

CITY OF TALLAHASSEE	
<u>PLANNING COMMISSION AGENDA ITEM</u>	
ACTION REQUESTED ON:	March 2, 2021
SUBJECT/TITLE:	Initiation of a Proposed Text Amendment to the Tallahassee Land Development Code (TLDC), Neighborhood Compatibility Ordinance to improve the edge between new projects and existing residential

Background and Statement of the Issue

In 2019, neighborhood groups expressed concerns about the compatibility of new non-residential and multi-family development built adjacent to and across the street from existing low density residential neighborhoods. The groups that identified this concern also believed that the solution could be found in how the City reviews site plans. Most site plans are reviewed as either a Type A or Type B site plan. A project that does not require any variances or deviations is eligible for a Type A site plan. The review time is 1 week. The idea behind the Type A site plan is that projects which fully meet the development standards in the zoning code should be incentivized through an expedited review process. On the other hand, projects that do require a variance or deviation must apply for a Type B site plan. The review time is 1 month. Additional time is provided for enhanced public outreach and analysis of the variance or deviation.

The solution identified by the neighborhood groups was to delete the Type A process and require all projects to follow a Type B site plan review process. Staff met with the neighborhood groups to ensure that we fully understood their concerns. Staff’s response was that focusing on the Type A versus the Type B site plan review emphasized only the process. The root issue in staff’s view is not the process that is followed, but rather the quality of the development standards that are applied in the course of that process.

Accordingly, staff surveyed 14 cities in July 2019 to document the tools used in their zoning codes to guide the form of commercial and multi-family development adjacent to residential. Our goal was not to judge the effectiveness of any city’s standards, but to instead simply document the tools that they utilized. Our goal was to ensure that we learn from the experience of other cities. That effort resulted in a report of the survey’s findings dated July 31, 2019. City staff utilized that report as a source of ideas for the initial versions of the neighborhood compatibility ordinance at Attachment 1.

In late 2020 and early 2021, staff conducted extensive stakeholder outreach meetings. Neighborhood stakeholders included the Alliance of Tallahassee Neighborhoods, the Council of Neighborhood Associations, the Capital Area Neighborhood Network, the Frenchtown Citizen Advisory Council, and a group of leaders from Southside neighborhoods. Business stakeholders included the Greater Tallahassee Chamber of Commerce, the Big Bend Minority Chamber of

Commerce, the Capital City Chamber of Commerce, the local chapter of the American Institute of Architects, and the local chapter of the American Society of Landscape Architects. We received invaluable feedback from these stakeholders, which has been incorporated into the draft ordinance at Attachment 1.

The draft ordinance provides 35 new development standards that are focused on improving compatibility of a new project adjacent or across the street from established residential neighborhoods. A few examples of the new development standards are highlighted below, and Table 1 provides a more detailed summary. The proposed new standards only apply to non-residential or multi-family projects that are adjacent to or across the street from established residential neighborhoods.

- Size and lighting of signs on local streets.
- Enhanced buffers required for buildings greater than 2 stories.
- Height step back required for buildings greater than 2 stories.
- Enhanced buffers if site grading lowers elevation of commercial site.
- More landscaping for accessory uses that cannot meet 200 foot setback.
- Enhanced setbacks and/or landscape buffers for drive through facilities.
- Photometric plans required to confirm light levels at property lines.
- Multi-family design standards improve architectural variety.
- Multi-family height step back for buildings greater than 2 stories.

The meetings with the stakeholder groups resulted in a general consensus on 34 of the 35 standards. The single standard that does not have consensus is a requirement for a good neighbor meeting for multi-family projects (a building with four or more dwelling units) that are adjacent to established residential neighborhoods. The standard requires a multi-family developer to meet with neighbors prior to filing a site plan application.

The City has recently had several multi-family projects that presented unique challenges. Several neighborhood stakeholder groups requested good neighbor meetings in the hope of establishing better communication between multi-family developers and neighbors at an earlier, more formative stage of the proposed project. Neighborhood stakeholders note that the advantages of a good neighbor meeting are that it loops residents into the conversation prior to a site plan submittal, allows neighborhood concerns to be addressed and incorporated into the project design through early communication, and gives neighbors an opportunity to be more aware, more involved, and better able to be engaged. On the other hand, business stakeholders note that the disadvantages of a good neighbor meeting are that it adds 40 days to the review process, increases costs, reduces the availability of affordable housing, and would be redundant given that site plans already require public notice. An email from the Greater Tallahassee Chamber of Commerce dated February 16, 2021 concerning this issue is provided at Attachment 2. Given that there was no concurrence on this issue, the proposed ordinance does not include the requirement.

Table 1 – Neighborhood Compatibility Ordinance

Section	Standard	Existing Code	Potential Revision	Applies to
Signs	Maximum sign size	200 sq. ft.	100 sq. ft.	Only the local road frontage of non-residential uses.
	# of wall signs	1 per frontage	1 per frontage	
	# of monument signs	1 per frontage	1 per frontage	
	Maximum height	Outside MMTD – 18 ft. Inside MMTD – 10 ft.	6 ft.	
	Illumination	Internal or external	External with shielded fixtures	
	Prohibitions	Sec. 7-81 lists 21 prohibitions. 4 more added in proposal. Existing code only prohibits flashing signs if part of portable sign.	Roof signs, billboard signs, pole signs, and flashing signs.	
Buffer Zones	Height Buffer – Applies if commercial or MFR is > 2 stories and adjacent to SFR. Must include either a height step back or tall tree buffer.	a. Height step back – None b. Tall tree buffer - None	a. Height step back – Floors above 2 stories must be stepped back 10 ft. from floor below it; or b. Tall tree buffer – Provide tall tree buffer using trees that achieve mature minimum height of at least 50 ft.	Non-residential or multi-family uses that are adjacent to protected residential uses.
	Grading Buffer – Applies if commercial or MFR site is graded to an elevation lower than adjacent SFR.	None	Perimeter landscaping at the commercial or MFR site must be located at the higher, pre-grading elevation to provide functional buffer for SFR. Also allows alternate landscaping placement if tall tree species are planted.	
Accessory Structures	Setbacks for loading zones and trash enclosures	Must be located at least 200 ft. from any property line adjoining low-density residential zoning.	Loading zones and trash enclosures may be located within 50 ft. of protected residential if buffered by 6 ft. masonry or wood wall and a 10 ft. wide landscape strip with 1 tree (for trash enclosure) and 2 trees (for loading zones).	Non-residential or multi-family uses that are both adjacent to and across the street from protected residential.
Drive Throughs	Setback for speakers, order boards, windows, and stacking lane	None	Either: a. 100 ft. from speaker/order board to nearest residential and 50 ft. from stacking lane to nearest residential; or b. 60-foot Type D landscape buffer, 4-inch caliper plantings, evergreen trees, and stockade fence.	Drive throughs that are adjacent to protected residential.

Table 1 – Neighborhood Compatibility Ordinance (continued)

Section	Standard	Existing Code	Potential Revision	Applies to
Lighting	Light trespass	Standard in some zoning districts is 0.5 footcandles measured at 6 ft. above ground level at property line.	0.5 footcandles measured at 6 ft. above ground level at the property line	Non-residential or multi-family uses that are both adjacent to and across the street from protected residential.
	Shielding	In MMTD, sign lighting must be shielded. In Downtown Overlay of MMTD, light overspill must be minimized with shielding. No standards outside MMTD.	Light sources within 10 ft. of the boundary of the property with a protected residential zoning district or dwelling unit shall be aimed away from the boundary and shall be shielded on the side closest to the boundary.	
	Photometric plan	None	A point-by-point photometric analysis of the anticipated illuminations levels required on a grid at a maximum of every 10 ft.	
	Lighting plan	None	(a) Site plan showing area to be illuminated; (b) number, type, location, and mounting heights of fixtures; (c) manufacturer cut sheets; (d) signature and seal of a registered architect, engineer, or lighting professional certifying that illumination meets Code.	
	Full cutoff	Required in some zoning districts.	Required whenever adjacent to protected residential.	
	Parallel installation	None	Fixtures shall be installed parallel to ground, without a tilted angle.	
	Mounting height	Varies by zoning district and whether in or out of MMTD.	Maximum is 18 feet in parking lots and 12 feet in pedestrian walkways, which is standard in MMTD's Downtown Overlay.	
	Change in elevation	None	If commercial or MFR use is at a higher elevation than protected residential, lighting must be shielded, aimed, located, and mounted to minimize the impact caused by elevation.	
	Ornamental and building lights	None	Shall be located, aimed, and shielded so that direct illumination is focused on the building façade or the ground.	

