

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of March 1, 2011

SUBJECT: Text Amendment to Chapter 62 (Landscaping and Screening Ordinance)

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the text amendments to Chapter 62 (Landscaping and Screening Ordinance) pertaining to conflicting land use buffers, interior landscape islands, bioretention, and non-native invasive vegetation.

STAFF RECOMMENDATION

Staff recommends this proposed text amendments be **approved** to improve water quality, prohibit the use of non-native invasive species, and to provide greater flexibility on how the conflicting land use buffer is applied.

STAFF REPORT

At its December 7, 2010 meeting, the Planning Commission postponed action on the proposed amendments to Chapter 62 to give staff an opportunity to address Commission comments.

Staff met with the Ordinance Revisions Committee on January 24, 2011 to discuss the issues that arose at the December 7 meeting and to determine ways to resolve them. Most of the comments pertained to the proposed Conflicting Land Use Buffer (CLUB) amendments. Other comments referred to the Modifications and Nonconforming Sites sections.

Below is a brief summary of how staff proposes to address the issues. A more comprehensive summary is attached to this staff report.

- **Concern expressed about requiring a CLUB when new residential development is proposed next to parkland.** Staff added language in Section 5:608(1)(d) indicating that the 4 foot high screen may be reduced.
- **Concern expressed about providing flexibility of the CLUB at the narrowest point where screening may be most necessary.** Staff changed the flexibility of the CLUB to only apply to existing (developed) sites that are being redeveloped; new development will need to adhere to the full requirements.
- **Concern expressed about requiring a CLUB between R3 and R4 zoning districts and parkland.** Staff removed the CLUB requirement between R3 and R4 and parkland.
- **Question asked about whether the requirement of a wall or fence adjacent to a park can be removed.** Staff proposes to remove this requirement when a park is adjacent to parcels zoned or primarily used for residential.
- **Planning Commission would like flexibility in applying the CLUB requirement.** This flexibility already exists in Section (5:608) Modifications, and a new section has

been added to clarify: Section (5:608(1)(d).

- **Concern expressed about striking nonconforming site clause.** The nonconforming site clause has not been removed from code, but moved to Section 5:608(2)(c)(vii), Modifications.

Prepared by Jeff Kahan
Reviewed by Wendy Rampson
jk/2/15/11

Attachments: Planning Commission Comments – Items to be Addressed
 January 28, 2011 Revised Draft Chapter 62 Amendments
 December 7, 2010 Staff Report

c: City Attorney
 Systems Planning

Planning Commission Comments
December 7, 2010
Chapter 62
Items to be Addressed

***Updated changes to the Ordinance based on the Planning Commission comments are in [blue](#) in the ordinance.**

5:603 Conflicting Land Use Buffer

- CLUB adjacent to public park- is there an in lieu of option if we don't want them planting a buffer next to a park. Ex: Elks Lodge and Bluffs Park.
 - **Added section to 5:608(1)(d) to address.**
- Averaging CLUB- is there any way to affect where the flexibility of the CLUB is provided- concerned that narrowest part of CLUB will be where it is needed the most?
 - **Changed the flexibility of the CLUB and landscape buffer to only apply to existing sites that are being redeveloped. New developments will have to adhere to the original buffer width requirements.**
- Why CLUB between R3 and R4 and Park?
 - **Removed the CLUB requirement between R3 & R4 and Park.**
- 5:603(3)- can wall or fence adjacent to park be removed?
 - **Section 5:603(3) has been modified to remove this requirement when a park is adjacent to parcels zoned or used primarily for residential purposes.**
 - **Section 5:608(1)(d) has been added for other zoning**
- Would like to give planning commission flexibility in applying CLUB. Planning Commission would like ability to say that when a CLUB does not make sense.
 - **This ability already exists, but a new section has been added to clarify- see section 5:608(1)(d)**
- Would like staff to come up w/ language under modifications section 5:608 1 and 2 to address existing vegetation and application of CLUB.
 - **This language exists in code in 5:606(8)**

5:608 Modifications

- Can a section be added to modifications for where existing vegetation meets screening intent of ordinance no buffer is necessary on that part of the property? For parks/public property only? Or just where R3 & R4 abuts a park?
 - **This language exists in code in 5:606(8).**

