

CITY OF CHARLOTTESVILLE

Department of Neighborhood Development Services

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July 18, 2017

TO: Charlottesville Planning Commission, Neighborhood Associations &
News Media

Please Take Notice

A Work Session of the Charlottesville Planning Commission will be held on **Tuesday July 25, 2017 at 5:00 p.m. in the NDS Conference Room (610 East Market Street)**

AGENDA

1. City Attorney Review of Zoning Ordinance
 - a. Building Height & Grade
 - b. Commercial and Mixed Use District Regulations
2. Public Comment

Discussion Materials are located: <http://www.charlottesville.org/departments-and-services/departments-h-z/neighborhood-development-services/zoning/legal-review-2017>

cc: City Council
Maurice Jones
Mike Murphy
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Planners
Stacy Pethia, Tierra Howard, Craig Brown, Lisa Robertson

Current Draft: in Article I (Interpretation), p.11: “The height of a building or structure is the distance measured from “grade” as defined in 34-1200 to the highest point on such building or structure. The highest point on a building is the level of a flat roof, the deck line of a mansard roof, or, for gable, hip or gambrel roofs, the average height level between the eaves and ridge.”

Current City Code (as proposed to be amended)

State Code (USBC) (2012 Construction Code)

34-1100(a): The term “**height**,” when applied to a building or structure shall refer to the distance measured from grade level to the highest point on such building or structures.

HEIGHT, BUILDING. The vertical distance from grade plane to the average height of the highest roof surface.

34-1200: “~~*Building height*~~” means the vertical distance measured from the level of the grade of the building footprint to the level of the highest point of the structure’s roof surface. **This distance is calculated by measuring separately the average height of each building wall, then averaging them together.** The height is measured to the level of a flat roof, to the deck line of a mansard roof, and to the average height level between the eaves and ridge for gable, hip or gambrel roofs.

34-617 and 637: The height of a building within the [WME and WMW zoning districts] shall mean the vertical distance measured from grade level to the level of the highest point of the roof of the building.

34-1200 “**Grade**” means, with reference to a building or structure: a reference plane representing the average level of the finished ground level adjoining adjacent to the exterior walls of the building. **In a case where walls are parallel to and not more than fifteen (15) feet from a sidewalk, the grade may be measured at the sidewalk.**

GRADE PLANE. A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet (1829 mm) from the building, between the building and a point 6 feet (1829 mm) from the building.

34-34-617 and 637: [within the WME and WMW zoning districts] “*Grade level*” refers to the average level of the curb at the primary street frontage.

BASEMENT. A story that is **not a story above grade plane** (see “Story above grade plane”).

34-1200: **Basement** means a portion of the building partly underground, but having more than half its clear height below the average grade of the adjoining ground.

34-1200: **Story** means that portion of a building, other than the basement, included between the surface of any floor and the surface of the floor next above it; and, if there is no floor above it, the space between the floor and the ceiling next above it.

STORY. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

STORY ABOVE GRADE PLANE. Any story having its finished floor surface entirely above grade plane, or in which the finished surface of the floor next above is: (1) More than 6 feet (1829 mm) above grade plane; or (2) More than 12 feet (3658 mm) above the finished ground level at any point.

<p>GOAL: re-word provisions that allow administrative officials (e.g., NDS Director, Zoning Administrator, PC reviewing site plans) to (i) create requirements not set forth within the ZO; (ii) modify provisions set forth within the ZO; (iii) allow certain reductions, actions, with the “approval” or “prior approval” of an administrative official, and (iv) that give administrative officials decision-making standards associated with legislative decisions (“public welfare”; “best interests of the public”; “demonstrated hardship”; promotes the “purpose or intent” of the ZO; etc.).</p>		
City Code Ref.	Summary of Existing Provisions	Recommended Text Amendment(s)—cite to Audit Document location
§34-108	<p>Authorizes the ZA to “grant a variance to building setbacks of less than one (1) foot”. Per Va. Code 15.2-2286(A)(4): “variance” should be “modification”, and procedure needs to conform to state statute requiring notice to adjacent property owners and a written decision appealable to the BZA.</p> <p>Question: should the provisions of 34-1145(a)(allowing the ZA to establish special yards/setbacks to allow a SFD to be constructed on a non-conforming lot, which by its nature is a hardship situation,) be modified so that the ZA must follow the procedure in this Va. Code requirement? <i>See Article III, Division 3.5 (General Regs), p. 41.</i></p>	<p>See Legal Audit Document: Art. II p.10 Art. I (ed.) p. 26 (proposing to allow ZA to modify building setbacks by more than 1 foot (i.e., by any amount), based on a demonstrated hardship)</p>
34-353(b)(7)	<p>Upon the determination of the NDS Director or planning commission that a reduction of a required side yard is necessary to accommodate any required off-street parking space(s), such yard may be reduced or eliminated. Delete—neither NDS Director nor PC may waive or modify side yard requirements established by ordinance. BUT NOTE: the waiver/modification is unnecessary.</p> <p>See 34- 972(a) and (c) (generally-applicable regulations establishing location of parking): for lots containing a SFD, SFA, or TFD, parking can <u>already</u> be located within any required yard (no need for a waiver/modification). In 34-972(b)(3) the ordinance says: “parking <i>shall be located in side</i> or rear yards...” but may not be located in any yard that faces a public street.</p>	<p>See Legal Audit Document: Art. III, p.9</p> <p><u>Optional addition to 34-972(b)(7) for clarification:</u> “Parking spaces may be located within a required side yard that faces a public street, when necessary to accommodate minimum on-site parking requirements.”</p>
34-519(1)	<p>Allows the NDS Director to approve a “minor change” or “minor deviation” from requirements of a PUD. Delete—the NDS Director may not lawfully waive a requirement established by City Council within an approved PUD Plan, or approved proffers, even if “minor”. A PUD amendment procedure is</p>	<p>See Legal Audit Document: Art. III (p. 3 of PUD provisions). <u>Optional alternative for consideration:</u> amend the PUD ordinance to specify that the PUD Development Plan need only</p>

