



CITY OF DUBLIN

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PLANNING REPORT

PLANNING AND ZONING COMMISSION

JULY 9, 2009

SECTION I - CASE INFORMATION:

**5. Outdoor Sales and Display
09-045ADM**

**Zoning Code Amendment
Administrative Request**

Proposal: Amendments to Code Section 153.002 and the addition of Code Section 153.099 to provide for the accessory use of Outdoor Seasonal Plant Display and sales at retail locations.

Request: Review and recommendation of approval to City Council of a Code amendment under the provisions of 153.234.

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Case Summary

This is a request for review and recommendation to City Council for amendments to Section 153.002 and the creation of a new Section 153.099 of the Dublin Zoning Code to address the seasonal outdoor display of plant material as an accessory use. The proposed Code amendment requires review and recommendation by the Planning and Zoning Commission, which will be forwarded to City Council for final consideration. Planning recommends approval of the proposed amendments.

Case Background

Earlier this year the City Council expressed concerns regarding the regulation and enforcement of outdoor sales and referred the issue to Council's Community Development Committee (CDC). At the June 8, 2009 meeting the CDC and other Council members recommended that City Council request a Code amendment permitting the sale of only live plant material and be administratively permitted for all retail locations. Other issues such as size and location restrictions were also discussed, although not specified. At the June 15, 2009 City Council meeting, the CDC recommendation was adopted and Council requested that Code language be quickly drafted and submitted to the Planning and Zoning Commission for a recommendation.

Planning has drafted language to address the particular issues discussed by the City Council and the Community Development Committee. The first reading of the ordinance is scheduled for the August 3, 2009 Council meeting.

Outdoor Sales History

Previously approved Planned Unit Developments (PUD) and standard zoning districts (which do not address these uses, and therefore prohibit them) treat outdoor sales in different ways. A number of the PUDs for example, specifically prohibit the uses, while others, for the very same

uses, permit them. The differences in how outdoor sales are treated has become confusing and difficult to administer and enforce (*please see the information Planning previously provided to City Council on this topic at the end of the packet*).

The variety of regulations applicable to seasonal outdoor storage and display areas for businesses creates a number of enforcement challenges. While outdoor storage and display is permitted in some Zoning Districts as conditional uses, there are no specific requirements for these uses. The lack of specific requirements applicable to these seasonal uses means that each request appears to be evaluated on a case-by-case basis.

While seasonal outdoor display areas tend to vary by location, type, and duration (some displays may last only a few days, while others could last an entire season), all display areas tend to operate similarly. Certain requirements should therefore be consistent for every location, such as placement on the site, size of display area, and types of materials permitted.

City Council and the CDC noted during its deliberations the inconsistency of the current regulations and expressed a desire that the new Code provision treat all locations in the same way, across all Zoning Districts, including PUDs. The specific desire of the City Council was to permit administrative review of seasonal display and sales of plant material, with certain limitations.

Proposed Code Amendment

Code Section 153.002: Outdoor Service Facility Definition

The Zoning Code does not include a definition or specific regulations for *outdoor seasonal plant display* or *seasonal outdoor sales* of plant and landscaping materials. Instead, the Zoning Code uses a general definition of Outdoor Service Facility listed in Section 153.002 (emphasis added):

“An area that is not fully enclosed by solid walls and a roof and where services are rendered or goods are displayed, sold, or stored. For purposes of this section, outdoor service facilities include, but are not limited to, outdoor dining areas, restaurant patios, outdoor storage areas, open-air markets, garden stores, and stand-alone parking lots.”

The broad reach of the outdoor service facility definition includes a wide variety of outdoor uses, but makes no provision for simple plant display or sales. The proposed Code amendment separates the use as desired by Council from the general Outdoor Service Facility definition.

Code Section 153.099: Outdoor Seasonal Plant Display

The proposed Code amendment includes specific requirements that ensure consistency of treatment for outdoor display areas. These regulations include limiting the duration, type, location, and size of outdoor display areas.

- *Duration.* Planning recommends limiting the duration of seasonal outdoor display and storage areas only through a limitation requiring removal during the winter season. Code Enforcement has historically found it very difficult to enforce specific time limits (such as “temporary” window signs), and with outdoor plant displays potentially ranging in duration from one day to several weeks, this would present a similar difficulty.

- *Type/Location/Size.* Defining specific restrictions on the type, location, and size of permitted outdoor display and storage areas will correct most of the existing problems with these uses. The limitations on materials to live plants will, in most instances, limit the display to growing seasons rather than year-round. This display and sale of any other hard goods, including such items as mulch, garden furniture, pots (not having live plants) or other similar goods, must be approved through other procedures currently in the Zoning Code. (Seasonal sale of Christmas trees and pumpkins are specifically regulated by Chapter 116, Seasonal Businesses, of the City Code.)

Approvals

Enforcement is currently complicated by the variety of conditions and requirements for individual locations. Outdoor service facilities, as now defined, are only permitted after receiving a conditional use approval in the Neighborhood Commercial (NC), Community Commercial (CC), Central Community Commercial (CCC), and Central Business (CB) Districts, and when developed in association with a permitted use in the Suburban Office and Institutional (SO) District. In addition to the Standard Districts, a number of approved development texts for Planned Districts prohibit these uses, permit them by right, or require conditional use approval.

As noted by the CDC review of this issue, properly regulated, outdoor seasonal plant display areas do not unnecessarily disrupt the operation of a site and can be an attractive addition, enhancing the public realm by inviting pedestrians and adding vibrancy to the streetscape. Because of their potential advantages and the specificity of the regulations, seasonal outdoor display and service areas can be administratively approved.

