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PLANNING & ZONING BOARD

To: Jerry Carris- Chairman
James Gentry – Vice-Chairman
James Dunn
Kent Horsley
Mark Maciel
Mac McKinney
Rohan Ramlackhan

Copy to: Mike Bollhoefer
Dan Langley
Ed Williams
Tim Wilson
Bill Wharton

RE: Agenda – June 6, 2011 - 6:30 PM
Commission Chambers, City Hall
300 West Plant Street, Winter Garden

-
1. Call to Order
 2. Roll Call and Determination of Quorum
 3. Approval of minutes from the May 2, 2011 meeting – Attachment 1

Special Exception Permit (All Public Hearing)

4. West Orange Montessori Charter School, 855 E. Plant Street – Attachment 2

City Code of Ordinances Amendment (All Public Hearing)

5. Ordinance 11-14 addressing Pawn Shops, Firearm Sales, Firearm Assembly and Manufacturing including Ammunition and Gun Ranges – Attachment 3
6. Ordinance 11-13 addressing fence requirements – Attachment 4

ADJOURN to a regular Planning and Zoning Board meeting on Monday, **July 11, 2011** at 6:30 p.m. in City Hall Commission Chambers, 300 W. Plant Street, 1st floor.

Note: §286.0105, Florida Statutes, states that if a person decides to appeal any decision by a board, agency, or commission with respect to any matter considered at a meeting or hearing, he or she will need a record of the proceedings and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act (ADA), if any person with a disability, as defined by the ADA, needs special accommodation to participate in this proceeding, then not later than two business days prior to the proceeding, he or she should contact the City Clerk's Office at 407-656-4111 extension 2254.



**A REGULAR MEETING MINUTES
PLANNING AND ZONING BOARD
MAY 02, 2011**

City of Winter Garden

P: 407.656.4111

300 West Plant Street
Winter Garden, FL
34787
wintergarden-fl.gov

CALL TO ORDER

Chairman Jerry Carris called the meeting of the City of Winter Garden Planning and Zoning Board to order at 6:30 p.m. in the City Hall Commission Chambers. The invocation was given followed by the Pledge of Allegiance. The roll was called and a quorum was declared present.

MEMBERS PRESENT: Chairman Jerry Carris, Vice-Chairman James Gentry, Board Members: Mark Maciel, Kent Horsley, Mac McKinney, James Dunn, and Rohan Ramlackhan.

STAFF PRESENT: City Attorney Giffin Chumley, Planning & Zoning Director Tim Wilson, Principal Planner Bill Wharton, and Planning Technician Lorena Blankenship.

Staff Absent: City Manager Mike Bollhoefer

1. APPROVAL OF MINUTES

Approval of minutes from regular meeting held February 07, 2011.

The above minutes were approved by acclamation.

VARIANCES

2. 1325 Vic Kay Court

Principal Planner Wharton presented the Board with a request for approval of a 16.24 foot rear yard setback variance for property located at 1325 Vic Kay Court (*Hillcrest Subdivision*), to allow the construction of a 746 square foot garage accessory

building. There is no home owners association for this subdivision. However, the applicant has provided a letter of no objections from seven of the surrounding homeowners, including the homeowner abutting the rear lot line of this lot. Mr. Wharton added that the applicant is requesting a 16.24 foot rear yard (west) setback variance to allow a 23'x25' detached garage with a 12'x14' room attached to the garage in the rear yard. Per section 118-1310(2)a of the City Code of Ordinances (Code), accessory buildings greater than 160 square feet must comply with all setback requirements of the principle structure. City Staff has reviewed the application and recommends approval of the 16.24 foot rear yard setback variance, with the following conditions:

1. The accessory building, the garage and attached room, will be allowed electrical services and no bathroom facilities shall be permitted.
2. Any use of the building as a guest house or apartment occupancy shall not be permitted.
3. The exterior finish of the accessory building shall match the primary building on the lot.

Motion by Kent Horsley to approve the 16.24 foot rear yard setback variance for property located at 1325 Vic Kay Court. Seconded by James Gentry, the motion carried unanimously 7-0.

ADJOURNMENT

There being no further business, the meeting was adjourned at 6:34 p.m.

APPROVED:

ATTEST:

Chairman Jerry Carris

Planning Technician Lorena Blankenship

THE CITY OF WINTER GARDEN
CITY PLANNING AND ZONING BOARD AGENDA ITEM
ATTACHMENT 2 (Public Hearing)

Meeting Date: June 6, 2011

Subject: West Orange Montessori Charter School Special Exception Use

Issue: Request for approval of a Special Exception Permit to allow a private school in a PCD zoning district.