	available.	provide the “general or approximate location” of specific items [buildings, lot lines, streets and utilities (consistent with Va. Code 15.2-2223); etc. This will allow some leeway for some adjustments within the final design [site plan] stage.
34-864(a)	The NDS Director “may require” that landscaping shown on an approved landscaping plan be either installed or sufficiently bonded to guarantee installation, prior to the issuance of a certificate of occupancy. Reword—this provision is written in a way that allows the director to establish a requirement case by case (legislative decision).	See Legal Audit Document: Art. IV (p. 3)
34-866(c)	With the approval of the NDS Director, trees of exceptional size, canopy, specimen type, age or historical value “may be credited” as up to four (4) trees of the same function group, for purposes of satisfying landscaping and screening requirements (“tree preservation bonus”). Reword—this provision is written in a way that allows the director to establish a requirement case by case (legislative decision).	See Legal Audit Document: Art. IV (p. 3)
34-866(d)	any As a condition of any requested approval, or in conjunction with a requirement imposed pursuant to paragraph (b), above, the NDS Director may require the developer to include on the erosion and sediment control plan for the development measures to protect existing trees. Reword—this provision is written in a way that allows the director to establish a requirement case by case (legislative decision); also, this is not a type of decision for which an administrative official may impose conditions.	See Legal Audit Document: Art. IV (p. 3), and edits from Questions/Comments
34-869(a)(3)	The NDS Director or PC may waive, in whole or in part, the Tree Cover Requirements. Delete: this provision essentially allows the NDS Director (or PC on an appeal) to make a legislative decision changing requirements that Council has put into the ordinance, which is inconsistent with state supreme court rulings. Although the provision attempts to set standards to guide the decision, the “standards” involve legislative judgments (choices between competing public interests and uses; “hardship” standard associated with a variance, etc.) which are typically associated with legislative decisions.	See Legal Audit Document: Art. IV (p. 5)
34-870(e)	As an alternative to the requirements of subsection (d), above [requiring streetscape trees to be planted on private property] streetscape trees may be planted in the city’s existing or proposed rights of way with the approval of the NDS Director. Such approval shall specify placement and type(s) of trees to be planted, and a financial guarantee for maintenance and replacement for a period of 2 years after planting. Reword: eliminate “with the approval of the director” this leaves too much discretion with the NDS director; language = legislative	See Legal Audit Document: Art. IV (p. 7)