Table 1 – Neighborhood Compatibility Ordinance (continued)

Section	Standard	Existing Code	Potential Revision	Applies to
MFR next to SFR	Transparency	No standards outside MMTD. In MMTD, standards vary based on whether in design review district.	Generally based on MMTD criteria outside design review district, including a.) All frontages must meet standard for primary frontage; and b.) New standard added for elevations at an angle to a public road.	Multi-family uses that are either adjacent to or across the street from protected residential.
	Façade articulation	MMTD references façade articulation. No numeric minimums.	No street facing façade shall exceed 50 ft. in length without at least a 2 ft. change in the depth of the wall plane.	
	Roofs	MMTD references roof articulation. No numeric minimums.	Roofs that exceed 50 ft. in length must provide a 2 ft. horizontal variation or a dormer, cupola, gable, hip detail, or roof projection.	
	Parking	MMTD sites parking behind building. No standard outside MMTD.	a. Inside MMTD – Proposal defers to MMTD criteria. b. Outside MMTD – Must be behind street facing façade.	
	Orientation	MMTD requires building to face street. No standard outside MMTD.	Front of structure must be oriented to face primary access street.	
	Height step back	None	Floors above 2 stories must be stepped back 10 ft. from floor below it.	
	Outdoor uses	None	No active recreation uses within 200 ft. of protected residential.	
	Driveway access	None	Site MFR driveways across street from shared SFR property lines.	

Initiation of an Amendment to the Tallahassee Land Development Code

Pursuant to §10-52 of the TLDC, the Planning Commission can initiate a text amendment to the TLDC. Staff requests that the Commission initiate a text amendment to Chapter 7, §7-72, to create new sign development standards for sites adjacent to or across the street from Protected Residential; to Chapter 10, §10-177(g), to create enhanced landscape standards for new buildings greater than two stories and for graded sites that are adjacent to Protected Residential; to Chapter 10, §10-411(b)(3)b, to create revised setback standards for trash enclosures and loading zones that are adjacent to Protected Residential; to Chapter 10, §10-412(6), to create new drive through facility setback and buffering standards for projects that are adjacent to Protected Residential; to Chapter 10, §10-427(c)(3), to create enhanced lighting standards for projects that are adjacent to or across the street from Protected Residential; and to Chapter 10, §10-429, to create enhanced development standards for multi-family residential projects that are adjacent or across the street from Protected Residential.

If the Planning Commission votes to initiate the above code amendments, the item will be brought to a public hearing before the Planning Commission on April 6, 2021 and noticed at least 21 days in advance by publication in a newspaper. Staff will prepare a complete analysis of the amendment, as well as a review of its consistency with the Comprehensive Plan, for the public hearing. Within 60 days following the close of the public hearing, staff will transmit a report of the Planning Commission's recommendations and findings to the City Commission, which will hold a public hearing and vote on the amendment.

Recommendation

Initiate a text amendment to Chapter 7, §7-72, and Chapter 10, §10-177(g), §10-411(b)(3)b, §10-412(6), §10-427(c)(3), and §10-429 from the Tallahassee Land Development Code to create new sign development standards for sites adjacent or across the street from Protected Residential, to create enhanced landscape standards for new buildings greater than two stories and for graded sites that are adjacent to Protected Residential, to create revised setback standards for trash enclosures and loading zones that are adjacent to Protected Residential, to create new drive through facility setback and buffering standards for projects that are adjacent to Protected Residential, to create enhanced lighting standards for projects that are adjacent or across the street from Protected Residential, and to create enhanced development standards for multi-family residential projects that are adjacent or across the street from Protected Residential.

Attachments

1. Draft Neighborhood Compatibility Ordinance
2. Email from Greater Tallahassee Chamber of Commerce dated February 16, 2021

Attachment 1
Draft Neighborhood Compatibility Ordinance

Ordinance No. 21-O-__

AN ORDINANCE OF THE CITY OF TALLAHASSEE, FLORIDA; AMENDING SECTION 7-72 OF THE LAND DEVELOPMENT CODE CONCERNING SIGNS ON LOCAL ROADS; AMENDING CHAPTER 10 OF THE LAND DEVELOPMENT CODE CONCERNING DEVELOPMENT REGULATIONS FOR COMMERCIAL AND MULTIFAMILY DEVELOPMENTS WITH PROXIMITY TO RESIDENTIAL PROPERTIES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF TALLAHASSEE, FLORIDA, AS FOLLOWS:

Section 1. Section 7-72 of the Tallahassee Land Development Code is hereby created to read as follows:

Section 7-72. – Signs on Local Roads

For the purposes of Section 7-72, the term “Protected Residential” means any property developed with a single family residence, duplex, or triplex to a density of less than or equal to 8 units per acre, and any vacant property that is zoned either RP-1, RP-2, RP-MH, RP-R, RP-UF, R-1, R-2, R-3, R-5, UF, LP, MH, or RA.

If a non-residential use fronts a roadway functionally classified as a local road and is either adjacent to Protected Residential or across a public street from Protected Residential, then signage for the non-residential use on the frontage of that local road is limited as follows:

1. Sign allowance. The aggregate surface area of all signs shall not exceed 1 square foot of area for each foot of building frontage occupied by the business displaying signs, or 0.5 square foot of area for each foot of frontage of property occupied by the building, whichever is greater. Maximum aggregate surface area allowed for each frontage is limited to 100 square feet for buildings with 1 or 2 tenants and 120 square feet for buildings with 3 or more tenants.
2. Sign Placement.
 - a. Monument Signs. Non-residential uses on local roads may place their monument sign either along the local road frontage of that non-residential use consistent with Section 7-72, TLDC; or along the collector or arterial road frontage of an adjacent non-residential use, subject to the approval of that property owner and consistent with the sign allowance at Section 7-72(1) but not the illumination standard at Section 7-72(5), TLDC.
 - b. Wall Signs. Non-residential uses on local roads may place their wall sign either along the local road frontage of that non-residential use consistent with Section 7-72, TLDC, or on a side or rear wall facing a collector or arterial road consistent with the sign allowance at Section 7-

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1 72(1). The illumination standard at Section 7-72(5), TLDC only applies to a wall sign if the
2 face of the wall sign is at an angle to the local road of less than 90 degrees.

3
4 3. Wall signs. One wall mounted sign is allowed per local street frontage.

5
6 4. Monument signs. One monument sign is allowed per local street frontage. Monument signs shall
7 be constructed with a base full width to the sign face. The maximum height of monument signs
8 from grade to the top of the sign (including the base) is 6 feet.

9
10 5. Illumination. If illuminated, wall and monument signs on local street frontages must be externally
11 illuminated with shielded fixtures.

12
13 6. Prohibitions. No roof signs, billboard signs, pole signs, or flashing signs are permitted.

14
15 7. Signs at Corner. A monument sign at an intersection of a collector or arterial road with a local road
16 is not subject to the standards in Section 7-72(1) through (5), provided: a.) It is located within 20
17 feet of the edge of the public right-of-way of the collector or arterial road; and b.) It is counted as
18 the 1 monument sign that is otherwise allowed for the collector or arterial road. The prohibited
19 signs listed in Section 7-72(6) may not be located in the site's side corner yard.

20
21 8. Section 7-72, TLDC does not apply to the following:

- 22
23 a. Proposed non-residential developments adjacent to properties which are Protected Residential
24 that are currently developed and occupied by a legally existing non-conforming use; or
25 b. Proposed non-residential developments adjacent to isolated properties which are Protected
26 Residential comprised of less than 3 units on less than 3 contiguous lots. For purposes of this
27 Section, "isolated" shall mean one or two residential units, which are surrounded by non-
28 residential zoning or uses.
29 c. A change of use at an existing non-residential development, provided the change of use does
30 not result in a more intense use.

31
32 Section 2. Section 10-177(g) of the Tallahassee Land Development Code is hereby created to
33 read as follows:

34
35 Sec. 10-177. - Buffer zones.

- 36
37 (g) Additional standards for non-residential or Dense Residential projects adjacent to existing
38 properties which are Protected Residential.

39
40 For the purposes of Section 10-177(g), the terms listed below are defined as follows:

- 41
42 ▪ "Protected Residential" means any property developed with a single family residence,
43 duplex, or triplex to a density of less than or equal to 8 units per acre, and any vacant
44 property that is zoned either RP-1, RP-2, RP-MH, RP-R, RP-UF, R-1, R-2, R-3, R-5, UF,
45 LP, MH, or RA.
46 ▪ "Dense Residential" means a residential building with four or more dwelling units.

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1 These additional buffer standards do not apply to non-residential or Dense Residential projects
2 located across the street from properties which are Protected Residential.

3
4 1. Non-residential or Dense Residential uses (greater than 2 stories) adjacent to properties
5 which are Protected Residential. Sec. 10-177(g)1, applies to a non-residential or Dense
6 Residential project which is required to obtain site plan review pursuant to Sec. 9-154
7 through Sec. 9-157, which is adjacent to three or more contiguous lots which are Protected
8 Residential, and which is greater than 2 stories. The adjacency requirement is met if the
9 proposed non-residential or Dense Residential use shares a common property boundary
10 with any portion of one of the three or more contiguous lots. Such projects must meet two
11 buffer requirements, as listed below. The planting density and planting types shall
12 otherwise be consistent with Sec. 10-177, TLDC.

13
14 Any project subject to the regulations contained in this paragraph shall provide the
15 following:

16
17 a. The buffer identified in Sec. 10-177(a)(4), TLDC if located outside of the MMTD or in
18 Sec. 10-284.3(a)(1) if located inside of the MMTD; and

19
20 b. One of the following:

21
22 (i.) Height Step Back.

