

## Code Interpretation

**Subject:** Setback standards when converting a structure built under residential code standards to commercial use

**Date:** May 3, 2024

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**Code Sections Impacted:** Sec. 144-5.2-11 – Landscape and buffering; Sec. 144-5.3-1. – Landscaping, tree preservation, public trees, screening, fences, buffering and lighting; and 144-5.3-2. Fences and walls; and Sec. 144-5.21. – General provisions and exceptions; use, height and area regulations.

**Purpose:** To remove barriers to economic mobility in commercial and industrial districts, and to preserve historic or neighborhood character.

**Proposal:** The interpretation will allow for the conversion of an existing residential structure to non-residential use to not be restricted by the setback requirements. This will also clarify the applicability of Sec. 144-3.3. & Sec. 144-3.4. building setback standards for non-residential use when abutting one or two-family use or zoning district, as well as buffering requirements of 5.2-11 and residential wall requirement of 5.3.1.

**Analysis:**

- Under the current code non-residential uses abutting one or two family use or zoning must have a minimum 20 foot side setback.
- There are many properties in commercial and industrial zoning districts that have allowed or currently allow for both residential and non-residential use.
- Properties that were constructed with one or two family structures, are typically located on lots 60 feet wide with five foot side setbacks and were not typically constructed with 20 foot side setbacks. Conversion of these structures to non-residential use are often not possible with the commercial setback requirement or the residential buffer requirement.
- Commercial and industrial districts should allow for conversion to the by right uses within the district.
- Non-residential uses are permitted by right in these districts and barriers that may hinder the non-residential use of the property should be removed.
- It is not appropriate to require increased setbacks for non-residential uses when abutting properties that allow for non-residential use and development, when the primary purpose of the zoning district is non-residential use, especially when it is the conversion of a residential structure in its originally placed configuration.
- The interpretation confirms previous city approvals for properties redeveloped under similar circumstances.

**Interpretation:**

Due to:

- the limitations that the residential setback buffering requirements place on redevelopment opportunities, and
- the broad variety and number of residential structures present in commercial and industrial districts, and
- many non-residential uses and corresponding structures allowed in Commercial districts do not conform to the residential setback requirements that are intended for new construction, nor are the lots adequately sized for these requirements. This creates a significant barrier to commercial redevelopment that is allowed by right, is contrary to the intent of the requirements, and stifles innovation.

**Recommended Code Amendment:**

Revise the Sec. 144-5.2-11; Sec. 144-5.3-1; 144-5.3-2. & Sec. 144-5.21. to include an exception for residential to non-residential conversion from compliance with the additional use related setback and buffering requirements.

This will provide clarity and consistency of application of the Zoning Ordinance and will in effect allow uses other than single family or two family residential to inhabit smaller lots within the City's commercial districts.

**Sec. 144-5.2-11. – *Landscape and buffering.* The drive-through, drop off or drive up facility shall be buffered and visually screened from residential development with a masonry wall and landscaping.**

(a) When a multifamily or non-residential development is adjacent to land used or zoned for single-family or two-family development and is not the result of a conversion of an existing residential structure to a non-residential use within existing commercial and industrial zoning districts the combination of fencing and plantings help disperse sound waves, therefore:

- (1) A minimum two-inch diameter tree per 20 linear feet shall be planted along the common property line of the single-family or two-family property. A variety of native tree species shall be used. Shade trees must be used, unless near utility lines where ornamental trees must be used. All new trees shall be provided with a permeable surface of 60 square feet per tree under the drip line. All planting areas shall be a minimum of five feet in width.
- (2) A minimum of one 24-inch high native Texas bush/shrub per five linear feet. Plantings may be clustered in the buffer area.
- (3) Maintenance. All plant material shall be regularly maintained in conformity with accepted practices for landscape maintenance; Each planting bed shall be served by at least one permanent automatically controlled irrigation line.
- (4) Parking areas visible from the public street must be screened by hedges/shrubbies which will be a minimum of 36 inches high within three years of planting.