5:611 Non-conforming Clause

- Not comfortable striking non-conforming site clause. If it is struck, would like guidance from staff on when Planning Commission should approve or deny.
 - **The non-conforming site has not be removed from code but it has been moved to the Modifications Section 5:608 (2)(c)(vii).**

- **Sections 5:602(1)(a)- Vehicular Use Area Landscape and Screening - and 5:603(1)- Conflicting Land Use Buffer- a variable width buffer can be used in situations where existing buildings or vehicular use areas are located within the landscape buffer area (does not require CPC approval).**
- **Section 5:606(8) allows for existing vegetation on the property to meet requirements of the ordinance (does not require CPC approval).**

Deletions – ~~struck out~~

Additions – in color and underlined

Planning Commission/ORC comments in blue

DRAFT
January 28, 2011

CHAPTER 62. LANDSCAPE AND SCREENING

(Chapter 62 added, Ord. No. 58-69; New Chapter 62 adopted, Ord. No. 60-78, 10/16/1978; New Chapter 62 adopted, Ord. No. 53-85, 3/17/1986; Chapter 62 amended, Ord. No. 56-94, 12/19/1994; Chapter 62 amended, Ord. No. 43-04, 1/3/2005; Chapter 62 amended, Ord. No. 08-32, 10/6/2008)

5:600. Intent and Application of Chapter.

- (1) *Intent:* This chapter is intended to:
 - (a) Improve the appearance of off-street vehicular use areas, property abutting public rights-of-way, private streets, and certain shared driveways within easements, thereby reducing conditions which lead to urban blight.
 - (b) Require buffering between conflicting land uses and conflicting zoning districts.
 - (c) Promote the public health, safety and general welfare by reducing noise and air pollution, light glare, soil erosion, and thermal heating of the environment.
 - (d) ~~Promote improved stormwater quality and increase soil water retention, thereby helping to prevent flooding.~~ Reduce the negative impacts of stormwater runoff by reducing impervious surface area and retaining greater amounts of stormwater on site.
 - (e) Improve the ~~amenity~~ quality and safety of pedestrian movement within paved areas and along public rights-of-way.
 - (f) Protect and preserve the appearance, character and value of the surrounding neighborhoods and parks.
 - (g) Promote preservation of existing significant vegetation, the use of non-invasive plant species and the selection of plant species based on site conditions including soil type, light exposure, presence of utilities, and salt tolerance.
- (2) *Application:* The provisions of this chapter shall require landscaping and screening on the site in the following cases:
 - (a) Whenever a site plan is required by Chapter 57 of this Code; or
 - (b) Whenever the estimated expense of construction exceeds 50% of the appraised replacement cost of the entire building or structure, exclusive of foundation, prior to its improvement (as determined by the building official); or

- (c) Whenever a shared driveway is provided within an easement in accordance with Chapter 55 of this Code.

5:601. Definitions.

The definitions of Chapter 55, 57, 59, 63 and 104 shall apply in this chapter.

- (1) Bioretention: a stormwater infiltration system capable of retaining and infiltrating runoff from the first one half (1/2) inch of runoff during any storm event.
- (2) Native or prairie plantings: the exclusive use of plants in a landscape planting, that were present in Ann Arbor prior to European settlement in Michigan.
- (3) Structural amenity: a non-plant element in the landscape that adds to the public benefit of the proposed landscape plan (ex: outdoor art, benches, sculptural solar lighting, water features, etc).
- (4)(4) Vehicular use area: Any area of 1,200 square feet or more of a property which is not located within an enclosed structure and which is devoted to a use by or for motor vehicles, including parking (accessory or non-accessory) or storage of automobiles, trucks or other vehicles; loading areas; service areas and drives. The area within a carport is considered part of the vehicular use area. Any paved area designed to be used solely for access between the street and the vehicular use area is not considered part of the vehicular use area.
- (2)(5) Xeriscaping: A combination of landscaping features and techniques that in aggregate reduce the demand for, and consumption, of water.

5:602. Vehicular Use Area Landscaping and Screening.

