notice in a newspaper.
- (b) Public Hearing Notice: Notwithstanding anything to the contrary contained in Town Ordinances, all notices of public hearings ('Public Hearing Notice') may be published on the Town's website instead of in a newspaper. Any such website Public Hearing Notice shall state the subject, date, time and location of the public hearing, and such other information as may be required by state law or Town ordinance for the particular public hearing. The Public Hearing Notice shall be posted to the website according to the publication schedule required by state law or Town ordinance. The Public Hearing Notice shall remain posted until the day after the day on which the associated public hearing closes.

A copy of the Public Hearing Notices published on the Town's website shall be maintained according to the Records Retention and Disposition Schedule. This copy shall serve as proof that the Public Hearing Notice was published by posting to the Town's website, and shall show the date(s) the Notice was published on the website.

- (c) Additional Notice Requirements: This ordinance does not replace any statute or ordinance that requires notice by mail for public hearings or posting signs on property. Those methods of notification remain in effect.

### **CHAPTER 9 CABLE TELEVISION ARTICLE I. IN GENERAL**

#### **Sec. 9-58. Forfeiture or revocation.**

#### **(c) Procedure prior to revocation.**

- (1) The town shall make written demand that the grantee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the grantee continues for a period of 30 days following such written demand or, in any case where such compliance cannot reasonably be completed within 30 days, other such longer period of time as reasonably set by the town, the town shall place its request for termination of the franchise upon a regular council meeting agenda. The town shall cause to be served upon such grantee at least seven business days prior to the date of such council meeting, a written notice of this intent to request such termination, and the

time and place of the meeting, notice of which shall be published by the town clerk at least once, seven business days before such meeting ~~in a newspaper of general circulation within the town~~ according to the advertising requirements in Section 2-2 of the Town Code.

- (2) The council shall hear any persons interested therein at the public hearing, and shall determine in its reasonable judgment, whether ~~or not~~ any failure, refusal or neglect by the grantee was with just cause.

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## ITEM D – TELECOMMUNICATION TOWERS AND ANTENNAE

### BACKGROUND

[Session Law 2013-185](#), approved by the Governor on June 26, 2013, amends the statutes regarding local regulation of telecommunications facilities such as cell phone towers and associated antennas. Section 5.2.4(D) of the LDO is proposed to be amended to conform to the revised statute by referencing its requirements. The revised statute requires local governments to approve any “eligible facilities request” to co-locate on existing structures, and also notes that such applications are entitled to “streamlined processing.” Generally, an “eligible facilities request” is one that (a) increases the vertical height of the structure by 10% or less; (b) adds an appurtenance to the body of a support structure that protrudes less than 20 feet horizontally from the edge of the structure; and (c) increases the square footage of the existing equipment compound by less than 2500 square feet. “Streamlined processing” means that local governments are required to approve complete applications in 45 days or less. More detailed definitions and requirements can be found in the text of the Session Law.

### PROPOSED TEXT

#### 5.2.4 USE-SPECIFIC STANDARDS: Industrial Uses (D) Telecommunications Facilities

##### (1) Purpose

The purpose of this section is to:

- (a) Minimize the impacts of telecommunications facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;
- (b) Encourage the location and co-location of telecommunications facilities equipment on existing structures thereby minimizing new visual, aesthetic and public safety impacts, and to reduce the need for additional antenna-supporting structures;
- (c) Encourage coordination between suppliers of telecommunications services in the Town of Cary and its planning jurisdiction;
- (d) Accommodate the growing demand for telecommunications services and the resulting need for telecommunications facilities;
- (e) ~~Respond to the policies embodied in the Telecommunications Act of 1996 in such a manner as not to unreasonably discriminate between providers of functionally equivalent personal wireless service or to prohibit, or have the effect of prohibiting, personal wireless service in the Town of Cary and its planning jurisdiction~~ Regulate in accordance with all applicable federal and state laws;

##### (3) Antenna Co-location on Existing Tower

Co-location and eligible facilities requests, as defined in G.S. 160A-400.51, shall be processed in accordance with G.S. 160A-400.52 and 160A-400.53.

- ~~(a) A co-located or combined antenna or antenna array shall not exceed the maximum height prescribed in the Special Use Permit (if applicable) and/or approved site plan.~~
- ~~(b) Applications that meet the requirements of G.S. 160A-400.53(b) or (c) are entitled to streamlined processing pursuant to G.S. 160A-400.53(a). In addition, applications for co-location of wireless facilities that propose an increase in the ground space area for equipment enclosures and ancillary facilities shown on an approved site plan are entitled to streamlined processing, provided that the resulting overall ground space area meets all other requirements of this Ordinance including, but not limited to, setbacks and buffering, as well as original conditions imposed on the tower upon which it is being attached.~~

**ITEM F – BUILDING SETBACKS IN R-8 DISTRICT**

**BACKGROUND**

Staff received a request from a developer to provide more flexibility with respect to side yard setbacks in the R-8 zoning district. Currently the minimum side yard setback is 10 feet on each side. The request is to reduce the minimum side yard setback to 7 feet, while maintaining an aggregate minimum of 20 feet including both side yards.