SUPPLEMENTAL MATERIAL/ANALYSIS

Owner/ Dr. Mary-Catherine Segota, President

Applicant: West Orange Montessori Charter School, LLC

Location: 855 East Plant Street; Trailside Center

Zoning: PCD (Courtlea Commercial Center)

FLU: Commercial

Summary: The subject property had the Planned Commercial Development (PCD) zoning designation assigned in November of 2002 as the Courtlea Commercial Center. The PCD requires all development to comply with the general zoning requirements of the C-1 (Central Commercial District) zoning designation. The Trailside Center (formally Courtlea Center) was developed under these requirements. The PCD also requires the permitted and special exception uses allowed on the subject property are to be those permitted and special exception uses allowed in the C-1 zoning district.

The C-1 zoning designation does not list 'schools' as a permitted use or a use allowed by special exception, however, under the special exception uses of the C-1 zoning designation, Section 118-534(5) states;

"Other uses which the planning and zoning board determines as the type and intensity of activity desired in the C-1 district."

It is under this section of the City Code the Planning and Zoning Board may consider this use.

Proposed

Use: West Orange Montessori Charter School is a public school sponsored by the Orange County Public School district. The School proposes to occupy the south building on the property (suites 100 through 600) as shown on Exhibit A. The School will start out occupying suites 500 and 600 the first year and expand as needed throughout the building each year a new

grade level is added. The School plans to enroll kindergarten through 2nd grade for a total of 108 students for the school year 2011/2012, and then add a grade each successive year to eventually serve grades kindergarten through 8th grade for a total potential maximum enrollment of 345 students. Administration and instructors will approximately number 10 in the first year, and increase to 25 by the time 8th grade classes are added. Evening activities will be generally limited to PTA meetings, Board meetings, fundraisers and occasional public meetings. Operating hours will be from 7:00am to 6:00pm with student drop-off peak from 8:00am to 8:30am, and pickup peak from 3:00pm to 3:30pm.

The School proposes to provide an outdoor recreational area in the area previously approved for outdoor seating for the (now closed) restaurant in the southeast corner of the property as shown on Exhibit A. The School would also like the option to expand this recreational area into the east end of the parking lot at a later date with the condition that minimum code requirements for parking for the development are maintained.

Analysis: Section 118-97 of the City's Code states a special exception will be permitted when such use is compatible to the surrounding uses, will not create traffic hazards or parking problems, or does not deviate from the terms of the zoning chapter of the Code.

Compatibility to Surrounding Uses

Adjacent development to the north, west, and southeast of the subject property include residential and non-residential uses that would be compatible and complementary to the school use as residential development is the target client of the school. A branch of the Orange County Library System is immediately to the west of the subject property and again would be compatible and complementary to the school use as being available to students of the school. Commercial uses are found along Plant Street as well as within the Trailside Center itself.

The use and site will comply with all other aspects of the zoning code.

Site Conditions

The Trailside Center is located on the northeast corner of East Plant Street and Perkins Street as shown on the Location Map. Perkins Street is a public right-of-way that serves just the Trailside Center.

The Trailside Center consists of two buildings on the site. The south, or front building is the proposed site of the school and contains 10,900 square feet. The school will eventually occupy the entire building. There are 44 parking spaces on the south side of this building.

The north, or rear building is "L" shaped and contains 22,200 square feet with 56 parking spaces in front of this building.

The drop-off/pickup queue for the school will wrap around this rear building as shown on Exhibit A providing adequate storage and internal circulation. The actual drop-off/pickup area will be located on the north side of the front (south) building. There is currently sufficient parking to

accommodate the existing uses on the site as well as the proposed school use.

Traffic Conditions

Based on the adopted levels of service (LOS) standards found in the City's comprehensive plan and recent traffic counts, the section of East Plant Street in the area of the Trailside Center operates at a LOS of "C". The adopted LOS standard for East Plant Street is "E". Addition of traffic from the proposed school is not expected to significantly degrade the LOS on East Plant Street.

Access to the site is by Perkins Street that runs along the western edge of the subject property. The Plant Street/Perkins Street intersection is controlled by a stop sign for the south bound traffic on Perkins Street. Staff concerns are with the eastbound traffic on East Plant Street attempting a left turn on to Perkins Street during the morning rush hour.

