

## 2016-3 UDO Text Changes    **Revisions following public hearing shown in RED**

### **Chapter 4:**

*Revise 155.402 Vested Rights to incorporate provisions of SL2016-111 (H483), which amends 160A-385 and 160A-385.1(b) regarding Vested Right for "Multi-phased Developments".*

155.402.2. Definitions    Add:

**Multi-phased development:** shall mean a development containing one hundred (100) acres or more that: i) is submitted for site plan approval for construction to occur in more than one phase; and ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval, all as provided by NCGS 160A-385.1(b).

155.402.A. Obtaining a Certificate of Vested Right

\* Current text will be renumbered as 155.402.3.A.1.

\* New text below will be 155.402.3.A.2:

2. A multi-phased development request for vested right (over one hundred acres) shall be submitted concurrent with a zoning application for a conditional district rezoning. This request will require additional time for staff review, and will not be scheduled for public hearing on the zoning request until the Planning office has verified all necessary information, including what is listed in 155.402.3.C. below and any data unique to the proposed development location, has been satisfactorily submitted. The zoning public hearing will be scheduled no earlier than three (3) months following initial submission. If the proposed development location has been previously zoned to a conditional district through an early designation process, then the request for vested right will be processed as though it is a change of zoning conditions for that zoning district and therefore will follow the same review and approval steps as a zoning action.

155.402.4.D. Duration    *Revise current text:*

A vested right shall be approved for a period of two (2) years, **except a vested right for a multi-phase development (100 acres or larger) shall be approved for a period of seven (7) years.** It shall be effective immediately upon approval. Upon issuance of a building permit, the expiration provisions of GS 160A-418 and the revocation provisions of GS 160A-422 shall apply, except that a building permit shall not expire or be revoked due to the running of time while an established vested right is outstanding. **A multi-phased development shall be vested for the entire development to utilize the provisions of this Title in place at the time of zoning and site plan approval for the initial phase of the multi-phased development.**

*Additional Background: This state statute provision refines an earlier statute requirement for a minimum 2-year vested rights opportunity for development projects. Because we have utilized the conditional zoning approach that in essence creates a vesting for a longer period, no development has requested the 2-year option. This is being included at this time because it needs to be referenced in our code, should there even be a proposal that would meet the criteria.*

### **Chapter 5:**

*Expand on "allowed/not allowed" uses explanation:*

§155.505 Tables of Allowed Uses    *Revise initial paragraph:*

Use of a building, structure or land shall be allowed only in the zoning districts indicated and for the purposes specified in the following Tables of Allowed Uses. Each use is mutually exclusive and does not encompass other uses listed in the Tables. If a use is listed for one or more districts as an allowed use, then it is only allowed in that or those districts, and shall not be allowed within any district which does not indicate it is allowed.

While most land uses will be assumed to be eligible to be located within one or more zoning districts within the Town limits, some land uses may not be listed on these tables. Occasionally a new land use category may become viable, or a new combination of activities prompts a new land use type designation, and amendments may be made to this Title to incorporate new land use categories as the need arises. When a specific use category is not clearly and directly related to a listed use category, and therefore cannot be determined to be considered essentially the same as a listed use, then it is not allowed in the Town without amendment to this Chapter. The Zoning Administrator will interpret whether a land use category fits within a listed category. **Criteria for interpretations on land uses are given at 155.203.C.**

Some land use activities have been determined by the Town to not be appropriate for overall community public health and safety, or may create adverse environmental impacts to surrounding properties, such as hazardous waste incinerators. Some unlisted uses have been determined to be injurious or not beneficial to the Town's economic viability, such as billboards that detract from the visual aesthetics of the community. Some uses may be of a density or intensity of development, create a level of noise, lights, odors, or vibrations, or generate inappropriate amounts of traffic that would not be consistent with the land use policies, long range visions, and community values for the Town.

A principal use listed in the Tables in any district denoted by the letter "P" is permitted by right . . . .

