



DEPARTMENT OF PLANNING AND ZONING

PLANNER'S REPORT

DATE: May 8, 2019
TO: Adrienne Senter
FROM: Lynn M. Patterson
RE: **Site Plan Review – Willingham Drive and Colville Avenue – The Village Walk at Hapeville**

BACKGROUND

The City of Hapeville has received a site plan application from Miller Lowry Developments for the construction of a multi-use project consisting of 20 30'-8", 2.5-story townhomes and 7,132 SF of single-story commercial space. The townhomes are all 3-bedroom units with a maximum footprint of 2,800 SF each. The commercial buildings will be 18' high, which is not compliant with the Architectural Design Standards requirement that all commercial buildings in the Commercial/Mixed-Use area be a minimum of 24' high. The site is situated between South Central Avenue, Colville Avenue, and Willingham Drive.

The property is zoned V, Village and is within the A-D, Arts District Overlay. It is subject to the Commercial/Mixed-Use Area Architectural Design Standards.

A subdivision plat is required to combine parcels 14 012700020429 and 14 012700020379. The applicant intends to request the following variances:

- Waive the sidewalk/curb and gutter requirement along Willingham Drive (Design Review exception required)
- Decrease the required distance between buildings from 20 feet to 10 feet (Board of Appeals variance required)
- Decrease the required commercial off-street parking from 36 to 32 spaces, including three parking spaces from the residential area to count towards the commercial parking requirement (Board of Appeals variance required)
- Reduce the high minimum for commercial buildings to 18' (Design Review exception required)

REVIEW

The following code sections are applicable to this application:

ARTICLE 11.1. - V ZONE (VILLAGE)

Sec. 93-11.1-1. - Intent.

The V district is established in order to:

- (1) Accommodate a mixed-use, urban fabric that preserves neighborhood scale;
- (2) Accommodate residents in the district with pedestrian access to services and employment typical of a live/work community;

- (3) Promotes neighborhoods established near shopping and employment centers;
- (4) Encourage pedestrian and neighborhood uses in the commercial area;
- (5) Discourage land uses, which are automobile or transportation related;
- (6) Exclude industrial uses such as manufacturing, processing and warehousing;
- (7) Promote retail and related commercial uses such as business offices, florists, card shops antiques, apparel and banks; and
- (8) Encourage mixed use with commercial uses on the first floor and residential living above.

Sec. 93-11.1-2. - Permitted uses.

The following are permitted within the V zone:

- (1) Any use permitted in the D-D zone;
- (2) Any use permitted in the C-1 zone subject to the requirements of this article;
- (3) Single-family detached dwellings;
- (4) Single-family attached dwellings with at least four units attached;
- (5) Group homes, subject to the restrictions in section 93-2-19;
- (6) Adult daycare facilities;
- (7) Condominiums subject to approval as a conditional use; and
- (8) Combination of residential and business applications within a single structure. However, each use must have a separate entrance.

Dimensional Requirements for V Zoning are as follows:

							Minimum Front Yard Setback		Minimum		Maximum			
Development Type	Lot Frontage (FT)	Min. Lot Area (SF)	Lot Area/ DU (SF)	Bed/ Bath Required	Floor Area/ DU (SF)	Max. Lot Coverage (%)	Minor Col.	Maj. Arterial	Side	Rear	Stories	Feet	Min. Parking Spaces	Max. Unit/ Bldg. Lot
Single-family Attached 4 to 8 Units	40	10,000	2,500	3br/2bth	1,400	70	15	15	5	10	2½	35	2 DU	a.
Nonresidential	50	10,000	10,000		1,000	70	15	15	15	25		40 b..	c., d., e.	N/A

- a. Single-family attached patio/townhomes cannot have more than eight units per building and no less than four units attached.
- c. One parking space for every 200 square feet of enclosed commercial floor area.

ARTICLE 28. - A-D ZONE (ARTS DISTRICT OVERLAY)

Sec. 93-28-1. - Factual basis.

In adopting the Hapeville Arts District Overlay Zone (the "arts district overlay"), the city seeks to reinvent itself as a cultural destination, particularly its walkable downtown. The downtown has declined over the past 40 or more years. Likely the primary driver of that decline was expansion of Hartsfield Jackson Atlanta International Airport in the 1980's. This expansion removed half the city's land base and nearly half the population having devastating impacts on retail trade and service industries. Secondary factors were the building of the interstate system that served as a bypass for travelers. This effectively eliminated Hapeville as a recipient of a very significant consumer market generated by east coast travelers and local commuters. Hapeville has also suffered from the general lack of investment characterizing Atlanta's Southside, reinforced by a failure of Southside incomes and housing values to keep pace with Atlanta's north side. Finally, closure of the Hapeville Ford Plant removed a significant revenue base

and spelled the need for a substantial retooling of the local economy.

As the regional and national economy rebounds, the city seeks to create an in-town, arts identity that will attract air travelers, local visitors and as importantly, bolster consumer offerings for Hapeville residents. The arts district overlay will become a significant element of an economic development strategy that will capitalize on Hapeville's airport location, sense of place, walkability and small town charm.

An important aspect of that development strategy is the assignment of property rights not available to owners outside the arts district overlay. This reflects an emphasis on compact development supported by such public investment as streetscapes, public parking, public art, wayfinding signs, kiosks, film festivals and community events. The flexibility of building and site design and planned public investment are intended to foster an arts district that will establish downtown Hapeville as a regional destination for the arts and for community celebrations, dining and shopping.

Sec. 93-28-2. - Definitions.

Arts. The interpretation of imagination and creativity in a physical form or performance.

Art gallery. An establishment that engages in the sale, loan or display of paintings, sculptures, photographs, video art or other works of art. "Art gallery" does not include a cultural facility such as a library, museum or non-commercial gallery that may also display works of art or an arts studio.

Art center. A facility whose mission is to promote the arts and make them available to the public. An arts center may hosts art exhibits and shows, provide studio space for the use of artists and engage in public education and exposure to the arts.

Art use. Creation or assembly of visual art, including two- and three-dimensional works of fine art or craft, or other fine art objects created or assembled for purposes of sale, display, commission, or trade by artists or artisans. Art use may also include classes held for art instruction.

Artist studio. An area in a building used for creation, production, rehearsal, study or teaching of any visual art or craft, including but not limited to painting, drawing, graphic design, photography, video, film, sculpture and pottery; written works of fiction or nonfiction; or any performing art, whether for live or recorded performance, including music, dance and theater. "Artist studio" may include performance space related to classes taught on-site and recording studios; a studio for artisan related crafts, such as small scale metalworking, glassblowing, furniture making, pottery, leather craft and similar activities. "Artist studio" may also include accessory sales of art produced on the premises.

Artist. A person who practices one of the fine arts, design, graphic, musical, literary, computer, or performing arts; or a person whose profession relies on application of these skills to produce a creative product. The term includes, but is not limited to, individuals who practice visual arts, such as painters, print makers, illustrators, sculptors, potters, jewelry makers, glass makers, craft artists and photographers; performing arts, such as musicians, composers, playwrights, choreographers and dancers; literary arts, such as creative writers and literary translators; architecture and design, such as architects, landscape architects, engineers, urban designers and planners, interior designers and decorators, industrial designers, graphic designers and fashion designers; and media arts, such as filmmakers, video and audio artists and web-based designers.

Consignment store. An enclosed retail establishment, whether operated by a for or not for profit organization or entity, engaged in selling used merchandise, such as clothing, furniture, jewelry, books, shoes, or household appliances, etc., on consignment. Consignment stores do not include those selling vehicles, auto parts, scrap, or waste.

Drive-through. Any facility that may be accessed directly by means of a motor vehicle for transacting business.

Entertainment, live. Any musical act, including karaoke; theatrical act, including a play, revue or stand-up comedy; dance; magic act; disc jockey or similar activity performed live by one or more persons, whether or not for compensation or an admission charge.

Food truck. A motorized vehicle or trailer drawn by a motorized vehicle used to prepare and sell food to the public directly from the vehicle or trailer.

Food truck court. An area designated in a private parking lot that is accessory to a permitted use conducted in a building on the lot or a freestanding commercial parking lot, subject to the requirements of section 93-28-12 of this article.

Food truck vendor. Any person or entity that prepares and sells food from a food truck in a designated food truck court.

Juried commission. The commission that determines whether individual(s) are eligible to occupy live-work and artist housing unit(s) in the arts district overlay. The juried commission will consist of five members. Three of these members must be an artist, architect, landscape architect, arts educator, or gallery owner. Lay persons with sufficient knowledge, experience, and judgment who have an interest in public art shall make up the balance of the juried commission. The members of the juried commission shall each be appointed by the mayor and council of the city. Three of the initial five members shall be appointed for a term of two years, and two of the initial five members shall be appointed for a term of three years. Thereafter, each new member shall be appointed for a term of two years.

Makerspace. An indoor or outdoor facility or both intended to be used by artists as studio and retail space. Makerspaces often combine production, equipment, community, and education for the purposes of enabling participating individuals to design, prototype, and create works that said individuals would have difficulty producing if working alone due to a lack of resources, tools, artistic input, and/or space. Such space may be in a residential, commercial, mixed use or a live/work building and often provides tools for community use. Makerspaces are characterized by consistent design elements, such as high ceilings, large windows, durable surfaces and wide entrances. These spaces are designed to accommodate and foster a variety of creative activities. Makerspaces may also include common space such as galleries, meeting rooms and open space that encourages resident engagement and community involvement.

Microbrewery. Any establishment where malt beverages are produced or brewed (as further defined and regulated in chapter 5, "Alcoholic beverages," of this Code).

Outdoor arts market. A temporary event held on private or public property where artwork is offered for sale.

Small power tools. Hand equipment driven by other than human means. Examples include circular saws, power drills, portable mitre saws, routers, electric belt sanders and wood lathes. Not defined as small power tools are chain saws, mounted mitre saws, band saws, jackhammers and similar power tools.

