

City of Ann Arbor

*301 E. Huron St.
Ann Arbor, MI 48104
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Formal Minutes - Final

Tuesday, December 7, 2010

7:00 PM

G. C. Larcom, Jr. Municipal Bldg. 2nd Flr.

City Planning Commission

10-1272 Amendments to Chapter 62 (Landscaping and Screening) regarding plant materials, screening and bioretention - Planning Commission
Recommendation: approval (8 yeas; 0 nays)

Jeff Kahan presented the staff report and explained the proposed text amendments to Chapter 62 Landscaping and Screening Ordinance.

Jerry Hancock, Floodplain Manager for the City, gave a presentation on the ordinance revisions to Chapter 62 (Landscaping).

Noting no public speakers, Mahler declared the Public Hearing closed at 7:48 PM.

*Public Hearing and Action on Amendments to Landscape Ordinance.
The proposed amendments will prohibit the use of non-native invasive plants, encourage the use of native plants, provide design flexibility and modify how the conflicting land use buffer is applied. Other proposed amendments include requiring portions of interior landscape islands to be depressed and utilized as bio-retention to improve water quality -
Staff Recommendation: Approval.*

COMMISSION DISCUSSION:

Derezinski asked staff if the City Attorney had reviewed the ordinance revisions, noting that in situations without grandfather clauses, it could constitute a 'taking'.

Hancock responded that the City Attorney had looked at parts of the ordinance and hadn't brought any 'red flags' to their attention yet. He noted that before the ordinance is brought to City Council for their action, the proposed ordinance would receive a full review by the City Attorney's office.

Derezinski recommended that staff might want to pursue that review now.

Pratt commented that he understood the proposal would affect those who wanted to make changes to their site, noting that they would have to come before the City Planning Commission for review.

Hancock answered that was correct. He explained that the Landscape Ordinance is triggered by Site Plan petitions; otherwise it is not required.

Pratt asked if a change in use to a property would require the application of the Landscape Ordinance.

Hancock responded, no, unless there were site improvements proposed.

Carlberg congratulated staff for incorporating bio-retention areas into parking lots. She questioned Hancock why carports were, [under the definition section; Item 4] defined differently than garages.

Hancock stated that the City had seen some instances in the student areas where roofs had been installed over open parking lot areas, and through the proposed definitions were attempting to close existing loopholes in the ordinance.

Carlberg asked whether Section 5:603 D) The portion of a parcel zoned R3 or R4 adjacent to a parcel zoned R1, R2 or a public park would require a conflicting land use buffer.

Hancock responded that staff had added that requirement at the recommendation of the Ordinance Revisions Committee.

Kahan stated that in going through the Area, Height, and Placement Ordinance amendment process, staff heard concerns brought up in public meetings regarding elevating height of multi-family uses and

developments adjoining residential neighborhoods. He said staff was asked to see if there were ways to mitigate those visual impacts through a land use buffer. He explained that the conflicting land use buffer already sits within the setback buffer, so we wouldn't be asking for additional setbacks, but rather, additional vegetation. He noted bringing in additional vegetation would be beneficial not only to the new development but to the existing residential neighborhood that abuts these developments.

Carlberg noted that she felt it was an extensive requirement for developers; that of a continuous vegetation along a large development which would be a lot of landscaping and could be difficult to include into projects.

Kahan responded that for large sites they are seeing these buffers being staged in phases as a project is built.

Carlberg said that the proposed ordinance called for a screening of a continuous hedge at least 4 feet high which would require a large number of plantings on a site.

Kahan explained that currently staff is seeing developers plant turf in these areas and the turf doesn't bring with it floristic qualities. He said providing other landscape materials would be ecologically beneficial. He stated that landscaping materials in relationship to the total site development costs are relatively small, so adding additional vegetation when landscape crews are already on site wouldn't be so onerous as to discourage new residential development.

Carlberg stated that she liked the language in the Lighting Section regarding light glaring onto adjacent properties; however, noted that this has been impossible to enforce previously because of the light fixture itself giving off the glare.

Hancock responded that they are not proposing to change the existing regulations for lighting. He said that currently the lighting requirements are in three different ordinances and staff is looking to eventually pull them together into one comprehensive ordinance, but that would be a separate effort.

Carlberg commented that the proposed ordinance amendments are wonderful for new developments, yet there doesn't seem to be an incentive for redevelopment of existing sites since the requirements seem so extensive. She asked if staff had considered other steps that might be taken to make redevelopment of a site easier and less expensive for the developer while still getting us to where we want to go,

since our goal is to make it easier for redevelopment instead of making it harder.

