

ORDINANCE NO. 5752

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE AND ZONING MAP BY AMENDING THE DEVELOPMENT CODE TEXT RELATED TO PROVIDING AN ALTERNATIVE PERIMETER LANDSCAPING PLAN WHEN LANDSCAPING CAN BE PLACED IN EXCESS PUBLIC-RIGHT-OF-WAY, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY (FILES DC-01-11).

WHEREAS, from time to time it is appropriate to amend the Albany Development Code (Code) based on changing conditions, and to be in compliance with state and federal laws; and

WHEREAS, the City collects suggestions for revisions to the Code and has an ongoing process to evaluate and recommend changes to it; and

WHEREAS, the proposed amendments respond directly to requests from Albany property owners who are challenged by bringing previously developed property up to the current perimeter landscaping standards; and

WHEREAS, the amendments would allow commercial perimeter landscaping to be placed in excess public-right of way in limited circumstances; and

WHEREAS, on February 7, 2011, the Planning Commission held a public hearing on the proposed amendments and unanimously recommended these changes to the City Council, based on their deliberation, and the staff report; and

WHEREAS, on March 9, 2011, the Albany City Council held a public hearing on the proposed amendments, heard testimony presented at the public hearings and then deliberated.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: The Findings and Conclusions found in the staff report, attached as Exhibit A, are hereby adopted in support of this decision.

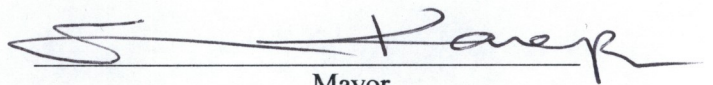
Section 2: The Albany Development Code text is hereby amended as shown in the attached Exhibit B: Article 9, On-Site Development and Environmental Standards.

Section 3: Inasmuch as this Ordinance is necessary for the immediate preservation of the peace, health and safety of the citizens of the City of Albany, an emergency is hereby declared to exist. This ordinance will be in full force and effective immediately upon its passage by the Council and approval by the Mayor.

Passed by the Council: March 9, 2011

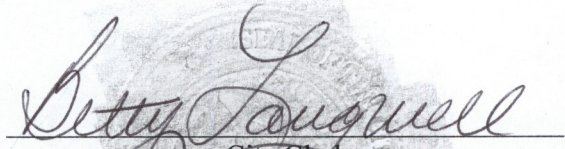
Approved by the Mayor: March 9, 2011

Effective Date: March 9, 2011

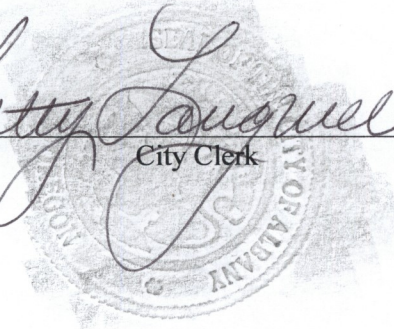


Mayor

ATTEST:



City Clerk



FINDINGS AND CONCLUSIONS

Planning File DC-01-11

Recommended unanimously by the Planning Commission on February 7, 2011

Adopted by the Albany City Council on March 9, 2011

**EXECUTIVE SUMMARY**

Staff is proposing an amendment to the Code to permit the Director to approve alternate perimeter landscaping plans on commercial property under limited circumstances.

The amendment would permit the Director to approve an alternate landscape plan, making use of the public right-of-way, when certain conditions are met. Briefly, the applicant would have to:

- secure written permission of the agency owning the right-of-way;
- augment the landscaping and irrigation if necessary to bring them to standard; and
- promise to provide the required landscaping on-site if permission to use the right-of-way is rescinded.

We have recently had two properties in various stages of development review with similar difficulties in meeting the City's commercial perimeter landscaping requirements.

Both sites were developed under previous standards, and have been vacant for more than a year. Under these circumstances, the Code requires the property to be brought up to current Code when there is redevelopment or change of use. This is a standard requirement in Codes around the nation. It assures that development in the community reflects the changing conditions and standards over time.

With the two current properties, we see situations where the intent of the Code -- quality development with landscaping -- may be met without strict adherence to the requirements. The screen grabs below illustrate the conditions.

The building (1260) sits on a small lot, with a wide area of landscaping between the property line and Santiam Hwy to the south. Current Code requires that additional ten-foot-wide perimeter landscape strips be added on-site along both street frontages. Under our proposal, the applicant would not have to add a ten-foot strip of landscaping along the south property line, but would still be required to extend the landscaping along the Price Road frontage.

