

Mesa Council Chambers Lower Level – 57 E 1st St

Date: June 7, 2023 Time: 5:30 p.m.

**MEMBERS PRESENT:**

Chair Alexis Wagner  
Boardmember Heath Reed  
Boardmember Ethel Hoffman\*  
Boardmember Troy Glover

**MEMBERS ABSENT:**

Vice Chair Nicole Lynam  
Boardmember Adam Gunderson  
Boardmember Chris Jones

(\*Boardmembers and staff participated in the meeting through the use of audio conference equipment)

**STAFF PRESENT:**

Mary Kopaskie-Brown  
Rachel Nettles  
Margaret Robertson  
Charlotte McDermott  
Sarah Steadman  
Kelly Whittemore  
Evan Balmer  
Joshua Grandlienard  
Charlotte Bridges  
Chloe Durfee Daniel  
Samantha Brannagan  
Kwasi Abebrese  
Vanessa Felix

**OTHERS PRESENT:**

**1 Call meeting to order.**

Chair Wagner declared a quorum present, and the Public Hearing was called to order at 5:31 p.m.

Staff member Balmer announced that for item 4c, BOA23-00004, Sunflower Cremation and Burial on the consent agenda the Special Use Permit will be heard by the Planning and Zoning Board. Tonight, the Board of Adjustment will only be acting on the Substantial Conformance Improvement Permit.

**2 Take action on all Consent Agenda items.**

A motion to approve the Consent Agenda was made by Boardmember Glover as read by Boardmember Reed and seconded by Boardmember Hoffman.

**Items on the Consent Agenda**

**3 Approval of the following minutes from previous meeting:**

**\*3-a Minutes from May 3, 2023 Study Session and Public Hearing.**

Vote: 4-0

Upon tabulation of vote, it showed:

AYES – Wagner - Reed – Hoffman - Glover

NAYS – None

ABSENT –Lynam – Gunderson - Jones

ABSTAINED – None

**4 Take action on the following cases:**

**\*4-a Case No.: BOA22-01123 (Approval with Conditions)**

Location: 105 West 9th Street. Located west of Center Street and south of Brown Road.

Subject: Requesting a Special Use Permit (SUP) to expand a non-conforming single residence in the Single Residence-6 with a Historic overlay (RS-6-HD) zoning district.

Decision: Approval with conditions

Summary: This item was on the consent agenda and not discussed on an individual basis

A motion to approve case BOA22-01123 was made by Boardmember Glover as read by Boardmember Reed and seconded by Boardmember Hoffman.

**Conditions of Approval:**

1. Compliance with the documents submitted.
2. Compliance with all City Development Codes and regulations.
3. Compliance with the Historic Preservation Certificate of Appropriateness, ADM23-00104.

**Consent Agenda Approved**

Vote: 4-0

Upon tabulation of vote, it showed:

AYES – Wagner - Reed – Hoffman - Glover

NAYS – None

ABSENT –Lynam – Gunderson - Jones

ABSTAINED – None

**\*4-b Case No.: BOA22-01323 (Approval with Conditions)**  
Location: Within the 2700 Block of South Power Road (east side) and within the 6800 block of East Guadalupe Road (north side). Located east of Power Road and north of Guadalupe Road.  
Subject: Requesting a Special Use Permit (SUP) to expand a non-conforming structure, modification of a (SUP) for an automobile/vehicle car wash, and a Substantial Conformance Improvement Permit (SCIP) to allow deviations from certain development standards to allow for the development of a restaurant with a drive-thru facility and an automobile/vehicle car wash in the Limited Commercial (LC) zoning district.  
Decision: Approval with conditions  
Summary: This item was on the consent agenda and not discussed on an individual basis

A motion to approve case BOA22-01323 was made by Boardmember Glover as read by Boardmember Reed and seconded by Boardmember Hoffman.

**Conditions of Approval:**

1. Compliance with the final documents submitted with this application.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Development Services Department regarding the issuance of building permits.
4. To demonstrate compliance with Section 11-31-7(F) of the MZO, submit a sound study for the car wash verifying sound level readings at the street and at interior property lines are no more than 55 decibels prior to the issuance of a building permit.

**Consent Agenda Approved**

Vote: 4-0

Upon tabulation of vote, it showed:

AYES – Wagner - Reed – Hoffman - Glover

NAYS – None

ABSENT –Lynam – Gunderson - Jones

ABSTAINED – None

**\*4-c Case No.: BOA23-00004 (Approval with Conditions)**  
Location: 5650 West Main Street. Located west of Recker Road and north of Main Street.  
Subject: Requesting a Substantial Conformance Improvement Permit (SCIP) to allow for deviations from certain development standards to allow for the development of a crematorium in the Limited Commercial (LC) zoning district.  
Decision: Approval with conditions  
Summary: This item was on the consent agenda and not discussed on an individual basis

A motion to approve case BOA23-00004 was made by Boardmember Glover as read by Boardmember Reed and seconded by Boardmember Hoffman.

**Conditions of Approval:**

1. Compliance with the final site plan and landscape plan as submitted.
2. Compliance with case ZON22-00984
3. Compliance with case DRB22-00978
4. Compliance with all City Development Codes and regulations, except as identified in Table 1 of this report.
5. Compliance with all requirements of the Development Services Department regarding the issuance of building permits.

