

<b>REQUEST</b>	Text amendment to Sections 2.201, 7.103, 9.205, 9.305, 9.406, 11.205, 12.106, and 12.108 of the Zoning Ordinance.
<b>SUMMARY OF PETITION</b>	The petition proposes to: 1) modify the height regulations in the residential districts; 2) add a new definition for "average grade"; and 3) modify the definition of "height"
<b>PETITIONER AGENT/REPRESENTATIVE</b>	Charlotte-Mecklenburg Planning Commission Charlotte-Mecklenburg Planning Department
<b>COMMUNITY MEETING</b>	Meeting is not required.

<b>ZONING COMMITTEE ACTION</b>	The Zoning Committee voted 5 to 1 to recommend <b>DENIAL</b> of this petition.
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<b>VOTE</b>	Motion/Second:	Fallon/Lipton
	Yeas:	Dodson, Fallon, Firestone, Lipton, and Rosenburgh
	Nays:	Phipps
	Absent:	Walker
	Recused:	None

**ZONING COMMITTEE DISCUSSION**

Staff summarized the text amendment. A Commissioner was concerned about the grandfathering of rezoning petitions. Staff responded that approved conditional district rezoning petitions are not affected with this change. As long as there is a note on the site plan indicating the height, they can construct to that height, no matter when construction begins.

A question was raised about what options property owners have who purchased land believing the height regulations of the Zoning Ordinance regulations would continue to apply. Staff responded that the options include rezoning to a different zoning district or seeking a variance, if a hardship exists (not an economic or financial hardship).

A Commissioner asked why the time period extension during which a building permit can be obtained when a nonconforming residential structure is damaged or destroyed is limited to residential structures. Staff responded that stakeholders were concerned about damages to residential condominium developments where multiple insurance companies would be involved with individual condominium owner claims. Stakeholders indicated that it could be difficult to have all insurance claims ready within the twelve month period in order to proceed with obtaining a building permit. This could impact the higher story condominium owners who might not be able to rebuild their unit at all. This is a concern with multiple owners in the single family and multi-family districts. Nonresidential buildings are usually covered by one insurance company, making resolution easier.

Another Commissioner asked about older buildings that might have nonconforming yards or setbacks. Can they be rebuilt in their current location? Staff responded that any nonconforming structure can be rebuilt to its former state as long as a building permit is issued within 12 months. Staff noted that once a building permit is issued, the first inspection will take place at six months. As long as progress is being made, the permit can be extended. In addition, a property owner can request an extension through the variance process.

A Commissioner asked why the UR-3 zoning district, which currently has a height limit of 60 feet, is being lowered to 40 feet, when it is in

urban areas where density is encouraged. Staff responded that only buildings in the UR-3 zoning district that are adjacent to a residential use in a single family zoning district are required to have a base height of 40 feet at the required setback, side, and rear yard lines. In all other situations, the building can have a height up to 100 feet with no restrictions.

A concern was voiced that allowing multi-family buildings adjacent to single family residential areas to have a maximum height of 100 feet is quite high. Why does the text amendment recommend a base height of 40 feet at the setback and yards for residential buildings adjacent to a residential use in a residential district with a height ratio increase at the yard lines, rather than just increasing the yards of the entire building? Staff responded that the stakeholders were a diverse group, including competing interests. The resulting text amendment is not perfect, but a consensus was reached to use the proposed method rather than just increasing the yards. This text amendment provides more opportunity to build more building on a lot than the existing regulations.

The Planning Director stated that the stakeholder group engaged many neighborhoods in the process. This amendment attempts to create contextual development in residential areas based upon what uses surround a particular piece of property. This text amendment provides consistency in how tall a building can be when adjacent to an existing residential use in a single family neighborhood. By creating a maximum height, or cap, the neighboring property owner has a certainty that no building will exceed 100 feet in height.

There were no additional questions.

#### **MINORITY OPINION**

The text amendment process has been a deliberate process. There has been extensive stakeholder input and the amendment has been vetted for over two years. The resulting text amendment is not perfect, but the process should be respected.

#### **STAFF OPINION**

Staff disagrees with the majority recommendation of the Zoning Committee and agrees with the minority opinion.

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### **FINAL STAFF ANALYSIS** (Pre-Hearing Analysis online at [www.rezoning.org](http://www.rezoning.org))

#### **PLANNING STAFF REVIEW**

- **Background**
  - City Council directed staff to examine the existing regulations that control height in residential areas after rezoning petition 2008-032 was filed by the Myers Park Neighborhood Association to rezone over 40 acres from R-22MF to R-8MF. This petition sought to reduce the allowed number of residential units from 22 units per acre to eight units per acre to be more compatible with the existing land use in the area.
  - In September of 2009, a citizen advisory group was convened to review existing standards for heights in residential districts, identify issues and concerns related to existing residential height standards, and comment on new residential height standards. Over 100 citizens participated in the citizen advisory group (CAG) process. Participants included residential property owners, neighborhood leaders, and representatives from the development community, architects, and other interested citizens.
  - Planning staff took into consideration input from CAG members, local case studies, and standards used by other cities when developing the proposed text amendment.