The City is currently improving East Plant Street that eventually will reach from 9th Street to SR 429. Plant Street Phase II improvements include a transition leading up to 9th Street in front of the Orange County Library and Trailside Center. Once the improvements to East Plant Street are complete this transition area will include eastbound left-turn lanes at both the library entrance and at Perkins Street. This will provide some storage capacity for the left turns onto Perkins Street, but as the drop-off times occur during the morning rush hour there may still be conflicts as more students are added to the school each school year. Plant Street Phase II Improvements are currently in the design stage and construction funds have yet to be programmed into the City's 5-Year Schedule of Capital Improvements.

As a precaution, Staff will recommend a traffic study be conducted by the School prior to the third year of operations of the school to determine the forecasted operational conditions of the East Plant Street/Perkins Street intersection. The study will look at each of the following years a new grade is added up to the inclusion of the 8th grade year. If the study projects adverse conditions for the subject intersection, the study shall then also recommend mitigation strategies to alleviate the condition. In consultation with the School, the City will determine which mitigation strategies will be required.

Additional Comments

As there is limited outdoor recreation space available, there have been preliminary discussions between the City and the School to allow an expansion of the School's outdoor recreation area to a part of the City owned property immediately east of the proposed school building. If it is determined this is a viable use of the land, it would require the School and City to enter into a written agreement for this use at this location and take into account the need to cross the West Orange Trail. The School shall continue to work with the City to secure additional outdoor recreation space to accommodate the additional students added each year.

STAFF RECOMMENDATION

Staff recommends the Board determine a school use is an activity desired in accordance with Section 118-534(5) of the City Code of Ordinances and approve the Special Exception Permit to allow a school use in accordance with the PCD zoning at the subject site with the following conditions:

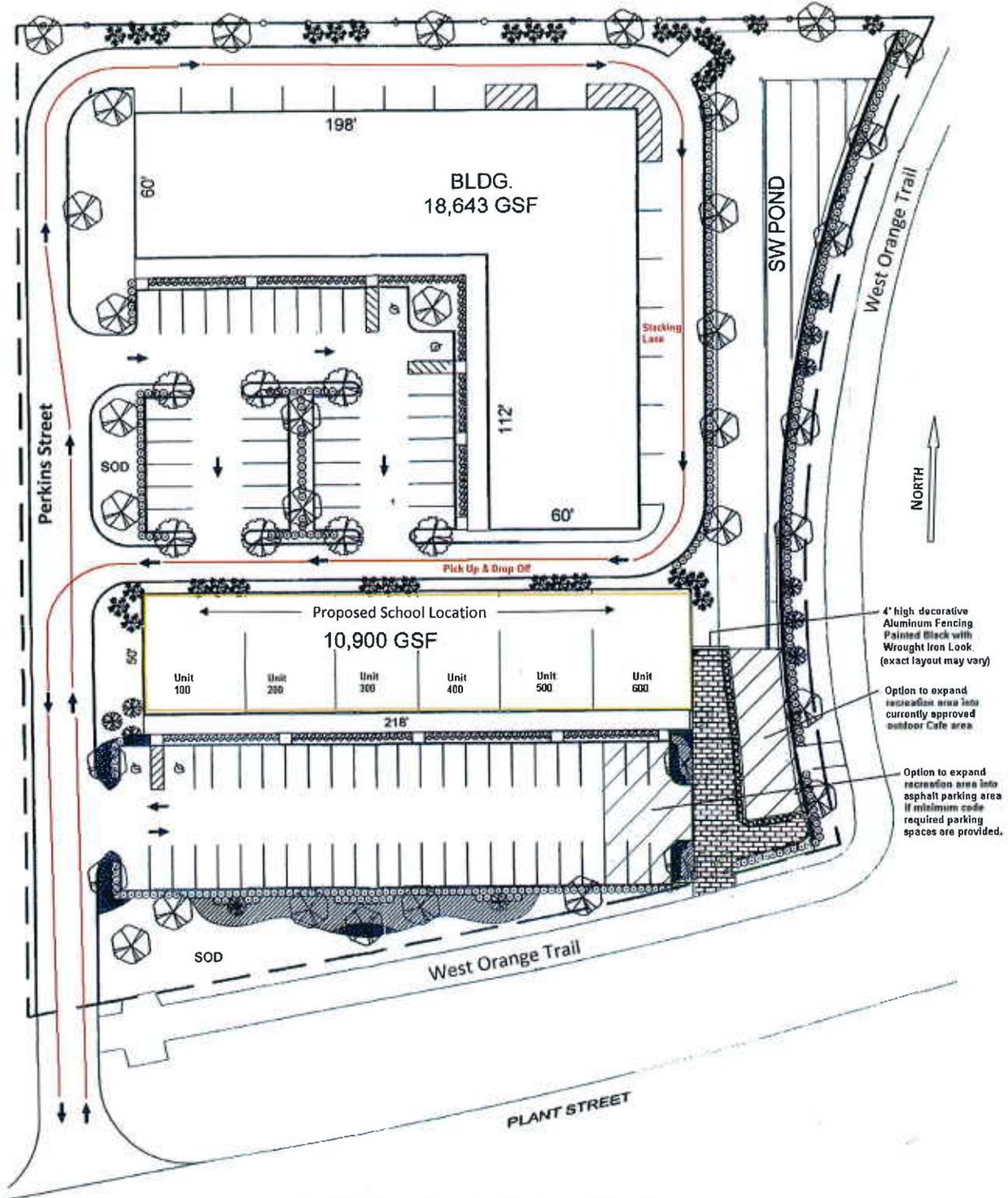
- 1) The School shall cause a traffic study to be prepared prior to the third year of operations of the school to determine the forecasted operational conditions of the East Plant Street/Perkins Street intersection. The study will look at each of the following years a new grade is added up to the inclusion of the 8th grade year. If the study projects adverse conditions for the study intersection, the study shall recommend mitigation strategies to alleviate the condition. In consultation with the School, the City will determine which mitigation strategies will be required. The methodology for the study shall be approved by City Staff prior to initiation of the study.
- 2) The maximum number of students shall be 345. Any proposed increase in student enrollment will require a public hearing before, and approval by the Planning and Zoning Board.
- 3) This approval does not include an approval to expand the outdoor recreation area into the parking lot. Any expansion of the outdoor recreation area into the existing parking area shall require the approval of the Planning and Zoning Director.
- 4) Additional landscaping or screening of the outdoor recreation area and associated equipment is required to offset the visual impact from Plant Street. A specific plan is to be submitted to, and approved by, the City prior to the installation of the outdoor recreation area, fence, equipment, and landscaping.
- 5) All local, state, and federal regulations for this use shall be met by the applicant.
- 6) This Special Exception Permit is specific to this location and the West Orange Montessori Charter School, LLC.
- 7) All signage for the school shall abide by the PCD and Code requirements.
- 8) Due to the limited space for outdoor recreation for the School, the School shall continue to work with the City to provide a solution to the outdoor recreation area deficit to accommodate the students added each school year.