**Consent Agenda Approved**

Vote: 4-0

Upon tabulation of vote, it showed:

AYES – Wagner - Reed – Hoffman - Glover

NAYS – None

ABSENT –Lynam – Gunderson - Jones

ABSTAINED – None

- \*4-d Case No.: BOA23-00179 (Approval with Conditions)**  
Location: Within the 2700 block of North Higley Road and the 5200 block of East McDowell Road. Located south of East McDowell Road and east of North Higley Road.  
Subject: Requesting a Special Use Permit (SUP) for a Comprehensive Sign Plan (CSP) in the Single Residence-7 with a Planned Area Development overlay (RS-7-PAD) zoning district.  
Decision: Approval with conditions  
Summary: This item was on the consent agenda and not discussed on an individual basis

A motion to approve case BOA23-00179 was made by Boardmember Glover as read by Boardmember Reed and seconded by Boardmember Hoffman.

**Conditions of Approval:**

1. Compliance with the sign plan documents submitted.
2. Compliance with all requirements of the Development Services Department regarding the issuance of building permits.
3. All signage to be reviewed and approved through a separate permit application.

**Consent Agenda Approved**

Vote: 4-0

Upon tabulation of vote, it showed:

AYES – Wagner - Reed – Hoffman - Glover

NAYS – None

ABSENT –Lynam – Gunderson - Jones

ABSTAINED – None

- \*4-e Case No.: BOA23-00286 (Continued to July 5, 2023)**  
Location: 2121 South Power Road. Located east of Power Road and south of Baseline Road.  
Subject: Requesting a Substantial Conformance Improvement Permit (SCIP) to allow deviations from certain development standards to allow for the development of a restaurant with drive-thru in the Limited Commercial with a Planned Area Development overlay (LC-PAD) zoning district.  
Decision: Approval with conditions  
Summary: This item was on the consent agenda and not discussed on an individual basis

A motion to approve case BOA23-00286 was made by Boardmember Glover as read by Boardmember Reed and seconded by Boardmember Hoffman.

**Consent Agenda Approved**

Vote: 4-0

Upon tabulation of vote, it showed:

AYES – Wagner - Reed – Hoffman - Glover

NAYS – None

ABSENT –Lynam – Gunderson - Jones

ABSTAINED – None

Staff member Margaret Robertson corrected the date of continuance listed on the agenda from July 7, 2023, to July 5, 2023.

- \*4-f Case No.: BOA23-00289 (Approval with Conditions)**  
Location: 32 North Date. Located west of North Country Club Drive and north of West Main Street.  
Subject: Requesting a Special Use Permit (SUP) to expand a non-conforming single residence; a Variance from the required minimum number of parking spaces, and a Variance from the minimum required front yard to allow for additions to an existing single-family residence in the Multiple-Residence-2 (RM-2) zoning district  
Decision: Approval with conditions  
Summary: This item was on the consent agenda and not discussed on an individual basis

A motion to approve case BOA23-00289 was made by Boardmember Glover as read by Boardmember Reed and seconded by Boardmember Hoffman.

**Conditions of Approval:**

1. Compliance with the final site plan as submitted.
2. Compliance with all City Development Codes and regulations.

**Consent Agenda Approved**

Vote: 4-0

Upon tabulation of vote, it showed:

AYES – Wagner - Reed – Hoffman - Glover

NAYS – None

ABSENT –Lynam – Gunderson - Jones

ABSTAINED – None

**\*4-g Case No.: BOA23-00307 (Approval with Conditions)**  
Location: Within the 1900 block of South Country Club Drive (west side) and within the 400 block of West Baseline Road (north side). Located north of Baseline Road on and west of Country Club Drive.  
Subject: Requesting a Substantial Conformance Improvement Permit (SCIP) to allow deviations from certain development standards to allow the development of a restaurant with drive-thru.  
Decision: Approval with conditions  
Summary: This item was on the consent agenda and not discussed on an individual basis

A motion to approve case BOA23-00307 was made by Boardmember Glover as read by Boardmember Reed and seconded by Boardmember Hoffman.

**Conditions of Approval:**

1. Compliance with the final documents submitted with this application.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Development Services Department regarding the issuance of building permits.
4. Compliance with all requirements of Design Review Case No. DRB22-01217.
5. Compliance with all requirements of Site Plan Review Case No. ZON22-01216.
6. Compliance with all conditions of approval of Ordinance No. 3678, except as modified by this request and comply with the final site plan submitted with Case Number ZON22-01216.

**Consent Agenda Approved**

Vote: 4-0

Upon tabulation of vote, it showed:

AYES – Wagner - Reed – Hoffman - Glover

NAYS – None

ABSENT –Lynam – Gunderson - Jones

ABSTAINED – None



**Items not on the Consent Agenda**

**5 Take action on the following case:**

**\*5-a Case No.: BOA23-00076 (Denial)**

Location: City wide

Subject: Consider an appeal of an interpretation of the Zoning Administrator issued on January 11, 2023, on the applicability of zoning requirements on properties with multiple zoning districts.

Decision: Appeal denied, uphold the Zoning Administrators interpretation

Summary: Planning Director/Zoning Administrator Mary Kopaskie-Brown presented case BOA23-00076 to the Board and appellant representative Stephen Brower presented to the Board.

**Staff member Mary Kopaskie-Brown presented BOA23-00076 Zoning interpretation to the Board.**

See attached presentation.

Boardmember Reed asked if other jurisdictions created a similar interpretation similar to the case that is being presented.

Staff member Grandlienard answered by adding that while they might not have formally provided an interpretation such as this, he spoke directly with a planner of nearby city, they said they would consistently see it the same way as well.

Steven Brower with Brentwood Law Group presented to the Board.

See attached presentation.

Chair Wagner called meeting to move to city rebuttal.

