

HEIGHTS LANDSCAPE DOD (Cont.)

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Name: Heights Landscape Design Overlay District (Sec. 36-350 through Sec. 36-367).

Location: An area generally described as north of Evergreen Drive, North Lookout Road, and Allsopp Park Road; west of Cantrell Road and Sherrill Road; south of the CRI&P railroad; and east of University Avenue and McKinley Streets.

Request: Creation of the Heights Landscape Design Overlay District

Source: Heights Neighborhood Association

STAFF UPDATE:

The applicant has requested that this item be deferred. Staff recommends approval of deferral request.

PLANNING COMMISSION ACTION: (MARCH 14, 2019)

The item was placed on consent agenda for deferral to the April 25, 2019 hearing. By a vote of 9 for, 0 against and 2 absent the consent agenda was approved.

Proposal / Request:

At the request of the Heights Neighborhood Association (HNA), Staff was invited to their "Neighborhood Tree Protection Committee" meeting that was held September 20, 2017 to discuss the issues that have arisen from new development in the Heights area. Ward 3 Director Kathy Webb was also in attendance. The Prospect Terrace President is ex-officio on the Heights Board and was aware of the work being done. Topics discussed were landscaping, parking in the front yard setback, differing architectural styles, historic districts, house sizes, and building setbacks. The possibility of a Design Overlay District (DOD) for the Heights area was discussed and what a DOD can and cannot do. After some general questions and discussion, it was decided that the committee would continue to work on ways to improve the area including developing a DOD for the area.

The committee continued to work the following year and submitted a list of points to Planning Staff that they would like addressed in the DOD in August 2018. Staff researched other ordinances in the country that were similar to the topics proposed by

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the committee. Staff then drafted a tentative ordinance that provided the most benefit for the neighborhood and did not reduce any buildable area on the sites.

The Planning Commission's Plans Committee met January 23, 2019 to discuss the proposed ordinance. Topics discussed were tree preservation, the tree fund, backyard versus front yard placement, and if a formal impact study was going to be completed.

The draft was presented back to the neighborhood committee. Meetings of the neighborhood committee were held to discuss the text. A meeting with the City Manager, Director Webb, Staff and neighborhood representatives was held on January 10, 2019 and edits were made to the draft and to the map area. On January 28th, the HNA Board unanimously approved the final draft text. This was provided to Staff with the request it be presented for adoption.

Staff identified the property owners in the area specified by the neighborhood committee by accessing property owners via the Pulaski County Tax Assessors data. Over 2,100 letters were mailed to each owner on February 11, 2019. This letter provided them a brief synopsis of the proposed ordinance and asked for any comments and concerns. The letter also stated that a copy of the draft ordinance was placed on the web. If they desired a hard copy, they were to contact Staff. There were numerous contacts from the property owners. See Neighborhood Comments section below.

The boundaries of the district are generally described as north of Evergreen Drive, North Lookout Road, and Allsopp Park Road; west of Cantrell Road and Sherrill Road; south of the CRI&P railroad; and east of University Avenue and McKinley Streets. The regulations apply only to lots zoned or occupied by single and two family dwellings. The Landscape Ordinance (Chapter 15) does not address single family or two family structures of two (2) acres or less zoned R1, R2, R3, R4 and R7A per Sec 15-4(a)(2).

The regulations apply to the following:

- (1) Any addition to the principal structure of more than four hundred (400) square feet of foundation area.
- (2) All other subsequent additions after passage of this division that result in total of more than (400) square feet of foundation area to the principal structure as existing before the passage of this division.
- (3) Construction of new single family or two-family structures.
- (4) Any lot that has had the principal building demolished and has not had active construction activities on that lot within one year of the demolition permit being issued.

The DOD's main goal is to have trees retained or planted in the front yards and those with corner lots to also retain or plant trees along that side street when new houses are built and additions to existing structures occur. A list of approved trees is included in the ordinance that has a mixture of native and non-native trees. Differing heights, deciduous,

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and evergreen trees are listed as well as a listing of trees that are suitable for planting under or near utility lines. Trees are to be maintained over time to promote health of the trees and promote shade. Any tree required by this section that is removed is required to be replaced within six months. Existing trees that are onsite that qualify as a "Preserved Tree" as defined in Chapter 15 shall be credited as fulfilling this ordinance in a one to one ratio.

