

MINUTES
BOARD OF PLANNING AND APPEALS MEETING
CITY OF HOLLY HILL, FLORIDA

May 6, 2013

1. CALL TO ORDER

Roll Call

Michael Myer called the meeting to order in the Commission Chambers at City Hall, 1065 Ridgewood Avenue at approximately 6:30 p.m. Attending with Michael Myer were Board members J.D. Mellette, Art Cappuccio, and David Heald.

Absent: Board member Nick Mostert.

Also attending were the following staff members: City Attorney Scott Simpson, and City Planner Thomas Harowski (also serving as the recording secretary).

A. Invocation

Mr. Myer delivered the Invocation.

B. Pledge of Allegiance to the Flag

Mr. Mellette led the Pledge of Allegiance.

2. MINUTES

Minutes from the Board of Planning and Appeals Meeting – April 1, 2013 (*City Clerk*)

*Mr. Mellette moved **APPROVAL** for the **Minutes**, seconded by Mr. Heald.*

The motion **CARRIED** 4-0 by roll call vote: Mellette – Yes, Heald – Yes, Cappuccio – Yes, and Myer – Yes

3. NEW BUSINESS

- A. **Z-2013-04** – 1050 Nova Road - Florida Gun Exchange proposed amendment to the approved PUD to modify side yard and rear yard setbacks

City Planner Thomas Harowski gave a brief staff report as it pertains to the Florida Gun Exchange proposed amendment to the approved PUD to modify side yard and rear yard setbacks.

Mr. Myer opened public participation. No one spoke.

Mr. Mellette moved APPROVAL for Z-2013-04 –1050 Nova Road - Florida Gun Exchange proposed amendment to the approved PUD to modify side yard and rear yard setbacks, seconded by Mr. Cappuccio.

The motion **CARRIED** 4-0 by roll call vote: Mellette – Yes, Cappuccio – Yes, Heald – Yes, and Myer – Yes

B. Z-2013-04 – Amendment to Section 114-34 regarding the re-establishment of non-conforming uses

City Planner Thomas Harowski gave a brief staff report as it pertains to amending Section 114-34 regarding the re-establishment of non-conforming uses. This item went before the City Commission and was asked to come back before the Board of Planning and Appeals for further review and consideration.

Mr. Myer opened public participation. No one spoke.

Mr. Heald moved APPROVAL for Z-2013-04 – Amendment to Section 114-34 regarding the re-establishment of non-conforming uses and to allow one extension of the nonconforming status (which would still be consistent with the intent to ultimately eliminate non-conforming uses), seconded by Mr. Mellette.

The motion **CARRIED** 4-0 by roll call vote: Heald – Yes, Mellette – Yes, Cappuccio – Yes, and Myer – Yes

4. OLD BUSINESS - NONE

5. COMMUNICATIONS FROM BOARD MEMBERS & STAFF

None.

6. ADJOURNMENT

The meeting officially adjourned at approximately 8:30 p.m.

Valerie Manning, City Clerk



STAFF REPORT

City of Holly Hill
Community Development Department

Board of Planning and Appeals *Agenda Item*

DATE: May 15, 2013
SUBJECT: INTERNET CAFÉ ORDINANCE
APPLICANT: CITY OF HOLLY HILL
NUMBER: Z-2013-06
PLANNER: THOMAS HAROWSKI, AICP

INTRODUCTION:

This application has been initiated to repeal Ordinance 2912 and Ordinance 2920 which allowed internet cafes in selected zoning districts as a special exception use.

BACKGROUND:

In 2011 the City responded to requests for establishment of internet cafes by adopting regulations which permitted the establishment of internet cafes as a special exception use in commercial zoning classifications including B-2 Shopping Center District, B-4 Highway Business District, B-5 General Commercial District and CC-1 Commercial Corridor District. The adoption was done via two ordinances 2912 and 2920.

Subsequent to the adoption of these ordinances four internet cafes were established along the Nova Road corridor and the DAV facility on 8th Street was considered a non-conforming use and operated in part as an internet café. In 2013 the State Attorney's office closed a number of internet café operations, including one in Holly Hill, and the Florida Legislature subsequently passed legislation prohibiting these uses.

