



AGENDA
PLANNING COMMISSION
CITY OF PORT ORANGE

Meeting Date: Thursday, May 27, 2021

Time: 5:30 PM

Location: Council Chambers, City Hall
1000 City Center Circle
Port Orange

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call

B. DISCUSSION/ACTION

3. Consideration of Minutes
4. APPLICATION: Variance/1387 Hyde Park Dr.
CASE NO.: 21-90000004
STAFF CONTACT: Penelope Cruz, Planning Manager (386) 506-5671/pcruz@port-orange.org
APPLICANT: Sharon and Edward Petty; 1387 Hyde Park Dr., Port Orange, FL 32128

A request by the applicant for a Variance from Chapter 16, Section 3(b)(2)(f) of the Land Development Code (LDC), to allow a 6-foot tall fence to be located 19.9-feet from a right-of-way in lieu of the required 30-feet.

5. APPLICATION: Rezoning/3704 Nova Rd.
CASE NO.: 21-60000001
STAFF CONTACT: Gwen Perney, Principal Planner (386) 506-5673/gperney@port-orange.org
APPLICANT: The McCarthy Family, LLP; 629 Hills Blvd., Port Orange, FL 32127

A request by the applicant to rezone ±5.55 acres from Planned Unit Development (PUD) to Highway Commercial (HC).

6. APPLICATION: LDC Text Amendment/Chapters 3, 13, 16 and 17
CASE NO.: 21-25000003
STAFF CONTACT: Penelope Cruz, Planning Manager (386) 506-5671/pcruz@port-orange.org
APPLICANT: City of Port Orange

A request to amend Chapters 3, 13, 16 and 17 of the Land Development Code

(LDC) that include clarifications and minor changes that are simple clean-up items that make the code more efficient to use.

C. OTHER BUSINESS

7. Commissioner Comments
8. Staff Comments

D. PUBLIC COMMENTS

E. ADJOURNMENT

NOTICES – PURSUANT TO SECTION 286.0105 OF THE FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE PLANNING COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY DOES NOT PREPARE OR PROVIDE SUCH A RECORD.



FOR SPECIAL ACCOMMODATIONS, PLEASE NOTIFY THE CITY CLERK'S OFFICE (PHONE: 386-506-5563) AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE.



HELP FOR THE HEARING IMPAIRED IS AVAILABLE THROUGH THE ASSISTIVE LISTENING SYSTEM RECEIVERS CAN BE OBTAINED FROM THE CITY CLERKS' OFFICE.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA), IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

REGULAR PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
MARCH 25, 2021

THE REGULAR PLANNING COMMISSION MEETING of the City of Port Orange was called to order by Chairman John Junco at 5:30pm.

Pledge of Allegiance

Silent Invocation

Roll Call

Present: John Junco
Maria Mills-Benat
Lance Green
Darrel “Bo” Bofamy
Thomas Jordan
Newton White

Absent: Stan Schmidt (excused)

Also Present: Shannon Balmer, Assistant City Attorney
Shelby Field, Assistant City Clerk

B. DISCUSSION/ACTION

4. Consideration of Minutes

Motion to approve the minutes as presented from January 28, 2021 was made by Commissioner Mills-Benat and Seconded by Commissioner Bofamy. Motion carried unanimously by roll call vote.

5. CASE NO.: 21-90000001

Variance/3681 S. Clyde Morris Blvd.

A request by the applicant for a Variance from Chapter 15, Section 3(b)(18) of the Land Development Code (LDC), to allow off-site signage.

STAFF CONTACT: Max Garcia, Planner (386) 506-5672 mgarcia@port-orange.org

Penelope Cruz, Planning Manager, discussed details of the proposed variance and answered questions from Commissioners.

Jeffrey Brock, Representative for the Applicant, provided background on the site.

*Motion to approve Case No. 21-90000001
was made by Commissioner Bofamy and
Seconded by Commissioner Jordan.*

Commissioner Green is unhappy with the size of the sign and the size of these types of signs in the city.

*Motion passed 5-1 by roll call vote with
Commissioner Green voting no.*

6. CASE NO.: 20-40000005

PUD Amendment/7th Amendment to the Bennett's Hammock Master Development Agreement and Conceptual Development Plan
LOCATION: 1143 Old Hammock Road

A request by the applicant to amend the Bennett's Hammock Planned Unit Development (PUD) Master Development Agreement (MDA) to establish the framework for the development of a 13-unit multi-family townhome subdivision.

STAFF CONTACT: Gwen Perney, Principal Planner (386) 506-5673 gperney@port-orange.org

Gwen Perney, Principal Planner, discussed details of the proposed amendment and answered questions from Commissioners.

Commissioner Mills-Benat is concerned with the impact of traffic on Herbert St.

Commissioner White questioned if Port Orange staff has calculated the trip volumes. Tim Burman, Community Development Director, responded the city uses the national manual for the number of trips.

Joey Posey, Representative for the Applicant, responded to the traffic concerns and provided additional information on the requested amendment and potential development.

Laurel Bouchard, Citizen, is concerned about the blind curve in the road, the sidewalk size and visibility at the dead end. She is also concerned about the additional traffic that may be caused with school aged children living in the units. Mrs. Bouchard would like to see a reduction in proposed townhome units.

Steven Bizz, Citizen, is concerned about the traffic to Herbert St. He is also concerned about the size of the retention pond and future stormwater runoff. Mr. Bizz stated the lighting in the area needs to be updated and he is concerned with the potential tree removals.

Donald Strawn, Citizen, believes the development would negatively impact the current residents livelihoods. He is concerned with the traffic and the current difficulty for emergency vehicles on the one-way street. Mr. Strawn stated there are drainage issues in the neighborhood already

and further development would make it worse. He believes this project would displace a large number of animals.

Jim Bouchard, Citizen, doesn't agree with the traffic statistics provided stating their neighborhood has a unique traffic pattern.

Robert Reinhagen, citizen, is concerned with the larger footprint this development would have on each space. He doesn't believe the space can support the number of townhomes suggested.

Brian Deaton, Citizen, is concerned that the development will change the current country feeling of the neighborhood. He would prefer to see a single-family home in the space instead.

Mike Peterson, Citizen, was under the impression that the lack of lighting is because of nesting owls in the area and believes it would be a shame to lose the green space.

Mr. Posey responded to citizen concerns and will meet with them further as needed.

Mrs. Cruz provided clarification that the applicant has authority to place streetlights on their property but not on public property.

April Blowers, Citizen, works in the healthcare field and believes an ALF would have a lesser traffic impact.

