

**Town of Cary, North Carolina
Site Plan Staff Report
Garden Supply Company (14-SP-024)
Town Council Quasi-Judicial Hearing
October 2, 2014**

REQUEST

Kimley-Horn and Associates, Inc., on behalf of the property owner, is requesting approval of a site plan to add 15 parking spaces to Garden Supply Company located at 1421 Old Apex Road. The plan includes a request to reduce the width of the perimeter buffer along the railroad right-of-way and to waive the right-of-way dedication for Old Apex Road; therefore, the site plan requires Town Council approval.

SUBJECT PARCELS

Property Owner	Wake County Parcel Identification Number (PIN) (10-digit)	Real Estate ID Number	Deeded Acreage
K and D Ramsey, LLC 1421 Old Apex Road Cary, NC 27513	0753634923	0222631	3.70
Total Area			3.70

BACKGROUND INFORMATION

Applicant's Agent	Bethany Ray, Landscape Analyst Kimley-Horn and Associates, Inc. 333 Fayetteville Street Suite 600 Raleigh, NC 27636 (919) 678-4035 bethany.ray@kimley-horn.com
General Location	1421 Old Apex Road
Land Use Plan Designation	Office and Industrial (OFC/IND)
Zoning Districts	Office, Research and Development – Conditional Use (ORD-CU) <i>96-REZ-17</i> <ol style="list-style-type: none"> 1. <i>The permitted use shall only allow a Wholesale-Retail Garden Center</i> 2. <i>A 30 foot undisturbed buffer adjacent to Old Apex Road.</i> Watershed Protection Overlay District – Swift Creek
Within Town Limits	Yes
Staff Contact	Kevin A. Hales, Senior Planner Town of Cary Planning Department P.O. Box 8005 Cary, NC 27512-8005 (919) 462-3944 kevin.hales@townofcary.org

LIST OF EXHIBITS

The following documents incorporated into this staff report are to be entered into the record for this hearing:

- [Exhibit A](#): Plan Review Application (6 pages)
- [Exhibit B](#): Applicant's Statement of Compliance (5 pages)
- [Exhibit C](#): Site Plan (9 pages)

PROJECT DESCRIPTION/SUMMARY OF REQUEST

The applicant is requesting approval of a site plan to add 15 parking spaces to the existing Garden Supply Company site located at 1421 Old Apex Road. The plan also includes the relocation of the dumpster enclosure and the bulk material storage bins from the Old Apex Road side of the site to the railroad track side. There will be no expansion to the buildings or to the display areas on the site. Vehicular access to the site will also remain unchanged. The disturbed area associated with the project is less than 12,000 square feet; therefore, no stormwater management plan is required by the LDO.

The applicant is requesting two modifications to the Town's development standards, the first of which is to reduce the width of the required perimeter buffer along the adjacent railroad corridor. The Land Development Ordinance (LDO) requires a 20-foot, Type C (Aesthetic) buffer between retail sales uses and railroad rights-of-way. The applicant is proposing to provide a 10-foot, Type B (Semi-opaque) buffer along the railroad right-of-way. The increase in the performance standard of the proposed buffer is intended to partially offset the requested reduction in the width.

The applicant's second request is to waive the dedication of right-of-way for Old Apex Road. The property owner dedicated right-of-way for, and made improvements to, Old Apex Road with the development of the site in the 1990s. The difference between the right-of-way required by the previous version of the Comprehensive Transportation Plan (CTP) and that required by the current CTP is six additional inches on the south side of Old Apex Road. The owner has made improvements to the site, most notably a retaining wall that directly abuts portions of the sidewalk, since the original development. These improvements would be located in the right-of-way if the applicant were to dedicate any additional right-of-way. The applicant, therefore, requests a waiver of the six inches of additional right-of-way dedication.

