SPECIAL MEETING NOTICE OF THE CLEARFIELD CITY PLANNING COMMISSION

It is hereby given that the Clearfield City Planning Commission will hold a special meeting, acting in a quasi-judicial capacity as the Appeal Authority, at **6:30 P.M., Wednesday, June 3, 2013** on the 3rd floor in the Council Chambers of the Clearfield City Municipal Building, 55 S. State, Clearfield, Utah.

6:30 PM CALL TO ORDER—PLEDGE OF ALLEGIANCE

1. ROLL CALL

SCHEDULED ITEMS:

2. Hearing on **VARIANCE 1505-0004**, a request from Craig M. Call on behalf of Tom and Toni Baker, for a variance from the City's Parking regulations for property located at 75 North Main Street (TIN: 12-020-0018). The property is approximately 0.004 acres and lies in the C-2 (Commercial) zoning district.

**APPEAL AUTHORITY MEETING ADJOURNED**

MEETING NOTICE OF THE CLEARFIELD CITY PLANNING COMMISSION

Notice is hereby given that the Clearfield City Planning Commission will hold a regularly scheduled meeting **at 7:00 P.M., Wednesday, June 3, 2015**, on the 3rd floor in the City Council Chambers of the Clearfield City Municipal Building, 55 S. State, Clearfield, Utah.

7:00 PM CALL TO ORDER – RECONVENE AS THE PLANNING COMMISSION

3. APPROVAL OF MINUTES
   A. April 15, 2015 - Training
   B. May 6, 2015

SCHEDULED ITEMS:

4. Discussion and Possible Action on **SP 1505-0004**: A request by Jeff Jackson, on behalf of Ironwood Development Group, LLC, for Site Plan approval located at 850 South 490 East (TIN: 12-066-0089, 12-066-0090, 12-066-0115). The property is approximately 8.82 acres and lies in the R-3 (Multi-Family Residential) zoning district.

DISCUSSION ITEMS

5. Appeal Authority – Consider using a Hearing Officer for Appeals to land use decisions.
6. Fencing Definition – Consider information related to “impermeable to sight” definition for fencing, and adding specific standards for fencing in Commercial and Manufacturing zones.

7. Buffer – Consider information related to buffers and landscaping requirements between uses, primarily between Commercial and Residential uses.

**COMMUNICATION ITEMS:**

8. Staff Communications – Administrative Site Plan Reviews

9. Planning Commissioners’ Minute

**PLANNING COMMISSION MEETING ADJOURNED**

Dated this 29th day of May 2015

/s/Scott A. Hess, Development Services Manager

The City of Clearfield, in accordance with the ‘Americans with Disabilities Act’, provides accommodations and auxiliary communicative aids and services for all those citizens needing assistance. Persons requesting accommodations for City sponsored public meetings, service programs, or events, should call Christine Horrocks at 525-2780, giving her 48 hours notice.
TO: Planning Commission

FROM: Scott A. Hess
Development Services Manager
scott.hess@clearfieldcity.org (801) 525-2785

MEETING DATE: June 3, 2015

SUBJECT: Discussion and Possible Action on SP 1505-0004: A request by Jeff Jackson, on behalf of Ironwood Development Group, LLC, for Site Plan approval located at 850 South 490 East (TIN: 12-066-0089, 12-066-0090, 12-066-0115). The property is approximately 8.82 acres and lies in the R-3 (Multi-Family Residential) zoning district.

RECOMMENDATIONS

Move to approve SP 1503-0005, A request by Jeff Jackson, on behalf of Ironwood Development Group, LLC, for Site Plan approval located at 850 South 490 East (TIN: 12-066-0089, 12-066-0090, 12-066-0115), based on discussion and findings in the staff report.

PROJECT SUMMARY

<table>
<thead>
<tr>
<th>Project Information</th>
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<tbody>
<tr>
<td>Project Name</td>
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<tr>
<td>Site Location</td>
</tr>
<tr>
<td>Tax ID Number</td>
</tr>
<tr>
<td>Applicant</td>
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<tr>
<td>Owner</td>
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<tr>
<td>Proposed Actions</td>
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<tr>
<td>Current Zoning</td>
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<tr>
<td>Current Master Plan</td>
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<tr>
<td>Gross Site Area</td>
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</table>
ANALYSIS

Background
The developer received Preliminary Plat approval by Planning Commission on April 1, 2015, and Final Plat approval by City Council on April 14, 2015. Site Plan approval is required as this project represents new multi-family development within the City.

General Plan and Zoning
The General Plan lists this area of the City as Residential. The current zoning of the property is R-3 Multi-Family Residential, and does not require any further entitlements prior to consideration of this Site Plan. Staff would recommend that the City and the Developer enter into a Development Agreement prior to issuing building permits for the project.

The project as proposed meets the basic density requirements of the R-3 zone. The property size, including areas in future dedicated roadways, open spaces, and the pedestrian connection to 550 East totals 8.82 acres. The zone allows 16 dwelling units per acre for a total of 141 units (the number of units proposed by the Developer).

The Preliminary and Final Subdivision Plats do not reflect the exact configuration of the site as it is proposed. Lot 1 has been extended north to accommodate additional parking. Some of that parking has ended up on property zoned C-2 commercial. Stand-alone parking areas are not permitted in the C-2 zone, and therefore the site must go through a correction to the Plat, or be revised to pull that parking south onto the formerly approved Lot 1 as provided in the Final Plat from April 14, 2015.

Site Plan Review

**DESIGN STANDARDS**

Chapter 18 Design Standards of the Land Use Ordinance regulates new construction, and construction that requires a building permit. The proposed project is a three story multi-family...
apartment complex with units spread across a series of buildings that are generally arranged in two clusters on the property. Exterior materials are a mix of stone veneer, stucco, and a cement board product indicated as “smart side planking”. The building will be required to demonstrate that there are at least three colors provided per side. There is no vinyl siding proposed, and the mix of materials is indicated on all four sides of the project meeting the R-3 zoning code and Design Guidelines requirements. The roof line varies, and meets the intent of the Design Guidelines avoiding long stretches of flat roof plans. The building face is articulated, and meets the intent of the Design Guidelines. Both the building elevations and the site plan views of the buildings indicate that each structure is dynamic and varies on each side. The main building entrances are clad in stone, and vary from the rest of the building. The entrances need to demonstrate that they provide three of the five requirements in the Design Guidelines, and would benefit from some sort of landscaping enhancement, increased use of glass, a porch or patio of some sort.

With the exception of some additional pedestrian level improvements at the entrances, the buildings as proposed meet the intent of Chapter 18 Design Guidelines. Staff would encourage the City and Developer enters into a Development Agreement to specify the exterior building materials and any specific requirements for the buildings.

SITEM CIRCULATION and PARKING
The Site is showing Depot Street as a major north/south access road off of 700 South. The construction of Depot Street meets the Master Streets Plan (a component of the General Plan). Depot Street was dedicated through the Plat approval process. There are three entrances provided to the development’s internal road network and parking off of Depot Street. A single sidewalk is provided on the east side of Depot, and Staff does not see a need for a sidewalk on the west side of Depot Street as it abuts the railroad right-of-way. The site has a secondary access point on the northeast corner through the Meadow’s Condominium. This will be a gated entrance. North Davis Fire District has approved that as a secondary entrance to the site, and has provided specifics on the gate construction for fire access. Staff expects that 700 South will see an increase in traffic, but at this time it will not be so detrimental as to require any additional improvements at the entrance of Depot Street and 700 South. Public Works Director, Scott Hodge, feels that the major impact will come when the Transit Oriented Development is connected to Depot Street, as the combined effects of both residential projects could create traffic situations that need to be mitigated. At this time, the addition of 141 units is expected to increase traffic, but not become a burden on the city or 700 South as a whole.

Parking is largely provided on the site adjacent to the buildings with the exception of a disjointed parking area to the north along the long and skinny parcel next to Depot Street. An adequate number of covered parking stalls are provided for, with at least one covered per unit. The site is parked at 2.125 stalls per unit which meets the R-3 Code. Staff would propose that the open space area on the south side of the site have as much parking as feasible placed in that corner in exchange for parking provided in the northernmost area. Staff also suggests shifting the detention area provided on the north further to the north to pull the parking south closer to the buildings. The site would benefit with the main entrance off of 700 South being made up of a tot lot, basketball court, tennis, etc…and limiting parking. Also, those parking spaces will likely go under-utilized. Staff wants to limit to the best of our ability having that parking lot turn into an eyesore with long-term vehicle storage which is disjointed from the site itself.

Internal sidewalk networks have been provided, with a pedestrian crossing between the two clusters of buildings. Staff would suggest that an additional sidewalk be provided across the
open space between the separated parking area to the north and the northern building. The grass area will likely be cut across regularly.

**LANDSCAPING**
Total landscaping for the project is approximately 38% at 3.4 acres. This includes areas indicated as water detention sites. The site shows both “Open Space and Landscaping” and “Landscape Planter Area”. Staff would suggest that a detailed landscaping plan be submitted with call outs for specific landscape materials that will be provided in those Open Space areas, and further suggests that those areas be improved with turf grass and an automatic irrigation system. Should the applicant choose to do xeriscaping, then a typical cross section of that landscape style should be provided and reviewed to make sure that the required number of trees and bushes are being provided as required by City Code. Landscaping should be included and installed at the time of building permit and completed prior to issuance of a Certificate of Occupancy. In the case that the landscaping cannot be installed due to inclement weather, the developer may escrow for the improvements for a time period of six months.

**This item is included as a condition of approval.**

**GARBAGE DUMPSTER**
At a minimum per City Code any on-site dumpster must be screened from view within an approved enclosure. The enclosure must be a masonry wall that is colored to match the project. The development plans show an enclosure for five trash bins on the northeast side of the northern structures within an enclosure, as well as two trash bins for the southern buildings. The southern trash bins must be kept within a matching enclosure.

**This item is included as a condition of approval.**

**FENCING PLAN**
Per City Code, walls and fences may be required around all multi-family projects. The site is surrounded by existing fences installed as part of the Meadow’s Condominium, Kensington and Brookshire Townhome projects. Staff would recommend fencing be provided along the north property line at the separation between the Commercial and Residential property. That fence should be of matching style and materials to what has been provided on the rest of the site.

**This item is included as a condition of approval.**

**SIGN PACKAGE**
Signage is not included as part of this Site Plan approval.

**Fire Department Review**
North Davis Fire District (NDFD) review letter has been attached for Planning Commission review.

**Public Works Review / Engineering Review**
The Public Works Director and City Engineer are working together to produce a letter stating concerns from their department perspectives. Staff expects to have that letter to the Commission prior to the meeting date.

**Public Comment**
No additional public comment has been received outside of the previous public hearings.
**REVIEW CONSIDERATIONS**

**Site Plan Review**
Clearfield Land Use Ordinance Section 11-5-3 establishes the review considerations the Planning Commission shall make to approve Site Plans. The findings and staff’s evaluation are outlined below:

<table>
<thead>
<tr>
<th>Review Consideration</th>
<th>Staff Analysis</th>
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<tr>
<td>1) <strong>Traffic:</strong> The effect of the site development plan on traffic conditions on abutting streets.</td>
<td>The development has adequate vehicular access provided off of 700 South and the extension of Depot Street. The developer has proposed an access easement through the Meadow’s Condominiums with a security access gate. The gate must be designed in accordance with North Davis Fire District’s letter. Additional traffic impacts are expected to be rise, but staff feels they can be accommodated by Depot Street. Traffic will ultimately increase, and will continue to be monitored as growth and development of this area of the city occurs.</td>
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<td>2) <strong>Vehicle; Pedestrian:</strong> The layout of the site with respect to locations and dimension of vehicular and pedestrian entrances, exits, drives and walkways.</td>
<td>Vehicular access to the site is adequate with three individual entrances to the parking areas. Pedestrian access is adequate internally, and the pedestrian access to 550 East is a major amenity for school aged children who will need access to the Junior High School and High School to the east.</td>
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<td>3) <strong>Off-Street Parking:</strong> Compliance of off-street parking facilities with Chapter 14 of this Title.</td>
<td>The current number of parking stalls and covered stalls meets the R-3 code. However, the configuration of guest parking to the north is not desirable. Staff would recommend that the developer consider using that area for increased open space, and placing parking in the southern corner. Also, any disjointed parking areas should be placed as close as feasible to the buildings with a direct sidewalk access to discourage crossing the grass and creating muddy foot paths.</td>
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<td>4) <strong>Loading and Unloading Facilities:</strong> The location, arrangement and dimensions of truck loading and unloading facilities.</td>
<td>There are no additional loading and unloading facilities required.</td>
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<td>5) <strong>Surfacing and Lighting; Parking:</strong> The surfacing and lighting of off-street parking.</td>
<td>Site lighting is shown, but a detail has not been provided of the lighting head style, or the true expected spread of lighting. Any wall lighting facing adjacent residential must be shielded downward to avoid impacts to those residents. Light poles must similarly be designed to have downward facing shields, and avoid light pollution</td>
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<td><strong>Screen Planting:</strong> The location, height and materials, of walls, fences, hedges and screen planting.</td>
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<td>6)</td>
<td><strong>Landscaping:</strong> The layout and appropriateness of landscaping.</td>
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<td>7)</td>
<td><strong>Drainage:</strong> The effect of the site development plan on City storm water drainage systems.</td>
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<td>8)</td>
<td><strong>Utility:</strong> The effect of the site development plan on City utility systems.</td>
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<td>9)</td>
<td><strong>Building Locations:</strong> Consideration of building locations on the site, elevations and relation to surrounding areas (Ord. 84-06B, 9-11-1984)</td>
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<td>10)</td>
<td><strong>Exterior Design:</strong> Consideration of exterior design in relation to adjoining structures and area character to assure compatibility with other structures in the neighborhood, existing or intended. (Ord. 84-08, 10-23-1984)</td>
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<td>12)</td>
<td><strong>Signs:</strong> Compliance of signs with Chapter 15 of this Title and particular consideration to the location of signs upon the site, their effect upon parking, ingress and egress, the effects upon neighboring properties and the general harmony of signs with the character of the neighborhood, existing or intended.</td>
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**CONDITIONS OF APPROVAL**

1) The developer shall submit a final clean copy of the Phase 1 Site Plan documents correcting all errors and omissions indicated by Staff Reviews.

2) The final engineering design (Improvement Plans) shall meet City standards and be to the satisfaction of the City Engineer and Public Works Director.

3) The final Fire Infrastructure design shall meet North Davis Fire District standards and be to the satisfaction of the Fire Marshall.

4) The exterior design of the entranceways shall incorporate three of five design elements as listed in 11-18-5B.

5) The Plat and zoning must be corrected to accommodate the northern parking area as shown on this site plan, or the parking needs to be revised to match the Final Plat that was approved by City Council on April 15, 2015.

6) Parking for guests shall be provided as close as possible to the building structures, and have direct sidewalk access to mitigate impacts to landscaping areas used as cut-thrus by pedestrians.

7) Garbage dumpsters shall be in enclosures designed to match the exterior of the project. Garbage enclosures must be constructed of masonry walls, and be sited in such a way to shield their view from public streets.

8) Fencing shall be added between the future commercial property and the R-3 property along the northern line of Lot 1. Fencing shall match the existing fence surrounding the project.