Motion to approve Case No. 20-40000005 was made by Commissioner White and Seconded by Commissioner Mills-Benat. Motion failed 2-4 by roll call vote with Commissioner Bofamy and Chair Junco voting yes.

7. Sign Code Update:

Mr. Burman presented a PowerPoint that provides an overview of the revisions Community Development is currently working on to the City's Sign Code and Definitions (Chapters 2 and 15) to address the Reed v. Town of Gilbert Supreme Court Case. Staff is currently drafting the sign code text amendment to eliminate content-based regulations and replace them with content-neutral regulations. The draft sign code text amendment will also feature a streamlined code that no longer includes redundant, out-of-date, and/or inconsistent requirements and definitions. Staff answered questions related to the changes being made and received feedback on other suggested changes to the City's sign code.

C. OTHER BUSINESS

8. Commissioner Comments

Chairman Junco is concerned with the state of the tunnel leading to City Hall. Mr. Burman responded Public Works is currently working on ideas to fix it.

9. Staff Comments

There were none.

D. **PUBLIC COMMENTS** - there were none.

E. **ADJOURNMENT** – 7:28 p.m.

Chairman John Junco

SPECIAL PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
MAY 3, 2021

THE SPECIAL PLANNING COMMISSION MEETING of the City of Port Orange was called to order by Chairman John Junco at 5:30pm.

Pledge of Allegiance

Silent Invocation

Roll Call

Present:	John Junco Maria Mills-Benat Lance Green Darrel “Bo” Bofamy Newton White Stan Schmidt
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Absent:	Thomas Jordan (excused)
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Also Present:	Shannon Balmer, Assistant City Attorney Shelby Field, Assistant City Clerk
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B. DISCUSSION/ACTION

3. CASE NO.: 21-25000004

LDC Text Amendment/Chapters 2, 15, 16, 17, & 18

An amendment to Chapters 2, 15, 16, 17, & 18 of the Land Development Code to remove content-based sign regulations and replace with content-neutral sign regulations, remove redundant, out-of-date, and/or inconsistent signage requirements and definitions, and provide requirements for alternative types of permanent signage.

STAFF CONTACT: Tim Burman, Community Development Director (386) 506-5675
tburman@port-orange.org

Tim Burman, Community Development Director, discussed details of the proposed amendment and answered questions from the Commissioners.

*Motion to approve Case No. 21-25000004
was made by Commissioner Green and
Seconded by Commissioner Mills-Benat.
Motion passed unanimously by roll call.*

C. OTHER BUSINESS

4. Commissioner Comments

There were none.

5. Staff Comments

There were none.

D. PUBLIC COMMENTS – there were none.

E. ADJOURNMENT – 6:30 p.m.

Chairman John Junco



STAFF REPORT

Variance from LDC Chapter 16, Section 3(b)(2)(f)

CASE NO. 21-90000004

REQUEST:	Variance from Chapter 16, Section 3(b)(2)(f) of the Land Development Code (LDC), to allow a 6-foot tall fence to be located 19.9-feet from a right-of-way in lieu of the required 30-feet.
LOCATION:	1387 Hyde Park Drive (Figure 1 – Location Map)
OWNERS/APPLICANTS:	Sharon and Edward Petty
STAFF RECOMMENDATION:	Denial
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
PLANNING COMMISSION DATE:	May 27, 2021

Introduction

The subject property is located at 1387 Hyde Park Drive, at the southeastern corner of Hyde Park Drive and North Wembley Circle (Figure 1). The property owners are requesting a variance to allow a 6-foot-tall vinyl fence to be placed in a secondary front yard setback 19.9-feet from the North Wembley Circle right-of-way line in lieu of the required 30-feet. According to the property owners, the proposed 6-foot-tall fence is to provide privacy from neighbors and traffic.

Figure 1. Location map. North of Taylor Road, West of Summer Trees Road.

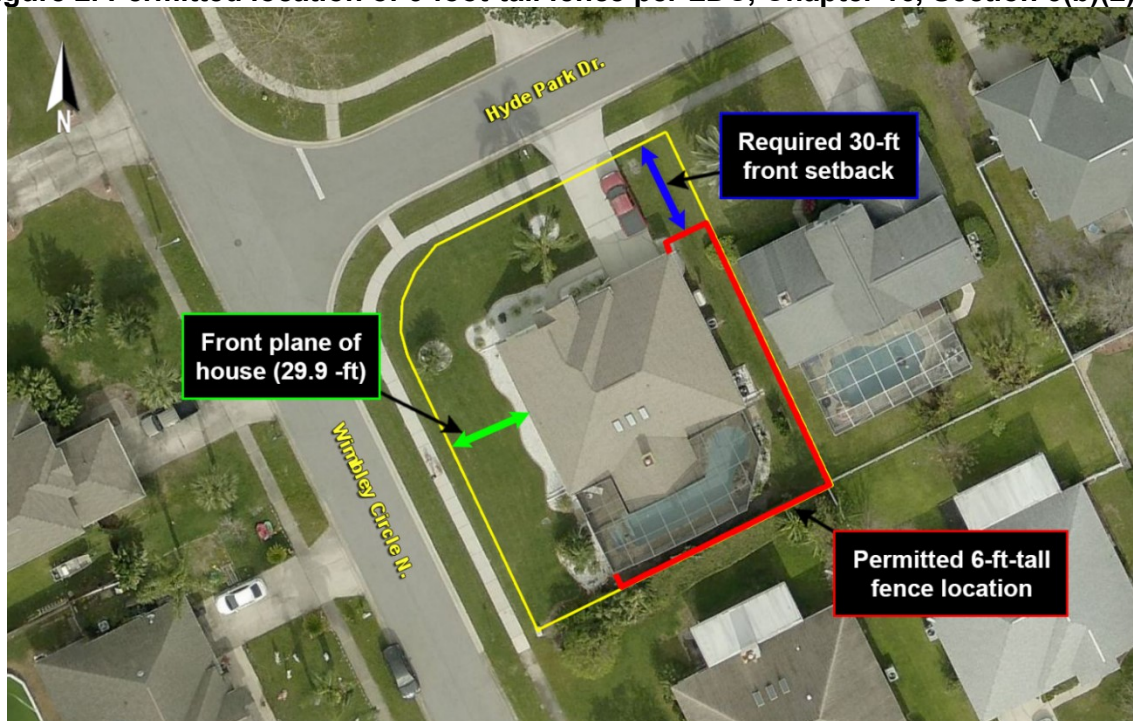


Discussion

The subject property has a single-family home that has been improved with a swimming pool, screen enclosure and a stone patio. According to the owners' survey, the existing home (built in 1992) and swimming pool enclosure (built in 2004) are set back 29.9-feet and do not meet the required secondary front yard setback (30-feet) by approximately 0.1-feet. Although this is a small deviation, it does prevent a 6-foot-tall fence from being installed in accordance with the corner lot fence requirements. The swimming pool enclosure was installed prior to the current owner purchasing the property (2015).