MODIFICATIONS TO LAND DEVELOPMENT ORDINANCE (LDO) REQUIREMENTS

Reduction to Perimeter Buffer Width Adjacent to Railroad Tracks

Section 7.2 of the LDO establishes minimum requirements for the provision and maintenance of functionally adequate, attractive screening and buffering of structures, parking areas, and other land uses. The purpose of these buffers is to promote design compatibility between uses; assist in delineating separations of spaces and uses; shield adjacent properties from adverse impacts; promote the preservation of open space, tree canopy, and wildlife habitat; mitigate adverse grade changes between uses; improve the quality of the built environment; and enhance the appearance and value of properties.

The property is unusually shaped, having a wide base to the west and narrowing as you approach the eastern end. The western end of the property, in which the garden center is located, is approximately 290 feet deep, and at the eastern terminus of the site, the property is approximately 85 feet deep. In addition to the constraints associated with this unusual shape, the property is subject to a zoning condition that requires a 30-foot undisturbed buffer along Old Apex Road.

The LDO requires retail sales uses (Land Use Class 6) adjacent to railroad rights-of-way (Land Use Class 5) to provide a 20-foot Type C (Aesthetic) buffer. When developed in 1997, the Town's development regulations required a 15-foot buffer. The development plan for the property (97-SP-037) included this buffer on the eastern half of the site. The dry storage shed is constructed approximately 16 feet from the railroad right-of-way. However, the plan was approved with a buffer reduction to the perimeter buffer on the western half of the site, adjacent to the sales areas and greenhouses. The plan was approved by Town Council on April 10, 1997, with an additional condition that the buffer be reduced from 15 feet to 10 feet. The following is the applicable excerpt from the consent agenda items from that meeting:

97-SP-037, Zone 7 Garden Center, Buffer Reductions(DS97-168)

Committee unanimously recommended approval of buffer reductions at the Zone 7 Garden Center located at 1421 Old Apex Road. Approval of the plan would reduce the western 25 foot buffer to 20 feet, the southern 15 foot buffer to 10 feet. Committee recommended the addition of evergreen landscape screening material in the buffers behind the proposed structures; approval of the installed berm; that street trees and additional evergreen trees be installed between the berm and Old Apex Road; and that the western buffer be planted to an opaque standard. All plantings must occur prior to the issuance of a certificate of occupancy on the site.

None of the approved site plans on file with the Planning Department show the reduced buffer, but do show limited encroachments consistent with the conditions of Town Council's approval. The applicant's requested reduction would be consistent with the width provided on the western half of the property. This plan will clean up the record and clarify the actual buffer requirement across the length of the southern property line. The proposed plan includes additional evergreen material and the extension of the 6-foot privacy fence along the remainder of the buffer length. These improvements would increase the performance standard of the buffer from a Type C (Aesthetic) to a Type B (Semi-opaque).

In summary, council may find that the requested reduction along the railroad right-of-way is consistent with prior approvals and that the increase in performance standard to a Type B (Semi-opaque) buffer would provide better aesthetic and screening performance than the aesthetic plantings provided in the 20-foot Type C buffer required by the LDO. The existing vegetation along the property line is already less than 20 feet in depth, so provision of a 20-foot buffer would represent supplemental planting and not the preservation of existing material along the corridor.

Waiver of Right-of-Way Dedication on Old Apex Road

Section 8.1.3(A)(1) requires developers to dedicate any additional right-of-way necessary to achieve the width required by the Town's CTP; the Parks, Recreations, and Cultural Resources (PRCR) Facilities Master Plan; and public utility plans. The property owner dedicated 15 feet of right-of-way during the initial development of the site in the 1990s. That dedication was sufficient to meet one-half of the 90-foot right-of-way required by the CTP at the time. However, the current version of the CTP requires a 91-foot right-of-way. This means that the applicant is required to dedicate six inches of additional right-of-way with the proposed parking addition.

