



**TO:** Planning and Zoning Commission  
**FROM:** Edie Sims, City Secretary  
**DATE:** June 20, 2011  
**SUBJECT:** Discuss materials used in the Highway Commercial Zoning and discuss the Comprehensive Zoning Ordinance regarding Highway Commercial

See attached memorandum from City Attorney Alan Lathrom

**ACTION:** Discuss and recommendations for an Ordinance.

(II - B)



**MEMORANDUM**

**TO:** Planning and Zoning Commission

**FROM:** Alan D. Lathrom, Assistant City Attorney

**SUBJECT:** Revisions to Highway Commercial Standards

**DATE:** June 20, 2011

---

Commissioners,

This memo is intended to provide a starting point for discussion regarding possible options that I have prepared for your consideration to address the concerns that we discussed at your last meeting regarding the building materials requirements in the Highway Commercial Zoning overlay district, in particular. These same standards also apply to new and remodeled structures in the Office (O), Neighborhood Services (NS), General Retail (GR), Commercial (C), Central Area (CA) and Planned Development (PD) zoning districts. These options are intended simply as a starting point to allow the Commission to direct the content and scope of the relief it desires to provide, if any, to applicants in these zoning districts for new development and redevelopment of property within the City's corporate limits.

First, Section 9-J of the Comprehensive Zoning Ordinance will have to be amended to recognize an exception or waiver process to the exterior building materials requirements, if the Commission so desires. That amendment can take the following form by replacing existing Section 9-J(1) as follows:

“1. In the O, NS, GR, C, CA, HC or PD Districts, exterior wall construction shall be of such material as is required to conform to the building code for the particular use or occupancy, provided that the exterior of all structures shall be one hundred percent (100%) masonry, exclusive of doors and windows save and except to the extent specifically provided otherwise in Section 9-K of this ordinance.”

This addition simply directs the reader to the section in which the exception or waiver process is spelled out.

Second, the waiver, exception or variance process can be as complicated or as simple as the Commission desires to recommend. I recommend adding a new paragraph to Section 9-K to spell out the process. That process can be pursued in a number of different ways – (1) through a variance from the Zoning Board of Adjustment, (2) through a waiver or

exception approved by the City Manager, (3) through a waiver or exception approved by the Planning and Zoning Commission, (4) through a waiver or exception recommend for approval by the Planning and Zoning Commission and finally approved by the City Council, or (5) through a combination of available choices dependent upon the circumstances in the development process.

Please note that a variance through the Zoning Board of Adjustment (ZBA) would require, in accordance with the mandates of state law, that an unusual condition of the property creates a special or unique hardship that is not of the applicant's own making to be granted which deprives the applicant of the same use and enjoyment of his/her property as is enjoyed by similarly situated properties. I do not believe the ZBA process would meet most of the concerns and goals expressed by the Commission at its last meeting although there is some merit to having such a process available in addition to other mechanisms.

It seems that a waiver process or exception process might address the concerns and goals expressed by the Commission. Again, it could be something as simple as a variance concept suggested by Commissioner Dan, which I have modified to a waiver or modification process, which might read as follows:

**“9. Waivers or Exceptions.** A waiver or exception from the specific requirements of this Section 9 can be granted for types of exterior design, architectural elements and/or building materials that are required by a regional or national corporation or organization that establish or are a part of the entity's identity, logo or theme upon recommendation of the Planning and Zoning Commission and approval by the City Council. All exceptions to these requirements for such exterior design, architectural elements and/or building materials shall be of exemplary and enduring quality.”

