

**ZONING ORDINANCE  
TEXT AMENDMENT APPLICATION**

**CITY OF CHARLOTTE**

FY2009
Petition #: <u>2009-38</u>
Date Filed: <u>2-23-09</u>
Received By: <u>MC</u>
Office Use Only

Section #: 12.103 "Requirements for lots along thoroughfares"  
(Title)

**Purpose of Change:**

To modify the regulations for transitional setbacks.

Susan Cannon  
Walter Fields  
Name of Agent  
Urban Resource Group  
1919 South Boulevard, Suite 100  
Agent's Address

Charlotte, NC 28203  
City, State, Zip

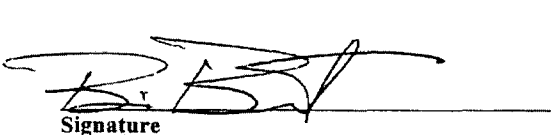
704.335.0210      704.409.1810  
Telephone Number      Fax Number  
susan.cannon@kimley-horn.com  
walter.fields@kimley-horn.com  
E-Mail Address

  
Signature of Agent

Bill Barnett  
Faison  
Name of Petitioner(s)  
121 West Trade Street  
27th Floor  
Address of Petitioner(s)

Charlotte, NC 28202  
City, State, Zip

704.972.2500      704.972.2573  
Telephone Number      Fax Number  
bill.barnett@faison.com  
E-Mail Address

  
Signature

Petition #:

Petitioner:

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING APPENDIX A  
OF THE CITY CODE - ZONING ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE:

Section 1. Appendix A, "Zoning" of the Code of the City of Charlotte is hereby amended as follows:

Amend Section 12.103. Requirements for lots along thoroughfares, by adding new language, along with related adjustments to existing text language to accommodate the new language and for grammatical consistency, as shown on the attached text that includes tracked changes.

Section 2. That this ordinance shall become effective upon its adoption.

Approved as to form:

\_\_\_\_\_  
City Attorney

I, \_\_\_\_\_ City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the reference having been made in Minute Book \_\_\_\_\_, and recorded in full in Ordinance Book \_\_\_\_\_, Page(s)\_\_\_\_\_.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

**Section 12.103. Requirements for lots along thoroughfares.**

G.S. 160A-306 states that cities shall have authority to (i) classify all or a portion of the streets within their jurisdictions according to their size, present and anticipated traffic loads, and other characteristics relevant to the achievement of the purposes of this Section, and (ii) establish by ordinance minimum distances that buildings and other permanent structures or improvements constructed along each class or type of street shall be setback from the right-of-way line or the center line of an existing or proposed street. Pursuant to that authority, the following requirements shall apply:

(1) Except as provided for in Section 12.103(5) below, the minimum yards or setbacks prescribed for each zoning district, which abuts a thoroughfare, shall be measured from the proposed right-of-way line established for each classification of thoroughfare as follows:

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Thoroughfare Classification	Distance From Thoroughfare Thoroughfare Centerline to Classification "Proposed Right-of-Way Line"
Freeway or Expressway (Class I)	175 feet
Limited Access Arterial (Class II)	100 feet
Commercial Arterial (Class III-C)	75 feet
Major Arterial (Class III)	50 feet*
Minor Arterial (Class IV)	35 feet*

\*The distance from thoroughfare centerline to proposed right-of-way line for Class III and IV thoroughfares located within the area bounded by Route 4 and I-85 shall measure 40 feet for Class III streets and 30 feet for Class IV streets. These standards represent the normally required rights-of-way. However, additional right-of-way may be necessary in the area of

interchanges, intersections, cut/fill areas, or areas where horizontal or vertical alignments must be improved and will be determined on a case by case basis by the City Manager. In addition, in those areas in which the existing street right-of-way exceeds the above noted dimension, the right-of-way width may not be reduced and certain thoroughfares will exceed this dimension as indicated by the Thoroughfare Plan unless the City Manager determines that the additional right-of-way is not needed for street improvements. The City Manager may also determine that the proposed right-of-way listed above exceeds that needed for street improvements and if so, may waive the need for any additional right-of-way for street improvements.