SECTION II - REVIEW STANDARDS:

Case Procedure

The current Code Section 153.232(B) grants the Planning and Zoning Commission the ability to review “amendments to the zoning map and to the zoning ordinance and recommendation of action to Council.” The Commission should review the modifications, provide input where necessary, and vote on the changes. The draft amendments will then be forwarded to City Council for final review and approval.

SECTION III – ANALYSIS & RECOMMENDATION:

The solution sought by Council is to quickly adopt a Code amendment that includes an administrative permit for an accessory use that could be obtained each year for any retail business that wished to display and sell plant material only in a limited area. The proposed amendment contains specific and detailed requirements that must be met before a permit is issued.

In Planning’s opinion, the proposed amendment permits outdoor seasonal plant display at retail locations with appropriate regulations and recommends approval of the amendment to City Council.

PROPOSED CODE LANGUAGE

EXISTING TEXT IN BLACK
NEW TEXT IN RED

§ 153.002 DEFINITIONS.

Amend Existing Definition

Outdoor Service facility.

An area that is not fully enclosed by solid walls and roof and where services are rendered or goods are displayed, sold, or stored **but does not include Outdoor Seasonal Plant Display**. For purposes of this section, outdoor service facilities include, but are not limited to outdoor dining areas, restaurant patios, outdoor storage areas, open-air markets, garden stores, and stand-alone parking lots,

Add Definition

Outdoor Seasonal Plant Display.

An area adjacent to a retail business that displays live garden plant material as an accessory use for sale by the adjacent principle retail business. Display may include live plants/such as flowers, and trees suitable for planting or landscaping.

The Following Section will be Added

§ 153.099 OUTDOOR SEASONAL PLANT DISPLAY.

(A) Purpose. Regulation of live seasonal sales items, such as flowers and plants that may be offered for sale in sidewalk areas along the front façade of a retail location as an accessory use. Outdoor Seasonal Plant Display may be approved in accordance with this Section for any approved retail location in the City of Dublin regardless of the current zoning classification or applicable regulation in effect prior to the effective date of this Section.

(B) Permit. All persons conducting Outdoor Seasonal Plant Display shall be required to obtain an Outdoor Seasonal Plant Display Permit from the Director of Land Use and Long Range Planning or designee. Permit applications shall include, at a minimum, a written description and site plan drawn to scale indicating the location and type of plant material and dates of sale/display.

(C) An existing retail business may conduct Outdoor Seasonal Plant Display and sales between March 1 and December 31 each calendar year providing that the following criteria are met:

PROPOSED CODE LANGUAGE

- (1) Contain no hard material for sale such as plastic, metal, or wood. All items for sale must be a live plant or soil material, except for display racks, shelves, plant containers, and furniture and equipment necessary for transacting sales.
 - (2) Display must be totally contained within the area approved in front of the building façade containing a major entrance and shall not extend beyond the side of the building defining that façade and not be placed in such a manner as to interfere with pedestrian ingress and egress to the business or adjacent properties, nor effect travel lanes or required parking spaces. At least five feet of clear passage along sidewalks and paved areas adjacent to the display shall be kept open for pedestrian travel.
 - (3) Display shall not exceed the reasonable capacity of the space available. No display area for a single building or tenant space shall exceed 1,000 square feet in area.
 - (4) All display racks, shelves, plant containers, furniture and equipment must be removed no later than December 31 of the approved year or when the use is discontinued.
 - (5) Signs shall only display the name and species of the material and the price of items for sale and no sign shall be larger than 94 square inches.
 - (6) Approval may be revoked at any time and use shall be discontinued immediately if it is determined that the applicant is in violation of this Section.
- (D) These restrictions shall not apply to garden centers/stores accessory to a permitted use and to the storage of materials accessory to and typically found in these uses, provided the materials are located at the side or rear of the principal building and are contained within and screened by a decorative wall or other screening.

REGULATIONS FOR CHRISTMAS TREE AND PUMPKIN SALES

CHAPTER 116: SEASONAL BUSINESSES

Section

- 116.01 Authorization
- 116.02 Permitted seasonal uses
- 116.03 License required
- 116.04 License application and requirements
- 116.05 License fee and terms
- 116.06 Bond
- 116.07 Appeal from license denial
- 116.08 Display of license
- 116.09 Outdoor site requirements
- 116.10 Revocation of license
- 116.99 Penalty

§ 116.01 AUTHORIZATION.

Seasonal uses are permitted only as expressly provided in this chapter and shall comply with the requirements of the Codified Ordinances of the city.

('80 Code, § 741.01) (Ord. 110-88, passed 11-21-88) Penalty, see § 116.99

§ 116.02 PERMITTED SEASONAL USES.

The following are seasonal uses which are subject to the following specific regulations and standards, in addition to the requirements specified in this chapter.

- (A) Display and open lot sales of Christmas trees.
- (B) Display and open lot sales of pumpkins.

('80 Code, § 741.02) (Ord. 110-88, passed 11-21-88)

§ 116.03 LICENSE REQUIRED.

REGULATIONS FOR CHRISTMAS TREE AND PUMPKIN SALES

No person, firm or corporation shall engage in the business or activity of operating a seasonal business in this municipality without first obtaining a license and posting a bond as provided in this chapter.

('80 Code, § 741.03) (Ord. 110-88, passed 11-21-88) Penalty, see § 116.99

§ 116.04 LICENSE APPLICATION AND REQUIREMENTS.