According to the Land Development Code (LDC), the subject property is a corner lot because it is adjacent to two public rights-of-way (Hyde Park Drive and North Wembley Circle) and therefore has two front yards. The intent of the city-wide setback requirement for a residential 6-foot-tall fence in the front yard is to ensure fences that abut streets in residential subdivisions, with narrow rights-of-way, are setback enough to provide adjacent properties adequate visual sight lines from their home. In this case, Hyde Park Drive is the primary front yard and North Wembley Circle is the secondary front yard (Figure 1.) Both streets are local roads and according to the LDC, and a 6-foot-tall fence built in a secondary front yard is to be setback in line with the front plane of the home (29.9-foot from the secondary front lot line) or equal to the zoning district front yard setback (30-feet), whichever is less (Figure 2). Therefore, a 6-foot-tall fence may only be installed up to the front plane of the house.

Figure 2. Permitted location of 6-foot-tall fence per LDC, Chapter 16, Section 3(b)(2)(f).



There are two options for a fence on the subject property that would meet the LDC requirement or reduce the variance requested to the minimum variance necessary without having to modify existing improvements on the property: 1) A 4-foot-tall fence can be installed up to 5-feet from the right-of-way; or 2) the setback variance request could be reduced to allow a 6-foot tall fence to be installed 6-feet into the secondary front yard (i.e. 23.9-feet from right-of-way in lieu of the requested 19.9-foot setback). According to the property owners, a 4-foot-tall fence does not provide them with the privacy they are seeking with the installation of the 6-foot-tall fence.

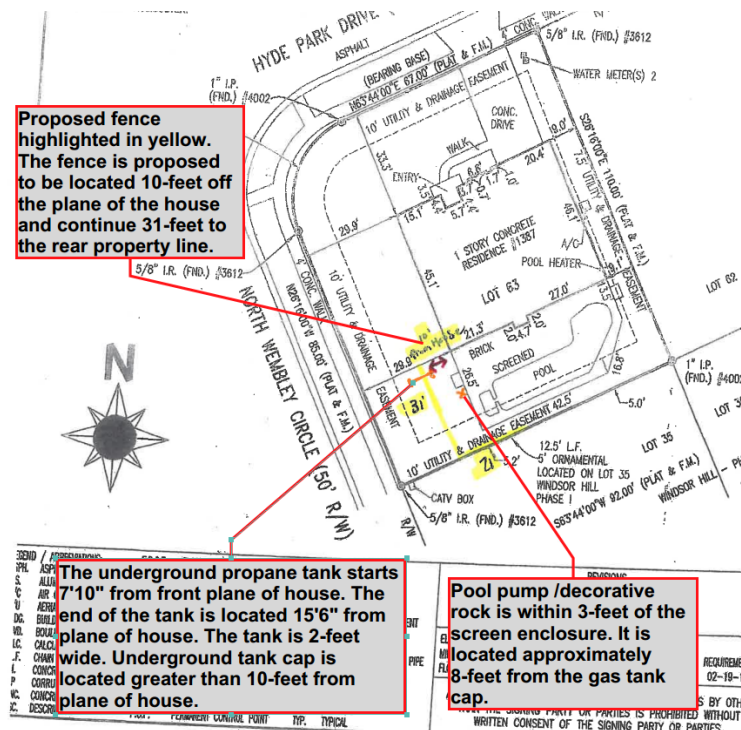
According to the owners' letter, they have tried other alternatives to provide additional privacy for

Figure 3. Pictures of Pool Pump with Decorative Cover and Propane Tank



The pool pump is located 3-feet from the screen enclosure and the underground propane tank is approximately 7'10" from the screen enclosure and approximately 2-feet wide (see Figure 3). The proposed 10-foot separation between the enclosure and proposed fence by the property owners is not required in order to properly maintain the pool pump or the propane tank. The National Electric Code requires a minimum 3-foot separation from the fence to the pool pump for maintenance. According to the owners, the request to locate the 6-foot-tall fence 10-feet from the screen enclosure (19.9-feet from the right-of-way) is to provide the necessary room for maintenance of the fence, access to the tank cap outside of fence, and existing landscaping. The location of the proposed fence, existing pool pump with decorative cover, and propane tank are shown on Figure 4 below.

Figure 4. Location of the Proposed Fence, Existing Pool Pump, and Existing Propane Tank



REVIEW OF VARIANCE CRITERIA

Chapter 19, Section 1, LDC, lists the review criteria that shall be used to determine whether a variance request should be granted.

- a) *Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structure or buildings in the same zoning district.*

The subject property is a corner lot that has two front yards according to the LDC, which is not a unique condition or circumstance. The lot size of the subject property (10,200 SF) exceeds the lot size requirement (9,200 SF) for a corner lot in the R-8SF zoning district.

The subject property is already developed with a single-family home and swimming pool. This criterion typically refers to conditions or circumstances such as steep slope, presence of historic trees, odd lot shape, etc. that might make installing a 6-foot fence in line with the front plane of the home impractical. There are no special conditions or circumstances which are peculiar and would otherwise prevent a 4-foot tall fence to be installed a minimum of 5-feet from the right-of-way along North Wembley Circle in accordance with the Land Development Code (LDC).

The subject property has an existing nonconforming swimming pool enclosure that is aligned with the front plane of the house along North Wembley Circle. Although not the owners' preference, a 4-foot-tall fence may be installed up to 5-feet from the right-of-way, modifications can be made to the location or design of the existing pool enclosure, additional screening may also be provided through landscaping as the LDC does not regulate height of shrubs or trees within the front yard, or the variance request could be reduced to request a smaller deviation from the required fence setback.

- b) *The special conditions and circumstances are not result of actions of the applicant.*

According to the owners, the existing nonconforming swimming pool enclosure is placed so that a 6-foot-tall fence cannot be located along the front plane of the house to adhere to the requirements of the LDC. The swimming pool enclosure was installed in 2004, prior to the current owners purchasing the property.