	approval.	
34-871(e)	<p>With the approval of the director, an opaque wall or fence may be utilized for, or as part of, a required screen. Where allowed, such wall or fence, including any gate shall be at least 6 feet tall, or an alternate height deemed necessary by the NDS Director to protect required site distances along a public ROW.</p> <p>Reword: eliminate “with the approval of the director” this leaves too much discretion with the NDS director and is language indicative of a legislative approval.</p>	<p>See Legal Audit Document: Art. IV (p. 9), and edits from Questions/Comments</p>
34-874(a)	<p>Each parking space within a parking lot must be provided with a 6-inch high concrete chock securely fastened in place, if deemed necessary by the planning commission. Reword: eliminate “if deemed necessary” how does PC decide when they’re “necessary”—too discretionary, language indicative of a legislative approval.</p>	<p>See Legal Audit Document: Art. IV (p. 9), and see Questions/Comments</p>
34-896(b)	<p>Each entrance onto any public road for vehicular traffic to and from a development shall be subject to approval of the director or commission....For a development of 50 or more dwelling units, reasonably direct vehicular access shall be provided from all residential units to 2 public street connections. For other residential developments the PC may require 2 points of access to a public street where such access is deemed warranted due to the character of the residents of such development, including but not limited to: the elderly, handicapped and developmentally disabled. Delete. This section is problematic in that it provides too much discretion to the PC without reference to traffic engineering or safety standards; it calls for the PC to make decisions based on age or disability, without reference to standards or specifications.</p>	<p>See Legal Audit Document: Art. IV (p. 15), and see Questions/Comments</p> <p><i>[note: SDM public safety standards incorporate ADA standards applicable to new public streets and sidewalks]</i></p>
34-972(g)	<p>The location and design of entrance and exit driveways shall be approved by the NDS Director to ensure a safe and convenient means of ingress and egress using current access management principles.</p> <p>Delete: eliminate “shall be approved by the NDS Director”, allows a discretionary [legislative] judgment call without reference to standards or specifications; also, inconsistent with the language of 34-896(b)(lot access requires compliance with SDM standards).</p>	<p>See Legal Audit Document: Art. III, Division 3.5 (Generally applicable zoning district regulations (p. 5))</p>
34-974(a) and (b) Cooperative parking	<p>With the approval of the NDS director, required off-street parking may be provided cooperatively for 2 or more uses of the same or different types, provided that arrangements are made (a long-term lease, recorded easement, etc.) such as will assure the availability of such space for the duration of the use to be served, and provided further that, unless reduced by the NDS Director as set forth below the number of spaces provided shall not be less than the sum of the individual components. (b) The combined parking requirements for 2 or more uses participating in a cooperative parking arrangement may be partially reduced by the NDS Director, provided that the uses will not conflict in time of operation or</p>	<p>See Legal Audit Document: Art. III, Division 3.5 (Generally applicable zoning district regulations (p. 6), with edits – see Questions/Comments (5-03-17))</p>

	need for the parking spaces and provided that the parking needs of each use at a given time of day may be adequately met through the parking arrangements. Reword: delete “with the approval of the NDS Director” and “may be” reduced by the NDS Director.	
34-975(c)	All off-street parking spaces shall be provided with safe and convenient access to a street, to an alley, or, with the approval of the NDS Director , to an easement connected to a public street or alley. Reword: delete “with approval of the NDS director”	See Legal Audit Document: Art. III, Division 3.5 (Generally applicable zoning district regulations (p. 6)
34-975(e)	(1) One way paths of ingress and egress are prohibited, except that the PC or NDS Director may approve such paths when necessitated by the peculiar character of the proposed use or site . When approved the PC or NDS Director shall require installation and maintenance of control devices... as may be reasonably necessary to provide direction and control of vehicular movements; and (2) one-way paths of ingress and egress shall be allowed for SFA, SFD and TFDs. Reword: delete “PC or NDS Director may approve”; the red highlighted provisions contain insufficient guidance for administrative interpretation/ decisions.	See Legal Audit Document: Art. III, Division 3.5 (Generally applicable zoning district regulations (p. 7)
GOAL: amend the ZO to specify an approach to measuring the height of a building that will mirror the USBC’s provisions, so		
34-1100(a) 34-1200 (definition of building height)	Proposed: The height of a building or structure is the distance measured from “grade”, as defined in §34-1200 , to the highest point on such building or structure. The highest point on a building is the level of a flat roof, the deck line of a mansard roof, or, for gable, hip or gambrel roofs, the average height level between the eaves and ridge. (deleted words: <i>“this distance is calculated by measuring separately the average height of each building wall, then averaging them together”</i>)	See Art. I (clean) p. 11 (for deleted provisions see Art. III, Division 3.5 (General Regs), p. 26; and see Art. V (Definitions), p.2
34-1200	Proposed: GRADE means, with reference to a building, a reference plane representing the average of the finished ground level adjoining a building at the exterior walls of the building, or adjoining a structure at its base . In a case where a building’s walls are parallel to and not more than fifteen (15) feet from a public sidewalk, the grade may be measured at the sidewalk.	See Art. V. Definitions, p. 5