Staff member McDermott presented city rebuttal. Key points; the interpretation does not create a zoning loophole. It does not allow an applicant to violate or sidestep any of the processes or requirements in the zoning ordinance, and that includes the public hearing process. The interpretation does not create a black and white rule. The interpretation is permissive. It says an accessory use may be allowed and located in zoning districts other than the principal use. It doesn't say that they always or shall be allowed. Accessory uses are still subject to the numerous requirements and design standards in the zoning ordinance.

Staff member Nettles added, regardless of the zoning, it would still have to go through all of our required processes which require public participation, whether it was a site plan review that was administratively approved by the planning director or site plan that was approved by city council.

Reese Anderson, 1744 S Val Vista #217 - expressed their support to this project and interpretation.

Steven Brower with Brentwood Law Group gave response to public testimony.

Boardmembers discussed the merits of the case.

Chair Wagner motioned to deny case BOA23-00076 and was seconded by Boardmember Hoffman.

Chair Wagner selected to do a roll call vote:

Vote: 4-0

AYES – Wagner - Reed – Hoffman - Glover

NAYS – None

ABSENT –Lynam – Gunderson - Jones

ABSTAINED – None

## **5 Adjournment.**

Boardmember Glover moved to adjourn the Public Hearing and was seconded by Boardmember Reed. Without objection, the Public Hearing was adjourned at 6:54 p.m.

Respectfully submitted,

Evan Balmer,  
On behalf of Zoning Administrator (Mary Kopaskie-Brown)



# Board of Adjustment

BOA23-00076

June 7, 2023



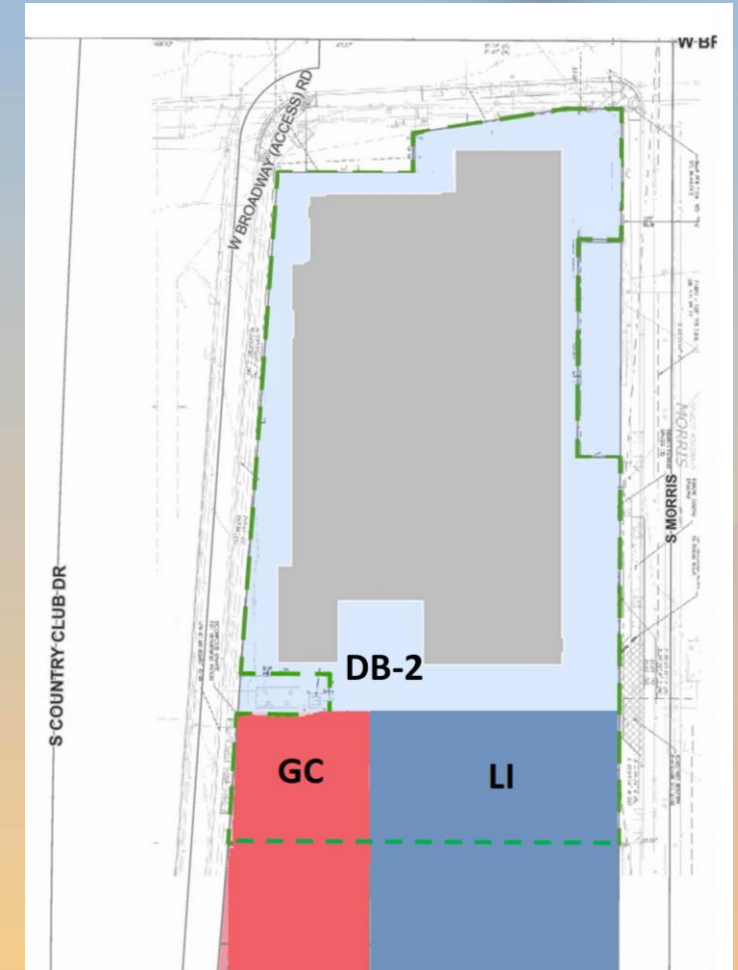
# Request

- Appeal of a Zoning Administrator Interpretation issued January 11, 2023
- Interpretation related to the applicability of zoning requirements on properties with multiple zoning districts



# Appeal Background

- October 26, 2022
  - Planning and Zoning Board approved a site plan for a Mini-Storage Facility
  - Southeast corner of Broadway Rd. and Country Club Dr.
- The Mini-Storage Site has 3 zoning designations
  - DB-2, LI, and GC
  - The Mini-Storage Facility is located within the DB-2 portion of the site and is a permitted use in DB-2





# Appeal Background

- October 31, 2022
  - John Conover filed an appeal of the Planning and Zoning Board's site plan approval to the City Council
  - Grounds for appeal:
    - 1) The subject property has 3 separate zoning districts - 2 of the districts require a CUP for the Mini-Storage
    - 2) Public participation requirements not met
    - 3) Conditions of approval failed to protect (appellant's) property rights



# Appeal Background

- January 11, 2023
  - Zoning Administrator (ZA) issued a zoning interpretation that concluded, in part:

On lots with multiple or split zoning, an accessory use that is located on the same lot as the principal use, may be allowed and located in a zoning district other than the principal use.



