



**Criteria:**

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

**PICTURES**







**Recommended Action:**

**Denial.** Mr. Tice Vieira, representing the property owner, Huntington Cobb I, LLC, is requesting a variance to reduce the required landscape buffer from 30 ft. to 0 ft. for the apartment complex located at 152 Dodd Street. The subject property, Huntington Lane Apartments is zoned OI (Office Institutional); and to the north are businesses that are zoned CRC (Community Retail Commercial); to the rear is a residential community that is zoned R4 (Single Family Residential (4 units/acre)); and to the south is a school that is zoned RM8 (Multi-Family Residential (8 units/acre)). To the east, across Dodd Street, is the Marietta Trade Center (WalMart) shopping center.

Section 708.23(I) requires a 30 foot landscape buffer when an OI district directly abuts a residential district. The petitioner is requesting a variance from these regulations as a result of a code enforcement violation dated August 18, 2009. The violation was issued because the property owners were clearing some brush and trees from the landscape buffer along the western property border. A power line also runs along this property boundary, and around the same time, Marietta Power was trimming trees under the power line and within the buffer. The result of both actions was to minimize the landscape buffer abutting residential community. The subject property owners have met with Staff, and were advised to prepare a plan to replace the trees in order to re-establish the buffer.

The property owners decided that they would seek a variance because they felt that the regulation is excessive. They also contest that the removal of the ground cover/brush did anything to hinder this buffer zone, and that the removal of the ground cover/brush has enabled them to remove trash and litter along the property lines. However, the abutting residential yards are more visible and have a minimized landscape buffer due to the cutting back of the tree line.

As shown on the site plan of the subject property, there are some points along the western border where two parking lots (0 ft – 21 ft from property line), internal residential sidewalks (0 ft. – 20 ft from property line), and apartment buildings (14.7 ft – 15.5 ft from property line) are on the property line or are significantly close to the property line, therefore laying within the 30 ft landscape buffer that is required by the current code. The original landscape buffer was (prior to the trimming and removal of trees) less than the required 30 ft landscape buffer. However, since the trimming of the upper tree limbs by the power company and the removal of trees within the landscape buffer, the buffer area is bare in some areas, and provides no protection to the abutting residential neighbors. Prior to the trimming/removal of the landscape buffer the subject property had a mature tree line that offered abutting residential neighbors a better landscaped screen.

The Huntington Lane Apartments are considered a nonconforming use of the property since it is zoned OI, Office Institutional. The property (14.632 acres) was rezoned from RM-8 to OI on August 27, 1986, but it was part of a proposed redevelopment that also included the property currently known as the Walmart shopping center (39.014 acres) and the property that is currently the Sam's Warehouse Club location (15.137 acres). Those properties were rezoned from RM-8 to GC (General Commercial). The rezoning application at the time stated that it was desired to rezone the entire area as part of a master plan. However, unlike the commercial areas, the Huntington Lane Apartments were never redeveloped.

Since the apartment site was developed without a 30 ft landscape buffer, it is not possible to establish one at this time. In addition, the power line that is periodically trimmed makes establishment of a buffer even more difficult. However, what little buffer that was there has been diminished even more by the actions of the property owner. Therefore, Staff recommends denial of the request to eliminate the entire buffer. The property owner should be required to provide a plan to plant evergreen shrubs and trees that will not grow tall enough to obstruct the power lines, but would provide a better visual screen to protect the abutting residential community.