A letter submitted regarding this request offered the following points to justify the request:

- would encourage and facilitate use of side-loaded garages;
- would allow flexibility in site design to preserve specimen trees;
- would provide additional area where needed to address drainage concerns between homes; and
- would not reduce the aggregate setback or increase the buildable area of the lot.

Staff has reviewed the request and agrees that reducing the minimum setback while maintaining the aggregate setback would provide additional flexibility in design, without increasing the overall density of site development. Staff recommends a further reduction to a 5' minimum setback, consistent with current requirements for certain lots in the Conservation Residential Overlay District.

**PROPOSED TEXT**

**6.1.3 TABLES OF DENSITY AND DIMENSIONAL STANDARDS:**

TABLE 6.1-1: TABLE OF DENSITY AND DIMENSIONAL STANDARDS - RESIDENTIAL DISTRICTS							
Use	Minimum Lot Dimensions		Minimum Building Setbacks (Ft) <i>(NOTE: These setbacks are minimums; streetscape and buffer width standards may require greater setbacks.)</i>			Height (Ft) <i>(NOTE: Height may be increased one foot for every foot provided in addition to the min. setbacks)</i>	Max Gross Density (du/acre)
	Area (Sq Ft)	Width (Ft)	Roadway <i>(NOTE: these setbacks apply to any portion of a lot which abuts a street)</i>	Side	Rear		
<b>R-8: Residential District</b>							
All uses and structures	8,000	60 (70 for corner lot)	From thoroughfare: 50 From collector: 30 From other streets: 20	<del>40</del> 5' minimum, <u>20 combined</u>	20	35	5.44

## ITEM G – REVIEW PROCEDURES – TECHNICAL CORRECTIONS

### BACKGROUND

LDO Amendments Round 26, Item H, included ordinance revisions related to quasi-judicial hearings that were necessitated by the enactment of Session Law 2013-126, “An Act to Clarify and Modernize Statutes Regarding Zoning Boards of Adjustment.” The following revisions were inadvertently left out of Round 26 but are necessary to comply with the new law, which gives all persons with standing 30 days to appeal decisions made under the LDO.

### PROPOSED TEXT

#### 3.9.3 REVIEW AND APPROVAL PROCEDURES: Subdivision of Land

##### (F) Review and Approval of Final Plats

##### (6) Appeal of Denial

In the event the Planning Director denies a plat, an appeal may be filed. The appeal procedure of Section 3.21 of this Ordinance shall apply, except that the appeal shall be to the Town Council, not the Zoning Board of Adjustment, ~~and shall be made within ten (10) days of denial.~~

#### 3.21.4 APPEALS OF ADMINISTRATIVE DECISIONS: Action by the Zoning Board of Adjustment

(B) Either at the hearing or a subsequent meeting, the Zoning Board of Adjustment shall adopt a written resolution reversing or affirming, wholly or partly, or modifying the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. In reversing, affirming, or modifying the ~~contested action~~ decision, the Zoning Board of Adjustment shall have all relevant powers of the administrative officer from whom the appeal is taken.

(C) The Zoning Board of Adjustment shall not reverse or modify the ~~contested action~~ decision unless it finds that the administrative officer erred in the application or interpretation of the terms of this Ordinance or related policies adopted by the Town.

#### 3.21.5 APPEALS OF ADMINISTRATIVE DECISIONS: Effect of Reversal or Modification

In the event that the Zoning Board of Adjustment reverses or modifies the ~~contested action~~ decision, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance with the reversal or modification granted by the Zoning Board of Adjustment.

#### 3.22.6 TREE CLEARING CERTIFICATE: Procedure

(C) The Vegetation Protection Plan shall be reviewed by the Planning Director based upon the provisions of 3.10 of this Ordinance. The Director may defer the decision on the Vegetation Protection Plan to the Town Council if he or she has concerns about the plan's ability to meet the standards of this Ordinance. In the event the Director denies the plan, an appeal may be filed. The appeal procedure of Section 3.21 of this Ordinance shall apply, except that the appeal shall be to the Town Council, ~~not the Zoning Board of Adjustment, and shall be made within ten (10) days of denial.~~

#### 7.2.13 Maintenance Responsibility, Replacement of Damaged Vegetation, and Associated Fines

##### (A) Maintenance Responsibility

(3) Any appeals of the Planning Director's decision relating to the amount of required revegetation shall be made pursuant to Section 3.21 of this Ordinance, except that the appeal shall be to the Town Council, not the Zoning Board of Adjustment within ten (10) days following the notice of decision, and the Town Council shall consider reduction requests at the next available regular meeting.

#### 9.16 Variances for Signs [Reserved]

No provisions of this Chapter may be varied with the exception of the following:



~~(A) The square footage limitations for verandah and wall signs as specified in Sections 9.3.2(W) and (X);~~

~~(B) The setback requirements for real estate signs listed in Section 9.3.2(Q).~~

**9A.1.7 Variances for Signs [Reserved]**

~~No provisions of this Chapter may be varied with the exception of the square footage limitations for verandah signs and principal wall signs as specified in Sections 9A.3.1(K) and 9A.3.1(L).~~

**9B.1.6 Variances for Temporary Signs [Reserved]**

~~No provisions of this Chapter may be varied.~~

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