9) As per City Code 11-13-23C, the developer shall post a bond of 125% of the value of the landscape. Should the landscape not be installed prior to Certificate of Occupancy, pursuant to Land Use Ordinance 11-13-23(B), (C) and (D) Final building permit approval is subject to the applicant establishing an escrow account, as reviewed and approved by the City Engineer and City Attorney. The landscaping plan shall indicate the nature of all
landscaping listed in the Site Plan, both for “Open Space and Landscaping” and “Landscape Planter Area”.

10) As per City Code 12-4-5, an estimate of public improvements (as outlined in 12-4-6), shall be submitted, reviewed and approved by the City Engineer prior to obtaining building permits. An Escrow agreement will be subject to approval by the City Engineer and City Attorney and an escrow account shall be established for any improvements not yet installed prior to recordation of the Final Plat.

11) No building permits shall be issued or construction of buildings or improvements may begin until after recordation of the final plat.

12) The applicant shall provide proof of having obtained and of having maintained, as may be periodically requested by the City, all applicable local, state, and federal permits.

ATTACHMENTS
1. West Square Site Plan
2. North Davis Fire Letter dated June 18, 2014
TO: Scott Hess Community Development
FROM: John Taylor / Fire Marshal
RE: West Square Project

DATE: May 14, 2015
I have reviewed the site plan submitted for West Square project. An application for site plan approval accompanied by a $50 fee is requested at this time and may be submitted upon retrieval of stamped plans. The Fire Prevention Division of this Fire District has the following comments/concerns.

1. The minimum fire flow requirement is 1500 gallons per minute for 60 consecutive minutes for residential one and two family dwellings. Fire flow requirements may be increased for residential one and two family dwellings with a building footprint equal to or greater than 3,600 square feet or for buildings other than one and two family dwellings. Provide documentation that the fire flow has been confirmed through the Clearfield City water dept.

2. Fire hydrants and access roads shall be installed prior to construction of any buildings. All hydrants shall be placed with the 4 ½” connection facing the point of access for Fire Department Apparatus. Provide written assurance that this will be met.

3. Prior to beginning construction of any buildings, a fire flow test of the new hydrants shall be conducted to verify the actual fire flow for this project. The Fire Prevention Division of this Fire District shall witness this test and shall be notified a minimum of 48 hours prior to the test.

4. All fire apparatus access roads shall be a minimum all-weather, drivable and maintainable surface. There shall be a minimum clear and unobstructed width of not less than 26 feet and an unobstructed vertical clearance of not less than 13 feet 6 inches. Dead-end roads created in excess of 150 feet in length shall be provided with an approved turn-around.

5. If grades exceed 8%, approval from the City Engineer and the Fire District is required.

6. As per the 2012 International Fire Code, all buildings 3 stories and higher must have an approved fire sprinkler system installed. Prior to installation a detailed set of design drawing must be submitted to our office along with an application and the appropriate fees.
7. The fire department access gate onto 490 East must be an electric self-opening gate equipped with a Knox key access device. An application for a Knox Key Switch must be obtained from our office.

8. FDC connections must be within 100 feet of a fire hydrant.

These plans have been reviewed for Fire District requirements only. Other departments must review these plans and will have their requirements. This review by the Fire District must not be construed as final approval from Clearfield City.
TO: Planning Commission
FROM: Scott A. Hess, Development Services Manager
DATE: June 3, 2015
SUBJECT: Discussion - Appeal Authority – Consider using a Hearing Officer for Appeals to land use decisions.

RECOMMENDATIONS

Review information presented by Staff and consider desirable amendments to Clearfield City's Zoning Code. Make recommendations to Staff on next steps to consider prior to bringing forward a Zoning Text Amendment.

BACKGROUND

Clearfield City Code currently lists the Planning Commission as the Appeal Authority for Variances and the City Council as the Appeal Authority for Conditional Use Permits and Site Plans.

The Clearfield City Council has directed staff to consider amendments to the City Code that would create a Hearing Officer. The duties and responsibilities of the Hearing Officer would likely be to hear appeals to Land Use Decisions. This change is consistent with numerous communities across Utah and the United States.

Staff would suggest that the members of the Planning Commission come prepared to discuss various options that meet the desire and vision of City Council as it relates to appeals.

Clearfield City Code Amendments Proposed:

Recommended Amendments to the Code:

- 11-1-13 Interpretation
- Update references to Appeal Authority from City Council to Hearing Officer for: “Site Plan, Subdivision Plats, Conditional Use Permit, Lot Split, Lot Line Adjustment, and Amendments of Approved Subdivisions”.
- Update references to Appeal Authority from Planning Commission to Hearing Officer for: “Variance”.
- 11-1-12 Update Appeal Authority to include Definition of Hearing Officer
- List Hearing Officer Duties and Limitations
Hearing Officer Research
Communities Reviewed: Murray, Draper, Saratoga Springs,

Hearings Officers

Section 17.16
The Hearing Officer is hereby designated the Appeal Authority and shall have the following powers: 1. requests for variances from the terms of the City’s land use ordinances; 2. appeals from decision by a Land Use Authority applying the City’s land use ordinances; 3. appeals from a fee charged in accordance with Section 10-9a-510 of the Utah Code; 4. appeals of the denial by a Land Use Authority of a request for a reasonable accommodations; and 5. any other request or appeal of a decision delegated to the land Use Authority by Title 16 or Title 17 of the Murray City Municipal Code.

Hearing Officers:

Jim Harland
Scott Finlinson
James Swan

Chapter 17.16 Appeal Authority
17.16.010: DEFINITIONS: 🌍 📖

APPEAL AUTHORITY: A list of five (5) hearing officers appointed by the mayor, with advice and consent of the city council, to decide an appeal or request of a land use decision by a land use authority including a request for a variance under title 10, chapter 9a, part 7 of the Utah code. For each appeal or request, the mayor shall assign one hearing officer from the list of five (5) to handle the specific appeal or request.

LAND USE AUTHORITY: The planning commission, the administrative development services director, or a staff member of the community and economic development division when making any order, requirement, decision or determination in the enforcement of title 16 or 17 of this code, or any other related ordinance. (Ord. 14-10)

17.16.020: APPOINTED HEARING OFFICERS: 🌍 📖

A. The mayor shall appoint a list of five (5) hearing officers, with advice and consent of the city council, to serve as an appeal authority for requests and appeals of decisions by a land use authority including variances under title 10, chapter 9a, part 7 of the Utah code. For each appeal or request, the mayor shall assign one hearing officer from the list of five (5) to handle the specific appeal or request.

B. A hearing officer shall be a resident of the city.

C. A hearing officer shall have expertise in land use matters.
D. A hearing officer shall be appointed for a term of three (3) years and may not serve more than three (3) consecutive terms. "Term", as used in this section, means serving for at least twelve (12) months.

E. A hearing officer may be removed from the list by the mayor for any reason. (Ord. 14-10)

17.16.030: AUTHORITY OF APPEAL AUTHORITY:

A. A hearing officer, acting as the appeal authority, shall hear and decide:

1. Requests for variances from the terms of the city's land use ordinances;

2. Appeals from decisions by a land use authority applying the city's land use ordinances;

3. Appeals from a fee charged in accordance with section 10-9a-510 of the Utah code;

4. Appeals of the denial by a land use authority of a request for a reasonable accommodation; and

5. Any other request or appeal of a decision delegated to the land use authority by title 16 or 17 of this code.

B. A hearing officer, serving as the appeal authority, shall:

1. Act in a quasi-judicial manner;

2. Serve as the final arbiter of issues involving the interpretation or application of city land use ordinances subject to appeal to the Utah district courts as provided in section 10-9a-801 of the Utah code. (Ord. 14-10)

17.16.040: APPEAL PROCESS:

A. A request or appeal to an appeal authority must be filed, in writing, with the city's community and economic development division, within ten (10) calendar days from the date of a written decision issued by a land use authority. If a written appeal or request is not timely filed as provided in this section, the decision of the land use authority shall be final.

B. The written appeal or request must, with specificity, allege the error in any order, requirement, decision or determination made by the land use authority in the administration or interpretation of the city's land use ordinances.

C. On receipt of a timely written appeal or request, the city's community and economic development division shall notify the mayor of the appeal or request. The mayor shall, in a timely manner, assign a hearing officer from the list of five (5) hearing officers, to serve as the appeal authority for the specific appeal or request.

D. The filing of a written appeal or request does not stay the decision of the land use authority. The appellant may petition the assigned hearing officer to stay the land use authority decision.
Upon petition, the assigned hearing officer may order the decision of the land use authority stayed pending review by the assigned hearing officer.

E. The assigned hearing officer shall proceed to take all steps necessary to review and hear the appeal or request.

F. The appellant has the burden of proving that the land use authority erred.

G. The assigned hearing officer shall respect the due process rights of each of the participants. (Ord. 14-10)

17.16.050: STANDARD OF REVIEW:

A. The review by the hearing officer, as the appeal authority, of the appeal or request shall be limited to the record of the land use application process resulting in the decision made by the land use authority which is the subject of the appeal or request including written communications, the written land use decision and the written appeal or request.

B. The assigned hearing officer may not accept or consider any evidence outside the record of the land use authority unless that evidence was offered to the land use authority and the assigned hearing officer determines that it was improperly excluded.

C. For the granting of variances, the assigned hearing officer may grant a variance only if:

1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and

5. The spirit of the land use ordinance is observed and substantial justice done.

D. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under subsection C1 of this section, the assigned hearing officer may not find an unreasonable hardship unless the alleged hardship:

1. Is located on or associated with the property for which the variance is sought;

2. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood; and
3. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under subsection C1 of this section, the assigned hearing officer may not find an unreasonable hardship if the hardship is self-imposed or economic.

E. In determining whether or not there are special circumstances attached to the property under subsection C1 of this section, the assigned hearing officer may find that special circumstances exist only if the special circumstances:

1. Relate to the hardship complained of; and

2. Deprive the property of privileges granted to other properties in the same zone.

F. The appellant shall bear the burden of proving that all of the conditions justifying a variance have been met.

G. Variances run with the land.

H. The assigned hearing officer may not grant a use variance.

I. In granting a variance, the assigned hearing officer may impose additional requirements on the appellant that will:

1. Mitigate any harmful affects of the variance; or

2. Serve the purpose of the standard or requirement that is waived or modified. (Ord. 14-10)

17.16.060: FINAL DECISION: ☐ ☐

A. A decision of a hearing officer, serving as the appeal authority, takes effect on the date when the hearing officer issues a written decision.

B. An appeal of the decision by the hearing officer may be made to the Utah district court on compliance with section 10-9a-708 of the Utah code. (Ord. 14-10)


Draper City Comments: “They feel the change to a Hearing Officer has been positive because the HA is a non-paid employee who it removed from any influences to decisions. Applicants have generally felt that this appeal process is fairer by using someone who is not directly connected to the City. Draper City utilizes an RFP process to find Hearing Officers, and has used retired judges as well as a legal firm who responded to the RFP and provided the service. They schedule the meetings as necessary with no yearly set schedule.

Appeals & Variance Hearing Officer
About the Officer
The Appeals and Variance Hearing Officer is responsible to hear and decide appeals from
zoning decisions, special exceptions, variances, and nonconforming uses. Per Ordinance No. 815, the Draper City Council replaced the Board of Adjustment with the Appeals and Variance Hearing Officer.

9-4-050: APPEALS AND VARIANCE HEARING OFFICER:

A. Appointment: The appeals and variance hearing officer shall be appointed as follows:

1. The appeals and variance hearing officer shall be appointed by the mayor with the advice and consent of the city council.

2. The appeals and variance hearing officer shall be appointed for a term of one year and thereafter may be appointed for succeeding one year terms.

3. The appeals and variance hearing officer shall, as a minimum, have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings regarding land use, land development, and regulatory codes dealing with issues related to land use.

4. The mayor may remove the appeals and variance hearing officer for cause upon receipt of written charges filed against the appeals and variance hearing officer with the city manager and upon the advice and consent of the city council. The mayor shall provide the appeals and variance hearing officer with a public hearing if one is requested.

5. In the case of death, resignation, removal or disqualification, the position of appeals and variance hearing officer shall be promptly filled by a replacement appointed by the mayor with the advice and consent of the city council for the unexpired term of the previous appeals and variance hearing officer.

6. The appeals and variance hearing officer shall be considered an independent contractor; and as such will enter into a year long contract for services at the beginning of each appointed term. Terms for compensation and reimbursement will be determined and agreed upon in the aforementioned contract. The terms and conditions of the contract shall ultimately be approved by the city council prior to any individual entering into an agreement with the city to serve as the appeals and variance hearing officer.

7. The mayor may, from time to time, appoint an appeals and variance hearing officer pro tempore on a temporary basis when necessitated by the absence, unavailability, incapacity or disqualification of the regularly appointed appeals and variance hearing officer upon the advice and consent of the city council. Each appeals and variance hearing officer pro tempore shall, as a minimum, have qualifications which are similar to the regularly appointed appeals and variance hearing officer.

B. Organization And Procedure: The appeals and variance hearing officer shall organize and exercise its powers and duties as follows:

1. The appeals and variance hearing officer may adopt reasonable policies and procedures in accordance with city ordinances to govern the conduct of its meetings and hearings and for any other purposes considered necessary for the functioning of the position of appeals and variance hearing officer. Such polices and procedures shall be approved by the city council before taking effect.
2. The appeals and variance hearing officer shall hold meetings as needed to consider matters within its purview under this title. The appeals and variance hearing officer meeting shall be held on the first Wednesday after the first Tuesday of each month and such other times deemed necessary by the appeals and variance hearing officer. All meetings and hearings shall be properly noticed and held in accordance with the open meetings law set forth in Utah Code Annotated section 52-4-1 et seq., as amended. Written minutes of all meetings and hearings of the appeals and variance hearing officer shall be prepared and filed in the office of the city recorder for review and access by the public in accordance with the Draper City government records access and management ordinance.

3. Decisions made by the appeals and variance hearing officer shall become effective at the meeting or hearing in which the decision is made, unless a different time is designated in the appeals and variance hearing officer's accepted rules or at the time the decision is made.

C. Powers And Duties: The powers and duties of the appeals and variance hearing officer shall be limited to the matters set forth below. Each of such powers and duties shall be exercised pursuant to the procedural and other provisions of this title.

1. Hear and decide appeals from zoning decisions of the planning commission or zoning administrator applying the provisions of this title.

2. Hear and decide special exceptions.

3. Hear and decide variances from the terms of this title.

4. Determine the existence, expansion, or modification of nonconforming uses.

5. With the consent of the city council, designate routine and uncontested matters that may be decided by the zoning administrator. The appeals and variance hearing officer shall establish guidelines by which routine and uncontested matters shall be decided.

D. Appeals: Appeals to the appeals and variance hearing officer shall be filed in writing with the zoning administrator within fourteen (14) days from the date of the decision or action appealed as provided in subsection 9-5-180D1 of this title. The officer or department from whom the appeal is taken shall forthwith transmit to the appeals and variance hearing officer all papers constituting the record upon which the action appealed from was taken.