Vehicular use areas shall have the following landscaping and screening:

- (1) Right-of-way screening: Vehicular use areas that are visible from a public right-of-way shall include the following between the vehicular use area and the right-of-way. This section applies to public alleys only when the public alley separates a residential use or zone from a vehicular use area.
 - (a) A landscaped buffer strip at least 10 feet in width. If there is an existing building or vehicular use area located within the required 10 foot landscape buffer strip, the landscape buffer strip may be averaged over the entire length of the required buffer area, with no specific location along the buffer being less than 5 feet in width.
 - (b) One deciduous shade or evergreen tree must be installed in the landscape buffer area for every 30 feet or fraction thereof of right-of-way (ROW) street frontage of the vehicular use area. Arrangement of trees in clusters or groupings is encouraged, but in no case shall trees be more than 50 feet apart on center.
 - (c) A hedge, dense shrub planting, landform berm, wall or combination thereof forming a continuous screen at least 30 inches in height above the vehicular use area grade, located is required in the buffer strip area to provide maximum screening of the vehicular use area. Arrangement of shrubs in clusters or groupings is encouraged. ~~Walls~~ If a wall is used, it shall be set back at least 4 feet from the property line with 4 one 30-inch high shrub provided for every 40 4

lineal feet, planted on the street side of the wall. ~~Gasoline or service stations shall employ berms or opaque walls between the vehicular use area and the public right-of-way unless the landscape buffer strip provided is 15 feet in width or greater, in which case a hedge is acceptable.~~

- (d) Gasoline or service stations shall employ berms or 30 inch high opaque walls between the vehicular use area and the public right-of-way unless the landscape buffer strip provided is 15 feet in width or greater. In which case a landform berm, hedge and/or dense planting combination at least 30 inches in total height is acceptable. If a wall is used, it shall be set back at least 4 feet from the property line with one 30-inch high shrub provided for every 4 lineal feet, planted on the street side of the wall.
- (e) The site design and planting scheme shall comply with the requirements set forth in this Chapter.
- (f) Materials used in these areas shall comply with standards set forth in this Chapter.

(2) ~~Interior landscape areas~~ Islands. Vehicular use areas greater than 3,300 square feet shall contain protected landscape areas islands located entirely within the ~~edges~~ perimeter of the vehicular use area, ~~which serve to~~ for the purpose of breaking up the expanse of pavement, ~~and they must meet the following interior landscaping requirements:~~ The following landscape island requirements must be met:

- (a) Within the interior of the vehicular use area, ~~interior-landscape areas~~ islands shall be provided at the following ratios at a minimum:

<u>Vehicular Use Area</u>	<u>Landscape Islands/Vehicular Use Area Ratio</u>
3,300-49,999 square feet	1:20 square feet
50,000-149,999 square feet	1:15 square feet
150,000 square feet & over	1:10 square feet

Multiple level parking structures are not required to have interior landscape islands but shall comply with all of the other requirements of this Chapter.

- (b) To be credited toward meeting the requirements of this section, each interior landscaped area island shall have at least 165 square feet, a minimum dimension of 8 feet in any direction, and shall include at least one (1) deciduous shade tree. Combining landscaped islands to form larger landscaped areas is encouraged.
- (c) Any landscaped area located outside the ~~edges~~ perimeter of the vehicular use area will not count toward satisfying this requirement. Landscaped areas within the corners of the vehicular use area may be counted, up to a maximum of 200 square feet for each corner, if at least one (1) deciduous shade tree is located within that area. A minimum of 50 percent of the perimeter of the landscaped corner must abut the vehicular use area to be considered an interior landscape island.
- (d) A maximum of 15 parking spaces are allowed in a parking row without a landscape island break. If landscape islands have been combined to form larger landscaped areas and are used for bioretention then 20 continuous parking spaces will be permitted.

- ~~(de)~~ The total number of trees required in the interior landscaped area island shall be calculated and provided at a rate of one (1) deciduous shade tree for each 250 square feet or fraction thereof of required interior landscaped area island.
- ~~(ef)~~ Additional credit toward required interior trees may be obtained for existing trees which measure a minimum of 8 inches in diameter at breast height (DBH) that are preserved within the vehicular use area or within 15 feet of and on the same parcel as the vehicular use area. Each 8 inches or fraction thereof of DBH of any healthy existing tree that is preserved may be deemed equivalent to one (1) required interior island tree. Up to 50% of the requirements of subsection ~~(de)~~ may be satisfied by preserving existing trees which meet the standards of this subsection. Additional credit allowed by this subsection is in addition to the credit allowed for existing vegetation used to meet the requirements of this chapter per section 5:606(7).
- ~~(g)~~ When the total required interior landscape area for all of the vehicular use areas on site exceeds 750 square feet, at least 50% of the required interior landscape area must be depressed bioretention areas and utilized for storm water management. Depressed bioretention areas can be used to meet the stormwater pretreatment requirements in Chapter 63. When the total required interior landscaped area for all of the vehicular use areas on site is less than 750 square feet, interior landscape islands in the form of depressed bioretention areas that are utilized for storm water management are encouraged.
- ~~(h)~~ Provision shall be made for snow pile storage locations such that they do not damage required plantings nor diminish required parking capacity.
- ~~(i)~~ The site design and planting scheme shall comply with the requirements set forth in this Chapter.
- ~~(j)~~ Materials used in these areas shall comply with standards set forth in this Chapter.

5:603. Conflicting Land Use Buffers.

~~A vehicular use area; or an office, commercial, or industrial use; or a refuse dumpster which is adjacent to a public park facility or land principally used or zoned for residential purposes shall have a conflicting land use buffer between this use and the park or residential land.~~

A conflicting land use buffer shall be provided under the following conditions:

- A) A vehicular use area adjacent to a public park or land principally used or zoned for residential purposes.
- B) A refuse/recycling container adjacent to a public park or land principally used or zoned for residential purposes.
- C) The portion of a parcel zoned O, RE, ORL, C, or M abutting a public park or parcel principally used or zoned for residential purposes.
- D) The portion of a parcel zoned R3 or R4 adjacent to a parcel principally used or zoned for residential purposes ~~R1, R2 or a public park.~~

The conflicting land use buffer shall consist of the following:

- (1) A landscape buffer strip at least 15 feet wide. If there is an existing building or vehicular use area located within the required 15 foot landscape buffer strip, the landscape buffer strip may

be averaged over the entire length of the required buffer area, with no specific location along the buffer strip being less than 8 feet in width.

- (2) One tree for each ~~20~~15 feet or fraction thereof of abutting land. At least 50% of the trees within the conflicting land use buffer shall be evergreen. Arrangement of trees in clusters or groupings is encouraged, ~~but in no case shall trees be more than 50~~ and shall be between 15 feet and 30 feet apart on center. Plantings should be placed to screen the views between buildings, that existed at the time of site plan approval, (especially windows and patio views) on the adjacent property.
- (3) A hedge, landform berm, wall, fence or combination thereof forming a continuous screen at least 4 feet high. All gasoline or service stations shall employ opaque walls as the continuous screen. For parcels principally used or zoned for residential purposes the requirement for a hedge, landform berm, wall or fence is only required to screen vehicular use areas and refuse/recycling containers that are adjacent to the conflicting land use buffer.
- (4) The site design and planting scheme shall comply with the requirements set forth in this Chapter.
- (5) Materials used in these areas shall comply with standards set forth in this Chapter.

5:603.1 Private Streets and Shared Driveway Buffers.

Private streets, and shared driveways within easements in accordance with Section 5:77 of Chapter 55 of this Code, shall comply with the following street tree and buffer requirements:

- (1) Street trees. One deciduous tree for every 30 feet or fraction thereof shall be provided along each side of a private street. Placement of trees between the edge of the curb and the sidewalk is encouraged, but in no case shall trees be more than 12 feet from the edge of the curb. A variety of species, planted in alternating order, is encouraged to ensure a tree canopy over the street and sidewalk in the event of species-specific infestation or disease.
- (2) Buffer. A buffer between a private street or shared driveway and any adjacent parcels not served by the private street or shared driveway shall be provided consisting of the following:
 - (a) A landscaped buffer strip at least 8 feet wide.
 - (b) A hedge, wall or solid fence, or combination thereof, forming a continuous screen at least 4 feet in height.

5:604. Refuse/Recycling Container Screening.

Refuse/recycling containers for other than single and 2-family uses shall be screened from view from any adjacent residential use or public right-of-way, excluding alleys. Screening shall consist of a 6-foot high opaque wall or fence. Live landscape material located so it does not interfere with the function of the refuse container is encouraged in addition to the opaque screen.

5:605. Lighting.

