

City Council Agenda Items  
and  
Contracts, Leases or Agreements

9/18/2012

City Council Meeting Date  
Agenda Items Only

Jeremy Pate  
Submitted By

Planning  
Division

Development Services  
Department

Action Required:

ADM 10-3554: I-540 Design Overlay District and Board of Adjustment Variance Findings. The request is to amend the Unified Development Code to repeal the I-540 Design Overlay District and consolidate certain related regulations into other sections of the UDC, and to amend the Board of Adjustment findings for variances to reflect state statutes.

Cost of this request	\$ -	Category / Project Budget	Program Category / Project Name
Account Number	\$ -	Funds Used to Date	Program / Project Category Name
Project Number	\$ -	Remaining Balance	Fund Name

Budgeted Item

Budget Adjustment Attached

Jeremy C. Pate  
Department Director      08-30-2012  
Date

Previous Ordinance or Resolution # \_\_\_\_\_

[Signature]  
City Attorney      8-30-2012  
Date

Original Contract Date: \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

Paul A. Babin  
Finance and Internal Services Director      8-30-2012  
Date

Received in City Clerk's Office  
Kim G.

Ann Man  
Chief of Staff      8-31-12  
Date

Received in Mayor's Office  
9/31/12  
[Signature]

Frederick Jordan  
Mayor      9/4/12  
Date

Comments:

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## **CITY COUNCIL AGENDA MEMO**

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**To:** Mayor Jordan, City Council

**Thru:** Don Marr, Chief of Staff

**From:** Jeremy Pate, Development Services Director 

**Date:** August 27, 2012

**Subject:** ADM 10-3554: I-540 Design Overlay District and Board of Adjustment Variance Amendments

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### **RECOMMENDATION**

Staff and the Planning Commission recommend approval of an ordinance to consolidate the I-540 Design Overlay District requirements into other sections of the UDC, and eliminate requirements that are not consistent with current development regulations. The City Attorney has also worked with staff since the Planning Commission reviewed this proposal to fine-tune the language and to add amendments to the Board of Adjustment requirements for approving a variance, consistent with state statutes related to variances.

### **BACKGROUND**

The City of Fayetteville adopted the Design Overlay District (I-540 Highway Corridor) in 1994 to protect and enhance the distinctive scenic quality for the I-540 Highway Corridor and to address traffic, safety, and environmental concerns. The regulations included in this district (I-540 DOD) for all nonresidential development have led to the adoption of other development regulations in subsequent years that are administered to all properties in the City of Fayetteville, including the Commercial Design and Development Standards, Street Design and Access Management Standards, Landscape Regulations, and pedestrian safety requirements in various sections of the Unified Development Code. The I-540 DOD served a valuable purpose for many years in a visible and environmentally sensitive area of the City until other sections of the Unified (UDC) were created or updated. Over the past decade or so new standards have left a majority of the I-540 DOD requirements redundant or outdated. Most of the I-540 DOD requirements are now covered in other sections of the UDC and apply throughout the City. However, some of the I-540 DOD requirements are slightly different than requirements in other areas of the City. In staff's opinion, this leads to inconsistent development requirements without substantial benefits. Some of these conflicts are:

- The curb cut distance requirements in the I-540 DOD are now addressed with a more comprehensive access management code (UDC 166.08);
- The 25-foot greenspace requirement adjacent to streets are now addressed under the consolidated landscape regulations (UDC 177) which require 15-foot greenspace;

- The 25% overall site greenspace requirement in the I-540 DOD is now addressed under the Commercial Design and Development Standards (UDC 166.14);
- Commercial Design and Development Standards (UDC 166.14) address the design of a commercial building’s façade and site layout, and differ somewhat from the I-540 DOD;
- A consolidated sign ordinance (UDC 174) contains all free-standing and wall sign regulations in the city, with the exception of the I-540 DOD, which often leads to confusion for applicants; and
- Variances from the I-540 DOD have a different set of parameters than typical variances, and thus are a source of confusion when proposed

Staff recommends that the redundant I-540 DOD requirements be eliminated and the existing applicable standards included in select chapters of the UDC.

One I-540 DOD standard that remains important, in terms of the viewshed of the area, is the prohibition on tall pole signs. Staff recommends this regulation remain, but be moved to Chapter 174 *Signs*, a more appropriate location to find a sign ordinance requirement. In addition, staff recommends the re-organization of the Commercial Design Standards ordinance to reflect its true application to commercial, office and mixed-use development, and also to industrial development within the original I-540 overlay district boundary, an amendment made by the Planning Commission.

Since the time of the Planning Commission recommendation, the City Attorney has worked with staff to address some legal concerns related to the original draft ordinance. When approved by the Planning Commission, the Commercial Design Standards were drafted to also apply to institutional development, such as schools and churches, a practice that is common in the state and region. However, the City Attorney has stated concerns with applying an aesthetic design standard to public schools and churches; after several unsuccessful attempts to address these issues, staff has elected to present the City Attorney’s recommended ordinance language.

Finally, Ch. 156 of the Unified Development Code pertaining to zoning variances has been completely rewritten by the City Attorney’s office and included in this proposal. This amendment is simply to reflect current state statutes related to zoning variances, which is entirely controlled by those statutes, in terms of who may hear and decide zoning variances, and what factors may be considered in the final decision.

**SUMMARY**

The proposal to eliminate Chapter 161.28 Design Overlay District (I-540 Highway Corridor) and to include some requirements in other sections of the UDC is summarized below and attached in full to this staff report:

Chapter	Section	Description
151.01	Definitions	- Include the definition of the overlay district boundaries for signage purposes and to apply design standards to industrial developments within - Modify the definition for Principal Façade
156.02	Variances	- Strike the section I-540 DOD variance; remove Planning Commission consideration for any zoning related variances; rewrite zoning variance findings
161.31	Zoning Regulations	- Strike the I-540 DOD section
164.09	Fences, Walls,	- Relocate fence standards from commercial design

	Vegetation	standards to supplementary regulations
166.14	Commercial Design and Development Standards	- Move to 166.25, modify applicability, site coverage, and other standards as needed
174.08	Prohibited Signs	- Keep the I-540 DOD pole sign prohibition and relocate to the Sign chapter.
174.09	Sign Illumination	- Keep the indirect illumination requirement in the I-540 DOD

**DISCUSSION**

On April 26, 2010 the Planning Commission voted 5-3-0 in favor of a recommendation of approval for ADM 10-3554. The primary discussion point (and reason for the split vote) was the application of aesthetic design standards to churches and public schools. Based on the City Attorney’s stated concerns, three of the Planning Commissioners were not in favor of applying aesthetic design standards to public schools and churches, while five felt that these uses could meet those tests. In the intervening time period, staff has worked with the City Attorney’s office in an attempt to find a middle ground for application of some design standards for churches and public schools, so that they are treated equitably; many churches and schools are large in nature, and in prevalent locations, greatly impacting the City’s appearance. Staff was unsuccessful at presenting a case for this application, and has made the attached proposal without standards for these institutional uses. This means that buildings that are constructed for public schools and churches will not be reviewed for aesthetic design considerations. Staff is recommending in favor of the changes herein.

**BUDGET IMPACT**

None.



Departmental Correspondence

LEGAL  
DEPARTMENT

www.accessfayetteville.org

Kit Williams  
City Attorney

Jason B. Kelley  
Assistant City Attorney

TO: Mayor Jordan  
City Council

CC: Jeremy Pate, Development Services Director

FROM: Kit Williams, City Attorney

DATE: August 30, 2012

RE: Church and School aesthetics

I would like to thank Planning Staff for considering my legal and constitutional concerns about trying to apply aesthetic judgments of the City of Fayetteville to the construction of public schools and churches.

By law, public school construction (and its aesthetics) are controlled not only by its elected school board, but also by the Arkansas Department of Education and its Academic Facilities Master Plan Program. A.C.A. §6-21-806. I believe it is inappropriate and possibly not statutorily allowed to attempt to “overrule” the decisions of the Fayetteville or Farmington School Board and the statutorily mandated Academic Facilities Master Plan Program by applying different City aesthetic standards for public school construction.

Freedom of religion and its expression is one of the constitutional bedrocks of the United States. Many churches, temples and mosques are instantly recognizable as the religious buildings they are. Thus, many religious buildings are the representation and symbol of the religious beliefs and faiths of their members. I believe, therefore, that the government should not place **aesthetic** requirements or limitations on such churches or other religious houses of worship. I believe that any government regulation or restriction about how a church should look would impose an improper government restriction on the religious freedom of expression of the church members.

The City remains empowered and authorized to enforce building permit requirements (plumbing, electrical, structural, etc.) grading, drainage, tree preservation, etc. for public school and church construction. It is only the **aesthetic** component for public schools and churches that I believe is legally or constitutionally suspect.

If anyone wishes to review my nine page memo on this subject citing cases and statutes, please ask me for a copy. I will certainly also try to answer any questions you might have relevant to my legal concerns about applying aesthetics considerations to churches and public schools.

I also agree with Jeremy and Planning about revising the Board of Adjustment code sections to more directly mirror state law for its powers and duties.

**ORDINANCE NO.**

AN ORDINANCE TO AMEND CHAPTERS 151, 156, 161, 164, 166, AND 174 OF THE UNIFIED DEVELOPMENT CODE TO REPEAL THE REQUIREMENTS OF THE I-540 DESIGN OVERLAY DISTRICT AND REVISE VARIOUS SECTIONS OF THE CODE ACCORDINGLY AND TO AMEND THE BOARD OF ADJUSTMENT FINDINGS FOR VARIANCES TO REFLECT STATE STATUTES

**WHEREAS**, in 1994 the City Council of the City of Fayetteville adopted Ordinance No. 3806, establishing the I-540 Design Overlay District, “to protect the distinctive scenic quality of the U.S. 71 Highway Corridor, to address issues of traffic and safety, to address environmental concerns and to preserve and enhance the economic value and viability of property within the corridor”; and

**WHEREAS**, the I-540 Design Overlay District created building and landscaping setbacks, greenspace, landscape standards and tree plantings in parking lots, aesthetic building design and appearance standards, sign regulations that only allow monument style signs and a prohibition on directly illuminated signs, curb cut separation requirements, screening of utility equipment and trash enclosures, and so forth; and

**WHEREAS**, the City of Fayetteville has, since 1994, adopted city-wide Commercial and Urban Residential Design Standards, comprehensive Landscape and Tree Preservation ordinances, Access Management regulations, and other codes that take the place of or improve upon the regulations set out in Ordinance No. 3806; and



**WHEREAS**, the usefulness of having a separate I-540 Design Overlay District in addition to the current Unified Development Code regulations has been exhausted and at times creates conflict or confusion with other applicable ordinances; and

**WHEREAS**, after a thorough analysis of the I-540 Design Overlay District Standards and current ordinances of the Unified Development Code, the Planning Staff, Planning Commission and City Attorney recommend the I-540 Design Overlay District be repealed for its original intended purpose and the requirements that should be retained to be inserted into the appropriate chapters of the Unified Development Code,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby amends §151 **Definitions** of the Unified Development Code as shown in Exhibit “A” attached hereto.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby amends §156 **Variances** of the Unified Development Code to repeal §156.02 Zoning Regulations and replace it with the language shown in Exhibit “B” attached hereto.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby repeals §161.31 **Design Overlay District (I-540 Highway Corridor)** of the Unified Development Code.

Section 4. That the City Council of the City of Fayetteville, Arkansas hereby amends §164 **Supplementary Zoning Regulations** of the Unified Development Code to repeal §164.09 Fences, Walls and Vegetation and replace it with the language shown in Exhibit “B” attached hereto.

Section 5. That the City Council of the City of Fayetteville, Arkansas hereby repeals §166.14 **Commercial Design and Development Standards** and adopts §166.25 **Commercial, Office and Mixed-Use Design and Development Standards** as shown in Exhibit “D” attached hereto.

Section 6. That the City Council of the City of Fayetteville, Arkansas hereby amends §174.08 **Prohibited Signs** to add the following:

“(M) *I-540 Overlay District*. It shall be unlawful to erect any pole sign within the I-540 Overlay District. The only permitted free standing sign in the I-540 Overlay District shall be monument signs.”

Section 7. That the City Council of the City of Fayetteville, Arkansas hereby amends §174.09 **Sign Illumination** to add the following:

“(B) Only indirect illumination may be used for illumination of all signs within the I-540 Overlay District boundary.”

**PASSED** and **APPROVED** this    day of    , 2012.

**APPROVED:**

**ATTEST:**

By: \_\_\_\_\_  
**LIONELD JORDAN, Mayor**

By: \_\_\_\_\_  
**SONDRA E. SMITH, City Clerk/Treasurer**

## CHAPTER 151: DEFINITIONS

*I-540 Overlay District.* The Overlay District encompasses all lands lying within 660 feet of each side of the right-of-way of I-540 from the intersection of I-540 and State Highway 471 (a/k/a 71B) north to the city limits of Fayetteville, (a/k/a the 71 Bypass and/or John Paul Hammerschmidt Expressway), and also that portion known as State Highway 471S described more fully as that portion of State Highway 471 which connects I-540 to State Highway 471 (a/k/a North College) and all future extensions of I-540 within the City of Fayetteville. Said boundaries are set out on the official plat pages along with a legal description of such boundaries located in the Planning Division.

*Principal Façade.* The front plane of a building that faces a public street including porches and balconies, but not including stoops, awnings or canopies (whether or not attached to the building).