All of the internet cafes in the City have ceased operations except for the DAV which has suspended the internet café portion of their gaming operation pending clarification of the rules for the associated gaming machines.

STAFF REPORT

City of Holly Hill Community Development Department

DISCUSSION:

With the modifications to State law, the staff is recommending repeal of the sections of the code establishing the use locally so we are consistent with the current State regulation.

RECOMMENDATION:

Recommend the City Commission repeal Ordinance 2912 and Ordinance 2920.



STAFF REPORT

City of Holly Hill
Community Development Department

Board of Planning and Appeals *Agenda Item*

DATE: June 3, 2013
SUBJECT: Flag Regulations
APPLICANT: City of Holly Hill
NUMBER: Z-2013-07
PLANNER: Thomas Harowski, AICP

INTRODUCTION:

As the Board is aware, the City has been embroiled in a controversy over the display of flags that are non-commercial in nature. (American flags, state flags and other similar flags.) The City Commission has been considering options to the current regulations that might allow more flags than permitted under the current regulations. As amendments to the land development regulations require a recommendation from the Board of Planning and Appeals, the item is being referred to the Board for consideration.

BACKGROUND:

Flags are addressed in Section 110-8 (g) of the land development code. The current rule limits a site to a maximum of three flags or insignias of governmental, religious, charitable, fraternal, or other organizations. The BFFAR site is in violation of the current rule as they often display flags in excess of the maximum allowed number. The BFFAR group is contesting the City regulation as a violation of first amendment provision of the US Constitution. The City Commission and staff have been working with the BFFAR group to attempt to develop a regulation that is consistent with current law on flags and freedom of speech.

The current City regulation is consistent with flag regulations in most jurisdictions in Volusia County. South Daytona, Port Orange, Deltona and Edgewater all have a three flag limitation similar to the Holly Hill code. New Smyrna Beach and Daytona Beach Shores appear to allow two flags. Daytona Beach, Ormond Beach and Deland do not appear to regulate the number of flags so long as the flag are not commercial in nature. The City Attorney prepared an analysis of flag

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issues when the controversy arose in mid-April, and a copy of that report is attached.

DISCUSSION:

At the May 28, 2013 City Commission meeting, the Holly Hill City Commission considered three alternative proposals. One proposal was to simply allow one flag for every 25 feet of lot frontage. The second proposal was somewhat broader in scope and is the proposal adopted on first reading by the City Commission. A copy of this draft ordinance is attached. The third proposal was offered at the meeting and would simply remove any regulation as to the number of non-commercial flags that may be displayed.

The broader ordinance that was adopted on first reading by the City Commission includes a limitation of one flag for each 25-feet of lot frontage, but it also addresses a number of other first amendment considerations in the current sign regulations with regard to exempt signs and non-commercial speech. The City Attorney will be at the regular meeting to discuss his position on these issues for the Board.

RECOMMENDATION:

Staff recommends the Board of Planning and Appeals support the proposed ordinance adopted on first reading by the City Commission

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TO: Mayor and City Commissioners
FROM: Scott E. Simpson, City Attorney
DATE: April 15, 2013
RE: Flag Issue

* * M E M O R A N D U M * *

A recent controversy has occurred over the City's sign regulations, specifically the flying of a flag. Although some may view the flying of a flag differently than regulating signage, both fall under the First Amendment protection. Regulating signage is one of the most legally challenging issues from the perspective of compliance with the First Amendment. This memo will first review the status of the City's current regulations, then evaluate flag regulations of surrounding local governments and lastly review the legal requirements the City's regulation of signs.

CURRENT STATUS

It is my understanding that some believe that the City recently changed its regulations regarding flags and this has resulted in the current issue. This is not true. The City currently allows a commercial property owner to fly three (3) flags or insignias of governmental, religious, charitable, fraternal or other organizations on a parcel. This regulation was adopted in 1993 and has remained unchanged since adoption. Therefore, any property owner who has displayed more than three (3) flags on a parcel has been in violation of this regulation.