All exterior lighting devices shall be adequately shielded and screened so that no light will glare directly onto any public right-of-way or property principally used for residential purposes. Lighting devices shall be arranged and kept at a level so that the amount of light projected onto property principally used for residential purposes does not exceed ~~4~~ one tenth of a foot candle.

5:606. Materials and Design Standards.

Materials used to comply with this Chapter shall meet the following standards:

- (1) (a) Artificial plants or trees shall not be used
(b) Any plant listed on the City of Ann Arbor Invasive Species List may not be used to meet the requirement of this Chapter.
(c) If more than 20 trees will be used, a mixture of three (3) or more tree species must be used.
(d) If more than 40 shrubs will be used, a mixture of three (3) or more shrub species must be used.
(e) When proposing or using a native or prairie planting, the selection of plant species must be diverse and similar to native plant communities present in the Ann Arbor area. The City of Ann Arbor's Natural Area Preservation Program maintains a list of plants native to the Ann Arbor area.
- (2) ~~Where p~~Plant material is used for hedging and screening at ~~least 50 percent~~ shall be evergreen and/or or deciduous shrubs which. ~~Plant materials~~ shall be a minimum of 24 inches tall and of a size, quantity and spacing to achieve 50 percent year-round opacity at the time of planting. Diversity and native species are encouraged. Plant material shall meet current ANSI American Standards for Nursery Stock.
- (3) Fences and walls, required by this chapter, shall comply with the requirements of Chapter 104 ~~and have a footing depth of at least 42 inches~~. Both sides of the fence or wall must be decoratively faced.
- (4) Landscaped areas shall be covered with ~~grass, low vegetative ground cover not to exceed 18 inches in height, or organic~~ biodegradable mulch, ornamental grasses, forbs, native prairie plants, native wetland plants, grass or other perennial herbaceous or shrub planting combinations. Stone or aggregate shall not be accepted to meet this requirement. ~~If grass or ground cover is used, it shall be planted and maintained to present a finished appearance within one growing season. If the landscaped area is wider than 10 feet, grass or low vegetative ground cover shall be used. In areas subject to erosion, erosion-reducing blankets, or suitable reinforced mulch, shall be used.~~
- (5) Deciduous shade trees shall have a mature crown spread of greater than 15 feet. ~~Permitted trees include Norway, Sugar and, Red Maples, Oak, Lindens, Ashes, London Plane, Honey Locusts, Zelkovas~~ include those on the the City of Ann Arbor's approved street tree list. Other types of trees can be used with City approval approval of the public service area administrator or designee. Due to the overpopulation of Maple species (Acer sp.) within the City, their use should be limited. Small trees such as Crabapple (*Malus sp.*), fruit trees, or Hawthorne (*Crataegus sp.*), Amelanchier, ~~or Russian Olive~~ are not permitted unless approved by the public services area administrator or designee. At planting, trees must have a minimum caliper of 2-1/2 inches at 6 inches above the root ball, a burlap ball size of at least 10 times the caliper size, and a clear stem of at least 5

feet (except within sight triangles where 8 feet is required per subsection 12). Trees must meet current ANSI American Standards for Nursery Stock.