- c) *Literal interpretation and enforcement of the land development code regulation would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under terms of the development code, and would work unnecessary and undue hardship on the applicant.*

When a new fence is installed, it must comply with current development requirements of the Land Development Code (LDC). The intent of the setback and front-yard requirements for a fence is to minimize the impact on adjoining properties, ensure adequate sight lines, and provide room on the subject property for maintenance and necessary repairs to the fence. Any property classified as a corner lot is subject to the LDC requirements regarding construction of a fence in the front yard setback. Although not the owners' preference, a 4-foot-tall fence may be installed up to 5-feet from the right-of-way, modifications can be made to the location or design of the existing pool screen/patio, additional screening may also be provided through landscaping as the LDC does not regulate height of new shrubs or trees within the front yard, or the variance request could be reduced to request a smaller deviation from the required fence setback.

According to the property owners, the variance is necessary to install the 6-foot-tall fence

in the secondary front yard, 19.9-feet from the North Wembley Circle right-of-way. The property owners state that the proposed location of the 6-foot-tall fence would not impact adjoining properties, ensure adequate sight lines, and provide room on the subject property for maintenance and necessary repairs to the pool screen enclosure (see Figure 5). The property owners are concerned that reducing the height of the fence will not provide sufficient screening of the property and installing the 6-foot-tall fence set back to the plane of the home would restrict use of the permitted pool area.

Figure 5. Picture Looking South at the Hyde Park Drive/North Wembley Circle Intersection



- d) *The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building or structure.*

A fence could be installed to comply with the setback requirements of the LDC; however, this would require the property owners to change the proposed location and height of the fence or modify the pool enclosure. Although not their preference, the property owners could shift the proposed 6-foot-tall fence to be in line with the plane of the home (flush against the existing screen enclosure), install opaque screens or panels inside the screen enclosure, or reduce the fence height to 4-foot tall and set back 5-feet from the right-of-way line.

According to the property owners, the proposed location of the 6-foot-tall fence will not impact adjoining residential properties or sight lines for vehicles/pedestrians traveling in the subdivision. The property owners are requesting to install the fence to screen their property from the adjacent neighbors and daily vehicular and pedestrian traffic.

According to the owners' letter of request, they have tried other alternatives to provide additional privacy for the swimming pool area that proved unsatisfactory (i.e. a plastic

screen and drapery) as they produced excess noise and were not secure in windy conditions . The owners are requesting the proposed fence location, so they do not have to disturb an existing pool pump with decorative cover and a propane tank. The pool pump is located within 3-feet of the screen enclosure, and the underground propane tank is approximately 7'10" from the screen enclosure and approximately 2-feet wide (see Figures 3 and 4). The owners are requesting to locate the 6-foot-tall fence 10-feet from the screen enclosure to provide the room for maintenance of the fence, access to the tank cap outside of the fence, and existing landscaping.

If the property owners did install a 4-foot-tall fence, additional screening may be provided through landscaping as the LDC does not regulate height of new shrubs or trees within the front yard. The variance request could also be reduced to request a smaller deviation from the required fence setback (e.g. 6-feet from the pool enclosure rather than 10-feet) and still provide the necessary space to access the pool and maintain the pool pump and propane tank. The National Electric Code only requires a 3-foot separation from the fence to the pool pump for maintenance, and the propane tank cap is greater than 10-feet from the screen enclosure. Therefore, the minimum variance would be 23.9' setback from the North Wembley Circle right-of-way.

- e) *Granting of the variance requested will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings or structures in the same zoning district.*

Any fence located within a front yard on a corner lot cannot exceed 4-feet in height unless it is set back to the designated front yard setback (30-feet) from the right-of-way line or along the front plane of the house. Granting the variance would confer special privilege for the owners. According to the LDC, all new or rebuilt fences within the City are required to meet the height and setback requirements when being placed in a secondary front yard. The subject property is a corner lot and according to the LDC, only a 4-foot-tall fence can be installed within the front yards of the subject lot.

- f) *The granting of the variance will be in harmony with the general intent and purpose of this code, and will not be injurious to the surrounding properties or detrimental to the public welfare.*

The fence requirements in the LDC are intended to protect the health, safety and general welfare of the citizens of the City, and to enhance the appearance, function and livability of the City, and improving the overall quality of life within the community. The intent of the city-wide setback requirement for a residential 6-foot-tall fence in a front yard is to ensure fences that abut streets in residential subdivisions with a narrow right-of-way width are set back off the right-of-way line to provide adjacent properties adequate visual sight lines from their home.

The height and location of the proposed fence is inconsistent with other fences in the neighborhood installed consistent with the LDC. There are 17 corner lots in Windsor Hill subdivision and 16 of them either conform to the fence height requirements of the LDC or no fence is installed.

The proposed location of the fence does meet the 25-foot visual clearance triangle requirement for intersections of two public roadways. The 25-foot visual triangle is determined by measuring 25-feet along the two intersecting rights-of-way that form the intersection then connecting those two points and measuring. If a variance is approved, the

fence is not anticipated to impact visual clearance for vehicles and pedestrians along Hyde Park Drive and North Wembley Circle.

- g) *The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has unreasonably burdened the applicant's property, based upon the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.*

This variance request is not based upon a claim brought under the Bert J. Harris Private Property Rights Protection Act.

RECOMMENDATION

Based upon the findings of this staff report, Staff recommends *denial* of the requested variance.

ATTACHMENTS

Exhibit I - Owner's/Applicant's Letter

Exhibit I

LETTER OUTLINING THE REQUEST AND EXPLAINING HARDSHIP

This request is for a 6 foot fence installed at the right rear side of our house creating an "L" shape around our patio and pool living area.

These are the reasons a fence is required:

- There is a known sex offender John Fernandes Fortes in our neighborhood. My home is directly in route between his house and the Publix (out of sight out of mind).
- There are seven home front doors as well as the street visible from my pool.
- Springs at Port Orange Apartment Complex was built next to Windsor Hills and the traffic of unknown persons on the neighborhood streets has significantly increased.
- There is a cable box just beyond my screen with repairmen, there are strangers picking oranges just over the property line, there are strangers walking by and many will stop to look at our pool fountain, there are dog walkers, people park their cars there and then disappear, increased traffic, men fertilizing the lawns, men spraying for bugs, men cleaning pools, repairmen, lawn mower men, city garbage recycling and tree trim pickup men, people with garage doors open having parties, people having garage sales, children walking home from school,

These are the failed attempts at privacy:

- I tried Florida Glass (plastic privacy screen) but wasn't told it flaps and in the wind and would make loud banging flapping noises next to my bedroom. I need to remove it.
- I tried drapery which nearly knocked me (disabled) over in the wind. I need to remove it.
- There are shrubbery around the pool which do not offer enough privacy. The majority of the shrubs belong to my neighbor and when they are cut, or not, I have little to no privacy. I also have no control over when the neighbor cuts the shrubs.