Thrift store. An enclosed retail establishment, whether operated by a for or not for profit organization or entity, engaged in selling previously owned or used goods and merchandise from an area greater than 25 percent of the total floor area devoted to retail sales and whose merchandise is acquired principally by donation. Thrift stores do not include those selling vehicles, auto parts, scrap, or waste.

Sec. 93-28-3. - Purpose.

The purpose of the arts district overlay is to facilitate creation of an arts destination, sustain established arts and cultural uses and promote new arts and cultural uses. The arts district overlay seeks integration of the arts into the fabric of the community and is conceived as the location of art galleries and art studios forming the core of an arts district. A complementary mix of shops, restaurants and entertainment venues will support these uses. These elements are expected to generate interest in downtown Hapeville and attract arts and cultural events.

The arts district overlay features an expanded range of permitted uses focused on the arts while retaining all property rights established by the underlying zoning. The arts district overlay encourages adaptive reuse of historic buildings and new construction technologies, affording owners expanded development options. These measures will enhance the market attractiveness of the arts district.

Arts venues, community festivals, expanded arts uses and pedestrian character are expected to promote an arts district. Planned investment in public art, lighting, sidewalks and off-street parking will leverage private investment and enhance public safety. This combination of public and private investment is expected to advance Hapeville's position in regional leadership in the arts and stimulate broad economic revitalization. Importantly, the arts district overlay features walkable distances from nearby neighborhoods to small-scale establishments and live entertainment venues accommodated by the arts district overlay and compatible with the neighborhood character.

Sec. 93-28-4. - Applicability.

Unless expressly modified by regulations in this article establishing the arts district overlay, the regulations governing the use of land and structures shall be as set forth in the underlying zoning districts and as regulated by other provisions of this Code. The architectural design standards shall control development in the arts district overlay unless an alternate provision is adopted in the arts district overlay. Where a conflict with other City Code and ordinance provisions exists, the more permissive standard shall apply.

Sec. 93-28-5. - Geography.

Generally, the arts district overlay radiates from downtown Hapeville running along North Central and South Central Avenues, Dogwood Drive, the two-lane segment of Virginia Avenue (i.e. from South Central Avenue to Doug Davis Drive) and North and South Fulton Avenues. The District is more specifically identified in Exhibit A entitled "Hapeville Arts District Overlay Zone."

Editor's note— Exhibit A as referenced in this section is not set out at length in this Code, but may be found in the offices of the city.

Sec. 93-28-6. - Scale.

Downtown Hapeville is the focus of the arts district overlay. Hapeville was established at a time when walking was the primary means of travel, and the downtown is characterized by a pedestrian scale. This scale is preserved by height limits inherent in the development intensity assigned to the downtown on Hapeville's future development map and development standards of the arts district overlay. A sense of place will be maintained by adherence to these height limits. Preservation of pedestrian scale is important as arts districts are typically designed to encourage walking to a variety of venues.

Sec. 93-28-7. - Additional uses encouraged in the arts district overlay.

Uses permitted by the underlying zoning are unaffected by adoption of the arts district overlay; the following uses shall be specifically permitted in the arts district overlay.

Sec. 93-28-7.1. - Arts uses.

- (a) Art gallery.
- (b) Artist studio.
- (c) Artist studio workspace.
- (d) Artist co-op to allow multiple artist spaces that are not bazaars, junk stores, specialty shops and flea markets, etc.
- (e) Arts and crafts retail sales.
- (f) Arts center.
- (g) Arts related businesses and services such as craft shops, galleries and studios within which is conducted the preparation, display, or sale of art products such as antiques, collectibles, custom apparel, jewelry, paintings, photography, picture framing, pottery, sculpture, stained glass and similar arts, crafts merchandise, and activities such as set design and restoration of artwork.
- (h) Arts supply store.
- (i) Cabaret, concert hall or other performing arts space, dinner theater, legitimate theater or movie theater.
- (j) Craftsman or artisan shop.
- (k) Music store, musical instruments store.
- (l) Performing arts ticket office or booking agency.
- (m) Photographic studio.
- (n) Recording studios, provided appropriate soundproofing is installed.
- (o) Television and radio broadcast studio.
- (p) Video and movie production.

Sec. 93-28-7.2. - Retail uses.

- (a) Farmers market or green market.

- (b) Framing shop.
- (c) Pottery and ceramics shop.
- (d) Growler shop.

Sec. 93-28-7.3. - Cultural and entertainment uses.

- (a) Brew pubs, including outdoor seating.
- (b) Microbreweries, subject to the provisions of chapter 5, "Alcoholic beverages," of this Code, and the development standards set forth in section 93-28-12 of this Code.
- (c) City-sponsored and/or approved outdoor cultural events and performances that feature visual art, music, dance, theater, performance art, science, design or cultural heritage.
- (d) Live entertainment, provided that all establishments hosting live entertainment shall comply with any and all applicable noise regulations and ordinances of the city.

Sec. 93-28-7.4. - Educational uses.

- (a) Art school and other visual and performing arts instruction including school of dance, photography, filmmaking, music, writing, painting, sculpting and printmaking, but excluding adult entertainment and erotic dance.
- (b) Educational or instructional activities, including training, vocational or craft schools, the arts and personal development.
- (c) Libraries.
- (d) Museums.
- (e) Social and philanthropic institutions.
- (f) Training studios, including martial arts studios, gymnastics and yoga.

Sec. 93-28-7.5. - Residential uses.

Live-work and artist housing, subject to the following stipulations:

- (1) The residential portion of a live-work unit shall contain sleeping areas, cooking facilities and complete sanitary facilities.
- (2) The residential occupancy of a live-work unit shall include, at a minimum, one person who is an artist and is employed or carries out an occupation in the arts within the nonresidential portion of the unit.
- (3) The nonresidential portion of a live-work unit shall be limited to two employees per shift, including the person living in the unit that is associated with the business.
- (4) The "artist" occupant will be subject to qualification by a juried commission that will determine the eligibility for occupancy in live-work and artist housing units. Upon receiving an application for occupation of live-work and artist housing unit(s), the juried commission shall meet to review the application, and hear the applicant should the applicant wish to appear before the juried commission. Said meeting shall occur within thirty calendar days of receipt of said application by the juried commission. The juried commission shall then issue a written determination to the applicant within 14 calendar days of said meeting. If the applicant is dissatisfied with the decision of the juried commission, the applicant may appeal the decision to the mayor and council of the city within seven calendar days of receipt of said decision. The mayor and council shall then hear the appeal within 30 calendar days of receipt of said appeal and shall issue a written final determination within 14 calendar days of said appellate hearing. Applications for live-work and artist housing may be acquired by contacting the city clerk.
- (5) The minimum floor area of a live-work and artist housing unit shall be 320 square feet, exclusive of kitchen and bathroom floor area.

The maximum number of dwelling units in a single building shall not be limited, provided that no development shall exceed 50 units. The parking requirement for such uses shall be one space for each dwelling unit. No minimum lot area shall apply in the arts district overlay provided all other development standards of this article are met.

No residential use shall front on a public street, sidewalk or alley at the ground floor or street level. All ground level uses fronting on a public street, sidewalk or alley shall be non-residential uses.

Single-family detached units, duplexes and triplexes are prohibited as incompatible with such higher density settings in recognition of the urban character of the arts district overlay and the need to preserve land for arts and entertainment uses.

Nothing contained in this section is intended to remove or restrict the potential of other residential uses for property within the arts district overlay that may be permitted or authorized pursuant to the city's zoning code.

Sec. 93-28-8. - Prohibited uses.

The following uses shall be prohibited in the Arts District Overlay:

- (1) Any drive-through facility.
- (2) Any outdoor storage of materials or any outdoor processing, fabricating or repair work with the exception of work performed with hand tools or small power tools.
- (3) Use of any structure primarily for storage (meaning no more than 25% of the total interior space of said structure may be used for storage of goods, materials, or equipment).
- (4) Car wash.
- (5) C-Store selling fuel.
- (6) Gas station.
- (7) Motor vehicle service or repair.
- (8) Tire stores.
- (9) Any use that involves the outdoor storage of materials or products. The production of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare or other objectionable effect shall also be prohibited.

Sec. 93-28-9. - Accessory uses.

- (a) Kilns, subject to the development standards in section 93-28-12.
- (b) Outdoor display of artwork and merchandise during hours of operation of the primary business or activity on the property.
- (c) Power tools. The use of hand tools is encouraged; the use of small power tools is allowed. All tools shall be used in compliance with the noise regulations and ordinances of the city.
- (d) Street performers, subject to the development standards in section 93-28-12.
- (e) Food trucks, in designated food truck courts only, and subject to the development standards in section 93-28-12.
- (f) Consignment stores and thrift stores, subject to the development standards in section 93-28-12.
- (g) Makerspaces, subject to the development standards in section 93-28-12.

Sec. 93-28-10. - Building and site design.

Sec. 93-28-10.1. - Building design.

Non-traditional structures such as re-use of shipping containers, subject to approval by the design review committee, and other structures, subject to approval by the design review committee, shall be permitted.

Any structure constructed out of a shipping container must include:

- (1) Wiring and connection for permanent electrical utility service.
- (2) No less than one HVAC (heating, ventilation, and air conditioning) system.
- (3) Insulation in the form of closed cell spray foam insulation.
- (4) Exclusive of any end cargo doors, a door measuring at least 19.5 square feet and one or more windows measuring at least six square feet each.

No more than 25 percent of a shipping container or other such structure in the arts district overlay shall be used for the storage of any goods, materials, or equipment.

New construction materials such as polished metal, corrugated metal, metal roofing, glass and concrete facades shall be permitted.

All building elevations visible from a public right-of-way shall be treated with materials, finishes and architectural details appropriate to primary street-facing facades. All elevations shall be similar and compatible with the front elevation; concrete masonry units, whether parged or not, shall not be permitted.

Sec. 93-28-10.2. - Site design.