The locations of the new trees are to be in the front yard setback and the side yard setback for those with corner lots. This will not reduce the size of any proposed house or addition.

This proposed ordinance is not retroactive and only affects future (after the date of adoption) residential additions or new construction.

Planning staff meet with neighborhood representatives on February 28, 2019 to discuss the emails that had been received by staff since the letters were mailed. Three changes to the proposed ordinance were made as a result of that meeting. The committee felt that these changes were appropriate. They are as follows with the bolded text being the new language:

Sec 36-434.38 (b) now reads "These regulations shall apply to all lots zoned or occupied by single family or two-family dwellings **except non-residentially occupied lots with conditional use permits.**" The exception was added to exclude churches, parks, schools, country clubs, etc. that had obtained a conditional use permit. The same language was added in Section 36-434.49.

Sec. 36-434.48 (b) (1) now reads "Any addition to the principal structure of more than **six hundred (600)** square feet of foundation area" and Sec. 36-434.48 (b) (2) "All other subsequent additions after passage of this division that result in total of more than **six hundred (600) square feet** of foundation area **added** to the principal structure as existing before the passage of this division." This was changed from 400 to 600 square feet to raise the threshold for application of the ordinance. The word "added" was inserted for clarity.

Staff has also corresponded with the Committee on April 5, 2019 concerning two additional changes that were proposed by them. They are as follows with the bolded text being the new language:

Sec. 36-434.49 (b) now reads "Credits for Preserved Trees. For each existing tree preserved **within the front or side yard setback**, there shall be a one to one credit applied to the minimum tree requirements. **Trees located in the front or side yard setback that are to be preserved that are twelve (12) inches or greater diameter at breast height (DBH) shall fulfill all requirements for the required trees within the front or side yard setback.**

Sec. 36-434.49 (b) now reads "*Required tree planting.* One **two and one-half (2-1/2)** inch or greater caliper single trunk tree measured at 12" above soil line shall be planted for

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every forty (40) feet or portion thereof of street frontage of the lot. Multi-trunk trees shall be measured as a total caliper of all trunks at 12" above soil line and shall be required to have a minimum of (4-1/2) four and one half inch or greater caliper. On corner lots, trees required on one street frontage may not be planted on a different street frontage. A minimum of one tree shall be planted for each street frontage.

The committee feels that the above five changes will make the ordinance less onerous to the community by exempting non-residential properties with conditional use permits such as churches, clubs, schools, etc., raising the threshold from a 400 square foot addition to 600 square feet, allowing one larger tree of 12" or more DBH to satisfy the requirements for tree planting in that setback, and reducing the size of tree from 3" down to 2 1/2" caliper.

NEIGHBORHOOD COMMENTS:

Notices were sent to approximately 2100 property owners in the area on February 11, 2019 and copy of the draft ordinance was posted on the city webpage that day. Staff has logged 112 citizen comments from email, phone calls and in office visits. 71% have voiced support of the ordinance, 16% have voiced opposition of the ordinance, and 13% were neutral or needed additional information. These totals are current to the printing date of the report.

STAFF RECOMMENDATION:

PLANNING COMMISSION ACTION:

(APRIL 25, 2019)

Brian Minyard, Planning and Development Staff made a presentation to the Commission on the process of the creation of the Design Overlay District (DOD) to date.

Natalie Capps, a resident, presented a PowerPoint presentation that spoke of the existing trees in the area, the neighborhood association and their activities, and development pressures in the neighborhood. She followed with multiple slides of lots that had all of the trees removed during construction. She reiterated the DOD origins and summarized the proposed DOD. She presented the amount of comments that the city had received as well as the petition that had been signed. She ended with examples of new development that met the proposed DOD criteria. She reserved the rest of her time for rebuttal.

Kevin Crass, of the Friday Eldredge & Clark Firm, spoke in opposition to the ordinance. He stated he was a resident of the area and that one of his Clients, Joe Ford, asked to be identified at the hearing. Mr. Crass stated that saving the tree canopy and the integrity of the neighborhood was a common goal but they disagree on the process of how to go about it. He spoke of the neighborhood association and how he felt that all citizens were not included in the process. Mr. Crass maintained the copies of the DOD were not given to the members. He did note that the city's mailer did have a link to the proposed DOD

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online. Mr. Crass believed that everybody was not notified and did note that he did not speak on behalf of the residents.