# Appeal Background

- January 23, 2023
  - City Council heard Mr. Conover's appeal of the site plan approval
  - By a vote of 7-0, City Council upheld the Planning and Zoning Board's approval of the site plan

The appeal of the City Council's decision on the site plan is not  
before this Board

Only the ZA's interpretation is before the Board





# City-wide ZA Interpretation

- When a specific land use is the primary or dominant use established or proposed to be established on a lot or parcel of land, it is defined in Chapter 87 of the MZO as a Principal Use
  - Every Principal Use must meet the MZO development standards for that particular use (i.e., parking, retention, landscaping, lighting, and trash and refuse collection)
  - These uses required by development standards, when incidental to, related and clearly subordinate to a Principal Use, are considered Accessory Uses and must be located on the same lot or parcel of land as the Principal Use
  - An Accessory Use is only allowed in conjunction with a Principal Use or building to which it relates, in any zoning district



# City-wide ZA Interpretation

- Neither the MZO definition of Accessory Use nor the Accessory Uses standards in Section 11-31-2 require the Accessory Use to have the same zoning district as the property where the Principal Use is located.
- Rather, it requires that the Accessory Use be on the same lot or parcel of land as the Principal Use. This is further demonstrated by the parking requirements in Section 11-32-2(A) of the MZO



# Appeal of Interpretation

- January 26, 2023
  - Mr. Conover filed an appeal of the ZA's Interpretation
  - Grounds for the appeal include:
    - 1) Inconsistent with requirements that uses be within zoning districts that permit them
    - 2) Violates private property rights and harm to private property owners
    - 3) Sets harmful precedent that can be abused
    - 4) MZO required accessory uses to be within a zoning district which permits the primary use
    - 5) Leads to absurd results contrary to the spirit of the MZO



# Rebuttal

1. *Interpretation inconsistent with requirements that uses be within zoning districts that permit them*
  - Interpretation clarified:
    - Accessory Uses can be located in a different zoning district than the Principal Use
    - Principal Uses and Accessory Uses, if specifically listed in the land use tables, must adhere to the land use regulations and specific development regulations noted in the land use tables
    - Accessory Uses clearly incidental to, and required for the development of the Principal Use (such as parking), are permitted on the same lot or parcel as the Principal Use



# Rebuttal

## 2. *Interpretation violates private property rights, downgrades neighborhoods, and has harmful effects*

- Interpretation does not apply to the appellant's property because his property does not have multiple zoning districts on it.
- Even if a property has multiple zoning, the Interpretation does not inhibit development; rather, it spurs growth and development
  - Multiple examples of property developing with multiple zoning districts with no harmful effects



# Rebuttal

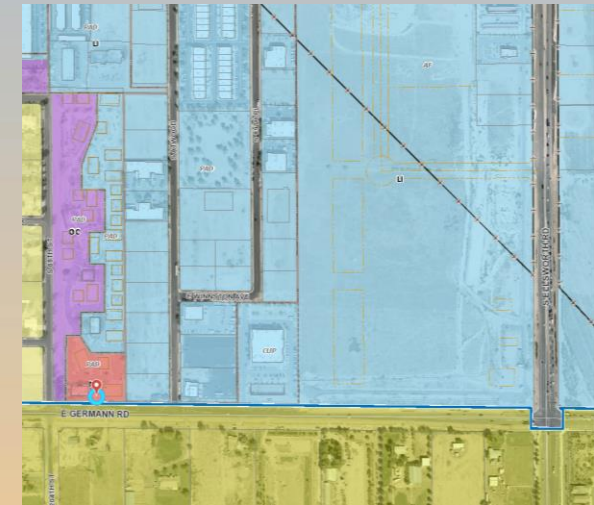
## 3. *Sets harmful precedent that can be abused*

- Interpretation formalizes how the City has historically applied MZO regulations on parcel/lots with multiple zoning districts
- Practice not unique to Mesa
- Multiple examples of prosperous development on property with multiple zoning districts