(A) Application for licenses for seasonal business operation shall be filed with the City Manager or his designee on a form to be furnished by the municipality, which shall require, at least the following information:

(1) The name or names of the person or persons having the management or supervision of the applicant's business during the time that it is proposed to be carried out in the municipality;

(2) The local address or addresses of such person or persons while engaged in such business;

(3) The permanent address or addresses of such person or persons;

(4) The capacity in which such person or persons will act (that is, whether as proprietor, agent or otherwise);

(5) The name and address of firm or corporation on whose account the business will be carried on, if any; and if a corporation under the laws of what state the same is incorporated;

(6) The place or places within the municipality where it is proposed to carry on the applicant's business, and the length of time during which it is proposed that the business shall be conducted;

(7) A sketch or site plan showing the actual location on the lot or site, or portion thereof, where the seasonal business shall be conducted, and a statement by the applicant indicating compliance with the site requirements set forth herein.

(B) If the City Manager or his designee determines after an investigation that the information furnished under the requirements set forth herein is correct, that the applicant proposes to engage in lawful, seasonal business enterprises and that the site and location for the operation of such business is in compliance with the municipality's zoning regulations and the site requirements set forth herein, he shall issue a license to the applicant.

('80 Code, § 741.04) (Ord. 110-88, passed 11-21-88)

§ 116.05 LICENSE FEE AND TERMS.

REGULATIONS FOR CHRISTMAS TREE AND PUMPKIN SALES

The license fee charged by the City Manager for the license required by this chapter shall be as set forth from time to time by ordinance per day and any such license issued shall contain a specific expiration date of 40 consecutive days per product per calendar year.

('80 Code, § 741.05) (Ord. 110-88, passed 11-21-88) Penalty, see § 116.99

Editor's Note:

A copy of the most recent ordinance establishing current city fees and service charges is available at city offices during normal business hours.

§ 116.06 BOND.

Before any license, as provided by this chapter, shall be issued for operation of a seasonal business, as defined herein, the applicant shall file with the City Manager a bond running to the City of Dublin in the amount of \$500 executed by the applicant, as principal, such bond to be approved by the City Attorney, conditioned that the applicant shall comply fully with all the provisions of the ordinances of the city and statutes of the state regulating and concerning the sale of goods, wares and merchandise and will pay all judgments rendered against such applicant for any violation of such ordinances or statutes. Further, the foregoing bond shall also be conditioned upon the applicant's cleaning and restoring the subject site to its original condition prior to the issuance of the application pursuant to the provisions of this chapter. Such bond must be approved by the City Attorney, both as to form, and as to responsibilities of the sureties thereon.

('80 Code, § 741.06) (Ord. 110-88, passed 11-21-88)

§ 116.07 APPEAL FROM LICENSE DENIAL.

Any applicant who has applied for a license in accordance with this chapter and to whom the City Manager or his designee has, after an investigation, denied a license may appeal to Council. Notice of such appeal should be filed with the Clerk within five days after the denial by the City Manager or his designee. Such appeal shall be heard by Council at the next regular meeting and its decision shall be final.

('80 Code, § 741.07) (Ord. 110-88, passed 11-21-88)

§ 116.08 DISPLAY OF LICENSE.

The license issued under the provisions of this chapter shall be displayed in a conspicuous place at all times during the operation of the seasonal business on the approved site.

('80 Code, § 741.08) (Ord. 110-88, passed 11-21-88) Penalty, see § 116.99

REGULATIONS FOR CHRISTMAS TREE AND PUMPKIN SALES

§ 116.09 OUTDOOR SITE REQUIREMENTS.

No license shall be issued for a seasonal business operation at an outdoor site unless the outdoor site is located within a commercial district and meets the following requirements:

(A) The proposed outdoor site provides a parking area entirely on asphalt or cement foundation;

(B) The outdoor site provides safe and controlled access for both pedestrian and vehicular traffic;

(C) The outdoor site is equipped with safe and adequate electrical facilities and lighting for night operations;

(D) All other applicable provisions of the Dublin Codified Ordinances, including but not limited to the sign regulations contained in Chapter 153, Zoning Regulations, are complied with;

(E) Within 72 hours of the earlier of either the expiration of the seasonal license or the cessation of business on an outdoor site, the applicant shall cause the site to be returned to its original condition including, but not limited to, the removal of all seasonal sales related items, fixtures, equipment and litter. The failure to do so will constitute grounds for forfeiture of the bond and denial of additional seasonal business licenses.

('80 Code, § 741.09) (Ord. 110-88, passed 11-21-88) Penalty, see § 116.99

§ 116.10 REVOCATION OF LICENSE.

Any license issued under the provisions of this chapter may be revoked at any time by the City Manager if the licensee is guilty of fraud, misrepresentation, or any unlawful act in connection with the business, or if the licensee violates any provisions of this chapter.

('80 Code, § 741.10) (Ord. 110-88, passed 11-21-88) Penalty, see § 116.99

§ 116.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than \$100. Each day during which seasonal business sales or activities operate in violation of this chapter shall constitute a separate offense.

('80 Code, § 741.99) (Ord. 110-88, passed 11-21-88)

RECORD OF PROCEEDINGS

June 15, 2009

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Held

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considers 2009 to be too early for the event, Council's suggestions can be incorporated into a 2010 plan.

Mayor Chinnici-Zuercher stated that she would prefer to enhance the teen Monster Mash event with a movie night. From there, the idea could evolve to similar events in the summer. A following would have been created for the event. All the existing teen groups should be brought together to work on this opportunity. The Schools should be an active participant in the plan as well.

Mr. Lecklider moved to direct staff to explore the concept of a teen movie night in Historic Dublin, incorporating all the ideas, opinions and views that were expressed by Council members, with the goal of launching the program in 2010.

Mr. Reiner seconded the motion, but noted he would like to see what could be developed for 2009.

Mr. Lecklider accepted the amendment.

Mr. Reiner noted that ideas he would like to see incorporated are: involving the students in the actual organization of the program, thereby developing their own leadership skills; using the already existing Dublin Recreation Facilities; and using the event to draw community participation in the Historic District. There are several opportunities within the concept.