City staff realized that there were several commercial properties along U.S. 1 that were displaying more signage than allowed. The City was faced with two options, either enforce the existing regulations, which would have resulted in a significant amount of code enforcement activity, or amend the City's regulations to allow more signage. The City recently adopted Ordinance No. 2932 which increased the number of permitted temporary signs. This ordinance increased the number of temporary signs allowed on industrial and commercial properties based on the street frontage of the property. The more street frontage the parcel has the more temporary signs that are allowed.

As it relates to BFFAR, apparently there have been more than three (3) flags flown on this property at different times in the past. When Ordinance No. 2932 was adopted BFFAR was provide notice that only three (3) flags were allowed but additional flags could be flown as a

temporary sign. However, BFFAR has not asked for a permit for any additional flags as a temporary sign but has continued to fly more than three (3) flags. Apparently since this has become an issue BFFAR has actually flown more flags than it has in the past and is flying the flags continuously which in the past the additional flags were only flown on the weekend. As a result of BFFAR's conduct, the City has issued a notice of violation to both BFFAR, as the tenant of the property, as well as the property owner. At no time has BFFAR been cited because of the type of flag that was being flown nor has the City instructed BFFAR what flag should be flown. The City has only regulated the number of flags and which three (3) flags BFFAR decides to fly is entirely up to the BFFAR.

SURROUNDING JURISDICTIONS' FLAG REGULATIONS

Below is a summary of some of the surrounding jurisdictions' flag regulations:

Daytona Beach

Flags, emblems, or insignia of any nation or political subdivision, one welcome flag, and one corporate flag. All flags shall be displayed from a permanent structure or flagpole. Flagpoles must meet wind load standards contained in the building code.

Ormond Beach

Flags and insignia of the United States or the state which are five feet (5') by eight feet (8') or smaller. (Note: Flagpole shall require building permit).

South Daytona

No more than three flags or insignia of governmental, charitable, religious, fraternal or other organizations may be displayed on any one parcel of land. The maximum width from top to bottom of any flag shall be 20 percent of the total height of the flag pole, or in the absence of a flag pole, 20 percent of the distance from the top of the flag or insignia to the ground.

Port Orange

No more than three flags or insignias of governmental, charitable, religious, fraternal, corporate or other organizations may be displayed on any site development. The maximum width from top to bottom of any flag shall be 20 percent of the total height of the flag pole, or in the absence of a flag pole, 20 percent of the distance from the top of the flag or insignia to the ground. The display of flags within any multi-tenant development shall be designed for the use by the entire development, rather than for use by any individual tenant for his/her tenant space.

Daytona Beach Shores

Flags and insignias of any government are exempt unless used in connection with commercial advertising or promotions, in which case Condition L in section 6-9 shall apply to flags located in the GC-RD and TC-MUPUD districts.

Condition L. One (1) American flag and one (1) State of Florida flag shall be allowed with or without a pole not higher than fifteen (15) feet and not placed in the front yard setback. Flags, banners and festoons are allowed for a thirty-day period during special events pursuant to chapter 16¾ of the city's Code of Ordinances or during promotional events pursuant to subsection 6-8(18) of the city's Land Development Code. Flags, banners and festoons shall be approved by the city council sixty (60) days prior to the event.

Deltona

No more than three flags or insignias of governmental, charitable, religious, fraternal, corporate, or other organizations may be displayed as part of any grand opening for a new site development.

Edgewater

(Exempt Flags) The flag of the United States shall be displayed in accordance with the protocol established by the Congress of the United States for Stars and Stripes. All other flags shall conform to the requirements of Section 21-61.

(Overlay Zoning) Flags. A maximum of one (1) state, one (1) federal and one (1) local/county flag per parcel; each a maximum of thirty-five (35) square feet. Flags shall be set back from road right-of-way a minimum distance of ten feet (10').

As is evident from the above Holly Hill's regulations regarding the display of flags is consistent with surrounding jurisdictions.