E. Notice Of Hearing: The appeals and variance hearing officer shall fix a reasonable time for the hearing of each appeal, give public notice thereof as well as due notice to the parties in interest, at least ten (10) days prior to the hearing and shall set certain other criteria as to the form of notice whether by publication, certified mail or other criteria, reasonably designed to give notice to those parties subject to be affected thereby.

F. Decisions Of The Appeals And Variance Hearing Officer: At the hearing of any matter, the parties affected may appear in person with or without an attorney. The appeals and variance hearing officer shall decide all appeals and other issues brought before it within a reasonable time.
G. Stay Of Proceedings: An appeal to the appeals and variance hearing officer shall not stay proceedings taken in furtherance of the action appealed from unless such proceedings are specifically stayed by order of the zoning administrator. An appellant may request a stay by submitting to the zoning administrator, in writing, an application for a stay setting forth the reasons why a stay is necessary to protect against imminent harm. In determining whether or not to grant a stay, the zoning administrator shall assure that all potentially affected parties are given the opportunity to comment on the request. A ruling on the request for a stay shall be given within five (5) days from the date the request is received by the zoning administrator. The zoning administrator, in granting a stay, may impose additional conditions to mitigate any potential harm that may be caused by the stay, including requiring the appellant to post a bond. Within ten (10) days of the zoning administrator’s decision regarding the grant or denial of a stay, any aggrieved party may appeal the decision to the appeals and variance hearing officer, whose decision will be final.

H. Appeals From The Appeals And Variance Hearing Officer: Any person aggrieved by a final decision of the appeals and variance hearing officer may have and maintain a plenary action for relief there from in any court of competent jurisdiction, provided that the petition for such relief is presented to the court within thirty (30) days from the date of the decision of the appeals and variance hearing officer.


19.03.09. Appeal Authority for Certain Limited Matters; Terms.

1. For only the actions listed in Section 19.03.12, there is hereby created an Appeal Authority, which shall be composed of a Hearing Examiner who shall be appointed by the Mayor with advice and consent of the City Council.
2. A Hearing Examiner:
   a. shall act in a quasi-judicial manner and serve as arbiter of issues involving the interpretation or application of land use ordinances;
   b. may not have a personal or financial interest in the matter being considered;
   c. may not be a City employee;
   d. may not live in the City of Saratoga Springs;
   e. may not entertain an appeal of a matter in which he or she had first acted as the land use authority; and
   f. shall be administered the oath of office after being appointed and before administering an appeals hearing.

19.03.10. Hearings Conducted by the Hearing Examiner.

1. The Hearing Examiner shall conduct hearings, may administer oaths to witnesses, may compel the attendance of witnesses, and may subpoena witnesses, documents, and other evidence. However, the Hearing Examiner may only subpoena witnesses, documents, or other evidence if there is an inadequate record. If written minutes and staff reports with adopted findings and conditions are available, it shall be presumed that there is an adequate record.
2. The City Recorder shall keep minutes of the appeal hearing.
3. The written minutes and records, along with the appeal application, written statements, and other facts bearing on the appeal and decision of the Hearing Examiner, shall be filed in the office of the City Recorder and shall be a public record.

4. The City Recorder shall make an audio recording of the proceedings of the Hearing Examiner and a copy may be requested from the City Recorder in accordance with the City’s policies for public records requests.

19.03.11. Powers and Duties of the Hearing Examiner.

The powers and duties of the Hearing Examinershall be limited to the following:

1. to hear and decide appeals from a land use decision, requirement, refusal, or other decision made in interpreting and applying the land use ordinance;
2. to hear and decide variances, as defined in state law, from the area, width, setback, or other terms of the land use ordinance, except a use variance shall not be granted; and
3. to act in a quasi-judicial manner and serve as the final arbiter of issues involving the interpretation or application of land use ordinances.


1. The powers and duties of the Hearing Examiner are limited to those set forth in this Chapter and Title. The Hearing Examiner shall not have the authority to amend this ordinance or to act outside of the authorized rules set forth in Utah Code Chapter 10-9a.
2. No decision shall be made in such a way so as to destroy the intent and purpose of the land use ordinance.
3. The Hearing Examiner’s decisions are subject to review only according to the provisions of Utah Code Chapter 10-9a.
4. The Hearing Examiner shall not have authority to hear appeals of legislative decisions made by the City Council including zoning decisions, development agreement approval, land use ordinance amendments, vacation of public streets and rights-of-way, and General Plan amendments.

19.03.13. Requests to Appear Before the Hearing Examiner.

1. Any adversely affected person or entity wishing to appeal a decision made by the Planning Director, Planning Commission, City Council, or other land use authority in applying the land use ordinance, or to request a variance, may commence such action by submitting a complete application to the Planning Director and paying the applicable filing fees.
2. The Planning Department shall accept and process such forms only if they are properly completed and accompanied by the filing fee in the current amount set by the City Council. To be heard at any meeting of the Hearing Examiner, such forms must be received in proper form with the filing fee properly filed within ten calendar days of the date the contested decision was issued in writing, or it shall be time-barred and not heard.
3. The application shall set forth all allegations of error to the Hearing Examiner. Any allegation not made in the application shall be waived, unless the new allegation was made pursuant to an amended application within the same time limits as the original application. No time periods shall be extended or tolled.
4. The applicant shall bear the burden of proof that an error was made.
19.03.14. **Hearing Examiner Appeal Procedure.**

1. Upon receipt of the request forms, the Planning Director shall forthwith notify the Hearing Examiner, and notice shall also be given as required elsewhere by this ordinance and state law.
2. If the Hearing Examiner finds that the request forms were properly filed and the filing fee paid, the Hearing Examiner shall hold a public hearing within 45 days and take action on the request within 30 days after the hearing.
3. Decisions of the Hearing Examiner shall become effective at the time a written decision is issued.

19.03.15. **Hearing Examiner Appeal Hearing.**

1. The Hearing Examiner shall fix a reasonable time for hearing the appeal. The City Recorder shall provide public notice by publication at least five days prior to the date of the hearing.
2. The intent in requiring a hearing is to enable the Hearing Examiner to obtain facts surrounding the case which may not be evident, or which may not be shown in the written record submitted to the Hearing Examiner.
3. The decision of the Hearing Examiners shall be based upon the facts and not upon expressions of support or protest, or lack of support or protest, which may be made at the hearing.
4. Any party may appear at the hearing in person or through an agent or attorney.
5. All appeal hearings shall be open to the public and shall be recorded.

19.03.16. **Action Taken by the Hearing Examiner; Standard of Review for Appeals.**

1. **Review.** An appeal shall be reviewed only when the Hearing Examiner finds that the adversely affected party has complied with and completed all of the forms, procedures, and rules.
2. **Approval.** If an appeal or variance request is approved, the Hearing Examiner shall enter into the official minutes the specific reasons for approval and any conditions or limitations of the approval.
3. **Denial.** If the decision of the Hearing Examiner is to deny an appeal or variance request, the Hearing Examiner shall enter into the official minutes the specific reasons for denial.
4. **Standard of Review.** In determining whether to approve or deny the appeal, the Hearing Examiner shall:
   a. Presume that the decision is valid;
   b. Review the record to determine whether the decision was arbitrary, capricious, or illegal; and
   c. Affirm the decision if it is supported by substantial evidence in the record.

19.03.17. **Rules for Hearing and Deciding Appeals.**

When the Hearing Examiner acts under his or her power to hear and decide appeals for authorized matters, the Hearing Examiners shall not grant the reversal or relief appealed for unless it finds that all of the following standards have been met:
1. The appellant has paid the applicable application fee and filed a properly completed application for appeal, which states with specificity the nature of the alleged error and how the appellant has been adversely affected by such alleged error.

2. The application for appeal was properly filed with the Hearing Examiner within 10 calendar days of the decision being appealed.

3. The appellant must have been adversely affected by the subject decision applying the land use ordinance.

4. If the appellant fails to list any allegation of error to the Hearing Examiner, the appellant shall lose all rights to appeal to district court the allegation not made.

5. The decision being appealed must be a decision in applying and interpreting this Title, Chapter 10-9a of the Utah Code, or a land use ordinance of the City of Saratoga Springs.

6. If the Hearing Examiner grants the appellant’s request, the decision must be consistent with the provisions of the land use ordinance and not waive or modify any of the terms or requirements thereof.

7. The appellant has the burden of proving that an error was made and must clearly meet that burden based on the facts presented for the record; expressions of support, protest, or other public clamor shall not constitute the basis of approval or denial.

19.03.18. Provisions for Hearing and Ruling on Variances.

1. Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or holds some other beneficial interest in may apply to the Hearing Examiner for a variance from the terms of Title 19.

2. Prior to filing an application for a variance with the Hearing Examiner, the applicant must have applied for a permit, or other land use approval, and have been denied such by the City or land use administrative officer or agency of the City of Saratoga Springs, based on the specific requirement that is the subject of the variance. If there were multiple reasons for denial, the approval of a variance of one requirement shall not relieve the applicant of the need to meet the remaining standards of the ordinance. The requirements of this subsection may be waived by the City Planner after consulting with the City Attorney to determine that the application would be required to be denied if submitted.

3. The Hearing Examiner may not hear a request for a variance unless the applicant has filed a properly completed application and paid the application fee. The application shall contain the following information:
   a. the normal or standard amount of area, distance, size, or volume required by the land use ordinance;
   b. the specific amount of variance being requested;
   c. an explanation of why an unreasonable hardship exists;
   d. the special circumstances attached to the property that do not generally apply to other properties in the same zone;
   e. the reasons why granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone; and
   f. all other information required by the application form.

4. The substance of the application for a variance must be a request to vary the requirements for height, bulk, width, setback, or other numerical or quantitative, as distinguished from approval to have a land use that is not listed as permitted in a zone. For example, the Hearing Examiner may not grant a “use variance.”
5. The Hearing Examiner may grant a variance only if the requirements of Utah Code § 10-9a-702 are met. The following is that section’s pertinent provisions, which may be amended from time-to-time by the Utah Legislature:
   a. The Hearing Examiner may grant a variance only if:
      i. literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the City’s land use ordinances;
      ii. there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
      iii. granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
      iv. the variance will not substantially affect the General Plan and will not be contrary to the public interest; and
      v. the spirit of the land use ordinance is observed and substantial justice done.
   b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (5)(a), the Hearing Examiner may not find an unreasonable hardship unless the alleged hardship:
      i. is located on or associated with the property for which the variance is sought;
      ii. comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood; and
      iii. is not self-imposed or economic.
   c. In determining whether or not there are special circumstances attached to the property under Subsection (5)(a), the Hearing Examiner may find that special circumstances exist only if the special circumstances:
      i. relate to the hardship complained of; and
      ii. deprive the property of privileges granted to other properties in the same zone.
   d. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
   e. In granting a variance, the Hearing Examiner may impose additional requirements on the applicant that will:
      i. mitigate any harmful effects of the variance; or
      ii. serve the purpose of the standard or requirement that is waived or modified.

6. In addition to the requirements of Utah Code § 10-9a-702, the following standards shall apply:
   a. The Hearing Examiner shall not grant a variance greater than the minimum amount necessary to afford relief.
   b. Variances run with the land.

19.03.19. Notification and Duration of Approval.

1. Within thirty days after the Hearing Examiner hears an appeal or variance request, the Hearing Examiner shall issue a written decision or order, which may consist of a signed document authored by the Hearing Examiner or the approved written minutes prepared by the City Recorder and signed by the Hearing Examiner. The City Recorder shall mail a copy of the final written decision or order within three days after receipt to the applicant at the address supplied in the application form.
2. The decision of the Hearing Examiner shall be deemed final as of the date the written decision or order is dated and signed.

3. A variance shall terminate one year from the date of the decision of the Hearing Examiner, unless the Hearing Examiner makes findings that a different date is necessary for substantial justice to be done and sets a different termination date as a condition of approval. Decisions regarding appeals of alleged error shall not have a termination date.

19.03.20. Recourse from Actions Taken by the Hearing Examiner.

1. Any person adversely affected by any decision of the Hearing Examiner may file a petition with a Court of competent jurisdiction for a review of that decision. Any such appeal or petition shall be barred unless it is filed within 30 days of the date when the decision becomes final, which is the date said decision is signed and dated by the Examiner. The petition shall be limited to a review of the record to determine whether the decision was arbitrary, capricious, or illegal.

2. The Hearing Examiner shall transmit to the reviewing court the complete record of its proceedings, including applications, exhibits, minutes, findings, and any audio recordings which may be on file with the City Recorder. If there is a record, the review of the Court is limited to the record, and the Court may not accept or consider evidence outside of the record unless it determines that there is an insufficient or inadequate record. If there is no record, the Court may call witnesses and take evidence.

3. The Court shall affirm the decision of the Hearing Examiner if the decision is supported by substantial evidence in the record.

4. Filing a petition for review with the Court does not automatically stay the decision of the Hearing Examiner.
   a. Before filing the petition for review with the Court, the aggrieved party may petition the Hearing Examiner to stay his or her decision. The Hearing Examiner shall take action on any petition to stay only in a meeting where proper notice was given. Upon considering such petition to stay, the Examiner may grant the stay if it finds such to be in the best interests of the City.
   b. After filing a petition for review with the Court, the petitioner may seek an injunction staying the decision of the Hearing Examiner.

5. No decision of the Hearing Examiner shall be subject to rehearing by the Examiner, except when remanded from a court of competent jurisdiction.

ATTACHMENTS

1. Sandy City Appeal Authority Research - 2013
Salt Lake City: Ordinance
The amount that we pay the person is $100 per meeting. At this point, Craig Call is the only Appeals Hearing Officer that has been appointed although there may be a need to have an additional appointed hearing officer in case there is a conflict of interest on any of the cases.

In addition, we have set the times for the meetings to be the first Wednesday of the month so there is a regular date for the meeting but if it got to the point where we needed more meetings, we would accommodate that.

The way our ordinance is set up, the Appeals Hearing Officer hears Appeals of Administrative Determinations (Staff interpretations); Variances and appeals of decisions made by the Planning Commission and Historic Landmark Commission. The appeals of Administrative Determinations and Variances are public hearings (de novo review). Appeals of Planning Commission and Historic Landmark Commission decisions are not public hearings (but they are public meetings). In these instances, the decision is based on the record.

Draper:
We use him just like a BOA but just send our requests to him. Seems to work okay. We have so little need for variances, special exceptions and appeals that he rarely gets used though.

Midvale: Ordinance
We have yet to appoint someone and work through the compensation issue. At this point, it may be someone who wants to provide a community service, a flat fee per case, an hourly rate, or a combination. We are currently working within our BOA budget, which provides $20 per member per meeting, but will make an adjustment if necessary.

As far as the BOA’s feelings, we have had a total of 6 meetings in the past four years, going a year and a half with no meetings. In all honesty, I think the members were relieved they didn’t need to block out the third Thursday of each month just in case an application was submitted. It got to the point that we were never sure if we had a working board if we received an application. It really wasn’t very functional for anyone.

North Salt Lake: Ordinance
We just changed to a Hearing Officer this year and we really prefer it. I’ve attached our Hearing Officer ordinance. We actually appointed an attorney who had previously served on the Board of Adjustment. We have found that it is much easier to schedule the meetings, the cost is lower, and the determinations seem to be more in line with state code regulations.

