

## M E M O R A N D U M

**TO:** Tom Harmer, Town Manager

**FROM:** Allen Parsons, AICP,  
Director, Planning, Zoning and Building Department

**REPORT DATE:** February 25, 2022

**MEETING DATE:** March 7, 2022

**SUBJECT:** Ordinance 2021-11, Amending Chapter 158.103, Single-Family Residential Structure Buffering/Screening Requirements

### **Recommended Action**

Forward Ordinance 2021-11 to the April 4, 2022 Regular Meeting for second reading and public hearing.

### **Background**

At their January 18, 2022 Regular Meeting the Planning & Zoning Board (P&Z Board) held a public hearing on Ordinance 2021-11, and recommended approval (7-0). Ordinance 2021-11, would add buffering/screening requirements to newly constructed single-family homes.

The proposed screening requirements derive from an extended series<sup>1</sup> of P&Z Board Workshop discussions and ordinance-related iterations. The initial focus of these efforts dealt with addressing perceived compatibility concerns related to newly constructed single-family homes. New construction requirements to elevate structures to meet flood clearance requirements, can make these significantly taller than adjacent older homes constructed prior to these elevation requirements. This subject's extended history is indicative of the challenge associated with both whether, and how, to regulate design aspects of newly constructed single-family homes.

The direction from the Town Commission to the P&Z Board was to provide recommendations on two specific areas<sup>2</sup> of an ordinance (Ord. 2020-07) that was considered by the Town Commission at their September 14, 2020 Regular Meeting. Ordinance 2020-07 contained provisions that would have applied to newly constructed single-family residences located immediately adjacent to the side yard of an existing at-grade single-family residence (constructed prior to 1975<sup>3</sup>). Such structures were provided a menu of options<sup>4</sup> to minimize privacy impacts of the new construction.

The P&Z Board did not recommend developing Overlay Zoning Districts. The overlay concept was viewed as being useful in very limited circumstances; is too small to create a series of neighborhood or area specific overlays; and the significant

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<sup>1</sup> A total of 20 meetings between the Town Commission and P&Z Board have been associated with this topic.

<sup>2</sup> (Footnote description available in Town Clerk's Office.

<sup>3</sup> The significance of the 1975 date is that homes constructed prior to that date were not required to be elevated above grade to meet FEMA flood zone requirements

<sup>4</sup> Options included: Building design; Usage of Construction materials; Usage of Trees, shrubs or other landscaping; and Screening by other means.

time/effort/expense associated with applicable standards and quasi-judicial public hearings to implement outweighed the potential benefits.

The P&Z Board also had concerns that the privacy requirements in Ordinance 2020-07 would be difficult to withstand challenges as to whether any given home had either been required to do too much; or had not done enough to mitigate privacy impacts. Such conflicts could end up discouraging renovations or upgrading of older non-flood-compliant homes. The P&Z Board also felt that provisions of Ordinance 2020-07 placed too much subjective judgement in the hands of staff, and the loosely defined standards would not meet legal tests as enforceable standards.

The P&Z Board considered that rather than develop highly specific standards, aspirational guidelines might better address privacy-related design issues. There were also debates about having no additional standards or requirements, with a number of concerns expressed including:

- Impeding the redevelopment of Federal Emergency Management Agency (FEMA) /flood compliant structures, which could impact home values.
- A belief that appropriate height and privacy controls are in place.
- That the solutions considered may be causing more problems than are being fixed.
- Creating legal/property rights claims and that additional standards could be viewed as unequal and bestowing unique rights to owners of older homes.
- Imposition of standards or guidelines that would result in over burdening personal design decisions.
- An indication the limited number of problematic examples of incompatible new home developments.

The P&Z Board provided direction to staff during their June 15, 2021 Workshop discussion to develop an ordinance to address buffering/screening requirements, as those currently required for new nonresidential or multifamily projects constructed next to single-family homes.

Ordinance 2021-11 was developed, reviewed and modified over a series of Workshops and public hearings. While initially proposed to apply to “a newly constructed single-family dwelling” use that “abuts an existing at-grade single-family dwelling (constructed prior to 1975),” the P&Z Board ultimately recommended that new buffering/screening requirements be applicable to all new single-family homes or alterations where a second-story is added, when abutting an existing one-story single-family home (regardless of when that abutting one-story home was constructed). The P&Z Board’s recommendation is that buffering/screening requirements are appropriate for all new single-family construction going forward as a means to increase privacy between homes and second-story additions.

The buffering/screening requirements apply to new construction, where:

- residential districts abut nonresidential structures;
- multifamily residential structures and uses abut single-family residential districts or uses; and
- (the newly proposed condition) a new single-family home (or alteration that adds a second-story) abuts a one-story single-family dwelling.

For these situations, there are two options: 1) placement of a fence or wall at the maximum height allowed by the Zoning Code<sup>5</sup>; or 2) installation of a landscaped buffer that is at least 10 feet in width, with mature plants that are either 8 feet in height or, when combined with a berm, are 8 feet in height, and “arranged to form a visual screen of at least 80 percent” between the more intensive use and the abutting residential use.

The Ordinance did not generally propose changes to the existing screening requirements, which currently apply to nonresidential and multifamily uses when next to single-family homes, because there has been no indication that these existing buffering/screening requirements has been insufficient. The only substantive change was to the height required, if the landscape buffer option is selected. The height was changed from 6 to 8 feet.

The screening requirements (in Sec. 158.103(A)(3)) provide for circumstances where the landscaping or other screening, on the abutting nonresidential or multifamily use/property, is not required. For the newly constructed single-family dwellings, language has been added to this subsection that similarly would not require buffering/screening if there is an active demolition permit on an abutting at-grade single-family home.

The P&Z Board is also recommending that the decision-making authority (Subsections 158.103(A)(4) and 158.103(A)(5)) that allows seeking Waivers of “Landscaping or Other Screening Methods” or Exemptions of “Buffer” requirements, be delegated to the P&Z Board, rather than the Town Commission<sup>6</sup>. The P&Z Board’s recommendation on this change of decision-making authority was intended to remove a burden from the Town Commission. Staff has not processed any Waiver or Exemption requests, nor could staff find records of prior cases seeking Waivers or Exemptions (i.e. these requests are likely to continue to be exceedingly rare).

The other changes proposed to this Section include minor changes such as to apply appropriate capitalization and consistent use of terminology within a Section such as the term “abutting.”

Staff is supportive of the P&Z Board’s recommended changes but notes that the new buffering/screening requirements, being proposed for new single-family homes and

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<sup>5</sup> Maximum fence/wall heights range from 3 ft. to 6 ft. to 8 ft. depending upon location within a typical yard.

<sup>6</sup> This change also requires a change to the Decision-making Table in Section 158.009(A).

second-story additions, go beyond the initial scope of addressing perceived incompatibilities associated with new construction abutting older homes built on-grade, not required to be similarly elevated. That expansion of scope introduces new screening obligations going forward for all new single-family homes and second-story additions. Additional implications the Commission should be aware of include single-family home setback distances where a 10 feet wide landscape buffer may not be feasible. For example, there are a number of single-family zoning districts that have side yard setback requirements of at least 8 feet (on one side). Houses setback at these minimum distances would not allow for a 10 ft. landscape buffer width. Similarly, houses with setbacks of 10ft. or slightly larger may not have practical room to allow for access, maintenance, etc. In such circumstances a fence/wall could alternatively be selected or a homeowner could seek a Waiver. Staff is also aware that certain homeowner's associations (HOA's) may not allow the installation of maximum height fences or walls. Staff also notes that there are no records of complaints having been received by the Town regarding privacy impacts of new structures next to existing structures. The P&Z Board's recommendation, however, reflects a position that the privacy benefits associated with new single-family home buffering/screening requirements can be viewed to have a beneficial impact for future residents, over time.

The P&Z Board recommended approval of (7-0) Ordinance 2021-11 at a public hearing at their January 18, 2022 Regular Meeting.

### **Staff Recommendation**

Forward Ordinance 2021-1 to the April 4, 2022 Regular Meeting for second reading and public hearing.

### **Attachments**

- A. Ordinance 2021-11 (Available in Town Clerk's Office)
- B. PowerPoint Presentation (Available in Town Clerk's Office)

**End of Agenda Item**