- (a) No overhead service doors or bays shall face the primary street serving the property. Loading and service areas shall be internal to the development and accessed via service alleys and not pedestrian-oriented streets.
- (b) Entrances to the building, including entrances to shops and the main lobby, shall be separated by no more than 40 feet along the front of the building.
- (c) Pedestrian and main entrances shall be located on the primary street serving the property. Curb cuts should be located on a side street where possible.
- (d) Parking shall not be the dominant visual element of the site along the primary frontage. Parking shall be designed as smaller, multiple parking lots separated by landscape and buildings, or placed behind buildings.
- (e) The parking space standard in the arts district overlay shall be eight and one-half feet by 18 feet. No loading space requirement shall apply to the arts district overlay. In most instances, the short term loading needs of the business can be met in the vehicle parking area.

Sec. 93-28-11. - Public art.

Placement or installation of outdoor sculpture and other art forms on private property intended to be viewed from a public right-of-way or other public property shall not be subject to setback standards of the applicable zoning district and shall not require a permit, provided that:

- (1) The art is not offered for sale;
- (2) The art does not constitute an advertisement; and
- (3) The placement does not impede the flow of pedestrian, bicycle or vehicle traffic or block motorist visibility at intersections, alleys or driveways.

Sec. 93-28-12. - Use specific standards.

The following standards shall control the development and manner of operation of the following uses within the arts district overlay:

- (1) *Food truck court.*
 - a. Food truck courts may be established in free-standing commercial parking lots accessory to an operating, permitted use provided that (a) the lot has been designated for food truck courts, (b) the property is zoned C-1, C-2, D-D, V, N-C, RMU or U-V, and (c) parking supply exists in excess of that required by ordinance or Code for uses or commercial space existing on the site and two off-street parking spaces shall be reserved for the exclusive use of customers of each food truck vendor. Such designation shall be subject to review and approval by the code enforcement officer who shall maintain the following database:
 - 1. Property address and number of spaces designated as a "food truck court."
 - 2. Site sketch depicting the building, parking spaces and parking spaces so designated.
 - 3. Dimensions and color photos (front, both sides and rear) of the dispensing vehicle.
 - 4. A copy of all lease agreements between the property owner and/or landlord and any food truck vendor, including the specific space being leased which shall be marked on the ground.
 - 5. Proof of compliance with all Fulton County Health Department regulations.
 - 6. An occupational tax permit issued by the city, which permit shall be posted in the front window of the food truck vendor vehicle or trailer while in use.
 - b. Food trucks shall not be permitted on the premises before 7:00 a.m. or after 10:00 p.m.
 - c. Each food truck vendor shall obtain an annual transient merchants license prior to operating in any area designated as a food truck court.
 - d. No minimum or maximum number of food trucks shall be established; food truck courts need not be contiguous and may be designated in several locations within a single lot.
 - e. No wastes of any kind shall be discharged from a food truck. Trash receptacles shall be provided by the food truck vendor for customers to dispose of food wrappers, food utensils, paper products,

cans, bottles, food and other such waste. Such receptacles shall be located no more than ten feet from the food truck. The food truck vendor shall be responsible for removing all trash, litter and refuse from the site at the end of each business day.

- f. No LED strip lighting shall be used in conjunction with any food truck court.
 - g. No loudspeakers shall be used for announcements or hawking of products in conjunction with any food truck court.
 - h. The property owner and/or landlord may provide limited seating on the food truck court to customers of the food truck vendor(s). Canopies for the protection of customers from the elements may also be provided by the property owner and/or landlord or the food truck vendor(s). Such canopies shall be temporary, located within three feet of the food truck, not exceed an area of 144 square feet and shall be subject to approval by the code enforcement officer.
 - i. A minimum distance of 100 feet shall be maintained between any food truck and the entrance to any restaurant.
 - j. The food truck shall not be located within any required setback, any sight distance triangle or required buffer. Access aisles sufficient to provide emergency access to any food truck shall be provided subject to approval by the fire marshal.
 - k. Sales of articles other than food shall be prohibited.
- (2) *Kilns.*
- a. The total volume of kiln space shall not exceed 24 cubic feet and no individual kiln shall exceed eight cubic feet.
 - b. Kilns may be located outside. Outside kilns shall be set back a minimum of 25 feet from any boundary common to property zoned residential or in residential use.
- (3) *Street performers.*
- a. Street performers shall obtain a permit from the city.
 - b. Performers shall operate only in designated areas.
 - c. No street performer shall impede movement along a public sidewalk; a minimum sidewalk width of five feet, independent of the performance area, shall be maintained throughout any performance.
- (4) *Microbreweries.*
- a. The production of beer shall not exceed 50,000 gallons per year (absent special approval of mayor and council), provided a restaurant or tasting room is open to the public on a regular basis.
 - b. No trucks larger than a 24-foot box truck shall be used in delivery to or shipment from the microbrewery.
 - c. Shipments or deliveries shall not occur between the hours of 10:00 p.m. and 7:00 a.m.
 - d. All operations by the microbrewery shall be conducted within an enclosed building. Production space shall not exceed 15,000 square feet. If "free tastings" are to be provided by a microbrewery pursuant to article 6.4, "Microbreweries," of chapter 5, "Alcoholic beverages," of this Code, then said microbrewery must have a tasting room encompassing a minimum floor area of 1,500 square feet for conducting said "free tastings."
 - e. No fumes, vapors, odor, smoke, dust or other particulate matter or offensive vibration, noise, heat, humidity, glare or other objectionable effect generated by the operation shall be perceptible at the property boundary of the microbrewery.
 - f. A landscaped buffer having a minimum horizontal dimension of 40 feet shall be established along any property boundary common to a residential zoning district. Alternate compliance may be achieved with berming to a minimum height of three feet affording a reduction in buffer width to 30 feet. Landscaping shall achieve nearly opaque screening of the microbrewery operation from adjacent residential districts throughout the year.
 - g. All microbreweries operating within the arts district overlay must comply with those regulations set forth in article 6.4, "Microbreweries," of chapter 5, "Alcoholic beverages," of this Code.
- (5) *Makerspaces.*
- a. Makerspaces may only open and/or operate on either of the following two streets in the city:
 - 1. Dogwood Drive, and
 - 2. That portion of Virginia Avenue from South Central Avenue to Doug Davis Drive.
- (6) *Consignment stores and thrift stores.*

- a. Consignment stores and thrift stores may only open and operate on the following two streets in the city:
 1. Dogwood Drive, and
 2. That portion of Virginia Avenue from South Central Avenue to Doug Davis Drive.

Sec. 93-28-13. - Signs.

Signs with lights and movable elements that contribute to the unique character of the district shall be permitted. Such signs shall be subject to approval by the design review committee.

REQUIREMENTS

ARTICLE 2. – GENERAL PROVISIONS

Sec. 93-2-16. - Site plan review.

- (a) *Intent and purpose.* The site plan review procedures are intended to ensure adequate review and consideration of potential impacts of proposed development upon surrounding uses and activities, and to encourage a high standard of site planning and design resulting in quality development in the city.
- (b) *Application.* An application for site plan review may be filed by the owner, or agent for the owner, of any property to be developed according to the plan. All applications for site plan review shall be filed with the building official for transmission to the planning commission. Site plan review requirements are applicable for all proposed development in all zones within the city and all property submitted for annexation.
- (c) *Submission requirements.* Applications for site plan review shall contain the following information and any additional information the planning commission may prescribe by officially adopted administrative regulations; ten copies of the application shall be submitted:
 - (1) *Site and landscape plan.* Maps and site plans shall be submitted (minimum scale of 1" = 50' or larger, e.g., 1" = 40', 1" = 30', etc.) indicating project name, applicant's name, adjoining streets, scale, north arrow and date drawn, showing:

A site plan including date, project name, north arrow, adjoining streets, and scale has been provided. Only a partial landscape plan has been provided.

- a. The locations, size and height of all existing and proposed structures on the site.

The site is currently vacant. The proposed development will contain 20 2,800 SF townhomes, one 2,416.7 SF commercial building, and one 4,716.7 SF commercial building. The townhomes will be 2.5 stories or 30'-8" high, while the commercial buildings will be 18' high. The commercial height is not compliant with the Architectural Design Standards.

Setbacks established for the buildings are all compliant with the V zoning district dimensional requirements.

- ***All structures are within a provided 15' front/rear setback line from the property line.***
- ***Minimum side setback for the townhomes is 10' between buildings, and 20' between the commercial buildings.***

Village zoning requires the minimum distance between two multiple family buildings to be 20', plus four additional feet for every story or fraction thereof that the building exceeds two stories. The townhomes are 2.5 stories high, which requires a minimum distance of 24' between buildings. The applicant is requesting a variance to allow for a minimum distance between multifamily buildings of

10'. The Planning Commission should review and provide a recommendation to the Board of Appeals per the Code.

- **Commercial buildings have rear setbacks of approximately 100' from the townhomes. This setback should be shown on the site plan.**

- b. The location and general design cross section characteristics of all driveways, curb cuts and sidewalks including connections to building entrances.

Per the Architectural Design Standards, sidewalks along South Central Avenue must have a 5' landscape area and a 10' clear area. All other sidewalks, including along Colville Avenue and Willingham Drive, must have a 5' landscape area and a 6' clear area.

- **The site plan identifies existing sidewalk partially along South Central Avenue but does not provide a width.**
- **A sidewalk with a 5' wide clear area and an unspecified landscape area is proposed for Colville Avenue, which is not compliant.**
- **The applicant is requesting a design exception to allow for a waiver of the Willingham Drive sidewalk due to grade change and a desire to preserve existing trees. No trees survey provided (see below).**

Sidewalk standards will be reviewed by the Design Review Committee for compliance.

Cross sections of curb cuts, sidewalks, connections to buildings, and driveways are not provided.

- c. The locations, area and number of proposed parking spaces.