Location Map
855 East Plant Street
Trailside Center



Exhibit A

Trailside Center Proposed Site Plan for Special Exception Petition
Submitted By West Orange Montessori Charer School.



Physical Address: 855 East Plant Street, Winter Garden FL

Legal Description: Tract F of Coutlea Oaks Phase 2B as recorded in plat book 38, page 78 of the public records of Orange County, Florida.

THE CITY OF WINTER GARDEN
CITY PLANNING AND ZONING BOARD AGENDA ITEM
ATTACHMENT 3 (Public Hearing)

Meeting Date: June 6, 2011

Subject: Ordinance 11-14 amending the City Code of Ordinances to address Pawn Shops, Firearm Sales, Firearm Assembly and Manufacturing, and Indoor Gun Ranges.

Discussion: The City has recently been presented with several use requests for pawnshops, firearm sales and similar uses which currently are not listed in the City's zoning districts. An ordinance has been drafted that would clarify these uses and locations in the appropriate zoning districts.

Ordinance 11-14 identifies where these types of uses would be permitted or prohibited as shown below:

Zoning District	Use Description
C-1 Central Commercial	<ul style="list-style-type: none"> • Prohibit pawn shops and firearm sales
C-2 Arterial Commercial	<ul style="list-style-type: none"> • Pawn shops by special exception • Firearm sales as permitted use
C-4 Professional Office	<ul style="list-style-type: none"> • Prohibit pawn shops
I-1 Light Industrial & Warehousing	<ul style="list-style-type: none"> • Pawn shops, indoor gun ranges, firearm assembly, ammunition, and manufacturing as permitted uses

The Florida Statutes require ordinances of this type have both readings before the City Commission advertised as public hearings. The schedule below is being followed for this ordinance:

Planning & Zoning Board	-	June 6, 2011
City Commission 1 st Hearing	-	June 9, 2011
City Commission 2 nd Hearing	-	June 23, 2011

Recommended Action:

City staff requests the Planning & Zoning Board recommend approval to the City Commission of Ordinance 11-14 amending the City Code of Ordinances to address pawn shops, firearm sales, firearm assembly and manufacturing, and indoor gun ranges.

