

**Note: This petition includes text amendments that modify both the Zoning and Subdivision Ordinances.**

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<b>REQUEST</b>	Text amendments to modify the transitional setback regulations in the Zoning Ordinance and Subdivision Ordinance.
<b>SUMMARY OF PETITION</b>	<p>This petition proposes to:</p> <ol style="list-style-type: none"><li>1) provide the City Manager with the authority to reduce or eliminate the need for additional street right-of-way along thoroughfares, thus reducing or eliminating the transitional setback;</li><li>2) transfer authority to hear and decide transitional yard or setback variance requests from the Zoning Board of Adjustment to the City Council;</li><li>3) eliminate the transitional setback requirements where widening projects or other street improvements have been completed, unless specific conditions are met;</li><li>4) eliminate the transitional setback for thoroughfares along which an improvement has been completed and another project has been funded, if acquisition of right-of-way in the transitional setback has not be completed within 18 months from the date a project is included in a Transportation Improvement Plan.</li></ol>
<b>STAFF RECOMMENDATION</b>	<p>Staff recommends:</p> <ol style="list-style-type: none"><li>1) deferring indefinitely the submitted text amendments (named Part "A"). Staff believes that these amendments are overly broad and require further review.</li><li>2) approving new text changes that modify the proposed minimum right-of-way for Independence Boulevard, and as a result the transitional yards and setbacks for properties that abut Independence Boulevard (see Part "B"). The text changes found in Part "B" are consistent with preliminary recommendations in the pending draft <i>Independence Boulevard Area Plan</i>.</li></ol>
<b>Petitioner</b>	Bill Barnett, Faison
<b>Agent/Representative</b>	Walter Fields/Susan Cannon
<b>Community Meeting</b>	Meeting is not required.

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#### **PLANNING STAFF REVIEW**

- **Background**
  - The "transitional setback" is defined as the area between the existing required setback or yard line and the future required setback or yard line. The future required setback is based on the proposed minimum right-of-way line.
  - The purpose of the proposed minimum right-of-way and transitional setback is to enhance the City's ability to create high quality streets over time and ensure that homes and businesses remain in compliance with zoning requirements as street improvements occur, and are not impacted by removal of structures and/or required parking.
  - The transitional setback applies to every property, except those zoned UMUD, MUDD, UR, PED, TOD, and TS, with frontage on a thoroughfare in the City of Charlotte and its sphere of influence.
  - The transitional setback regulations have been in effect since 1989.
  - The transitional setback does not impact the area that the City or State might purchase in the future for road improvements.

Independence Boulevard, a Class “I” thoroughfare, currently has a 350-foot proposed minimum right-of-way (175 feet on each side, measured from the centerline) per the Zoning and Subdivision Ordinances.

Staff has been reviewing the right-of-way requirements for Independence Boulevard, as part of the development of the *Independence Boulevard Area Plan* which should be completed by summer.

Staff has developed a new proposed cross-section for Independence Boulevard, which would result in a proposed minimum right-of-way of 250 feet (125 feet on each side, measured from the centerline) between Briar Creek and W.T. Harris Boulevard and 280 feet (140 feet on each side, measured from the centerline) from W.T. Harris Boulevard to the City limits.

Reductions to the proposed minimum right-of-way for Independence Boulevard in the Subdivision and Zoning Ordinances would result in reductions to the transitional setback.

#### **Proposed Request Details**

The text amendments (Part “A”) propose the following modifications:

Provide the City Manager with the authority to reduce or eliminate the need for additional street right-of-way along thoroughfares, thus reducing or eliminating the transitional setback.

Transfer authority to hear and decide variances to the transitional yard or setback requirements from the Zoning Board of Adjustment to City Council.

Eliminate the right to appeal a variance to the superior court.

Propose that where widening projects or other street improvements have been completed, unless another project has been designed, funded for construction, and included in the City or State Transportation Improvement Plan, then the transitional setback requirements will no longer apply along that street.