LEGAL ANALYSIS

As I previous stated, regulating signage is one of the most challenging areas of the law because the regulations must be in compliance with the First Amendment. Displaying signs, including the display of flags, is viewed as a form of protected speech. Without getting into a lengthy legal analysis, the most important criteria are that a local government regulations should be content neutral and should instead focus on "time, place and manner" restrictions. Stated differently, local government can regulate when, where and how speech is stated, but not what is stated. When the regulation varies depending on type of speech, then the regulation is a content-based regulation and is subject to the strictest scrutiny by the courts. For example, the 11th Circuit Court of Appeals, which is the Circuit Holly Hill is located, held a regulation unconstitutional because it only allowed flags of the U.S. Government or political subdivisions. The Court stated the following:

In language strikingly similar to that held unconstitutional in *Dimmitt*, the Douglasville sign ordinance provides that, in the historic district, "[b]anners, pennants and streamers along or across road rights-of-way" are prohibited; however, an exception is made for "flags or banners of the United States or other political subdivisions thereof." Douglasville, Ga., Zoning Ord., § 3.73.04(e)(2). Under this provision, like the provision in *Dimmitt*, the display of

the American flag or the flag of the State of Georgia would be allowed in the City's historic district, while a flag displaying a Greenpeace logo or a union affiliation would be prohibited. See *Dimmitt*, 985 F.2d at 1569. On its face, this provision, like the provision in *Dimmitt*, draws a content-based distinction between different types of banners, flags, and pennants. Accordingly, it is unconstitutional. Lamar Adver. Co. v. City of Douglasville, Georgia, 254 F. Supp. 2d 1321, 1331 (N.D. Ga. 2003).

There has been discussion about having a regulation that would allow more than 3 flags if the additional flags were governmental flags or flags of the branches of the military. Such a proposed regulation would also be a content-based regulation and could likewise be unconstitutional. The City does have the authority to amend the number of flags that can be flown on a parcel of property, as that is a content-neutral regulation. My recommendation is that the focus of the City Commission discussion be on "time, place and manner" restrictions and not on the type of flags that are being flown.

ORDINANCE NO. 2938 – DRAFT

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA; AMENDING SECTION 110-8 (PERMITTED PERMANENT ACCESSORY SIGNS) AMENDING THE METHOD OF CALCULATING THE AMOUNT OF PERMITTED NON-COMMERCIAL SIGNAGE; PROVIDING FOR TERMS AND CONDITIONS; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has a legitimate governmental interest to regulate the amount and size of signage in its community to promote both the aesthetics and traffic safety of the community; and

WHEREAS, signage has the potential to create clutter, visual impairment and distractions to motorist if not properly regulated; and

WHEREAS, any regulation of signage must be in compliance with all applicable laws, including the First Amendment; and

WHEREAS, words which are underlined (underlined) are additions to the text and words with strike through (~~strike through~~) the characters are deletions from the text.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

SECTION 1. The City Commission of the City of Holly Hill hereby amends Section 110-8 (Permitted Permanent Accessory Signs) to read as follows:

Sec. 110-8. - Permitted permanent accessory signs.

(a) *Permitted sign types.* A permanent accessory sign may be a ground or building sign. A permanent accessory sign may not be a roof sign.

(b) *Contents.* A permanent accessory sign may display any message so long as it is not harmful to minors as defined in this subpart.

(c) *Type, number, area, spacing and height.*

(1) *Ground signs.* The permissible type, number, area, spacing and height of permanent accessory ground signs (including both monument signs and pole signs) for each multiple-occupancy complex and each occupant not located in a multiple-occupancy complex shall be determined according to table X-1 below:

TABLE X-1

Street Frontage (feet)	Number of Signs Allowed	Total Sign Area Allowed/ Maximum Sign Area for Individual Sign (square feet)	Minimum Distance from Any Side Property Line/ Other Permanent Ground Sign on the Same Site (feet)	Maximum Height (feet)
Less than 50	1	32/32	10/NA	18
At least 50 but less than 100	1	48/48	15/NA	18
At least 100 but less than 200	1	64/64	20/NA	18
At least 200 but less than 300	1	72/72	50/NA	<u>25</u>
At least 300 but less than 400	2	144/96	50/100	<u>25</u>
400 or more	2	192/96	50/100	<u>25</u>