Mr. Crass continued that the Heights area has never had a DOD and this would be a major policy change. He said the other cities' DOD processes are subject to long study and then a referendum. Mr. Crass followed by asking why would this not be good for the entire city.

Mr. Crass stated that this will cause additional cost to the residents and to the city. He stated that with no requirement for tree preservation, this would create two classes of citizens, those subject to and those not. Mr. Crass maintains it would be impossible to enforce. He spoke of Act 1002 of 2015 and if the City was going to be liable. Mr. Crass spoke to experts in the field of landscaping and noted that there are types of trees that are not listed that would be suitable.

Mr. Crass believes that the DOD is driven by larger homes replacing the existing ones and he stated he did not approve of the language in the petition. He wanted to ask developers to voluntarily plant trees. Mr. Crass asked the commission to vote down the proposal and to continue the discussion.

Frances Buchannan, resident, spoke in opposition to the item. She stated she loves the trees and the neighborhood and has seen a lot of trees come and go. She continued that not enough scientific facts have been explored concerning the planting of trees after new construction. She made four points: 1) larger trees in the area are on life support being artificially watered and fed. 2) It can take over five years for a tree to die after construction ends. 3) A lot of trees will be lost during construction. 4) The best time to plant is after the house is not immediately after finished and occupied.

She asked who would be checking on the trees, the homeowners or the city. She continued that some homeowners are being smart and not planting immediately.

Thompson Murry, a resident, spoke in favor of the item and about being a neighbor for 25 years and purchasing the house based on the neighborhood and the trees. He supported building in minimal requirements for trees.

Emily Penell, a resident, spoke in favor of the item and covered some history of the Heights. She spoke of drainage problems from re-grading the lots and the benefits of trees with shade, reducing urban heat, walkability, providing wildlife habitat, etc.

She continued that the City of Little Rock already had intruded into the life of citizens through fire codes, building codes, residential codes, etc. and that this DOD would be minor in comparison. She finished with a quote from the Planning Departments' mission statement. She feels that this is accommodating to new development.

Merritt Dake, a resident, spoke in favor of the DOD and stated that he was building a new residence and a new commercial building in the Heights. He has maintained trees on his

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lot. He believes that this is moderate regulation and that moderate regulation makes a balance to protect property values. He has researched other cities and theirs are more invasive. He asked the Commission to approve the DOD.

Ruth Bell, League of Women Voters, stated that the DOD carries forward positive aspects of that neighborhood. She asked the Commission to approve the item.

Commissioner Craig Berry asked the City Attorney's representative, Shawn Overton, about takings on this item. Mr. Overton stated that there was nothing glaring at this level. He continued that this may not be the final version of the DOD. Commissioner Berry asked Mr. Minyard about any public meetings that have been held on this item. Mr. Minyard stated that he could not speak to the neighborhood meeting. Mr. Norman Hodges, President of the Heights Neighborhood Association, spoke of the quarterly agendas, membership in the association, and the committee that worked on the DOD. Mr. Crass stated that these were not public meetings.

Commissioner Berry stated that there are studies that state that trees increase the price of the properties and this is a benign ordinance.

Commissioner Bill May commented that he lived in Leawood and even he knew of the proposed DOD. Mr. Crass maintained that all of the citizens did not have input in the process.

Commissioner Bill May said that he had talked to Dickson Flake earlier and Mr. Flake has advised him to use common sense. He continued that the Planning Commission was making a recommendation to the Board of Directors and that he would vote for it.

Commissioner Robin Rahman asked who the applicant is on this application. Mr. Minyard stated that the City was working at the request of the Neighborhood Association. He also asked if the Planning Department has made a recommendation yet. Mr. Jamie Collins, Director of Planning and Development said that they would before it went to the Board. He continued that this was the public hearing for this item.

Commissioner Rahman asked if the cost implications had been calculated. Mr. Collins stated no.

Commissioner Robby Vogel stated that this had been a topic of discussion at the Subdivision Committee meeting. He is a resident of the area and has discussed it with others and there are concerns. He says they should look to the future and noted the considerable effort of the citizens.

Commissioner May stated it was a good place to start the discussion on the item.

Commissioner Tom Brock said he was from Southwest Little Rock and wished the DOD would go citywide.

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A motion was made to approve as presented. The motion passed with 10 ayes, 0 noes, and 1 absent.