# Split Zoning in Mesa

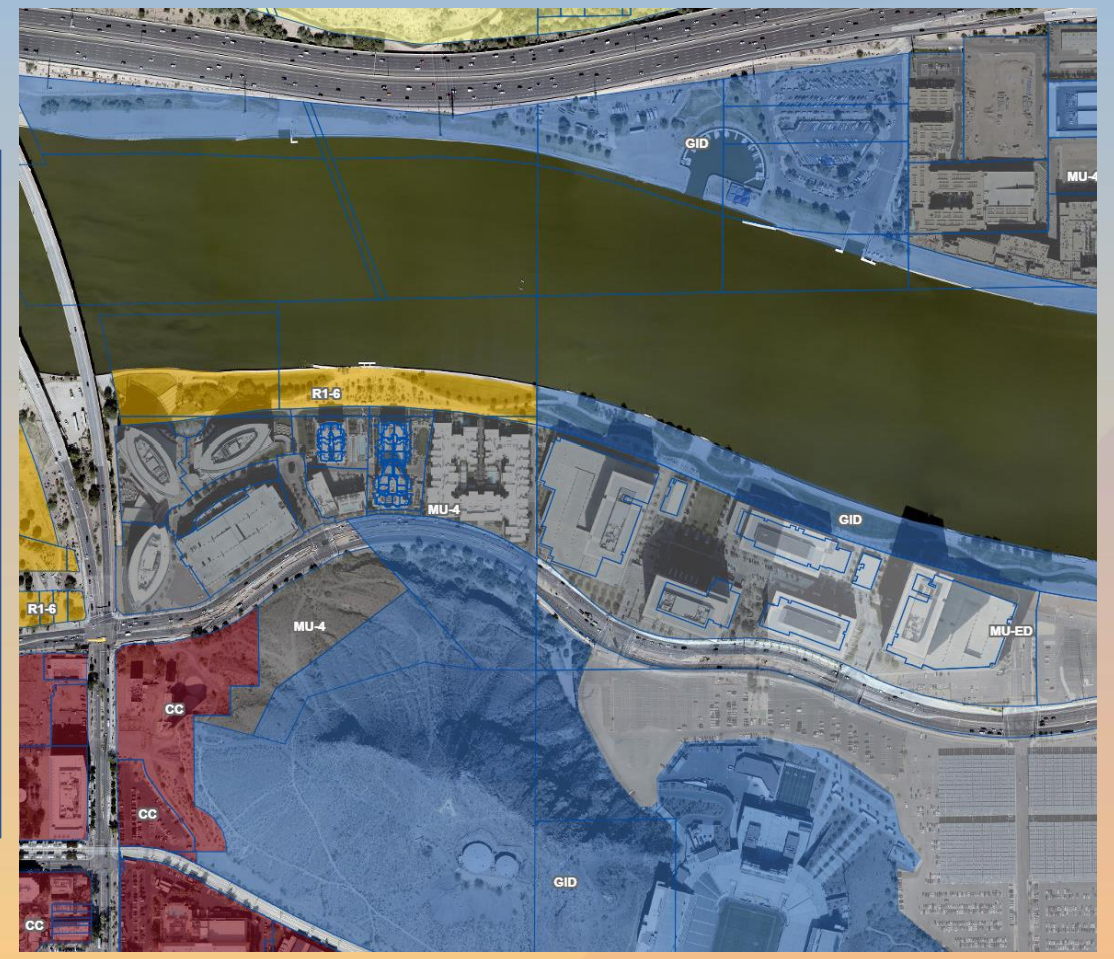
- 8830 E Germann RD Mesa, AZ





# Split Zoning in Other AZ Cities

- Tempe Town Lake Tempe, AZ

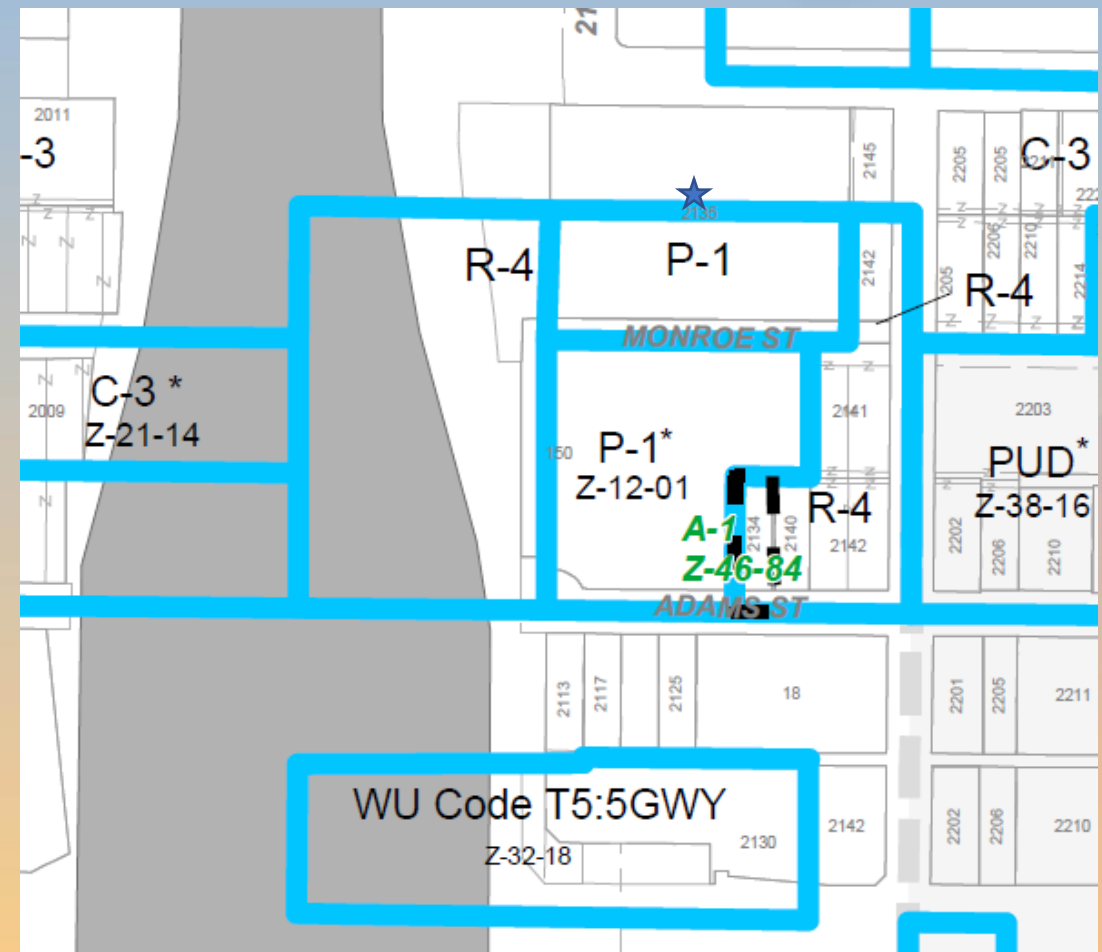
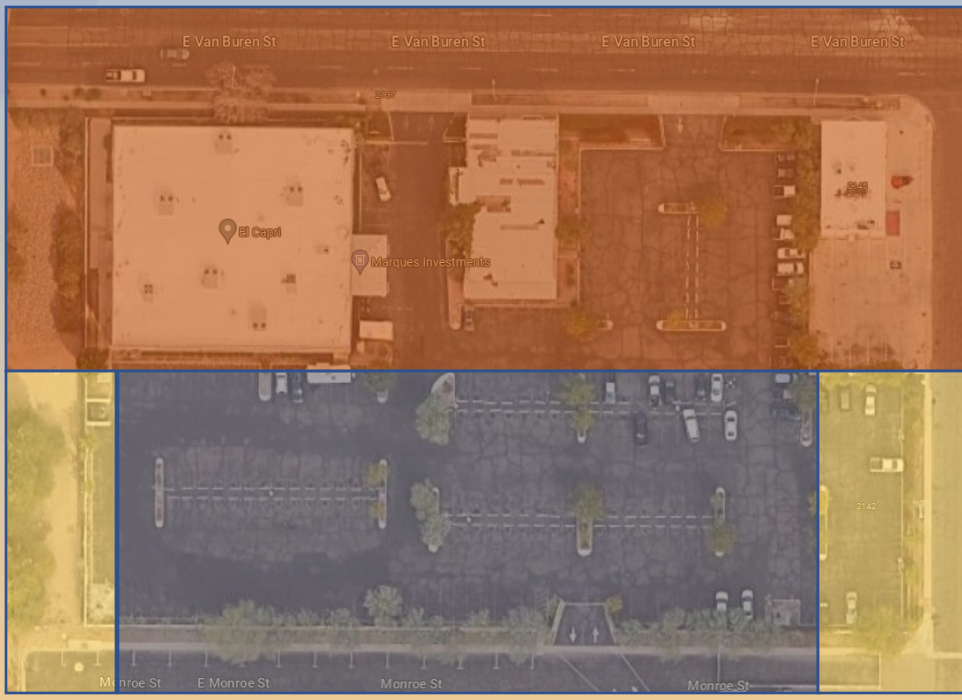