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**Sec. 144-5.3-1. – *Landscaping, tree preservation, public trees, screening, fences, buffering and lighting.***

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(b) *Landscaping and screening.*

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(7) *Minimum landscaping and screening requirements.*

(i) *Parking lot screening and landscaping.* See Illustrations 9 and 10. Subject to the provisions of section 144-5.3-1, the following landscaping is required for parking lots:

1. *Street frontage landscape buffer area.* Where a parking lot is adjacent to and within 50 feet of public street right-of-way, a minimum five-foot landscape buffer adjacent to the right-of-way of any street is required. Lots adjacent to two streets or more shall be required to observe the five-foot buffer on all frontages. Trees within street rights-of-way shall not count toward the number of trees required for a development site, unless approved by the director or designee.
2. *Street frontage trees and shrubs.* Where a parking lot is adjacent to and within 50 feet of public street right-of-way, a minimum of one minimum one and one-half-inch diameter tree and four five-gallon or three-foot tall shrubs for every 40 feet (or portion thereof) of street frontage shall be installed using trees from the approved plant list (Appendix A). Shade trees must be used, unless under the canopy of an existing preserved tree, or near utility lines where ornamental trees must be used, as required in subsection 144-5.3-1(b)(6)ii. Trees shall be planted no closer than 20 feet apart. In no event may trees other than ornamental trees listed in Appendix A be planted under overhead power lines. All new trees shall be provided with a permeable surface of 60 square feet per tree under the drip line. All planting areas shall be a minimum of five feet in width.
3. *Parking lot shading.* At least one minimum one and one-half-inch (1½") diameter tree per 14 parking spaces shall be planted in or adjacent to a parking lot. Shade trees must be used, unless under the canopy of an existing preserved tree, or near utility lines where ornamental trees must be used, as required in subsection 144-5.3-1(b)(6)ii. All trees shall be planted in a minimum permeable area of 100 square feet per tree. These trees may be clustered for the purposes of existing tree preservation or to accommodate topographic constraints, but otherwise must be spread generally throughout the parking lot. Trees planted or preserved to meet this parking lot shading requirement are in addition to the required street frontage trees.
4. *Turf.* No more than 30 percent of the parking lot landscaped area, not including detention ponds, shall be turf grasses, except buffalo and prairie grasses may be planted. Xeriscaping is preferred.
5. *Residential buffer.* In addition to the masonry wall requirement in subsection 144-5.3-2(h), at least one tree per 25 linear feet of property, or part thereof, a minimum one and one-half inches (1½") in diameter, shall be planted along the common property line of the

single-family or two-family property. Shade trees must be used, unless under the canopy of an existing preserved tree, or near utility lines where ornamental trees must be used, as required in subsection 144-5.3-1(b)(6)(ii). All new trees shall be provided with a permeable surface of 60 square feet per tree under the drip line. All planting areas shall be a minimum of five feet in width. Existing trees can be credited toward meeting the residential buffer requirement, per subsection 144-5.3-1(b)(6)(v), so long as the location and number of required trees is satisfied, or alternate compliance is demonstrated.

**(i) In the event that the incoming non-residential use is the result of a conversion of an existing residential structure to a non-residential use in existing commercial or industrial zoning districts the converted property shall be exempt from the residential buffer requirement.**

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**144-5.3-2. Fences and walls.**

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(h) *Residential buffer wall.* Where a five-unit or greater multifamily or non-residential development is adjacent to land used or zoned only for single-family, two-family (duplex), three-family (triplex) or four-family (quad-plex) development, a six-foot tall (minimum) to eight-foot tall (maximum) solid screen residential buffer wall must be installed and maintained by the commercial/multifamily property owner/developer as a buffer between the properties. The wall must be constructed of any of the following materials:

- Brick,
- Stone,
- Cast stone,
- Rock,
- Marble,
- Granite,
- Split-face concrete block,
- Poured-in place concrete, or
- Precast concrete.

In no instance shall any residential buffer wall be constructed of fiber cement, such as James Hardie brand products or equivalent.