I am disabled with spine injuries and often can only sit on my patio in a robe and it's such a busy area and I feel so exposed. The publicness is intrusive and impossible to ignore. I want privacy on my own property.

Sharon Petty
1387 Hyde Park Drive
Port Orange, FL 32128



STAFF REPORT

CONVENTIONAL REZONING / 3704 NOVA ROAD
CASE NO. 21-60000001

REQUEST: Rezone ±5.55 acres from Planned Unit Development (PUD) to Highway Commercial (HC)

LOCATION: 3704 Nova Rd. (Figure 1 – Location Map)

PROPERTY OWNER/APPLICANT: The McCarthy Family, LLP

STAFF CONTACT: Gwen Perney, Principal Planner (386) 506-5673

STAFF RECOMMENDATION: Approval

PLANNING COMMISSION: May 27, 2021

Property Overview

The subject property is currently zoned Planned Unit Development (PUD) but does not have an active Master Development Agreement (MDA) or Conceptual Development Plan (CDP). The property owner, The McCarthy Family, LLP, is requesting to rezone the subject property from PUD to Highway Commercial (HC). The rezoning request is a shift from the negotiated PUD zoning district to a conventional zoning district that uses the Land Development Code (LDC) to provide specific development regulations. If approved, development of the property will need to follow the requirements of the HC zoning district and the regulations for site plan development provided in the Land Development Code (LDC). (Figure 1 – Location Map).

Figure 1. Location Map



Map created by the City of Port Orange Community Development Department

Discussion

The subject property is currently vacant. Prior to 2007, a gas station/convenience store was located along Nova Road and a single-family house occupied the rear portion of the property. The convenience store and single-family house were both demolished in 2007.

From 1974 to 1995, the subject property had split zoning with a majority of the property zoned commercial and the remaining portion of the property zoned multi-family. From 1995 until 2007, the subject property was zoned Highway Commercial (HC) and Community Commercial (CC). In 2007, the Nova Bella Piazza PUD was approved by the City and the MDA established the framework to develop a mixed-use project with a maximum of 40,000 square feet of commercial tenant space and a maximum of 20 residential dwelling units. In 2009, the MDA for the Nova Bella Piazza PUD expired and currently the subject property does not have an active MDA to provide permitted uses or dimensional and development regulations. Therefore, in order for the property owner to develop the subject property, it must first be rezoned to a conventional zoning category listed in the LDC, or a new MDA needs to be adopted.

According to the property owner, the request to rezone the subject property to the HC zoning category is to assist in the development of the subject site. If the rezoning is approved, the property owner intends to develop the subject property as a motor vehicle, recreational vehicle, and boat storage facility. The property owner does not anticipate deviating from the requirements in the LDC, therefore, the property owner selected to use a standard zoning district and meet the requirements in the LDC including landscape buffers, parking, building setbacks, tree preservation, infrastructure, compatibility with adjoining commercial and multi-family properties, and traffic concurrency. The property owner believes that following the list of permitted uses in the HC zoning district and the development requirements in the LDC is a more efficient and transparent process to develop the site.

Access to the property is available along Nova Road. Any proposed access drives off Nova Road must be reviewed and approved by FDOT during the site plan review process. Water and sewer are available to service the property. As part of any future site development, the applicant will be required to submit a site plan for staff review, to meet all architecture, landscaping, traffic generation, site development and infrastructure requirements of the City's LDC.

The HC zoning district permits typical commercial uses commonly found along an arterial roadway and not adjacent to single-family residential areas such as: retail stores, restaurants, personal services (hair salon, barber shop, nail salon, retail dry cleaning, etc.) bars, boat and motor vehicle sales, truck, trailer and automobile rental, game/recreation facilities, hotels/motels, and motor vehicle and boat storage, offices, health/exercise clubs, convenience store/gas station, banks, and similar uses. If the property is rezoned to HC and the current property owner does not develop the site as a motor vehicle, recreational vehicle, and boat storage facility, the proposed use of the subject property will need to be a permitted use in the HC zoning district.

Compatibility with Surrounding Uses and Zoning

The rezoning request was reviewed according to the criteria established in Chapter 3, Section 7 of the Land Development Code (LDC) in terms of consistency with the Comprehensive Plan and the surrounding land uses and zoning.

The proposed HC zoning district is appropriate for this location and is compatible with the surrounding properties. Table 1 summarizes the land use and zoning of the adjacent properties. The subject property is located along a major arterial roadway and adjacent to existing

commercial properties currently zoned HC, properties with higher-density multi-family zoning designations, and an RV campground (Figure 2 – Current and Proposed Zoning Map).

Table 1. Surrounding Land Uses and Zoning

Direction	Existing Land Use	FLU Designation	Zoning District
North	Commercial (Boulevard Tire)	<i>Commercial</i>	Highway Commercial (HC)
	Vacant Residential	<i>Urban High Density Residential (8-16 u/a)</i>	High-Density Multi-Family Residential (R-3H)
South	Commercial (Auto Service Center)	<i>Commercial</i>	Highway Commercial (HC)
	Single-Family Residential house	<i>Urban High Density Residential (8-16 u/a)</i>	Medium-Density Multi-Family Residential (R-3M)
	Multi-Family Residential (Oak Cove Villas)	<i>Urban High Density Residential (8-16 u/a)</i>	Medium-Density Multi-Family Residential (R-3M)
East	Multi-Family Residential (Canal View Condos)	<i>Urban High Density Residential (8-16 u/a)</i>	Medium-Density Multi-Family Residential (R-3M)
West	Nova Family Campground	<i>Urban High Density Residential (8-16 u/a)</i>	Residential Mobile Home (RMH)