Each townhouse will have an attached two car garage. The townhouses will have access to an additional 13 parallel parking spaces and three full size spaces, which is in excess of code maximum parking requirements. The commercial buildings show a 29-space parking lot, which does not meet the minimum parking requirement of one space per 200 SF of commercial space. A variance would be required from 36 spaces to 29 spaces by the Board of Appeals.

- d. Existing and proposed grades at an interval of five feet or less.

Existing grading is shown at five-foot intervals, and proposed grading is shown at one-foot intervals.

- e. The location and general type of all existing trees over six-inch caliper and, in addition, an identification of those to be retained.

The location and general type of existing trees has not been provided. No identification of trees to be retained has been provided. The applicant should provide a tree inventory and save schedule.

- f. The location and approximate size of all proposed plant material to be used in landscaping, by type such as hardwood deciduous trees, evergreen trees, flowering trees and shrub masses, and types of ground cover (grass, ivies, etc.). Planting in parking areas should be included, as required in section 93-23-18.

No proposed plant material has been provided. The applicant should provide the required information on all proposed plant material.

- g. The proposed general use and development of the site, including all recreational and open space areas, plazas and major landscape areas by function, and the

general location and description of all proposed outdoor furniture (seating, lighting, telephones, etc.).

The site plan includes 20 townhomes, 2 commercial buildings, and a private recreational open space with walking path and firepit. However, no proposed outdoor furniture is included. The applicant should provide any landscaping details of the common area.

- h. The location of all retaining walls, fences (including privacy fences around patios, etc.) and earth berms.

Retaining walls, a 75' opaque screening wall along South Central Avenue and an additional fence of a type not specified running the length of South Central Avenue are included on the plans. The screening wall and fence must be reviewed by the Design Review Committee.

- i. The identification and location of all refuse collection facilities, including screening to be provided.

Two dumpsters are shown on the northeast side, one for residential use and one for commercial use. Screening information is not provided on plans.

- j. Provisions for both on-site and off-site stormwater drainage and detention related to the proposed development.

A stormwater retention and drainage plan has been provided. See engineer's comments.

- k. Location and size of all signs.

One construction sign is indicated on the plans near the southeast entrance on Willingham Drive. The height, width, and area of the sign should be provided. A separate sign application will be required.

- (2) *Site and building sections.* Schematic or illustrative sections shall be drawn to scale of 1" = 8' or larger, necessary to understand the relationship of internal building elevations to adjacent site elevations.

Building elevations have been provided. The proposed elevations are not in compliance with the Architectural Design Standards and require review by the Design Review Committee.

- (3) *Typical elevations.* Typical elevations of proposed building shall be provided at a reasonable scale (1/8" = 1'0") and shall include the identification of proposed exterior building materials.

Building elevations have been provided. The proposed elevations are not in compliance with the Architectural Design Standards and require review by the Design Review Committee.

- (4) *Project data.*

- a. Site area (square feet and acres).

The site plan lists the site as 3.255 acres, or 141,790 SF.

- b. Allocation of site area by building coverage, parking, loading and driveways, and open space areas, including total open space, recreation areas, landscaped areas and others.

The site plan lists total impervious area as 32,762 SF of building surface area, 8,613 SF of parking area, 32,468 SF of driveway area, and 6,051 SF of sidewalk area for a total of 79,894 SF. Maximum allowable is 70%. Total per site plan is 56.3%, which is compliant.

- c. Total dwelling units and floor area distributed generally by dwelling unit type (one-bedroom, two-bedroom, etc.) where applicable.

Each townhouse will include 3 bedrooms and 2.5 bathrooms. Minimum required is 3 BR/2 BA.

- d. Floor area in nonresidential use by category.

The commercial buildings will have a combined total area of 7,132 SF.

- e. Total floor area ratio and/or residential density distribution.

Residential minimum is 1,500 SF. Proposed dwellings are 2,800 SF, which is compliant. The commercial minimum is 1,000 SF. Proposed commercial buildings are 2,416.7 SF and 4716.7 SF, which are compliant.

- f. Number of parking spaces and area of paved surface for parking and circulation.

Each townhouse will have an attached two car garage. The townhouses will have access to an additional 13 parallel parking spaces and three full size spaces, which is in excess of code maximum parking requirements. The commercial buildings show a 29-space parking lot, which does not meet the minimum parking requirement of one space per 200 SF of commercial space. The total parking and driveway area will be 41,081 SF.

- (5) *Project report.* A brief project report shall be provided to include an explanation of the character of the proposed development, verification of the applicant's ownership and/or contractual interest in the subject site, and the anticipated development schedule. At the discretion of the planning commission, analyses by qualified technical personnel or consultants may be required as to the market and financial feasibility, traffic impact, environmental impact, stormwater and erosion control, etc. of the proposed development.

Verification of ownership and a construction schedule have been provided.

Sec. 93-11.1-6. - Area, placement, and buffering requirements.

All buildings or structures erected, converted or structurally altered shall hereafter comply with the following lot area, yard, and building coverage requirements:

- (1) *Lot area and width.* No lot shall have a minimum frontage of less than 50 feet, while the minimum area shall be established by the restriction governing lot coverage, setbacks, screening, and parking requirements.
- (2) *Front yard.* All structures located along a street shall be set back, at a minimum, of 15 feet, or greater as may be determined to be necessary and advisable by the city planning commission in the course of its site plan review process. In determining such yard setbacks, the city planning commission shall consider the size and configuration of the proposed buildings, their relationship to the existing and proposed thoroughfares; in order to maximize all vehicular and pedestrian safety.
- (3) *Side and rear yards.* The side and rear yards adjacent to, or separated by a street, alley or other right-of-way from a residential or commercial zone, shall provide a building setback of at least 15 feet.
- (4) *Distance between buildings.* The minimum distance between two multiple family buildings on a single lot or on contiguous property under the same ownership shall be 20 feet, plus four additional feet for every

story or fraction thereof that the building exceeds two stories, or such distance determined necessary by the planning commission to enhance the aesthetics of development.

With a height of 2.5 stories, the minimum distance between two single-family attached buildings must be 24'. The site plan indicates a minimum distance of 10', which is not compliant. The Applicant is seeking a variance to reduce the distance all multiple family buildings must be separated by to 10'. The Fire Marshall supports this reduced distance. The Planning Commission should provide regarding aesthetics.

- (5) *Height regulations.* No building or structure shall exceed 2½ stories or a 35 feet in height, provided the planning commission may allow a development with greater height, if it finds that:
 - a. The proposed height will not adversely impact adjacent properties or nearby residential neighborhoods;
 - b. The added height is necessary to support redevelopment of an area, which currently contains uses that have an adverse impact upon adjacent neighborhoods;
 - c. The proposed development is designed to facilitate the objectives and strategies of the master plan;
 - d. Meets approval from the fire department and FAA.
- (6) *Residential buffer.* New development shall provide sufficient setback as well as an attractive physical barrier between the residential and nonresidential uses as necessary to minimize disruptive light, noise, odor, dust, unsightly appearances and intrusive activity relative to the residential environment. A smooth transition between residential neighbors and nonresidential uses (including all parking lots) shall be ensured by the provision of sufficient screening of more intensive uses (i.e., commercial/offices uses) from residential neighborhoods through the use of decorative landscaping and screened walls. A 15-foot landscaped buffer shall be installed between and along the residential and nonresidential sides of said buffer. The landscaped area shall be planted with trees, flowers, grasses and shrubs to visually screen non-residential areas and provide an attractive boundary that encourages continued investment in the adjacent residential property.

A 15' buffer and landscape plan are provided.

ARTICLE 23. - OFF-STREET PARKING AND LOADING

Sec. 93-23-1. - Purpose and intent.

The purpose of this article is to ensure the reasonable provision of off-street parking and loading facilities within the city. The requirements contained herein are minimum standards only, and are intended to protect and promote the health, safety and welfare of the present and future inhabitants of the city.

Sec. 93-23-2. - Entrance and exit points.

Except in districts zoned R-0, R-1, R-2 and R-3, curb breaks shall not be more than 30 feet in width, nor less than 25 feet in width. In no case shall there be less than 50 feet from the closest sides of any two-driveway curblines. Curb breaks shall be located at least 25 feet from the nearest intersection of two curblines as measured along one of the curblines. Business establishments on contiguous lots are encouraged to consolidate entrance and exit points. Suitable provisions, including a five-foot-wide planted buffer strip between the right-of-way and parking area shall be made to prevent entrance or exit from other than at designated entrance or exit points.

Curb break and curbline dimensions were not provided. The Applicant should provide dimensions of all curb breaks and curblines.

Sec. 93-23-3. - Setbacks from property lines.

Off-street parking and loading spaces and their respective maneuvering areas shall be set back not less than five feet from all property lines, except where those spaces and areas for adjacent properties abut, or are in contiguous use, there need not be any setback.

Off-street parking and loading spaces must be set back at least 5' from property lines. The required dimensions should be provided on plans.

Sec. 93-23-4. - Maneuvering areas.

All off-street parking and loading spaces shall be provided with adequate off-street maneuvering areas.

Off-street maneuvering space 26' wide has been provided.

Sec. 93-23-5. - Surfacing and maintenance.

- (a) *Nonresidential.* All driveways, off-street parking and loading facilities required, pursuant to the provisions of this chapter, shall be hard surfaced pavement, drained, lighted and maintained by the owner in accordance with specifications of the city. Parking areas that are in excess of the parking requirements of this chapter may consist of pervious materials provided the total number of parking spaces does not exceed 110 percent of the requirement.
- (b) *Residential.* Single-family residential development may utilize porous concrete, asphalt or other permeable pavements in driveway construction.

See Engineer's report

Sec. 93-23-6. - Reduction in area and number of parking spaces.

No open area in an off-street parking area shall be encroached upon by buildings, storage or any other use; nor shall the number of parking spaces and/or off-street loading spaces be reduced except upon approval of the board of appeals, and then only after proof that, by reason of diminution in floor area, seating area, number of employees or change in other factors controlling the regulation of the number of parking spaces, the proposed reduction is reasonable and consistent with the intent of this chapter.