Require the City or State Department of Transportation to acquire additional right-of-way within 18 months of the date that a project or improvements are included in the City or State Transportation Improvement Program. If the acquisition is not complete within 18 months, then the transitional setback will no longer apply

#### **Staff Recommended Changes to Text Amendments**

The staff recommended changes (Part “B”) include the following modification to the Zoning and Subdivision Ordinances:

Revise the proposed minimum right-of-way in the Zoning and Subdivision Ordinances for Independence Boulevard, and as a result the transitional yards and setbacks for properties that abut Independence Boulevard (see Part “B”). Currently, the proposed minimum right-of-way is 350 feet. The new proposed minimum transitional right-of-way along Independence Boulevard would be reduced to 280 feet (140 feet on each side, measured from the centerline) for the portion of Independence Boulevard from W.T. Harris Boulevard southeast to the City limits, and to 125 feet between Briar Creek and (125 feet on each side, measured from the centerline) W.T. Harris Boulevard.

#### **Public Plans and Policies**

Part “A”, the original text amendments, are inconsistent with adopted policies.

Part “B”, the staff recommended changes, are consistent with preliminary recommendations in the draft *Independence Boulevard Area Plan* currently in progress.

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### **PUBLIC INFRASTRUCTURE** (see full department reports online)

#### **CDOT:**

Recommends deferral of the petition (Part “A”) for the following reasons:

The transitional setback applies to every property, except those zoned UMUD, MUDD, UR, PED, TOD, and TS, with frontage on a thoroughfare in the City of Charlotte and its sphere of influence.

The transitional setback enhances the city’s ability to create high quality streets over time;

The transitional setback ensures that homes and businesses remain in compliance with zoning requirements as street improvements occur; and

CDOT would like time to evaluate the effects that any proposed ordinance changes could have on the city’s ability to implement the Urban Street Design Guidelines and the

Transportation Action Plan.

No issues with Part “B”.

**Charlotte Fire Department:** No comments received.

**CATS:** No issues.

**Connectivity:** No issues.

**Schools:** CMS does not comment on text amendments.

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#### **ENVIRONMENTALLY SENSITIVE SITE DESIGN** (see full department reports online)

**Storm Water:** No issues

**LUESA:** No issues.

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

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#### **OUTSTANDING ISSUES**

Staff has the following concerns related to the submitted text amendments (Part "A"):

1. Staff does not support the proposal to provide the City Manager with the authority to reduce or eliminate the need for additional street right-of-way along thoroughfares, thus reducing or eliminating the transitional setback. The reduction or elimination of right-of-way, on a case by case basis, could result in irregular right-of-way widths.
2. Staff does not support the transfer of authority to hear and decide transitional yard or setback variance requests (a quasi-judicial process) from the Zoning Board of Adjustment to the City Council. City Council does not currently conduct its meetings in a quasi-judicial process. A quasi-judicial process requires sworn testimony, findings of fact, no ex-parte communication, and no time limits imposed on witness testimony.
3. Staff does not support the elimination of a property owner's right to seek an appeal of a variance decision with superior court.
4. Staff does not support the provision that eliminates the transitional setback along any street where widening projects or other street improvements have been completed, unless specific design and funding conditions are met. Under this provision, the only way a transitional setback can be protected is if the City and/or State have consecutive, back-to-back street improvement projects designed, funded, and published.
5. Staff does not support the elimination of the transitional setback for thoroughfares along which an improvement has been completed and another project has been funded, if acquisition of right-of-way in the transitional setback has not be completed within 18 months from the date a project is included in a Transportation Improvement Plan. For complex projects, acquisition of needed right-of-way may not occur until after 18 months from the date the project is included in a Transportation Improvement Plan.

Staff has no issues with Part "B" modifications.

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#### **Attachments Online at [www.rezoning.org](http://www.rezoning.org)**

Application/Part "A"  
CATS Review  
CDOT Review  
LUESA Review  
Storm Water Review  
Part "B" recommended changes

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