- (6) Plants required in this Chapter shall be planted in soils suitable for the species specified, including a depth to compacted surfaces of at least 30 inches with drainage from that surface, if required. Soils must be provided with suitable pH, coarseness, fertility and slope that will give the best possible chance for the long term vitality of plantings.
- (67) Evergreen trees shall be a minimum of 7 feet in height with a minimum spread of 3 feet, and a burlap ball size of at least 10 times the caliper size. Evergreen trees must meet current ANSI American Standards for Nursery Stock.
- (78) Existing vegetation on the property may be used to meet the requirements of this Chapter if it meets the size, species and opacity requirements. This determination shall be made by the public services area administrator. Additional credit toward the interior landscaping requirement for vehicular use areas may be obtained by preserving existing trees per Section 5:602(2)(e).
- (89) Water outlets (hose bibbs) and/or rain barrels shall be provided within 150 feet of all plant material required by this Chapter if a subsurface irrigation system is not provided. Plantings may be further than 150 feet from water outlets and/or rain barrels if xeriscape plantings are used.
- (910) Berms shall have slopes no greater than one vertical foot for each 3 horizontal feet and shall have at least 2 feet of flat area on top and shall have adequate protection to prevent erosion.
- (1011) Landscaped areas in and adjacent to vehicular use areas shall be protected by concrete ~~or bituminous~~ curbing, anchored bumper blocks, or other durable materials if approved by the public services area administrator. Wood timbers which are not part of a structural retaining wall shall not be accepted to meet this requirement. Alternative barrier designs which provide improved infiltration or storage of stormwater are encouraged. Curbs separating interior landscape islands from vehicular use area may allow stormwater runoff to pass through them. Curbs may be perforated or have gaps or breaks.
- (12) When landscape islands are used for bioretention the ponding area should be at least 6 inches deep, but not more than 18 inches deep and planted with native wildflowers/forbs and grasses.
- (1112) Plant materials shall be selected and installed in accordance with standards established by the public services area.
- (1213) All landscaping or other screening material within a sight triangle shall be no greater than 30 inches tall, and all trees within a sight triangle shall have all branches trimmed to provide clear vision for a vertical height of 8 feet above the roadway surface. Evergreen trees shall not be permitted within sight triangles. The specification for sight triangles found under Sight Distance in Division II of the City of Ann Arbor Public Services Department Standard Specifications Manual shall be used to determine sight triangle areas.
- (14) Plant material should be placed to allow full access to fire hydrants and public utility systems. A 5-foot space clear of vegetation greater than 6 inches tall must be maintained around the circumference of fire hydrants, and any access point to a public utility system (i.e. water shutoff valve box, sanitary/storm sewer manhole).

5:607. Site Plans.

A detailed landscape plan shall be submitted as part of a site plan review, when such review is required by Section 5:600(2). The landscape plan shall include, but not necessarily be limited to, the following items:

- (1) The vehicular use areas clearly indicated for the purpose of determining the landscape requirements for each vehicular use area and a tabulation in chart form of each vehicular use area including the square footage of each vehicular use area, the square footage of each interior landscape area, and the number of trees proposed to meet interior and perimeter requirements.
- (2) Location and spacing of trees and shrubs proposed for use within a required landscape area in sufficient detail for a determination that the plan conforms with this Chapter.
- (3) A plant list of proposed landscape materials showing caliper sizes, root type (bare root, balled and burlapped, container size), height of material, botanical and common names, type and amount of mulch, ground cover and grasses.
- (4) Specifications for treatment of compacted soil on the entire site.
- (5) Specifications for planting media in landscaped areas.
- (46) Minimum scale of 1" = 50'.
- (57) Existing and proposed contours on-site and 10 feet beyond the site at intervals not to exceed 2 feet.
- (68) The location of light poles, refuse containers, walls, fences, protective curbing, mechanical equipment, and other hard landscaping materials.
- (79) Identification of location, species, and size of existing trees and vegetation to be preserved.
- (810) Irrigation plan, if appropriate, or water outlets (hose bibbs).
- (911) Planting and staking details to ensure proper installation and establishment of proposed plant materials in accordance with standards established by the public services area.
- (1012) Identification of a landscape maintenance program including a statement that all diseased, damaged, or dead material shall be replaced in accordance with this Chapter by the end of the following planting season, in perpetuity.
- (13) Identification of snow storage areas including a statement that snow shall not be pushed onto interior landscape islands unless designed for snow storage.
- (1414) Other information or data determined necessary by the public services area administrator or designee such as construction details and/or cross-sections sufficient to resolve specific site conditions. These conditions include, but are not limited to berms, retaining walls, screen walls, fences, tree wells to preserve existing trees, or culverts to maintain natural drainage patterns.

5:608. Modifications.

The following modifications to the standards of this Chapter may be applied:

- (1) Additional landscaping, screening, preservation of existing vegetation, or rearrangement of landscaping may be required by the public services area administrator or appropriate approving body as a condition of approval in the following circumstances:
 - (a) When development activity would damage existing natural systems or processes.
 - (b) To screen mechanical equipment which was not included on an approved site plan.
 - (c) To prevent traffic hazards or other dangers to public safety such as obstruction of fire hydrants, fire suppression services provider connections or fire protection equipment or component.
 - (d). For parcels zoned for non-residential purposes including R5 abutting a public park the four (4) foot high continuous screen may be reduced provided vehicular use areas and refuse/recycling containers are adequately screened.