Vote on the motion as amended: Mayor Chinnici-Zuercher, yes; Mr. Reiner, yes; Vice Mayor Boring, yes; Ms. Salay, yes; Mr. Lecklider, yes.

COUNCIL COMMITTEE REPORTS/COUNCIL ROUNDTABLE

- **Community Development Committee Recommendation re. Outdoor Seasonal Sales and Storage**

Ms. Salay stated that the Community Development Committee met on Monday, June 8th to discuss the issue of outdoor displays. The desire is to immediately put in place one set of rules for all businesses with outdoor displays. Any additional, related issues would be addressed in the upcoming Zoning Code update.

Vice Mayor Boring stated that most of the Committee's discussion appeared to be focused on big box stores. Would the proposed legislation also address individual small businesses who rent lots for seasonal sales?

Ms. Salay stated that those types of smaller businesses were not discussed by the Committee. The Committee did discuss existing stores that use their exterior ground for display areas.

Mr. Langworthy stated that legislation already exists that addresses Christmas tree sales and pumpkin sales. Staff will try to incorporate those provisions into the new ordinance so that all is in one place.

Ms. Salay moved to direct staff to expedite a Code amendment to provide the initial requirement that seasonal outdoor displays be limited to live plant materials only.

Mr. Lecklider seconded the motion.

Vice Mayor Boring stated that this amendment will not address percentages of store frontage permitted for outdoor displays. Will it be addressed at a later date?

Ms. Salay responded that this amendment will address live materials only. The Committee discussed the topic of percentage for displays and deferred that issue until the overall Zoning Code update.

Vote on the motion: Mr. Lecklider, yes; Ms. Salay, yes; Vice Mayor Boring, yes; Mayor Chinnici-Zuercher, yes; Mr. Reiner, abstain.

STAFF COMMENTS

- **Lot Coverage**

Mr. Foegler stated that at the last Council meeting, staff brought before Council the issue of lot coverage related to patio homes in Muirfield. There was concern that the current ordinance created a problem. Upon further exploration of the Code Planning

**COMMUNITY DEVELOPMENT COMMITTEE OF
DUBLIN CITY COUNCIL**

Monday, June 8, 2009

Minutes of Meeting

Ms. Salay, Chair, called the meeting to order at 6:30 p.m. in Council Chambers.

Committee members present were Ms. Salay and Mr. Lecklider. Mr. Reiner was absent (excused).

Other Council members present were Mr. Gerber and Mr. Keenan.

Staff members present were: Mr. Foegler, Mr. Smith, Mr. Langworthy, Mr. Gunderman and Code Inspector Brian Martin.

Ms. Salay stated that the purpose of this meeting is the discussion of the issue referred to the Committee regarding seasonal outdoor display and storage.

Mr. Langworthy stated that a memo was recently provided to Council, which outlined the particular issues. He added that no Code amendment is simple, as one change can impact several other sections of the Code. The memo outlined as many of those other areas as staff could identify. This subject should be addressed from two aspects: the actual Code requirement, and the enforcement of that requirement. The enforcement will be much easier with a well written Code section. For that reason, they have attempted to achieve consistency in treatment and regulation of the proposed Code amendment. There are also accompanying issues that require policy direction from Council, including the most basic question: Does Council want to permit outdoor displays and/or storage? If so, what approval process and regulations should be in place? Should the regulations be specific, or should each case be judged on its own merits?

Mr. Smith stated that the City's Code enforcement for these outdoor display and storage issues is generally complaint driven. There are four property owners, involving a total of six sites in this category – Kroger, Giant Eagle, Lowe's and Oakland Nurseries. Legal staff checked with Code Enforcement staff about whether they had received any complaints regarding outdoor displays or storage during the last two years. There was one line of sight issue, which was quickly addressed, but no complaints. The current process is for Code enforcement staff to send a notice of Code violation to the individual and/or visit the site and speak with the violator. If compliance is not achieved, the next step has been to draft a complaint for filing in the Mayor's Court and forward it to the Law Director's office. Mr. Foegler's direction has been not to file a case at that level, but to continue efforts to achieve compliance through communication with the property owner. All of this is subject to whatever policy Council develops. One of the difficulties relates to the many different texts; one entity, Kroger, has three locations in Dublin with different texts for each. Council has indicated that living plant material should be treated differently than hard goods; hard goods can be stored inside. Consequently, living material is what they have addressed in drafting a Code amendment.

Mr. Keenan inquired if any of the texts permit hard good storage outside, because he has observed such hard goods in outdoor displays.

Mr. Smith responded that none of the texts permit them, but, nevertheless, that is occurring.

Mr. Gerber stated that the existing City Code provides for a seasonal permitting process. Upon review of the materials, it occurred to him that there may be a need to review some of the definitions -- for instance, the longevity of the display. In addition, the texts of the different development districts should be fairly consistent regarding this topic.

Ms. Salay stated that there are three separate PUDs and a straight zoning involved. Of the three Kroger developments, Lowe's is a PUD; Giant Eagle is part of a PUD, and she understands that Oakland Nurseries reverts back to the original text for that site -- Frank's. Can a single Code amendment address all of these, or will it be necessary to amend the various development texts? Mr. Smith responded that, ultimately, it will be necessary to change the zoning texts. It may be possible to do them all at once through a City-sponsored application. That will take a period of time to do. Another Code amendment can be written to address seasonal sales and issuance of permits. Language can be written that would "trump" the zoning text.

Mr. Foegler noted that if there is any conflict, this amendment would take precedence.

Mr. Gerber stated that the Kroger on Bridge Street is not a PUD; it is a straight zoning.

Mr. Smith confirmed that is correct.

Mr. Gerber asked on what basis can they do outdoor sales?

Mr. Langworthy stated that they would apply for a conditional use.