The current right-of-way is located at the edge of the sidewalk along the property's frontage. A stone wall has been constructed up to this property line by the property owner. Dedication of any additional right-of-way would place that wall within the right-of-way and would require the approval of an encroachment permit from the North Carolina Department of Transportation (NCDOT). In addition, additional right-of-way would reduce the width of the approved streetscape, making it non-compliant with the zoning conditions attached to the property.

In summary, council may find that the additional six inches of right-of-way would serve little purpose, as the Town would be unlikely to undertake any widening in the future within that six inches. The outer edge of the sidewalk directly abuts the right-of-way; however, most sidewalk maintenance could and would preferably be performed from the roadway side due to the stone wall that has been constructed up to the property line along the sidewalk.

SUMMARY OF PROCESS AND ACTIONS TO DATE

Pre-application Meeting

The applicant attended a pre-application meeting for the site plan on August 28, 2013.

Plan Submittal and Review

The site plan was submitted for its initial review on April 11, 2014, and has been reviewed by the Development Review Committee (DRC) through two review cycles.

Notification and Property Posting

The Planning Department provided notification of the public hearing and posted the property in accordance with local and state regulations.

**SITE PLAN WORKSHEET
AND
SUGGESTED MOTIONS**

A subdivision and/or site plan may be approved by the Town Council only if it satisfies the six approval criteria listed in Section 3.9.2(l) of the LDO. As part of determining whether the first criterion is satisfied, council must determine whether to grant the requested modification(s) to the Town's development standards. A roadmap of the decisions council must make is provided below:

WORKSHEET 1

- 1. Does the plan comply with all applicable requirements of the LDO, including the development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8 as well as all applicable Town specifications?**

As indicated in the staff report, the applicant has requested that council grant several modifications to the Town's development standards. These are detailed further in the attached Worksheet 1.

Once the council has made a decision on the modification requests, it may then turn to the remaining site plan approval criteria.

WORKSHEET 2

- 2. Does the plan adequately protect other property, or residential uses located on the same property, from the potential adverse effects of the proposed development?**
- 3. Does the plan provide harmony and unity with the development of nearby properties?**
- 4. Does the plan provide safe conditions for pedestrians or motorists and prevent a dangerous arrangement of pedestrian and vehicular ways?**
- 5. Does the plan provide safe ingress and egress for emergency services to the site?**
- 6. Does the plan provide mitigation for traffic congestion impacts reasonably expected to be generated by the project?**

WORKSHEET 1

1. Does the plan comply with all applicable requirements of the LDO, including the development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8 as well as all applicable Town specifications?

Applicant’s Statement: The proposed plan does comply with all applicable requirements of the above referenced ordinance. We will provide testimony or affidavits from experts confirming satisfaction of applicable requirements.

Staff Observations: The Development Review Committee has reviewed the proposed site plan for compliance with the LDO and all other applicable regulations through two review cycles. There are 18 remaining review comments.

TEST SATISFIED? YES NO

1. The applicant requests that the 20-foot Type C (Aesthetic) buffer along the railroad right-of-way be reduced to a 10-foot Type B (Semi-opaque) buffer.

Town Council should consider this modification request pursuant to Section 7.2.10(C) of the LDO.

Section 7.2.10(C) of the LDO reads as follows:

“The Town Council may reduce the width of required streetscapes and buffers to no less than ten (10) feet. Buffer reductions between uses may be considered based on the use of innovative site/building design concepts. The Council may make exceptions to this minimum width for development within the Town Center district and for redevelopment sites. Reductions in the width of streetscapes and buffers should only be allowed when meeting the required width prevents reasonable use of the property based on the zoning and/or when additional existing healthy vegetation or open space is provided elsewhere on the site.”

Applicant’s Statement: Buffer reduction is requested due to the existing vegetation that is in place, the buffer is along a railroad right-of-way, and there is no visual impact to adjacent residential property. Additionally, the buffer reduction will allow for additional parking to eliminate parking within right-of-way along Old Apex Road.