The site plan does not provide adequate parking per Code. The applicant should provide to the Board of Appeals by way of the Planning Commission the rationale for the reduction in parking and the ability to service the commercial area with reduced parking.

Sec. 93-23-7. - Mixed uses.

In the case of mixed uses, the total requirements for off-street parking and off-street loading space shall be the sum of the requirements of the various uses computed separately as specified herein. Off-street parking and off-street loading space for one use shall not be considered as providing the required off-street parking or off-street loading space for any other use.

Each townhome requires two parking spaces which are provided within the two car garages. The residential parking is in excess of the maximum parking allowed. The commercial area separately requires 36 spaces, which has not been met.

Sec. 93-23-8. - Uses not specifically mentioned.

In the case of a use not specifically mentioned herein, the requirements for off-street parking space and off-street loading space for a use which is so mentioned, and to which that use is most similar, shall apply.

Sec. 93-23-9. - Issuance of certificate of occupancy.

No certificate of occupancy shall be issued for any building or group of buildings unless and until all required off-street parking and loading facilities are in place and ready to use.

Sec. 93-23-10. - Off-street parking requirements according to district and uses.

At the time of the erection of any building or structure hereinafter listed, or at the time any such building or structure is enlarged or increased in capacity by adding dwelling units, guestrooms, floor area, seats, beds, members or employees, there shall be provided for such new construction, enlargement or increased capacity only, off-street automobile parking space and off-street loading spaces in accordance with the minimum requirements established

for each zone. The maximum number of off-street automobile parking spaces shall be 110 percent of the requirement for uses proposed at the time of development approval.

The minimum off-street parking for the townhomes is 40 spaces, and the maximum is 44. The plans indicate there will be two parking spaces per townhome, with an additional 16 spaces provided in the residential area. This is in excess of 110% of the minimum parking requirement and is not compliant. The minimum off-street parking for the commercial area is 36 spaces, and the maximum is 40. The plans provided indicate there will be 29 parking spaces exclusively available for the commercial use area, which is not compliant. The Applicant is seeking a variance to reduce the minimum parking requirements for the commercial use.

Sec. 93-23-11. - Size of off-street parking spaces, including parking spaces for compact automobiles, and parking spaces for automobiles of the physically handicapped.

- (a) Of the total number of parking spaces required for any nonresidential use having 20 or more off-street parking spaces, a maximum of 70 percent shall be "full-size" as described in the table below, and a minimum of 30 percent shall be "compact size" as described in the table below:

Minimum Full-Size Space Dimensions

Type of Space	Width of Space	Length of Space
Parallel at curb to angle of 29 degrees	8.5 feet	22 feet
Angle of 30 degrees to 60 degrees	9 feet	18 feet
Angle of 61 degrees to 90 degrees	10 feet	18 feet

Minimum Compact-Size Parking Space Dimensions

Type of Space	Width of Space (feet)	Length of Space (feet)
Parallel at curb to angle of 29 degrees	8	19
Angle of 30 degrees to 60 degrees	8.5	15
Angle of 61 degrees to 90 degrees	9	15

The plans show 12 (37.5%) compact-size and 19 (62.5%) full-size parking spaces for the commercial use, which is compliant. The lengths of the compact-size spaces are shown as being 18' long, which is not compliant. The Arts District Overlay has stricter parking space dimension requirements found in Sec. 93-28-10.2(e), provided below.

Sec. 93-28-10.2. - Site design.

- (e) The parking space standard in the arts district overlay shall be eight and one-half feet by 18 feet. No loading space requirement shall apply to the arts district overlay. In most instances, the short term loading needs of the business can be met in the vehicle parking area.

Sec. 93-23-11. - Size of off-street parking spaces, including parking spaces for compact automobiles, and parking spaces for automobiles of the physically handicapped.

- (b) There shall be adequate interior passageways, drives and maneuver areas, as determined by the building official, to accommodate each space and to connect each space with a public street.

Compliant.

- (c) In addition to the above-stated requirements, parking space for automobiles of the physically handicapped shall be provided in accordance with the following standards.
- (1) Access to buildings generally.

- a. Accessibility to such building shall be provided from rights-of-way in parking areas by means of a pathway leading to at least one entrance generally used by the public. Such pathway shall have been cleared of all obstructions relating to construction activity, prior to the opening of the building to the general public. Where curbs exist along such pathway, as between a parking lot surface and a sidewalk surface, inclined curb approaches or curb cuts having a gradient of not more than one foot in 12 feet and a width of not less than four feet shall be provided for access by wheelchairs.

The Applicant should provide the dimensions of any pathways leading from the handicapped parking spaces, including the dimensions of any curb cuts or ramps.

- b. A parking lot servicing each entrance pathway shall have a number of level parking spaces as set forth in the following table, identified by above grade signs as being reserved for physically handicapped persons. Each parking space so reserved shall be not less than 12 feet in width.

Parking Spaces for Handicapped

Total Spaces and Lot	Required No. of Reserved Spaces
Up to 25	1
26 to 50	2
51 to 75	3
75 to 100	4
100 to 150	5
150 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of total
Over 1,000	20, plus 1 for each 100 over 1,000

The plans provide for two handicapped parking spaces, which is compliant.

- (2) Location. Parking spaces for the physically handicapped shall be located as close as possible to elevators, ramps, walkways and entrances.

The two provided handicapped parking spaces are centrally located for the commercial buildings.

Sec. 93-23-12. - Location.

If the required off-street parking spaces cannot reasonably be provided on the same lot as the building it serves, the board of appeals may permit that space to be provided on other off-street property. That property shall be within 400 feet of the premises to which it is appurtenant, as measured along the nearest pedestrian walkway.

Not applicable at this time.

Sec. 93-23-13. - Joint use of required off-street parking spaces.

No part of an off-street parking area required for any building or use for the purpose of complying with the provisions of this chapter shall be included as a part of an off-street parking area similarly required for another

building or use unless the type of structure indicates that the periods of usage of that structure will not be simultaneous with each other, as determined by the board of appeals.

The off-street parking provided is considered mutually exclusive to each use.

Sec. 93-23-14. - Size of off-street loading spaces.

Each off-street loading space shall have minimum dimensions of 15 feet in height, 15 feet in width, and 60 feet in length. However, upon sufficient demonstration in a specific instance that a particular loading space will be used exclusively by shorter or lower trucks, the board of appeals may reduce the minimum length or height.

The loading area is given as 15' wide and 60' long, which is compliant.

Sec. 93-23-15. - Location of off-street loading spaces.

All required off-street loading spaces shall be located on the same lot as the building which they are intended to serve, or on an adjacent lot when shared with the use occupying the lot.

The loading area is on the same lot as the commercial area.

Sec. 93-23-16. - Drive-in establishments.

There shall be no drive-in establishments in which customers are served while located on a public right-of-way. In the case of a drive-in establishment where customers are served while occupying automobiles parked off a public right-of-way, that establishment shall provide on the premises sufficient parking space which, in the judgment of the building official, the chief of police and the city engineer will accommodate the largest number of automobiles being served or waiting to be served at any one time. This required space shall be appropriately arranged for the purpose and in no case shall it be less than the minimum space as specified in this chapter.

Not applicable.

Sec. 93-23-17. - Continuing character of obligation.

The schedule of requirements for off-street parking space and off-street loading space applicable to newly erected or altered structures shall be a continuing obligation of the owner of the real estate on which any such structure is located, so long as the structure is in existence and its use requiring vehicle parking or vehicle loading facilities continues, and it shall be unlawful for an owner of any building affected by this chapter to discontinue, change or dispense with, or to cause the discontinuance or change of the required vehicle parking or loading space apart from the discontinuance, sale or transfer of the structure, without establishing alternative vehicle parking or loading space which meets the requirements of and is in compliance with this chapter, or for any person, firm or corporation to use that building without acquiring the land for vehicle parking or loading space which meets the requirements of and is in compliance with this chapter.

Sec. 93-23-18. - Landscape requirements for vehicular use areas.

- (a) *Intent.* The objective of this section is to provide space for the use of landscape beautification and natural plant growth for developments where off-street parking and open lot sales, displays, and service areas are provided. The intent is to improve and protect the appearance, environmental and ecological condition, character, design, and value of the total urban area, thereby promoting the public health, safety, and welfare.
- (b) *Areas subject to the requirements of this section.* Vehicular use areas, except those serving single-family or duplex developments, parking garages, and public rights-of-way shall conform to the minimum landscaping requirements hereinafter provided.

This section only applies to the commercial use parking area

- (c) *Procedure for the development of vehicular use areas.*
 - (1) *Permit requirements.* No building grading, or tree removal permit shall be issued until approval of a required landscape plan for vehicular use areas. Prior to submission of building plans, the requirements of this section must be met. In cases where a vehicular use area is located on a lot other than that of the principal building, building plans may be submitted for review.
 - (2) *Submission of a required survey and proposed landscape plan.*

- a. The applicant or his authorized agent shall submit to the department of public service three copies of each survey and landscape plan at a scale no greater than one inch equals 50 feet. The proposed landscaping may be superimposed on the proposed site plan or on a separate sheet, provided all drawing are the same scale.
- b. Each survey and landscape plan shall include the following:
 - 1. Name, signature, address, and telephone number of property owner, surveyor, and or designer;
 - 2. North arrow and scale;
 - 3. All dimensions; and
 - 4. All required information and data listed on drawings.

The landscape plan provided does not provide the required information.

- (3) **Survey.** The required survey shall include the following information:
 - a. Legal description of the property.
 - b. All trees and survey data as defined in this chapter.
 - c. Existing structures, buildings, parking spaces, accessways, and public streets.
 - d. Aboveground and belowground utility lines and easements.
 - e. Existing natural features and topography at one-foot contour intervals. In areas where slopes are 20 percent or greater, a five-foot contour interval may be substituted.