23 A height step back is required and shall vary based on the first floor elevation of the
24 non-residential or Dense Residential use in relation to the first floor elevation of the
25 Protected Residential use as follows:

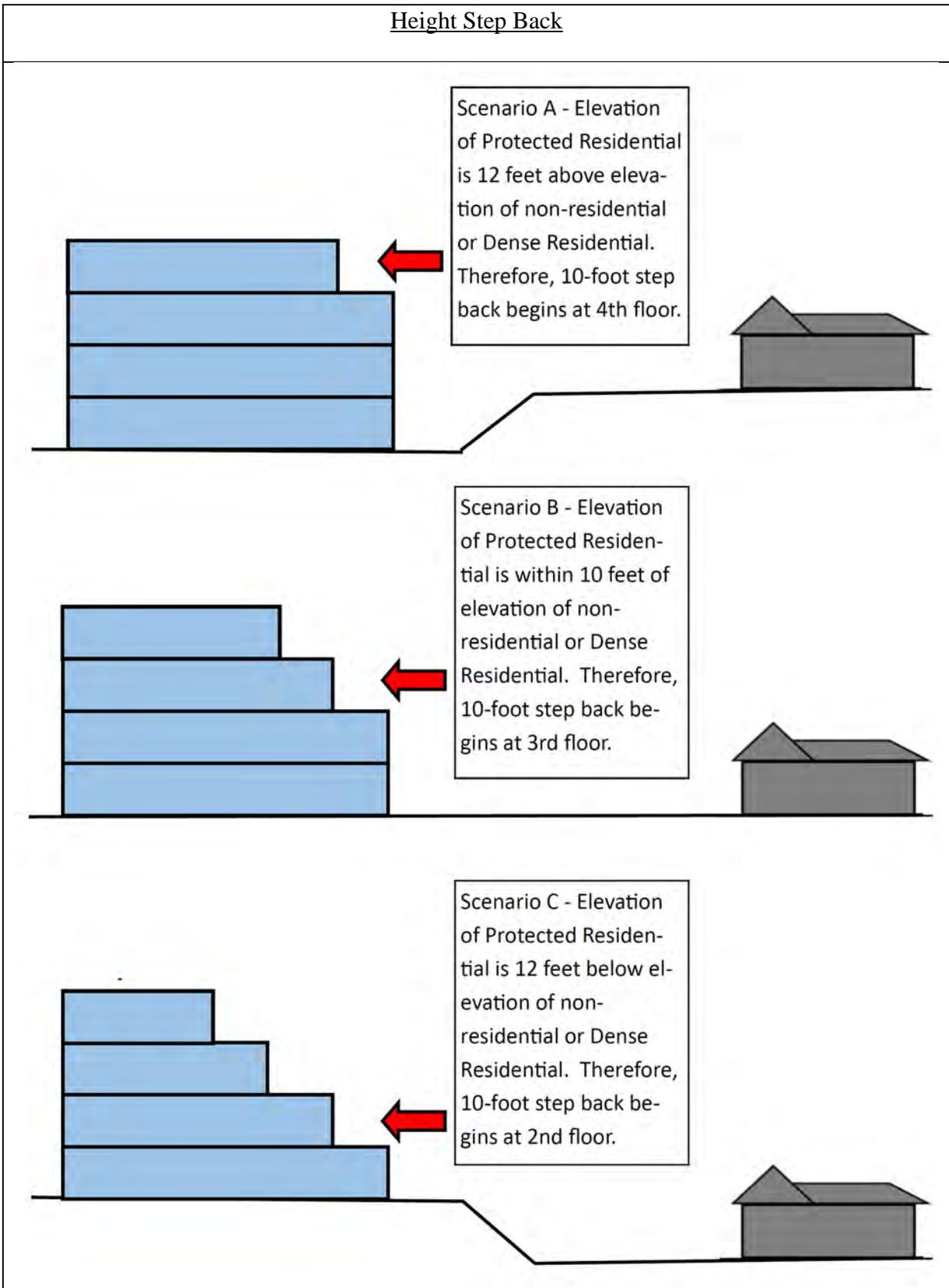
26

<u>1st Floor Elevation of</u> <u>Protected Residential versus</u> <u>Non-Residential or Dense Residential Use</u>		<u>Height Step Back Begins At</u>
<u>A.</u>	<u>Protected Residential > 10 ft. above</u>	<u>3rd floor plus 1 additional floor per</u> <u>10 ft. of elevation difference</u>
<u>B.</u>	<u>Protected Residential < 10 ft. above or</u> <u>below</u>	<u>3rd floor</u>
<u>C.</u>	<u>Protected Residential > 10 ft. below</u>	<u>3rd floor less 1 additional floor per</u> <u>10 ft. of elevation difference</u>

27
28 The floors identified in the table above, and each successive floor, must be each
29 stepped back a minimum of 10 feet from the floor below it where adjacent to a
30 property which is Protected Residential. This standard is visually represented by the
31 illustration titled “Height Step Back”.
32

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Height Step Back



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1 (ii.)Tall Tree Buffer.

2 The project must provide an enhanced landscape buffer with trees chosen from the
3 list in the table below (in lieu of trees otherwise required) that commonly grow to a
4 minimum height of at least 50 feet and are known to succeed in an urban landscape.
5 The trees from the list below comprise the shade tree portion of the buffer that is
6 otherwise defined by Sec. 10-177(a)(4), TLDC (if located outside of the MMTD) or
7 in Sec. 10-284.3(a)(1) (if located inside of the MMTD). Understory trees and
8 shrubs are also required by the noted citations.

9
10 To be eligible for the tall tree buffer option, projects must provide a minimum 15
11 foot separation at the time of planting between the tall tree and all buildings and a
12 minimum soil volume of 2,400 cubic feet per tree. The maximum allowable depth
13 for calculating soil volume is 3 feet. The landscape plan submitted with the site
14 plan must show the planned location of each tall tree, the 15 foot separation, and the
15 undeveloped area committed to the soil volume requirement.

16
17 If a property owner opts to satisfy this buffer requirement by utilizing one or more
18 of the tall trees listed in this Section, they shall maintain the tall trees so they do not
19 present an imminent risk to human health or property. Projects that are not able to
20 provide the minimum distance between trees and buildings and the minimum soil
21 volume shall instead provide the height step back identified in Sec. 10-177(g)(1)b.i.
22

Trees with Mature Minimum Height of at Least 50 Feet ¹		
<u>Scientific Name</u>	<u>Common Name</u>	<u>Mature Height (feet)</u>
<u>Carya illinoensis</u>	<u>Pecan</u>	<u>70-100</u>
<u>Carya tomentosa</u>	<u>Mockernut Hickory</u>	<u>60-80</u>
<u>Fagus grandiflora</u>	<u>American Beech</u>	<u>50-75</u>
<u>Fraxinus Americana</u>	<u>White Ash</u>	<u>50-80</u>
<u>Fraxinus pennsylvanica</u>	<u>Green Ash</u>	<u>60-70</u>
<u>Liriodendron tulipifera</u>	<u>Tulip Poplar</u>	<u>80-100</u>
<u>Magnolia grandiflora</u>	<u>Southern Magnolia</u>	<u>60-80</u>
<u>Nyssa sylvatica</u>	<u>Black Tupelo</u>	<u>65-75</u>
<u>Pinus elliottii</u>	<u>Slash Pine</u>	<u>75-100</u>
<u>Pinus serotina</u>	<u>Pond Pine</u>	<u>70</u>
<u>Pinus taeda</u>	<u>Loblolly Pine</u>	<u>50-80</u>
<u>Pinus palustris</u>	<u>Longleaf Pine</u>	<u>60-80</u>
<u>Platanus occidentalis</u>	<u>American Sycamore</u>	<u>75-90</u>
<u>Quercus alba</u>	<u>White Oak</u>	<u>60-100</u>
<u>Quercus bicolor</u>	<u>Swamp White Oak</u>	<u>50-70</u>
<u>Quercus coccinea</u>	<u>Scarlet Oak</u>	<u>60-75</u>
<u>Quercus falcata</u>	<u>Southern Red Oak</u>	<u>60-80</u>
<u>Quercus nuttallii</u>	<u>Nuttal Oak</u>	<u>60-80</u>
<u>Quercus phellos</u>	<u>Willow Oak</u>	<u>60-75</u>

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Trees with Mature Minimum Height of at Least 50 Feet ¹		
<u>Scientific Name</u>	<u>Common Name</u>	<u>Mature Height (feet)</u>
<u>Quercus shumardii</u>	<u>Shumard Oak</u>	<u>55-80</u>
<u>Quercus virginiana</u>	<u>Live Oak</u>	<u>60-80</u>
<u>Taxodium distichum</u>	<u>Bald Cypress</u>	<u>60-80</u>
<u>Ulmus Americana</u>	<u>American Elm</u>	<u>70-90</u>
<u>Washingtonia Robusta</u>	<u>Washington Palm</u>	<u>70-100</u>
¹ <u>The minimum planting size is a 2 inch caliper tree, measured 6 inches above the soil line.</u>		