1. The site is narrow and irregularly shaped and creates practical difficulty by requiring the use of critical land area to provide a buffer between a high intensity use of the railroad line and the low intensity use of the garden center. The requirement of a 20-foot buffer along the railroad line prevents the reasonable use of this very narrow site, particularly in view of the 30-foot undisturbed buffer required along Old Apex Road under the applicable zoning conditions
2. The requirement to maintain the 30-foot buffer cramps the site and its ability to provide sufficient parking to accommodate its customers at peak time, resulting in customers parking on Old Apex Road, a busy thoroughfare with a dangerous curve.
3. Existing mature, healthy vegetation currently in place provides a narrower but adequate buffer which does not need to be increased. In addition open space exists elsewhere on site in the form of a 30-foot undisturbed buffer along Old Apex Road, 10-foot natural buffers on each end of the site, planted tree areas and numerous open air plant display areas.

Staff Observations:

- The property is unusually shaped, narrowing in depth from the western end to the eastern end. Provision of the full 20 feet of width would limit the ability to provide additional parking while maintaining access to the service areas of the site.

- Employees and patrons frequently park along Old Apex Road (on the paved shoulder). This site is located on a hill and in a curve in Old Apex Road, limiting sight distance along Old Apex Road.
- Old Apex Road is a thoroughfare and is striped with a double-yellow centerline. On-street parking, which is currently occurring, was not contemplated in the design of the corridor. On-site parking is preferable from both a transportation and safety perspective.
- The applicant has not provided a condition eliminating on-street parking; however, language for such a condition is included below as part of Worksheet 2 in the event council finds such a condition necessary and desirable.
- The buffer along the railroad right-of-way on the western half of the site is currently a 10-foot-wide buffer with a 6-foot privacy fence.
- There is no vegetation in the inner 5 to 10 feet of the required 20-foot buffer, reflecting the 15-foot buffer that was required with the original development plan.
- The applicant is proposing to increase the performance standard for the entire length of the railroad right-of-way from a Type C (Aesthetic) buffer to a Type B (Semi-opaque) buffer. This proposal includes the extension of the existing 6-foot privacy fence to span the entire length of the right-of-way.

2. The applicant requests a waiver of dedication of the six inches of right-of-way required to meet one-half of the 91-foot right-of-way identified for Old Apex Road in the Comprehensive Transportation Plan.

Town Council should consider this modification request pursuant to Section 8.1.4(A)(10) of the LDO.

Section 8.1.4(A)(10) of the LDO reads as follows:

"Land needed for right-of-way as depicted on the Comprehensive Transportation Plan shall be dedicated at the time of final plat for approval, unless such dedication is waived by the Town Council as part of approving the site plan in a quasi-judicial hearing or the subdivision/site plan is classified as an "exempt" subdivision/site plan. The amount of land to be dedicated shall be based upon the requirements listed in the Comprehensive Transportation Plan."

Applicant's Statement: An analysis of the site, the Comprehensive Transportation Plan and prior dedications from this site indicate that right-of way dedication of six (6) inches would be required in connection with improvements to the site. In connection with prior right-of way improvements in this area, Old Apex Road has been widened and sidewalks have been installed. In addition, a decorative stacked stone wall with business signage has been constructed to the edge of the site. The applicant requests that council waive the requirement for the dedication of six inches of right-of-way for the following reasons which will be supported through affidavits or testimony of experts:

1. The dedication may cause the wall and signage to encroach into the right-of-way.
2. According to our professional traffic engineer, obtaining an encroachment permit from NCDOT would be difficult to obtain.
3. Six inches of additional right-of-way would remove area from the required 30-foot undisturbed buffer and make the buffer nonconforming.
4. The loss of the six inches on site could negatively impact parking areas and maneuverability,
5. It is highly unlikely that the City or State would undertake a widening or other road improvement project with just six additional inches of right-of-way.