GOAL: amend (or delete) mixed-use development provisions that cannot be effectively implemented as written.		
34-562 34-583(a) 34-642(a) 34-744 34-746(d) 34-766(d)	<p>Courtyards or plazas are required to be provided in all developments that cover an entire city block. Problem: neither the ZO nor the SO provide any definition of what’s a city block.</p> <p>It is believed that the courtyards/ plaza provisions were included in the ZO beginning in 2003, to provide one mechanism for preventing massive buildings without open areas/ transitions.</p>	<p>Discussion draft: see Art. III, Division 3.2 (Mixed Use Districts), p. 1. (“When the gross area of a development site exceeds X square feet, the development site shall be deemed to constitute an entire city block.”).</p>
34-773	<p>In the Corner Mixed Use Corridor District: residential density is generally limited to 21 DUA, but for a mixed use building or development residential density of up to 43 DUA is allowed. Problem: there is no definition of “mixed use” that specifies how substantial the non-residential component of the development must be in order to qualify for the density bonus.</p>	<p>Discussion draft: see Art. III, Division 3.2 (Mixed Use Districts), p. 1. For discussion purposes, it’s suggested that, whenever there’s no other definition of “mixed use”, a default standard should be provided: no residential or non-residential use may occupy less than 12.5% of the GFA of a building or development.</p>
34-457(b)(5)	<p>Within the Industrial Corridor (commercial district) the maximum permitted building height is generally 4 stories; however, up to 6 stories of height are allowed by SUP with an SUP. Problem, there is no definition of “mixed use” that specifies how substantial the residential or non-residential component of the development must be in order to qualify for an SUP to obtain 6 stories.</p>	<p>Discussion draft: see Art. III, Division 3.2 (Mixed Use Districts), p. 1—same comment as above.</p> <p>Alternative: allow additional height only by SUP, regardless of whether a building contains mixed uses</p>
34-577(2)	<p>Downtown Extended Mixed Use Corridor District: generally, the max. permitted building height is 50 feet; however, <i>double</i> that height is allowed <i>by right</i> for a mixed use building. Problem: there is no definition of “mixed use”.</p>	<p>Discussion draft: see Art. III, Division 3.2 (Mixed Use Districts), p. 1—same comment as above.</p> <p>Alternative: allow additional height only by SUP, regardless of whether a building contains mixed uses</p>
34-580 34-659 34-744	<p>Downtown Extended Mixed Use Corridor District: generally, “multifamily” development is subject to a minimum density of 21 DUA.</p> <ul style="list-style-type: none"> ➤ Technically, a “mixed use” building = a “multifamily dwelling”. Clarify that a MU building is subject to the 21 DUA minimum. <p>Cherry Avenue Mixed Use Corridor District: “multifamily dwellings” are restricted to 21 DUA, but any MU “project” that includes residential uses may have a density of up to 43 DUA. A MU building = a multifamily dwelling/ development—does 21 DUA or 43 DUA apply to a mixed use building?</p> <p>Water Street Mixed Use Corridor District: the general regs within this district say that max. density is 43 DUA/ 240 with SUP. <i>Minimum</i> density required for multifamily developments is 21 DUA. A MU building = a multifamily dwelling/</p>	<p>Discussion draft: see Art. III, Division 3.2 (Mixed Use Districts), p. 4, p.11, 21</p> <p>(recommend treating <i>all</i> residential development the same for purposes of density requirements, unless/ until a definition of “MU” desired in DE, CH and WS can be developed. This means, in DE and WS: 21 DUA, min/ 43 DUA max, and allowing 240 DUA by SUP for any development)</p> <p>In CH, this would mean 7 DUA for SFDs, 21 DUA for developments containing ONLY TH or MFD</p>

	development. Verify that MU buildings are subject to the minimum required [residential] density.	(100% residential/ no commercial uses), and 43 DUA for everything else.
34-597	Downtown North Mixed Use Corridor District —there is no maximum building height within this district, only a maximum streetwall height . Is that intentional?	Discussion draft: see Art. III, Division 3.2 (Mixed Use Districts), p. 4
34-620 (WMW) 34-640 (WME)	States that no “parking garage” may front on a primary street. Generally, the term “parking garage” is used in the ZO to refer to a commercial parking garage operation—not to accessory parking. Is it intended that no parking <i>uses</i> may be located on the ground floor of a building, adjacent to a primary street?	Discussion draft: see Art. III, Division 3.2 (Mixed Use Districts), pp. 17, 19
34-583 34-603 34-622 34-642 34-662	When 20+ parking spaces are required for a development, there is a limitation that says that not more than 50% of those spaces can be within a surface lot. In some places the lot is referred to as “ surface parking ” and in other places the lot is referred to as “ surface parking open to the sky ”. Is there an intended distinction between these two terms, or can we pick one or the other and use it consistently?	
GOAL: UPDATE THE USE MATRIX FOR THE RESIDENTIAL ZONING DISTRICTS		
34-420	Eliminate all uses that are NOT permitted in ANY of the residential zoning districts	
34-420	Delete references to Building Types and Density of Development; move both into zoning text provisions and integrate with provisions from 34-1123 (which specify minimum lot sizes for particular building types)	
34-420	Move occupancy restrictions (3 or 4 unrelated persons) into text	
34-420	Why don’t we allow any veterinary clinics (WITHOUT outside pens/ runs) in any residential zoning districts?	