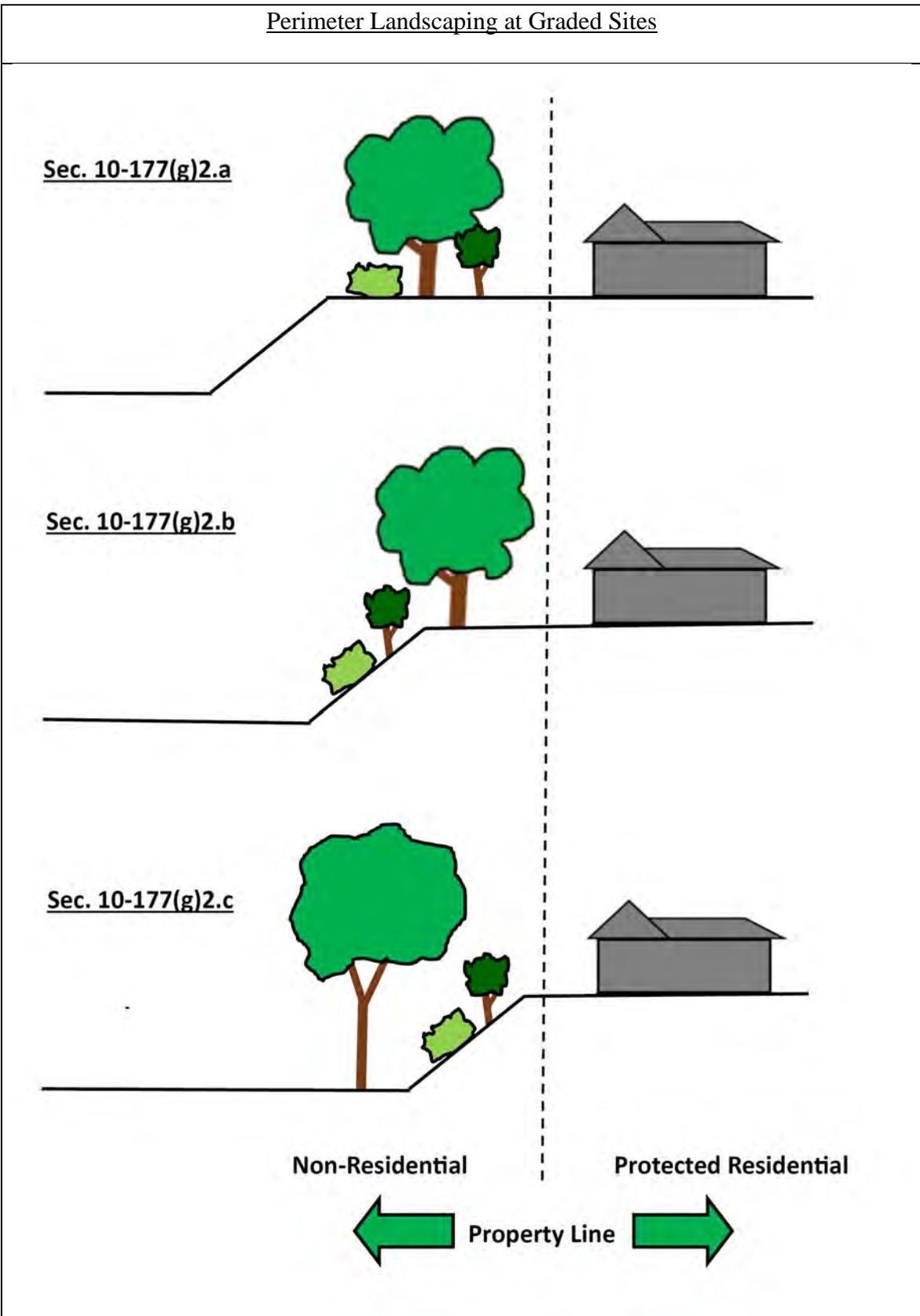
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2. Site Grading. If a non-residential or a Dense Residential site is graded to reduce the elevation of the developed portion of site below an adjacent property which is Protected Residential, the perimeter landscaping shall be located as follows:
 - a. The perimeter landscape buffer may be provided at the higher, pre-grading elevation; or
 - b. If an arborist certifies in writing that the degree of the slope, the type of soil, and the drainage patterns do not cause this option to adversely impact the viability of the buffer, the perimeter landscape buffer may start at top of the slope, with all shade trees planted at the higher, pre-grading elevation and understory trees and shrubs planted on the slope; or
 - c. The perimeter landscape buffer may be provided at the lower, post-grading elevation, provided it is a tall tree buffer as defined by Section 10-177(g)1.b(ii), TLDC.

15 This standard is visually represented by the illustration titled “Perimeter Landscaping at Graded Sites”.

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3. Section 10-177(g), TLDC does not apply to the following:
 - a. Proposed non-residential or Dense Residential developments adjacent to properties which are Protected Residential that are currently developed and occupied by a legally existing non-conforming use; or
 - b. Proposed non-residential or Dense Residential developments adjacent to isolated properties which are Protected Residential comprised of less than 3 units on less than 3 contiguous lots. For purposes of this Section, “isolated” shall mean one or two residential units, which are surrounded by non-residential zoning or uses.
 - c. A change of use at an existing non-residential or Dense Residential development, provided the change of use does not result in a more intense use that is otherwise regulated by Section 10-177(g), TLDC.

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Perimeter Landscaping at Graded Sites



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1 Section 3. Section 10-280.2(c) of the Tallahassee Land Development Code is hereby amended
2 to read as follows:

3
4 Sec. 10-280.2(c) – Applicability.

5
6 (c) Notwithstanding the provisions of Chapter 1, Section 1-2, Definitions and Rules of Construction,
7 the provisions of this Division shall take precedence over those of development regulations found
8 in Chapters 9 and 10 of the land development code, regardless of whether more or less restrictive,
9 except the local health and safety codes. In the event the MMTD does not provide a standard,
10 then the applicable general standard shall take precedence. Despite the foregoing, Sections 7-72
11 (relating to signs on local roads), 10-177(g) (relating to buffer zones), 10-411(b)(3) (relating to
12 accessory structures), 10-412(6) (relating to drive-thru facilities), 10-427(c)(3) (relating to site
13 lighting standards), and 10-429 (relating to Dense Residential uses next to properties which are
14 Protected Residential) will also apply in the MMTD.

15
16 Section 4. Section 10-411(b) of the Tallahassee Land Development Code is hereby amended to
17 read as follows:

18
19 Sec. 10-411. – Accessory structures.

20
21 (b) *Storage buildings, utility buildings, ~~greenhouses~~ equipment, and infrastructure.*

22
23

24
25 (3) Utilities, equipment, and infrastructure

26
27 a. New Development. No exterior utility accessories used for service loading entries, parking
28 for commercial vehicles with cargo volumes greater than ten cubic yards (referred to below
29 as “loading zones”), solid waste facilities with capacities greater than one cubic yard
30 (referred to below as “trash enclosures”), nonresidential air conditioning compressors
31 greater than ten tons, air compressors, electrical generators, or overhead electrical
32 transformers shall be located nearer than 10 ~~ten~~ feet from any property line or 200 feet from
33 any property line adjoining a low-density residential zoning district.

34
35 b. Lot Configuration Does Not Permit Attainment of 200 Foot Buffer.

36
37 For the purposes of Section 10-411(b)(3)b. and e., the term “Protected Residential”
38 includes any property that is zoned either RP-1, RP-2, RP-MH, RP-R, RP-UF, R-1, R-2,
39 R-3, R-5, UF, LP, MH, or RA.

40
41 1. Loading Zone. If the distance between the back of a building and the rear property line
42 is less than 220 feet, then the project may locate the loading zone to within 50 feet of
43 the boundary of the adjoining property which is Protected Residential provided it is
44 buffered from the property which is Protected Residential with a minimum of a 10
45 foot wide landscape strip along its full length between the loading zone and the nearest

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1 Protected Residential. The landscape strip must include at least two trees from the list
2 at Sec. 10-285, Table 4, TLDC.

3
4 2. Trash Enclosure. If the distance between the back of a building and the rear property
5 line is less than 220 feet, then the project may locate the trash enclosure to within 50
6 feet of the boundary of the adjoining property which is Protected Residential provided
7 it is buffered from the property which is Protected Residential by a 6 foot opaque wall
8 of finished masonry or wood on three sides, with a gated door accessible to service
9 vehicles. If a wall of a trash enclosure is generally parallel to Protected Residential,
10 then a 10 foot wide landscape strip shall be adjacent to the trash enclosure along the
11 full width of the side(s) facing the property which is Protected Residential. If a corner
12 of a trash enclosure is adjacent to Protected Residential, then the 10 foot wide
13 landscape strip shall be adjacent to one of the trash enclosure walls that form that
14 corner. The landscape strip must include at least one tree from the list at Sec. 10-285,
15 Table 4, TLDC.