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(2) A transitional setback or yard shall also be established for each zoning district which abuts a thoroughfare that has an existing right-of-way which is not as wide as the right-of-way established for that thoroughfare as illustrated in Figure 12.103. The transitional setback or yard area established for lots abutting thoroughfares can be used for any purpose allowed by the particular zoning district, except for (a) those uses which are prohibited in the required setbacks or yards as established by this ordinance, or (b) to satisfy any minimum parking requirements if parking is not allowed in the setback or yard by the particular zoning district. However, the transitional setback or yard may be used for parking which exceeds the minimum ordinance parking requirements. The area between the existing right-of-way line and the proposed right-of-way line may not be used to satisfy any minimum parking requirement, any minimum open space requirements, any minimum lot size requirements or any other minimum requirements, imposed by this ordinance. At the time that the proposed right-of-way is dedicated or otherwise acquired for roadway purposes, the property owner shall be responsible for the removal of any uses constructed after May 1, 1989, which are within the transitional setback or yard that are not otherwise permitted in the setback or yard by the district regulations. The property owner shall have one (1) year from the date of right-of-way acquisition to remove any such uses.

(3) The standards of subsections 12.103(1) and 12.103(2) will not apply to any development meeting one or more of the following circumstances:

(a) Any multi-building site or multi-site project which has at least one building built or under construction, or has a valid, unexpired building permit issued for at least one building prior to May 1, 1989.

(b) Any project, which had a site plan not requiring any additional right-of-way, approved prior to May 1, 1989 either: (i) by the Planning Commission and/or Planning Staff; or (ii) under the conditional zoning district and/or special use permit zoning processes of the Zoning Ordinance. However, any change in the site plan requiring a public hearing or the creation of a new parcel of land may subject the project, for which the site plan was revised, or the newly created parcel of land to the provisions of this ordinance.

(4) An affected property owner shall have the right to appeal transitional yard or setback requirements to the City Council for variance or modification as they apply to the particular piece of property. The City Council may vary or modify these requirements upon a showing that:

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(a) The peculiar nature of the property results in practical difficulties or unnecessary hardships that impede carrying out the strict letter of the requirement;

(b) The property will not yield a reasonable return or cannot be put to reasonable use unless relief is granted; and

(c) Balancing the public interest in enforcing the setback requirements and the interest of the owner, the grant of relief is required by considerations of justice and equity. In granting relief, the City Council may impose reasonable and appropriate conditions and safeguards to protect the interest of neighboring properties.

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**Deleted:** The Board of Adjustment's decision shall be subject to review by the superior court by proceedings in the nature of certiorari all in accordance with G.S. Sec. 160A-388(e).

(5) In as much as the intent of this Section is to provide for the creation of setbacks along streets based on either the edge of or the centerline of public street right-of-way as classified by the City, it shall be applicable only to rights-of-way used for the construction of streets so classified, defined, and listed by street type in this Ordinance. In those circumstances where widening projects or other street improvements have been constructed along a street as classified and defined by this Ordinance and there are no published plans for any further widening or other street improvements that have been designed and funded for construction on either the City or NCDOT Transportation Improvement Program at the time that such construction is completed, then the transitional setback requirements will no longer apply even if the total right-of way used for such construction is less than the standard listed in paragraph (1) above. In those circumstances where widening projects or other street

improvements have been constructed along a street as classified and defined by this Ordinance but additional widening projects or other street improvements have been published and are designed and funded for construction in either the City or NCDOT Transportation Improvement Program, then the transitional setback standards of this section will apply. The appropriate transportation authority shall acquire the right-of-way needed for the additional road improvements within eighteen (18) months of the date that the specific project or improvements are included in the applicable Transportation Improvement Program. If the acquisition of the additional right-of-way is not completed within eighteen (18) months, then the additional right-of-way shall be free of any further restriction or reservation. Notwithstanding the provisions above, the City Manager may determine that the proposed right-of-way listed above exceeds that needed for street improvements and if so, may waive the need for any additional right-of-way.

Revision 1, 02-20-09  
Revision 2, 02-23-09