Mr. Keenan asked for confirmation that outdoor displays are not permitted within their straight zoning district.

Mr. Langworthy confirmed that is correct.

Mr. Langworthy stated that the problem with these outdoor displays is that they can be easily moved. The managers change, and are not aware of the different regulations. This year, letters were sent to all the establishments with outdoor displays, informing them, individually, regarding the requirements and what they are permitted to do. This provided the City with a record of early notification to the businesses.

Mr. Lecklider asked if the businesses are complying.

Mr. Martin stated that he met with the manager of Kroger Sawmill, as they were in violation. They are now in compliance. The managers of the Kroger stores at Bridge Street and Avery Road have met with staff regarding the submission of conditional use applications. They will follow the prescribed process and legitimize their outdoor displays.

Mr. Keenan inquired if the conditional use would include hard goods.

Mr. Martin responded that it would not. It would cover live goods only. The correct terminology is actually "outdoor services."

Mr. Langworthy stated that part of the complication results from the current definition for the uses. The amendment would also address the definitions.

Mr. Keenan noted that there appear to be no objections from Council to having live plant materials on display on a seasonal basis.

Ms. Salay asked how Code enforcement would be impacted, should staff draft an amendment that would override all the different development texts to specify that only live plant materials and seasonal produce are permitted as outdoor displays.

Mr. Martin responded that if all of the businesses have the same rules, it would be much easier to achieve compliance. Enforcement could be difficult, however, if timeframes for such display are not clear.

Ms. Salay asked if the language should address the need to have the produce rotated/removed after it is out of season.

Mr. Langworthy responded that there is actually another ordinance that relates specifically to pumpkins and Christmas trees. That could be eliminated and addressed in the new amendment.

Mr. Lecklider asked if the regulations applying to pumpkins and Christmas trees are the same in terms of space limitations for the displays, as are suggested in the proposed amendment.

Mr. Langworthy responded that they are not. The regulations are limited; the display is subject to the approval of the City.

Mr. Gerber stated that it is the seasonal permit process.

Mr. Keenan stated that when the business applies for the permit, the City has the opportunity to communicate with the applicant regarding what is permitted.

Mr. Langworthy responded that if a Code amendment provided consistency -- the same regulations for everyone -- compliance by all would be easier to achieve.

Ms. Salay asked if one permit for seasonal sales would address everything for the year.

Mr. Langworthy responded that if the business is aware of what they plan to do for the entire year, it could be done under one permit. Often, that is not the case.

Ms. Salay asked if one permit could cover the regulations for everything.

Mr. Langworthy responded that the permit would give the City the needed record. The regulation would state what the business needs to provide to obtain the permit -- the site plan, location and size.

Ms. Salay wondered if this would make the process overly complex for businesses.

Mr. Foegler responded that it can be simplified. Because there is an extensive review of the entire Zoning Code underway, there should not be an attempt to solve other issues with this amendment regarding seasonal outdoor displays. If Council's direction is that this should be handled in the simplest way possible to provide reasonable regulations and a simple permitting process, staff could draft legislation to accomplish that and which would override any conflicting regulations of the various PUD texts.

Mr. Lecklider stated that, in general, he is in agreement. He acknowledges that things change. However, he served on the Planning and Zoning Commission when the Lowe's zoning was approved with certain restrictions. If that particular Commission had reviewed all the other cases reflected here at the same time, they probably would have imposed the same restrictions with those zonings as for Lowe's. In comparing the Lowe's in Dublin with other Lowe's in the Columbus area, the positive appearance of the Lowe's in Dublin is obvious. For instance, the brick enclosure of the outdoor materials would likely not exist if not required by the Commission

and ultimately approved by Council. He concurs with the need to limit the display to live materials, but there must be other limitations regarding the particular area and percentage of the frontage. It has been pointed out to him that the Kroger on Bridge Street uses bales of straw in their fall displays. Are those flammable?

Mr. Gerber stated that the letter sent out by staff early in the year could address the related restrictions.

Ms. Salay noted that bags of mulch are also placed in outdoor displays, and the mulch could be categorized as live, similar to a cut pumpkin or cut tree.

Mr. Langworthy responded the language can restrict the items to "now living" materials.

Pumpkins and Christmas trees are addressed elsewhere in the Code.

Mr. Lecklider inquired if mulch and top soil would be permitted.

Mr. Langworthy responded that the difficulty with those is often with the amount of space taken up. He believes it would be easier to limit the displays to "now living" plants.

Mr. Lecklider noted that the large pallets of trees sometimes take up quite a bit of space.

Mr. Langworthy responded that the text can contain space restrictions.

Mr. Foegler stated that in urban streetscapes, the goal is to bring some vitality to the outside of the building and add some interest, especially on a seasonal basis. Flowers, trees, plants -- and to some extent, displays with bales of straw -- can be argued to add visual interest to plain building fronts. If that is the goal, the language can be constructed to achieve that. Items that are bagged in plastic, and other items that do not achieve the goal, would be restricted.

Mr. Smith pointed out that a Farmer's Market will soon be coming to Dublin. This amendment should contemplate that as well.

Mr. Lecklider asked about appropriate space limitations. Would they be stated in terms of percent of the building frontage, or the total site? He prefers the former.

Mr. Langworthy responded that it could be a percentage with a maximum amount specified.

Mr. Foegler stated that it would be preferable not to artificially limit the area as much as control the character of the site. It could be argued that, from an interest perspective, the more high quality vegetation and high color provided, the better.

Mr. Lecklider referred to the recommendations on page 3 of staff's memo, where it states that "outdoor displays in service areas could be administratively approved," and then in the next sentence states that "the Code could require a conditional use in certain districts, such as the SO District." Most of the examples reflected in the discussion are Community Commercial or PCDs. Perhaps a conditional use should be required in SO and neighborhood commercial. For instance, the Athenry and UDF -- what would prevent them from displaying racks of plants?