## CHAPTER 156: VARIANCES

### 156.02 Zoning Regulations

- (A) *General procedure.* Variances of all zoning regulations shall be considered and decided as shown below by the Board of Adjustment. There shall be no appeal to the City Council for zoning regulation variances.
- (B) *Requirements for variance approval.*
- (1) Where strict enforcement of the zoning ordinance would cause undue hardship due to circumstances unique to the individual property under consideration;
  - (2) Where the applicant demonstrates that the granting of the variance will be in keeping with the spirit and intent of the zoning ordinance; and
- (C) *Minimum necessary variance.* The Board of Adjustment may only grant the minimum variance necessary to make possible the reasonable use of the applicant's land, building or structure.
- (D) *Special Conditions.* In granting a zoning regulation variance, the Board of Adjustment may impose whatever special conditions found necessary to ensure compliance and to protect adjacent property.
- (E) *Non-permitted Uses.* The Board of Adjustment may not grant, as a variance, any use in a zone that is not permitted under the zoning ordinance.
- (F) *Specific Tests.* The Board of Adjustment shall apply specific tests for the following variance requests:
- (1) *Height variances in all districts.* In addition to meeting all other normal requirements for a variance, an applicant seeking a height variance must establish the increased height of the proposed structure will not adversely affect adjoining or neighboring property owners, nor impair the beauty of Old Main, the historical churches on Dickson Street near East Avenue, nor otherwise impair the historic beauty and character of Fayetteville.

## CHAPTER 164: SUPPLEMENTARY REGULATIONS

### 164.09 Fences, Walls, And Vegetation

- (A) Subject to the provisions of §166.12, fences, walls, and vegetation may be permitted in any required building setback or any required setback area, or along the edge of any setback, provided the fence, wall, or vegetation does not materially impede vision, as determined by the Zoning and Development Administrator, between vehicular or pedestrian traffic. In any required setback or any required setback area, nothing permanent over 2½ feet (30 inches) high may be installed which materially impedes vision between vehicular or pedestrian traffic.
- (B) *Fences.* Fences may be permitted for screening, security or for aesthetic purposes. The following types, height, and location of fences shall be prohibited for developments that are subject to the regulations within this chapter:
- (a) *Razor and/or barbed wire.* Razor and/or barbed wire fences are prohibited if visible from the street right-of-way or a residence, unless and except barbed wire fences that are used for agricultural purposes.
  - (b) *Chain link.* Chain link fence is prohibited if closer to the street than the front of the building. Single family residential uses outside the Downtown Design Overlay District are exempt from this requirement.
  - (c) *Height of fences in front of buildings.* Fences located in front of the principal façade of a building may be solid up to 30 inches in height. Any part of a fence which exceeds 30 inches in height shall not obstruct the view of the principal façade from the right-of-way.

(Code 1965, App. A., Art. 8(2); Ord. No. 1747, 6-29-70; Ord. No. 2380, 9-20-77; Code 1991, §160.111; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 5271, 9-1-09)

**CHAPTER 166: DEVELOPMENT**

**166. 25 Commercial, Office and Mixed Use Design And Development Standards**

(A) *Purposes.*

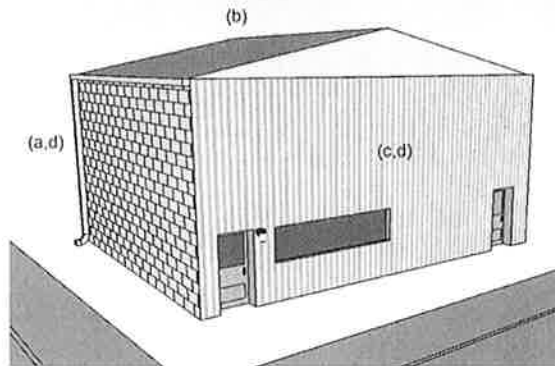
- (1) To protect and enhance Fayetteville's appearance, identity, and natural and economic vitality.
- (2) To address environmental concerns which include, but are not limited to, soil erosion, vegetation preservation, and drainage.
- (3) To protect and preserve the scenic resources distributed throughout the city which have contributed greatly to its economic development, by attracting tourists, permanent part-time residents, new industries, and cultural facilities.
- (4) To preserve the quality of life and integrate the different zones and uses in a compatible manner.
- (5) To address the issues of traffic, safety, and crime prevention.
- (6) To preserve property values of surrounding property.
- (7) To provide good civic design and arrangement.

(B) *Applicability.* These design and development standards apply to commercial developments, office developments, those parts of a Planned Zoning District or other mixed use developments with commercial and office elements and to industrial developments within the I-540 Overlay District.

(C) *Building Exterior Appearance and Design Standards.* The following exterior development standards and design element guidelines shall be followed:

- (1) The elements to avoid or minimize include:
  - (a) Unpainted concrete precision block walls;
  - (b) Square "boxlike" structures;
  - (c) Metal siding which dominates the principal facade;
  - (d) Large blank, unarticulated wall surfaces;

**Elements to Avoid**



- (2) A development which contains more than one building should incorporate a recurring, unifying, and identifiable theme for the entire development site, without replicating the building multiple times.
- (3) A development should provide compatibility and transition between adjoining developments.
- (4) All structures shall be architecturally designed to have front facades facing all adjacent street and highway rights-of-way, and shall include at least one prominent entry-way on the principal façade(s).
- (5) All buildings should be constructed of wood, masonry, or other similar durable material.

(D) *Site Development and Design Standards.*

- (1) *Site coverage.* A maximum of 80% of the development site may be covered by the ground floor of any structure, parking lots, sidewalks, and private streets and drives or any other impermeable surface. Properties located within the Downtown Master Plan boundary are exempt from this requirement.
- (2) *Driveways.* Shared drives and cross access between properties shall be encouraged to adjacent developed and undeveloped properties.
- (3) Mechanical and utility equipment and refuse containers shall be screened if visible from the highway/street right-of-way or from residential property as set forth below:
  - (a) *Mechanical and utility equipment.*
    - (i) All mechanical and utility equipment located on the wall and/or on the ground shall be screened with

vegetation, by incorporating screening into the structure, or by utilizing paint schemes that complement the building and screen the equipment.

- (ii) All roof mounted utilities and mechanical equipment shall be screened by incorporating screening into the principal structure utilizing materials and colors compatible with the supporting building.
- (b) *Refuse containers.* Refuse containers shall be screened with materials that are compatible with and complementary to the principal structure, with access to the refuse containers not visible from the street. Containers may be screened from view by the principal structure; by a permanent walled or fenced enclosure; or with appropriate vegetation, planted at a density and size sufficient to be view obscuring immediately from the date of planting; so long as the screening is maintained and loose trash does not litter the ground or become an environmental nuisance.
- (4) Outdoor storage of material and equipment shall be screened if visible from the highway/street right-of-way or from residential property as set forth below:
  - (a) At the expense of the owner or lessee of the property, and in all zones, the following uses shall be completely surrounded by a view obscuring fence or by view obscuring vegetation, or a combination of the two, of sufficient height to prevent the view of the premises from vehicular and pedestrian traffic on adjacent streets: outdoor storage yards, including but not limited to, auto salvage yards, scrap metal yards, used furniture yard and garbage dumps.
  - (b) Where vegetation is used to meet the requirements of this subsection, the vegetation shall be planted at a density sufficient to become view obscuring within two years from the date of planting. If vegetation planted under this subsection does not become view-obscuring within two years, a view-obscuring fence shall be installed.
  - (c) *Exceptions:* The outdoor display of materials or equipment solely for sale or lease, such as automobiles, seasonal

garden supplies, etc. shall not be required to be screened as set forth in subsection (a) above.

- (5) *Non-residential uses adjacent to residential uses.* The Planning Commission or Planning Division may require non-residential uses, including parking lots associated with said uses, to be screened from adjacent residential uses, as set forth below:
  - (a) A buffer strip, fence, or screen wall that is required shall be constructed and maintained on the zoning lot containing or proposed to contain such use, in accordance with provisions of this chapter.
  - (b) *Buffer Strip.* The purpose of the buffer strip is to provide separation and enclosure of uses. The landscaped buffer strip shall consist of a strip of land at least 8 feet wide adequately landscaped with approval of the Urban Forester, entirely on the zoning lot which is required to provide the buffer strip, and so located as to serve as an effective buffer between the use required to provide the buffer strip and other property for whose protection the buffer strip is required. The buffer strip should extend along the full length of the boundary separating the zoning lot from such other property, or from the street, as the case may be.
  - (c) *Fence required.* The purpose of the fence is to enclose uses. Required fences shall not be less than six (6) feet high, constructed of good, substantial material, of first-class workmanship, and so erected as to resist wind pressure, ensure public safety, and present a neat, attractive uniform appearance.
  - (d) *Screen required.* The purpose of the screen is to conceal uses. Screening shall mean a view obscuring fence, view obscuring berm, view obscuring architectural treatment, or view obscuring vegetation, or combination thereof, of sufficient height to prevent the view of the screened items from vehicular and pedestrian traffic on adjacent streets, and from residential property. Vegetation shall be planted at a density sufficient to become view obscuring within two years from the date of planting.
- (6) *Mini-storage.* At the expense of the owner of the property, all storage units and storage

yards for mini-storage created under Use Unit 38 shall be required to be screened by view obscuring vegetation when the storage yards or the storage units have common property lines with any residential use or zone and when they have frontage on any public street. Vegetation used for screening purposes shall be planted at a density sufficient to become view obscuring within two years from the date of planting and it shall be the responsibility of the property owner to maintain the screening throughout the life of the use of the property as mini-storage.

(E) *Design review.*

(1) *Submittals.* The following drawings, information, and plans shall be submitted to the Planning Commission or Planning Division for design review and approval with the associated development application, when applicable;

(a) *Elevations.* Color rendered elevation drawings of all building facades and a description of external building materials. Labels and dimensions, where applicable, shall accompany changes in texture, plane, material or color.

(b) *Materials sample.* A sample of exterior materials to be used for the proposed structure that indicates texture, color and type of materials.

(c) *Landscaping.* Proposed landscaping to be used as screening shall be shown on the tree preservation plan and landscape plan.

(2) *Build out.* Upon approval of a development, or issuance of a building permit, build-out of the project shall conform to the drawings, information, and plans approved.

(a) *Amendments.* Amendments to the drawings, information, and plans shall be submitted to the planning division. Amendments which are determined to be insignificant or minor may be approved by the Planning Division. Significant amendment shall be approved by the Planning Commission when approval was given through the large scale development process, or by the planning division when approval was given through the building permit process.

(b) *Review.* Amendments shall be considered using the same standards as the initial design approval.

(c) *Noncompliance.* Failure to build-out the project according to the approved drawings, information, and plans, or approved amendments thereto, shall render the large scale development approval, or the building permit approval void.

(F) *Variances. (See Chapter 156.)*

(Code 1991, §160.124; Ord. No. 4004, §1, 10-15-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 4917, 9-05-06; Ord. 4930, 10-03-06; Ord. 5028, 6-19-07; Ord. 5271, 9-1-09)

Cross reference(s)--Specific Districts  
§161.13



# Planning Commission Minutes

**New Business:**

**ADM 10-3554: Administrative Item (UDC AMENDMENT CH. 160.28, I-540 CORRIDOR DESIGN OVERLAY DISTRICT):** Submitted by CITY PLANNING STAFF for revisions to Fayetteville Unified Development Code Section 161.28, I-540 Design Overlay District. The proposed code changes consolidate the I-540 Design Overlay District requirements into other sections of the UDC, and eliminate requirements that are not consistent with current development regulations.

**Dara Sanders**, Current Planner, gave the staff report. She discussed the background for the I-540 Design Overlay District. The proposed code changes address conflicting areas in the code including curb cuts, 25-foot greenspace, and 25% greenspace. All of these exceed the requirements in other chapters. Staff proposes to keep pole sign restrictions. Sanders reviewed the changes to the proposal since the agenda session including the requirement that industrial buildings are not exempt from commercial design standards in the I-540 DOD. Sanders summarized the overall proposal as listed in the chart in the staff report.

**There was no public comment.**

**Commissioner Chesser** asked about commercial design standards being vague. He went through the design standards currently in the code.

**Commissioner Lack** discussed that this conversation is beyond the scope of this project.

**Andrew Garner, Senior Planner** suggested that if the commissioners wish, staff could look at evaluating and potentially changing the commercial design standards as part of a different code amendment in the future.

**Commissioner Hoskins** inquired about an industrial building next to a commercial building.

**Sanders** stated that industrial uses in the I-540 DOD are subject to commercial design standards and that the proposal before the planning commission would not change that.

**Kit Williams**, City Attorney, discussed concerns with the legal reaches of applying design standards to public schools and churches. He discussed religious expression in the design of buildings and aesthetics. He recommends we do not include churches in design standards. He also recommends that public schools not be included either.

**Commissioner Lack** stated with churches, looking at the five criteria of commercial design standards, he has trouble seeing any of the commercial design standards limiting expression of faith, only regulating a few issues.

**Williams** went through some of the other standards listed in the commercial design standards besides the five criteria. It's just a fundamental problem when we regulate the design of churches. Traditionally the state has not regulated aesthetics of a church.

**Commissioner Lack** asked Williams if our downtown design overlay district (DDOD) results in the same issue as churches have to comply.

**Williams** answered yes. He stated that he had concerns when the DDOD went through. He doesn't think we should regulate aesthetics.

**Commissioner Lack** asked about whether there are legal issues where churches are required to a conditional use permit and the design of a church is determined to be compatible with surrounding uses.

**Williams** responded that churches in a residential district may not be appropriate. He discussed further the purpose of aesthetics in the construction a church.