Attachments/References:

Ordinance 11-14

ORDINANCE 11-14

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING CHAPTER 118 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN CONCERNING THE LOCATION OF PAWN SHOPS, FIREARM SALES, FIREARM ASSEMBLY AND MANUFACTURING, AND GUN RANGES; AMENDING ARTICLE I, SECTION 118-1 DEFINITIONS; AMENDING ARTICLE IV, DIVISION 8, SECTION 118-535 PROHIBITED USES AND STRUCTURES FOR C-1 ZONING DISTRICT; AMENDING ARTICLE IV, DIVISION 9, SECTIONS 118-577 AND 118-579 PERMITTED USES AND STRUCTURES AND SPECIAL EXCEPTIONS FOR C-2 ZONING DISTRICT; AMENDING ARTICLE IV, DIVISION 11, SECTION 118-680 PROHIBITED USES AND STRUCTURES FOR C-4 ZONING DISTRICT; AMENDING ARTICLE IV, DIVISION 12, SECTION 118-727 PERMITTED USES FOR I-1 ZONING DISTRICT; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL IN EVENT OF CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission has the authority to regulate commercial activity within its jurisdictional boundaries pursuant to Article VIII, § 2(b) of the Florida Constitution and Chapter 166, Florida Statutes;

WHEREAS, the City Commission desires to expressly delineate appropriate locations in the City where pawn shops, firearm sales, firearm assembly and manufacturing, and gun range uses may be located.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:

SECTION 1: Authority. The City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes.

SECTION 2: Adoption. Chapter 118, Article I, Section 118-1 of the City of Winter Garden Code is amended to add the following definition of "pawn shop" between the words "parking space" and "planned unit development" (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Pawn shop means a business that lends money on the collateral of pledged personal property left in the possession of the business. If the loan is repaid, the collateral is returned by such business, and if the loan is not repaid, the collateral is sold and the proceeds are kept by such business. Pawn shop also includes, without limitation, a business being conducted in accordance with Chapter 539, Florida Statutes.

SECTION 3: Adoption. Chapter 118, Article IV, Division 8, Section 118-535 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken-out~~ are deletions; words that are underlined are additions):

ARTICLE IV DISTRICT REGULATIONS
Division 8. C-1 Central Commercial District

Sec. 118-535. Prohibited uses and structures.

In the C-1 central commercial district, the uses and structures prohibited are as follows:

- (1) Single-family, two-family and mobile home parks.
- (2) Manufacturing and warehousing activities, freight, or cargo transportation terminals, truck parking facilities, and other activities of similar nature.
- (3) Industrial activities.
- (4) Body art establishments.
- (5) Mobile body art establishments.
- (6) Pawn shops.
- ~~(67)~~ All uses not specifically or provisionally permitted in this division.
- ~~(78)~~ Any use not in keeping with the commercial character of the district.

SECTION 4: Adoption. Chapter 118, Article IV, Division 9, Section 118-577 and Section 118-579 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken-out~~ are deletions; words that are underlined are additions):

ARTICLE IV DISTRICT REGULATIONS

Division 9. C-2 Arterial Commercial District

Sec. 118-577. Principal permitted uses and structures.

Permitted principal uses and structures in the C-2 arterial commercial district are as follows:

- (1) All uses permitted in the C-1 district.
- (2) Gasoline stations.
- (3) Motels, with a minimum of 300 square feet per unit exclusive of lobbies and accessory floor areas.
- (4) Firearm sales.

Sec. 118-579. Special exceptions.

In the C-2 arterial commercial district, the uses permitted as special exceptions pursuant to section 118-97 are as follows:

- (1) Campgrounds.
- (2) Planned shopping centers.
- (3) Automobile sales and service.
- (4) All types of businesses in buildings not of standard construction or without restroom facilities.
- (5) Miniwarehouse facilities.

- (6) Truck parking facilities, and other activities of similar nature without adequate buffering from view from a public road and/or adjacent property
- (7) Other uses which the planning and zoning board determines are of the type and intensity of activity desired in the C-2 district.
- (8) Children day care centers.
- (9) Pawn shops.