Figure 2. Current and Proposed Zoning Map



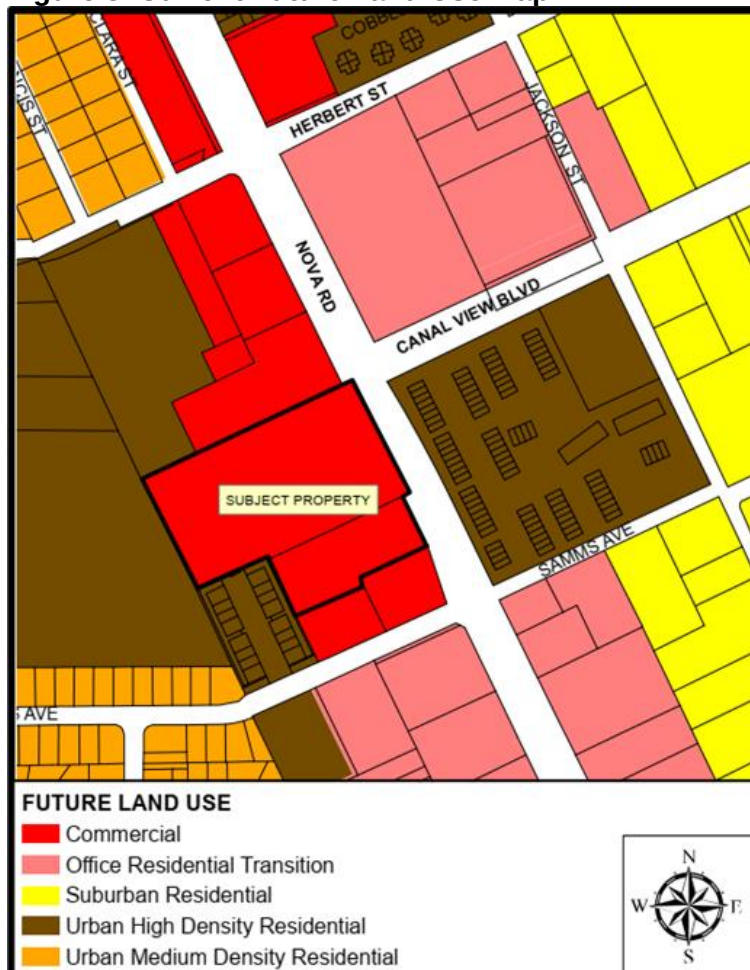
The current PUD zoning district is intended to provide a flexible approach for unique and innovative land development proposals, which would otherwise not be permitted by this code. Because the property owner intends to develop the site in compliance with the LDC and does not anticipate deviating from the requirements in the LDC, the property owner selected to use the standard HC zoning district and meet the requirements in the LDC. All future development plans (site plan or subdivision) submitted will require a detailed technical review by the Development Review Committee (DRC) to determine all requirements in the LDC are met.

Consistency with Comprehensive Plan

The proposed rezoning is generally consistent with the pertinent Goals, Objectives, and Policies of the City's Comprehensive Plan and is compatible with adjacent properties. The subject property is currently designated with the Future Land Use Category *Commercial*, along with the adjacent properties along Nova Road.

The proposed HC zoning district is consistent with the subject property's current *Commercial* Future Land Use (FLU) designation. (Figure 3 – Future Land Use Map). The *Commercial* FLU designation is generally characterized by uses that provide for the retail sale of items and provision of services to the general public. Based on compatibility with adjacent uses and availability of infrastructure, the requested zoning is appropriate for this location and it is consistent with existing FLU designation.

Figure 3. Current Future Land Use Map



Public Notice

On April 30, 2021, staff posted the property notifying the public of the proposed rezoning. As of the time this agenda item was prepared, there have been no phone calls or other inquiries on the proposed rezoning. According to the LDC, a neighborhood meeting was not required for the proposed rezoning as the property does not abut any single-family zoning districts.

Staff Recommendation

Staff recommends **approval** of the request to rezone ±5.55 acres from Planned Unit Development (PUD) to Highway Commercial (HC).

Attachments:

Exhibit 1 – List of Permitted Uses for the HC zoning district

Exhibit 1

Highway Commercial (LDC, Chapter 17, Section 22)

Permitted uses.

- (1) Adult/vocational education.
- (2) Appliance/electronic repair shops.
- (3) Athletic/sports facilities.
- (4) Auction houses.
- (5) Banks.
- (6) Bars, lounges, and night clubs.
- (7) Boat sales.
- (8) Business services.
- (9) Commercial/industrial equipment and supplies.
- (10) Convenience stores with or without fuel operations.
- (11) Equipment rental.
- (12) Financial services.
- (13) Fleet-based services.
- (14) Fortune tellers, astrologers, and palm readers.
- (15) Furniture and appliance stores.
- (16) Game/recreation facilities.
- (17) Health/exercise clubs.
- (18) Hotels/motels.
- (19) Maintenance contractors.
- (20) Medical offices/clinics.
- (21) Mobile home sales.
- (22) Motor vehicle and boat storage facilities.
- (23) Motor vehicle sales.
- (24) Motor vehicle service centers.
- (25) Motor vehicle service stations.
- (26) Offices.
- (27) Office supplies.
- (28) Pawn shops.
- (29) Personal services.
- (30) Restaurants.
- (31) Retail home building materials.
- (32) Retail sales and services.
- (33) Tattoo establishment.
- (34) Theaters.
- (35) Truck/trailer/automobile rental.

Permitted uses with special development requirements (chapter 18, section 4).

- (1) Brewery (subsection 3.7).
- (2) Community gardens (subsection 1.5).
- (3) Craft food and beverage producer (subsection 5.15).
- (4) Laundry/dry cleaning plants (subsection 9).
- (5) Microbrewery (subsection 9.57).
- (6) Taxidermy (subsection 16).

Special exception uses (chapter 18, section 3).

- (1) Mini-warehouses (subsection 10).
- (2) Motor vehicle repair facilities (subsection 13).



STAFF REPORT

CASE NO. 21-25000003

LDC Amendment/ Chapters 3, 13, 16 and 17

REQUEST:	Amendments to Chapters 3, 13, 16 and 17 of the Land Development Code (LDC) that include clarifications and minor changes that are simple clean-up items that make the code more efficient to use.
APPLICANT:	City of Port Orange
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
PLANNING COMMISSION:	May 27, 2021

Introduction

Staff has been updating the Land Development Code (LDC) in phases over the past several years. Prior amendments included updates to sign regulations, the “green” building initiative, erosion control, floodplain management, updates to Building Code references, county-wide Traffic Impact Analysis standards, school concurrency, Construction Standards modifications, fire impact fees, site plan and subdivision regulations, removal of select uses from the Ridgewood Corridor zoning district, zero lot line homes in the R-2D zoning district, microbreweries, architecture requirements, economic development – Ridgewood targeted businesses, tree preservation and others.

Proposed Amendments

The proposed amendments to Chapters 3, 13, 16 and 17 of the Land Development Code (LDC) are intended to improve and update the content of the existing code, as part of an on-going maintenance effort. The proposed amendments include clarifications and minor changes that are simple clean-up items that make the code more efficient to use, support the City’s redevelopment efforts, or address problems or issues encountered when applying the code.

Amendment #1: Exemptions to Required Development Order [Chapters 3]:

The proposed amendment would allow for the approval of a building addition less than or equal to 500 square-feet to a non-residential building through a building permit instead of requiring a site development plan and building permit. The proposed exemption would only apply if the building addition is less than or equal to 500 square-feet and the site has sufficient existing site improvements (parking, stormwater, irrigation, utilities, etc.). As part of the building permit review, compliance with all requirements in the City’s Land Development Code, Florida Building Code, Florida Fire Prevention Code, and other applicable codes would be reviewed and required to be met.