- (2) Flexibility in the application of the landscaping or screening requirements of Sections 5:602, 5:603, 5:604 or 5:606 may be allowed if each of the following conditions are met:
 - (a) The modifications are consistent with the intent of this chapter (Section 5:600(1)); and
 - (b) The modifications are included on a site plan and in a motion approved by city planning commission or city council; and
 - (c) The modifications are associated with one or more of the following site conditions:
 - (i) The site is located in a special parking district as designated by Chapter 59.
 - (ii) Strict application of this chapter will result in a loss of existing parking spaces required by Chapter 59 where the parking does not abut residential uses.
 - (iii) The topographic features of the site create conditions so that the strict application of the provisions of this chapter will result in less effective screening and landscaping than alternative landscape designs.
 - (iv) ~~Existing buildings provide adequate screening for the purposes of Section 5:602(1).~~
 - (v) Existing vegetation and landscaping are located or spaced in such a manner that the addition of required landscaping would be detrimental to the plant material or create undesirable conditions.
 - (v) The use of bioretention areas, native or prairie plantings, structural amenities, or xeriscaping would prevent strict application of this chapter.
 - (vi) In the case of planned projects or planned unit developments, a rearrangement of the landscaping elements will achieve the spirit and intent of this chapter.

(vii) Landscape elements which are a part of a previously approved site plan may be maintained and continued as nonconforming, provided no alterations of the existing landscape elements are required or proposed.

- (d) The petitioner provides a statement of justification identifying which site conditions warrant the requested modification and how the modification meets the intent of the ordinance.

5:609. Variances.

Upon an appeal filed to the zoning board of appeals in accordance with the procedures of Chapter 55, a variance may be granted from the strict application of the provisions of this chapter in cases involving practical difficulties or hardships when the evidence supports that the public benefit intended to be secured by this chapter will exist with less than the required landscaping or screening.

5:610. Plant Substitutions.

- (1) The public services area administrator or designee may approve minor revisions to landscape plans plant materials due to seasonal planting problems and lack of plant availability. Minor revisions may be approved only when there is no reduction in the quality of plant material, no significant change in size or location of plant material, the new plant material is compatible with the area, and the new plant material is of the same general category (i.e., deciduous shade or evergreen trees) and the same general design characteristics (mature height, crown spread) as the material being replaced. ~~If these criteria are not fulfilled, the approved site plan must be revised according to the requirements of Chapter 57.~~
- (2) Following approval of plant substitutions by public service area administrator or designee, an as-built landscape plan must be submitted to the community services area for attachment to the approved site plan.
- (3) If these criteria are not fulfilled, the approved site plan must be revised according to the requirements of Chapter 57.

~~**5:611. Nonconforming Sites.**~~

~~Landscape elements which are a part of site plans approved and constructed prior to the effective date of this ordinance and which meet the requirements of Chapter 62 as adopted March 17, 1986 may be maintained and continued as nonconforming sites, provided no alterations of the existing landscape elements are proposed.~~

5:612. 5:611 Enforcement.

- (1) No owner or occupant of property shall fail to maintain, to the standard of this chapter, landscaping and screening materials shown on a site plan or building permit application.
- (2) No building permit shall be issued for property which is in violation of this chapter.
- (3) No certificate of occupancy shall be issued unless the provisions of this chapter have been met or a performance bond or other security has been posted.
- (4) ~~Violation of any provision of this chapter constitutes a civil infraction punishable by a fine of not more than \$500 per violation. Each day upon which such violation shall occur shall constitute a separate offense.~~ A person who violates any provision of this chapter is responsible for a municipal civil infraction, punishable by a civil fine of up to \$2,500.00, plus costs and all other remedies available by statute. Each day that a violation continues shall be deemed a separate offense. The fine shall be not less than \$250.00

for a first offense, not less than \$500.00 for a second offense, and not less than \$1,000.00 for each additional or subsequent offense within a 2 year time period.

- (5) In addition to the penalties provided herein, any person who violates any provision of this ordinance shall be required to abate the violation in compliance with all applicable City Codes.
- (6) Inspection fees may be assessed by the community services area for failure to respond to a correction notice at a rate of \$100.00 per reinspection per violation. Fees shall be collected from security bonds or shall become a debt to the city from the landowner and may be collected as a single lot assessment under Section 1:292 of the City Code, or in any other manner in which an indebtedness due the city may be collected.