SECTION 5: Adoption. Chapter 118, Article IV, Division 11, Section 118-680 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

ARTICLE IV DISTRICT REGULATIONS

Division 11. C-4 Neighborhood Commercial District

Sec. 118-680. Prohibited uses and structures.

In the C-4 neighborhood commercial district, the uses and structures prohibited are as follows:

- (1) Residential uses.
- (2) Manufacturing and industrial activities, transportation terminals, storage warehousing and other activities of a similar nature.
- (3) Outdoor sales displays.
- (4) All uses not specifically or provisionally permitted in this division; any use not in keeping with the low-density commercial character of the district.
- (5) Churches.
- (6) Gasoline stations.
- (7) Pawn shops.

SECTION 6: Adoption. Chapter 118, Article IV, Division 12, Section 118-727 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

ARTICLE IV DISTRICT REGULATIONS

Division 12. I-1 Light Industrial and Warehousing District

Sec. 118-727. Permitted uses.

Permitted uses in the I-1 light industrial and warehousing district are as follows:

- (1) Warehousing, wholesaling, and storage facilities within enclosed structures.
- (2) Ministorage warehouse facilities.
- (3) Light manufacturing, processing, and assembly, including precision manufacturing, electrical machinery, instrumentation, and similar uses.
- (4) Research and development facilities, provided that all activities are within an enclosed structure.
- (5) Vocational and trade schools.
- (6) Public utility equipment and facilities.
- (7) Radio or television transmitter, towers, or broadcasting facilities.
- (8) Communication towers and communication antennas.

(9) Truck parking facilities (but not transportation terminals or freight handling facilities)

(10) Pawn shops.

(11) Indoor gun range.

(12) Firearm assembly and manufacturing including ammunition.

SECTION 7: Codification: Sections 2, 3, 4, 5, and 6 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

SECTION 8: Control: In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance controls to the extent of the conflict.

SECTION 9: Severability: It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 10: Effective Date: This Ordinance shall become effective upon adoption at its second reading.

FIRST READING: _____, 2011.

SECOND READING AND PUBLIC HEARING: _____, 2011.

ADOPTED this ____ day of _____ 2011, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk

THE CITY OF WINTER GARDEN
CITY PLANNING AND ZONING BOARD AGENDA ITEM
ATTACHMENT 4 (Public Hearing)

Meeting Date: June 6, 2011

Subject: Ordinance 11-13 amending the City Code of Ordinances to address the placement and height of fences, walls and swimming pool enclosures (Section 118-1297, Division 7 of Supplemental District Regulations).

Discussion: Issues have come up relating to the permitted location of fences and walls in relation to the property line. The proposed changes to the Code update the City requirement to location of a fence or wall and swimming pool enclosure. One of the main revisions to the fence or screen wall requirements is to allow the placement of the fence or wall on or immediately adjacent to the property line with a more detailed scaled drawing. The current requirement is the fence or wall to be placed six inches inside of the property line or on the property line only when consent is obtained from the adjacent property owner. This has created several problems for strips of land outside the fence or wall that needs to be maintained and in some instances a second fence be installed that would not be needed.

The second modification to fence and wall requirements is regarding the maximum height of a rear yard fence or wall. When residential property is adjacent to commercial or industrial property that does not have screening from the residential property, a City staff evaluation will occur to determine if other alternatives are needed to provide the necessary screening. Other revisions include addressing the placement of pool enclosures, prohibiting permanent structures (such as concrete pool decks) in utility easements and addressing maintenance responsibility. The proposed ordinance is provided below for the Board's review.

Recommended Action:

City staff requests the Planning & Zoning Board recommend approval to the City Commission of Ordinance 11-13 amending the City Code of Ordinances to address the placement of fences, walls and enclosures for swimming pools.

Attachments/References:

Ordinance 11-13

ORDINANCE NO. 11-13

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 118, ARTICLE VI, DIVISION 7, SECTION 118-1297 OF THE WINTER GARDEN CODE OF ORDINANCES RELATING TO STANDARDS AND REQUIREMENTS FOR FENCES, WALLS, AND SWIMMING POOL ENCLOSURES; AND PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission has the authority to regulate commercial activity within its jurisdictional boundaries pursuant to Article VIII, § 2(b) of the Florida Constitution and Chapter 166, Florida Statutes;

WHEREAS, the City Commission desires to enact reasonable regulations regarding locations and standards for fences within the City to promote and maintain property values and aesthetic coherence within the City and further protect the health, safety, welfare, and morals of its citizens; and

WHEREAS, the City Commission desires to update the specific location, height, and other related requirements to fences and other similar screen structures; and

WHEREAS, the City is identifying the locations, standards and location requirements for fences in required yards and enclosures of swimming pools; ~~and~~.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:

SECTION 1: Authority. The City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII, § 2(b) of the Constitution of the State of Florida and Chapter 166, Florida Statutes.