**Commissioner Lack** asked about proposed subsection (2)(d) that discusses that facades adjacent to a street need to be designed with elements similar to a front façade. If a building faces a street, would that requirement also apply to the sides of the building that are visible from the street?

**Sanders** explained that it would apply to the façade directly facing the street, and wouldn't apply to the sides of the structure. This requirement wouldn't preclude back of house activities such as loading docks or back doors, however it may require wrapping a similar color or pilaster from the front façade around to the other side of the building that faces a second street frontage.

**Commissioner Lack** stated that he would like to see the commercial design standards apply to all facades when visible from street, not just when the façade directly faces the street.

**Commissioner Hoskins** asked about chapter 166.14(2) referring to similar buildings to the left and right.

**Williams** stated that staff is proposing to expand the commercial design standards from the current standards.

**Commissioner Chesser** asked if that architecturally designed meant that it had to be designed by an architect?

**Sanders** said that an architect is not required.

**Commissioner Chesser** asked if a Jehovah's Witness wanted to build and their standard design is without windows was in violation.

**Sanders** said that churches would be able to ask for variances if they don't meet the design standards.

**Williams** stated they must show a hardship on the site in order to be granted a variance.

**Commissioner Cabe** said that a lack of windows doesn't necessarily mean that it is a blank façade;

there could be other elements that articulate the facade. Churches are built differently nowadays and are not the typical traditional church building anymore. He is real comfortable with the way the code is proposed. He is okay applying the code to churches and schools.

**Commissioner Winston** stated that there is a variance process and discussed that the variance process could be set up where a variance could be permitted when aesthetic issues would create a religious hardship.

**Commissioner Chesser** stated that he feels we should really consider legal council's advice.

**Garner** discussed that the overall intent of this proposal from staff was to eliminate the redundant and unnecessary items in the I-540 DOD; the design standards for churches and schools was a secondary item that was folded into proposal. If the design standard for churches and schools is the only issue the commission is struggling with, and can't agree on, staff would prefer to move this item forward and leave out the design standard for churches and schools, and address that at a later time.

**Commissioner Cabe** would appreciate memos and cases from legal council on this topic.

**Commissioner Lack** discussed again that he doesn't see why the five elements in commercial design standards discriminate against a church, and would like to see that as well from the City attorney.

**Motion #1:**

**Commissioner Chesser** made a motion to forward to City Council, striking the changes from commercial to non-residential, and discussing that we can take up the issue regarding churches and schools at a later date. **The motion was not seconded and was withdrawn after commission and staff discussion.**

**Motion #2:**

**Commissioner Cabe** made a motion to forward to City Council as recommended by staff, **Commissioner Earnest** seconded the motion.

**Commissioner Kennedy** had a question about "architecturally" designed.

**Commissioner Cabe** amended his motion to strike "architecturally" from Chapter 166.14 2.d **Commissioner Earnest** seconded the change.

**Commissioner Winston** asked if a school has design standards.

**Williams** said that, no, the school board approves plans that are designed by an architect.

**Upon roll call the motion to forward to City Council passed with a vote of 5-3-0 with Commissioners Lack, Bunch and Chesser voting "no".**

**Ordinance No. 3806**  
**Original I-540 Design Overlay District**  
**June 28, 1994**

**ORDINANCE NO. 3806**

AN ORDINANCE ESTABLISHING A DESIGN OVERLAY DISTRICT FOR THE U.S. 71 HIGHWAY CORRIDOR; AND AMENDING CHAPTER 160, ZONING CODE, OF THE FAYETTEVILLE CODE OF ORDINANCES TO ADD REGULATIONS AND STANDARDS FOR THE DESIGN OVERLAY DISTRICT FOR THE U.S. 71 HIGHWAY CORRIDOR.

FILED FOR RECORD  
94 JUL 15 AM 8 04  
WASHINGTON CO AR  
A. KOLLMAYER

**WHEREAS**, the City Council recognizes the distinctive scenic importance of the U.S. 71 Highway Corridor; and,

**WHEREAS**, the City Council wishes to address the impact of the rapid growth along the U.S. 71 Highway Corridor upon the health, safety and welfare of the general public; and,

**WHEREAS**, the City Council wishes to protect the environment and the natural resources located along the U.S. 71 Highway Corridor.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

**Section 1.** There is hereby established a Design Overlay District for the U.S. 71 Highway Corridor.

**Section 2.** That Chapter 160, Zoning Code, of the Fayetteville Code of Ordinances shall be amended to add the following:

§160.045  
DESIGN OVERLAY DISTRICT.

A. **Purpose.** The purpose of establishing a Design Overlay District for the U.S. 71 Highway Corridor is as follows:

1. To protect and enhance the distinctive scenic quality of the U.S. 71 Highway Corridor by providing for non-residential developments which will maximize preservation and enhancement of the natural, rural, and open character of the terrain and foliage.
2. To address the issues of traffic and safety.
3. To address environmental concerns which include but are not limited to, soil erosion, vegetation preservation, drainage and heat islands.
4. To preserve and enhance the economic value and viability of property within and near the overlay district for the U. S. 71 Highway corridor.



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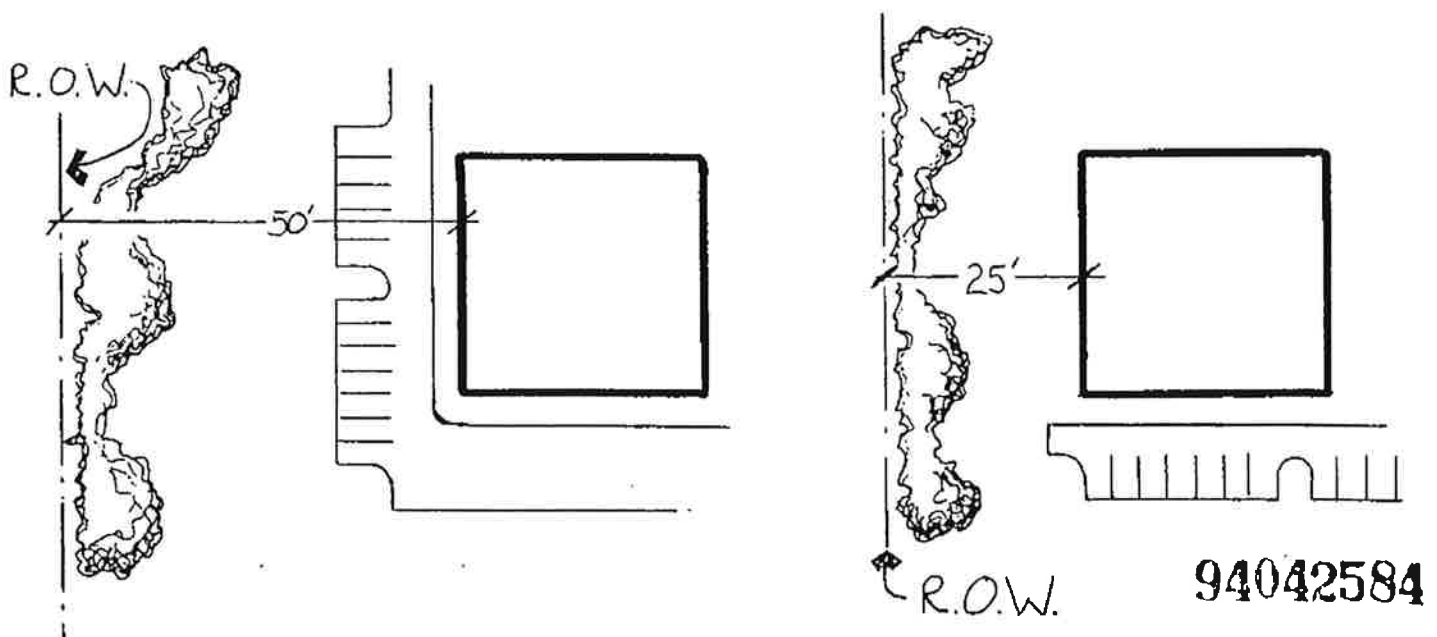
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B. Overlay District Boundaries. The overlay district encompasses all lands lying within 660' of each side of the right-of-way of U.S. Highway 71 from the intersection of U.S. Highway 71 and State Highway 471 (a/k/a 71B) north to the City limits of Fayetteville, (a/k/a the 71 Bypass and/or John Paul Hammerschmidt Expressway), and also that portion know as State Highway 471S described more fully as that portion of State Highway 471 which connects U.S. Highway 71 to State Highway 471 (a/k/a North College) and all future extensions of U.S. Highway 71 within the City of Fayetteville. Said boundaries are set out on the official plat pages along with a legal description of such boundaries located in the Planning Office.

C. Application of Overlay District Regulations and Standards. The regulations and standards contained herein shall apply to all non-residential properties, (including but not limited to new development, redevelopment and expansions of existing development), located within the Overlay District boundaries. Such regulations and standards shall be in addition to and shall overlay all other ordinance regulations and standards, including but not limited to non-residential zoning district and signage regulations and standards. Should the regulations and standards of the underlying and overlay districts conflict, the overlay district regulations and standards shall control.

D. Non-Residential Site Design and Development Standards.

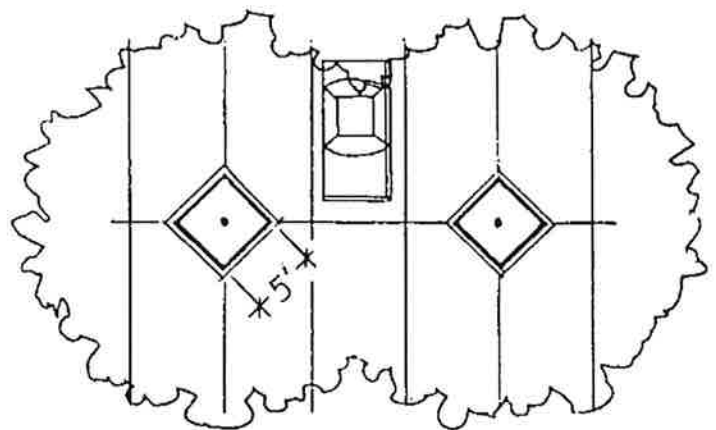
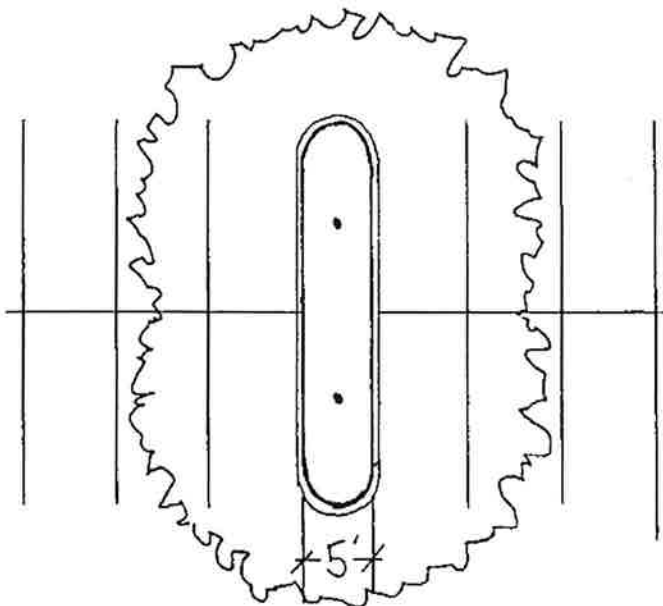
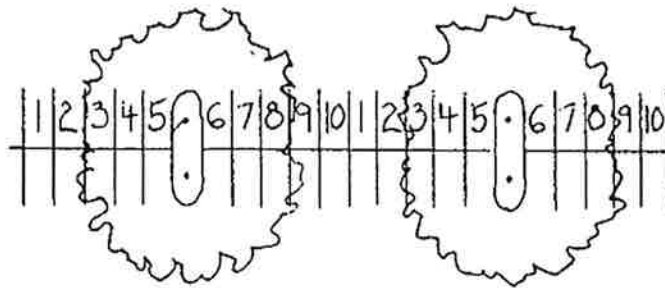
1. Setback From Right-of-Way. All principal and accessory non-residential structures shall have a 50 foot building setback from the highway or street right-of-way. Non-residential uses may reduce their building setback to 25 feet if parking is not located between the structure and highway or street right-of-way.



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2. **Green Space.** A minimum of 25 feet of landscaped green space exclusive of right-of-way shall be provided along the highway right-of-way and any public street to which the development has frontage. Parking lots shall not encroach into the green space and shall be screened when abutting a required green space area. Trees shall be planted at the interval of one tree per 30 linear feet of green space area when practicable.