An updated survey has been provided. The survey does not provide information about existing trees.

- (4) **Landscape plan.** The proposed landscape plan shall include the following information:
 - a. All trees, natural features, man-made appurtenances and structures to be retained upon the site and all topographic changes.
 - b. All proposed landscaping improvements and planting or landscaping areas identified. The grade, spacing, size, and name of proposed landscape materials shall be listed on the plan.
 - c. Comments regarding site preparation, tree preservation, methods of installation, and methods of maintenance shall be listed on the plan.
 - d. Required plans shall identify all vehicular use areas, aisles, driveways, sidewalks, wheel stops, and or curbs and other vehicular use controls. The location of the curb cuts, median openings on abutting streets, lighting, underground irrigation system, hose bibs, proposed planting areas, decorative and or screening walls, and related buildings shall be shown.

The landscape plan provided does not contain the required information. The Applicant should provide all requested details above.

- (d) **Landscape requirements.** All vehicular use areas subject to these regulations shall be required to have the following maintained perimeter and interior landscaped areas:
 - (1) **Perimeter landscape requirements.**
 - a. All exterior perimeters of all vehicular use areas shall have a perimeter landscaped area with no horizontal dimension less than five feet. A decorative masonry wall, earth berm, natural landscaping screen, and or combinations of the above shall be installed in such a manner as to screen the vehicular use area from adjacent properties or public rights-of-way. Screening areas shall be maintained at a minimum height of three feet.

Exterior perimeter and screening dimensions cannot be determined. The Applicant should provide all requested details above.

- b. All required perimeter landscaped areas shall have at least one tree for every 250 square feet or fraction thereof.

Perimeter tree requirements cannot be determined. The Applicant should provide all requested details above.

- c. Where other provisions of this chapter required a six-foot screening wall of masonry construction, such screening wall may totally or in part be substituted with a natural landscape screen and or earth berm upon approval of the planning commission. Such natural screening shall be at least three feet in height at time of planting and maintained at a height of five feet with a visibility obstruction of at least 75 percent.
 - 1. i. When abutting a public street right-of-way, landscaped areas along a public street shall have a minimum dimension of five feet and a minimum average dimension of ten feet from the right-of-way line to the vehicular use area.
 - ii. In addition, the requirements of section 93-2-7, "Vision clearance at corners," shall be met.
 - 2. When abutting adjacent properties. Required perimeter landscaped areas which would abut adjacent, existing nonresidential properties may be allocated as additional interior or other additional perimeter landscaping.
- (2) *Interior landscape requirements.*
 - a. An area or combination of areas equal to ten percent of the total vehicular use area exclusive of perimeter landscaped areas shall be devoted to interior landscaping.

Interior landscaping requirements and area cannot be determined. The Applicant should provide all requested details above.

- b. There shall be a minimum of one tree provided for every 250 square feet or fraction thereof of interior landscaping area.

Interior landscaping requirements and area cannot be determined. The Applicant should provide all requested details above.

- (3) *Permitted modification to the landscaping requirements.*
 - a. In cases where the landscaped area requirements of subsection (d)(1) and (d)(2) may exceed 20 percent of the vehicular use area, the applicant may be allowed to reduce dimensions of landscaped areas other than those abutting a public street right-of-way or adjacent to the residential uses or zones to equal a 20 percent maximum provided a method of vegetative and or masonry screening is maintained and is approved by the department of public service.
 - b. In instances where proposed innovative designs, landscaping techniques, and site amenities are believed to fulfill the intent of subsection (a) above, the strict requirements of this section may be waived by the planning commission.
 - c. In instances where healthy plant material exists, the requirements outlined in subsections (d)(1) and (d)(2) of this article may be adjusted thereby allowing credit for the preservation of existing plant material. The planning commission may make such adjustments so long as the intent of this section is preserved.
 - d. Open lot sales of vehicles may be excluded from the perimeter screening requirements adjacent to public rights-of-way by the planning commission, provided the tree requirements and area requirements are met.

Not applicable.

- (4) *Landscape installation requirements.* All landscaping shall be installed in accordance with accepted good planting procedures.
 - a. *New plant materials.*
 - 1. All new living plant materials shall satisfy the requirements of No. 1 or better as defined in the most current edition of Grades and Standards for Nursery Plants.
 - 2. All separate landscaped areas shall have a minimum variety of two living plant materials other than trees; total landscaping areas required shall include a minimum variety of three landscape materials other than trees.
 - 3. Paving (other than walks) and artificial plants shall not be permitted within landscaping areas.
 - 4. Trees. A tree shall attain an average crown spread over 15 feet at maturity. Trees having an average crown spread less than 15 feet may be substituted by grouping the same so as to

create the equivalent of a 15-foot crown spread. All trees shall be of a species which can be maintained with a minimum of five feet of trunk height. Trees shall have a minimum of two inches DBH (diameter at breast height) measured 4½ feet above the ground and shall be a minimum of six feet in overall height immediately after planting.

5. Shrubs. Shrubs shall be a minimum of one foot in height when measured at the time of planting except where they are to act as screening for residential uses or districts. In which case, they shall be a minimum of three feet in height at the time of planting and maintained at a minimum height of five feet at maturity.
 6. Lawn grass and ground covers. Grass may be sodded, plugged, sprigged, or seeded except that solid sod shall be used in swales or other areas subject to erosion. In areas where plant materials other than solid sod or grass is used, a fast-growing grass seed shall be sown for immediate effect and protection until coverage is otherwise achieved. Grass sod shall be clean and reasonably free of weeds and noxious pests or disease. Ground covers which present a finished appearance and reasonable complete coverage at time of planting may be used in lieu of grass sod.
- b. *Existing plant materials.* Existing living plant materials to be preserved shall be in accordance with of this chapter.
 - c. *Earthwork.* Earth berms shall be of variable height and slope. Swales and ponds shall be permitted for onsite retention of stormwater provided they are approved by the city's department of public service.
 - d. *Encroachment.* Landscaped areas, walls, structures, and walks shall require appropriate protection from vehicular encroachment by utilizing wheel stops, curbs, posts, wood, brick-work, and/or other devices. Placement of these devices shall be located at least 2½ feet from walks, walks, and structures and may be placed one foot from landscaped areas to prevent a vehicular overhang of no more than 1½ feet of landscaping area may be counted as part of the required depth of each parking space.
 - e. *Maintenance.* The owner or his agent shall be responsible for the maintenance of all landscaping which shall be maintained in good condition so as to present a healthy, neat, and orderly appearance and shall be kept free from refuse and debris. All landscaped areas shall be provided with a sprinkler system or readily available water supply with at least one outlet located within 50 feet of all plant material to be maintained. The owner shall replace all landscaped materials required if, for any reason, they die or are severely damaged within one year of the final approval of the installation. The owner is thereafter responsible to maintain the landscaping in a healthy manner.
 - f. *Planting bed.* The planting bed for all landscaping materials shall be free of weeds, debris, and noxious material and shall consist of a healthy plant growth medium. The planting bed soil shall provide adequate support, drainage, and nutrients for the plants and thus may require the incorporation of sand, peat, and or topsoil into the soil. Such planting soil shall be placed throughout the planting hole for each plant, and this hole shall be at least twice as wide as the width of the plant ball and 1½ as deep as the depth of the plant ball.

The landscape plan provided is only one page and does not contain the required information. The Applicant should provide all requested details above.

- (e) *City review of landscape plan.* The department of public service shall approve or reject the required landscape plan. The decision of the department of public service shall be deemed final administrative action, but may be appealed to the planning commission provided such appeal is made in writing at least ten days prior to the next regular planning commission meeting. Developments which require site plan approval by the planning commission shall be reviewed and approved by the planning commission for compliance to this section.
- (f) *Certification of compliance.* Upon completion of the landscape improvements, the site shall be inspected for compliance to the approved landscape plan. A certificate of compliance must be issued before a certificate of occupancy can be issued for any related structures. When occupancy of a related building is desired prior to completion of the required landscaping, a temporary certificate of occupancy may be issued if a financial guarantee in the amount equal to 100 percent of the cost for landscaping improvements is provided and acceptable in form to the city attorney.

Sec. 93-2-14. - Tree conservation.

(a) *Purpose.*

- (1) This section shall be known as the Hapeville Tree Conservation Ordinance. The overall purposes of this section are to promote tree conservation, the increase of tree canopy, and the protection of existing trees in the city. General provisions and regulations contained herein, along with the attached administrative standards and best management practices for Hapeville's urban forest, will guide practices to accomplish this purpose. It is the intent of this section to regulate tree conservation activities as part of the building construction, and land development process, protect landmark trees, and provide public safety within the city.
- (2) Benefits derived from the conservation of trees and increased canopy include:
 - a. Improved air quality;
 - b. Energy conservation;
 - c. Reduced flooding and reduced storm water runoff;
 - d. Reduced soil erosion and improved water quality;
 - e. Improved habitat for desirable wildlife;
 - f. Reduced health risks;
 - g. Community aesthetics and improved quality of life;
 - h. Added economic value.

(b) *Applicability.*

- (1) The terms, provisions and regulations of this section and the administrative standards and best management practices for Hapeville urban forest, Appendix A hereto, shall apply to any real property, public or private, within the corporate limits of the city:
 - a. For all activities which require a land disturbance, building construction, or demolition permit;
 - b. For external renovations of all properties resulting in the increase of total square footage, or the construction of accessory structures, which may impact landmark trees;
 - c. For the purpose of permitting the removal of landmark trees.

- (c) *Definitions.* As used in this section, unless specifically stated otherwise, the following terms shall be defined as indicated and where any definition herein conflicts with another definition in this chapter, the more restrictive definition shall prevail.

Boundary tree. A tree on a property adjacent to a permitting property whose critical root zone or canopy extends into the permitting property.

Buildable area. The area of a lot within a given zoning district, located within the required setbacks.