16
17 3. Lots with Multiple Frontages. For sites with multiple street frontages, the front yard is
18 the principal frontage as defined by Sec. 1-2, TLDC. Loading zones and trash
19 enclosures shall be sited in the rear yard of such properties. If the distance between
20 the back of a building and the rear property line is less than 220 feet, then the loading
21 zone or trash enclosure shall meet the following criteria: a.) Be a minimum of 50 feet
22 from any property boundary that is adjacent to Protected Residential; b.) Be a
23 minimum of 50 feet from any property boundary that is across a street from Protected
24 Residential, provided the street has 3 or fewer travel lanes (including on street parking,
25 merge, and turn lanes); and c.) Provide the buffer wall or fence, landscaping, and trees
26 noted in Sec. 10-411(b)(3)b, TLDC.

27
28 c. Redevelopment. Redevelopment projects that propose a solid waste facility with a capacity
29 greater than one cubic yard that is enclosed with ~~an~~ a 6 foot opaque wall of finished
30 masonry, wood, or natural plant material on three sides, with a ~~an appropriate~~ gated door
31 accessible to service vehicles, are not required to comply with the 10 foot ~~ten-foot~~ or 200
32 foot ~~200-foot~~ setbacks set forth in this Section ~~section~~. Solid waste facilities for
33 redevelopment projects are ~~required~~ ~~encouraged~~ to be located behind buildings or other
34 structures so as to screen them from public rights-of-way to the greatest extent possible that
35 is reasonable and feasible.

36
37 d. Earthwork Disturbances. No earthwork disturbances for stormwater swales, detention
38 ponds or retention ponds shall be located nearer than 30 feet from any (existing) property
39 line adjoining a low-density residential zoning district. This does not include earthwork
40 disturbances for underground stormwater facilities, stormwater swales centered on
41 (proposed) property lines with a common utility easement, or perpendicular crossings of
42 property lines by stormwater swales. Redevelopment projects are exempt from complying
43 with the 30-foot distance requirement set forth in this subsection (b)4 for earthwork
44 disturbances associated with stormwater swales. Earthwork disturbances associated with
45 stormwater retention or detention ponds for redevelopment projects must comply with a

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1 15-foot distance requirement from any (existing) property line adjoining a low-density
2 residential zoning district.

3
4 e. Section 10-411(b)(3) does not apply to the following:

- 5
6 1. Proposed non-residential or Dense Residential developments adjacent to properties
7 which are Protected Residential that are currently developed and occupied by a legally
8 existing non-conforming use; or
9 2. Proposed non-residential or Dense Residential developments adjacent to isolated
10 properties which are Protected Residential comprised of less than 3 units on less than
11 3 contiguous lots. For purposes of this Section, “isolated” shall mean one or two
12 residential units, which are surrounded by non-residential zoning or uses.
13 3. A change of use at an existing non-residential or Dense Residential development,
14 provided the change of use does not result in a more intense use that is otherwise
15 regulated by Section 10-411(b)(3), TLDC.
16

17 Section 5. Section 10-412(6) of the Tallahassee Land Development Code is hereby created to
18 read as follows:

19
20 Sec. 10-412. – Accessory uses.

21
22 (6) For the purposes of Section 10-412(6), the term “Protected Residential” includes any
23 property developed with a single family residence, duplex, or triplex to a density of less
24 than or equal to 8 units per acre, and any vacant property that is zoned either RP-1, RP-2,
25 RP-MH, RP-R, RP-UF, R-1, R-2, R-3, R-5, UF, LP, MH, or RA.
26

27 If allowed as a permitted principal use in a zoning district and if adjacent to a property
28 which is Protected Residential, businesses with drive through facilities must meet the
29 following development standards:
30

31 a. Option 1

- 32
33 1. Businesses with drive through facilities must provide a landscape buffer and fence
34 as defined by Sec. 10-177 (for areas outside the MMTD) and Sec. 10-284.3 (for
35 areas inside the MMTD).
36 2. Drive through speakers, order boards, and windows must be located a minimum of
37 100 feet from the nearest adjacent boundary of any property which is Protected
38 Residential.
39 3. That portion of the drive through lane between the order board and the point 75 feet
40 before the order board must be located a minimum of 50 feet from the nearest
41 adjacent boundary of any property which is Protected Residential.
42

43 b. Option 2

44
45 Businesses with drive through facilities (both inside and outside of the MMTD) must
46 provide a landscape buffer which achieves the following:

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- 1 1. The 60-foot Type D planting standard at Section 10-177, TLDC;
- 2 2. All canopy trees and understory trees within the buffer are 4 inch caliper at the time
- 3 of planting;
- 4 3. All trees are evergreen species to provide year round screening; and
- 5 4. A 6-foot wood stockade fence with no spacing between the pickets is built adjacent
- 6 to all Protected Residential property lines.

7
8 c. Section 10-412(6) does not apply to the following:

- 9 1. Proposed drive through facilities adjacent to properties which are Protected Residential that
- 10 are currently developed and occupied by a legally existing non-conforming use; or
- 11 2. Proposed drive through facilities adjacent to isolated properties which are Protected
- 12 Residential comprised of less than 3 units on less than 3 contiguous lots. For purposes of
- 13 this Section, “isolated” shall mean one or two residential units, which are surrounded by
- 14 non-residential zoning or uses.
- 15 3. A change of use at an existing drive through, provided the change of use does not result in a
- 16 more intense use that is otherwise regulated by Section 10-412(6), TLDC. However, if a
- 17 new drive through lane is proposed, it must meet the standards in Section 10-412(6),
- 18 TLDC.

19
20
21 d. Properties in the Multi-Modal Transportation District must also meet the additional

22 drive through standards set forth in Division 4, Downtown Overlay Regulating Plan and

23 Multi-Modal Transportation District (MMTD) Standards.

24
25 Section 6. Section 10-427(c)(3) of the Tallahassee Land Development Code is hereby created

26 to read as follows:

27
28 Sec. 10-427. - Site lighting standards.

29

30
31 (c) *Specific guidelines.*

32 Paragraphs (c)(1) and (c)(2) establish lighting development standards for specific geographic areas,

33 while paragraph (c)(3) establishes citywide lighting development standards based on proximity to

34 properties that are Protected Residential.

35

36
37 (3)For the purposes of Section 10-427(c)(3), the terms listed below are defined as follows:

- 38
- 39 ■ “Protected Residential” means any property developed with a single family residence, duplex,
- 40 or triplex to a density` of less than or equal to 8 units per acre, and any vacant property that is
- 41 zoned either RP-1, RP-2, RP-MH, RP-R, RP-UF, R-1, R-2, R-3, R-5, UF, LP, MH, or RA.
- 42 ■ “Dense Residential” means a residential building with four or more dwelling units.
- 43

44 The following lighting standards apply when a non-residential or Dense Residential land use is

45 adjacent or across a public street from a property which is Protected Residential. In the event of

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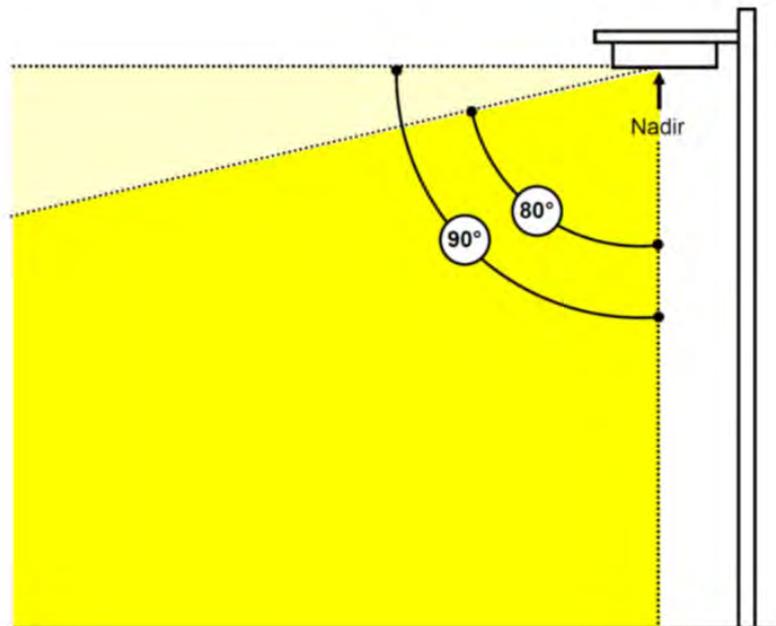
1 any conflict between this Subsection and any other lighting standard in this Section, this
2 Subsection shall control.

3
4 a. Definitions.

- 5
6 1. Candela. A measurement of luminous intensity.
7
8 2. Footcandle (FC). A quantitative unit measuring the amount of light (illumination) falling
9 onto a given point. One footcandle equals one lumen per square foot.
10
11 3. Full cutoff. Luminaire light distribution where zero candela intensity occurs at or above an
12 angle of 90° above nadir. Additionally, the candela per 1,000 lamp lumens does not
13 numerically exceed 100 (ten percent) at or above a vertical angle of 80° above nadir. This
14 applies to all lateral angles around the luminaire.

15
16 As shown by the illustration titled “Full Cutoff Lighting Fixture”, a full cutoff fixture does
17 not allow any light above a horizontal line at the bottom of the light source (i.e. at or above
18 an angle of 90° above nadir), and limited light at an angle of 80° to 90° above nadir.