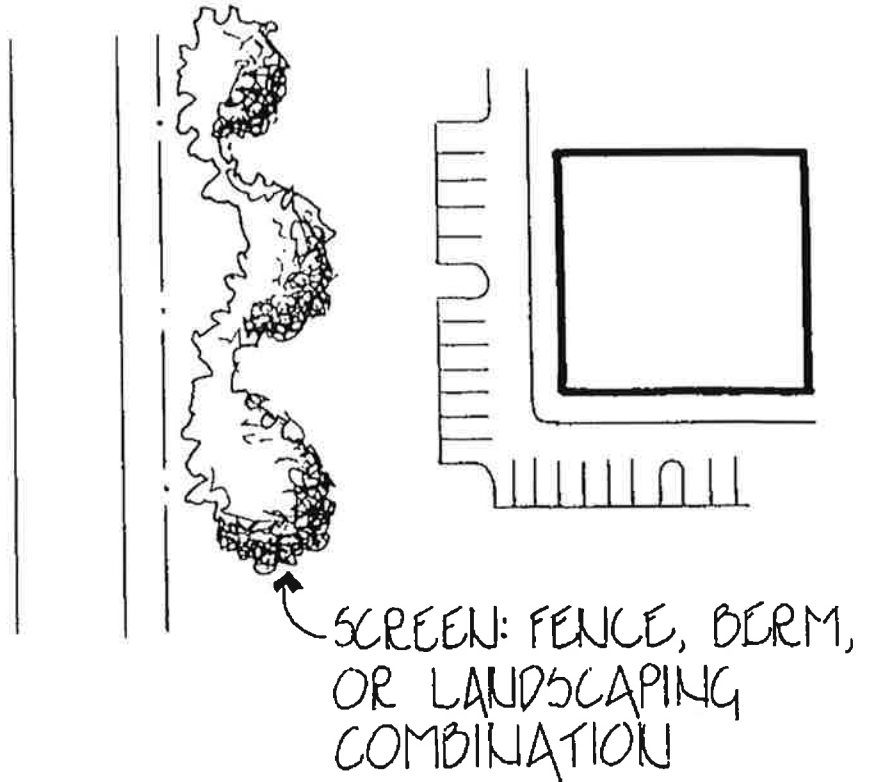
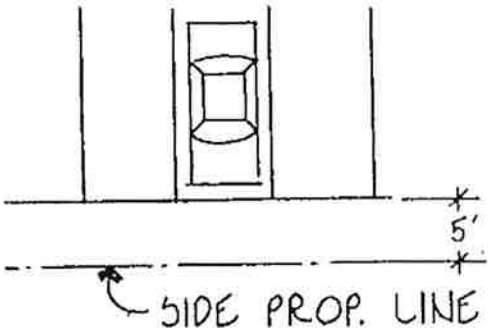
3. **Parking Lots.** All parking lots for non-residential development shall have 1 tree per 10 parking spaces. Trees shall be placed uniformly within the parking lot or in islands within the lot providing a minimum of 25 square feet of unpaved area per tree. Parking lots shall be set back a minimum of five feet from any side property line.



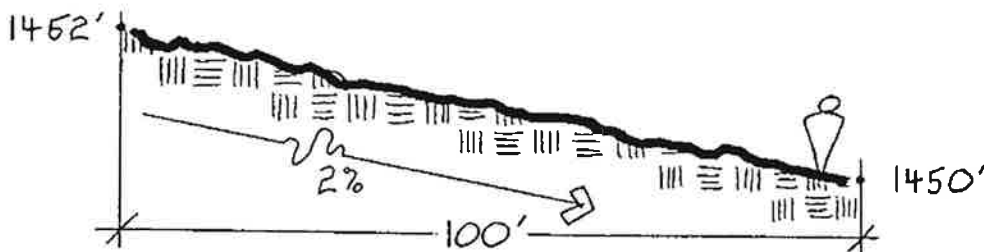
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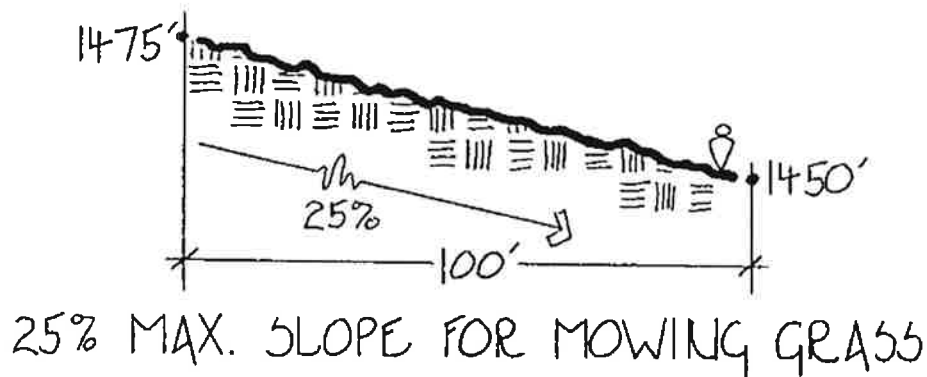
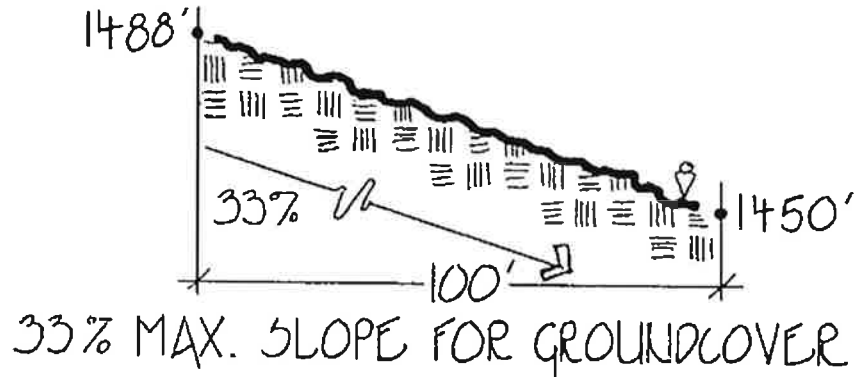
4. Landscaping Treatment. Landscaping shall be required which is sufficient to provide soil stability and promote suitable drainage. Landscaping shall be primarily living plants and shall attempt to incorporate existing on-site trees and shrubbery into the landscaping scheme and the landscaping plans shall indicate such incorporation.



2% MIN. SLOPE FOR GRASS DRAINAGE

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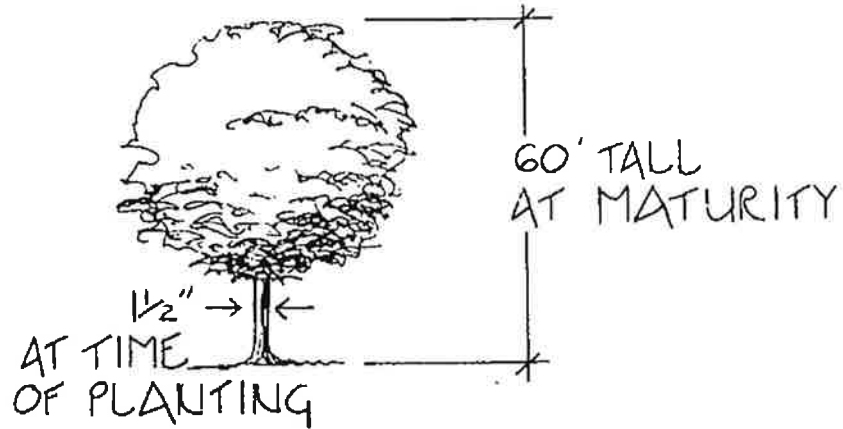


a. Any required landscaping that dies or is damaged shall be replaced by the current owner of the property. Where possible, native vegetation should be used in order to minimize the amount of watering required. The City shall require replacement vegetation if it is not maintained.

b. Tree species planted within these corridors should be consistent with other species present, preferably native. Trees shall be 1½" DBH at planting with an expected height of 60' or more at maturity. Species selection shall be at the discretion of the developer but if root or branching habits of plant material should be a nuisance, (for example: roots breaking through the sidewalk, messy fruit, etc.), plant materials shall be replaced at the owner's expense.

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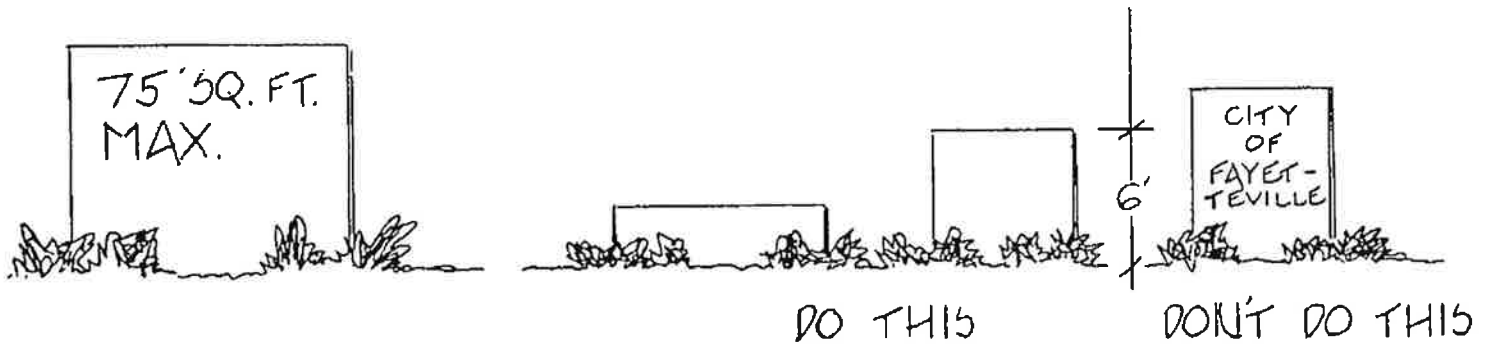
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5. Signage.

a. Non-Residential Free Standing Signs.

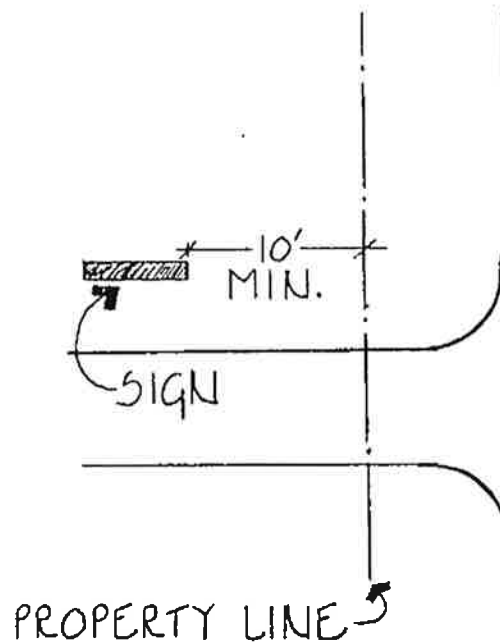
1) Each separate non-residential lot will be allowed a single ground-mounted (monument) sign located on the building site. In the case of lots with double frontage, two ground-mounted (monument) signs shall be allowed.



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2) The sign shall be a maximum of 6 feet high, 75 square feet in area, and set back a minimum of 10 feet from the property line.



b. Wall Signs. One wall sign may be installed per business. Sign area shall not exceed 20% of that wall area or 200 square feet, whichever is less. A second sign may be allowed if it is determined that the structure has more than one front facing a street or highway right-of-way.

c. Illumination. Only indirect lighting may be used for illumination of all signs.

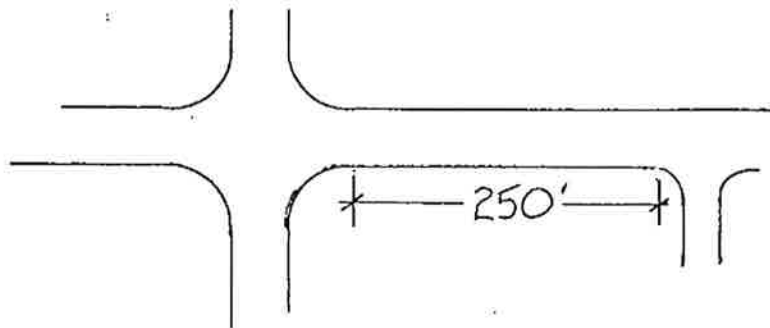
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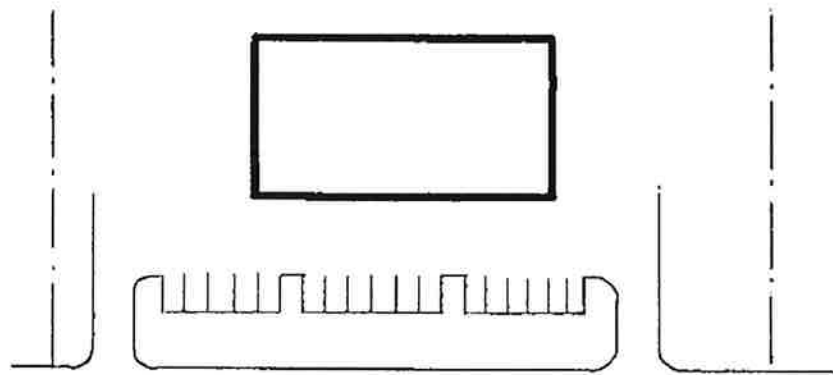
d. Multiple Tenants. The owner of the building shall be responsible for the provision of one monument sign with sign area for multiple tenants.

e. Sign Content. Content of monument and wall signs shall be limited to the name of the business. Advertising shall not be permitted on the structure, wall sign or monument.

6. Curb Cuts. One curb cut shall be allowed per 200 feet of frontage. No curb cuts shall be allowed within 250 feet of any intersection.