I’m not sure what we offered to pay the Hearing Officer, but he offered to donate his time (to count towards his donated attorney hours, I assume). The Board of Adjustment didn’t really mention anything about being replaced, but I’m sure they were disappointed. We wrote the ordinance shortly after they made a determination that did not meet the state criteria. So, yes, our Board of Adjustment seemed to be making arbitrary determinations based on being nice to the residents instead of meeting the legal criteria. We have had two meetings with the Hearing Officer so far this year and both determinations were denials due to not meeting the state criteria. Staff writes a report with their analysis and we usually have the City Attorney present it at the
mtg. We have staff attend the meeting along with the applicant and the Hearing Officer hears both arguments and then he has generally taken a couple of weeks to make a written decision.

**Bountiful:** Ordinance
Brian, we dumped our BOA about 5 years ago (as soon as was possible) and shifted duties around. First, we created a three person body called the "Administrative Committee" which is composed of myself, the assistant city engineer, and a citizen. We hear selected variances, CUP’s, and other items that aren’t worth involving the Planning Commission. ADA exceptions go to a hearing officer, and appeals of my decisions go to the Planning Commission. This has worked very well for us so far.

Attached is a copy of our approval process — Part 1 has all of the relevant info. At the end of Part 1 is a matrix that shows who the different land use and appeal authorities are. Currently we let people make some appeals to the City Council — I would drop this option if it were politically feasible.

**South Jordan:**
South Jordan currently uses a hearing officer appointed by the City Council for Board of Adjustment. When an application is submitted for a variance, part of our process is to coordinate date and time arrangements with the Hearing Officer and applicant to have the meeting. We have no particular day of the week or month scheduled for Board of Adjustment hearings, only on as needed basis. It has been working out pretty well. Our City Attorney’s office has advised us that there is no need for a public hearing nor notification of adjacent and nearby property owners. However, lately we have been giving a courtesy notice to adjacent neighbors and if anyone shows up, it is up to the Hearing Officer as to whether or not he wants input from them.

Staff does attend the meetings. We also write a staff report outlining the request. Generally we do not give a written recommendation. However, when we are asked our opinion by the Hearing Officer we give one. The officer volunteers his time.

The change occurred over time. Over the last 10 to 12 years we were averaging about 2 BOA meetings per year, not very many. I believe in 2008 we did not have a meeting at all so the City Council thought that since there was so little need for a complete Board, they would take over and act as the BOA. However in 2009, an election year for half the Council, there was a little upswing in BOA applications and the Council realized they were going to be required to make some decisions regarding variances that were going to be unpopular with their constituents. It was then that with the advice of the City Manager and Legal Department that Council decided to go to a separate BOA again. Our City Attorney suggested that since variance applications were still few and that training an entire Board of 5 or 7 members was time consuming it might be more practical to have a single hearing officer. The gentleman recommended and picked to fill the post is both a resident of South Jordan and an attorney that understands the state statute regarding the granting of variances. He donates the time.
Holladay
We just held our last BOA meeting last night. We have adopted an Administrative Appeals Hearing Official and hope to have 1-3 officials in place in the next few weeks. We hope to have at least one of them from outside our city. One person to hear the matter -- three people who are qualified at any given time to serve in the position.

Our BOA was, at times, not working as objectively as it should. We had a hard time getting a quorum from time to time and Board members often ignored the advice of staff and legal counsel on correctly applying the 5 part test. After a few ill-advised and unsupported variance approvals, our council decided to explore the Hearing Officer alternative. We've been talking about it for at least a couple of years.

We have not broadcast the demise of our Board much and they have not met much in the last year or two, so I don't think they care much about being replaced, frankly...

Clearfield City
We use a hearing officer for our Business License Appeals. (Clearfield City Muni Code Title 4) We haven’t moved that direction with the planning and zoning appeals......yet. I see it heading that way. We still have Council as the appeal authority for CUPs and Site Plans. Planning Commission hears variances.

South Salt Lake
South Salt Lake went to an ALJ about 5 years ago and it has worked really well for the City. I would be glad to discuss our successes and trails with it.

Meg Ryan, ULCT; Ordinance
I know of a few communities outside of Salt Lake. Huntington and Orangeville share one just for appeals - Providence was going to adopt one as well for both as Duschene. In Morgan County myself and another person rotate cases. Attached is the ordinance I helped Huntington with. Craig Call, John Jansen and myself have had preliminary discussions on getting a pool of certified folks together to be available to communities. So far I only know of Craig and myself actually doing the work on the Wasatch Front.
TO: Planning Commission

FROM: Scott A. Hess, Development Services Manager

DATE: June 3, 2015

SUBJECT: Discussion - Fencing Definition – Consider information related to “impermeable to sight” definition for fencing, and adding specific standards for fencing in Commercial and Manufacturing zones.

RECOMMENDATIONS

Review information presented by Staff and consider desirable amendments to Clearfield City’s Zoning Code. Make recommendations to Staff on next steps to consider prior to bringing forward a Zoning Text Amendment.

BACKGROUND

Clearfield City Code requires that fences adjacent to and visible from public right-of-ways be “impermeable to sight”. The definition of impermeable has been one that the Planning Commission has been required to consider a number of times. In order to limit confusion, create consistency, and better define terms Staff is presenting information from other communities who use similar fencing definitions.

The extent to which Clearfield City’s fencing regulations must be amended is a point of discussion. This could be as simple as defining the term, or as complicated as setting regulations for different fence styles based on location, land use, impacts, visual screening, buffers, etc.

Staff would suggest that the members of the Planning Commission come prepared to discuss various options that meet the desire and vision of City as it relates to fencing.

Impervious Fencing Definition

www.definedterm.com

Opaque Wall: Wall opaque means a solid wall or fence constructed of brick, concrete, masonry, metal, stone, wood, or other similar material that provides 100 percent screening.

Sandy City:

Exterior Fencing (Within PUD Ordinance) Exterior fencing shall be provided as approved by the Planning Commission. Acceptable fencing materials include architecturally designed brick or block fences, wrought iron fences, post and rail fences, vinyl fences, or structural wood fences with metal posts with tongue-in-groove redwood siding and redwood for all other wood
members. Additional landscape buffers may also be required, with the width and landscaping specifications as determined by the Planning Commission.

Opaque Fence:
   a. Walls. Construction materials shall be brick or colored block masonry. Other masonry material shall require Planning Commission approval.
   b. Under special conditions where it has been determined that the development may create unique impacts on an adjoining residential district, such as in the case of hillside developments or developments adjacent to dedicated open space, the Planning Commission shall review and may approve or deny other methods of screening such as bermed landscaping, open construction or other types of screening, and also screen height and placement of screening.

Schaumberg, Chicago:

Solid Fence – A fence having a regular pattern that has less than thirty percent (30%) of the surface which is open and unobstructed to both light and air when viewed perpendicular (right angle) to the plane of the fence.
   c. Chain link slatted fences are prohibited altogether.

Fairfield, California:

4. Commercial. Fencing on any property with a commercial zoning designation shall comply with the following regulations:
   a. Any open or solid decorative fence, wall, or hedge eight feet or less in height may be installed in any location up to the required street frontage landscape setback identified in Table 25-10: Commercial District Development Regulations. Any fence, wall, or hedge greater than eight feet in height shall comply with all required building setbacks.
   b. In addition to the provisions in a. above, any commercial property owner may have installed an open, decorative fence up to ten feet in height in any location up to the required street frontage landscape setback identified in Table 25-10 with the written permission of the Fairfield Police Department.
   c. Vinyl-clad chain-link fencing may be installed at the rear of buildings if not visible from public areas on- or off-site, or any public right-of-way (e.g., vinyl-clad chain link shall not be used along a street-side property line).
   d. Screening for outdoor storage shall be installed in compliance with Section 25.32.9, Outdoor Seating, Display, and Merchandise Storage.

5. Industrial. Fencing for any property with an industrial zoning designation shall comply with the following requirements:
   a. Any open or solid decorative fence, or hedge 12 feet or less in height may be installed in any location up to the required front building setback line identified in Table
25-12: Industrial District Development Regulations. Any fence, wall, or hedge eight feet or less in height may be installed in any location up to the required street frontage landscape setback line identified in Table 25-12. Any fence, wall, or hedge exceeding 12 feet in height shall comply with all required building setbacks.

b. Vinyl-clad chain link fencing may be installed along any interior side property line.

c. In the Light or General Industrial zoning districts, galvanized chain link fencing shall be permitted along any interior side or rear property line only where no landscape setback is required (see Table 25-12).

d. Screening for outdoor storage shall be installed in compliance with Section 25.32.9 (Outdoor Seating, Storage, and Merchandise Display).
TO: Planning Commission
FROM: Scott A. Hess, Development Services Manager
DATE: June 3, 2015
SUBJECT: Discussion - Buffer – Consider information related to buffers and landscaping requirements between uses, primarily between Commercial and Residential uses.

RECOMMENDATIONS

Review information presented by Staff and consider desirable amendments to Clearfield City’s Zoning Code. Make recommendations to Staff on next steps to consider prior to bringing forward a Zoning Text Amendment.

BACKGROUND

Clearfield City Code currently states that walls and fences may be required when commercial and residential projects abut. There is not any additional landscaping or buffer requirements. Staff is presenting information to the Commission for their consideration. Buffering between properties can be a very large topic with entire ordinance sections dedicated to specifics, or it can be minimal and directed by the Planning Commission based upon foreseen impacts.

Staff would suggest that the members of the Planning Commission come prepared to discuss various options that meet the desire and vision of City as it relates to landscaping and buffers.

Buffer and Landscape Research
Information Reviewed: South Weber City, American Planning Association Article

South Weber City:

Extensive Buffer Yard Ordinance

10.150.070 Buffer Yard Landscaping

1. Intent: The intent of these requirements is to increase the compatibility of adjacent land uses and foster compatibility among different land uses by minimizing the harmful effects of noise, dust and other debris, motor vehicle headlight glare or other artificial light intrusions, and other objectionable activities or impacts conducted or created by an adjoining or nearby use.

2. Requirements: The following illustrations graphically indicate the specifications of each buffer yard. Buffer yard requirements are stated in terms of the width of the buffer yard.
and the number of plant units required per one hundred (100) linear feet of buffer yard. The requirements of a buffer yard may be satisfied by any of the options thereof illustrated. The type and quantity of plant materials required by each buffer yard, and each buffer yard option, are specified in this section. Only those plant materials capable of fulfilling the intended function shall satisfy the requirements of this chapter.

The options within any buffer yard are designed to be equivalent in terms of their effectiveness in eliminating the impact of adjoining uses. Cost equivalence between options was attempted where possible. Generally, the plant materials which are identified as acceptable are determined by the type(s) of soil present on the site. All of the following illustrations are drawn to scale and depict the buffer yard according to the average projected diameter of plant materials at five (5) years of planting.

3. Illustrations: Each illustration depicts the total buffer yard located between two (2) uses.
4. Walls, Fences Or Berms: Whenever a wall, fence, or berm is required within a buffer yard, these are shown as "structure required" in the following illustrations, wherein their respective specifications are also shown. All required structures shall be the responsibility of the higher intensity use, in order to provide maximum sound absorption.
5. Plant Material Substitutions: The following plant material substitutions shall satisfy the requirements of this section:
   1. In buffer yards B, C, D, and E, evergreen canopy or evergreen understory trees may be substituted for deciduous canopy forest trees without limitation.
   2. In buffer yard A, evergreen canopy or evergreen understory trees may be substituted as follows:
      1. In the case of deciduous canopy forest trees, up to a maximum of fifty percent (50%) of the total number of the deciduous canopy trees otherwise required.
      2. In the case of deciduous understory, without limitation.
   3. In all buffer yards, evergreen or conifer shrubs may be substituted for deciduous shrubs without limitation.
6. Equivalent Structures: The following structures are equivalent and may be used interchangeably, so long as both structures are specified in the buffer yard illustrations in this section. (Buffer yard illustrations are to typify the structure and are not intended to be required designs.)

<table>
<thead>
<tr>
<th>Structure Equivalent Structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>F1</td>
</tr>
<tr>
<td>F2</td>
</tr>
<tr>
<td>F3</td>
</tr>
<tr>
<td>F3</td>
</tr>
</tbody>
</table>

7. Solar Access: If the development on the adjoining use is existing, planned, or deed restricted for solar access, understory trees may be substituted for canopy trees where canopy trees would destroy solar access.
8. Satisfaction Of Requirements: Any existing plant material which otherwise satisfies the requirements of this section may be counted toward satisfying all such requirements.
9. Placement: The exact placement of required plants and structures shall be the decision of each user except that the following requirements shall be satisfied:
1. Evergreen (or conifer) shall be planted in clusters rather than singly in order to maximize their chances of survival.

2. Berms with masonry walls (BW1) required of buffer yards D and E options are intended to buffer more significant nuisances from adjacent uses and additionally, to break up and absorb noise, which is achieved by the varied heights of plant materials between the masonry wall and the noise source.
   1. When berms with walls are required, the masonry wall shall be closer than the berm to the higher intensity use.
   2. Within a buffer yard, a planting area at least five feet (5') wide containing fifteen percent (15%) of the total plant requirements shall be located between the masonry wall and the higher intensity class use. These plants shall be chosen to provide species and sizes to reduce noise in conjunction with the wall.

10. Sprinkler System; Ground Cover Required: All buffer yard areas shall include an underground sprinkler system and be seeded with lawn unless ground cover is already established.

(Example Image of Buffer Yard type required)

BUFFERYARD E

American Planning Association Article: [https://www.planning.org/pas/at60/report133.htm](https://www.planning.org/pas/at60/report133.htm)

This is a very Comprehensive Article written in 1960 that considers many aspects of buffering. Please read the “Summary and Conclusions” at a minimum.
ZONING BUFFERS: SOLUTION OR PANACEA?

Just by using the word "buffer," we assume that two or more things are antagonistic. And indeed, the idea that the activities taking place on one piece of land may be harmful to those on a neighboring parcel is almost as old as zoning itself.

The zoning buffer is an attempt to solve this ever-present problem of incompatible land uses. There are two chief types. One—the "use buffer"—is an offshoot from the main branch of the zoning ordinance in its conventional historic form. The other—the "landscaped buffer"—is a fairly recent development. Both will be taken up in turn, but because certain dangers lurk in the concept of the "use buffer," we shall trace its connections with the structure of the zoning ordinance.

In trying to prevent a conflict between land uses, the first step was to classify and segregate the different types of uses. The next step was to arrange them in a hierarchical order, from high to low. Most zoning ordinances today reflect this hierarchy, and some actually specify it in so many words: "The order of classification of uses from highest to lowest for the purposes of this ordinance shall be as follows.

An essential part of the system of high-low use classification is the "zoning pyramid." Just where this term first arose is not clear, but it has become an often-used device to explain the structure of the typical zoning ordinance.

As the accompanying diagram shows, all those uses in the "highest" or residential class are permitted throughout the pyramid. Starting with the second level, the next lower or business uses are permitted in addition. And at the lowest level, industry is permitted in addition to residence and business uses. Thus, uses accumulate from the top to the bottom of the pyramid. Or, putting it another way, "higher" uses are always permitted in the next "lower" class.

Prepared by Mary McLean

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This diagram oversimplifies the situation, and nearly every modern zoning ordinance contains exceptions to the rule, the most notable one being the prohibition of residences in industrial districts.

