



TMHConsulting@cfl.rr.com  
97 N. Saint Andrews Dr.  
Ormond Beach, FL 32174  
PH: 386.316.8426

## MEMORANDUM

**TO:** Howey-in-the-Hills Planning Board  
**CC:** J. Brock, Town Clerk  
**FROM:** Thomas Harowski, AICP, Planning Consultant  
**SUBJECT:** Lake Hills Commercial Variance Requests  
**DATE:** February 2, 2024

---

The Town has received an application from Windcrest Development Group for the Lake Hills Commercial development seeking a variance from two regulations governing requirements in the Town's landscape regulations. The requested variances ask for relief from Section 7.04.02 which requires a minimum 10-foot wide landscaped area be provided along all sides of non-single family primary structures and from Section 7.05.01 (C) which requires a minimum 10-foot wide divider median abutting rows of parking. The requested variances are seeking complete elimination of both requirements.

The subject property is the commercial component of the approved Lake Hills Development. The applicant's are seeking approval to develop a 50,000 square foot grocery store, 8,400 square feet of additional retail space and four outparcels with uses to be determined. The applicaant has submitted an application for preliminary site plan approval for the grocery store and retail building, along with designation of the outparcel sites.

The requested variance from Section 7.04.02 will affect all buildings including the outparcel sites by allowing the elimination of any foundation landscaping. The requested variance from Sectiion 7.05.01 will affect the layout of the parking lots by allowing for angled parking with pull-through stalls.

The applicants have four options to address the code requirements. First, they can design the site layout in accordance with the current code. Secondly, they seek a varaince from the current regulations based on a demonstrated hardship unique to the property or building. This is the fastest option and the one the applicants have chosen. Thirdly the applicants could amend the master development agreement to include their desired design within the provisions of the planned unit development ordinance. Fourthly they could propose an amendment to the land development regulations to amend the code sections in question.

## Applicant Statements

The applicants submitted an application and supportive narrative that lays out their case for each variance. The arguments are summarized as follows:

### Section 7.04.02 10-Foot Foundation Landscape Area

#### ***7.04.01 Landscaping Non-Single-Family Primary Structures***

- A. A minimum 10-foot wide landscaped area shall be provided along all sides of the building, except the following:
  1. Where areas such as motor vehicle bays or loading zones would prohibit it
  2. In front of storefront windows that directly abut a pedestrian way
  3. Where the building is within 25 feet of a required landscaped buffer or natural areas which will be preserved.
- B. This required area shall be primarily comprised of shrubs, ornamental plants, and groundcovers. Turf should not be used in this area and trees that require more room for mature growth should not be placed close to buildings. Irrigation should be limited to drip or other components that will not spray towards the building or trap water near the building foundation. Hardscape, such as benches, sculpture, or planters, is encouraged within this area.
- C. Landscape materials required by this section should be located to achieve the following:
  1. Screen mechanical equipment, air conditioning units or any other visible outdoor equipment adjacent to the primary building
  2. Provide visual interest along building facades
  3. Enhance walkways, entrances, seating areas, and other similar pedestrian areas

The applicants state that the section

- Is an obstacle to ADA compliance.
- Could stimulate allergic responses and creates a trip and fall hazard
- Is impractical to maintain
- Presents a risk to structural integrity
- Clashes with the aesthetic look of the project.

### Section 7.05.01 (C) Landscaped Divider Median

#### ***7.05.01 Parking Lots***

The following requirements are established to provide shade and visual interest to parking lot areas. The Town will place emphasis on preserving existing trees and applicants will be expected to take existing trees into consideration when designing parking lots.

- C. Divider medians. Landscaped divider medians shall form a continuous landscaped strip between abutting rows of parking. The minimum width of a divider median shall be 10 feet. Canopy trees at least 4 inches DBH at time of planting shall be spaced no fewer than one tree every 40 feet. Ground cover, shrubs, and understory trees shall also be included in divider medians.

The applicants state that the

- Islands are an inefficient use of space
- Adversely affect traffic flow and safety for drivers and pedestrians
- Create barriers to ADA compliance
- Increase maintenance costs
- Clash with the site aesthetics

### **Standards for Approval of A Variance**

The standards for granting of a variance are presented in Section 4.13.04 and are reproduced below.