19
20 Full Cutoff Lighting Fixture



- 22
23 4. Fully shielded. A light fixture constructed, installed and maintained in such a manner that
24 all light emitted from the fixture, either directly from the lamp or a diffusing element, or
25 indirectly by reflection or refraction from any part of the fixture, is projected below the
26 horizontal plane through the fixture’s lowest light emitting part.
27

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- 5. Glare. The effect produced by a light source within the visual field that is sufficiently brighter than the level to which the eyes are adapted, to cause annoyance, discomfort, or loss of visual performance and ability.
- 6. Light trespass. Unwanted light spilling onto an adjacent property.
- 7. Lumen. A quantitative unit used to identify the amount of light emitted by a light source. A lamp is generally rated in lumens.
- 8. Nadir. The point directly below the luminaire.
- 9. Shield. A device that is attached onto or inserted into a luminaire to alter the direction of light being emitted. A luminaire that has a shield attached or inserted is considered to be "shielded."
- 10. Lighting plan. The lighting plan shall include the following: (a) site plan showing the area to be illuminated; (b) the number, type, location, and mounting heights of all pole mounted and building mounted fixtures; and (c) specifications and manufacturer cut sheets for all fixtures including full cutoff classification and shielding information. Lighting plans shall contain the signature and seal of a registered architect, engineer, or lighting professional and shall certify that the illumination on the plan is in accordance with the standards contained in Section 10-427(c)(3).

b. Standards.

The standards listed in the table titled "Lighting Standards" shall apply to a non-residential or Dense Residential land use either (a) adjacent to property which is Protected Residential or (b) across a public roadway from property which is Protected Residential.

<u>Lighting Standards</u>		
	<u>Adjacent to property which is Protected Residential</u>	<u>Across a public roadway from property which is Protected Residential</u>
<u>Trespass. Light trespass shall not exceed 0.5 footcandles, as measured at 6 feet above ground level at the property line.</u>	<u>X</u>	
<u>Shielding. Light sources within 10 feet of the boundary of the property which is Protected Residential shall be aimed away from the boundary and shall be shielded on the side closest to the boundary.</u>	<u>X</u>	

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<u>Photometric Plan. As a condition of approval of the final site plan, a point-by-point photometric analysis of the anticipated illumination levels shall be provided on a grid at a maximum of every 10 feet. The final site plan will not be issued by the City until a photometric plan is provided that demonstrates that no more than 0.5 footcandles will occur at the property line (measured at 6 feet above ground level). The photometric plan shall contain the signature and seal of a registered architect, engineer, or lighting professional and shall certify that the illumination on the plan is in accordance with the standards contained in Section 10-427(c)(3).</u>	<u>X</u>	
<u>Lighting Plans. A lighting plan must be provided.</u>	<u>X</u>	<u>X</u>
<u>Full Cutoff. All outdoor lighting fixtures (including security lighting) shall be full cutoff.</u>	<u>X</u>	<u>X</u>
<u>Parallel Installation. Lighting fixtures shall be installed and maintained parallel to the ground, without a tilted angle.</u>	<u>X</u>	<u>X</u>
<u>Mounting Height. The mounting height of outdoor lighting shall not exceed 18 feet in parking lots and 12 feet along pedestrian walkways, except for lighting in the Mahan Corridor Ring (MCR), Mahan Corridor Node (MCN), Office Residential 1 (OR-1), and Neighborhood Boundary Office (NBO) zoning districts, which have lower mounting height standards.</u>	<u>X</u>	<u>X</u>
<u>Change in Elevation. Where the non-residential or Dense Residential site is at a higher elevation than a property which is Protected Residential, lighting fixtures must be shielded, aimed, located, and mounted to minimize the impact caused by the change in elevation.</u>	<u>X</u>	<u>X</u>
<u>Ornamental and Building Lighting. All ornamental and building lighting mounted on a structure shall be located, aimed, and shielded so that direct illumination is focused exclusively on the building façade or the ground immediately below the fixture.</u>	<u>X</u>	<u>X</u>

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c. Prohibitions

The following outdoor lighting fixtures and applications are prohibited:

1. Any lamp which blinks, flashes, moves, revolves, flickers, or changes intensity or color;
2. Any upward oriented lighting;
3. Searchlights, beacons, and laser source light fixtures;

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- 1 4. Unshielded accent building mounted luminous tube (such as neon, LED, fluorescent or
- 2 other similar technology);
- 3 5. Flood lights;
- 4 6. Internally illuminated wall panels; and
- 5 7. Lighting of any angled building surface (i.e. roof pitch).
- 6

7 d. Exemptions

8
9 The following outdoor lighting fixtures and applications are exempt from the standards in this

10 Subsection 10-427(c)(3):

- 11
- 12 1. Low voltage, low wattage ornamental lighting fixtures, provided the lighting is shielded to
- 13 eliminate glare and light trespass;
- 14 2. A building mounted fixture that delivers a maximum of 1,000 lumens output (equivalent to
- 15 a 60-watt incandescent bulb) and utilizes a translucent lens covering the light source;
- 16 3. Fixtures that turn on only during an emergency or power outage;
- 17 4. Construction or emergency lighting provided that such lighting is temporary and is
- 18 discontinued immediately upon completion of construction work or abatement of the
- 19 emergency;
- 20 5. Lighting of temporary uses and special events permitted by the City; and
- 21 6. Athletic fields and outdoor recreation facilities operated by the City or the Leon County
- 22 School Board.

23

24 e. Final Inspection.

25
26 Prior to determining that a building passes final inspection, or prior to the issuance of a

27 certificate of occupancy, the City Land Use and Environmental Services inspector shall

28 confirm that the outdoor lighting as installed complies with the approved lighting plan and the

29 requirements of this Sub-section.

30

31 f. Previously Developed Sites.

32
33 In the event of construction or redevelopment of an existing site with outdoor lighting which

34 does not conform to this Subsection and which otherwise requires a Type A or Type B site plan

35 review pursuant to Sec. 9-154 or Sec. 9-155, TLDC, any modification of the outdoor lighting at

36 the site must conform to this Subsection.

37

38 g. Section 10-427(c)(3) does not apply to the following:

- 39
- 40 1. Proposed non-residential or Dense Residential developments adjacent to properties which
- 41 are Protected Residential that are currently developed and occupied by a legally existing
- 42 non-conforming use; or
- 43 2. Proposed non-residential or Dense Residential developments adjacent to isolated properties
- 44 which are Protected Residential comprised of less than 3 units on less than 3 contiguous
- 45 lots. For purposes of this Section, “isolated” shall mean one or two residential units, which
- 46 are surrounded by non-residential zoning or uses.

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- 1 3. A change of use at an existing non-residential or Dense Residential development, provided
 2 the change of use does not result in a more intense use that is otherwise regulated by
 3 Section 10-427(c)(3), TLDC. However, if new or replacement outdoor lighting is
 4 proposed, it must meet the standards in Section 10-427(c)(3), TLDC.
 5

6 Section 7. Section 10-429 of the Tallahassee Land Development Code is hereby created to read
 7 as follows:

8
 9 Sec. 10-429. – Development Standards for Dense Residential Uses Next to Properties which Are
 10 Protected Residential.

11
 12 (a) Applicability.

13 For the purposes of Section 10-429, the terms listed below are defined as follows:

- 14
 15 (1) “Protected Residential” means any property developed with a single family residence, duplex,
 16 or triplex to a density of less than or equal to 8 units per acre, and any vacant property that is
 17 zoned either RP-1, RP-2, RP-MH, RP-R, RP-UF, R-1, R-2, R-3, R-5, UF, LP, MH, or RA.
 18 (2) “Dense Residential” means a residential building with four or more dwelling units.

19
 20 (b) Standards.