Mr. Foegler stated that neighborhood commercial businesses are much smaller scale with tighter parking. If something general is written, it is important not to permit it in areas where it is not intended.

Ms. Salay asked about a floral business, located in a neighborhood commercial district, which would desire a small outdoor display. If it were prohibited in the district, they would not be able to do this unless they pursued a cumbersome conditional use process. In that case, the business would either set up the display in violation of Code, or not do it, when it would actually be desirable for them to do so from an aesthetics standpoint.

Mr. Langworthy stated that the text could be written to ensure the display does not block the sidewalk; takes up only a certain percentage of the frontage; and that it has to be associated with their frontage and property. Some of these will be self limiting. For a small floral business, the sidewalk restriction would be a problem because that is all the outdoor space they have.

Mr. Lecklider stated that is his concern. Unless they have a very deep sidewalk, it would create a problem for pedestrians.

Mr. Langworthy stated that the less intensive, more neighborhood-oriented districts should have a higher degree of examination than a community commercial district. It is Council's discretion whether that would also be addressed with this amendment or later in the overall Code update.

Mr. Lecklider stated that uniformity for these 5 or 6 large businesses should be addressed with the immediate amendment.

Mr. Foegler stated that if all these businesses are big box retail, they have a certain minimum size floor plate. Perhaps they could be addressed separately from businesses that have a very modest amount of store frontage.

Mr. Lecklider stated that he would defer to staff to determine to what extent this subject can be addressed with this amendment.

Mr. Langworthy responded that his concern is that by the time the approval process for this amendment is completed, it will be the end of the growing season.

Mr. Lecklider inquired whether, in that case, a proposed amendment would be provided later in the winter.

Mr. Foegler responded that regardless of the time frame, he would recommend that big box retail be addressed separately -- not solely because Council desires to address the larger businesses quickly, but also because there could be many issues related to this subject specifically for larger businesses.

Mr. Lecklider inquired what would be the necessary timing for this amendment to have it in effect for next spring.

Mr. Langworthy responded that it would not be necessary for Council to pass the amendment before their summer break. It could be prepared for later in the fall.

Ms. Salay that the language would permit live plant material -- organic material not enclosed in a bag, box or package -- so that firewood, soil, mulch and compost would be avoided; and pine wreaths, pumpkins, cut Christmas trees and straw bales (if not a fire hazard) would be permitted.

Mr. Langworthy responded that it would be necessary to craft language that could not be interpreted as being an acceptable place for a "mound" of mulch display.

Ms. Salay responded that the wording also should not permit other seasonal displays, such as outdoor grills or lawn furniture.

Mr. Keenan noted that bales of straw in a display could trigger the need for fire inspection.

Mr. Langworthy responded there is a restriction that such materials cannot be within a certain distance of a fire source. They are typically used for displays and are not for sale.
Mr. Foegler stated that it would be a seasonal display.

Ms. Salay suggested the Committee provide direction for staff.

Mr. Lecklider moved to direct staff to expedite a Code amendment to provide the initial requirement that seasonal outdoor displays be limited to live plant materials only.

Ms. Salay seconded the motion.

Vote on the motion: Ms. Salay, yes; Mr. Lecklider, yes.

Mr. Gerber and Mr. Keenan expressed support for the direction.

The meeting was adjourned at 7:15 p.m.

Clerk of Council



CITY OF DUBLIN

Office of the City Manager
5200 Emerald Parkway • Dublin, OH 43017-1090
Phone: 614-410-4400 • Fax: 614-410-4490

Memo

To: Members of Dublin City Council
From: Terry Foegler, City Manager *TF/sjg*
Date: June 5, 2009
Initiated By: Steve Langworthy, Director of Land Use and Long Range Planning
Re: Seasonal Outdoor Sales

Summary

Following the May 4, 2009 City Council meeting, Planning prepared a memo outlining Code provisions regarding seasonal outdoor display and sales and included suggested modifications to make the governing regulations more uniform for businesses throughout the City. The suggested modifications included:

- Revising the Code to differentiate between seasonal outdoor sales and outdoor storage;
- Identifying specific requirements for location, types, and sizes of outdoor sales areas; and
- Establishing an appropriate approval process to facilitate consistency and compliance.

The final recommendation of the report suggested that Code modifications be included in the 2010 Zoning Code update or that the topic be referred to the Community Development Committee for further discussion and recommendation.

At the May 18, 2009 meeting, City Council referred this topic to the Community Development Committee for review and recommendation. Initial conversations with Council members regarding the focus of the Community Development Committee meeting have indicated a need to address the current compliance issues and include any Code modifications with the 2010 Zoning Code update.

Recommendation

Planning recommends that the Community Development Committee discuss the regulations governing outdoor and seasonal sales and the potential modifications outlined in the attached May 14, 2009 memo in order to resolve the current and future compliance issues.

May 4, 2009 Council Meeting Minutes – Excerpt

COUNCIL ROUND TABLE/COUNCIL COMMITTEE REPORTS

Mr. Gerber:

1. Stated that in the past few months, businesses have many seasonal displays outside, but they all seem to operate under different rules. There are different zoning texts as well as zoning code provisions related to seasonal and outdoor sales, resulting in a compliance and code enforcement nightmare. He would like to have staff report on what currently exists, and make suggestions for how to improve upon the situation. The goal would be consistency in terms of code enforcement. He added that in a 'green' community such as Dublin, having some plant material outside seems acceptable. He requested that staff provide such a report to Council.

Vice Mayor Boring asked if Planning staff can discuss what types of modifications have been made. She had understood that there was some modification made related to the amount of plant materials stored outside.