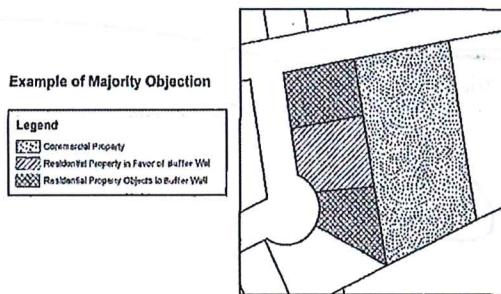
Any new buffer wall must be consistent with any pre-existing wall so long as it meets the materials requirements above.

(1) Exemption.

(i) In the event that the owner(s) of the adjacent residential property intended to be protected object to the residential buffer wall, they may submit their objection in writing to the planning and community development department. Upon receipt of the written

objection, the planning and community development department will authorize an exemption from the requirement that a residential buffer wall be erected for that single property line.

- (ii) In order to maintain wall design consistency in the event that multiple single- or two-family residential properties abut the multifamily or non-residential development along a single linear property line:
- All owners of property adjoining a single linear property line of the exemption request shall be notified.
  - A two-thirds majority of the adjoining property line (measured in length of shared property line) must be represented by written opposition from the adjoining property owners in order for the residential buffer wall exemption to be administratively authorized along that linear property line.



- (iii) Before a certificate of occupancy (C of O) can be issued for any subsequent commercial/multi-family development, any previous exemption from the residential buffer wall requirement is voided and must be re-evaluated.

- (iv) In the event that the incoming non-residential use is the result of a conversion of an existing residential structure to a non-residential use in existing commercial and industrial zoning districts the converted property shall be exempt from the residential buffer wall requirement.**

Maintenance. Any fence or wall erected by the commercial or multi-family development, regardless of material used, must be maintained by the commercial or multi-family property owner/developer.

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#### **Sec. 144-5.21. – General provisions and exceptions; use, height and area regulations.**

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##### **5.21-3. Yard and setback exceptions.**

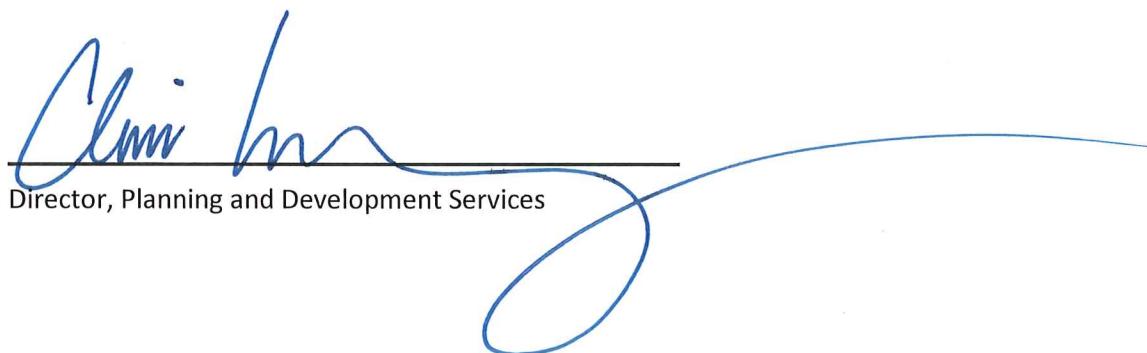
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- (j) *Screen enclosures.* A screen enclosure without a solid roof and made from open mesh screening material, attached or detached to a main structure, shall be located behind the front facade of the main structure, not less than five feet from interior side lot lines and rear lot lines, and shall

maintain a minimum 15-foot corner street side setback, or the required corner side street setback for main structures, whichever is greater. No screen enclosure shall exceed the height of the principal structure where it can be seen above the roofline from the street at the front of the lot. Screen enclosures shall be maintained in good repair free of fraying and tears. Repair or replacement of the mesh screen must take place when three or more 12-inch tears/holes, or cumulative equivalent, occurs. Screen enclosures with a solid roof attached to the main structure shall be considered part of the main structure and all main structure setbacks for the respective zoning district shall apply.

- (k) Commercial or industrial district residential setback. In commercial districts where there exists a residential structure that is proposed to be converted to a by right commercial or industrial use; the building is not required to meet the residential setback standard.**

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Alvin H.

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