Staff Observations:

- The current right-of-way is located at the outer edge of the existing sidewalk.
- The property owner has constructed a stone wall and landscaped berm to enhance the streetscape along the property's frontage. The stone wall, in some places, is immediately adjacent to the edge of the sidewalk. Dedication of additional right-of-way would cause portions of the wall to be located within the right-of-way.
- Old Apex Road is a state maintained roadway and any encroachment into the right-of-way would require approval through NCDOT. Customarily, NCDOT would be reluctant to allow the encroachment of such permanent, non-breakaway structures in their right-of-way.
- Dedication of additional right-of-way would reduce portions of the streetscape below the 30 feet required by the existing zoning condition. Though the property would not comply with the zoning condition if such a dedication occurred, Section 10.1.8(l) of the LDO indicates that streetscapes made non-conforming through the actions of a governmental entity shall not render an existing lot non-conforming.

SUGGESTED MOTIONS FOR MODIFICATION REQUESTS

MOTION TO APPROVE ALL MODIFICATION REQUESTS

For the reasons discussed, I move that we **APPROVE** the modification requests made by the applicant, as the requests meet all of the approval criteria of the applicable sections of the LDO.

This approval is conditioned upon the following:

1. *[insert any additional conditions necessary to bring the project into compliance with the LDO or other standards]*

OR

MOTION TO APPROVE INDIVIDUAL MODIFICATION REQUESTS:

For the reasons discussed, I move that we **APPROVE** modification request(s) number(s) _____ made by the applicant as the request(s) meet all the approval criteria of the applicable sections of the LDO.

This approval is conditioned upon the following:

1. *[insert any conditions necessary to bring the project into compliance with the LDO or other standards]*

OR

MOTION TO DENY ALL MODIFICATION REQUESTS

For the reasons discussed, I move that we **DENY** the modification requests made by the applicant, as they do not meet all of the approval criteria of the applicable sections of the LDO.

2. Does the plan adequately protect other property, or residential uses located on the same property, from the potential adverse effects of the proposed development?

Applicant's Statement: There are no residential uses on site or on adjacent properties. The proposed plan protects adjacent non-residential properties to the north and south through the use of natural perimeter buffers that are at least 10 feet in width and are otherwise in accordance with the Town's ordinance. The site is bounded by public right of way to the west and rail right of way to the east. The site includes a 30 wide undisturbed buffer along Old Apex Road and a 10-foot buffer along the railroad tracks. We plan to submit a landscape plan and an aerial photo to confirm these buffers.

Staff Observations:

- The only residential uses in the immediate area surrounding the site are across Old Apex Road. There are no proposed modifications to the streetscape along Old Apex Road.
- The property located to the west is developed as a public utility facility (water tank). The property located to the east is vacant, residentially-zoned property. This property is unsuited for residential development given the location and topography. It has been investigated for development in conjunction with the adjacent Trillium Center project (formerly the site of the Cary Motor Inn).
- The buffer modification being requested by the applicant is adjacent to the railroad right-of-way behind the site.
- The applicant is proposing to install a 6-foot privacy fence and additional plant material to increase the performance of the reduced-width buffer from Type C (aesthetic) to Type B (Semi-opaque). This will provide a more opaque and consistent visual separation between the retail use and the railroad right-of-way.

TEST SATISFIED? YES NO

3. Does the plan provide harmony and unity with the development of nearby properties?

Applicant's Statement: The use on this site is as wholesale-retail garden center is existing and has existed on this site for over 18 years and is and has been compatible with adjacent properties and uses to the north (vacant) and south (public utility). The proposed plan adheres to all land use and zoning conditions attached to the site. Zoning Conditions from Zoning Case 96-REZ-17 require a 30-foot undisturbed buffer adjacent to Old Apex Road and the use of the site as a Wholesale-Retail Garden center. We plan to submit affidavits or testimony of the property owner to confirm the use, buffer and compatibility.