SECTION 2: Adoption. Chapter 118, Article VI, Division 7. Fences, Buffers Section 118-1297 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

DIVISION 7. FENCES, BUFFERS

Sec. 118-1297. Fences; and walls ~~and enclosure of swimming pools~~.

(a) *Permitted in required yards.* Notwithstanding other sections of this chapter, fences and walls may be permitted in any required yard or along the edge of any yard subject to the following:

- (1) *Front yards.* Three feet in height, with the exception of chainlink fences which shall not exceed four feet in height, and set back from the property line one-half foot.
- (2) *Side yards.*

a. Three feet in height, with the exception of chainlink fences which shall not exceed four feet in height, to the building line and six feet in height for the remaining side yard.

b. ~~Set back from the property line one half foot or on the line with the consent of adjoining property owners~~ Setback can be located on the side and rear property line (or immediately on the inside of the property line) with the submission of a scaled drawing indicating the location and dimensions of fence or wall overlaid on a scaled survey. Alternatively, setback from the property line of one half foot from the property line or on the property line with the written consent of the adjoining property owner(s) with a drawing showing the location of the fence.

(3) *Rear yards.* Fences and walls in rear yards may be a maximum of six feet in height. If the City determines there is a potential conflict with a proposed residential fence or wall that is adjacent to commercial or industrial property, the City will evaluate the appropriate alternative to provide necessary screening from the commercial or industrial property.

(4) *Fences adjacent to alleyways.* Fences may be located no closer than four feet from the edge of pavement of an alley (rear yard or side yard) providing the fence is a maximum of four feet in height and the fence is semi-opaque. Fences that are greater than four feet in height (but no greater than six feet in height) and are fully opaque may be constructed adjacent to an alley (rear or side yard) providing the fence is no closer than eight feet from the edge of pavement of the alley. Driveways to alleyways may be gated providing the gate does not swing open toward the alley.

(5) *General.* All fences must be installed with the smooth side or most finished side facing out towards the adjacent property. All fences and walls must be outside the triangle of visibility.

(b) *Enclosure of swimming pools and spas.*

(1) ~~Every outdoor swimming pool or family pool shall be completely surrounded by a fence or wall not less than five feet in height, which shall be so constructed as not to have openings, holes, or gaps larger than four inches in any dimension except for doors or gates. If a picket fence is erected or maintained, the horizontal dimension shall not exceed four inches. A dwelling house or accessory building may be used as part of such enclosure.~~ Fencing or enclosing of swimming pools shall additionally comply with the adopted version of the Florida Building Code, Section 424, Swimming Pools and Bathing Places.

(2) ~~All gates or doors opening through such enclosure shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when not in actual use, except that the door of any dwelling which forms a part of the enclosure need not be so equipped.~~ Screen enclosures shall be located at least five (5) feet from the side or rear property line or outside of any utility or drainage easement whichever is greater.

(3) ~~This subsection (b) shall be applicable to all new swimming pools or family pools constructed, other than indoor pools, and shall apply to all~~

~~pools which have a minimum depth of 18 inches of water. No person in possession of land within the city, either as owner, purchaser, lessee, tenant or licensee, upon which is situated a swimming pool or family pool having a minimum depth of 18 inches shall fail to provide and maintain such fence or wall as provided in this article. No permanent structures (such as concrete pool decks) are permitted in utility easements. Fences are allowed uses in utility easements.~~

~~(4) The city manager may make modifications in individual cases, upon a showing of good cause with respect to the height, nature or location of the fence, wall, gates or latches, or the necessity therefor, provided the protection as sought under this section is not reduced thereby. The city manager may permit other protective devices or structures to be used so long as the degree of protection afforded by the substitute devices or structures is not less than the protection afforded by the wall, fence, gate and latch described in this subsection. The city manager shall allow a reasonable period within which to comply with the requirements of this section.~~

(c) *Electric fences.* It shall be unlawful for any person to erect, install or maintain any electrically charged fence within the city, except that the building official may issue a permit for an electrically charged fence to retain animals upon proof that the fence will not be hazardous to life.