Hancock explained that with the proposed amendments there would not be any additional requirements for increased landscaping material, with the exception of the one item as previously discussed, the conflicting land use buffer. He stated that the goal is not to require increased landscape requirement but to make the ordinance more flexible while requiring more qualitative measures instead of quantitative.

Westphal inquired if the bioretention island is more expensive to construct than what is currently required.

Hancock responded, yes, he believed so. He said that currently there is usually a mound of dirt planted with grass and a tree, making it less hospitable for plantings, while with the new proposals they would need to amend the soil in order to manage the required plantings.

Westphal asked if there would be grass planted in the depressed swale areas and where the overflow of stormwater would go.

Hancock answered that there could be trees planted in those area as well. He noted that the overflow from bioretentive systems would be directed to the storm system as they are built with an overflow structure. He said that there wouldn't be a need to install additional stormwater systems on sites.

Rampson asked Hancock to explain if and how the bioretention areas could be counted toward the stormwater requirements in terms of the cost of installation, which would offset the costs of building storm water facilities off site.

Hancock explained yes, and that the amendments would not increase the costs of providing the volume that one is currently required to provide for stormwater.

Westphal asked if one could install a smaller retention facility if they had the bioretention systems.

Hancock said, yes, and it would save them particularly if they were doing underground retention.

Briggs asked if a variance could be granted if it is deemed that these requirements aren't necessary for a project.

Kahan responded, yes, the Zoning Board of Appeals can grant a

variance from the requirements of Chapter 62 Landscape and Screening.

Hancock explained that there are two mechanisms that are available, one being the variance process and the other being the option of using the Modifications Section 5:608, of the Ordinance which would be reviewed by the City Planning Commission. He noted that variances go with the parcels, whereas landscaping modifications with the developments.

Woods asked if the systems are bioretentive or biodetentive.

Hancock answered that they are bioretentive since they are intended to infiltrate the water into the ground and not run off.

Woods asked if these systems are already in use in Ann Arbor.

Hancock referred to the Mallett's Creek Library, which has had this system in place for 6-7 years.

Woods inquired if there have been any problems with visibility of the bioretention systems.

Hancock noted that there is usually vegetation that is visible above the grass on the sites, and he explained that they are not proposing to eliminate the curbing or bumper requirement between the parking spaces and the landscaping on a site.

Woods asked about the ordinance intend in regards to snow piling.

Hancock responded that the intent is for the developer to indicate on their plans where the snow piles would be located to signify they wouldn't be using parking spaces or damage the landscaping.

Woods said she thought it was a great idea and asked how it would be enforced.

Hancock said that while there is no enforcement mechanism incorporated in the ordinance, they would like for these requirements to be a part of the thought in the design process when developing the site plan.

Kahan explained that when site plans are submitted they are reviewed by City staff for adherence with Chapter 62 and would therefore be the responsibility of the staff person reviewing the plans to inquire of the developer how snow piling would be managed.

Hancock noted that in Chapter 57 there is a requirement that the property owner has to maintain compliance with the site plan.

Woods asked if the Police Department would be the ones to enforce the ordinance.

Kahan responded that it would be the Planning or Building staff rather than the Police Department who would regulate Chapter 62. He explained that staff would document the issue and work with the property owner in an attempt to remedy the situation before ticketing them.

Pratt asked if the City has conducted research of salt tolerant native species and would be able to assist the applicant with choices.

Hancock responded that the Natural Area Preservation Unit (NAP) has a helpful guide that is available. He also noted that the City has installed test rain gardens in areas that get a high percentage of salt, which have given the City valuable information and led them to be able to recommend these types of alternatives.

Pratt asked if there would be a way to build in flexibility into Section 5:603 D) regarding required buffering when next to an adjacent park. He referenced the Elks Lodge, a residential project that had come before them that was adjacent to Bluffs Park. He asked if we would feel comfortable requiring such an applicant to plant a landscape buffer right next to the existing woods or if there could be an option such as a payment in lieu of, or allowing the Parks Department make a recommendation to the City Planning Commission on what the contribution should be.

Hancock stated that such conversations had come up, but they had been comfortable falling back on the flexibility section of the ordinance when dealing with unique situations, noting that in unique situations, the Planning Commission can deviate from the ordinance and modify the requirement.

Pratt asked if the Commission could waive requirements for unique situations.

Hancock stated yes.

Pratt stated that in Section below 5:603 D) where it outlined the conflicting land use buffer, he wondered if there would be a way to tweak the averaging of that buffer strip since people might not mind a 15 foot

buffer towards the rear of the property but if it was up front it might not be so desirable. He pointed out that since where there are adjacent buildings on a site with a narrow buffer, that's usually where one wants buffering.