CURB CUTS MUST BE  
AT LEAST 250' FROM  
INTERSECTIONS



ONE CURB CUT PER 200' FRONTAGE

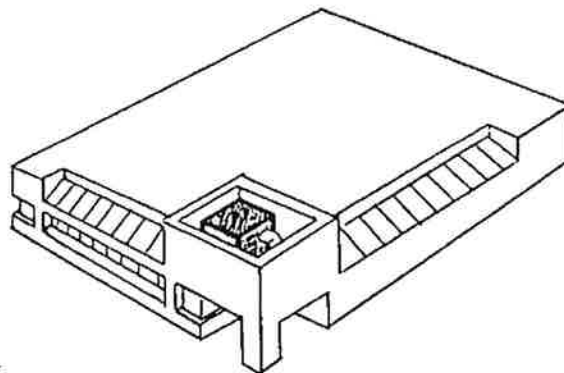
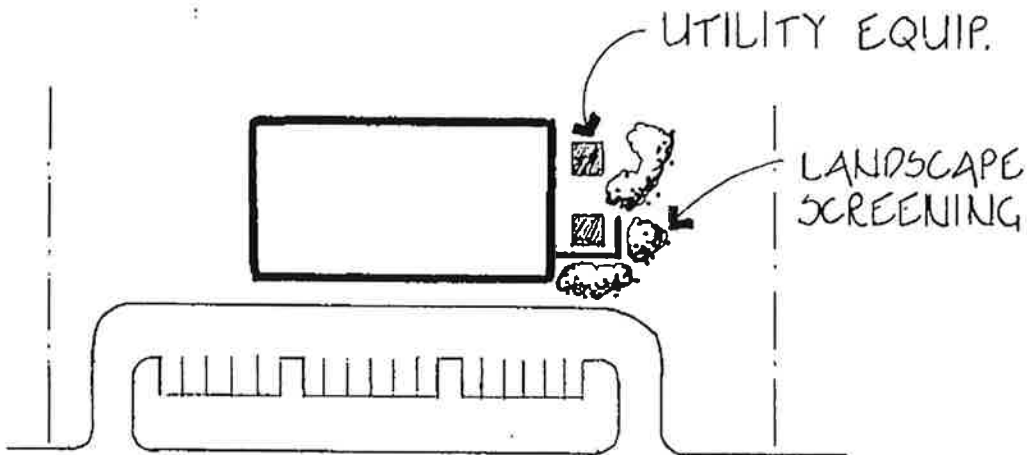
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7. Lighting. Parking lot lighting shall be designed and located in such a manner to preserve the scenic appearance of the corridor. Lighting shall be shielded and directed downward to the parking lot and light spread shall not reflect into the adjacent neighborhood. Lighting shall not exceed 35 feet in height and shall utilize sodium lighting fixtures.

8. Screening. All mechanical and utility equipment, trash enclosures, and parking lots shall be screened in the following manner:

a. All mechanical and utility equipment on the side of the building and/or on the ground shall be screened by fencing and/or vegetation if visible from the highway/street right-of-way or residential property. Screening of roof-mounted utilities shall be incorporated into the structure, utilizing materials compatible with the supporting building.

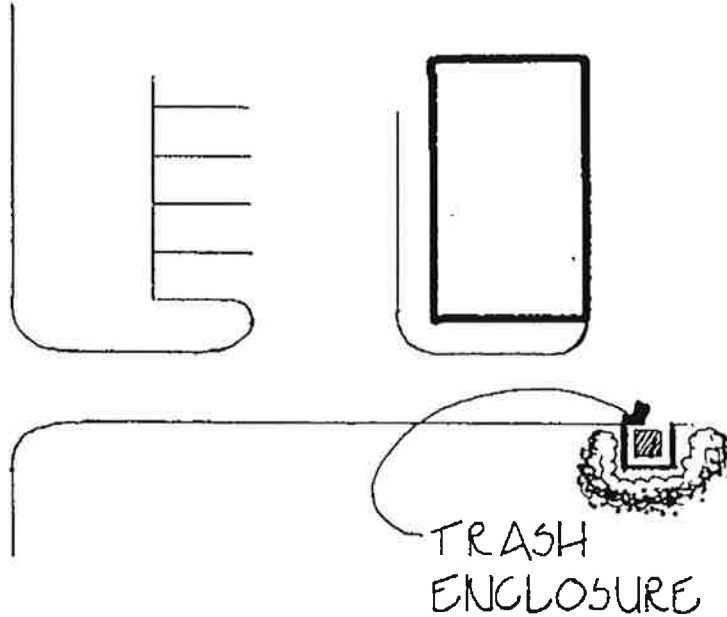


SCREEN ROOF-MOUNTED  
UTILITIES

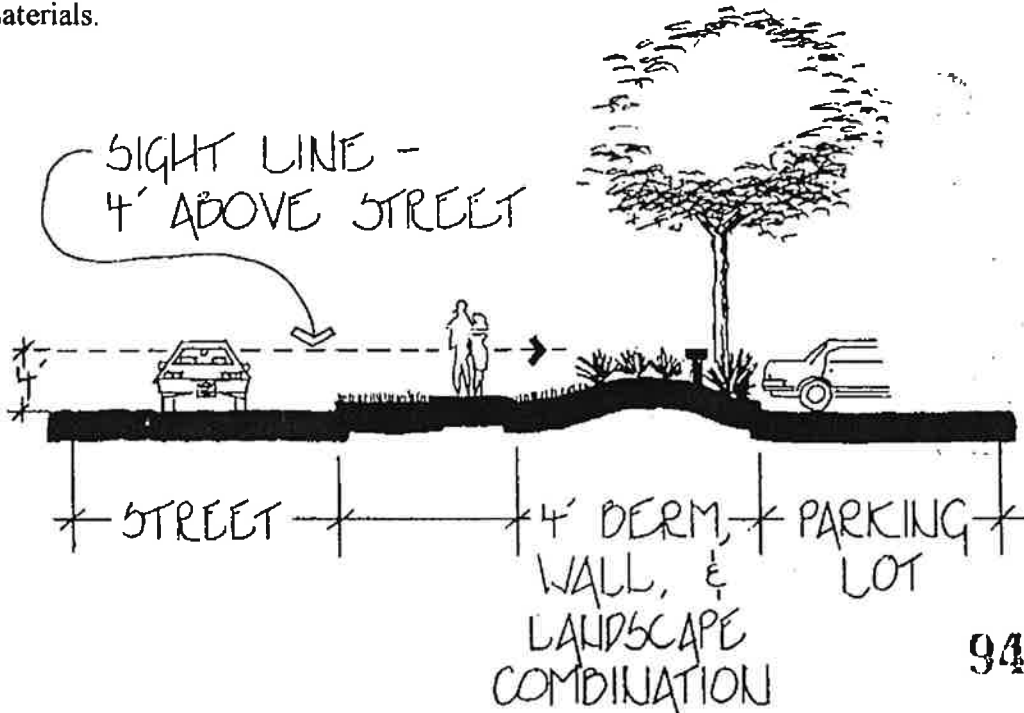
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b. Trash enclosures shall be screened on three sides with the access not visible from the street.

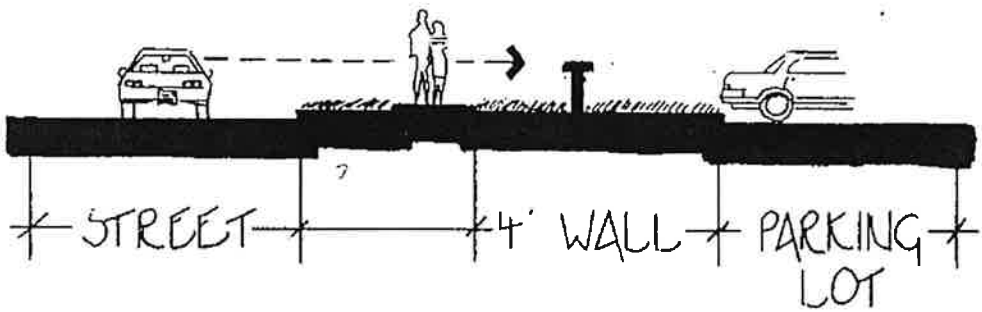
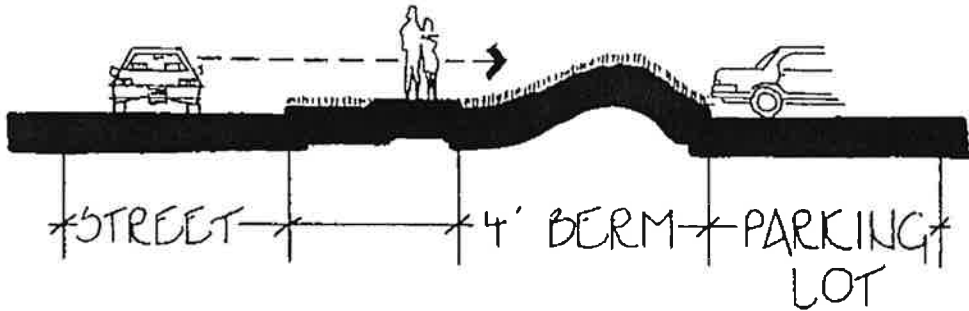
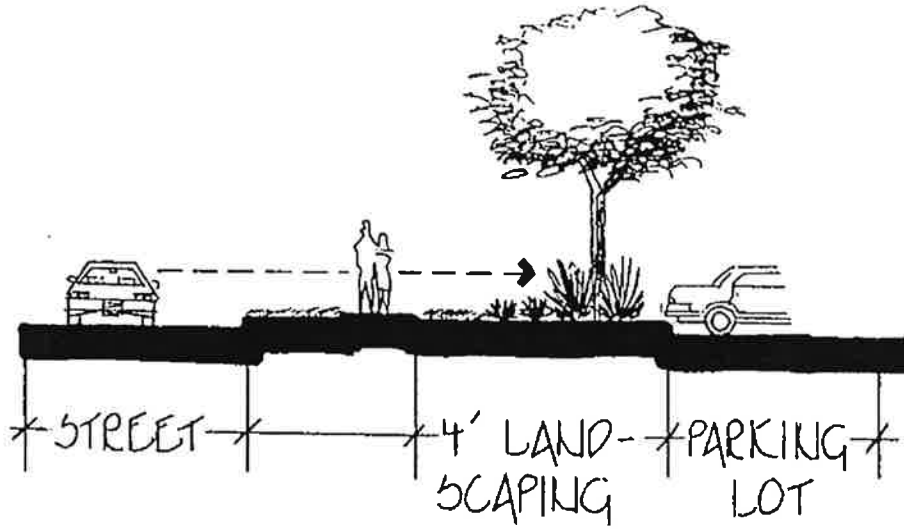


c. Parking lots shall be screened by a four-foot high view-obscuring landscaped berm, wall, landscaping, or combination of berm/wall and/or landscaping. If view obscuring walls are utilized, they shall be set back a minimum of 5 feet from the property line with landscaping located between the wall and property line. All walls shall be constructed of wood, masonry, or natural-looking materials.



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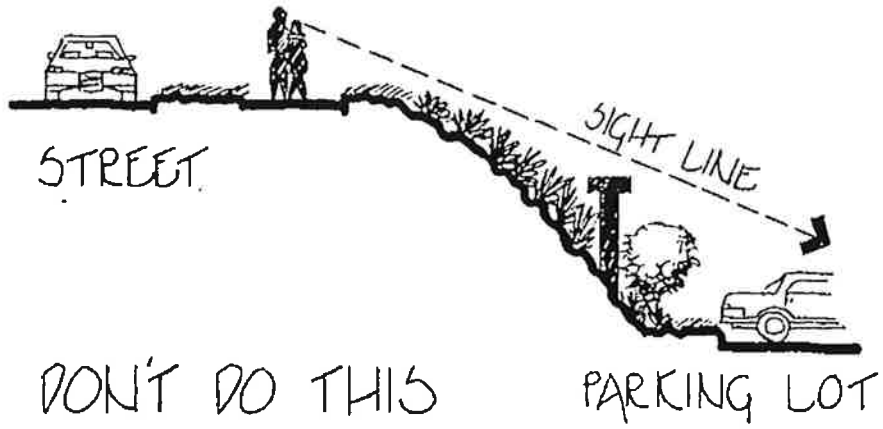
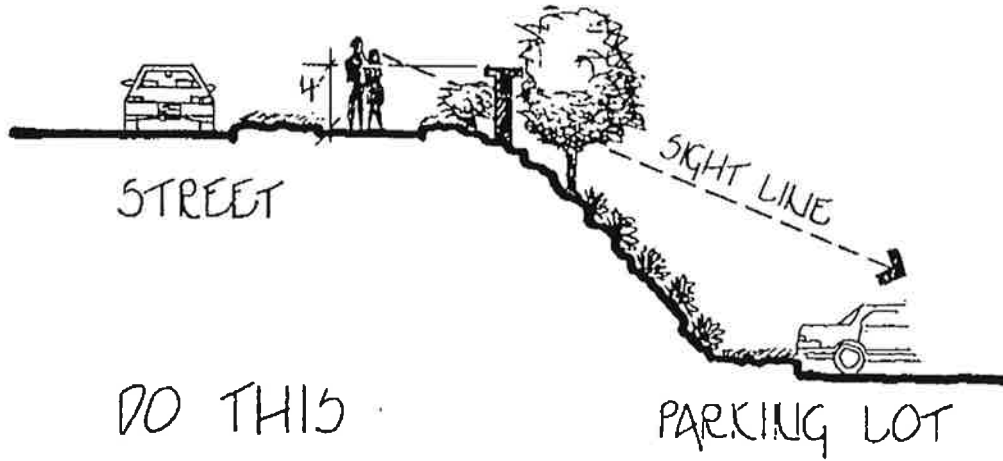
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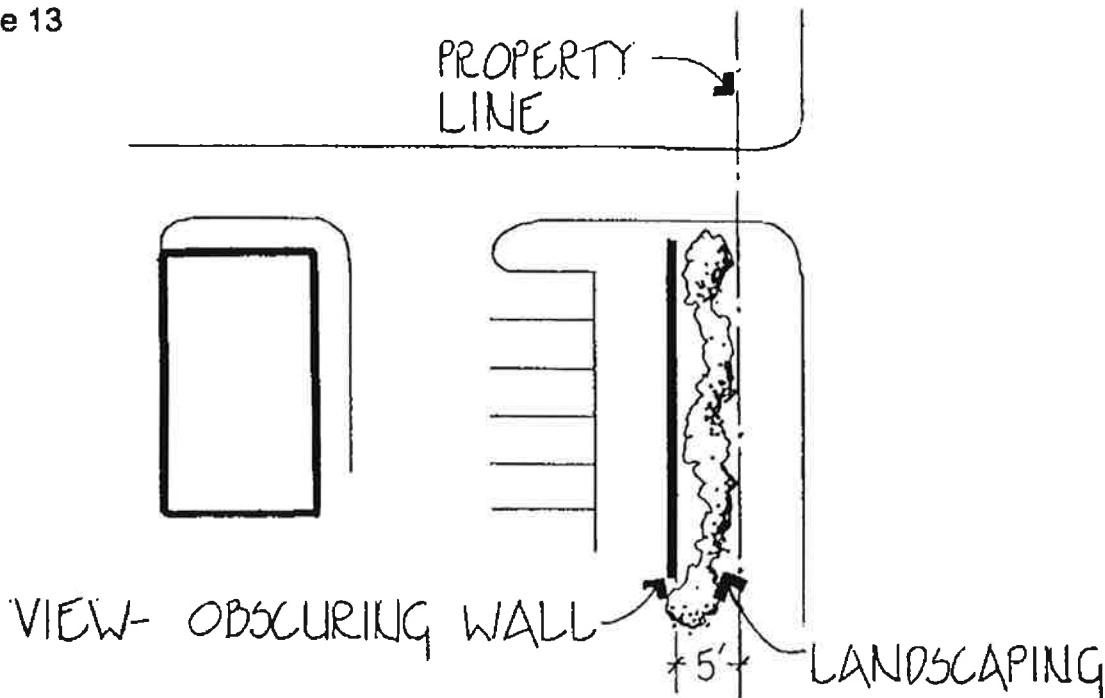