In recent years, the assumption that pyramidal zoning is a wholly satisfactory way of making land uses compatible has been challenged. The biggest impetus has come from the movement to guarantee good land for industry—land that is well placed and arranged in parcels large enough to accommodate one-story plants with large parking lots, characteristic of modern industrial establishments. This movement has in turn been reflected in the trend toward exclusive industrial zoning, already mentioned.

Pyramidal zoning has been challenged also because over the years the idea of "good" and "bad" has been injected into the scheme of things and substituted for "high" and "low"—words that in themselves do not necessarily possess moral value. Instead, the view that all classes of use have a place in the community is gaining wide favor. Thus the problem is not so much one of protecting residences from all other uses as in seeing that the zoning ordinance, to the extent possible under the law, encourages the proper functioning of each class of land use.

This is not to say that residential properties need not be protected. In fact, the threats to peaceful urban neighborhoods increase as time goes on and as technology advances. The new viewpoint is more a matter of emphasis than a change of position.

An ordinance that is not cumulative, but which still divides principal uses into classes according to function, can be represented by a cube. In this schematic diagram, nothing but business and associated uses are permitted in the business zone, and nothing but industry in the industrial zone. Actually, this picture is not as far-fetched as it might seem to be. There are, for instance, a number of zoning ordinances that prohibit residences in business as well as industrial zones—though still permitting business in industrial. Others restrict the business uses in an industrial zone to those that are accessory to industry. The trend toward planned shopping center zones and planned industrial districts is also a manifestation of the "exclusive" zoning principle.

It is also becoming fairly common for ordinances that are predominantly pyramidal in fact to be organized as if they were cuboid. To take an example: the C-1 zone in a pyramidal ordinance permits all R-4 uses, and by virtue of the cumulative effect, all preceding residence uses. These residential uses are not individually enumerated in the C-1 district provisions, however. In contrast, many contemporary ordinances specifically list in each zone the uses permitted, even though this listing may duplicate previous lists. This practice produces a lengthier, bulkier document, but it also makes the ordinance easier to use. In the long run, it should discourage the automatic progression of previous uses that the present cumulative zoning makes so easy.
A secondary effect of the pyramidal organization of zoning ordi-
nances—and one that bears on buffer strips—is the assumption
that higher uses need to be protected from those lower down the
scale or pyramid. What we are questioning here is not the fact
that this may well be the case in most circumstances, but rather
the assumption that (1) all adjoining use classes have "zone
border compatibility" per se, and that (2) the intervention of
a use immediately lower on the scale serves to protect a higher
use from one still lower down.

Compatibility. To see if this assumption is accurate, we first
must say what we mean by compatibility. This concept is very
important in zoning, and is one of the basic reasons for di-
viding uses into classes. In determining compatibility, we
evaluate such factors as property values, traffic conflict,
mixture of pedestrian and vehicular traffic, phenomena that
affect the senses (noise, light, glare), aesthetic considera-
tions, psychological factors, and building height and bulk.
(Also, see Norton, 1955, for a discussion of what constitutes
compatibility.)

For many years compatibility was considered mainly in relation
to residential uses, but recently it has been extended to busi-
ness and industrial uses as well. Richard L. Nelson, author
of The Selection of Retail Locations (1958), devotes a chapter
to "The Principle of Compatibility." Briefly, businesses are
compatible if they help each other: "A high degree of compatibility exists
between two businesses which, because of their adjacency, do more volume
together than they would if separated... The measure of compatibility
is the degree to which the two businesses interchange customers."

In addition, compatibility can be measured, according to Mr. Nelson, by a
negative factor—interruption of pedestrian traffic. He sets up detailed
compatibility tables on the basis of extent of customer interchange and
shopper traffic interruption. The relationships between businesses are
graded according to whether they are highly compatible, moderately compatible,
slightly compatible, incompatible, or deleterious.

Industrial management, too, is becoming increasingly concerned with compati-
bility. One of the big attractions of a planned industrial district is that
industries within the district are chosen on the basis of their mutual com-
patibility. (See Planned Industrial District Zoning, Planning Advisory
Service Information Report No. 120, 1959.)

It is interesting to note that a new element is introduced into the idea of
compatibility as it applies to business and industrial uses. Whereas pro-
tection is uppermost in considering whether or not another use is compatible
with a residence, enhancement carries equal weight where business and in-
dustrial compatibility are under consideration. This emphasis is in line
with the movement away from "negative" zoning (that is, the ordinance that
prohibits) and toward "positive" or "permissive" zoning (that is, the ordi-

1For complete information on the references given in the text, see the list
at the end of this report.
nance that uses the affirmative approach and is also designed to carry out a land-use plan.)

"Zone Border Compatibility." Let us briefly examine the assumptions mentioned earlier, that all adjoining use classes have zone border compatibility per se, and that the intervention of a use immediately lower on the scale serves to protect a higher use from one still lower down.

Inherent in the idea of a high-low scale is the concept of degree of restrictiveness. Thus R-1 zones are usually the most restrictive of all: fewer types of uses, lower density, large lot area, and wider yards. In the commercial group, C-1 zones are most restrictive, for the same kinds of reasons; and a similar logic holds in the industry groups.

Consequently, since dissimilar zones are going to have to be adjacent to each other, the greatest zone compatibility comes when a zone only slightly less restrictive adjoins one that is more restrictive. Any damaging effect of the lower on the higher use zone will therefore be slight, according to the theory.

These effects can be further reduced by transition zoning—a subject, as it applies to residence zones, that has been fully treated by Arthur C. Comey in his book Transition Zoning (1933). Transition zoning consists in applying more restrictive controls over the uses next to the zone boundary that separates a higher and a lower zone. (Or, it may work the other way, and controls may be relaxed in the transition area—a practice that employs a somewhat different principle.) Controls may apply to use, but more often they apply to height, area, and yards. Transition zoning of use has now evolved into a type of "buffer zoning," as we shall see later.

This general argument seems satisfactory as long as we are dealing with
several different low-density residence zones. But what of the effect created by proximity of a high-rise apartment zone to a three-story apartment zone? From the standpoints of building bulk and traffic generation, for instance, is a high-rise apartment a more desirable neighbor than a one-story neighborhood store? Or, to take another example, is a strip commercial zone more compatible with a residence zone than a light industrial zone? What, in the second example, are the relative effects on property values and the relative degrees of disturbance due to traffic, noise, and lights?

The answer to these questions is, of course, that it depends a great deal on the extent to which the zoning ordinance regulates the effects that might be harmful to nearby neighborhoods. In other words, compatibility or incompatibility, in these examples, depends on the characteristics and activities of the various uses and the conditions under which they operate. Rank position per se has nothing to do with compatibility.

The assumption of universal "zone border compatibility" is fallacious from another viewpoint, also. Most readers are probably familiar with the argument that it is all right to permit hospitals, nursing homes, nursery schools, and other humanitarian institutions in R-3 and R-4 zones but not in R-1 and R-2 zones. The argument holds that the high-density zones can put up with these uses because they are high-density zones: since the people already live closer together, they can endure these institutions better than can people who live farther apart.

Although Edward M. Bassett has long since blasted this line of reasoning (Bassett, 1940), ordinances throughout the country continue to reflect it. Furthermore, it carries over into the thinking about zone boundaries. If a shopping center is to be built in the heart of a suburban R-1 district, why not put an R-4 zone in between, so that the apartment houses can protect the single-family homes from the lower use?

Too literal reliance on the zoning pyramid leads to still another fallacy. As we have seen, the text of a zoning ordinance is organized along the lines of a gradual change, through zone steps, from one extreme to the other. The zoning map, on the other hand, and the land-use arrangement it depicts, seldom carry out that arrangement. The result is that most zoning maps show a hodgepodge of disparate zones. The effect of this assortment is not necessarily bad, but neither does it reflect the safe and ordered arrangement of the zoning pyramid. To some extent, then, the protection offered by a conventionally graded ordinance is misleading because the arrangement on paper does not work out realistically on land.

The hearing was on a controversial request by the State for industrial zoning for 524 State-owned acres that would be sold to Reynolds. The last-minute buffer zone proposal would drop about 60 acres off this total.

Separated by Strips
If granted, it would create a light-industrial zone and a heavy-industrial zone, each separated from the nearest residential zone by strips of land 100 to 600 feet wide.

The "buffer" concept in zoning has taken two different forms, which seem to be unrelated to each other. One, which for convenience we shall call the "use buffer," grows out of the traditional framework of zoning described above. The "landscape buffer," on the other hand, is essentially a design device. Both, however, are attempts to defend the most fragile and vulnerable part of a zoning plan—the zone borders. Both have also been seized upon to make rezoning more palatable.
A Realistic Approach

Buried in Volume XIII of the Harvard City and Regional Planning Papers is Alfred Bettman's article, "The Fact Bases of Zoning," written in 1925. In this paper, Mr. Bettman points out that the relationship between the zoning ordinance and public health, safety, welfare, and other police power goals is one that should be demonstrable in fact.

Whether, for instance, the segregation of business from residential districts tends to promote the public health, is obviously not a question of law but a question falling within the domain of the science and art of public hygiene. . . . Similarly, the relationship of the various district regulations of a zoning ordinance to public safety involves questions of fact and of cause and effect which do not fall within the realm of law, but within the realm of the arts and sciences that deal with security of life and limb under urban conditions; and similarly throughout the other subdivisions of the police power.

Bettman was also interested in clarifying the idea that zoning has a factual basis: "Instead of surmising or reasoning a priori, we should actually trace the way in which the engineering plans and public improvements of a particular city have, in detail and in particulars, been adjusted to the zone plan, and the economies and efficiencies resulting therefrom."

In the years since 1925, developments show that Bettman's plea for a scientific approach to zoning has to some extent been heeded. The most notable example is, of course, industrial performance standards, which require that certain effects be measured (with instruments, if possible, and by observation if not). It is probably not possible in all phases of zoning to be as precise. But even if scientific precision is lacking, it should still be possible to demonstrate a causal relation between a zoning requirement and what it is supposed to achieve. For example, if side yard requirements are intended to permit access to light and air by neighboring buildings, then the yard requirements should in fact do so. And this causal effect should be capable of demonstration.²

This does not necessarily mean that every zoning provision must first be tested, or that elaborate proof must be drawn up to show the efficacy of every zoning plan. But if the ordinance is brought to court, theoretically, at least, the connection between the provision being questioned and the particular ends it is designed to achieve should be demonstrable by reference to objective standards of one kind or another.

The real obligation to base zoning provisions on fact comes when a new zon-

²A more scientific approach to achieving access to light and air is the daylight indicator and sunlight indicator method developed by the Ministry of Housing and Local Government. See The Density of Residential Areas (1952), and Flats and Houses 1958 (1958), London: Her Majesty's Stationery Office. Available from British Information Service, 45 Rockefeller Plaza, New York 20, N. Y. Similar devices have been used in the zoning ordinances of a few American cities.
ing technique is introduced. And unless a factual demonstration is made at this time, the drafters of the ordinance may unintentionally deceive the public—unless the claims happen by chance to coincide with the facts.

It is also at this stage that the authors of a zoning ordinance should be wary of a semantic trap. The snare is set up in this way: First a concept is developed involving a statement of the problem, and a way it can be solved (for example, a means of reducing the harmful effects of one use on another). Next, an attractive name is given to it (buffer strip). Then the name is applied to an object that superficially resembles the suggested solution but that does not possess the characteristics necessary to the solution (a "buffer strip" too narrow to produce the desired effects). The result of this process is that the attributes of the name are relied on whether or not the object in fact does what the concept implies.

It is against a background of fact, therefore, that buffer strip devices should be examined: What is a buffer expected to achieve? What are the conditions of its achievement? Do the particular zoning provisions fulfill these conditions?

**Use Buffers**

As we have seen, the "use buffer" idea is employed mainly by taking ordinary zoning districts and mapping them in such a way that a "buffer" district is interposed between one zone and another. What happens when this idea is carried to its logical conclusion is shown on the accompanying map extract. Instead of the zoning ordinance being an instrument to carry out a land-use plan of the community, it reflects a land-use arrangement based on the idea—if not the fact—of protection. (In this particular example, interestingly enough, very little land in the C-2 zone has in fact been put to business use. Most of it is devoted to residences as an outcome of the cumulative principle of the zoning pyramid, and because there is little incentive for business investment.)

Lest the wrong impression be received from this discussion of the fallacies of the "use buffer," we hasten to say that we do not mean to attack the idea of use segregation nor the attempt to improve "border relations." If anything, the need to determine what constitutes compatibility, to set up scientific standards where possible, and to isolate the factors of land-use relationships that make for a good urban environment is greater now than ever before.

A diminishing supply of urban land, the increase in apartment house con-
struction, and the growth in large-scale projects of all kinds--residential, commercial, and industrial--are but a few of the factors that complicate the problem. These developments and others put pressures on local officials to find an answer that satisfies both sides.

The grading of zoning districts according to compatibility has proved to be a sound zoning principle, offering protection where it is needed most. And various refinements developed over the years have, in Comey's words, helped to mitigate "the detrimental effect to property on the edge of one zoning district resulting from the actual or prospective development of adjacent property in a less restricted district." (Comey, 1933)

But is is quite another thing to turn doctrine into dogma, and to make a rigid logical system out of what was intended to be a set of guiding principles. A priori reasoning applied to a practical situation runs counter to the prevalent trend in zoning.

**Landscaped Buffers**

Although the purpose of a landscaped buffer is the same as that of a use buffer--namely, to ameliorate or even prevent the damaging effects of one kind of land use on another--it operates on quite a different principle. Under the concept of a landscaped buffer, a wholly desirable, noncontroversial use of land is placed between the two conflicting types of districts. The effect of a landscaped buffer is mainly physical: it provides space, obstructs undesirable views, and in other ways reduces the impact of one thing upon another.

**Landscaped Buffer as an Acoustic Screen.** One of the claims often made for a landscaped buffer strip is that it acts as an acoustic screen, reducing the noise emanating from a source to a level where it will not be offensive to people living nearby. So far, tests of the amount of noise reduction gained by buffer plantings are inconclusive, and a case for their effectiveness has not been established.

![Relation between sound level and distance from a noise source.](image)

Mention should be made of the inverse-square law, which states that the intensity of noise diminishes approximately as the square of the distance from the noise source. Because of this phenomenon, distance itself is something of a buffer, though how effective it is in any practical situation depends on several variables.

Among the factors affecting the propagation of noise are wind profile (whose shape depends on the roughness of the ground); wind fluctuations (velocity and frequency); and temperature (the velocity of sound increases with temperature). The pattern of sound distribution is largely determined by these
three factors. Their effects can be represented in a three-dimensional model:

A. Three-dimensional representation of the intensity distribution around a sound source in the presence of a temperature and wind gradient. The sound source and the receiver are located 10 feet above ground. The height of the surface about the ground level represents the sound pressure level in db, and the distance from the source is on a logarithmic scale.

B. Intensity distribution around a source in the presence of a wind stronger than that corresponding to A.

Source: The Physics of Outdoor Sound (Ingard, 1953)

If the noise is slight, reduction due to distance might be enough to make a difference. But if the noise is very loud, a considerably greater distance is needed to secure noticeable reduction. Therefore, the width of a buffer strip should bear some relation to the loudness of the noise generated at the source.