- **Proposed Request Details**

The text amendment contains the following provisions:

- Modifies the current definition of “height” and adds a new definition for “average grade”.
- Creates new minimum side and rear yard requirements for nonresidential (typically institutional) development to improve compatibility with residential neighborhoods:
  - Single family districts: Minimum side yards increase to 20 feet, up from five/six feet. Minimum rear yards increase to 35/40/45 feet (depending on the district), up from 20/30/35/40/45 feet.
  - Multi-family districts: Minimum side yards increase to five/ten/20 feet, up from five/ten feet. No change proposed to the rear yard requirements.
- Highlights of the modifications to the height regulations:
  - Residential buildings:
    - R-3, R-4, R-5, R-6, R-8, R-8MF, R-12MF and UR-1 zoning districts.
      - Establishes a base maximum average height:
        - 40 feet in R-3, R-4, R-8MF, R-12MF, and UR-1, measured at the required side yard line.
        - 35 feet in the R-5, R-6, and R-8, measured at the required side yard line.
      - Establishes a maximum average height at the front building line:
        - 48 feet in R-3, R-4, R-8MF, R-12MF, and UR-1.
        - 40 feet in R-5, R-6, R-8.
      - Modifies the height regulations to allow one foot of height for each additional foot in distance the portion of the building is from the required side yard line.
    - R-17MF, R-22MF, R-43 MF, UR-2, and UR-3 zoning districts.
      - Establishes a base maximum average height of 40 feet, measured at the required setback, side, and rear yard lines, when adjacent to a single family district with a residential use. In all other situations, there is no base maximum average height requirement.
      - Establishes a maximum height of 100 feet from the lowest to the highest point of the building.
      - Modifies the regulations to allow one additional foot of height for each additional two feet in distance the portion of the building is from the required setback, side, and rear yard lines located along all boundaries adjacent to a single family zoning district. In all other situations, there is no required height ratio.
    - MX-1, MX-2, and MX-3 zoning districts.
      - Single family, duplex, triplex and quadraplex residential development:
        - Same maximum height standards as R-3.
      - Multi-family residential development within the MX-1 district:
        - Same maximum height standards as R-8MF.
      - Multi-family residential development within the MX-2 and MX-3 districts:
        - Same maximum height standards as R-17MF.
    - Nonresidential buildings in R-3, R-4, R-5, R-6, R-8, R-8MF, R-12MF, R-17MF, R-22MF, and R-43MF, UR-1, UR-2, and UR-3 zoning districts.
      - Establishes a base maximum average height of 40 feet, measured at the required setback, side, and rear yard lines, when adjacent to a single family district with a residential use. In all other situations, there is no base maximum average height required.
      - Establishes a maximum height of 100 feet from the lowest point to the highest point of the building.
      - Modifies the regulations to allow one additional foot of height for each additional two feet in distance the portion of the building is from the required setback, side, and rear yard lines located along all boundaries adjacent to a single family zoning district. In all other situations, there is no required height ratio.
  - Adds height to the list of innovative development standards in the MX-1, MX-2, and MX-3 zoning districts.
  - Extends the time period from 12 months to 24 months during which a building permit can be obtained when a residential structure, that is nonconforming with respect to height, is destroyed or damaged.
  - Adds new side and rear yard requirements (15 feet each) for accessory structures that exceed 24 feet in height, when located in the single family, multi-family, urban residential and mixed use districts.
  - Modifies the general height limitations applicable to all zoning districts to 1) allow maximum development potential without adversely impacting the character of single family

- neighborhoods, and 2) to align with the new height modifications proposed in this petition.
  - Deletes the building shadow provision for high-rise buildings in all zoning districts.
  - Adds firewalls and chimneys to the list of structures that are permitted to extend above the height limit in all zoning districts.
  - **Public Plans and Policies**
    - This petition is consistent with *Center, Corridors and Wedges Growth Framework*.
  - **Staff Recommendation (Updated)**
    - Staff recommends approval of this text amendment.
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**DEPARTMENT COMMENTS** (see full department reports online)

- **Charlotte Area Transit System:** No comments received.
  - **Charlotte Department of Neighborhood & Business Services:** No issues.
  - **Charlotte Department of Transportation:** No issues.
  - **Charlotte Fire Department:** No issues.
  - **Charlotte-Mecklenburg Schools:** Not applicable.
  - **Charlotte-Mecklenburg Storm Water Services:** No issues.
  - **Mecklenburg County Land Use and Environmental Services Agency:** No issues.
  - **Mecklenburg County Parks and Recreation Department:** No comments received.
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**ENVIRONMENTALLY SENSITIVE SITE DESIGN** (see full department reports online)

- **Site Design:**
    - There is no site plan associated with this text amendment.
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**OUTSTANDING ISSUES**

- No issues.
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**Attachments Online at [www.rezoning.org](http://www.rezoning.org)**

- Application
- Pre-Hearing Staff Analysis
- Charlotte Department of Neighborhood & Business Services Review
- Charlotte Department of Transportation Review
- Charlotte Fire Department Review
- Charlotte-Mecklenburg Storm Water Services Review
- Mecklenburg County Land Use and Environmental Services Agency Review

**Planner:** Sandra Montgomery (704) 336-5722