(2) *Building signs.*

a. Building signs shall not exceed the height of the building on which the signs are located.

b. Each multiple-occupancy complex may display one permanent accessory building sign on each side of the principal building or buildings in which the complex is located, not to exceed a sign area of up to ten percent of the facade area (see section 110-9, pertaining to measurement determinations) of each building side.

c. Each occupant of a multiple-occupancy complex may display three permanent accessory building signs on any exterior portion of the complex that is part of the occupant's unit (not including a common or jointly owned area), not to exceed a total combined sign area of ten percent of the facade area (see section 110-9, pertaining to measurement determinations) of such exterior portion.

d. Each occupant not located in a multiple-occupancy complex may display three permanent accessory building signs on each side of the principal building in which the occupancy is located, not to exceed a total combined sign area for each building side of ten percent of the facade area (see section 110-9, pertaining to measurement determinations) of the building side.

(3) *Multiple frontages.* If a building has frontage on two or more streets, each frontage shall be separately considered for the purposes of determining compliance with the provisions of this chapter, but the permitted sign area for one frontage may not be combined with that permitted on another frontage to increase the permitted sign area on one frontage. However, no ground sign on one right-of-way may be closer than 100 feet to a sign on another right-of-way, measured as the sum of distances measured continuously along the rights-of-way through a common point.

(d) *Time-temperature-date signs.* Time-temperature-date signs are permitted as a permanent accessory sign on commercially developed parcels notwithstanding the general prohibition on changing signs. These signs may only display numerical information in an easily comprehensible way. They may be ground or building signs, and are subject to the regulations applicable to such signs. They shall be counted as part of an occupancy's allowable sign area.

(e) *Directional signs.* Directional signs limited in area to four square feet, giving directions to motorists regarding the location of parking areas and access drives, shall be permitted as permanent accessory signs on all parcels and shall not be counted as part of an occupancy's allowable sign area.

(f) *Signs at entrances to residential developments.*

(1) *Permitted signs.* A permanent accessory sign may be displayed at the entrance to residential developments.

(2) *Restrictions.*

a. One sign is permitted at only one entrance into the development, from each abutting street. The sign may be a single sign with two faces of equal size or may be two single-faced structures of equal size located on each side of the entrance. No face of the sign shall exceed 32 square feet in size, and the sign may be illuminated in a steady light only.

b. When considering the placement of such signs, the board of planning and appeals or city council, as the case may be, shall consider the location of public utilities, sidewalks and future street widenings.

c. The board of planning and appeals or city council shall ensure that such signs shall be maintained perpetually by the developer, the owner of the sign, a pertinent owners' association, or some other person who is legally accountable under a maintenance arrangement approved by the city attorney. If no accountable person accepts legal responsibility to maintain the signs and no other provision has been made for the maintenance of them, the signs shall be removed by developer or owner.

(g) *Flags Non-commercial sign/message.*

(1) *Number.* Not more than one non-commercial sign shall be allowed for every full twenty-five feet of frontage. Frontage shall be defined as that portion of the lot along the road that is the post office street address. Parcels with multiple frontages shall only count the frontage of the post office street address. If a parcel does not have twenty-five feet of frontage, said parcel shall be allowed one non-commercial sign. A non-commercial sign is hereby defined as a sign that does not contain: three flags or insignias of governmental, religious, charitable, fraternal or other organizations may be displayed on any one parcel of land.

a. The name or insignia of the business, services offered or products sold on the property.

b. Words such as "Open", "Grand Opening", "Sale", "Going Out Of

Business” or such other sign or message that contains wordings, symbols, etc. that clearly advertises or promotes the business or is intended to attract customers to the business for commercial purposes.

(2)*Size.* The maximum distance from top to bottom of any flag shall be 20 percent of the total height of the flagpole, or in the absence of a flagpole, 20 percent of the distance from the top of the flag or insignia to the ground.