Allowing for a building addition less than or equal to 500 square-feet on a site with sufficient site improvements (parking, stormwater, irrigation, utilities, etc.) to be approved through a building permit is anticipated to assist in the redevelopment of existing buildings by removing

a financial barrier to redevelopment. Recently, there have been inquiries to redevelop existing buildings and sites within the City, but one of the deterrents is if an existing building needs additional space to support a new use or existing use and the necessary site improvements are in place but the LDC requires a full site development plan. As Port Orange continues to shift toward the redevelopment of existing non-residential buildings and sites, the proposed amendment would assist, specifically the area of the City east of Nova Road including the Ridgewood corridor.

The LDC currently provides a list of development activities that can be completed with an approved building permit and do not require a site development plan to be prepared. The development activities that are allowed through just a building permit include: addition to a dwelling unit, construction of an accessory structure on a residential lot, demolishing of a structure, alteration of an existing non-residential structure that does not enlarge the effective size or capacity of the structure, construction of a fence, wall, or sign on a developed lot, construction of agricultural accessory structures, resurfacing of a parking lot, removal of trees or vegetation or changing of grade, and installation of an antenna on a communication tower. The proposal is to include a building addition less than or equal to 500 square-feet to the list of development activities exempt from a site plan and can be approved through the building permit review process to verify compliance with all applicable codes.

Amendment #2: Clarification of Subdivision Roadway Landscape Buffer Requirements [Chapter 13]:

In 2012, the LDC was amended (ORD. 2012-16) to add a requirement for new residential subdivisions to install an opaque vinyl fence, masonry wall or landscape berm along all perimeter boundaries abutting arterial and collector roadways in addition to the required landscape buffer planting, unless there is a minimum of 100 feet of common area between the platted rear lot lines and the abutting roadway.

The intent of the 2012 amendment was to create an instant buffer to better screen the rear yards of the residential lots abutting a roadway. However, in some cases the grade elevation between the roadway and a residential lot along with the LDC required landscape buffer will provide sufficient screening, without the addition of a berm or an opaque fence or wall. The proposed amendment adds a provision that the requirement for a berm, or opaque fence or wall adjacent to a collector or arterial roadway for a new residential subdivision may be reduced or waived by the Administrative Official in situations where the LDC required buffer and grade difference between an arterial or collector roadway and the rear yard of a lot provides sufficient screening of the rear yards.

Amendment #3: Amendment to Commercial Outdoor Storage Requirements [Chapter 16]:

The LDC currently allows areas for outdoor storage of garden supplies, outdoor recreational equipment (e.g. bicycles, kayaks, paddle boards, etc.), lawn equipment, motor vehicles, boats, recreational vehicles, and mobile homes on a commercial site when associated with a permitted commercial use. However, the designated outdoor storage area on a commercial site for the items listed above is required to be identified on an approved site plan. The requirement to prepare and process a site plan can be costly for a business, especially smaller mom and pop businesses located along Ridgewood Avenue. The proposed amendment adds a provision to allow commercial outdoor storage areas to be established through a building permit subject to the required right-of-way landscape buffer existing on the

subject property or installation of the landscape buffer is part of the proposed improvements associated with establishing the outdoor storage area.

The current commercial outdoor storage area location requirements in the LDC that would apply to reviewing a site plan would not change. If the proposed amendment is approved, the same requirements would apply when reviewing a building permit for an outdoor storage area on a commercial site, such as the screening requirement and that outdoor storage be, “out of view from any abutting rights-of-way, private streets, waterways and residential uses.” Requests received typically pertain to outdoor storage areas being located on existing paved or gravel areas on a site and do not typically require additional pavement. Requests that involved adding pavement may still require a site plan to address stormwater requirements.

Allowing an outdoor storage area for a commercial use to be established through a building permit will allow staff to verify compliance with the LDC without adding the additional expense for a property owner or tenant to have an engineer prepare a site plan to identify the area on a commercial site where outdoor storage can be located. The proposed amendment does not change the allowed items associated with commercial uses that can be stored outdoor along with the locational and screening requirements for commercial outdoor storage areas in the LDC

Amendment #4: Dimensional Requirements for the Government/Public Use (GPU) Zoning District [Chapter 17]:

The proposed amendment would establish dimensional requirements (setbacks, height, open space, building coverage, etc.) for the Government/Public Use (GPU) zoning district. Currently, there are no dimensional requirements listed in the LDC for the GPU zoning district as there are for other city standard zoning districts. Therefore, when a development is proposed on property zoned GPU, staff has historically applied the dimensional requirements from a compatible or nearby zoning category. The GPU zoning district is typically utilized for government facilities, schools, parks, and houses of worship and currently makes up about +/- 1,300 acres or about 7.2% of land within the city limits. The proposed dimensional requirements for the GPU zoning district are comparable to the dimensional requirements for the Professional Office (PO), Commercial Industrial (CI), and Light Industrial (LI) zoning districts, which are comparable zoning districts with regards to permitted uses and development intensity allowed and currently developed within the GPU zoning district.

Figure 1. Dimensional Requirements Comparison

District	Minimum Living Area/D.U. (Sq. Ft.)	Minimum Lot Area/D.U. (Sq. Ft.)	Minimum Lot Width (Ft.)	Maximum Building Coverage (%)	Minimum Open Space (%)	Minimum Building Setback (Ft.)			Maximum Height
						Front	Side	Rear	
PO	-	10,000	125	30	30	D	10*	25*	35
CI	-	22,500	150	40	20	D	15*	25*A	45
LI	-	20,000	150	50	15	D	25*	25*A	60
GPU	-	10,000	125	40	20	D	10*	25*A	60***

* Non-residential building setbacks adjoining residential zoning shall be equal to or greater than building height

***Maximum height is limited to 35 feet if the property abuts a single-family or mobile home zoning districts.

A = Rear and side yard setbacks on GPU and industrial lots abutting railroad right-of-way may be reduced to zero feet, where approved as part of an overall site development plan.

D = The required front yard setback is equal to the right-of-way landscape buffer.

Providing listed dimensional requirements for the GPU zoning district will provide transparency and clarity to property owners and residents as it relates to the dimensional requirements (setbacks, height, open space, building coverage, etc.) for property zoned GPU or being rezoned to GPU and reduce possible inconsistency in applying dimensional requirements for property zoned GPU.

Recommendation

Staff recommends approval of the amendments to Chapters 3, 13, 16 and 17 of the Land Development Code (LDC).

