

OFFICE OF THE CITY ATTORNEY

OPINION NO. 93-04

TO: Philip V. Bloom, Development Services Director
FROM: Stephen M. Kemp, City Attorney
DATE: April 8, 1993
SUBJECT: Requirement for Screen Walls

QUESTION:

You have requested an opinion regarding the application of Section 14-3-13.A.E of the City Zoning Code in regards to "non-residential uses" within a residential zoning district.

OPINION:

The relevant City Code provision states:

A.A masonry screen wall, not less than five feet in height above grade, shall be constructed and maintained in the following locations, except as otherwise provided herein:

3. Abutting the interior side lot line and rear lot line of any non-residential property within any residential district which is the boundary line separating it from any single-family residential district, wherein an off-street parking lot, playground or other intensive activity or use is placed in the required side or rear yard adjoining such boundary line.

This provision clearly states that if a non-residential use that includes an off-street parking lot is located in a residential zoning district, the non-residential use must construct masonry screen walls abutting the interior side and rear lot line.

Under Section 13-3-14.D, the Zoning Commission may grant waivers if:

1. The Commission finds the intent of this chapter would not be served by the wall.
2. Will the adjacent residential property be re-zoned to non-residential use in the foreseeable future.

If the Commission finds these requirements are met, waivers may be granted.

Finally, you inquire whether Section 14-32-6 of the Code grants the Commission the authority to impose this requirement.

It is my opinion that based on the requirements for a "Major Site Plan" application under Section 14-32-3 and the provisions of 14-32-6.A. pertaining to review of major site plans, the Commission may impose a screening requirement on a conditional use in a residential area, even if such requirement is not imposed under Section 14-3-14.A.3.

If you should have any questions, please do not hesitate to contact me.

cc:Honorable Mayor and Council
Peter C. Harvey, City Manager

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