#### ***4.13.01 Standards in Granting a Variance***

The Board of Adjustment may authorize a variance from the terms of this LDC as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Code will result in unnecessary and undue hardship. In authorizing a variance from the terms of this LDC, the Board of Adjustment shall find:

- A. That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structures, or buildings in the same zoning district,
- B. That the special conditions and circumstances do not result from the actions of the applicant,
- C. That literal interpretation of the provisions of this LDC would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this LDC and would work unnecessary and undue hardship on the applicant,
- D. That the variance created is the minimum variance that will make possible the reasonable use of the land, building or structure, and
- E. That the granting of the variance will be in harmony with the general intent and purpose of this LDC and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- F. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this LDC. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this LDC.

## Discussion and Analysis

It is common for commercial developments to be developed without extensive foundation planting and to use a parking lot design that has angled, pull-through parking lot design, however, it is common to find both of these elements on commercial sites and in commercial parking lots. In preparing the development regulations, the Town included the foundation landscaping and the parking lot medians in an effort to increase the landscape appeal of non-single-family development. The key for the variance is to compare the applicant's statements with the criteria included in the ordinance.

That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structures, or buildings in the same zoning district,

Given that the proposed project is on a site with no previous urban development, it is difficult to claim that there is a unique condition peculiar to the site that requires relief from the code. The applicant can simply design around either of the two issues raised in the application. If the Board is to recommend either or both variances, the Board will need to find that there is a condition unique to the building that supports the variance.

That the special conditions and circumstances do not result from the actions of the applicant,

Again this is a difficult criterion to meet given that the site is a new development site which the applicant has free reign to design in compliance with the code. As with the first criterion, the Board will need to base a recommendation for approval on some aspect of the building.

That literal interpretation of the provisions of this LDC would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this LDC and would work unnecessary and undue hardship on the applicant,

The rules in question will apply to any commercial site plan presented for approval. The only commercial site plan approved by the Town to date is the plant nursery on SR 19 at Revels Road, and that project did include foundation plantings. That project did not have any head to head rows of parking that would have required the divider medians. The question for the Board to assess is would the application of the current rules create an unnecessary and undue hardship for the applicant. The conditions cited by the applicant may go to this issue.

That the variance created is the minimum variance that will make possible the reasonable use of the land, building or structure, and

Given that the applicants claim that either rule is negatively affecting the project, complete elimination of the requirement is the minimum relief needed.

That the granting of the variance will be in harmony with the general intent and purpose of this LDC and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Given that both requested waivers are internal to the subject site and are consistent with commercial development sites in other communities, the relief requested is unlikely to be detrimental to the public welfare.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this LDC. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this LDC.

The Board does have the option of setting additional conditions that might be appropriate to the requests. As an example, since the primary purpose of the two regulations in question is to add landscaping to the site, the Board may wish to increase the level of perimeter landscaping, and/or require more landscaped islands in the planned parking area.

Based on the effects cited in the application for the variances, the staff has some additional comments for consideration:

- We question whether the inclusion of the divider median results in a less safe traffic layout than the option that allows pull through traffic mid-row. The layout with the divider median is likely less convenient for drivers as they would be required to go to the end of the row to access adjacent rows of parking. It is difficult to see how the pull-through parking stall design is safer for pedestrians.
- The site plan proposes 306 parking spaces. The minimum code requirement is 245 spaces, so the addition of the divider medians is unlikely to cause a shortfall in the parking required by code.
- As ADA design parking stalls are typically placed close to the building, it is difficult to see how the divider median design make compliance more difficult. If needed the Board could allow the divider median where accessible parking spaces are located to include sidewalks if necessary.
- There may be additional cost to maintain the added landscape area, but cost is not a criterion for determining the variance outcome.
- The project has not presented a particular aesthetic design proposal at this point in the review process. Where added landscaping is required by the rule, the applicant has wide latitude in selecting the plant material. The rule for

foundation planting is clear in the recommendation that trees not be applied in these areas to avoid building damage.

## Summary

The applicant has asked for approval for variances from two landscape design regulations in the Town's code. The Board may consider each request independently when forming their recommendation to the Town Council. The applicants have provided their reasons why the variances should be granted, and the staff has provided an analysis of the requests. Basing the variance on any unique conditions demanded by the building may be the best option if the Board wishes to grant the variance. As noted, the Board may recommend additional conditions if the Board believes these are warranted to support a variance recommendation. For example, the Board could lessen the area required for foundation plantings and/or increase landscaping requirements elsewhere such as the added landscape islands noted previously.