§155.203 The Town Zoning Administrator

*Add criteria for Zoning Administrator to use when determining if a proposed use is allowed in a specific district:*

**C. CRITERIA TO CONSIDER FOR INTERPRETATIONS. The Zoning Administrator or designated assistant shall use the following criteria, where applicable, when making a determination on how to interpret a given land use category:**

- 1. Has the Zoning Administrator received a detailed written description of all the desired and expected activities to take place within the given use, and do these activities match, or very closely compare in their land use impacts to another land use category already defined?**
- 2. Is there a general catch-all land use category that clearly would allow the given use in the requested zoning district?**
- 3. Is the development intensity of the given use the same as or very similar to another land use category already stated within this Title?**
- 4. How may newly generated traffic, noise, light, vibration, odor, or other potential impacts on surrounding parcels and the adjacent neighborhood very closely match any land use category already stated within this Title?**
- 5. Does the given land use type have the same potential environmental impacts as another land use category already determined by the Town as inappropriate to be located within close proximity to residential and institutional land uses?**

*Additional Background:*

*This is being added in response to recent court decisions that are changing the long-held understanding that any use not expressly allowed in a zoning code was not permitted in that jurisdiction. The Constitution and courts have long required that most land uses must be allowed someplace within a community's regulations, but have acknowledged that some uses can be excluded for clear reasons.*

*Additional criteria at 155.203.C. will strengthen the explanation on why some uses may not yet be in the tables of allowed uses, and how they may be evaluated.*

\* \* \* \*

Clarify provisions for crematorium, based on NCGS 90-210.123

155.505.1 Table of Allowed Uses: Traditional and Parallel Traditional (Residential Districts)

Institutional & Governmental Uses Category:

Cemetery, mausoleum, and columbarium, subject to § 155.506.13 PC in R-20, R-15, R-12, R-9

General Commercial Uses Category:

Crematorium, ~~as an accessory to a funeral home when no dwelling is within 400 feet~~ when located on same lot as a cemetery, subject to 155.506.13 PC in R-20, R-15, R-12, R-9

Crematorium, stand alone, subject to 155.506.13 not allowed in any districts on this table

Funeral home na

~~Funeral home with other related service, not including crematorium~~ delete listing from table

155.505.2 Table of Allowed Uses: Traditional and Parallel Traditional (Non-Residential Districts)

Institutional & Governmental Uses Category:

Cemetery, mausoleum, and columbarium, subject to § 155.506.13 PC in R/I and O

General Commercial Uses Category:

Crematorium, ~~as an accessory to a funeral home when no dwelling is within 400 feet~~ when located on same lot as a cemetery or funeral home, subject to 155.506.13 ACC P in B-1, B-3, B-D, B-H and I-1, I-2

Crematorium, stand alone, or on an adjacent parcel to a cemetery or funeral home only when such parcel is commercially or industrially zoned, subject to 155.506.13 PC in B-1, B-3, B-D, B-H, I-1, I-2

Funeral home P in O, B-1, B-3, B-H, I-1

~~Funeral home with other related service, not including crematorium~~ delete listing from table

155.505.3 Table of Allowed Uses Conditional Only

Institutional & Governmental Uses Category:

Cemetery, mausoleum, and columbarium, subject to § 155.506.13 PC in R-VS, CrC, SRN, C-MF

General Commercial Uses Category:

Crematorium, ~~as an accessory to a funeral home when no dwelling is within 400 feet~~ when located on same lot as a cemetery or funeral home, subject to 155.506.13 ACC P in MUD, B-1SCD

Crematorium, stand alone, or on an adjacent parcel to a cemetery or funeral home only when such parcel is commercially or industrially zoned, subject to 155.506.13 PC in B-1SCD

Funeral home P in C-MF, MUD, TS, B-1SCD

~~Funeral home with other related service, not including crematorium~~ delete listing from table

155.506.13 Cemeteries, Mausoleums, ~~and~~ Columbarium , and Crematorium.

A. Private or public cemeteries, as a stand-alone use or in association with a place of worship, may be permitted in or near residential neighborhoods, in the R-20, R-15, R-12, R-9, R/I, CrC, O, R-VS, SRN, and C-MF districts, when meeting the following criteria.