(3) *Substitution of noncommercial speech for commercial speech.* Notwithstanding anything contained in this Land Development Regulations to the contrary, any sign erected pursuant to the provisions of this Chapter with a commercial message may, at the option of the owner, contain a non-commercial message. The non-commercial message may occupy the entire sign face or any portion thereof. The sign face may be changed from a commercial message to a non-commercial message, or from one non-commercial message to another, provided that the sign is not a prohibited sign or sign-type, provided that the manner or frequency of the change does not violate restrictions on electronic or illuminated signs, and provided that the size, height, setback and other dimensional criteria contained in this Chapter and the City Land Development Regulations have been satisfied.

4) If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of Chapter is declared or held to be invalid or unconstitutional by any court of competent jurisdiction, such declaration or holding shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Chapter even if such severability would result in less speech, whether by subjecting previously exempt signs to this Chapter’s permitting requirements, or otherwise.

(h) *Utility signs.* Public utility signs that identify the location of underground utility lines and facilities, high voltage lines and facilities, and other utility facilities and appurtenances are permitted so long as they do not exceed three feet in height, and so long as the sign face does not exceed one-half square foot.

SECTION 2. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

SECTION 3. That all ordinances made in conflict with this Ordinance are hereby repealed.

SECTION 4. That this Ordinance shall become effective immediately upon its adoption.

SECTION 5. That this Ordinance shall be posted at City Hall as required by law.

The within and foregoing Ordinance was introduced and read on first reading before the City Commission of the City of Holly Hill, Florida, at its regular meeting held in Commission Chambers at City Hall on the ◊ day of ◊, 2013.

It was moved by Commissioner ____ and seconded by Commissioner ____ that said Ordinance be approved on first reading. A roll call vote of the Commission held on said motion for approval of the Ordinance resulted as follows:

Mayor Roy Johnson	_____
Commissioner John Penny	_____
Commissioner Penny Currie	_____
Commissioner Donnie Moore	_____
Commissioner Elizabeth Albert	_____

The within and foregoing Ordinance was introduced and read on the second reading before the City Commission of the City of Holly Hill, Florida, at its regular meeting held in Commission Chambers at City Hall on the ◊ day of ◊, 2013.

It was moved by Commissioner ___ and seconded by Commissioner _____ that said Ordinance be adopted. A roll call vote of the Commission held on said motion to adopt the Ordinance resulted as follows:

Mayor Roy Johnson	_____
Commissioner John Penny	_____
Commissioner Penny Currie	_____
Commissioner Donnie Moore	_____
Commissioner Elizabeth Albert	_____

Whereupon, the Mayor of the City of Holly Hill, Florida, has hereunto set his official signature, duly attested by the City Clerk, and has caused the official seal of said City to be affixed, all at City Hall in the City of Holly Hill, this <> day of <>, 2013, for the purpose of authenticity as is required by law.

City of Holly Hill, Florida

Roy Johnson, Mayor

James A. McCroskey City Manager

Attest:

Valerie Manning, City Clerk

Ord. 2938
5/28/2013
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STAFF REPORT

City of Holly Hill
Community Development Department

Board of Planning and Appeals *Agenda Item*

DATE: May 30, 2013
SUBJECT: Modifications to Ridgewood Avenue Buffers
APPLICANT: Administrative Request
NUMBER: Z-2013-08
PLANNER: Thomas Harowski, AICP

INTRODUCTION:

The City Manager has requested the Board of Planning and Appeals consider a modification to the front buffer requirements within the Redevelopment District Overlay to reduce the required front buffer from the current 10 feet to seven and one-half feet.

BACKGROUND:

The landscaping requirements for developments in the City of Holly Hill are presented in Chapter 98 of the City Code. Section 98-33 presents the requirements for landscaping adjacent to streets and along parcel lines. This section reads in part:

Sec. 98-33. Landscaping adjacent to streets and along parcel lines.