# Split Zoning in Other AZ Cities

- 22<sup>nd</sup> St and Van Buren Phoenix, AZ





# Rebuttal

4. *MZO does not require Accessory Uses to be in a zoning district that permits the Principal Use*
- MZO requires Accessory Uses to be on the **same lot or parcel of land** as the Principal Use



# Example of Accessory Uses

- 420 S. Pioneer Mesa, AZ





# Rebuttal

5. *Interpretation leads to absurd results contrary to the spirit of the MZO*
- Interpretation did not change how land uses are classified in the MZO or the zoning district where they are permitted
  - Interpretation clarified that where there is an Accessory Use, it can be located in a zoning district that is different from the Principal Use



# Conclusion

For all the reasons stated in the Staff Report and this presentation including, but not limited to, the goals of the City's General Plan and Zoning Ordinance, the ZA recommends the BOA **deny** the appeal and **uphold** the ZA's interpretation

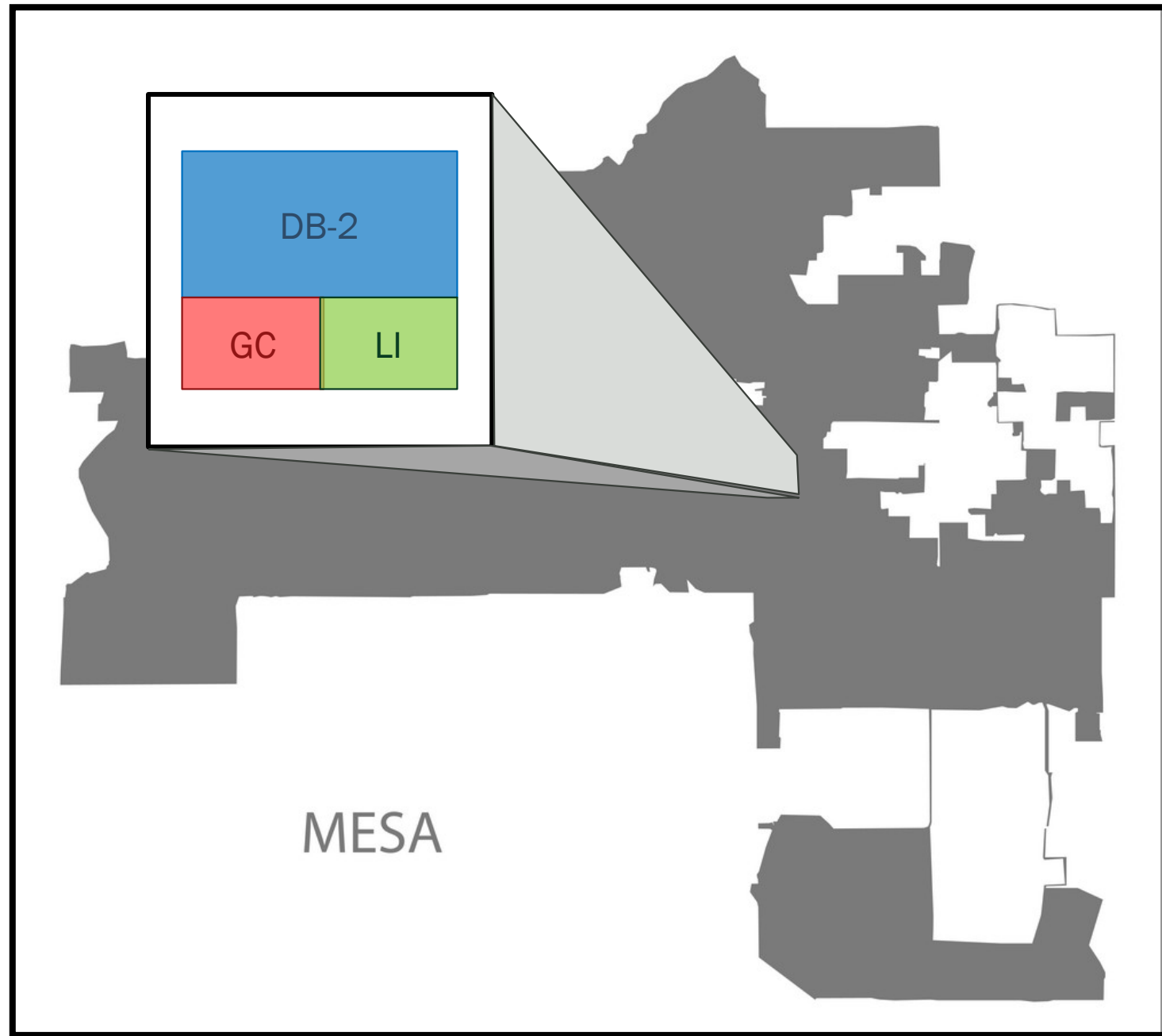


# Consideration of the City of Mesa's Zoning Interpretation

Safeguarding Zoning Integrity and Residential Interests

**The Issue:** The interpretation by the City of Mesa regarding accessory uses in zoning districts

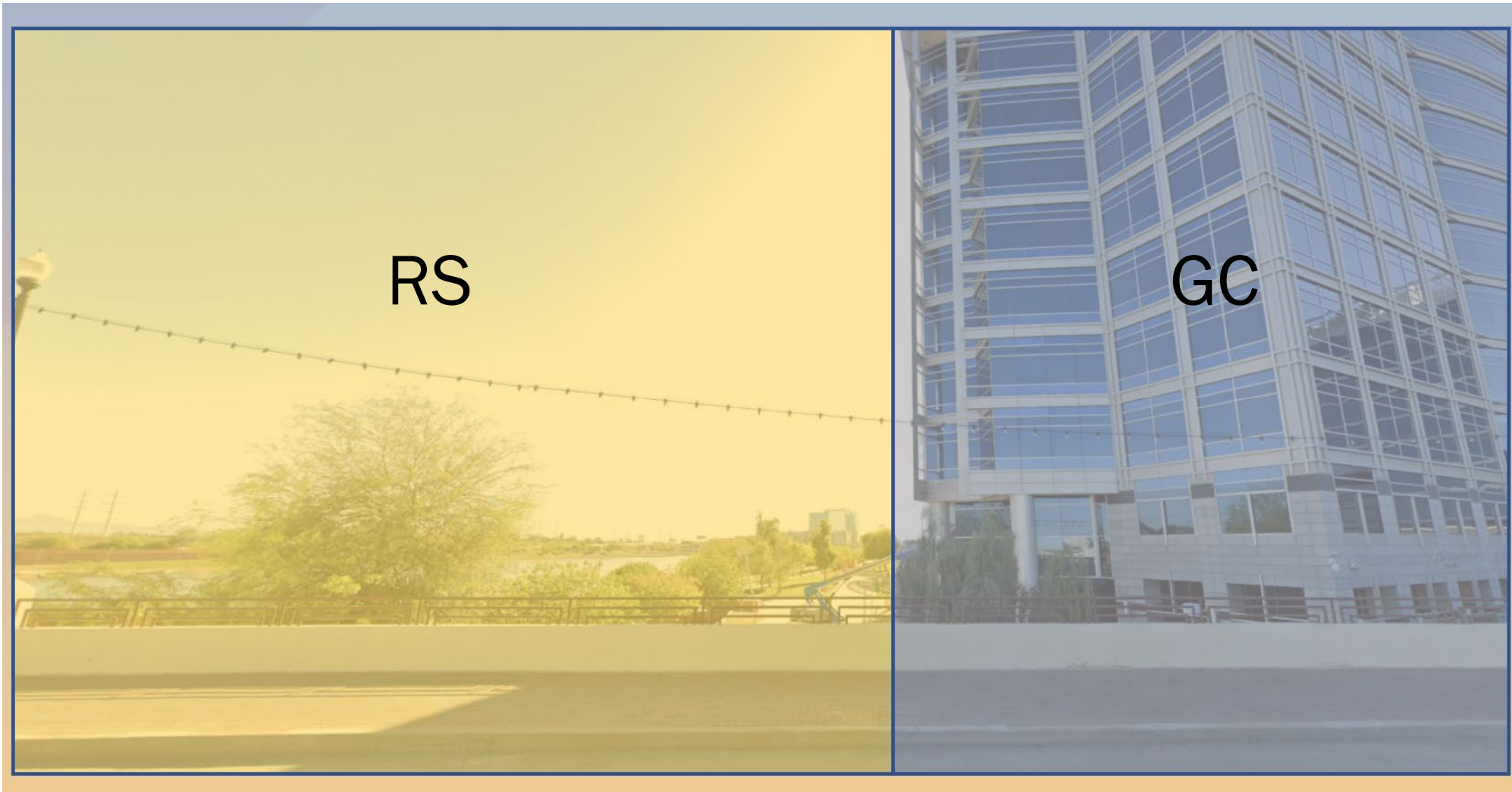
This interpretation could lead to misapplication of zoning rules and potentially disrupt residential areas.





## THE CITY'S INTERPRETATION:

"On lots with multiple or split zoning, an accessory use that is located on the same lot as the principal use, may be allowed and located in a zoning district other than the principal use."