21 All new Dense Residential projects which require a Type A or Type B site plan review pursuant to
 22 Sec. 9-154 or Sec. 9-155, TLDC, which are adjacent to or across the street from a property which is
 23 Protected Residential shall meet the following regulations:

- 24
 25 (1) Transparency. Reflective glass (which provides for less than 70 percent light transmission) is
 26 prohibited. Transparency must be provided as indicated in the table below titled “Transparency
 27 Standard for Dense Residential”. Properties in the MMTD design review districts are subject
 28 to a separate transparency standard in Division 4 of the Tallahassee Land Development Code
 29 (Downtown Overlay Regulating Plan and Multi-Modal Transportation District Standards).
 30

<u>Transparency Standard for Dense Residential</u>			
		<u>Dense Residential Units in:</u>	
		<u>Single Use</u>	<u>Mixed Use</u>
		<u>Buildings Citywide</u>	<u>Buildings Citywide</u>
<u>1</u>	<u>Elevations with frontage on a public roadway</u>	<u>30% at eye level¹</u>	<u>60% at eye level¹</u>
<u>2</u>	<u>Elevations at an angle to a public roadway</u>	<u>15% at eye level¹</u>	<u>30% at eye level¹</u>
<u>3</u>	<u>Each floor above the first floor in rows 1 and 2 above</u>	<u>15%</u>	<u>15%</u>
<u>¹Eye level is between 3 and 8 feet above the finished grade.</u>			

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- 1 (2) Façade Articulation. No street-facing façade shall exceed 50 feet in length without at least a
2 minimum 2 foot change in the depth of the wall plane.
3
- 4 (3) Roofs. Street-facing roofs that exceed 50 feet in length shall meet the following standards:
5 a. Sloped roofs shall provide one or more of the following: 1.) A minimum 2 foot horizontal
6 variation in the roofline, or 2.) A roof element, that includes one of the following: dormer,
7 cupola, gable, hip detail, or roof projections.
8 b. Flat roofs shall provide either a cornice or other decorative band to serve as a building cap
9 for the entire roof. If building equipment or utilities are located on a flat roof, a parapet
10 wall is required to shield the equipment or utilities.
11
- 12 (4) Parking. Parking shall be provided as follows:
13 a. In the Multi-Modal Transportation District, parking lots shall meet the development
14 standards listed in Division 4, Downtown Overlay Regulating Plan and Multi-Modal
15 Transportation District (MMTD) Standards.
16 b. Outside of the Multi-Modal Transportation District, parking lots shall meet the following
17 standards:
18
19 1. Parking shall be provided to the side or rear and not closer to the street than the street-
20 facing facade of the structure.
21 2. Parking lots with more than four spaces shall be screened when adjacent to a property
22 which is Protected Residential. Screening shall include a Type A landscape buffer
23 consistent with Sec. 10-177, TLDC.
24
- 25 (5) Orientation. The front of the structure shall be oriented to face the primary access street.
26
- 27 (6) Height Step Back. This standard applies to any Dense Residential building elevation
28 which meets any of the following criteria:
29
30 a. Abuts a property which is Protected Residential; or
31 b. Is located across a local street from a property which is Protected Residential; or
32 c. Is located across any collector or arterial roadway (which include three or fewer
33 travel lanes) from a property which is Protected Residential. Striped on-street
34 parking, middle merge lanes, and middle turn lanes shall count as one lane.
35

36 If any of the above location criteria are met, a height step back is required and shall vary based
37 on the first floor elevation of the Dense Residential use in relation to the first floor elevation of
38 the Protected Residential use as follows:
39

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<u>1st Floor Elevation of Protected Residential versus Dense Residential Use</u>		<u>Height Step Back Begins At</u>
<u>A.</u>	<u>Protected Residential > 10 ft. above</u>	<u>3rd floor plus 1 additional floor per 10 ft. of elevation difference</u>
<u>B.</u>	<u>Protected Residential < 10 ft. above or below</u>	<u>3rd floor</u>
<u>C.</u>	<u>Protected Residential > 10 ft. below</u>	<u>3rd floor less 1 additional floor per 10 ft. of elevation difference</u>

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The floors identified in the table above, and each successive floor, must be each stepped back a minimum of 10 feet from the floor below it where adjacent to or across the street from a property which is Protected Residential. If other building elevations face non-residential uses, one additional floor is permitted along the non-residential uses to compensate for the density not permitted due to the building step back along the Protected Residential elevation. This standard is visually represented by the illustration titled “Height Step Back”.

9
10
11
(7) Outdoor Uses. There shall be no active recreation uses allowed within 200 feet of any property which is Protected Residential.

12
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16
(8) Access. If a Dense Residential driveway exit is located on a local street across from a property which is Protected Residential, it shall be sited across from the shared property boundary of the individual Protected Residential lots to minimize the extent to which automobile headlights shine into the windows of residences.

17
18
(c) Section 10-429 does not apply to the following:

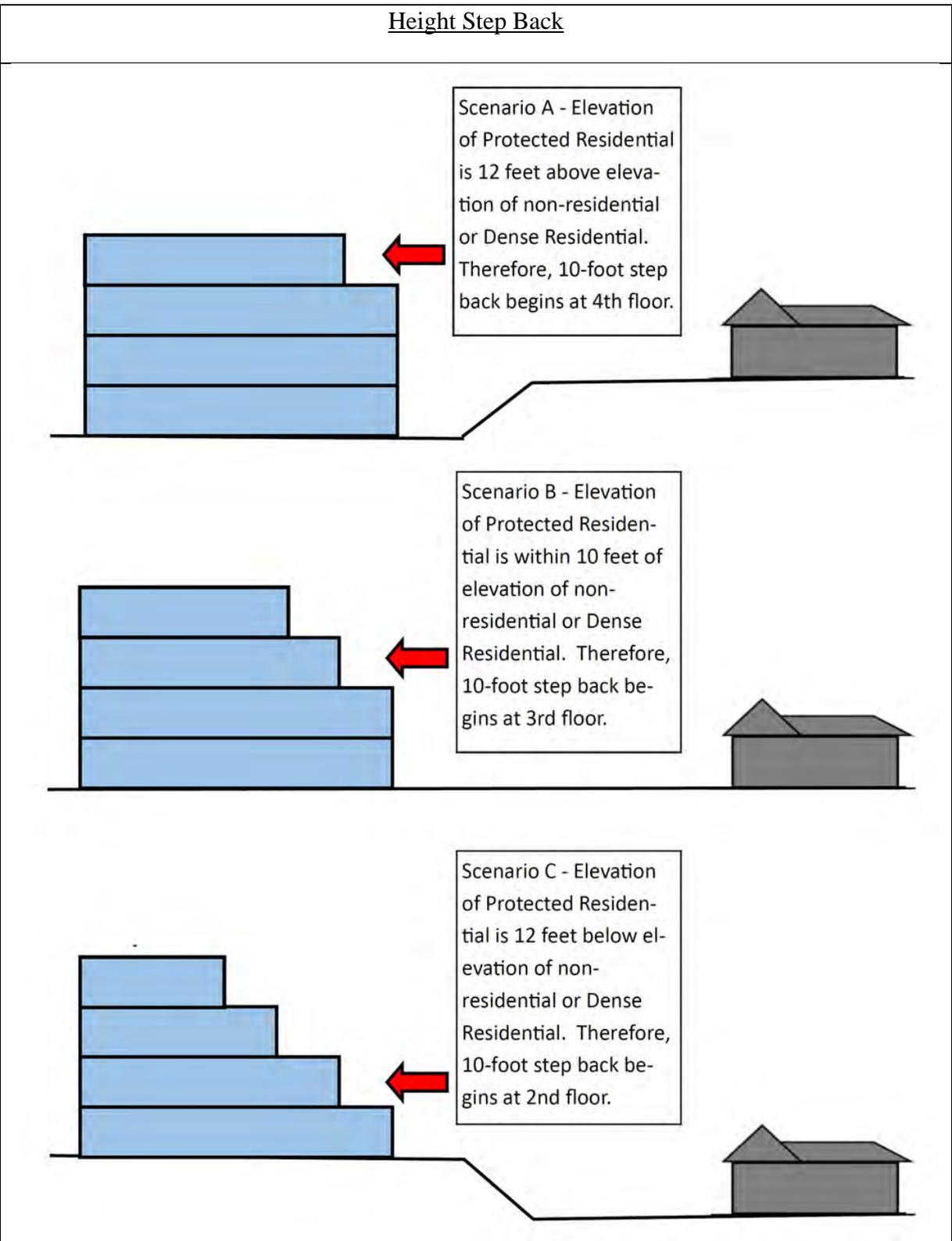
19
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21
(1) Proposed Dense Residential developments adjacent to properties which are Protected Residential that are currently developed and occupied by a legally existing non-conforming use; or

22
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25
(2) Proposed Dense Residential developments adjacent to isolated properties which are Protected Residential comprised of less than 3 units on less than 3 contiguous lots. For purposes of this Section, “isolated” shall mean one or two residential units, which are surrounded by non-residential zoning or uses.

26
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28
(3) A change of use at an existing Dense Residential development, provided the change of use does not result in a more intense use that is otherwise regulated by Section 10-429, TLDC.

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Height Step Back



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Section 8. Conflicts. All ordinances and parts of ordinances of the City of Tallahassee Code in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 9. Severability. If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full force and effect.

Section 10. Effective Date. This ordinance shall become effective _____, 2021, for all new sign permit applications and all new site plan applications. Sign permit applications and site plan applications received prior to the effective date are not subject to this ordinance.

INTRODUCED in the City Commission on the _____ day of _____, 2021.

PASSED by the City Commission on the _____ day of _____, 2021.

CITY OF TALLAHASSEE

By: _____
John E. Dailey
Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
James O. Cooke, IV
City Treasurer-Clerk

By: _____
Cassandra K. Jackson
City Attorney

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Attachment 2
Email from Greater Tallahassee Chamber of Commerce dated February 16, 2021

From: Richard Darabi <rdarabi@moorebass.com>
Sent: Tuesday, February 16, 2021 4:42 PM
To: Jumonville, Karen <Karen.Jumonville@talgov.com>
Cc: sdick@talchamber.com
Subject: Neighborhood Compatibility and Variance Ordinances

*****EXTERNAL EMAIL*****

Please report any suspicious attachments, links, or requests for sensitive information.

Good afternoon, Karen.

We appreciate you and your team engaging with the business community to discuss the proposed zoning code updates.

The first meeting was very informative and we appreciated the level of detail and the approach staff took to outline the proposed updates. In our second meeting, we were glad to see some components of the neighborhood compatibility ordinance adjusted based on our feedback from the first meeting. We haven't seen an updated version since our second meeting, but based on the prior level of engagement and outcome, we are hopeful our suggestions will be considered as you finalize the code language.

After further review of the code updates and supplementary data, and after engagement with a representative group of the business community including local attorneys who specialize in land use law, we seek to communicate our concerns about two topics that we strongly believe should be addressed before moving forward.

We feel these components can be resolved, but the process will take some time.

Good Neighbor Meeting

We feel the Good Neighbor Meeting (GNM) component of the zoning code update requires further consideration. Our issues with the GNM boil down to timing / content, cost, and redundancy.

The proposed timing requirements for the GNM requires that an applicant request the GNM 40 days prior to submitting a pre-submittal or site plan application. This is based on the requirement to request no sooner than 20 days before the GNM date and to wait 20 days after the GNM before filing an application.

This timeline creates an undue burden and delay for any applicant since one would be required to initiate the GNM process as soon as possible to avoid an application delay, but the resulting early GNM would occur when only a draft project concept plan has been prepared with limited detail. It would be unlikely that the GNM would be fruitful for all involved. The timing requirement creates a catch-22 for the applicant. Wait to prepare a more robust concept (and penalize you on the back end by receiving permits 40 days later) or rush through a GNM with a preliminary concept that isn't consistent with the final plan. Either situation doesn't serve the public and doesn't meet the intent of the GNM.

During our second feedback call with staff, we mentioned that requiring a GNM prior to a Pre-Submittal application is not a good idea since the Pre-Submittal process is a tremendous due diligence tool for potential development. This is evident by how many Pre-Submittal applications you receive each week. The ability to gather general staff review comments at that stage of concept design is vital and leads to better projects and less staff time review in the later stages of permitting. If we require an applicant to submit for GNM prior to pre-submittal, this will effectively kill the pre-submittal process based on cost and time. Also, as mentioned above, the concept nature of pre-submittal plans will lead to GNMs that review concepts that are inconsistent with how the project will end up developing.

Related to cost, an applicant already pays substantial permit application fees through each step of developmental review and approval. The proposed GNM code language states, "*The applicant shall bear*

any costs arising from or concerning the meeting.” That open-ended code provision leads to confusion related to the costs to be borne by the applicant. As written, the costs may include staff time by city staffers to organize, attend and document the meeting, venue costs if a city facility is not available, presentation materials and the applicant’s representative’s costs to attend and host the meeting, etc. Also, the direct notice fees (typically in the \$1,200 - \$1,500 range) creates yet another fee that will serve to deter development altogether. In cases where an applicant must go through Type B site plan review, rezoning, or PUD, there is already a separate round of direct notice fees at the time of those applications. These added regulatory costs fees have a cumulative effect that leads to higher priced development (including home prices) that is passed on to the members of our community through increased user costs. If we want to reduce home prices and promote affordable housing, adding development application fees is counterproductive.

Lastly, the GNM is a redundant process since any project’s Pre-Submittal and Site Plan (Type A or Type B) reviews require public hearings with agenda notices available to anyone. We live in a time where civil discourse is often sought but hardly achieved especially when discussing contentious issues like growth and development. To require another public meeting, that may not be held in a controlled environment such as city hall with metal detectors, that is hosted by a developer or their representative, creates undue risk and liability for all parties involved. We currently have captive engagement today with all new projects. The city is doing a great job through GIS mapping tools and outreach efforts to create resources where anyone can find a project on a map, click to see specific application documents, find contact information for staff, etc.

Based on the above opinions, we ask that you remove the GNM portion of the proposed code changes and allow time for staff to continue to assess the need and make-up of the GNM.

We are available to further discuss the GNM after you have reviewed and considered the points above.

Deviations / Variances

We feel the proposed changes to the deviation / variance code criteria should be paused to allow other, relevant code updates prior to any deviation / variance criteria changes. We also request the deviation / variance criteria is refined through active discussion with a focus on Florida case law and with a goal to avoid a “full stop” of development projects comprising a range of sizes and types.

(For the following references to legal opinions, we have relied on our land use attorney colleagues).

The deviation process is one of the most valuable flexibility tools in the land development code. We believe you would agree that code cannot be written in such a manner that deviations are never required. You see this every day, so we won’t belabor the point, but deviations are a necessary tool to enable development, or redevelopment, on sites that are constrained for a variety of reasons and circumstances that are not created by the applicant. The deviations allow development the flexibility to adhere to the intent of the code while properly mitigating the requested deviation by means of alternate measures.

To quantify this point, please refer to the helpful report your staff provided tabulating all deviations from Nov 2016 to Nov 2019 (attached here for reference). From that list of 55 deviations, we noted a range of projects from Hungry Howie’s, to College Town Phase III, to a city electric substation, and a city Putnam Drive sidewalk improvement project. All of these projects required deviations to move forward. This list of projects is diverse and includes small sites, large-scale multi-phase projects, public infrastructure, and affordable housing. From the documented history of deviations, one can see how deviations are a valuable flexibility tool that allows projects of nearly any size or type to move forward when strict application of the code would otherwise inhibit the project from moving forward at all.

The list of deviations from 2016 to 2019 also provides a great summary of which code provisions are most deviated from. This list of code sections is exactly where we should focus code refinement attention rather than taking an axe to the deviation process altogether. By amending these commonly deviated

sections of code, to allow more flexibility, one could eliminate a vast majority of required deviations. These changes may include more flexibility for maximum setbacks, landscaping / street tree plantings, and sidewalks. We don't propose to eliminate these elements but merely amend code in a manner that allows practical flexibility to achieve code intent.

These code changes to add flexibility must occur **prior to** changing the deviation / variance criteria or we risk stopping development on a variety of valuable projects in our community, as demonstrated in the 2016 to 2019 list. Those projects, ranging public to private, large to small, and including affordable housing, would not otherwise qualify for a variance based on the variance criteria proposed. In other words, those projects would not happen – sidewalk improvements, electric substations, urban infill redevelopment, etc. If we eliminate the deviation process and harden the variance criteria before adjusting the commonly deviated code, we have placed the cart before the horse and will effectively halt development until code changes are realized.

Regarding the proposed changes to eliminate the deviation option altogether coupled with hardening the variance criteria, the current deviation code language includes, amongst other criteria, the specific phrase, "*will constitute a substantial hardship.*" The current variance language mentions, "*practical difficulties or hardships.*" The proposed variance language includes, "*exceptional and unique hardships.*"

Our legal experts have opined that the proposed language, including the phrase, "*exceptional and unique hardships*" will create a bar so high that nearly every project or site would not qualify for a variance. Florida case law provides guidance of what constitutes an *exceptional and unique hardship*. Regardless of how city staff, the Development Review Committee, or Commissioners interpret this phrase, nearly any site plan approval that receives a variance would be open for a challenge through an Administrative Hearing Judge and that judge would likely cite Florida case law to rescind any development approvals. Our community can't afford for this to occur considering the current rigidity in certain code sections.

Our team did research into other Florida communities to understand their variance processes and criteria. We've attached that report to this email. In that report, various other Florida communities utilize multiple levels of variances rather than one stringent (unattainable) criterion. Those communities also offer language that may be helpful as we work to refine our proposed variance criteria.

In the order you'll find them in the report:

Wakulla County offers a minor variance option and refers to "*special conditions and circumstances*" and "*unnecessary hardship.*"

Gainesville also refers to "*special conditions and circumstances.*"

The city of Alachua offers Minor Deviations as well as variances.

Port St. Lucie refers to "*unnecessary hardship.*"

St. Petersburg offers **three types of variances** with varying legal criteria for each one (*unnecessary and undue hardship*, then *practical difficulty*, then *unusual, exceptional, unnecessary difficulties or injustice*).

Cape Coral offers variances by "*unnecessary and undue hardship*" but also includes Administrative Deviations based on code standards that "*significantly inhibit development.*"

West Palm Beach references "*unnecessary and undue hardship*" as well as "*unusual and practical difficulties.*"

The city of Naples offers **both variances and administrative variances** that can be approved at the staff level.

Reviewing these examples from other Florida communities, that also need to adhere to Florida law as we do, one can see that none require the same burden of “*exceptional and unique hardships*” (which has specific legal meaning) and many offer levels of variances similar to what our code currently calls a deviation.

In light of the above information, we ask that you:

- **remove the deviation / variance ordinance changes, and**
- **consider making applicable code changes to add flexibility to commonly deviated code components prior to any deviation / variance ordinance changes, and**
- **continue active engagement to refine the deviation process, achieve our common goals, consider what similar communities in Florida are doing, and avoid inadvertently setting a legal threshold for variances that is so high, no development could ever qualify.**

We are available to answer any questions about our above stated positions and to collaboratively assist you and your staff as you move forward through the code refinement process.

We appreciate the information you and your staff has provided to this point and we look forward to thoughtful and productive discussions ahead.

Thank you.

Best,

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