A landscaped strip shall be provided along all parcel lines and abutting street right-of-way lines as required by the provisions of this section. The depth of the required landscaped strip shall be measured and provided parallel to the parcel line or abutting street right-of-way in question. Landscaped strips shall be considered to be required landscaped area. A landscaped strip may be included as fulfilling the buffer requirements for the premises in question. However, no part of a landscaped strip required for any use shall be included as fulfilling the landscape or buffer requirements for another use unless specifically provided for in this subpart. Landscaped strips shall be provided in the following manner:

- (1) *Parcel lines abutting arterial or collector roadways.* A ten-foot-wide landscaped strip shall be provided along all parcel lines abutting a street right-of-way classified as an arterial or collector roadway in the

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traffic circulation plan element of the comprehensive plan. Required landscaping shall be provided within the required landscaped strip as follows:

- a. *Trees*. One tree shall be provided for every 25 linear feet of parcel line in question. Such trees shall be evenly spaced.
- b. *Hedges*. When off-street parking, loading, unloading and vehicular circulation areas are to be located adjacent to the street in question, a dense hedge of evergreen type shrubs shall be provided in the following manner:
 1. At initial planting and installation, shrubs shall be at least 30 inches in height and shall be separated by a distance of 30 inches or less on center from adjacent tree trunks or shrubs.
 2. Within one year of initial planting and installation, shrubs shall have attained and be maintained at a minimum height of four feet and shall provide an opaque vegetative screen between the street and the use of the premises.
 3. In lieu of a vegetative hedge, the development code administrator shall be authorized to approve the use of berms or other appropriate landscape materials in a manner that results in the visual separation of the street right-of-way and the premises in question.

In recent efforts to redevelop properties along both US 1 and LPGA Boulevard, the City has encountered conditions where buildings are located close to the road or have insufficient area to permit full 10-foot buffers without impacting necessary site elements such as parking. It is possible to address these conditions with variances if a hardship unique to the property can be proven, but often these are hard cases to prove when the issue is arising from a desire to redevelop an existing property. When buffers are an issue, this problem can have a dampening effect on redevelopment activities.

DISCUSSION:

If we want to address the buffer concern, there are a couple of options that are open to us.

- One option is to modify the buffer rule for all properties.
- A second option is to modify the buffer rule for all properties that front on US 1 or LPGA Boulevard

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- A third option is to create an opportunity for an administrative modification to the buffer requirements based on specific standards.

Option one is a straight forward adjustment of the language in Section 98-33 to change the buffer requirement from 10 feet to 7.5 feet. This change would have the effect of reducing buffers for all business sites anywhere in the City where they front on arterial or collector roads.

Option two is a similar change but it would be limited to properties that front on US 1 or LPGA Boulevard. We have a similar type of regulation in the Redevelopment District Overlay where there are some land uses that are prohibited on properties adjacent to Ridgewood Avenue and LPGA Boulevard (Section 114-635)

Option three requires some discretion on the part of staff to interpret and apply criteria that support a limited application of the standard rule. Section 114-637 regarding off-street parking in the Redevelopment District Overlay is a regulation of this type. This rule allows a waiver of parking requirements dependent upon the property design, uses, inclusion of pedestrian ways and the availability of public parking. We could develop a similar regulation for front buffers in the Redevelopment District Overlay in situations where there is less than ten feet between the building and the right-of-way; where the provision of a full ten foot buffer would impact the provision of pedestrian access; or where the property owner could demonstrate that a full ten-foot buffer would unduly limit the use of a property for essential site activities such as parking.

Under the third option, staff recommends adding a section to the Redevelopment District Overlay similar to Section 114-637 where the option to vary from the minimum buffer requirement is allowed provided one of the conditions cited above exists. Staff can then make a determination as to the nature and extent of any reduction in the minimum buffer requirement and approve a reduction if warranted. The section should state that any reduction in the buffer is the minimum reduction necessary to provide relief from the effect of the buffer regulation.

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Option three will have the effect of maintaining the current buffers and landscaping where possible while providing some relief to developments where a traditional variance might not be applicable. A project such as the new development at 700 Ridgewood or the redevelopment of the Sunoco station at Mason Avenue and Ridgewood would provide the full 10-foot buffer since they are essentially fully demolishing building on the site and starting redevelopment with a clean slate.

RECOMMENDATION:

The planning staff recommends the third option which creates an adjustment opportunity under the provisions of the Redevelopment District Overlay.