A reduction in noise level gained by a buffer-type planting strip, to be worthwhile, must be added to that normally resulting from the spreading of sound waves over distance alone. In any given situation, therefore, two factors should be taken into account: attenuation due to distance and other variables; and additional attenuation--if any--due to the planting.

In recent years, much interest has been shown in the effects of landscaping on noise reduction. It was hoped at one time that trees might be used to reduce noise from jet airports, but tests conducted in England demonstrated that the reduction achieved in noise of this magnitude was meaningless. (See Impact of Turbine-Powered Aircraft Upon Land Near Airports: Part II, Planning Advisory Service Information Report No. 64.)

Another situation where plantings have been recommended as an acoustic buffer is along high-speed expressways. Unfortunately, scientific tests of their actual value apparently have not been made. A paper on "Abatement of Highway Noise with Special Reference to Roadside Design" (Highway Research Board, 1955) reported two isolated cases where state highway engineers had observed a satisfactory reduction in noise due to planting. Apparently no actual measurements were made, and the observations were subjective.
This paper goes on to point out that to be effective, buffer plantings should be provided for at the time of right-of-way purchase, and that the vegetation should be planted as close as practicable to the traveled way. It concludes with the observation that field tests are needed to obtain data for general uniformity and agreement on: (1) methods of measurement of highway noise from the standpoint of annoyance to roadside dwellers; (2) noise levels acceptable for different land-use areas in which highways may be located; and (3) most effective and economical methods for abating (reducing) highway noise to abutters.

It should be emphasized that although this article was optimistic about the possibilities of landscape buffers as effective noise reducers, it did not report that proof had been established.

On the other hand, measurements have been taken of the effectiveness of solid walls as noise buffers or deflectors. Calculations were made to find out if traffic noise heard on adjoining properties is reduced when freeways are depressed below grade. The solutions indicated that, using uniform dimensions of distance, height of wall, and height of observer, the same amount of reduction was secured from a depressed highway as from a wall. (This does not include sound level reduction due to distance.) (Rettinger, 1959) Earlier tests have shown that a wall reduced traffic noise level by about 10 to 15 decibels. (Rettinger, 1957)

It is a mistake, though, to assume that a hedge can be substituted for a wall. The author of these articles states that measurements showed that a 6-foot privet hedge resulted in a reduction of only 3 decibels.

Finally, the observations made in the Handbook of Noise Control (Harris, 1957) should be noted.

For bushes and trees to be effective in containing noise in an open work area or reducing noise in residential areas, the density of growth must be very high and the depth of treatment great. If trees are used the leaf level should extend almost to ground level. Systematic studies of the attenuation provided by bushes and trees have not been made. However, measured transmission losses through various types of jungle are useful as a guide. These data indicate that bushes and trees provide only slight attenuation. Therefore, as a practical matter, the use of plants as a sound barrier can be justified only when the effects desired are marginal, or when other avenues of approach are either unprofitable or exhausted.

From information available to date, we can only conclude that planting strips are not effective acoustic buffers. When combined with space or distance, they may produce a very slight sound reduction, but the amount

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3But not so close as to prevent dissipation of exhaust fumes. (See Highway Research Board, 1955, p. 45.)

is so small as to be negligible. Until more knowledge is available, it is far safer to rely on the attenuating effects of distance than to count on plantings of any kind.

**Landscaped Buffer as a Visual Screen.** A second claim made for buffer-strip plantings is that they shut off the view between one use and another, reducing or canceling out whatever disadvantages might come from seeing that use. This claim is, of course, easily substantiated and constitutes perhaps the biggest argument in favor of buffer strips in various kinds of situations.

It is easy, however, to fall into the trap of requiring a buffer strip in a zoning ordinance, for instance, and then assuming that the requirement will achieve the results desired. Depending on what effect is desired, the type of plantings, their height, thickness, and maintenance should be specified. Otherwise, the buffer strip requirement will be nothing more than lip-service to an idea.

Designing a buffer strip whose purpose is to cut off virtually all view of an industrial plant, for example, is clearly a job for a landscape architect familiar with the flora of the locality. Again, there are no objective standards to go by. But if sight distances in a tropical jungle are any indication, a complete screen would need to be at least 20 feet wide and planted with an unusually dense growth.

The following description of foliage characteristics is taken from the *Handbook of Noise Control*; it describes the different types of jungle growth in which the sound measurements mentioned above were taken:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Leafiness</th>
<th>Sight distance</th>
<th>Penetration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>very leafy</td>
<td>20 feet</td>
<td>by cutting</td>
</tr>
<tr>
<td>2</td>
<td>very leafy</td>
<td>50 feet</td>
<td>with difficulty,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>but without cutting</td>
</tr>
<tr>
<td>3</td>
<td>leafy</td>
<td>100 feet</td>
<td>free walking if</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>care is taken</td>
</tr>
<tr>
<td>4</td>
<td>leafy</td>
<td>200 feet</td>
<td>rather easy</td>
</tr>
<tr>
<td>5</td>
<td>very leafy undergrowth; large</td>
<td>300 feet</td>
<td>easy</td>
</tr>
<tr>
<td></td>
<td>bracketed trunks</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In a practical situation, the need or intent to completely block off the sight of a building or other use seldom arises. More often, the purpose of a so-called buffer strip is to break up the massive appearance of a solid building wall, for instance; to obscure or camouflage, rather than conceal. This effect, unfortunately, is difficult to measure in quantitative terms, and its success is in the realms of psychology and aesthetics rather than optics.

One approach is to examine again the meaning of the word "buffer." According to Webster's *New World Dictionary of the American Language*, a buffer is "a device using padding, springs, hydraulic pressure, etc. to lessen or absorb the shock of collision or impact." Therefore, in the second meaning given, it is "any person or thing that serves to lessen shock."
The question then becomes this: what are the characteristics of a planting strip that succeed in reducing the effects of seeing a factory, a parking lot, an office building, or some other nonresidential use? Should there be a predetermined ratio between spacing of trees and front footage, for instance? Or between tree spacing and length of building wall? Should the strip be wide enough to exploit the principles of perspective? What percentage of the total view should be shut off by foliage when plants have reached maturity? Should vertical as well as horizontal sight lines be considered?

These are some of the questions that should be given thought if a buffer device is used for the purpose of obscuring view. Although there may not be any cut-and-dried answers, merely to pose them will increase the probability of arriving at a realistic solution.

As is true with a number of other zoning refinements, factual information is badly needed on the visual value of buffer strips. Few studies of their influence on land value or their success in ameliorating what would otherwise be an incompatible juxtaposition of land uses have been made. No one can quarrel with the idea that landscaping improves appearance. The real question is whether in a given situation it can solve a basic incompatibility, or whether its effects are only marginal.

Greenbelt between industrial and residential property. Strip is 80 feet wide; plantings are about five years old. Oak Park, Michigan

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5 One study, not yet completed, is being made by Oak Park, Michigan. In 1952, Oak Park adopted a master plan that provided for buffer areas, or greenbelts, to isolate industrial areas, commercial areas, and major highways from adjacent residential properties. Since 1952, the city has acquired through dedication and acquisition some 3.3 miles of greenbelts, varying in width from 20 feet to 110 feet, depending on the type of area to be isolated. For the most part, developers have dedicated the land and paid for the initial development material costs, with the city providing the labor. Experience shows that the plant material screening does not become effective until five or six years after planting. On the other hand, maintenance costs decline as the plantings mature. Tentative findings indicate that the adjoining residents for the most part are favorable to the greenbelt idea and believe that greenbelts are desirable to live next to. The effect on land value is not determined yet, but preliminary investigations indicate that properties next to greenbelts have not decreased in value as a result of being located near a factory or road. Experience so far shows that maintenance is the big factor, and a city official advises that a program of this type should not be attempted without it.
Zoning Provisions

The appendix consists of buffer provisions extracted from a number of zoning ordinances. The "use buffer," as described earlier, is not among them because it comes into being by means of the zoning map rather than through specialized provisions. The examples, therefore, deal almost entirely with landscaped buffers. There are a few, however, that permit certain other uses of the buffer area in addition to landscaping, and several others that are special-purpose buffer zones.

It may be unfair to compare these various provisions point by point. For one thing, they are not necessarily designed to accomplish the same thing. For another, they are extracted and isolated from the ordinance as a whole, and other provisions, not shown, may influence the total effect of an industrial zone, for instance, on a nearby residential neighborhood. No comparisons are made on the types of uses permitted in the "buffered district," although ordinances that also contain performance standards are so indicated.

There are certain points, however, that a planning commission considering buffer strips should look for when reviewing these provisions. They should be examined critically to see whether or not they would in fact achieve the objectives hoped for by employing a buffer strip device in any given community.

1. **Lateral width of buffer area.** Width ranges from 8 feet to 150 feet; is not specified in some cases.

2. **Types of uses permitted.** Some provisions require landscaping only and prohibit all other uses. Some permit parking and certain buildings and other structures; others prohibit parking.

3. **Standards.** Except for specifying width, few provisions attempt to set up standards that define a "buffer effect." Sarasota, an exception, specifies a degree of opacity, and in common with several others, indicates height and maintenance of planting.

4. **Function.** In most cases, buffers are used to separate industrial zones from residential areas. Some, however, apply to commercial zones and specialized types of land use such as trailer parks and freeways.

5. **Yard pattern.** In some cases, the distance of the "buffered" use from the "protected" use follows the traditional yard pattern. That is, a required buffer strip located along a side yard abutting a residential lot may be narrower than that located along a rear yard. In other cases, the distance is uniform and is related to type of use, irrespective of yard pattern.

6. **Intervening streets.** In some examples an intervening street or alley may substitute for a buffer area. In others, the street makes no difference in the requirements.

7. **Label.** Some areas are called "buffers," and some with similar provisions are not. The term "buffer" appears to bear little relation to the width of the strip.
8. Intent statements. A few of the examples are prefaced with a statement on the intent or purpose of the buffer strip or zone. In other cases, the reasoning is clear, though implied. Some simply specify a buffer or planting strip, but do not make quite clear what it is intended to accomplish.

Court Cases

Buffer strips of different types have been involved in several recent zoning cases. The citations are as follows:

Kozesnik et al. v. Township of Montgomery et al.; Slover et al. v. Township of Montgomery et al.; Depew et al. v. Township of Hillsborough et al. (three cases); Supreme Court of New Jersey, April 8, 1957, 131 A. 2d 1, 9 Zoning Digest 146. (The court held that the quarry operator should provide the necessary buffer and not cast the burden on the neighboring owner.)

Penny v. City of Durham, Supreme Court of North Carolina, Feb. 25, 1959, 107 S.E.2d 72, 11 ZD 161. (An intervening 150-foot buffer strip was involved in interpretation of "directly opposite.")

Ridgeview Co. v. Board of Adjustment of Florham Park, Superior Court of New Jersey [trial court], July 30, 1959, 154 A.2d 23, 12 ZD 81. (Case involved shopping center area requirements. The only question on which plaintiffs failed to make the required showing that the ordinance was unreasonable was the 50-foot buffer strip.)

Miner v. City of Yonkers, Supreme Court (N.Y.), Westchester County [trial court], June 12, 1959, 189 N.Y. S.2d 762, 12 ZD 90. (Buffer strip provided by business developer was not required by ordinance, and hence did not make the rezoning conditional.)

McClain v. City of Hazel Park, Supreme Court of Michigan [highest court], Oct. 13, 1959, 98 N.W. 2d 560, 12 ZD 130. (Rezoning conditioned on reservation and landscaping of 30-foot strip upheld; effect was merely to require a building setback.)

Summary and Conclusions

The buffer concept has arisen because some land uses are incompatible when located in adjoining districts. The buffer device is an attempt to lessen incompatibility, or to cancel out effects that would occur if a buffer were not there.

Two main types of buffer devices have been developed: the use buffer, which is a logical, but not necessarily realistic, outgrowth of the conventional pyramidal zoning ordinance; and the landscaped buffer, which is a design device and relies mainly on physical and visual features for its effect.

The use buffer, applied uncritically, seems to be of dubious value. If rank
position on a "restrictiveness" scale is relied on to protect "higher" uses, the results may be disappointing. The "buffer" zone may fail to give the protection desired. Or undesirable conditions may be imposed on uses within the "buffer" zone itself.

On the other hand, the landscaped buffer shows considerable promise. While wishful thinking may have gone into some zoning provisions, others show that an attempt has been made to approach the problem scientifically. More factual information is needed, however, to determine what can be achieved by strips of different widths and with various types of landscaping, and what their limitations are.

It is hard to avoid the conclusion that buffer strips have been used on occasion to soften up the opposition—namely, the residential property owners who oppose new industry, a freeway, or a new shopping center. The ethical problem here is one that each planning commission has to solve for itself. But if it is to carry out its function with honor, a planning staff does have the responsibility of presenting the facts and not relying on a pretty label. A buffer strip should be what its name implies and it should achieve what is claimed for it.

Whatever the merits of a buffer strip, it is not a substitute for land-use planning, nor is it a substitute for performance standards or other industrial zoning controls. But even with adequate land-use planning and adequate industrial zoning, situations may arise where proximity of incompatible uses cannot be avoided. Or two objectives may conflict—for instance, the goal of a short journey-to-work, and the goal of a safe, pleasant residential environment. In these kinds of situations, buffer strips apparently can save the day—provided they are properly designed and their value can be demonstrated factually.
APPENDIX

Readers be warned! The following ordinance extracts are not offered as models. This representative collection contains both good and bad examples of buffer provisions. Some are good in some ways, and ineffectual or incomplete in others. In other cases, the substantive provisions seem more satisfactory than the administrative.

These extracts could have been arranged according to the types of districts being "buffered." But if this had been done, the provisions that make up a system (e.g., Cumru Township) would have been separated, and the technique of relating requirements to type of district would have been concealed.

The buffer strip or zone should be approached warily and critically. These examples illustrate the development of the idea and show different techniques. Before any of them are adapted to another ordinance, they should be examined for their bad points as well as their good, for mistakes to avoid as well as for achievements to emulate.

Buffer Yards Between Residence and Nonresidence Zones

In C - Retail Commercial Districts: Side Yards. None required for a building used exclusively for commercial or other non-residence purposes, except that where a lot abuts a street on the side lot line or a Residence, or Rural Residence district in the Township, or a similar district in an adjoining municipality, a side yard shall be provided which shall be not less than twenty-five (25) feet in width.

In HC - Highway Commercial Districts: Special Buffer Requirement Adjacent to Residence District. The front, rear, or side yard of any lot used for commercial or other non-residence purposes which abuts a Residence or Rural Residence District in the Township, or a similar district in an adjoining municipality, shall be not less than fifty (50) feet in width or depth measured from the boundary line. Where a street constitutes the district boundary line, the yard shall be measured from the street line. Along each side or rear property line, the twenty (20) feet of such yard space nearest the boundary line shall be used only as a planting strip on which trees or suitable shrubbery shall be placed, and along each street line, the twenty (20) feet of the required front yard adjacent to the street shall be suitably landscaped, except for necessary sidewalks and accessways, subject to the provisions of Section 1007 relating to vision, obstruction. The remaining thirty (30) feet of required yard may be used, however, for off-street parking or for any other purpose other than a building or permanent structure, or any commercial, manufacturing, or processing activity.