B. STANDARDS.

1. Tombstones, monuments, and open wall columbarium must be located at least twenty five feet (25') from any side or rear lot line which adjoins lots in a residential area and at least ten feet (10') from any side or rear lot line which adjoins all other properties. In any case, they must be at least forty feet (40') from any street right-of-way.
2. Buildings for the maintenance, management, rent, or sale of cemetery lots, burial or remembrance sites, mausoleums, crypts, and columbarium within enclosed structures must be located at least one hundred feet (100') from any lot lines which adjoin lots in a

residential area. Otherwise any such buildings must conform to the requirements for principal uses in the district where they are located. **[formerly known as § 153.189]**

C. CREMATORIUM.

1. Crematorium are allowed per NCGS 90-210.123 (a) and (b) on the same lot as a funeral home or cemetery, or on a parcel adjacent to a cemetery or funeral home use.
2. When on the same lot as a cemetery in any of the districts listed above at 155.506.13.A., the crematorium shall be a minimum of four hundred feet (400') from any adjacent residential dwelling unit.
3. When a cemetery is on property zoned one of the districts listed in 155.402.13.A. above, a crematorium may be located on an adjacent parcel zoned as a commercial or industrial district of B-1, B-3, B-D, B-H, I-1, I-2, or B-1SCD.
4. Crematorium may be allowed in association with a cemetery or funeral home or as a stand-alone use in other districts as listed in the Tables of Allowed Uses at 155.505.

*Additional Background: This is being proposed to be included due to a new state statute provision. Since a number of older cemeteries exist within our jurisdiction today in residentially-zoned districts, we need to incorporate the new provisions for crematorium. Funeral homes today are not allowed, and do not exist, within any residential zoning district. The grayed-out listing above are included to show where these uses are allowed today, and no changes are proposed for them.*

\* \* \* \*

*Mecklenburg County P&R wants to amend the ENT list of allowed rec uses to accommodate anything that may be allowed in a regional park today. The only use that appears may not be included now is indoor or outdoor tennis and racket sports courts, as an allowed use separate from a tennis "club".*

155.505. Tables of Allowed Uses

Revise use listings by splitting one exiting use listing into two categories as follows:

~~Tennis and racket club and racket sports court, commercial, indoor or outdoor P in HUC, C-MF, MUD, TS, B-1SCD, ENT~~

Tennis and racket club, commercial, indoor or outdoor P in HUC, MUD, TS, B-1SCD

Tennis and racket sports courts, indoor or outdoor P in HUC, SRN, C-MF, MUD, TS, B-1SCD, ENT

*Additional Background:*

*The catch-all land use category for most park improvements is this: "Park and playground operated on a noncommercial basis for purposes of public recreation," which then covers provisions for "one or more . . . court (i.e., basketball, tennis) . . ." with a minimum distance separation and landscaping from adjacent development. This does not apply to the ENT district since it is not intended to create and protect a primarily residential environment.*

\* \* \* \*

*Cross reference standards for certain uses allowed in the R/I district:*

155.502.8 Residential/Institutional District (R/I)

B. Lot development and design standards, as outlined in §155.605, and dimensional standards of § 155.604.2, apply to the R/I District. Uses allowed within the R/I district are given in the Table of Allowed Uses at § 155.505.2. Supplementary standards which may be applicable to certain uses within the R/I district are listed at § 155.506., such as but not limited to §155.506.6 Child Care Homes and Child Day

Care Facilities, §155.506.7 Institutional Uses In Residential Settings, §155.506.8 Recreational Uses In or Adjacent to Residential Settings, §155.506.13 Cemeteries, Mausoleums, Columbarium, and Crematorium, §155.506.15 Commercial Indoor and /or Outdoor Tennis and Racket Clubs and Associated Swimming Pools, §155.506.16 Continuing Care Retirement Communities (CCRC), §155.506.17 Skilled Care (Nursing Home) Facility, and §155.506.18 Motorcycle Safety Training Course.

*Additional Background:*

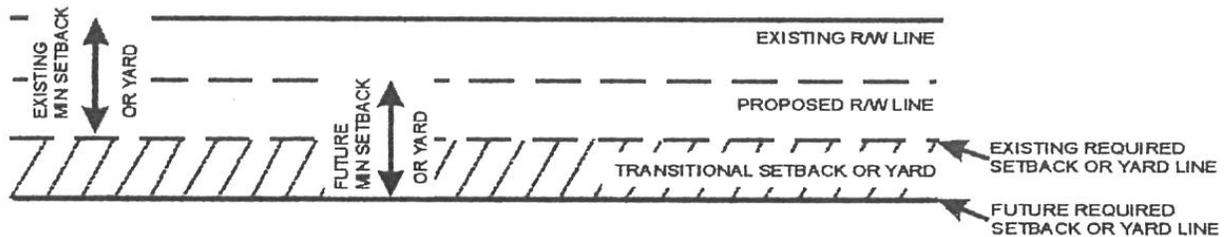
*Adding these specific references citations here helps anyone reading the code to know which uses have extra provisions that need to be followed.*