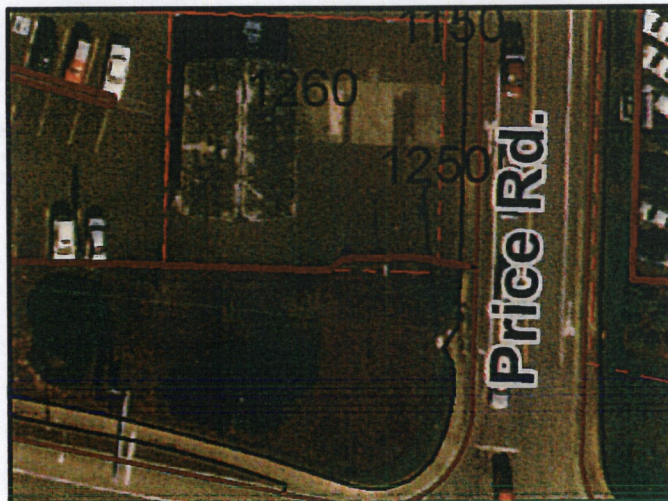
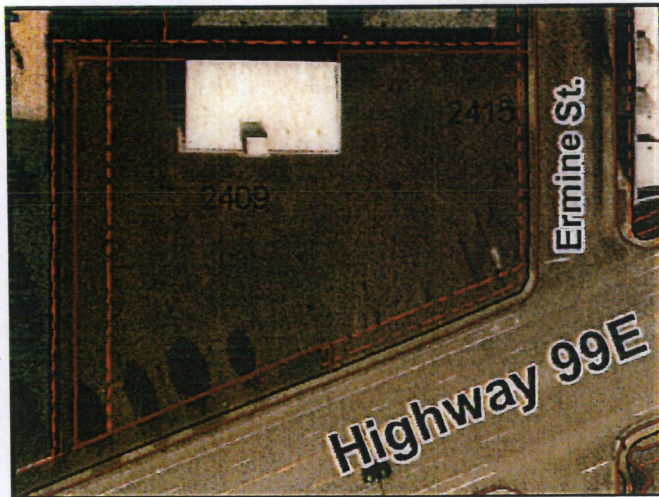


EXHIBIT A

In the second example, there is partial landscaping along the Hwy 99 frontage that will be extended along the remainder of the south property line, providing a wider landscape strip than would be required on-site. Again, the perimeter landscape along the side street would be required.



In the staff's judgment, this change would provide flexibility in reviewing redevelopment and change of use proposals, while still meeting the purpose and intent of the On-Site Development Standards.

NOTICE INFORMATION & PLANNING COMMISSION HEARING

A notice of public hearing was published in the *Albany Democrat-Herald* on January 31, 2011.

The Planning Commission held a public hearing February 7, 2011 on the proposed amendments. No one testified at the hearing. No written testimony had been received.

STAFF ANALYSIS

Development Code Amendment File DC-01-11

The Albany Development Code (ADC) contains the following review criteria which must be met for this Development Code amendment to be approved. Code criteria are written in *bold italics* and are followed by Findings and Conclusions.

- (1) *The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.*

FINDING OF FACT

1.1 *Albany Comprehensive Plan, Chapter 7, Social Amenities, Aesthetics and Urban Design*

Goal: Improve Albany's image, livability, appearance, and design through aesthetic enhancement.

The proposal would provide an alternative method for achieving the Comprehensive Plan goal, while preserving flexibility in site design and value for previously-developed properties.

CONCLUSION

- 1.1 The proposed amendments are consistent with the Comprehensive Plan goal.

- (2) *The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.*

FINDING OF FACT

- 2.1 *ADC 9.010, On-Site Development and Environment Standards, Overview.*

The ADC Overview sections calls for standards that “foster high quality development throughout the City and to minimize adverse effects on surrounding property owners or the general public”. Landscaping that provides this quality may be balanced against the constraints encountered when sites have been previously developed under different codes. In such cases, unused rights-of-way, adjacent to these sites, can supply the necessary area for fulfilling the landscape requirement.

CONCLUSION

- 2.1 The proposed amendments are consistent with the Albany Development Code.

LANDSCAPING

9.140 General Requirements. Landscaping requirements by type of use are listed below:

- (1) Landscaping Required – Residential. All front setbacks yards (exclusive of accessways and other permitted intrusions) are required to be landscaped before an occupancy permit will be issued or final building permit approved. In all residential districts except Rural Residential (RR), the minimum landscaping acceptable for every 50 lineal feet of street frontage (or portion thereof, deducting the width of the driveway) is:
 - (a) One tree at least 6 feet tall.
 - (b) Four 1-gallon shrubs or accent plants.
 - (c) The remaining area treated with attractive ground cover (e.g., lawn, bark, rock, ivy, and evergreen shrubs).

- (2) Landscaping Required – Non-Residential. All required front and interior setbacks yards, exclusive of accessways and other permitted intrusions, must be landscaped before an occupancy permit will be issued. Minimum landscaping acceptable for every 1,000 square feet of required setbacks yards in all commercial industrial districts is as follows:
 - (a) One tree at least 6 feet tall for every 30 feet of street frontage.
 - (b) Five 5-gallon or eight 1-gallon shrubs, trees or accent plants.
 - (c) The remaining area treated with suitable living ground cover, lawn, or decorative treatment of bark, rock, or other attractive ground cover.
 - (d) When the yard adjacent to a street of an industrially zoned property is across a right-of-way from other industrially or commercially zoned property, only 30 percent of such yard setback area must be landscaped.

- (3) Alternate Plan – Non-Residential - **The Director may approve placement of the required setback landscaping in public right-of-way when the following conditions are met:**
 - (a) **The site contains existing development that includes substantial building(s), and is subject to ADC improvement requirements due to a change of use or vacancy; and**
 - (b) **The appropriate government agency grants written permission for use of the right-of-way; and**
 - (c) **The applicant provides written assurance that on-site setback landscaping will be installed within 90 days in the event permission to use the right-of-way is revoked; and**
 - (d) **The Director finds that the required setback landscaping can feasibly be installed on the property without creating other violations of this Code; and**
 - (e) **The Director finds that providing the landscaping in the public right-of-way in the interim fulfills the intent this Code for high quality development (9.010) and the minimum landscaping requirements in Section 9.140(2)(a) through (c).**