Staff Observations:

- The site plan proposes no changes to the use of the property, nor the intensity of the use.

TEST SATISFIED? YES NO

4. Does the plan provide safe conditions for pedestrians or motorists and prevent a dangerous arrangement of pedestrian and vehicular ways?

Applicant's Statement: The proposed plan utilizes the existing access driveway as well as provides internal parking for vehicles and safe walking routes for pedestrians. The addition of more parking internally will help the applicant address the parking that currently occurs along Old Apex Road within the public right of way. We will provide testimony or affidavits from experts confirming safety and improvement in parking.

Staff Observations:

- Old Apex Road is a thoroughfare and is striped with a double-yellow centerline. On-street parking, which is essentially what is occurring, was not contemplated in the design of the corridor.
- This site is located on a hill and in a curve in Old Apex Road, limiting sight distance along Old Apex Road. Employees and patrons frequently park along Old Apex Road (on the paved shoulder), which is an unsafe condition in the present configuration.
- The provision of additional on-site parking will relieve some of the parking pressures on the site and reduce or eliminate the need for parking along Old Apex Road, increasing the safety of those patrons and/or employees now able to park on-site.
- A sidewalk connection from the side is being proposed with the plan, improving pedestrian access and safety by providing an alternative to walking in the driveway, which is the only option available in the current configuration.
- No changes to the vehicular access or circulation on the site are being proposed at this time.

TEST SATISFIED? __ YES __ NO

5. Does the plan provide safe ingress and egress for emergency services to the site?

Applicant's Statement: The proposed plan has a full access drive off of Old Apex road which allows for the safe ingress and egress for emergency services to the site. We will provide testimony or affidavits from experts confirming safety and maneuverability of emergency vehicles.

Staff Observations:

- No changes to the vehicular access or circulation on the site are being proposed at this time.
- The layout of the parking lot conforms to the Town's Standard and Specifications Manual for parking lot design.

TEST SATISFIED? __ YES __ NO

6. Does the plan provide mitigation for traffic congestion impacts reasonably expected to be generated by the project?

Applicant's Statement: The existing use on the property will not change, nor will it be expanded as part of this application. As such, no new vehicle trips are anticipated in association with this application. The proposed plan will promote regular traffic flow into and out of the site and along Old Apex Road. Rather than increasing impacts, the addition of more on-site parking will reduce traffic congestion nearby. We will provide testimony or affidavits from the property owner confirming continuation of use. The proposed site plan shows the addition of parking places. Experts will confirm reduction in congestion by reducing the need for on street parking.

Staff Observations:

- The applicant provided no information regarding traffic impacts for this project to staff in advance of the hearing.
- The site plan proposes no changes to the use of the property, nor the intensity of the use. Therefore, no changes to the amount of traffic would be anticipated.
- Removal of parking along the shoulder of Old Apex Road would be anticipated to lower the likelihood of a crash in this part of the corridor by limiting the number of vehicles entering or exiting the flow of traffic unexpectedly. It will also improve the sight distance from the driveway into the site by eliminating impediments to the sight line.

TEST SATISFIED? __ YES __ NO

SUGGESTED MOTIONS FOR SITE PLAN

MOTION TO APPROVE THE SITE PLAN

For the reasons discussed, I move that we **APPROVE** the proposed site plan without condition (**ALT: with conditions as stated below**), as it meets all of the approval criteria set forth in Section 3.9.2(I) of the LDO.

(ALT: This approval is conditioned upon the following:)

1. No employee or patron parking is allowed within the right-of-way of Old Apex Road.
2. [*insert any conditions necessary to bring the project into compliance with the LDO or other standards*]

OR

MOTION TO DENY THE SITE PLAN

For the reasons discussed, I move that we **DENY** the proposed site plan, as it does not meet all of the approval criteria set forth in Section 3.9.2(I) of the LDO.