Alternatively, multiple processes can be established to provide a frame work for the decision-making process of the Commission and Council in granting waivers or exceptions similar to the following language, which I have modified in part from ordinances of a couple of other cities:

**“9. Limited waivers for expansion or reconstruction of existing buildings.** The City Manager may, upon request by the applicant, authorize a waiver from specific requirements

for exterior materials set out in Sections 9-J and 9-K of this ordinance, if:

- a. strict compliance with these standards would result in significantly inconsistent appearance between existing and proposed sections of the building; or,
- b. if the proposed expansion or reconstruction has been mandated as a condition to the applicant's ability to continue operating a franchise, or license, to conduct business in the existing building; and
- c. the expansion or reconstruction does not increase the square footage of the existing building by more than fifty percent (50%); and
- d. the applicant proposes the use of high quality materials in the expansion or reconstruction of the existing building that significantly improve the quality and appearance of the existing building.

The applicant shall submit detailed information to the City Manager as required in Paragraph No. 10 of this section regarding meritorious exceptions. The City Manager may, for any reason, refer the request for a waiver to the Planning and Zoning Commission for a decision according to procedures outlined in Paragraph No. 10 of this section. The applicant may appeal the decision of the City Manager to the Planning and Zoning Commission according to the procedures outlined in Paragraph No. 10 of this section regarding meritorious exceptions. The applicant may appeal the decision of the Planning and Zoning Commission to the City Council according to the procedures outlined in Paragraph No. 10 of this section regarding meritorious exceptions.

**10. Meritorious exception.** It is not the intent of this section to discourage innovation. An architectural and site design that does not conform with the specific requirements of this section, but which has merit by making a positive

contribution to the visual environment and which is appropriate to the site and use, may be submitted for consideration as a meritorious exception. Such proposals shall be fairly and seriously considered by the Planning and Zoning Commission through the approval process outlined in this Paragraph.

- a. An applicant for a meritorious exception shall submit:
  - (i) All items required for the review of required architectural and site standards;
  - (ii) A written description of the nature of the meritorious exception and the compelling reasons that prevent the applicant from meeting the minimum standards set forth herein; and
  - (iii) Color renderings of all elevations.
- b. The application for a meritorious exception shall be reviewed by the City Manager and a report of findings shall be prepared and submitted to the Planning and Zoning Commission. If the applicant is not in agreement with the decision of the Planning and Zoning Commission, the applicant may, within 21 days of the Planning and Zoning Commission action, request in writing to the City Manager that the meritorious exception be appealed to the City Council. Prior to consideration of an application for a meritorious exception, the Planning and Zoning Commission shall hold a public hearing, with notice given according to the procedure for a change in a zoning district location or boundary. In considering the request, the Planning and Zoning Commission shall consider the following factors in determining the extent of any exception granted:
  - (i) The extent to which the application meets other specific standards of this Section 9;

- (ii) The extent to which the application meets the spirit and intent of this Section 9 through the use of building materials, colors, and facade design to create a building of exceptional quality and appearance;
  - (iii) The positive or negative impact of the proposed project on surrounding property use and property values, in comparison to the expected impact of a project, which could be built in conformance with the standards of this Section 9; and
  - (iv) The extent to which the proposed project accomplishes city goals as stated in the comprehensive plan or other approved document.
- c. A meritorious exception shall not be granted to serve solely as a convenience to the applicant, or for reasons related solely to economic hardship.

**11. Variances.** When a property owner can show that a strict application of the terms of this Section 9 relating to architectural or site standards will impose upon him unusual and practical difficulties or particular hardship, including instances where an applicant has previously built in strict conformance with approved architectural and site standards plans and such approval was erroneously granted by the City Manager or his designee, a variance from the strict application of this section may be granted by the Board of Adjustment; provided that:

- a. The variance requested is in harmony with the general purpose and intent of this section;
- b. The Board of Adjustment is satisfied that a granting of such variance will not merely serve as a convenience to the applicant, but will alleviate a demonstrable and unusual hardship or difficulty; and

- c. The Board of Adjustment is satisfied that there will be no adverse impact on surrounding property.”

Again, these provisions are simply something for the Commission’s consideration together with the ordinance excerpts from Rockwall, Wylie and Frisco that have been provided to you. I look forward to your discussion of these concepts and direction regarding the manner in which the Commission desires to proceed.