(d) *Barbed wire fencing.* For the purpose of these regulations, barbed wire includes concertina wire, razor wire, or any similar device.

Notwithstanding the above regulations, it shall be unlawful for any person to erect, construct or maintain any barbed wire fencing within the city except:

(1) Not more than three courses of barbed wire may be installed above the top line of a six-foot (1.83 meters) chain link fence. Barbed wire may only be used in the following zoning districts:

- a. I-2;
- b. I-1; and
- c. C-2 with a special exception.

Regardless of the zoning district, no barbed wire may be used in locations that are:

- d. Visible to a residential zoned property; or
 - e. Within 20 feet of a public road.
- without a special exception permit.

Existing nonconforming situations--All existing nonconforming barbed wire as of the date of this subsection [July 22, 1999] shall be considered vested and may be allowed to remain.

(2) Barbed wire fences which comply with state statutes may be erected, constructed and maintained on premises zoned for agricultural uses.

(e) *Fences creating safety hazards.* It shall be unlawful for any person to erect, install, or maintain a fence which obscures clear view of traffic at intersections or driveways or which creates a safety hazard to pedestrians or vehicular traffic.

(f) *Permits.* It shall be unlawful for any person to install, erect, construct, relocate or alter a fence within the city without first obtaining a permit therefor from the building inspector. No permit shall be issued if the building inspector determines that the proposed fence does not meet any of the requirements of

this section. A sketch or design of the proposed fence, including a description of materials to be used and specification of height, shall be submitted with the application for a permit.

(g) *Application of section to existing fences.* This section does not apply to fences in existence before the effective date of the ordinance from which this section derives, except that on sale or transfer of the property upon which a nonconforming fence is located, such fence shall be made to conform to the requirements of this section or shall be removed within 30 days of closing or transfer.

(h) *Chain linked fence.* Notwithstanding the above regulations, all new chain linked fences that are visible from either a public road or from a residential or commercial property must be coated in green, black, or brown vinyl. The exceptions to this requirement are:

- (1) Existing chain link fences;
- (2) Chain linked fences on single family or duplex residential property; or
- (3) New chain linked fences that receive specific permission by the planning and zoning board to be uncovered.

(i) *Subdivision walls and/or buffers.* All new perimeter lots in new subdivisions that back up to a public right-of-way must have some type of wall, fence, vegetative screen, or buffer at the time of final plat approval. The construction of said improvements must be approved by the planning and zoning board at the time of preliminary plat approval. These improvements shall provide both a desirable buffer for the residents of the subdivision from the street as well as provide an aesthetic buffer for the motorist. This can be accomplished with the installation of berms, walls and/or vegetation. In general, compliance with this section will require a brick facade wall (or berm or considerable amount of open space such as a golf course), hedges, canopy trees (at 50-foot spacing) and understory trees (at two trees per 50 feet). Inset sections of perimeter walls for landscaping are allowed. The following are not considered adequate buffers for compliance with this section:

- Chain linked fences.
- Wood fences.
- Painted or untreated block walls.
- Insufficient planting area for maturing landscaping.

Maintenance of these improvements will be the responsibility of the homeowners' association and must be clearly defined on the final plat.

(j) *Retention ponds.* All retention ponds that are required to have chain link fencing by St. John's River Water Management District must be coated in green, brown, or black vinyl. The exception to this requirement are retention ponds that:

- (1) Are not visible from any public right of way or from a commercial or residential property; or
- (2) If the owner of the retention pond fencing receives specific permission by the planning and zoning board.

(k) *Maintenance.* All fences, walls or other similar structures erected in any residential district shall be maintained by the property owner. Property owners shall be responsible for maintaining the appearance of the fence, wall, hedge or other similar structure in a manner that there are no missing boards or slats, cracks, open gaps,

leaning sections, crooked posts, missing blocks or bricks, cracked or crumbling blocks or bricks and to maintain the structural integrity of the fence, wall or similar structure.

SECTION 3: Codification. Sections 2 through 6 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

SECTION 4: Control. In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance shall control to the extent such conflict exists.

SECTION 5: Severability. It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall survive and remain effective despite such invalidity or unconstitutionality.

SECTION 6: Effective Date. This Ordinance shall become effective upon adoption at its second reading.

FIRST READING: _____, 2011.

SECOND READING AND PUBLIC HEARING: _____, 2011.

ADOPTED this _____ day of _____, 2011, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk