

FILE NUMBER: DCA223-007(AG) **DATE INITIATED:** August 15, 2023

TOPIC: Amendment to the Dallas Development Code to consider clarifications related to height in Neighborhood Stabilization Overlay regulations.

COUNCIL DISTRICT: All

CENSUS TRACTS: All

PROPOSAL: Consideration of amending Chapter 51A of the Dallas Development Code, with consideration to be given to amending Section 51A-4.507, "Neighborhood Stabilization Overlay" and related sections including but not limited to amending regulations related to height plane definition and how height is measured.

SUMMARY: The proposed code amendments are intended to provide clarity to the Neighborhood Stabilization Overlay ordinance as it relates to height, height plane, and allowable height exceptions, to better reflect the intent and purpose of the overlay.

STAFF RECOMMENDATION: Approval of staff's recommended amendments, as briefed.

ZOAC RECOMMENDATION: Approval of staff's recommended amendments, subject to a revised height plane diagram.

CODE AMENDMENTS WEBPAGE:

<https://dallascityhall.com/departments/pnv/Pages/Code-Amendments.aspx>

BACKGROUND INFORMATION:

- On November 9, 2005, the Dallas City Council adopted Ordinance No. 26161 which established the Neighborhood Stabilization Overlay (NSO) for single family neighborhoods.
- Since establishing the ordinance, thirteen (13) neighborhoods have adopted overlays, 8 of which include height regulations more restrictive than allowed by the base zoning district.
- Over the past couple of years, several examples have been brought to the City’s attention, primarily in the La Bajada neighborhood, where approved development did not appear to align with NSO intent and regulations, including a Board of Adjustment variance to the NSO height regulations that was heard on July 18, 2023 and then on August 15, 2023, at which meeting the Board of Adjustment approved the variance.
- This code amendment is being initiated by Planning and Urban Design (P+UD) staff to provide clarity to a section of the code that has resulted in both staff and community confusion about how height is measured and applied in Neighborhood Conservation Overlays.
- On September 19, 2023, the Zoning Ordinance Advisory Committee was briefed and recommended the proposed amendment move forward to CPC, subject to a revised height plane diagram.

STAFF ANALYSIS:

The proposed amendment is intended to provide clarity to the NSO ordinance as it relates to the definition of how height is measured and how it is applied. The intent of the NSO is to “preserve single family neighborhoods by imposing neighborhood-specific yard, lot, and space regulations that reflect the existing character of the neighborhood. The neighborhood stabilization overlay does not prevent construction of new single family structures or the renovation, remodeling, repair or expansion of existing single family structures, but, rather, ensures that new single family structures are compatible with existing single family structures.” An NSO may regulate front yard setback; side yard setback; garage location, placement and connection; and height, if a petition in support of the overlay is signed by the owners of 60 percent or more of the properties within the overlay boundaries.

In recent months, the wording of the NSO ordinance related to height has come under scrutiny from some residents and staff due to the height variance at the Board of Adjustment as well as citizen complaints about new construction in the La Bajada

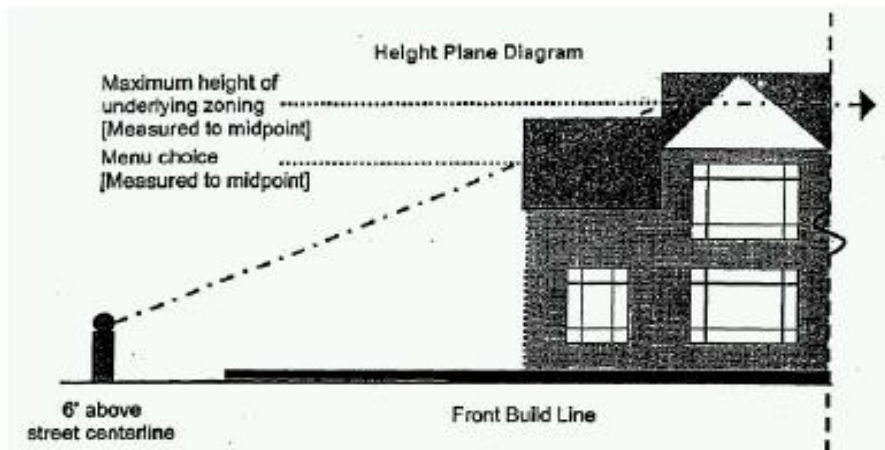
neighborhood. Staff reviewed the ordinance and recommends a comprehensive update to the almost 20-year old regulations to better respond to current needs in established neighborhoods. However, this could take up to a year, working with the community and bringing it through the public hearing process. In the interim, the proposed shorter-term clarifying amendments would address some of the immediate issues related to height that have been discovered in the past few months.

Issue 1: From where height is measured

In NSOs, height is measured by utilizing a Height Plane, which the ordinance defines as “a plane projecting upward and toward the subject lot from a point six feet above grade at the center line of the street adjacent to the front property line, and extending to the intersection of a vertical plane from the front **building line** with the maximum height established by the neighborhood stabilization overlay and continuing at the same angle to the maximum height of the underlying zoning.”

The diagram below (Diagram 1) is included in the ordinance to illustrate the height plane requirements.

Diagram 1: Height Plane Illustration

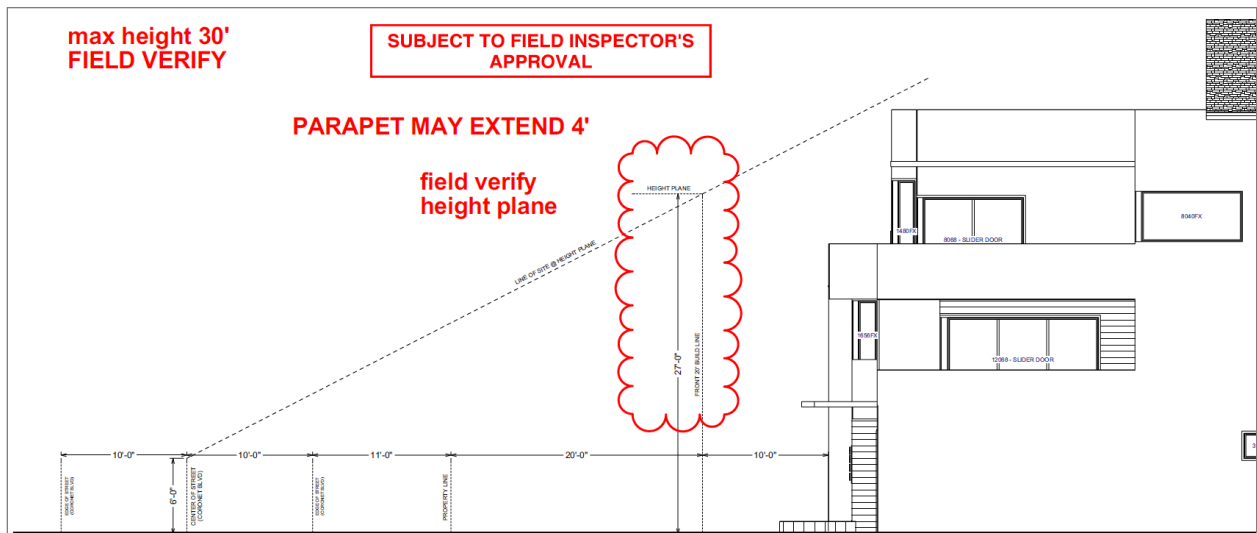


Apart from this being a challenging way in general to address height, the immediate issue for the subject code amendment is to clarify at what point the vertical plane is established, which reflects the maximum height set by the individual NSO. Although the NSO ordinance says the “front building line” in the NSO text, the NSO height plane illustration says, “Front Build Line”, which creates some confusion because of the inconsistent use of terms.

The Dallas Development Code says, “BUILDING LINE means a line marking the minimum distance a building may be erected from a street, alley, or lot line. (Also called the ‘setback line.’)” The definition of building line has been the standard interpretation since the text controls over illustrations but since the intent of the height plane provision was to create scaled-down front facades and to push additional structure height to the rear of the lot, the definition of building line does not produce that effect when a building is erected further than the minimum required front yard setback. For example, if the minimum front setback is 20 feet, then the front building line is 20 feet, regardless of where the structure is placed.

To date, the building line and placement of the front building facade have largely been one in the same--- most structures are placed at the minimum front setback line. However, as a result of several complaints from the La Bajada neighborhood about perceived violations to their NSO height restrictions, it came to staff’s attention that if a structure is pushed back far enough from the front building line, it can be moved out of the height plane completely and not have to comply with the NSO requirements. The image below (Diagram 2) illustrates how this may happen.

Diagram 2: Height Plane Illustration (2)



In Diagram 2, the dashed vertical line to the right of the 27-foot measurement is the front building line, or the minimum front setback. The structure is set back 10 feet behind the front building line, therefore moving it out of the height plane. Had the building been placed at the front building line, the highest point of the structure would not have met this individual NSO’s height restriction. As the code is currently written and interpreted, the project was found in compliance.

Given the high barrier to entry to have an additional height restriction added to the base zoning in a neighborhood, the below proposed minor adjustment to the height plane definition was presented to ZOAC on September 19 to clarify that the vertical plane is measured from where the front façade of the structure is placed on the site, making it more difficult to push the building, at least entirely, out of the NSO height plane measurement. In short, the amendment would set the front façade of the building as the vertical measurement, not the minimum front setback.

Staff Recommendation at ZOAC:

The proposed amendment to Section 51A-4.507(b)(4) Height Plane, was presented to ZOAC on September 19:

HEIGHT PLANE means a plane projecting upward and toward the subject lot from a point six feet above grade at the center line of the street adjacent to the front property line, and extending to the intersection of a vertical plane from the front building facade line ~~line~~ with the maximum height established by the neighborhood stabilization overlay and continuing at the same angle to the maximum height of the underlying zoning.

During the ZOAC meeting, members expressed interest and support for adding a building facade definition to staff’s proposed amendment, as described in their motion. As staff worked on including that language, further clarification was also found to be needed because all existing NSOs with a defined height provision specify that it is measured “at the front building line”. A list of existing NSOs and their height restriction is listed below.

NSO 1: no NSO height provision	NSO 8: height is 24 feet at front building line
NSO 2: height is 20 feet at front building line	NSO 9: height is 24 feet at front building line
NSO 3: height is 25 feet at front building line	NSO 10: NSO height provision
NSO 4: height is 22 feet at front building line	NSO 11: height is 20 feet at front building line
NSO 5: no NSO height provision	NSO 12: NSO height provision
NSO 6: height is 24 feet at front building line	NSO 13: height is 27 feet at front building line
NSO 7: no NSO height provision	

Updated Staff Recommendation:

To address the request by ZOAC and the additional clarification needed for existing NSOs that include a height provision, staff recommends an updated proposed amendment. Since the proposed new language (to follow in blue and underlined) of the definition of

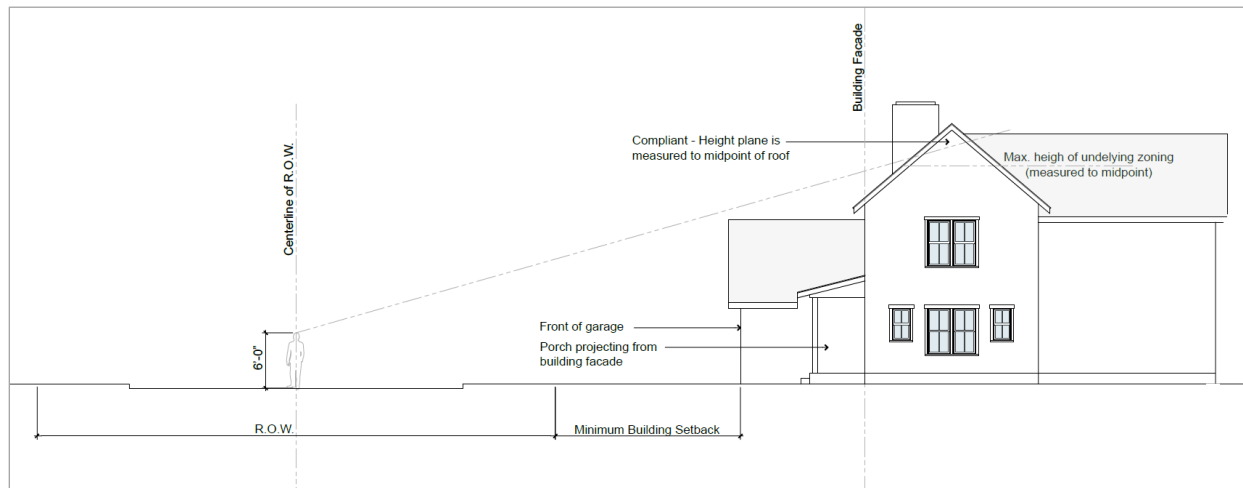
Height Plane was not presented at the ZOAC meeting, it is shown as a separate staff recommendation within the ordinance at the end of this report.