Building permit. A permit issued by the city department of community services that authorizes the commencement of construction and building construction activity.

Caliper. The trunk diameter measurement of nursery stock trees measured at six inches above the ground for trees up to and including four inches caliper size, and measured at 12 inches above the ground for trees larger than four inches caliper size.

Canopy tree. A large or medium tree with a crown size and shape that will typically provide significant shade and beneficial effects on temperature, air quality, water quality, and other environmental conditions, at maturity. A canopy tree is also referred to as a shade tree.

Certified arborist. An arborist certified by the International Society of Arboriculture as possessing a minimum level of competency required to practice arboriculture.

Critical root zone. The minimum rooting volume of a tree necessary to sustain the tree's life, generally defined by the tree's drip line or a radius of one and one-fourth feet for every one inch dbh, whichever is greater, and from the surface to a depth of three feet.

Damaged tree. A harmful injury to a tree or any of its parts, including its roots, the root buttress area, the trunk and branches.

Destroyed tree. When any part of a tree is damaged to the point where that tree's survival beyond three full growing seasons is questionable, as determined by the city arborist.

Diameter at breast height (DBH). The diameter of a tree's trunk measured at four and one-half feet above the ground. For multi-trunk trees, the diameter is measured at the narrowest point beneath the point of attachment of the multiple trunks.

Ecological compatibility. The suitability and functionality of a given tree species for its intended growing site, based on its potential size, structural characteristics, growth rate, and growing site attributes such as slope, exposure, soil type, and drainage.

City arborist. The individual authorized by the mayor and council of the City of Hapeville to advise the city on the administration of the requirements and standards as established in this section. The city arborist shall have the following minimum qualifications: A BS degree in urban forestry, horticulture or arboriculture with five years experience in development related tree conservation, or a MS degree in urban forestry, arboriculture or horticulture with three years experience in development related tree conservation.

Hazardous tree or portion of tree. A tree or part of a tree that is at risk for failure because it is dead or structurally defective, and where that failure could result in personal injury or property damage.

Land disturbance permit. A permit issued by the city community services department that authorizes the commencement of alteration of development of a given tract of land or the commencement of any land disturbing activity.

Landmark tree. Any canopy tree 30 inch dbh or larger, or otherwise designated by the mayor and council as having significance to the community, or any understory tree eight inches dbh or larger, in fair or better condition, having a life expectation of greater than five years.

Site tree conservation plan (STCP). A plan documenting the location of all trees, boundary trees, structures, proposed utility locations, site grading and construction proposals, methods of tree protection, proposed tree planting, existing and proposed tree canopy, and associated details, as required in subsection 93-2-14(e).

Tree. A self-supporting wood plant capable of reaching a minimum height of 15 feet.

Tree protection zone. The area of a lot defined by the minimum required setbacks and the critical root zone of any protected tree.

Landmark tree removal permit. A permit issued by the city for the removal of a landmark tree.

Understory tree. Smaller growing and shade tolerant tree species which typically grow on sites trees underneath canopy trees.

Qualified professional. An individual possessing a degree in forestry, urban forestry, landscape architecture or horticulture, having been qualified by the city to submit plans in the implementation of this section and for tree protection in building construction. The city shall maintain a list of qualified professionals.

(d) *General requirements.*

(1) *Tree removal.*

- a. No trees shall be removed or destroyed prior to issuance of a building construction or land disturbance permit. The issuance of a building construction or land disturbance permit shall constitute compliance with the tree conservation provisions of this section.
- b. No landmark tree shall be removed from any real property within the corporate limits of the city without the issuance of a landmark tree removal permit.

(2) *Protected trees.*

- a. All trees outside the footprint of a proposed building construction or land development project, eight inches dbh or larger, shall be considered protected trees.
- b. No protected trees shall be damaged or destroyed.

(3) *Conditions for removal or destruction of trees.*

- a. The removal or destruction of trees is subject to approval of the city arborist, only if all of the following conditions are met:
 1. Unavoidable site modifications resulting from grading, utility work, and construction activities will result in destroying the tree;
 2. Site plan modifications to prevent irreparable damage to the tree are impossible or not practical, based on cost benefit analysis;
 3. Actions are taken to mitigate the removal of trees by way of replacing by meeting overall site canopy requirements.
- b. Approval of the STCP by the city arborist shall constitute approval to remove protected trees.
- c. Any decision of the city arborist relating to the removal or destruction of protected trees may be appealed as provided in subsection 93-2-14(i).

(4) *Trees that present a dangerous condition.*

- a. It shall be unlawful for any person to allow to remain on their property any tree which presents a dangerous condition. Dangerous trees include:
 1. A tree or any part of a tree that is likely to fail (fall) as a result of structural defects, root damage, disease, decay, decline or death; and where failure of a tree or any part of a tree would result in potential property damage or injury.
 2. A tree that by its proximity interferes with traffic or pedestrian sight distance, drainage or utility lines and easements so as to create an unsafe condition on or off the site or easement.

3. A tree of any species or variety which, because of any other circumstances, poses a danger to public health or safety.
 - b. The city's department of community services (or agent of the department of community services) is authorized and empowered to enter upon any lot or parcel of land in the city for the purpose of inspecting and evaluating any tree which is suspected to present a dangerous condition. It shall be unlawful for any property owner to take any action to prevent or interfere with the inspection and evaluation of potentially dangerous trees.
 - c. The department of community services shall obtain the services of the city arborist for the purpose of inspecting and evaluating suspected dangerous trees.
 - d. If it is determined by the city's department of community services that a tree presents a dangerous condition, the city's department of community services shall serve the owner of record of the lot or parcel of land on which said tree is located, a written notice requiring such owner to take corrective action to remove the tree or its dangerous part(s) to eliminate the dangerous condition. This written notice shall include a time frame to complete the corrective action. When the corrective action includes tree removal, the tree shall be replaced. Replacement shall be based on a canopy replace for canopy lost basis.
 - e. Any notice by the city's department of community services to correct a dangerous condition or remove a tree which presents a dangerous condition may be appealed to the city's planning commission, provided a written notice is submitted no later than five days following receipt of the notice appealed from.
 - f. If a property owner fails, neglects, or refuses to trim or remove such tree within the stated time frame or following an adverse decision on appeal, the city's department of community services may proceed to take the corrective action and assess the resulting costs to the property owner. The amount of costs shall be paid by the owner to the city.
 - g. The assessment of the costs of work done by the city against the property owner shall include the actual cost of work performed, including tree replacement, in addition to the penalties imposed for any violation or noncompliance with any provision of this section, plus administrative fees.
 - h. If the property owner fails to pay the costs assessed by the department of community services, a lien shall be placed on the subject property for the cost of the work performed, penalties, and fees.
- (5) *The removal or destruction of landmark trees.*
- a. The removal or destruction of landmark trees from any property in the city is subject to the approval of the city arborist, and approval may only be granted if one of the following two conditions is met:
 1. The tree threatens the property, safety or health of the property owner or the public.
 2. Actions are taken to mitigate the tree's removal by way of planting a new tree of a comparable species and canopy. Payment may be made into the city tree bank in lieu of planting, calculated on a tree lost/replaced basis.
 - b. The issuance of a tree removal permit constitutes approval to remove a landmark tree.
 - c. Any decision of city arborist relating to the removal or destruction of landmark trees may be appealed as a provided in subsection 93-2-14(g).
- (6) *The removal or destruction of boundary trees.* No boundary trees shall be damaged, destroyed, or removed. Procedures for the protection of boundary trees are provided in subsection 93-2-14(e)(4).
- (7) *Canopy requirements.*
- a. All properties requiring the issuance of a demolition, building construction, remodeling or land disturbance permit shall meet the minimum canopy requirements as established in the administrative standards and best management practices for Hapeville's urban forest.
 - b. All new parking lots shall meet the minimum canopy requirements as established in the administrative standards and best management practices for Hapeville's urban forest.
 - c. Trees planted to meet canopy requirements shall be ecologically compatible with the intended growing site.
- (8) *Establishment of the city tree bank.*
- a. Where it is determined by the city arborist that it is impractical or impossible to fully meet the canopy requirements on a specific site, the cost for the balance (unmet portion) of the requirement will be paid into the city tree bank, prior to issuance of a demolition, building construction, or land disturbance permit. Calculation of costs shall be established in the administrative standards and best management practices for Hapeville's urban forest.