In LM - Light Manufacturing Districts: Yard Adjacent to Residence District or Township Boundary Line. Along any boundary line of a Rural-Residence or
Residence District or any similar District in an adjoining municipality, a buffer yard shall be provided which shall be not less than one hundred and fifty (150) feet in width, measured from such boundary line. Where a street constitutes the boundary line, the yard shall be measured from the street line. The fifty (50) feet of such yard space nearest the district boundary line shall be used only as a planting strip on which trees or suitable shrubbery shall be placed. The remaining one hundred (100) feet of space may be used for off-street parking or for any purpose other than a building or permanent structure, or any manufacturing, commercial, or processing activity.

In M - General Manufacturing Districts: Yard Adjacent to Residence District or Township Boundary Line. Along any boundary line of a Rural-Residence or Residence District or any similar District in an adjoining municipality, a buffer yard shall be provided which shall be not less than two hundred (200) feet in width, measured from such boundary line. Where a street constitutes the boundary line, the yard shall be measured from the street line. The fifty (50) feet of such yard space nearest the district boundary line shall be used only as a planting strip on which trees or suitable shrubbery shall be placed. The remaining one hundred and fifty (150) feet of space may be used for off-street parking or for any purpose other than a building or permanent structure, or any manufacturing, commercial, or processing activity.

(Note: Ordinance prohibits offensive emissions, glare, etc.)

Cumru Township, Berks County, Pennsylvania, 1958

Screen Planting in M-1 Light Industrial District

Along any side or rear lot line adjoining an "R" District, there shall be provided a screen planting of trees.

(Note: Ordinance has only one industrial zone.)

Falls Church, Virginia, 1959

Planting Screen in Industrial Zone

Greenbelts - M-1: Industrial establishments in the M-1 Zone adjoining, facing or abutting a more restrictive District shall establish and maintain a greenbelt not less than ten (10) feet wide containing a compact screen of evergreen shrubbery not less than six (6) feet in height.

(Note: Ordinance has one industrial zone only. Also contains performance standards regulating noise, smoke, odor, gases.)

Palm Springs, California, 1958

April 1960
Buffer Area. Where a C-2 Commercial District abuts a Residential District there shall be a buffer area along the district boundary line within the C-2 Commercial District, the depth of which shall be at least 20 feet measured from the district boundary line; where such line is along a street the depth of the buffer area shall be at least 10 feet from the side line of the street. The buffer area may be included in any front, rear or side yard area required under the provisions of this Section. The buffer area shall be used for no purpose other than planting and screening, and there shall be not more than one entrance and one exit from each lot to any street except that additional entrances and exits from a buffer zone—in locations approved by the Police and Highway Departments—may be permitted when authorized as a special exception by the Board of Adjustment.

Buffer Area. Where an L I District abuts a Residential District there shall be a buffer area along the district boundary line within the L I Limited Industrial District, the depth of which shall be at least sixty (60) feet measured from the district boundary line. The buffer area shall be used for no other purpose other than planting and screening, and there shall be not more than one entrance and one exit from each lot to any street except that additional entrances and exits from a buffer zone—in locations approved by the Police and Highway Departments—may be permitted when authorized as a special exception by the Board of Adjustment.

Buffer Area. Where "N S C" Neighborhood Shopping Center District abuts a Residence District, there shall be a buffer area along the district boundary line within the "N S C" Neighborhood Shopping Center District, the depth of which shall be at least 100 feet measured from the district boundary line; where such a line is along a street the depth of the buffer area shall be at least 50 feet from the side line of the street. The buffer area may be included in any required front, rear, or side yard area. The buffer area shall be used for no purpose other than planting or screening.

Tredyffrin Township, Pennsylvania
(amended to 1959)

Landscaped Buffer Around Trailer Parks

Trailer parks shall be surrounded by a landscaped buffer area to the width of 50 feet along arterial highways and 25 feet in width along arterial highways [pic] and 25 feet in width along all other highways and property lines. All landscaping is to be shown on a plan approved by the Zoning Department for the trailer park design.

Dade County, Florida, 1957
Planting Strip in Industrial Zones

Greenbelt. A greenbelt shall be a planting strip composed of deciduous or evergreen trees or a mixture of each, spaced not more than forty (40) feet apart and not less than one (1) row of shrubs, spaced not more than five (5) feet apart and which grow at least five (5) feet wide and five (5) feet or more in height after one (1) full growing season, which shall be planted and maintained in a healthy growing condition by the property owner.

Greenbelt. Where an industrial district is located adjacent to a residential district, a public park or playground and not separated therefrom by a street or alley, a greenbelt buffer strip of trees and shrubs shall be provided and maintained, of not less than eight (8) feet in width, along the property lines. The Board of Appeals may vary these requirements where conditions are such that a greenbelt buffer strip will not serve a useful purpose.

(Note: This ordinance also has performance standards for noise, glare, fire, and safety hazards.)

Northville Township, Michigan, 1955

Landscaped Buffer Strip

Greenbelt. Where a non-residential use is located adjacent to a residential district, a greenbelt buffer strip of trees and shrubs shall be provided and maintained of not less than twenty (20) feet in width along a rear property line, and not less than eight (8) feet in width along a side property line. The Planning Commission may vary these requirements where conditions may cause a hardship to the affected property, or where conditions are such that a greenbelt buffer strip will not serve a useful purpose.

(Note: Applies to both manufacturing zones, M-1 and M-2. Ordinance also has performance standards for noise, glare and heat, and fire and safety.

Plymouth, Michigan, 1955

Landscaped Buffers Between Nonresidence and Residence Zones

In S-C Shopping Center Districts: Along each side or rear property line which adjoins an R-1, R-2 or R-3 Residence District, a buffer planting strip shall be provided on which shall be placed shrubbery, trees, or other suitable plantings sufficient to constitute an effective screen. Along each street line bounding the district, a twenty (20) foot buffer area shall be provided, suitably landscaped except for necessary sidewalks and accessways.
Nothing herein provided shall prohibit the erection of a suitable fence or wall on the required buffer area.

The character of buffer areas and screening devices to be maintained including the dimensions and arrangement of all areas devoted to plantings, lawns, trees, or similar purposes [are to be shown on development plans.]

Yard in Manufacturing District Adjacent to Residence District Boundary Line. In Manufacturing Districts along any Residence District boundary line the following regulations shall apply:

a. A buffer yard of not less than fifty feet in width shall be provided which shall be used only as a planting strip on which hedge, evergreens, shrubbery, or other suitable planting shall be provided and maintained.

b. No building in which manufacturing or processing operations take place shall be located closer than one hundred and fifty (150) feet from a residence district boundary line. This requirement shall not apply to office or administrative buildings, parking facilities, storage buildings, tanks and appurtenances, or other buildings which do not include manufacturing or processing operations.

Where a street constitutes the boundary line, the yard shall be measured from the street line. Where land in an adjoining residence district is held in common ownership with contiguous land in a manufacturing district, one hundred feet of such land in a residence district may be used in meeting the above requirements, but such land used to meet yard requirements may not thereafter be sold separately, if such sale would reduce the yard space below minimum requirements.

West Deptford Township, Gloucester County, New Jersey (amended to 1959)

Buffer Strip in Business and Industrial Zones

Greenbelt. A strip of land variable in width, but not less than eight (8) feet wide for the growing and maintaining of a screen planting of healthy trees and shrubs, which shall not be less than five (5) feet in height.

Local and General Business Districts: Greenbelt. All non-residential uses, when adjacent to an existing residence or a residential district, shall provide and maintain, in a healthy growing condition, a greenbelt buffer strip of trees and shrubs not less than eight (8) feet in width.
Wholesale districts: Greenbelt. All non-residential uses, when located adjacent to an existing residence or a residential district, shall provide and maintain in a healthy growing condition, a greenbelt buffer strip of trees and shrubs not less than twenty (20) feet in width.

Industial districts:

<table>
<thead>
<tr>
<th>M-1</th>
<th>M-2</th>
<th>M-3</th>
<th>M-4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front yards</td>
<td>8'</td>
<td>50'</td>
<td>150'</td>
</tr>
</tbody>
</table>

All building lines and front yards shall be established no closer to the street than the future street line as established by the Master Thorofare Plan of the Township of Warren.

Side yards and rear yards

None | 20' each | 60' each | 100' each

Greenbelt

None, except when a side yard abuts a zoning district other than industrial, then 8' wide

Along all zoning district boundary lines which border on a more restrictive zoning district. Along all street property lines but may be omitted along the front yard when the front yard is landscaped.

8' wide | 20' wide | 20' wide

(Note: This ordinance also contains detailed performance standards.)

Warren Charter Township, Michigan, 1952

Yards in Industrial Zones

Yard (setback) side

(A) Each lot shall have two (2) side yards, each at least twenty (20) feet in width. On corner lots, the side building line shall be the same as the front building lines of the majority of lots fronting on the same street or a minimum of twenty-five (25) feet except that in areas where no Master Plan of Highways has been adopted, the side building line shall be not less than seventy (70) feet from the center line of any abutting street or highway. If the lot adjoins a lot in a Residential Zone along its side lot line, there shall be a side yard equal to the height of the tallest industrial building located on the lot which is proximate to the side yard, but not less than thirty (30) feet. The side yard may be used for off-street parking or loading; however, a planting strip at least ten (10) feet wide shall be provided, planted with suitable trees, shrubs, etc. as determined by the City Manager.
(B) If a lot contains less than the required frontage, the side yard requirement on one side may be eliminated completely upon the approval of the Commission. Where such reduction is provided, party-wall construction shall be required.

Yard (setback) rear

(A) Each lot shall have a rear yard at least twenty (20) feet in width, when the lot adjoins a lot in a Residential Zone along its rear lot line, there shall be a rear yard equal to the height of the tallest industrial building, located on the lot which is proximate to the rear yard of the lot on which the industrial building is located, but not less than thirty (30) feet.

(B) A building not over fifteen (15) feet in height may encroach on the rear yard in this Zone providing that:

(a) The rear yard planting strip shall be at least ten (10) feet in depth.

(b) There shall be no access to a residential street or lot across the rear yard.

(c) The wall bordering on the rear yard shall be unbroken by windows, doors, exhaust outlet and other openings.

(d) No use is permitted within the rear yard, other than the required planting.

(C) When an industrial lot rears on a residential street, it shall have a rear yard planting strip at least twenty-five (25) feet in depth. No access to the residential street shall be permitted from the industrial lot.

(D) No rear yard shall be required when the lot abuts a railroad right-of-way.

(Note: The zone description contains this statement: "The regulations of this Zone are intended to provide standards of intensity of use and standards of external effects or amenities compatible with the surrounding or abutting residential districts."

The same provisions quoted above apply also to the I-2 Light Industrial Zone, whose zone description says: "This Zone is composed of certain lands so situated as to be suitable for light industrial development, but where the modes of operations of the industrial development will directly affect nearby residential and commercial uses. The purpose of this Zone is to permit the normal operations of almost all light industries, within an industrial neighborhood without the encroachment of residential and commercial uses. The regulations are necessary to control traffic congestion, fire and safety hazards and to protect the neighboring residential and commercial districts."

Rockville, Maryland, 1957
Limitations on Permitted Uses in Yard Area Where Industry Abuts Residential

Where an industrial area or property zoned for M-1 uses, fronts or sides upon a street, the opposite side of which is zoned for R-1, R-2, R-3, R-4 or C-1 uses, the uses in the M-1 District shall be subject to the following conditions and limitations:

(1) Setback Area. There shall be maintained a building setback area subject to the exceptions hereinafter set forth, of one hundred feet (100') measured from the right-of-way line, in which the following uses will be required, allowed, or prohibited as specified:

(a) Administrative buildings, not exceeding fifty feet (50') in height may be located therein provided such buildings are set back not less than fifty feet (50') from the street right-of-way line.

(b) Other buildings, not exceeding fifty feet (50') in height, may be located therein, provided such buildings are set back not less than fifty feet (50') from the street right-of-way line, subject to such limitations and conditions as the Board of Zoning Adjustment may deem necessary for the protection of neighboring residential uses.

(c) Landscaping.

(d) Employees recreational facilities without structures.

(e) Parking.

(f) Fences and walls not located within ten feet (10') from the street right-of-way line.

(g) Outdoor storage of material and equipment shall not be permitted in this area.

(h) Railroad facilities shall not be permitted in this area.

Where property which is zoned for M-1 purposes abuts and is contiguous to property zoned for R-1, R-2, R-3, R-4, or C-1 purposes; the uses in the property zoned for M-1 uses shall be subject to the following conditions and limitations.

(1) Setback Area: There shall be maintained a building setback area subject to exceptions hereinafter set forth, on one hundred feet (100') measured from the property line in which area the following uses will be required, allowed, or prohibited as specified:
(a) Administrative buildings, not exceeding the height limitations provided for in the adjoining residential or commercial district, may be located therein provided such buildings are set back not less than fifty feet (50') from the property line contiguous to both the industrially and residentially zoned territory.

(b) Other buildings, not exceeding the height limitation provided for in the adjoining residential or commercial district, may be located therein, provided such buildings are set back not less than fifty feet (50') from the property line which is contiguous to both the industrially and residentially or commercial zoned territory, subject to such limitations and conditions as the Board of Zoning Adjustment may deem necessary for the protection of neighboring residential uses.

(c) Landscaping.

(d) Employee recreational facilities without structures.

(e) Parking.

(f) A uniformly painted solid board fence or masonry wall six feet (6') in height shall be maintained along the property line.

(g) Outdoor storage of materials and equipment shall not be permitted in this area.

(h) Railroad facilities shall not be permitted in this area.

(i) No sign larger than fifty (50) sq. ft. shall face the residential area. Signs shall not be illuminated or animated.

(Note: These conditions apply also to M-2 Zone. Ordinance contains performance standards as well.

Sunnyvale, California,
1951 (amended to 1939)

Planting Strip in M Industrial Zone

A planting strip at least ten feet (10') wide shall be provided along each abutting street, public space, or property in any residential zone, except for necessary ways of ingress and egress. The planting strip may be de-
ducted from the area reserved for off-street parking and off-street loading.

San Diego County, California, 1954

Buffer Zone

ZONE B-1. REGULATIONS (BUFFER STRIP). A person shall not use any premises in Zone B-1 for any purpose other than the following:

(a) Uses permitted within a setback line of Article 1 of Chapter 4.

(b) Landscaping.

(c) Motor vehicle parking.

(d) Employees' recreational area without structures.

(e) Access to any property between which and a highway the area in Zone B-1 is located.

(f) Railroad spur tracks. This subsection does not permit the storage of railroad motive power equipment or rolling stock in Zone B-1.

(g) An ornamental type fence not over eight feet in height, such as woven wire, welded wire, chain link, or wrought iron.

(h) Single or double faced signs identifying the persons occupying the adjoining premises, or the business conducted on the adjoining premises, not to exceed two signs per parcel of land and each sign having an area per face not exceeding eighty four square feet.

(Note: Applies to land adjacent to M zones and whenever indicated on the map. Article 1, Section 4, deals with front and side yard setbacks, and is designed to insure adequate open spaces and to provide visibility along streets in unincorporated portions of the county "developed to such a degree as to possess urban characteristics, or which in the course of natural or probable development will possess urban characteristics."