**Chapter 6:**

*Add drawing for transitional setback and yard into § 155.601.18 (it was part of old 153.095) and should have been included with conversion*

§155.601.18 Special Requirements for Lots along Thoroughfares

A. Transitional Setback/Yard Required. *Add drawing at end of A.4.:*



\* \* \* \*

*Clarify what screening requirements apply for lots adjacent to thoroughfares.*

§155.601.18 Special Requirements for Lots along Thoroughfares

*Revise 155.601.18.B. to include previous details about landscape screening along thoroughfares:*

*In all districts screening in accordance with §155.606 must be provided along the rear yard and along the side yard of any lot which abuts a thoroughfare.*

Either the provisions for site perimeter screening at §155.606.6.A or the provisions for loading area screening at §155.606.6.B must be provided along the rear yard and along the side yard of any lot which abuts a thoroughfare when located within the following districts: all Traditional zoning districts except HUC, and Conditional-Only districts R-VS, CrC, SRN, C-MF, B-1SCD, and AU.

§155.606.2.D Screening

*Revise §155.606.2.D. by adding a third category where screening is required:*

3. Along all side and rear yard boundaries of properties abutting a thoroughfare in all Traditional zoning districts except HUC, and within Conditional-Only districts R-VS, CrC, SRN, C-MF, B-1SCD, and AU.

§155.606.6.A Site Perimeter Screening

*Revise by adding a new second sentence:*

Screening is required along all side and rear yard property boundaries abutting an existing residential use or residentially zoned area. Screening on all side and rear yard boundaries when a property abuts a thoroughfare shall use the provisions here or in §155.606.6.B below. Screening shall be designed and installed . . . .

§155.606.6.B.1 Loading Area, Service Area or Outdoor Storage Area Screening.

*Revise by adding a new second sentence:*

Screening around all loading and service areas and all outdoor storage areas which may be visible from a public right-of-way shall be required in all nonresidential districts or for a nonresidential use in a residential district. Screening on all side and rear yard boundaries when a property abuts a thoroughfare shall use the provisions her or in §155.606.6.A above. The screening may be located anywhere on the property. . . .

Proposed additional text changes per comments at public hearing:

*Add clarification that pedestrian paths may be located through perimeter planting or screening:*

155.606.4 Perimeter Planting

I. When a public-use pedestrian pathway is proposed to be located along a non-street property line of a parcel, or shared by more than one parcel along non-street property lines, the pathway may be located on top of the lot line and/or within the 15' perimeter planting area. Such pathway, however, shall not require removal of any existing trees over eight inches (8") DBH, and grading or other land disturbing activity for such pathway shall not take place within more than twenty percent (20 %) of the protected tree's dripline, unless construction methods to protect the tree are approved by the Town Landscape Manager.

155.606.6 Screening

C. SCREENING STANDARDS.

6. When a public-use pedestrian pathway is proposed to be located along or near a property line of a parcel that is required to install and maintain screening, the pathway shall generally be located at least ten feet (10') to the interior side of the property line. Required amounts of planting material must be provided, although they may be located on both sides of the pedestrian path. This pathway shall not require removal of any existing tree over eight inches (8") DBH, and grading or other land disturbing activity for the pathway shall not take place within more than twenty percent (20%) of the protected tree's dripline, unless construction methods to protect the tree are approved by the Town Landscape Manager. When a pedestrian pathway crosses through a required screening, the crossing opening shall be at an angle between thirty and 70 degrees (30° to 70°), or in such a way as to not create a direct vision opening from the residential property or public right-of-way.

*Additional Background: Screening requirements for side or rear yards that are adjacent to a thoroughfare were provided in the former Zoning Ordinance in lengthy detail (old 153.095(B) through (E)), but were not brought forward into the UDO. The statement now at §155.601.18.B. was intended to be sufficient. While it states that screening is required for any side or rear yard that abuts a thoroughfare, it refers to the Landscape section at 155.606 without giving clarity as to which screening standards apply for these situations.*

*Rather than add this clarification only for screening adjacent to thoroughfares, this proposed amendment will clarify allowance for pedestrian pathways along any internal property lines.*