

MEMORANDUM

TO: Honorable Village Commission
Reginald White, Code Enforcement Officer

CC: Maria Camara, Acting Village Manager

FROM: John J. Hearn, Village Attorney 

RE: Review of Ordinance 2015-04 Regarding Off-Street Parking

DATE: May 31, 2016

On September 1, 2015, the Village Commission unanimously approved Ordinance 2015-04 which made changes to Section 5.3 entitled “Landscaping and objects in the swale area of the right-of-way” and Section 5.6 entitled “Off-street parking”. The Commission provided a one year grace period to provide residents with nonconforming and non-permitted parking surfaces an opportunity to have compliant parking surfaces permitted and installed. The ordinance further requires parking surfaces to be of approved materials, to have an approved approach across the swale and provides other regulations in order to ensure consistency and aesthetic standards for the Village. As we are nearing the end of the one year grace period, several meetings were held with the Interim Village Manager, the Code Compliance Officer and my office to review existing driveways and to determine whether or not those driveways are in violation of Ordinance 2015-04.

One of the first issues that was discussed was whether off-street parking facilities could be placed in a swale area. The terms “swale” and “rights-of-way” are sometimes used interchangeably in the Village Code. The term “rights-of-way” is used to describe a variety of publicly owned property, including medians, sidewalks, easements, roadways and swales. Under the Village Code, a swale area refers to the area between the pavement edge and the property line contiguous to a lot (Sec. 8.4.1). While not all rights-of-way are swales, by definition, all swales are part of the public rights-of-way.

Since passage of the ordinance, there have been conflicting opinions as to whether parking in the swale is allowed. There was discussion during second reading concerning parking in the swale and, if allowed, what surfaces should be approved. There was no consensus or amendment to the ordinance made which directly addressed that issue. A review of Section 5.3.4(c) entitled “Paving and drainage” was not amended by the ordinance. Section 5.3.4 addresses objects in the swale area and Section (c) provides that “pervious pavers shall be allowed, but any impervious paving shall be adequately drained to prevent the build-up of stormwater in the right-of-way”. As a result, my office and Village staff have agreed that the language in Section 5.3.4(c) allows both pervious pavers, and impervious paving provided that adequate drainage is installed. (See also 5.3.2 “protection and use of rights of way”)

It is important to note that 5.3.4(d) provides a list of “other objects prohibited” in the right-of-way. That section provides that it is unlawful to place and maintain within the dedicated right-of-way, parking or swale area of the Village “any painted concrete or other unapproved hard materials such as “rocks, stones, bricks...of other similar obstructions”. The prohibition of concrete, bricks and rocks (see gravel) appears to be in contradiction with the changes to Section 5.6.8(e) which expressly allows those materials on parking surfaces. Further, Section 5.3.4(e) references only the allowance of a combination of an approved parking approach and sodding of rights-of-way provided that the impervious section does not exceed 40% of the total area. Even though these two sections appear inconsistent, after discussing this matter with staff, meeting with the Chair of the Planning and Zoning Board, listening to the Commission meeting which approved Ordinance 2015-04 and a legal analysis of this language, parking is allowed in the swale area with certain limitations. (Providing pavers in the swale are pervious and/or impervious paving provides adequate drainage and the impervious section of swale does not exceed 40% of the total area with such paved areas being kept in good condition.)

In further support of that interpretation, Section 8.4.1. entitled “Lots and public rights-of-way”, also provides that paving and sodding of lots and rights-of- way is permitted provided the impervious section does not exceed 40% of the total area and such paved areas shall be kept in good condition.

An issue that needs to be discussed and clarified is whether the recent change to Section 5.6.1 requiring off-street parking facilities “within each property” allows for swale surface parking to count towards required parking spaces. Based on the plain language of the Code, staff and the Planning and Zoning Board have interpreted that swale parking, although allowed, does not count toward required parking. Village staff will address properties that are affected by this section of the Code.

Village staff will be presenting a PowerPoint at the June Commission meeting to illustrate how off-street parking will be enforced, and how properties are being identified that need to come into compliance as of September 1, 2016.