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9. Exterior Appearance. All structures shall be architecturally designed to have front facades facing all street and highway right-of-way. An elevation drawing shall be submitted for each side of the building that faces a street or highway.

10. Building Material. Buildings shall be constructed of wood, masonry, or natural looking materials. No structures shall be allowed that have metal side walls unless such metal siding is similar in appearance to wood, masonry or natural looking material.

11. Site Coverage. Twenty five percent (25%) of the site shall be left in open space. Eighty percent (80%) of the open space shall be landscaped which may include ponds and fountains.

12. Utilities. Above ground utilities may be located at the rear property line. In the event it is not feasible to place utilities at the rear property line, utilities shall be placed underground.

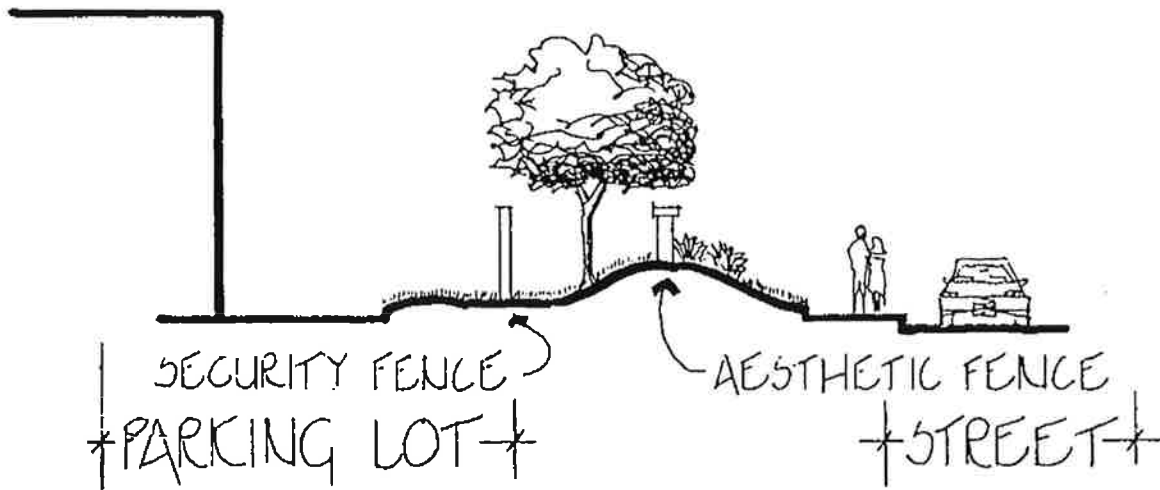
13. Optional Fencing. All fencing shall be constructed of wood, masonry, or natural-looking materials. No optional fencing shall be located within the green space required by section D-2. No metal fencing shall be allowed except in the following cases:

- a. Wrought iron fencing.

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b. If other types of metal fencing are necessary for security purposes, they may be used if the area is first fenced off with a view-obscuring natural or natural-looking fencing material. The metal fencing shall be placed inside the view-obstructing fencing, and the view-obscuring fencing shall be at least the height of the metal fencing.



14. Outdoor Storage of Material and Equipment. All outdoor storage of material and equipment shall be screened with natural vegetation.

15. Access.

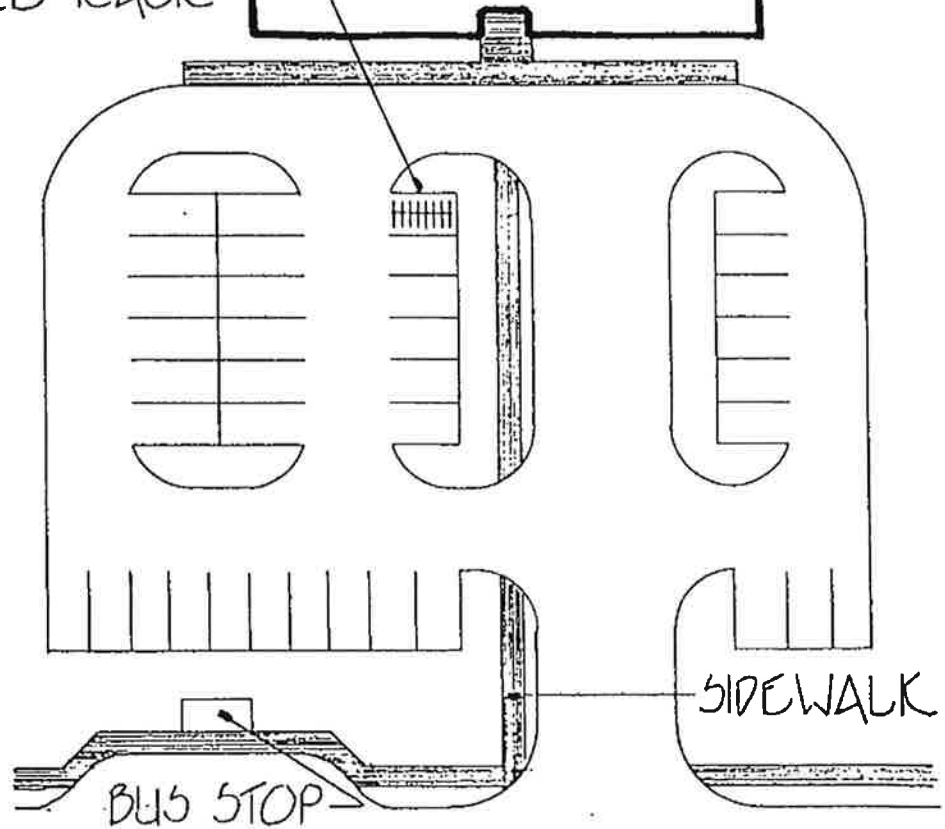
a. Pedestrian access shall be provided from the street to the entrance of the structure by way of a designated trail or sidewalk.

b. Multi-modal access may be required on non-residential sites within the Design Overlay District. (for example: the provision of bus stops, bicycle racks, parking stalls for car pools, and bicycle and pedestrian walks and trails).

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BIKE RACK

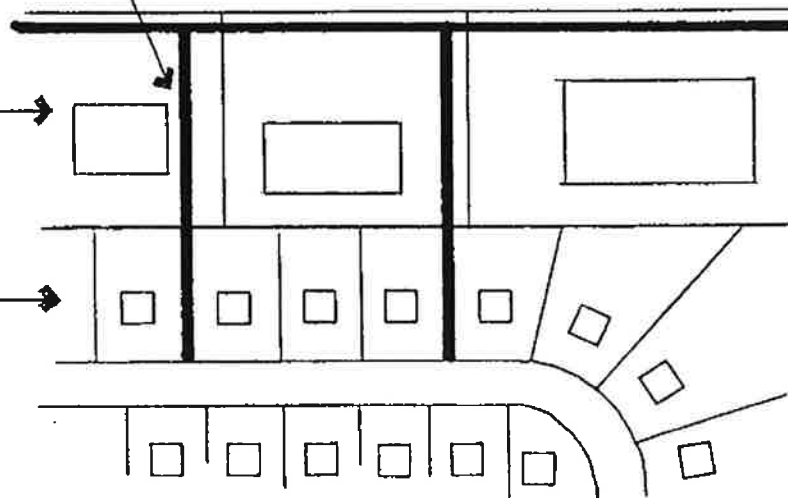


MULTI-MODAL ACCESS

PEDESTRIAN SIDEWALK-TRAILS

COMMERCIAL

RESIDENTIAL



94042597

LINK DIFFERENT ZONES WITH TRAILS

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Page 16

16. Plans/Drawings Required. The following plans and drawings shall be submitted prior to large scale development review and approval.

- a. Landscaping plan.
- b. Screening elevation.
- c. Front facade elevation.
- d. Monument sign elevation.
- e. Scaled drawings of signage.
- f. Large scale development plan.

Drawings, plans and elevations may be combined when possible.

E. Non-Residential Developments and Multiple Building Sites.

In the case of non-residential development involving multiple building sites, whether on one or more platted lots, the above described regulations shall apply to the development as an entire tract rather than to each platted lot.

F. Large Scale Development.

All non-residential development within the Design Overlay District shall be reviewed through the Large Scale Development procedure and shall meet all those requirements regulating Large Scale Developments regardless of the size of the tract.

G. Variances; Conditions Governing Applications; Procedures.

1. The purpose of this section is to authorize upon appeal in specific cases such variances from the regulations of this design overlay district as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship. A variance from the terms of this chapter shall not be granted by the Planning Commission unless and until:

- a. The applicant provides in writing from what section of the Design Overlay District a variance is requested. This shall be submitted along with the large scale development plan demonstrating:

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1) That special conditions and circumstances exist which are peculiar to the land, structure, building, and/or lot configuration involved and which are not applicable to other lands, structures or building in the same district;

2) That literal interpretation of the provisions of the chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;

3) That the special conditions and circumstances do not result from the actions of the applicant;

b. The Planning Commission shall make the following findings:

1) No nonconforming use of neighboring lands, structures, or building in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

2) The Planning Commission shall make findings that the requirements of this section have been met by the applicant for a variance;

3) The Planning Commission shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure;

4) The Planning Commission shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

2. The granting of any variance requested will not confer on any other land any special privilege that is denied by this ordinance.

3. In granting any variance, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance.

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**Section 3. SEVERABILITY.** Should any paragraph, section, clause, phrase or part of this ordinance, for any reason, be held invalid, such decision shall not affect the validity of the remaining provisions of this ordinance and the application of those provisions to any person or circumstance shall not be affected thereby.

**Section 4. EMERGENCY CLAUSE.** The City Council hereby finds and declares that as a result of the current development pressures along U.S. 71 Highway corridor, that in order to protect the health, safety and welfare of the citizens of the City, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** this 28<sup>th</sup> day of June, 1994.

APPROVED:

By: *Fred Hanna*  
Fred Hanna, Mayor

ATTEST:

By: *Sherry L. Thomas*  
Sherry L. Thomas, City Clerk



94042600

I, Alma Kollmeyer, Circuit Clerk and  
Ex-officio Recorder for Washington County,  
Arkansas, do hereby certify that this in-  
strument was filed for record in my office  
as indicated herein and the same is now  
duly recorded to the acknowledgment  
and certificate of the Record Book and  
Page as indicated hereon.

IN WITNESS WHEREOF, I have hereunto  
set my hand and affixed the seal of said  
Court on the date indicated hereon.

Alma Kollmeyer  
Circuit Clerk and  
Ex-officio Recorder

by AK



# Ordinance Mark-up

## CHAPTER 151: DEFINITIONS

*I-540 Overlay District.* The Overlay District encompasses all lands lying within 660 feet of each side of the right-of-way of I-540 from the intersection of I-540 and State Highway 471 (a/k/a 71B) north to the city limits of Fayetteville, (a/k/a the 71 Bypass and/or John Paul Hammerschmidt Expressway), and also that portion known as State Highway 471S described more fully as that portion of State Highway 471 which connects I-540 to State Highway 471 (a/k/a North College) and all future extensions of I-540 within the City of Fayetteville. Said boundaries are set out on the official plat pages along with a legal description of such boundaries located in the Planning Division.

*Principal Façade.* The front plane of a building that faces a public street including porches and balconies, but not including stoops, awnings or canopies (whether or not attached to the building).

DRAFT

## CHAPTER 156: VARIANCES

### 156.02 Zoning Regulations

(A) *General procedure.* Variances of all zoning regulations shall be considered and decided as shown below by the Board of Adjustment. There shall be no appeal to the City Council for zoning regulation variances.