Mr. Langworthy responded that, depending upon the development text, there are many different rules for different areas. His understanding is that Mr. Gerber is seeking a way to ensure uniformity across the community.

Mr. Gerber agreed.

Mayor Chinnici-Zuercher asked what timeframe will be required to have this report from staff.

Mr. Foegler responded that information will be provided to Council at the May 18th meeting.

It was the consensus of Council to request this report from staff.

May 18, 2009 Council Meeting Minutes – Excerpt

COUNCIL ROUND TABLE/COUNCIL COMMITTEE REPORTS

Mr. Lecklider noted that staff has provided a memo regarding the seasonal outdoor display and storage areas. An option identified is referral of the matter to the Community Development Committee, and he asked for Council's input.

The consensus of Council was to refer this matter to the Community Development Committee.

June 1, 2009 Council Meeting Minutes - Excerpt

STAFF COMMENTS

Mr. Foegler stated that currently, a topic has not been identified for the Monday, June 8 Study Session. If there is not a need for a Study Session that evening, perhaps that would be an appropriate time to schedule the Community Development Committee meeting. Council has previously referred the matter of a possible Code amendment related to seasonal outdoor display and storage areas to the Committee.

Ms. Salay asked if staff would be prepared for the discussion by June 8.

Mr. Gunderman responded affirmatively.

Ms. Salay and Mr. Lecklider indicated they would be available.

Mr. Smith indicated that it would necessary for Mr. Reiner to recuse himself due to a conflict of interest.

The Community Development Committee meeting was scheduled for Monday, June 8 at a time to be determined.



CITY OF DUBLIN.

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Memo

To: Members of City Dublin Council
From: Terry Foegler, City Manager *TF/Sgf*
Date: May 14, 2009
Initiated By: Steve Langworthy, Director of Land Use and Long Range Planning
Re: Seasonal Outdoor Display and Storage Areas

Background

At the May 4, 2009 City Council meeting, Council requested further clarification regarding existing Code provisions governing outdoor and seasonal sales, including suggested improvements to make these regulations more uniform. Planning conducted a review of retail locations within the City that have had outdoor storage and displays of merchandise accessory to their primary uses to illustrate the variety of restrictions applicable to different businesses. Suggested Code modifications that could establish consistency among the requirements are contained in this memo.

Issues and Recommendations

Outdoor Service Facility Definition

Issue: The Zoning Code does not include a definition or specific regulations for seasonal outdoor sales of plant and landscaping materials. While the Zoning Code lacks a specific definition for this particular use, a general definition related to outdoor storage and outdoor displays is included in the definition of Outdoor Service Facility listed in Section 153.002:

“An area that is not fully enclosed by solid walls and a roof and where services are rendered or goods are displayed, sold, or stored. For purposes of this section, outdoor service facilities include, but are not limited to, outdoor dining areas, restaurant patios, outdoor storage areas, open-air markets, garden stores, and stand-alone parking lots.”

The broad reach of the outdoor service facility definition includes not only outdoor storage areas, but patios and stand-alone parking lots. This requires similar treatment of widely different uses. There may be instances when some of these uses would still require conditional uses, but it may be advantageous in certain districts to allow some by right. Outdoor dining patios, for example, should be encouraged in some districts and not required to go through an extensive review process.

Recommendation: Treat the defined uses separately, list them in the Code in the appropriate locations, and determine the necessary approval method. The remainder of this memo will specifically address outdoor display areas for plant material and ground cover.

Regulatory Consistency

Issue: The variety of regulations applicable to seasonal outdoor storage and display areas for businesses creates a number of enforcement challenges. While outdoor storage and display is permitted in some zoning districts as conditional uses, there are no specific requirements for these uses. The lack of specific requirements applicable to individual uses means that each request is evaluated only on a case-by-case basis.

This is not an issue of review flexibility; rather, it is a lack of recognition that certain uses have the same characteristics regardless of their location. While seasonal outdoor display and storage areas tend to vary by location, type, and duration (some displays may last only a few days, while others could last an entire season), within these broader categories such display areas tend to operate similarly. Certain requirements should therefore be consistent for every location, such as placement on the site, size of display area, and types of materials permitted.

Recommendation: Include specific requirements in the Zoning Code that ensures consistency of treatment for outdoor display areas. Examples of these regulations follow. (Note that similar kinds of regulations could be developed for outdoor patios.)

- Type - Limit outdoor display and storage areas to living plant material and landscape ground cover. Grills, patio furniture, lawnmowers, and other similar “hard” materials would not be permitted.
- Location - If available, outdoor display and storage areas could be permitted only within the building footprint, such as within a building alcove. Where these areas are not found, display should be located within the buildable area of the lot, but not within any required parking spaces. Storage/display areas should not impede pedestrian or vehicular circulation.
- Size - Outdoor display and storage areas could be limited to a percentage of the building frontage (such as 20 percent) along which the display area is proposed. A square-footage cap could also be considered, such as applying the percentage requirement, but not exceeding a specified size. Another possibility is to set a percentage limit for the total site, such as for shopping centers.

Planning does not recommend limiting the duration of outdoor display and storage areas. Code Enforcement has historically found it very difficult enforcing Code regulations that permit certain activities for limited durations (such as “temporary” window signs), and with outdoor plant displays potentially ranging in duration from one day to several weeks, this would present a similar difficulty. Alternatively, it is Planning’s opinion that defining specific restrictions that identify the type, location, and size of permitted outdoor display and storage areas will be sufficient in correcting any existing problems with these types of uses. Similarly, the types of materials recommended for display will, in most instances, be limited to growing seasons and are not likely to be year-round.