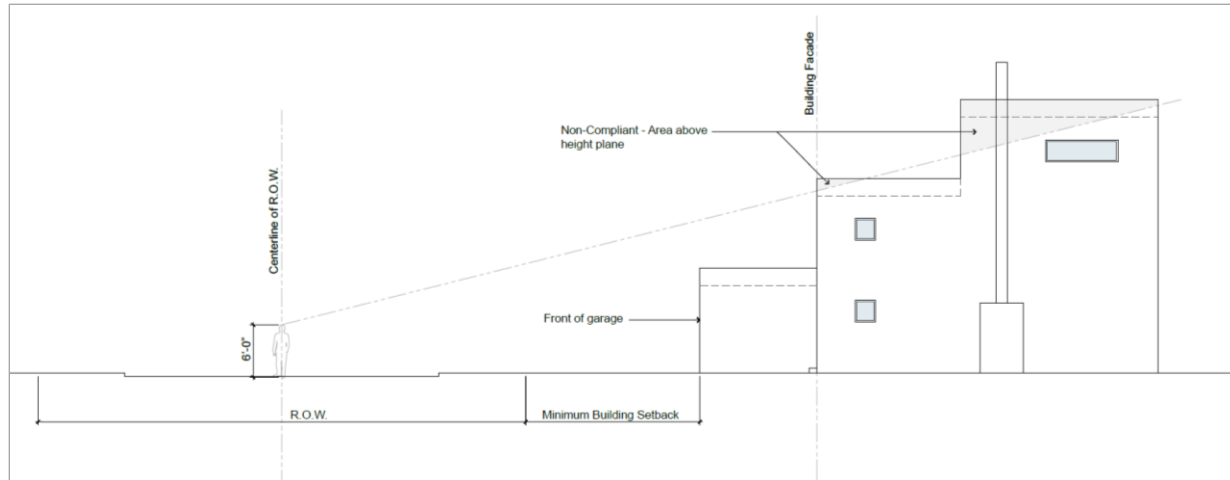
The updated proposed staff amendment to Section 51A-4.507(b)(4) Height Plane, is as follows:

HEIGHT PLANE means a plane projecting upward and toward the subject lot from a point six feet above grade at the center line of the street adjacent to the front property line, and extending to the intersection of a vertical plane from the front building ~~line~~ facade line with the maximum height established by the neighborhood stabilization overlay and continuing at the same angle to the maximum height of the underlying zoning. For purposes of this subparagraph, BUILDING FACADE means the front-facing exterior wall or walls of the first floor of the principal structure on a lot, and excludes the building facade of the portion of the principal structure designed or used as a parking structure or a projecting porch. For purposes of establishing the vertical plane in NSOs adopted prior to [date of this ordinance], the term “building line” means “building facade”.

To more clearly represent the proposed amendments to the Height Plane, the following illustrative diagrams, showing two different roof types, are recommended for inclusion in the ordinance and to replace the existing Height Plane Illustration currently found in the code.