Los Angeles County, California, 1957

"Open Area District" as a Buffer

This district is designed to provide open space to serve as a buffer between industrial or commercial districts and adjoining residential districts or public streets.

April 1960
Uses Permitted:

(a) Landscaping and screen planting.

Uses Requiring Use Permits as provided in Article 23.

(a) Fences not to exceed six (6) feet in height
(b) Non-commercial recreation
(c) Off-Street parking and loading
(d) Minor local service streets

Palo Alto, California, 1953

Landscaped Area Between Business and Residential Zones

A landscaped area not less than twenty (20) feet in width, measured at right angles to the property lines, shall be established along the entire length of and contiguous to each property line adjoining any property zoned as a residence district; said area shall be so designed and planted as to be eighty per cent (80%) or more opaque when viewed horizontally between two (2) feet above average ground level and ten (10) feet above average ground level; said area shall be established and maintained in a neat and clean condition at all times and the setting and selection of plants shall be such as to assure securing eighty per cent (80%) opacity within twelve (12) months after the landscaping is begun; failure to comply with the landscape requirements set out in this paragraph shall be ground for the Administrative Officer to revoke the Certificate of Occupancy covering the land, buildings and structures intended to be screened by such landscaped area; provided, however, that when any land zoned as "BA-2" business district is separated from nearby land zoned for a residence district, by a street, alley, or other thoroughfare or public area, then the Administrative Officer is authorized to waive all or a portion of such landscaping requirements along the street, alley or public area frontage of the "BA-2" business district property and his discretion in doing so shall be governed among other things by the width of the street in question, the effect on traffic of opaque plantings at the location in question, and the nature and development of the nearby residence district. No part of said landscaped area shall be used for vehicular parking area.

Sarasota, Florida, 1935 (amended to 1954)

Uses in Yard Area Abutting a Residential Street

Every use permitted shall be subject to the following conditions and limitations:

(a) When an industrial area fronts or sides upon a street the opposite side of which is classified for "R" purposes, there shall be maintained a
building line setback of ten (10%) per cent of the average depth of the
lots in each block of such industrial area, provided such setback shall not
be less than ten (10) feet, nor be required to exceed fifty (50) feet in
depth. A minimum strip of landscaping approved by the Planning Commission
shall be maintained along all frontage of the setback area. In addition
thereof the following uses may be located in the setback area:

(1) Landscaping.
(2) Parking area.
(3) Employee's recreational area without structures.
(4) Driveways.
(5) Railroad spur tracks, excluding storage of railroad motive
power equipment or rolling stock.
(6) An ornamental type fence located not closer than ten (10)
feet to the front lot line.

(b) All uses shall be conducted wholly within a completely enclosed build-
ing, or within an area enclosed on all sides with a solid wall or uniformly
painted fence not less than six (6) feet in height.

(c) No operation conducted on the premises shall be objectionable by reason
of noise, odor, dust, mud, smoke, vibration or other similar causes.

Modesto, California, 1957

Buffer Strip in Industrial Zones

INDUSTRIAL BUFFER REQUIRED: Where industry adjoins, faces or confronts resi-
dential property or a major or secondary thorofare, such industrial use shall
provide a yard of not less than 10% of the lot depth or width on the side or
sides abutting, facing or confronting said uses, but such yard need not ex-
ceed 50 feet unless a greater depth or width is required by the general set-
back provisions of this Ordinance, or general or special setback provisions
of any existing setback ordinance. Such yard may be improved with any of
the following:

a. Parking lot
b. Recreational space for employees, or landscaping

Pima County, Arizona,
1952 (revised to 1956)

Buffer Area in Highway Commercial Zone

Buffer Area. Where a CO Commercial District abuts a Residence District
there shall be a buffer area along the district boundary line within the
CO Commercial District, the depth of which shall be at least 20 feet meas-
ured from the district boundary line; where such line is along a street the
depth of the buffer area shall be at least 10 feet from the side line of
the street. The buffer area may be included in any front, rear or side yard
area required under the provisions of this Section. The buffer area shall
be used for no purpose other than planting and screening, and there shall be
not more than one entrance and one exit from each lot to any street except
that additional entrances and exits from a buffer zone—in locations approved
by the Police and Highway Departments—may be permitted when authorized as
a special exception.

Lower Merion Township, Pennsylvania, 1953

ARTICLE 25

B ZONE

SECTION 7250

B Buffer Zone. Land classified in a B
Zone may also be classified in another
zone, except in the C and M zones, and
the regulations set forth in this Article shall
apply in the B buffer zone unless otherwise
provided in this Chapter.

SECTION 7251

Uses Permitted.

A. Any use permitted in the other
respective zone in which the land is
classified and with which the B zone
is combined, provided, however, as
follows:

1. No outdoor advertising sign or
outdoor advertising structure
shall be placed and/or main-
tained in any B zone, provided,
however, that there may be dis-
played on the premises occupied
by any permitted business use
which is located in any B zone
outdoor advertising signs and
outdoor advertising structures
for the advertising only of such
business; and the total area of
all outdoor advertising signs and
outdoor advertising structures in
the aggregate displayed by or
for any one place of business
shall not exceed the equivalent
of one (1) square foot for each
one (1) foot of frontage actually
occupied by such business, in-
cluding the widths of driveways
directly appurtenant thereto.

2. No junk, salvage or auto wreck-
ing yard shall be established in
any B zone unless the same is
completely enclosed within a
building or within a fence ap-
proved by the Planning Com-
mision.

B. The following additional uses,
if not permitted in the other zone, may
be permitted in a B zone upon the
granting of a conditional-use permit:
1. Automobile parking areas
2. Automobile service stations
3. Directional or informational
   signs of a public or quasi-public
   nature
4. Drug stores
5. Garages, public, including re-
   pairing and servicing
6. Grocery, fruit and vegetable
   stores
7. Hotels, apartment houses and
   multiple residences
8. Motels, auto courts and tourist
   courts
9. Meat markets or delicatessen
   stores
10. Professional offices
11. Restaurants, tea rooms and cafes

SECTION 7252

Building Height, Front, Side and Rear
Yards, Area Requirements and Distance
Between Buildings on the Same Lot. None,
extcept that on parcels or lots of less than
ten thousand (10,000) square feet in area,
said regulations shall be the same as re-
quired in the R-3 zone; and provided that
all buildings, except temporary stands,
shall be located not nearer than ninety (90)
feet from the centerline of any public street
or highway.

Kern County, California, 1957
REQUIREMENTS FOR LANDSCAPING AND SCREENING

Zoning Ordinance - City of Rye (New York)

1. Most uses that would need landscaping happen to be classified as "Uses Permitted Only By Special Permit". In order that such a use may be approved, the City Planning Commission must make certain findings, one of which is that the proposed use "will be appropriate in the proposed location and will have no material adverse effect on existing or prospective conforming development". The existence or provision of landscaping or landscaped screening may have an important bearing on whether such a finding can be made by the Planning Commission. Such requirements have been made in certain plans approved to date.

In connection with off-street parking areas for such uses, the Commission must make a finding that such areas are "properly screened from adjoining residential uses". While such screening could consist of a fence or wall, it is usually landscaping.

(For the above, see Section 9-4.4, paragraphs (b) and (d), respectively. Also, see Section 9-4.52 (b) for a similar screening requirement for office buildings in B-4 District

2. Where a Business District abuts Residence Districts, "a strip at least 10 feet wide .... shall be planted and maintained with shrubbery or other natural screening". (Section 9 - 5

3. Where a B-6 Business District faces a Residence District across a street, there shall be a front yard at least as deep as that required in such Residence District and "said front yard shall be planted and maintained with trees or shrubbery sufficiently dense to screen from view from the street any business operations not hidden by building or other walls ....." (Section 9-5.71.)

4. In connection with educational uses (public, parochial and private schools), welfare uses, and public or private recreational uses, buildings, parking areas and playgrounds must be set back specified distances, depending upon the zone, and the intervening area shall be "so densely landscaped as to provide effective visual and sound screening of such activity from adjoining property zoned for residence or left in its natural state if this will fulfill the screening objective ....." (Section 9 - 6.1.)

5. Outdoor play areas for nursery schools, a special permit use, must be "so screened from an lot line and from any residential structure on an adjoining lot so as to avoid a noise nuisance (Section 9 - 6.1 - 2 (7).)

6. Off-street parking areas in Business Districts are also subject to special requirements as to screening. (Section 9 - 6.2.)

7. Open storage of contractors' equipment, coal, wood, lumber, new building material or other similar storage yards which are permitted only in B-1 Business Districts, must be "effectively screened from view of adjoining property in a Residence District". (Section 9.

F. P. Clark, June 25, 1959
13.06.250 Transitional districts—Purpose. The purpose of all transitional districts is to minimize, subject to proper safeguards, conflicts and frictions between zoning districts. The objective to be achieved is stability—of land use, of desirability and of values—through minimizing adverse influences of land use patterns at the edges of two dissimilar districts or between residential and institutional areas. The City Council may, from time to time, as warranted, establish and superimpose transitional districts upon other regular zoning districts. Land classified in the transitional district also shall be classified in one or more of the regular zoning districts. The zoning of such land shall be designated by a combination of symbols: e.g. "R-3-T" Translational District in a Two-Family Residential District. (Ord. 14783 § 20A part; added by Ord. 15062 passed Aug. 9, 1954).

13.06.260 "T" Residential-Commercial transitional district—Use restrictions—Height—Area—Parking. This section will permit the establishment of a district designed primarily for office and institutional land uses having only a limited contact with the general public, not involving the sale of merchandise at retail except incidentally, and which may be carried on with no offensive noise, smoke, odors, fumes, or other objectionable conditions in structures surrounded with ample open space for yards and for off-street parking and the loading of vehicles. The following are the regulations of the "T" Residential-Commercial Districts:

A. USE REGULATIONS.

a. The uses of property permitted in the regular residential zoning district with which the "T" District is combined.

b. The following permitted uses, provided that the residential character of the neighborhood is maintained by the provision of adequate open space setbacks and the control of advertising with one non-illuminated sign on each street frontage:

(1) Business colleges, trade schools, music conservatories, and similar organizations offering vocational training in a specific field.

(2) Dental and medical clinics including a medical pharmacy as an accessory use of the clinic.

(3) Governmental office buildings, post offices, telephone exchanges, and other administrative functions.

(4) Professional offices offering recognized professional services such as the following: dentists, doctors, lawyers, architects, engineers, etc.

(5) Libraries, museums and art galleries.

c. Conditional uses only when authorized by the City Planning Commission:

(1) Offices for organizations used primarily for accounting, correspondence, or research except those which involve equipment processes or materials prohibited or first listed as a permitted use in any "C" District; provided that the occupancy does not regularly involve contact, in person, with clients, members, or customers and, provided that no merchandise is handled, nor any merchandising services are rendered on the premises; provided further that there is no display of merchandise.

(2) Private clubs, lodges, and social and recreational buildings except those carried on as a commercial enterprise.

B. HEIGHT REGULATIONS. The height regulations shall be the same as the residential district with which the "T" District is combined.

C. AREA REGULATIONS. Unless otherwise provided by this section, the following are the area regulations for "T" Districts:

a. Yard Setbacks:

(1) Front and rear yard setbacks shall be the same as the residential district with which the "T" District is combined.

(2) Side yard setbacks shall be as follows:

- "R-1" District .................................................. 20 feet
- "R-2" and "R-3" Districts .................................. 15 feet
- "R-4" and "R-5" Districts .................................. 10 feet

b. Area: The minimum lot area shall be the same as the residential district with which the "T" District is combined.

D. PARKING AND LOADING REGULATIONS. Unless otherwise provided in this section, the off-street parking and loading regulations shall be the same as provided in Section 13.06.350. The following specific uses are exceptions to the regulations of Section 13.06.350(A).

a. Museums, art galleries, libraries and all office buildings: One space for every 400 sq. ft. of floor space.

b. Business colleges, trade schools, etc.: One space for every six students. (Ord. 14783 § 20A part, added by Ord. 15062 passed Aug. 9, 1954).

13.06.270 "TM" Medical Center transitional district—Use restrictions—Height—Area—Parking. This section will permit the harmonious development of medical centers within the City of Tacoma with a large public or quasi-public hospital as its focus. Since these institutions are now located in residential areas, a further purpose of this section is to establish standards which will make such centers compatible with their residential surroundings. The following are the regulations of the "TM Medical Center Transitional Districts:

A. USE REGULATIONS.

a. Any use permitted in the "R" District in conjunction with which this transitional district is established.

b. Dental and medical clinics including a medical pharmacy as an accessory use.
c. Hospitals or sanitariums properly licensed by the state, county or city (except correctional institutions and those for mental, alcoholic or drug addict cases and animal clinics), provided that the building or buildings be located not less than fifty feet from any side lot line.

d. Nursing homes, properly licensed by the state, county or city, provided that the following lot area, yard setback and frontage regulations are complied with:

1. Where not more than five persons are cared for:
   - Total lot area: 6,000 sq. ft.
   - Frontage: 50 ft.
   - Yard setback: Same as the residential district with which the "TM" District is combined.

2. Where more than five but not more than ten persons are cared for:
   - Total lot area: 15,000 sq. ft.
   - Frontage: 75 ft.
   - Yard setback: Same as the residential district with which the "TM" District is combined.

3. Where eleven or more persons are cared for:
   - Total lot area: 20,000 sq. ft.
   - Frontage: 150 ft.
   - Yard setback: 20 feet from all property lines.

e. Conditional uses only when authorized by the City Planning Commission. Hospitals or sanitariums treating epileptics, drug addicts or alcoholic patients and asylums for the mentally ill, properly licensed by the state, county or city, provided that the building or buildings be located not less than fifty feet from any side lot line.

B. HEIGHT REGULATIONS. The height regulations shall be the same as the residential district with which the "TM" District is combined.

C. AREA REGULATIONS. Unless otherwise specified in this subsection the area regulations shall be as follows:

a. Yard setbacks:

1. Front and rear yard setbacks regulations shall be the same as the residential district with which the "TM" District is combined.

2. Side yard setbacks shall be the same as a "T" District, except that uses allowed in residential districts with which the "TM" District is combined shall have the same yard regulations for all permitted uses; any conditional use specified as a permitted use in this subsection must meet the yard regulations of a "T" District.

b. Area: The minimum lot area shall be the same as the residential district with which the "TM" District is combined.

d. Nursing homes: One space per five beds. (Ord. 14793 § 20A; added by Ord. 15062 passed Aug. 8, 1954).

D. PARKING AND LOADING REGULATIONS. Unless otherwise provided in this section the off-street parking and loading regulations shall be the same as provided in Section 13.06.350. The following are specific exceptions to the regulations of Section 13.06.350(A).

a. Auditoriums: Each auditorium or any similar place of assembly shall provide one parking space for every five seats or ten feet of bench.

b. Hospitals and Sanitariums: One space per five beds.

c. Medical and dental clinics: One space for every 400 feet of floor area.

d. Nursing homes: One space per five beds. (Ord. 14793 § 20A; added by Ord. 15062 passed Aug. 8, 1954).
REFERENCES

ASPO Newsletter, July 1959. "Buffer Zones."