(B) *Requirements for variance approval.*

- (1) Where strict enforcement of the zoning ordinance would cause undue hardship due to circumstances unique to the individual property under consideration;
- (2) Where the applicant demonstrates that the granting of the variance will be in keeping with the spirit and intent of the zoning ordinance; and

(C) *Minimum necessary variance.* The Board of Adjustment may only grant the minimum variance necessary to make possible the reasonable use of the applicant's land, building or structure.

(D) *Special Conditions.* In granting a zoning regulation variance, the Board of Adjustment may impose whatever special conditions found necessary to ensure compliance and to protect adjacent property.

(E) *Non-permitted Uses.* The Board of Adjustment may not grant, as a variance, any use in a zone that is not permitted under the zoning ordinance.

(F) *Specific Tests.* The Board of Adjustment shall apply specific tests for the following variance requests:

- (1) *Height variances in all districts.* In addition to meeting all other normal requirements for a variance, an applicant seeking a height variance must establish the increased height of the proposed structure will not adversely affect adjoining or neighboring property owners, nor impair the beauty of Old Main, the historical churches on Dickson Street near East Avenue, nor otherwise impair the historic beauty and character of Fayetteville.

~~(B) *Consideration by the Planning Commission.* Applications for variances of the following shall be considered by the Planning Commission.~~

~~(1) *Design Overlay District.*~~

- ~~(a) *Special conditions.* The purpose of this section is to authorize in specific cases such variances from the regulations of~~

~~the Design Overlay District as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the Design Overlay District regulations would result in unnecessary hardship.~~

~~(b) *Variance requested.* A variance from the terms of the Design Overlay District regulations shall not be granted by the Planning Commission unless and until the applicant provides from what section a variance is requested. This shall be submitted along with the large scale development plan.~~

~~(c) *Findings.* The Planning Commission shall make the following findings:~~

~~(i) *Requirements met.* That the requirements of §156.02.(A) have been met by the applicant for a variance.~~

~~(ii) *Minimum variance.* That the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.~~

~~(iii) *Harmony with general purpose.* That the granting of the variance will be in harmony with the general purpose and intent of the Design Overlay District, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.~~

~~(d) *Conditions and safeguards.* In granting any variance, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this section.~~

~~(1) *Access to structure.* The Planning Commission shall have the authority to waive the requirement that every building hereafter erected or moved shall be located on a lot which has frontage on a public street when the property owner provides safe and convenient access for fire protection and sanitation vehicles.~~

~~(2) *Building height variance in all zoning districts.*~~

~~(a) The Planning Commission shall have the authority to grant a variance to allow a proposed structure to exceed building~~

~~height limits in all Zoning Districts in those instances where, owing to special conditions and circumstances, literal enforcement of the building height restrictions would result in unnecessary hardship or the applicant can show that the additional height requested will not adversely affect adjoining or neighboring property owners.~~

~~(b) The Planning Commission may prescribe appropriate conditions and safeguards to ensure any variance will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.~~

~~(3) Building height variance in the C-3 District.~~

~~(a) The Planning Commission shall have the authority to grant a variance to allow a proposed structure to exceed a height of 84 feet or six stories in the C-3 District in those instances where, owing to special conditions and circumstances, literal enforcement of the building height restrictions would result in unnecessary hardship or the applicant can show that the additional height requested will not adversely affect adjoining or neighboring property owners or impair the beauty of Old Main, the historical churches on Dickson Street near East Avenue, or the historical character of Fayetteville.~~

~~(C) Consideration by the Board of Adjustment.~~

~~(1) Bulk and area. Applications for variances of bulk and area requirements shall be considered by and may be approved by the Board of Adjustment.~~

~~(2) Public hearing. A public hearing shall be held.~~

~~(3) Findings. The Board of Adjustment shall make the following findings:~~

~~(a) Minimum variance. That the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.~~

~~(b) Harmony with general purpose. The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of zoning, Chapters 160 through 165, and will not~~

~~be injurious to the neighborhood, or otherwise detrimental to the public welfare.~~

~~(c) Conditions and safeguards. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the zoning regulations.~~

~~(d) No variance allowed. Under no circumstances shall the Board of Adjustment grant a variance to allow use not permissible under zoning in the district involved, or any use expressly, or implication prohibited by the terms of the zoning regulations in said district.~~

~~(4) Action. The Board of Adjustment may take the following actions:~~

~~(a) Reverse or affirm, wholly or partly; or~~

~~(b) May modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the Zoning and Development Administrator from who the appeal is taken.~~

~~(5) Vote. The concurring vote of a majority of the members present shall be necessary to reverse any order, requirement, decision or determination of the Zoning and Development Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass or to effect any variation in the application.~~

(Code 1965, App. A. 5 (VII (a))); Ord. No. 2148, 10-7-75; Ord. No. 2351, 6-21-77; Ord. No. 2362, 8-2-77; Ord. No. 1747, 6-29-70; Code, 1991, §160.038(E); Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4293, 2-20-01; Ord. 4858, 4-18-06; Ord. 4863, 05-02-06; Ord. 5296, 12-15-09)

## CHAPTER 161: ZONING DISTRICTS

### 161.31 Design Overlay District (I-540 Highway Corridor Reserved)

(A) *Purpose.* The purpose of establishing a Design Overlay District for the I-540 Highway Corridor is as follows:

(1) To protect and enhance the distinctive scenic quality of the I-540 Highway Corridor by providing for nonresidential developments which will maximize preservation and enhancement of the natural, rural, and open character of the terrain and foliage.

(2) To address the issues of traffic and safety.

(3) To address environmental concerns which include, but are not limited to, soil erosion, vegetation preservation, drainage and heat islands.

(4) To preserve and enhance the economic value and viability of property within and near the Overlay District for the I-540 Highway Corridor.

(B) *Overlay District boundaries.* The Overlay District encompasses all lands lying within 660 feet of each side of the right-of-way of I-540 from the intersection of I-540 and State Highway 471 (a/k/a 71B) north to the city limits of Fayetteville, (a/k/a the 71 Bypass and/or John Paul Hammerschmidt Expressway), and also that portion known as State Highway 471S described more fully as that portion of State Highway 471 which connects I-540 to State Highway 471 (a/k/a North College) and all future extensions of I-540 within the City of Fayetteville. Said boundaries are set out on the official plat pages along with a legal description of such boundaries located in the Planning Division.

(C) *Application of Overlay District: Regulations and standards.* The regulations and standards contained herein shall apply to all nonresidential properties, (including, but not limited to new development), located within the Overlay District boundaries. Such regulations and standards shall be in addition to and shall overlay all other ordinance regulations and standards, including, but not limited to nonresidential zoning district and signage regulations and standards. Should the regulations and standards of the underlying and Overlay District conflict, the Overlay District regulations and standards shall control.

(D) *Nonresidential site design and development standards.*

(1) *Greenspace.* A minimum of 25 feet of landscaped greenspace exclusive of right-of-way shall be provided along the highway right-of-way and any public street to which the development has frontage. Parking lots shall not encroach into the greenspace and shall be screened when abutting a required greenspace area. Trees shall be planted at the interval of one tree per 30 linear feet of greenspace area when practicable.

(2) *Signs*

(a) The only permitted free standing signs shall be monument signs. Only indirect lighting may be used for illumination of all signs.

(b) All signs shall otherwise comply with Chapter 174 Signs and any variance shall be considered pursuant to § 156.06 of the Unified Development Code.

(3) *Exterior appearance.* All structures shall be architecturally designed to have front facades facing all street and highway right-of-way. An elevation drawing shall be submitted for each side of the building that faces a street or highway.

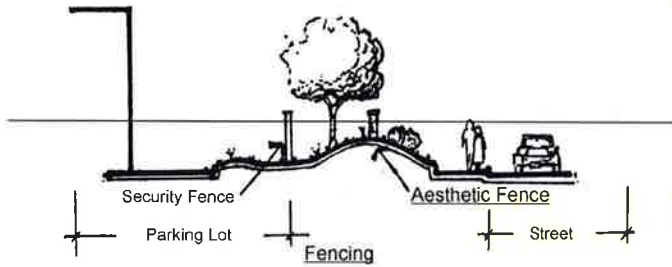
(4) *Building material.* Buildings shall be constructed of wood, masonry, or natural looking materials. No structures shall be allowed that have metal side walls UNLESS such metal siding is similar in appearance to wood, masonry, or natural-looking material.

(5) *Site coverage.* Twenty-five percent (25%) of the site shall be left in open space. Eighty percent (80%) of the open space shall be landscaped which may include ponds and fountains.

(6) *Optional fencing.* All fencing shall be constructed of wood, masonry, or natural looking materials. No optional fencing shall be located within the greenspace required by Section (D)(1). No metal fencing shall be allowed except in the following cases:

(a) Wrought iron fencing.

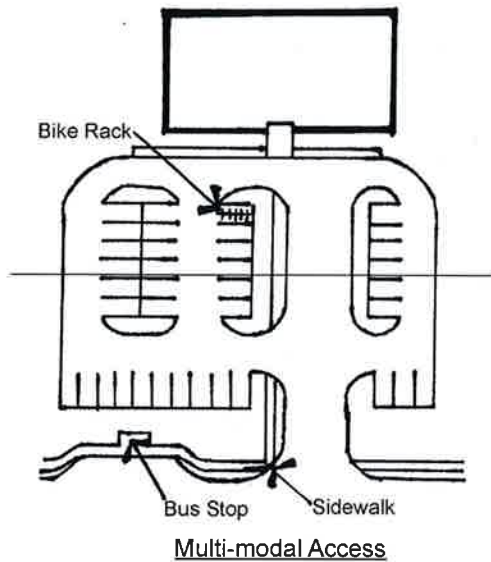
(b) If other types of metal fencing are necessary, for security purposes, they may be used if the area is first fenced off with a view obscuring natural or natural looking fencing material. The metal fencing shall be placed inside the view obscuring fencing, and the view obscuring fencing shall be at least the height of the metal fencing.



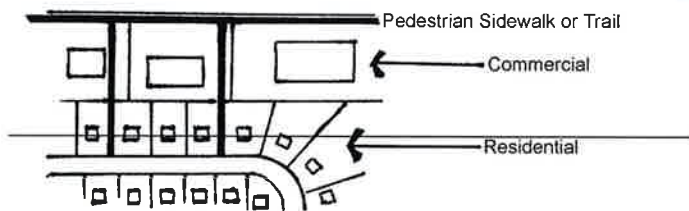
(7) Outdoor storage of material and equipment. All outdoor storage of material and equipment shall be screened with natural vegetation.

(8) Access.

(a) Multi-modal. Multi-modal access may be required on nonresidential sites within the Design Overlay District. (For example: The provision of bus stops, bicycle racks, parking stalls for car pools, and bicycle and pedestrian walks and trails).



Multi-modal Access



Pedestrian Linkages to Different Zones

(E) Nonresidential developments and multiple building sites. In the case of nonresidential development involving multiple building sites, whether on one or more platted lots, the above-described regulations shall apply to the development as an entire tract rather than to each platted lot.

(F) Exemptions.

(1) Undeveloped or partially developed lots in nonresidential subdivisions lying within the Design Overlay District for I-540 Highway Corridor which have received preliminary or final approval as nonresidential subdivision prior to June 28, 1994, are hereby exempt from compliance with Ordinance No. 3806 (§ 161.21).

(2) Owners of lots within nonresidential subdivisions which obtained preliminary or final approval as nonresidential subdivisions prior to June 28, 1994, and not included in the specifically exempted properties may apply for an exemption to the Fayetteville Zoning and Development Administrator. The Zoning and Development Administrator shall respond to the application in writing within 10 working days of the receipt of the application.

(3) Completed development upon property subject to such exemption not in compliance with the standards set forth in Ordinance No. 3806 (§ 161.21) shall be considered pre-existing conforming structures.

(4) Nothing contained herein shall limit or prohibit property owners from utilizing the variance provisions contained in Ordinance No. 3806 (§ 161.21).

(Code 1991, §160.048; Ord. No. 3821, §1, 3-5-8-9-94; Ord. No. 38-06, 6-28-94; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4128, §1, 12-15-98; Ord. 4725, 7-19-05; Ord. 4784, 10-18-05; Ord. 5312, 4-20-10)

Cross reference(s) Appeals, Ch. 155; Variances, Ch. 156.

## CHAPTER 164: SUPPLEMENTARY ZONING REGULATIONS

### 164.09 Fences, Walls, And Vegetation

- (A) Subject to the provisions of §166.12, fences, walls, and vegetation may be permitted in any required building setback or any required setback area, or along the edge of any setback, provided the fence, wall, or vegetation does not materially impede vision, as determined by the Zoning and Development Administrator, between vehicular or pedestrian traffic. In any required setback or any required setback area, nothing permanent over 2½ feet (30 inches) high may be installed which materially impedes vision between vehicular or pedestrian traffic.
- (B) *Fences.* Fences may be permitted for screening, security or for aesthetic purposes. The following types, height, and location of fences shall be prohibited for developments that are subject to the regulations within this chapter:
- (a) *Razor and/or barbed wire.* Razor and/or barbed wire fences are prohibited if visible from the street right-of-way or a residence, unless and except barbed wire fences that are used for agricultural purposes.
  - (b) *Chain link.* Chain link fence is prohibited if closer to the street than the front of the building. Single family residential uses outside the Downtown Design Overlay District are exempt from this requirement.
  - (c) *Height of fences in front of buildings.* Fences located in front of the principal façade of a building ~~primary structure~~ may be solid up to 30 inches in height. Any part of a fence which exceeds 30 inches in height shall not obstruct the view of the principal façade from the right-of-way.

(Code 1965, App. A., Art. 8(2); Ord. No. 1747, 6-29-70; Ord. No. 2380, 9-20-77; Code 1991, §160.111; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 5271, 9-1-09)

## CHAPTER 166: DEVELOPMENT

### 166.14 25 Commercial, Office and Mixed Use Design And Development Standards

#### (A) Purposes.

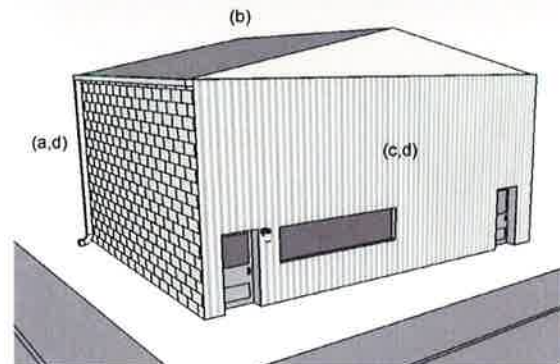
- (1) To protect and enhance Fayetteville's appearance, identity, and natural and economic vitality.
- (2) To address environmental concerns which include, but are not limited to, soil erosion, vegetation preservation, and drainage.
- (3) To protect and preserve the scenic resources distributed throughout the city which have contributed greatly to its economic development, by attracting tourists, permanent part-time residents, new industries, and cultural facilities.
- (4) To preserve the quality of life and integrate the different zones and uses in a compatible manner.
- (5) To address the issues of traffic, safety, and crime prevention.
- (6) To preserve property values of surrounding property.
- (7) To provide good civic design and arrangement.

(B) **Applicability.** These design and development standards apply to commercial developments, office developments, those parts of a Planned Zoning District or other mixed use developments with commercial and office elements and to industrial developments within the I-540 Overlay District.

(C) **Building Exterior Appearance and Design Standards.** The following exterior development standards and design element guidelines shall be followed:

- (1) The elements to avoid or minimize include:
  - (a) Unpainted concrete precision block walls;
  - (b) Square "boxlike" structures;
  - (c) Metal siding which dominates the main principal facade;
  - (d) Large blank, unarticulated wall surfaces;
  - (e) Large out of scale signs with flashy colors.

#### Elements to Avoid



- (2) A commercial development which contains more than one building should incorporate a recurring, unifying, and identifiable theme for the entire development site, without replicating the building multiple times.
- (3) A development should provide compatibility and transition between adjoining developments.
- (4) All structures shall be architecturally designed to have front facades facing all adjacent street and highway rights-of-way, and shall include at least one prominent entry-way on the principal façade(s).
- (5) All buildings should be constructed of wood, masonry, or other similar durable material.

#### (D) Site Development and Design Standards.

- (1) **Site coverage.** A maximum of 80% of the development site may be covered by the ground floor of any structure, parking lots, sidewalks, and private streets and drives or any other impermeable surface. Zoning districts C-3, DC, MSC, and DG, and the I-540 Design Overlay District Properties located within the Downtown Master Plan boundary are exempt from this requirement.
- (2) **Driveways.** Shared drives and cross access between properties shall be encouraged to adjacent developed and undeveloped properties.
- (3) **Setback reduction.** Required building setbacks may be reduced in accordance with the following table where no off-street parking is provided in the remaining front setback. One-way drive aisles may be permitted within the setback.



C-1, C-2, and I-1 zones	From 50 feet to 25 feet
R-O zone	From 30 feet to 25 feet
I-2 zone	From 100 feet to 50 feet

~~(4) Maintenance of vegetation.~~ Vegetation required under the provisions of this section shall be continuously maintained to conform to the requirements of this section.

~~(3) Fences.~~ The following types, height, and location of fences shall be prohibited:

~~(a) Razor and/or barbed wire.~~ Razor and/or barbed wire fences are prohibited if visible from the street right-of-way or a residence, unless and except barbed wire fences that are used for agricultural purposes.

~~(b) Chain link.~~ Chain link fence is prohibited if closer to the street than the front of the building. Residential uses are exempt from this requirement.

~~(c) Height of fences in front buildings.~~ Fences located in front of the primary structure may be solid up to 30 inches in height. Any part of a fence which exceeds 30 inches in height shall not obstruct the view of the primary structure from the right-of-way.

(3) Mechanical and utility equipment and trash enclosures refuse containers shall be screened if visible from the highway/street right-of-way or from residential property as set forth below:

(a) Mechanical and utility equipment.

(i) All mechanical and utility equipment located on the wall and/or on the ground shall be screened with vegetation, by incorporating screening into the structure, or by utilizing paint schemes that complement the building and screen the equipment.

(ii) All roof mounted utilities and mechanical equipment shall be screened by incorporating screening into the principal structure utilizing materials and colors compatible with the supporting building. Mechanical and utility equipment over 30 inches in height shall meet building setbacks.

(b) Trash enclosures Refuse containers. Trash enclosures Refuse containers shall be screened with materials that are

compatible with and complementary to the principal structure, with access to the refuse containers not visible from the street. Containers may be screened from view by the principal structure; by a permanent walled or fenced enclosure; or with appropriate vegetation, planted at a density and size sufficient to be view obscuring immediately from the date of planting; so long as the screening is maintained and loose trash does not litter the ground or become an environmental nuisance.

(4) Outdoor storage of material and equipment shall be screened if visible from the highway/street right-of-way or from residential property as set forth below:

(a) At the expense of the owner or lessee of the property, and in all zones, the following uses shall be completely surrounded by a view obscuring fence or by view obscuring vegetation, or a combination of the two, of sufficient height to prevent the view of the premises from vehicular and pedestrian traffic on adjacent streets: outdoor storage yards, including but not limited to, auto salvage yards, scrap metal yards, used furniture yard and garbage dumps.

(b) Where vegetation is used to meet the requirements of this subsection, the vegetation shall be planted at a density sufficient to become view obscuring within two years from the date of planting. If vegetation planted under this subsection does not become view-obscuring within two years, a view-obscuring fence shall be installed.

(c) Exceptions: The outdoor display of materials or equipment solely for sale or lease, such as automobiles, seasonal garden supplies, etc. shall not be required to be screened as set forth in subsection (a) above.

(5) Non-residential uses adjacent to residential zones-uses. The Planning Commission or Planning Division may require non-residential uses, including parking lots associated with said uses, to be screened from adjacent residential uses, as set forth below:

(a) A buffer strip, fence, or screen wall that is required shall be constructed and maintained on the zoning lot containing or proposed to contain such use, in

accordance with provisions of this chapter.

- (b) ~~Landscaped area Buffer Strip.~~ The purpose of the buffer strip is to provide separation and enclosure of uses. The landscaped buffer strip shall consist of a strip of land at least 42.8 feet wide ~~which shall be~~ adequately landscaped with approval of the Urban Forester, entirely on the zoning lot which is required to provide the buffer strip, and so located as to serve as an effective buffer between the use required to provide the buffer strip and other property for whose protection the buffer strip is required. The buffer strip ~~should~~ **shall** extend along the full length of the boundary separating the zoning lot from such other property, or from the street, as the case may be.
- (c) *Fence required.* The purpose of the fence ~~shall be~~ is to enclose uses. Required fences shall ~~of a wood or chain link type (barbed wire not permitted)~~ not be less than six (6) feet high, constructed of good, substantial material, of first-class workmanship, and so erected as to resist wind pressure, ensure public safety, and present a neat, attractive uniform appearance.
- (d) *Screen required.* The purpose of the screen ~~shall be~~ is to conceal uses. Screening shall mean a view obscuring fence, view obscuring berm, view obscuring architectural treatment, or view obscuring vegetation, or combination thereof, of sufficient height to prevent the view of the screened items from vehicular and pedestrian traffic on adjacent streets, and from residential property. Vegetation shall be planted at a density sufficient to become view obscuring within two years from the date of planting.
- (6) *Mini-storage.* At the expense of the owner of the property, all storage units and storage yards for mini-storage created under Use Unit 38 shall be required to be screened by view obscuring vegetation when the storage yards or the storage units have common property lines with any residential use or zone and when they have frontage on any public street. Vegetation used for screening purposes shall be planted at a density sufficient to become view obscuring within two years from the date of planting and it shall be the responsibility of the property owner to maintain the screening throughout

the life of the use of the property as mini-storage.

(E) *Design review.*

- (1) *Submittals.* The following drawings, information, and plans shall be submitted to the Planning Commission or Planning Division for design review and approval with ~~large scale development the associated development application, when applicable; or, submitted to the Planning Division for design review and approval with, or prior to, building permit applications for non-large scale development.~~
- (a) *Elevations.* Color rendered elevation drawings of all building facades ~~showing adjoining context~~ and a description of external building materials. Labels and dimensions, where applicable, shall accompany changes in texture, plane, material or color.
- (b) *Materials sample.* A sample of exterior materials to be used for the proposed structure that indicates texture, color and type of materials.
- (c) *Landscaping.* Proposed landscaping to be used as screening shall be shown on the tree preservation plan and landscape plan.
- (2) *Build out.* Upon approval of a ~~large scale~~ development, or issuance of a building permit, build-out of the project shall conform to the drawings, information, and plans approved.
- (a) *Amendments.* Amendments to the drawings, information, and plans shall be submitted to the planning division. Amendments which are determined to be insignificant or minor may be approved by the Planning Division. Significant amendment shall be approved by the Planning Commission when approval was given through the large scale development process, or by the planning division when approval was given through the building permit process.
- (b) *Review.* Amendments shall be considered using the same standards as the initial design approval.
- (c) *Noncompliance.* Failure to build-out the project according to the approved drawings, information, and plans, or approved amendments thereto, shall

render the large scale development approval, or the building permit approval void.

(Code 1991, §160.124; Ord. No. 4004, §1, 10-15-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 4917, 9-05-06; Ord. 4930, 10-03-06; Ord. 5028, 6-19-07; Ord. 5271, 9-1-09)

(F) *Variances. (See Chapter 156.)*

**Cross reference(s)--Specific Districts**  
§161.13

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## CHAPTER 174: SIGNS

### 174.08 Prohibited Signs

- (A) *Spot lights and beacons.* It shall be unlawful for any person to continue in operation or erect any attraction device or sign which contains a beacon of any type and/or contains a spot light providing direct illumination to the public.
- (B) *Fluctuating illumination.* It shall be unlawful for any person to erect additional attraction devices or signs or to continue in operation an attraction device or sign which flashes, blinks, or is animated. Illumination of attraction devices or signs located in the city that fluctuates in light intensity shall be prohibited. Electronic message boards using flashing, intermittent or moving light or lights are prohibited, provided, however, that electronic message boards displaying only time and/or temperature for periods of not less than 30 seconds are permitted. Electronic message boards may change their message every three hours without violating the prohibition of flashing or blinking.
- (C) *Portable swinger or temporary attraction sign boards.* It shall be unlawful for any person to continue to display or erect any portable swinger, "A" frame, sandwich, or temporary attraction sign board in the city, except under the following conditions:
- (1) One (1) freestanding, "A" frame sandwich / menu board for a single permitted eating establishment may be permitted on a commercially zoned lot or on the adjacent public or private sidewalk in front of the respective business for the duration of the business' hours of operation. The temporary sign shall be removed and placed inside after business hours.
  - (2) The sign shall be placed such that the sidewalk remains ADA compliant, and for signs located on the public sidewalk there shall be a minimum of five feet of the total sidewalk width free and clear, to provide adequate and unobstructed pedestrian movement.
  - (3) The permitted sign shall only advertise for the adjacent eating establishment, and is to be utilized for display of menu items or advertised specials. The sign may not be utilized for product placement or to advertise for other commercial or business establishments.
  - (4) The size of the sign shall be limited to 36" tall by 24" wide.
- (5) No sign may be displayed or erected that swings, rotates, flashes, fluctuates, or is illuminated, or in any other manner that would violate the provisions of §174.08.
- (D) *Revolving, rotating, or moving signs.* It shall be unlawful for any person to erect or to continue using any sign on the exterior of which revolves, rotates or otherwise moves, in whole or part.
- (E) *Windblown signs.* It shall be unlawful for any person to display any windblown sign; provided, windblown signs may be displayed on a lot, at a shopping center, or at a mall one time per year for a period not to exceed 72 hours if a temporary sign permit is first obtained from the Planning Division upon payment of the appropriate fee; provided further, one company flag shall be permitted to be flown in conjunction with the United States Flag or Arkansas Flag or both on a lot, at a shopping center, or mall.
- (F) *Signs that constitute a traffic hazard.* No sign or other advertising structure as regulated by this chapter shall be erected at the intersection of any street in such a manner as to obstruct free and clear vision; or at any location where, by reason of the wording, position, shape, or color, it may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal or device.
- (G) *Use of vehicle as sign.* It shall be unlawful to use a vehicle or a trailer as a sign in circumvention of this chapter.
- (H) *Off-Site Signs.* It shall be unlawful to erect any off-site sign.
- (I) *Roof Signs.* Roof signs shall not be permitted.
- (J) *Placing signs on private property.* No signs shall be placed on any private property without the consent of the owner thereof.
- (K) *Placing signs on trees.* No signs shall be placed or painted on any tree within the city's right-of-way or property.
- (L) *Placing signs on utility poles.* No signs shall be placed on any utility pole except for utility identification or similar purposes.
- (M) ***I-540 Overlay District.* It shall be unlawful to erect any pole sign within the I-540 Overlay District. The only permitted free standing sign in the I-540 Overlay District shall be monument signs.**

### 174.09 Sign Illumination

- (A) Direct illumination by incandescent light bulbs shall be restricted to light bulbs rated at 150 watts or less.
- (B) Only indirect illumination may be used for illumination of all signs within the I-540 Overlay District boundary.

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