Hancock observed that the ordinance doesn't take into account what is on the adjacent property, whether there is a building right up to the property line or nothing at all.

Giannola commented on Section 5:603 D) Conflicting Land Use Buffers, saying that she didn't understand the reasoning why there needs to be a buffer between townhouse or apartment property and parks. She said that the R1 and R2 sections don't require it and it wouldn't seem to be needed.

Hancock explained that this would apply if there were an apartment complex proposed next to a park; the complex would be required to install a 15 foot landscape buffer on their property.

Giannola noted that she currently lives in an R4 district in a townhouse which abuts a golf course and she would be upset if there would be a landscape buffer between them since it's an enjoyment to view the golf course.

Kahan answered that Planning staff were most interested in multi-family residential uses located next to single-family residential uses, rather than with residential uses next to parkland.

Rampson stated that she believes the thought of park buffering might go back to the early 70's when the idea was that buildings and parks couldn't coexist next to each other harmoniously.

Hancock added that the new addition to the ordinance is the multi-family residential uses.

Pratt asked if we really want to put a barrier between residential areas and parks.

Bona commented that she supported the amendment and was glad to see the addition of buffering between districts, which she felt was more important than buffering between adjacent neighbors. She said that the issue of buffering between multi-family buildings and their neighbors had been brought up often at the Planning Commission meetings. She said the ordinance amendments didn't address buffering between R4 and R4 since some of the R4 properties have single family homes on them and then they might get a larger building next to them on another R4 lot. She

also noted that she was in support of park buffering.

Bona stated that her interpretation on most of the current buffers is that they aren't very solid and often too sparse. While she liked keeping eyes on the parks, she noted that the buffers aren't that solid. She said that she too had struggled with wanting the flexibility in the ordinance and felt that the 8 foot width of landscape buffer was reasonable. She thanked Hancock for his work on the ordinance and particular his work on incorporating the parking lot islands.

Pratt said he agreed with Bona and noted that he would be more comfortable with the language in Section 5:603 D) (3) if it indicated that residential developments, when they were adjacent to a park, would not be allowed to put up a fence or a wall. He asked if it would make sense to tweak the language or allow the Planning Commission to decide on a case by case basis.

Hancock referenced Section 5:608 Modifications (2) pointing out the eight situations when the Planning Commission could allow deviation from the code requirement.

Rampson asked for clarification, noting that the ordinance didn't allow for reduction in materials in a modification but a reconfiguration.

Hancock replied that he believed it was possible to reduce the requirement but the idea was to still maintain the intent of the ordinance, noting that an applicant could reduce the materials if they could come up with a method to meet the adequately screening requirements.

Rampson noted that Section 5:608 Modifications didn't address the issue if the Planning Commission were to decide that an applicant should not have to provide a buffer at all.

Carlberg stated that it would be appropriate to add language to Section 5:608 Modifications (1) that would allow taking into consideration existing vegetation on adjacent properties where it meets the intent of the ordinance.

Hancock responded that the intent of the ordinance wasn't to take into consideration what was on adjacent properties.

Pratt reiterated the example with Elks Lodge that was next to the woods and it wouldn't make sense to require them to plant trees and a hedge next to existing woods and a park. He felt that it would seem unnecessary to require additional landscaping if it already existed as a buffer.

Carlberg said that language could be added in order to give more flexibility to the ordinance, while still keeping the intent of the ordinance.

Pratt expressed that the only time they would want to allow such stipulation was if the adjacent property was public land, since private parcels could always be developed in the future.

Carlberg felt that there might be instances where the parcels are already well established.

Briggs stated that she agreed with Giannola in that she would like to see additional flexibility built into the ordinance that would, at times, allow diversion from the buffering requirements if buffering wasn't necessary.

Woods referenced Section 5:600 the Intent and Application of the Chapter, noting that it was important to look at what was on neighboring property and not require applicants the expenditure to plant additional vegetation if it was already in existence.

Carlberg stated that she believes the legal department has informed the Commission that the intent of an ordinance doesn't have as much weight in a dispute as actual language in the body of the ordinance would. She said it would be good to add specific language under the modification section of the ordinance as well.

Hancock said he was hesitant to incorporate vegetation on adjacent properties, except for instances with City park land, since it wouldn't be equitable, noting that a developer could put a buffer in and then the neighbor develops but says they shouldn't have plant a buffer since their neighbor has already planted one.