Attachments

Exhibit 1 - Proposed LDC Amendments to Chapters 3, 13, 16 and 17

EXHIBIT 1

Strikethrough indicates text to be deleted; underline indicates text to be added.

Chapter 3 – ADMINISTRATION ARTICLE I: - CODE ADMINISTRATION

[No changes to Section 1]

Section 2: - Development order and development permit required.

- (a) *In general.* No development activity shall be undertaken unless the activity is authorized by a development permit. A development permit may not be issued unless authorized by a development order reflecting conformance with the requirements of this code.
- (b) *Exceptions to the requirement of a development order.* A development permit may be issued in the absence of a development order for the following activities, when the proposed development conforms to the standards and permitting requirements of this code:
 - (1) The construction, alteration, or enlargement of a one- or two-family dwelling on a lot of record as of November 1, 1990, or lot created under the terms of this code.
 - (2) The construction of an accessory structure on a previously developed single-family lot.
 - (3) The alteration of an existing non-residential structure which does not enlarge the effective size or capacity of the structure less than or equal to 500 square feet, ~~with the exception of alterations to a one- or two-family dwelling.~~
 - (4) Demolition of a structure.
 - (5) Erection of signs or fences on a previously developed site and when independent of other development activity on the site.
 - (6) The clearing of trees or vegetation or changing of grade when independent of other development activity on the site.
 - (7) The construction of agricultural accessory structures.
 - (8) The resurfacing of a vehicle use area.
 - (9) The installation of an antenna on a communication tower or alternative support structure in compliance with the requirements of section 9 of chapter 16 of this code.

Chapter 13 - LANDSCAPING AND BUFFERS Section 3.5: - Opaque fence or wall requirements.

[No changes to subsection (a)]

- (b) New single-family, duplex, and multi-family subdivisions shall be required to install an opaque vinyl fence, masonry wall or landscape berm along all perimeter

boundaries abutting arterial and collector roadways. The fence, wall or berm shall be required in addition to any landscape buffer planting required by this chapter. However, the fence, wall or berm shall not be required if there is a minimum of 100 feet of common area between the platted rear lot lines and the abutting roadway. This requirement may also be waived or reduced by the Administrative Official in situations where the grade difference between an arterial or collector roadway and the rear yard of a lot and the required right-of-way landscape buffer provides sufficient screening for the rear yard.

- (1) The opaque fence, masonry wall or landscape berm shall be installed by the developer prior to the issuance of the first certificate of occupancy.
- (2) The opaque fence, masonry wall or landscape berm shall be located in common area. The opaque fence, masonry wall or landscape berm shall be installed and set back a minimum of three feet from the platted rear lot lines to provide sufficient space for installation and maintenance. The three-foot setback may be reduced if justification is provided for the use of alternative materials or construction methods that do not require a three-foot setback for installation or maintenance. The alternative materials and construction methods shall comply with all other requirements of this code.
- (3) If an opaque fence or masonry wall is required, then it shall be installed behind the required landscape buffer so that the landscaping fronts onto the adjacent roadway.
- (4) If a landscape berm is utilized in lieu of an opaque fence or masonry wall, then the berm shall be designed to provide equivalent opaque screening as would a masonry wall or opaque fence.
- (5) The homeowners' association for the development or phase of the development shall be primarily responsible for maintaining the fence, wall or landscaped berm.

Chapter 16 - MISCELLANEOUS REGULATIONS

Section 1: - Accessory uses and structures.

[No changes to subsections (a) through (d)]

- (e) *Outside storage.* Outside storage of new and used equipment and materials shall be regulated as follows.

[No changes to subsection (1) or (2)]

- (3) *Commercial uses.* Outside storage of equipment and materials shall be permitted only when associated with a commercial use and located in designated areas approved for such display as part of a development plan, or as part of a building permit, if the required right-of-way landscape buffer is provided. Additional restrictions are specified below.
 - ~~(a) Display of landscape or garden supplies, outdoor recreational equipment, and lawn equipment shall be located in designated areas approved for such display as part of a development plan.~~

- ~~(b) Display of new and used motor vehicles, boats, recreational vehicles, mobile homes and other such vehicles shall be located in designated areas approved for such display as part of a development plan.~~
- ~~(ae) Storage of licensed and operable motor vehicles, boats, recreational vehicles, tractor trailers, storage trailers and other such vehicles shall be located in designated areas approved for such storage as part of a development plan and out of view from any abutting rights-of-way, private streets, waterways and residential uses. For sites without an approved development plan otherwise operating in compliance with this code, storage of such vehicles shall be located on a part of the site out of view from any abutting rights-of-way, private streets, waterways and residential uses.~~
- ~~(d) Display setups of products customarily used outdoors such as pools, spas, lawn furniture, concrete fixtures and other similar items shall be limited to one of any one product or model.~~
- ~~(be) Outdoor display and/or storage may be permitted in conjunction with special sales events such as those permitted under section 18-77Chapter 58, Article III, Code of Ordinances, and other uses when permitted by special exception or approved as part of a development plan.~~
- ~~(cf) Licensed and inoperable motor vehicles awaiting repair may be stored within screened areas on the site of motor vehicle repair facilities and motor vehicle service centers, provided that no such vehicle shall be stored for more than 28 consecutive days.~~

[No changes to subsection (4) or (f)]

Chapter 17 - ZONING DISTRICT REGULATIONS

Section 1: - In general.

- (a) Dimensional requirements for each zoning district, except ~~the NP and GPU~~ districts, are specified in the table in section 27 of this chapter, entitled "schedule of dimensional requirements."

[No changes to subsections (b) through (h), or Sections (2) through (26.5)]

Section 27: - Schedule of dimensional requirements.

District	Minimum Living Area/D.U. (Sq. Ft.)	Minimum Lot Area/D.U.	Minimum Lot Width (Ft.)	Maximum Building Coverage	Minimum Open Space	Minimum Building Setback (Ft.)			Maximum Height
						Front	Side	Rear	
GPU	-	10,000	125	40%	20%	D	10*	25*A	60***

Notes to schedule of dimensional requirements:

A = Rear and side yard setbacks on GPU and industrial lots abutting railroad right-of-way may be reduced to zero feet, where approved as part of an overall site development plan.

[No changes to B through J]

* ~~Commercial-Non-residential~~ building setbacks adjoining residential zoning shall be equal to or greater than building height.

**Multifamily buildings of greater than 25 feet in height shall have a building setback equal to or greater than the building height.

***Maximum height is limited to 35 feet if the property abuts a single-family or mobile home zoning districts.