Approvals

Issue: Enforcement is complicated by the variety of conditions and requirements for individual locations. Outdoor service facilities are only permitted after receiving a conditional use approval in the Neighborhood Commercial (NC), Community Commercial (CC), Central Community Commercial (CCC), and Central Business (CB) Districts, and when developed in association with a permitted use in the Suburban Office and Institutional (SO) District.

In addition to the standard districts, a number of approved development texts for planned districts either prohibit these uses, permit them as an allowed activity, or require conditional use approval. Three businesses with different zoning restrictions illustrate the assortment of regulations:

- Kroger, 299 West Bridge Street, Community Commercial District (CC): This site is zoned Community Commercial District; outdoor display areas are subject to a conditional use.
- Lowe's, 6555 Dublin Center Drive, Community Commercial District (CC), Corridor Development District (CDD): Lowe's was reviewed under the Corridor Development District and conditional use process. The conditional use prohibited any display of materials or product outside the building or within the parking lot.
- Giant Eagle, 6700 Perimeter Loop Road, Perimeter Center Planned Commerce District (PCD): the site, formerly Big Bear, received a conditional use approval, limited to the plaza space north of the main entrance.

(Note: a previous memo to the City Manager responding to compliance issues associated with these sites is attached that describes these and other situations in more detail.)

Recommendation: Properly regulated, outdoor display areas do not unnecessarily disrupt the operation of a site and can be an attractive addition to a site, enhancing the public realm by inviting pedestrians and adding vibrancy to the streetscape. Because of their potential advantages, outdoor display and service areas could be administratively approved if specific requirements are met. If deemed necessary, the Code could require a conditional use in certain zone districts, such as the SO District. Another option is to require a conditional use for outdoor display areas that exceed the specific criteria. Otherwise, a variance from the Board of Zoning Appeals could be sought.

Recommendation

Information only. Planning recommends that the suggested Code modifications regulating outdoor storage and display areas be considered for inclusion in the update to the Zoning Code.

Alternatively, if Council determines that there is more urgency in resolving this matter, the subject of outdoor display and storage could be referred to the Community Development Committee for a recommendation.



CITY OF DUBLIN.

Land Use and Long Range Planning
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Memo

TO: Jane S. Brautigam, City Manager
FROM: Steve Langworthy, Director of Land Use and Long Range Planning
DATE: July 23, 2007
RE: Outdoor Display and Storage Areas

OVERVIEW

In June 2007, Planning and Code Enforcement conducted a review of retail locations within the City that provide outdoor storage and display of merchandise accessory to the primary use, which resulted in the identification of six locations. The current zoning ordinance does not contain provisions for seasonal outdoor storage or outdoor storage or displays for retail locations. However, a number of approved development texts for individual Planned Districts either permit outdoor storage or require conditional use approval to permit outdoor storage. The six locations were in various levels of compliance, which are outlined below.

- Giant Eagle – 6700 Perimeter Loop Road – Permitted with conditional use approval and in compliance
- Kroger – 7100 Hospital Drive – Not permitted and not in compliance
- Ace Hardware – 7040 Hospital Drive – Not permitted and not in compliance
- Kroger – 299 West Bridge Street – Not permitted and not in compliance
- Lowe’s – 6555 Dublin Center Drive – Permitted and not in compliance
- Kroger – 7740 Sawmill Road – Permitted and in compliance

OUTDOOR AREAS

The details of each location are outlined below and include the types of items displayed or stored outside, as well as any approvals gained from the Planning and Zoning Commission or through the individual development text.

Giant Eagle – 6700 Perimeter Loop Road - Perimeter Center Planned District

The outdoor storage and display area is located adjacent to the two sets of entrance doors and contains plant material and mulch. The site, formerly Big Bear, received approval of a conditional use for outdoor display in the pedestrian space located north of the main entrance. Based on this approval, the outdoor display area is permitted.



Exhibit

Kroger – 7100 Hospital Drive – Riverside PCD

Ace Hardware – 7040 Hospital Drive – Riverside PCD

Both Kroger and Ace Hardware have storage and display areas adjacent to the main entrance of the store, which include plant material and mulch. Under the service requirements of the approved development text, no materials, supplies, equipment or products shall be stored or permitted to remain on any portion of the parcel outside the permitted structure. The display and storage areas do not comply with the provisions of the approved development text.



Kroger – 299 West Bridge Street – Community Commercial

The Kroger located on Bridge Street contains a small outdoor display area with plant materials along the front elevation of the building. The site is zoned Community Commercial and no provisions for outdoor storage or display is provided within the Zoning Code, which results in this area not complying with Code.



Exhibit

Lowe's – 6555 Dublin Center Drive – Community Commercial

Outdoor storage and display is provided beyond the enclosed storage area and consists of plant material. Lowe's received Corridor Development District, CDD and conditional use, CU approval on November 5, 1998 for a 14,494-square-foot outdoor storage area. The outdoor storage area is an extension of the building and is enclosed on all sides with an approximately 30-foot wall. Per the conditions of approval, no material in the outdoor storage area should be visible from the building exterior. The condition is a result of discussion at the PZC meeting prohibiting any display of materials or product outside the building or within the parking lot (Case No. 98-027CDD/CU). The display and storage areas do not comply with the provisions of the CDD and CU approval.



Kroger – 7740 Sawmill Road – Northeast Quad PUD

The outdoor display area is located along the front entrance of the tenant space and contains, plant material, planters, and mulch. Within the approved development text, seasonal outdoor display and sales are permitted and a written understanding of this agreement between Planning and the tenant also was created. The display and storage areas do comply with the provisions of the approved development text.



SUMMARY AND RECOMMENDATION

Four of the six tenants were not in compliance with the Code, development texts or records of action regarding outdoor storage and display areas. Planning recommends that Code Enforcement notify and work with these tenants to ensure they are in compliance with the Code or approved requirements.