- b. Funds in the city tree bank shall be administered by the mayor and council or their designee and shall be used exclusively for increasing, managing, maintaining tree canopy and tree safety in public space, the purchase of open space, and seasonal landscaping in the city. The mayor and council will establish a planned program for administration of these funds.
- (e) *Procedures.*
 - (1) *Tree removal permits.*
 - a. All properties applying for a permit to remove landmark trees shall submit a permit application to the department of community services, indicating how the tree(s) present a dangerous condition pursuant to subsection 93-2-14(d)(4)a.
 - 1. For properties requiring the issuance of demolition, building construction, or land disturbance permits, the removal of landmark trees is permitted under the procedures in subsection 93-2-14(e)(3).
 - 2. The required STCP shall indicate how the how the tree(s) present a dangerous condition pursuant to subsection 93-2-14(d)(4)a.
 - (2) *Permits to remodel.*
 - a. Permits to remodel owner occupied single family houses shall have tree protection and replacement prescriptions prepared by the city arborist when both the following conditions are met:
 - 1. The proposed remodeling alters the existing footprint of the house.
 - 2. The proposed remodeling or construction related activities will encroach upon a landmark tree.
 - b. Replacement prescriptions shall be based on a canopy replace for canopy lost basis, for the loss of landmark trees. Payment may be made into the city tree bank when the city arborist determines that site constraints preclude the replacement of trees.
 - (3) *Demolition, building construction, land disturbance permits.*
 - a. A site/tree conservation plan (STCP) shall be submitted by a qualified professional for review by the city arborist and approval by the city development department prior to issuance of demolition, building construction or land disturbance permits. (Except for permits to remodel, see subsection 93-2-14(e)(2).)
 - 1. The SCTP shall document tree species eight inches dbh or greater, including size, dbh, critical root zone and location, the species and caliper size of proposed trees, the location of all proposed site building construction and land development activities, including grading, drainage, proposed utility locations, and all proposed tree protection measures.
 - 2. All proposed trees for removal must be indicated.
 - 3. The exact location of any tree must be provided if encroachment is proposed with that tree's critical root zone.
 - 4. Standard details for tree protection and tree planting shall conform to the administrative standards and best management practices for Hapeville's urban forest.
 - 5. The following note shall be provided on the STCP in large letters: TREE PROTECTION FENCING SHALL BE MAINTAINED DURING THE ENTIRE PROJECT PERIOD.
 - 6. The STCP shall include emergency 24-hour contact information.
 - 7. The STCP shall document compliance with the canopy, parking, and landscape requirements established in the administrative standards and best management practices for Hapeville's urban forest, in addition to the city landscape requirements for vehicular use areas.
 - b. The STCP shall also include the location of landmark trees.
 - 1. The removal or destruction of landmark trees will be permitted only if the city arborist determines that no alternative construction or mitigating site or cultural practices will prevent destruction of the tree.
 - 2. Replacement of landmark trees shall be of comparable species with the size potential of the landmark tree, and shall be ecologically compatible with the intended growing site.
 - 3. Trees planted to replace a landmark tree shall have the grow out potential to fully mitigate loss of the entire measured canopy of the landmark tree.
 - 4. Canopy mitigation for loss of a landmark tree shall be in addition to the overall site canopy requirements.
 - (4) *Boundary trees.*
 - a. The STCP shall provide for the protection of boundary trees.
 - b. When building construction or land disturbance activities occur within the critical root zone of boundary tree(s) and the city arborist determines that the survival of the tree(s) is/are doubtful as a

result of the proposed disturbance activities, a performance bond shall be established regarding the subject boundary tree(s). The bond amount shall cover the removal and replacement costs of the subject boundary tree(s) and the arborist fee for determination of the trees' survival at the end of the escrow period, and shall be approved by the city arborist.

1. In establishing the bond amount, replacement trees specified shall be of comparable species and size potential to the subject boundary tree, shall be ecologically compatible with the intended growing site at maturity, and shall fully mitigate the lost canopy area of the subject boundary tree.
 2. Canopy credit will be granted to a permittee for the entire canopy area of successfully protected boundary trees, except for those trees located on public rights-of-way.
 3. The department of community services will administer the bonding of boundary trees through the department of finance.
 - c. Prior to a determination authorizing the return of the performance bond to the permittee, any property owner whose property contains an at risk boundary tree(s) for which the bond was held, may petition the department of community services for payment for the removal and replacement of the subject boundary tree(s), should any of the subject boundary tree(s) fail to survive or is determined to be in an irreversible decline as a result of the permitted disturbance activities, as determined by the city arborist.
 1. The permittee shall have the right to petition the mayor and council or their designee for the return of all escrow funds should the subject trees survive for a period of three full growing seasons, as determined by the city arborist. If the subject tree(s) has/have failed to survive or is in a reversible or irreversible decline as a result of the permitted disturbances, the escrow funds shall be paid pursuant to subsection 93-2-14(e)(4)b., for removal and replacement of the subject tree(s), or for arboricultural practices to reverse the decline as determined and prescribed by the city arborist.
 2. Any funds not collected by either an affected property owner or the permittee within a period of five years, or any interest accrued therein, shall be deposited in the city tree bank.
- (5) *Field verification.*
- a. The qualified professional preparing the STCP shall verify its accuracy with the city arborist prior to submittal.
 - b. The city arborist shall verify successful compliance to the STCP prior to issuance of a permit, and shall verify final field compliance prior to issuance of a certificate of occupancy.
 - c. Performance bonds may be accepted by the department of community services in lieu of required tree planting and landscaping if seasonal and weather conditions are inappropriate for the establishment and survival of plant material.
 1. The bond amount shall be one and one-fourth times the amount of the documented landscape cost, including plant materials and installation.
 2. The period of the bond shall be mutually agreed upon by the permittee and the department of community services.
 3. The bond shall be returned when all of the landscape requirements are met, or cashed by the city when the bond period expired. The bond period may be extended if determined appropriate by the department of community services.

(f) *Enforcement.*

- (1) *Authority.* The department of communities services or their designee has the responsibility to issue permits in conformance with and enforce compliance with this section.
- (2) *Responsibility and inspection.*
 - a. Neither the issuance of a tree permit nor compliance with the conditions thereof, nor with the provisions of this section shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of any permit hereunder serve to impose any liability upon city, its officers or employees, for injury or damage to persons or property.
 - b. The department of community services may cause periodic inspections of the work under permit in accordance with this section and shall make a final inspection following completion of the work. The permittee shall assist the city arborist or his designee in making such inspections. Agents of the permitting authority shall have the authority to conduct such investigations as he/she may reasonably deem necessary to carry out his/her duties as prescribed in this article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of

investigating and inspecting the sites of any land development activities within the protection area. No person shall refuse entry or access to any authorized representative or agent of the department of community services who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his/her official duties.

- c. Where it is deemed necessary, the department of community services or their designee shall require performance bonds to assure compliance to the terms, conditions, and standards of this section.

(3) *Violations and penalties.*

- a. Any action or inaction which violates the provisions of this section or the requirements of an approved site plan or permit may be subject to the enforcement actions outlined in this section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

- 1. *Notice of violation.* If the director community services determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved site plan or the provisions of this section, a written notice of violation shall be issued by code enforcement to such applicant or other responsible person. Where a person is engaged in activity covered by this section without having first secured the appropriate permit, code enforcement shall be serve a notice of violation on the owner or the responsible person in charge of the activity being conducted on the site.

The notice of violation shall contain:

- A. The name and address of the owner or the applicant or the responsible person;
 - B. The address or other description of the site upon which the violation is occurring;
 - C. A statement specifying the nature of the violation;
 - D. A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the approved site plan or this section and the date for the completion of such remedial action;
 - E. A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and
 - F. A statement that the determination of violation may be appealed to the board of zoning appeals by filing a written notice of appeal within 15 days after the notice of violation (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient).
- 2. *Penalties.* In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the director community services shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten days (except that in the event the violation constitutes an immediate danger to public health or public safety, as determined by the director of community services, 24 hours notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the city arborist may take any one or more of the following actions or impose any one or more of the following penalties.
 - A. *Stop work order.* The director of community services may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take necessary remedial measures to cure such violation or violations.
 - B. *Withhold certificate of occupancy.* The director of community services may refuse to authorize a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken

the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

- C. *Suspension, revocation or modification of permit.* The director of community services works may suspend, revoke or modify the permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the director of community services may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
- D. *Penalties.* In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days (or such greater period as the city arborist shall deem appropriate) (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient) after the city arborist has taken one or more of the actions described above, the city's designated code enforcement agent may issue a citation to the applicant or other responsible person, requiring such person to appear in municipal court to answer charges for such violation. Any violation of this article is punishable, upon conviction, according to the provisions the City Code. Each day any violation of this section shall continue shall constitute a separate offense.

(g) *Administrative appeal and judicial review.*

(1) *Administrative appeal.*

- a. *Administrative appeal.* Any person aggrieved by a decision or order of the city arborist may appeal in writing within 15 days after the issuance of such decision or order to the board of zoning appeals of the city and shall be entitled to a hearing before the board of zoning appeals of the city within 60 days of receipt of the written appeal.
 1. The board of zoning appeals shall hear and decide appeals when it is alleged an error in any requirement, interpretation, decision, or determination is made by the city arborist in the enforcement or administration of this section.
 2. The board of zoning appeals shall consider the testimony of the city arborist, who shall be present at such hearings, and may consider all technical evaluations, relevant factors, field conditions, and all standards specified in this and other relevant sections of this section.
 3. The board of zoning appeals after conducting a public hearing may affirm or reverse the decision or order by the city arborist.

- (2) *Judicial review.* Any person aggrieved by a decision or order of the city arborist after exhausting all administrative remedies, shall have the right to appeal de novo to the Superior Court of Fulton County.

The Applicant should provide all requested details on tree conservation above.

RECOMMENDATION

The site plan should be revised to show the following concerns identified per the planner's review for zoning compliance.

- *The Applicant should provide rear setback for the commercial buildings.*
- *The Applicant should provide cross sections of curb cuts, sidewalks, connections to buildings, and driveways.*
- *The Applicant should provide outdoor furnishings/lighting etc. for the common area.*
The Applicant should provide screening information for the refuse collection facilities.
- *The Applicant should provide the height, width and area of the sign.*
- *The Applicant should provide 24' width between buildings or request a favorable opinion by the Planning Commission for the Board of Appeals review.*
- *The Applicant should provide dimensions of all curb breaks and curblines.*
- *The Applicant should provide setbacks for the off-street parking and loading spaces from the property lines.*

- The Applicant should provide 36 spaces in the commercial area.
- The Applicant should reduce the residential spaces to 4 additional spaces.
- The Applicant should ensure that the parking space sizes meet the Arts District Overlay dimensions.
- The Applicant should provide the dimensions of any pathways leading from the handicapped parking spaces, including the dimensions of any curb cuts or ramps.
- The Applicant should provide a tree inventory and tree retention/removal plan.
- The Applicant should provide all requested details in the parking lot landscaping requirements in the complete landscape plan.
- The Applicant should provide all requested details for the tree conservation ordinance.

It is understood the building elevations will be reviewed by the Design Review Committee for compliance with the Architectural Design Standards.

Staff cannot recommend approval with the application as submitted. The Applicant must address all deficiencies in the Planner's report as well as the City Engineer's comments and the Fire Marshall's comments.

The Arts District assumes mixed-use enfronting structures.