RS

GC

## City's Slide 10: Interpretation clarified



- Interpretation clarified:
  - Accessory Uses can be located in a different zoning district than the Principal Use
  - Principal Uses and Accessory Uses, if specifically listed in the land use tables, must adhere to the land use regulations and specific development regulations noted in the land use tables
  - Accessory Uses clearly incidental to, and required for the development of the Principal Use (such as parking), are permitted on the same lot or parcel as the Principal Use



Interpretations are quasi-judicial rulings. The rulings cannot be changed or clarified mid-appeal.

This clarification suggests that specific accessory uses must adhere to MZO land use tables. Why?

# WHY IS THIS WRONG?

The interpretation contradicts MZO 11-31-2:

“An accessory use shall be secondary to a primary use and shall be allowed only in conjunction with a principal use or building to which it relates, in any zoning district. Accessory use regulations are found in the use regulations tables in Article 2 and 3 of this Zoning Ordinance and are subject to the regulations of the primary use and specific standards found in this Chapter.”

This phrase "in any zoning district" applies to the entire sentence, emphasizing that the rule applies to all zoning districts, not that accessory use can be located anywhere.

Reference Case: *Gadelhak v. AT&T Services, Inc.*, 950 F.3d 458, 468 (7th Cir. 2020). Establishes that a qualifying phrase separated by a comma applies to the entire sentence, not only to the immediately preceding statement.

# APPELLANT'S INTERPRETATION

**Restated zoning regulation:** "*In any zoning district, an accessory use shall be secondary to a primary use and shall be allowed only in conjunction with a principal use or building to which it relates.*"

**Meaning:** No matter the zoning district, an accessory use must always be secondary to the primary use.

# WHY IS THIS WRONG?

The interpretation contradicts MZO 11-31-2:

“An accessory use shall be secondary to a primary use and shall be allowed only in conjunction with a principal use or building to which it relates, in any zoning district. Accessory use regulations are found in the use regulations tables in Article 2 and 3 of this Zoning Ordinance and are subject to the regulations of the primary use and specific standards found in this Chapter.”

See also MZO 11-5-2: "Use classifications not listed are prohibited."

# APPELLANT'S INTERPRETATION

**Restated zoning regulation:** "An accessory use . . . are subject to the regulations of the primary use."

- The principal and most relevant "regulation of the primary use" is that the use must be contained in the correct zoning district.

**Meaning:** Accessory use "are subject to [these same] regulations."

# OTHER CITIES SUPPORT THE APPELLANT'S INTERPRETATION

## City of Surprise:

Jason Moquin, Planning Manager of the City of Surprise, was presented with this same mini-storage scenario in which there is a single parcel with three different zoning districts.

Mr. Moquin was asked how the City of Surprise would answer if the City would permit a parking lot to be erected on the section of the parcel zoned for different use as an accessory use. Mr. Moquin immediately responded that the City of Surprise "does not encourage split zoning at all" and that in instances like this, the city would "require a zoning change so that the parcel is all zoned as one same area." When prompted with more details such as that principal use of the parcel would be for a mini storage facility built on the properly zoned section of the parcel, and if in this situation the parking lot as an accessory use to the mini storage would be permitted, Mr. Moquin again stated, "initial concept review [by the city] would be that they would need to redo the zoning [of the] property."



# OTHER CITIES SUPPORT THE APPELLANT'S INTERPRETATION

## Town of Fountain Hills:

Likewise, John Wesley, Development Services Manager with the Town of Fountain Hills, was presented the same scenario and information.

Mr. Wesley stated in response to the question about how Fountain Hills would address this issue: "we would see the parcel rezoned to its use." Again, more information regarding the specifics of the zoning scenario were presented. Mr. Wesley restated that the entire parcel would need to be rezoned to the use of the land. He also commented that "we do not have a specific provision in the ordinance that addresses it . . . but [another parcel] in town has this situation and we are currently rezoning so that the zone conforms to the use of the parcel."

# OTHER CITIES SUPPORT THE APPELLANT'S INTERPRETATION

## City of Florence:

Likewise, Harvey Krauss, Community and Economic Development Director with the City of Florence, was also presented the same scenario and information.

Mr. Krauss addressed this issue stating: "you have to run a rezoning concurrent with use of the property." He also stated: "I've been doing this a long time and I am pretty sure any zoning administrator would say the same thing" and that it would be 'better off running a concurrent rezoning with the property.'"

## Limited Time for Survey / Request for Full Survey Results

- Appellant had limited time after receiving the staff report to contact other cities.
- Each city Appellant received a response from supported rezoning of the entire parcel.
- Appellant requests City of Mesa provide the Board and Appellant with a report of all cities' responses including cities that disagree with the interpretation at issue.
- No report was provided from staff about Surprise, Fountain Hills, Florence, Gilbert, Chandler, Maricopa County, Glendale, or other cities.



## Hypothetical Scenario 1

The potential misuse of the City's interpretation involving a split-zoned parcel for a hospital.



New Hospital  
Tower under  
Construction

GC (General Commercial)

RS - 6 (Single-Family Residential)



**H**  
New Hospital  
Tower under  
Construction

GC (General Commercial)

Refuse Containers  
Ambulance Access Driveway

RS - 6 (Single-Family Residential)



## Hypothetical Scenario 2

The potential misuse of the City's interpretation involving industrial development.



GI (General Industrial)

RM-4 (Multifamily Residential)





GI (General Industrial)

RM-4 (Multifamily Residential)



GI (General Industrial)

RM-4 (Multifamily Residential)

# THE SOLUTION

**Proposed action:** Overrule the current interpretation to ensure that accessory uses do not bypass the intended zoning regulations.

**The Goal:** Safeguard the integrity of zoning regulations and protect residential zones from incompatible uses.