Woods noted that the modification section refers back to the intent of the ordinance and she felt that there should be a way to incorporate the fairness issue as well as the intent.

Pratt clarified that he would be comfortable with the language if it incorporated the flexibility of allow the Planning Commission more discretion when projects were next to public property. He saw perceivable obstacles in the future with the averaging issue. He thought it might be a good idea to table the issue until all suggestions were brought forth.

Westphal stated he would be comfortable leaving some of the discretion up to staff when it came to making sure the petitioner was looking at context and taking into account neighboring structures. He mentioned

that he believed that NAP had a working definition of what a natural area was, and if that was the working mode for skipping a buffer, that established definition could be used. Westphal agreed with lessening the obligations next to a natural area.

Mahler asked if the Commission were ready to provide suggestions on text amendments tonight or if they would need more time to review the ordinance.

Giannola asked for feedback from the Commission, noting that she would like more time to allow looking into the flexibility of the land use buffer next to a park or for the language to be removed from the ordinance, which would give the Planning Commission the flexibility to decide on a case by case basis.

Bona stated that she would prefer not to be so specific in the language of where and how and instead offer the Planning Commission the flexibility regarding the nature, relative to a fence or screening. She said she remembers the Commission reducing a landscape requirement for a nursing home on Huronview since it was next to Bluffs Park. She noted that she would like to see the flexibility without a guarantee that the Commission would be forced to give an exemption to a petitioner.

Carlberg asked if staff could add another clause to the Modification Section, under both (1) and (2) to make sure the flexibility is there. She also noted that Commissioner Woods had suggested adding preserving existing vegetation under the Intent Section.

Pratt stated that he wasn't comfortable with coming up with wording for the ordinance this evening.

Westphal added that he would like to see some research done and for staff to add some exception wording in the motion itself when drafted by staff, that might outline, ... subject to reduction of landscape screening... and specify in one sentence.

Kahan asked if it would be helpful for Hancock or Kerry Gray to summarize the ideas and suggestions brought forth at this evening's meeting.

Mahler said he would like to make sure that the suggestions were captured fully and the ideas come back having addressed the Commission's concerns.

Pratt commented that he didn't want to come up with language that would add burdensome time for staff who review the site plans.

Rampson noted that the Commission wanted language that would allow them to determine, on a case by case basis, the reduction of a landscape buffer when it didn't make sense; however, they didn't want to give the petitioner the impression if they don't want to provide the landscape screening, the option is open-ended.

Mahler commented that he would like to strike the Non-conforming section altogether from the ordinance, which gives a subjective element to the case-by-case review. He noted that without replacing the language that would be struck, it would be helpful if staff could look into some form of guidance for the Commission with which the Commission can point to specifics on non-conforming sites noting whether they meet or fail to meet specific standards.

Mahler stated that he didn't want the Commission to find themselves one week reviewing a non-conforming use property and approving it and the next week reviewing another non-conforming site and finding it less desirable and turning them down, which would put the Commission in a precarious position.

Pratt said it would be helpful if there were levels, similar to measuring impervious surfaces, that could be used as standards.

Mahler said that a step analysis where petitions would be measured using two or three various criteria.

Giannola clarified that when she was referring to an example with a 2-story townhouse complex next to a park, the issue wasn't a height issue. She felt it should be treated the same as a 2-story single-family house, but the issue was the category. She stated that unless there is a height specification added, there isn't a difference and doesn't make sense to put an additional hedge next to the woods.

Rampson asked if there was a direction that the Ordinance Revisions Committee should review options before coming back to the Planning Commission.

The Commissioners agreed it should go to the Ordinance Revisions Committee first.

Derezinski stated that it should be noted that Hancock had done a great job on the proposed ordinance efforts.

Moved by Carlberg, seconded by Derezinski, to postpone action on the amendments to Chapter 62 to allow staff time to bring the Commission different options to address their concerns. A vote on the motion to postpone showed:

Yeas: 9 - Bonnie Bona, Evan Pratt, Eric A. Mahler, Jean Carlberg, Wendy Woods, Tony Derezinski, Erica Briggs, Kirk Westphal, and Diane Giannola

Nays: 0

10 AUDIENCE PARTICIPATION (Persons may speak for three minutes on any item.)

None

11 COMMISSION PROPOSED BUSINESS

Derezinski noted that there was a very appropriate article on Sustainability in the Planning Commission Journal.

12 ADJOURNMENT

**Motion by Pratt, Seconded by Briggs to adjourn meeting at 8:54 PM.
On a voice vote, the motion passed unanimously.**

Eric Mahler, Chair
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