Proposed Amended Diagram A:



Proposed Amended Diagram B:**Issue 2: Exceptions**

When the NSO ordinance was adopted in 2005, nearly 20 years ago, certain building designs, and their popularity, were not anticipated. Specifically, the three- and four-story flat roof homes, many with elevators, currently being built throughout Dallas were not commonplace in 2005, at least in the established neighborhoods contemplating a Neighborhood Stabilization Overlay. As such, some of the default sections applicable to the citywide Dallas Development Code were carried forward to application in the NSOs. Specifically, the NSO allows for the same exceptions to height as the citywide development code.

Section 51A-4.507(e)(5)(C) of the NSO states:

If the district regulates height, single family structures may not be built to heights that exceed the height plane, except structures listed in Section 51A-4.408(a)(2). Height is measured from grade to the midpoint between the lowest eaves and the highest ridge of the structure. See Paragraph 51A- 2.102(47), "Height."

Some of the structures included in Section 51A-4.408(a)(2) are mechanical rooms and elevator penthouses, which may project a maximum of 12 feet above the maximum structure height, and parapet wells, which may be built up to 4 feet above the maximum structure height. These projects often go hand-in-hand with the flat roof houses being built today. In neighborhoods where the median building height is often under 20 feet,

these projections, in addition to the higher heights of a flat roof home, can have a significant impact on the feel and context of an established neighborhood.

To better reflect the original intent of the Neighborhood Stabilization Overlay for established neighborhoods seeking to maintain a certain level of compatibility with existing structures, staff proposes striking the exception language in Section 51A-4.507(e)(5)(C) as follows:

If the district regulates height, single family structures, including structures listed in Section 51A-4.4.08(a)(2) but excluding chimneys, may not be built to heights that exceed the height plane~~], except structures listed in Section 51A-4.408(a)(2)].~~ Height is measured from grade to the midpoint between the lowest eaves and the highest ridge of the structure. See Paragraph 51A- 2.102(47), "Height."

As stated previously, this code amendment would address some of the immediate issues related to height that have surfaced over the past year. A more comprehensive review and potential amendments to the NSO ordinance will begin in the next fiscal year.

ZOAC Minutes
September 19, 2023

DISCUSSION:

- (1) **DCA223-007** Consideration of amending Chapter 51A of the Dallas Development Code, with consideration to be given to amending Section 51A-4.507, “Neighborhood Stabilization Overlay” and related sections including but not limited to amending regulations related to height plane definition and how height is measured.
Andrea Gilles

Ms. Gilles presented, one speaker spoke, and the item was opened for discussion and questions from ZOAC members. Ms. Gilles and Ms. May provided clarification as needed. Chair Hampton led the discussion, and the committee concluded with the following motion.

Speakers: Ronnie Mestas, 3606 N. Winnetka Ave., Dallas, TX 75212

MOTION #1

Motion to approve staff’s recommended amendments, as briefed and to update the height plane diagram to illustrate how height plane is measured with multiple facades.

Motion: Ann Bagley
2nd: Larry Hall

Result: Passed: 7-0
For: Bagley, Behring, Hall, Hampton, MacGregor Popken, and Rieves
Against: None
Absent: Blair

ZOAC RECOMMENDED AMENDMENTS:

Note: Underlines and double underlines indicate words to be added and ~~strikeouts~~ indicate words to be deleted.

SEC. 51A-4.507. NEIGHBORHOOD STABILIZATION OVERLAY.

(a) Findings and purpose.

(1) The city council finds that the construction of new single family structures that are incompatible with existing single family structures within certain established neighborhoods is detrimental to the character, stability, and livability of that neighborhood and the city as a whole.

(2) The neighborhood stabilization overlay is intended to preserve single family neighborhoods by imposing neighborhood-specific yard, lot, and space regulations that reflect the existing character of the neighborhood. The neighborhood stabilization overlay does not prevent construction of new single family structures or the renovation, remodeling, repair or expansion of existing single family structures, but, rather, ensures that new single family structures are compatible with existing single family structures.

(3) The yard, lot, and space regulations of the neighborhood stabilization overlay are limited to facilitate creation and enforcement of the regulations.

(4) Neighborhood stabilization overlay districts are distinguished from historic overlay districts, which preserve historic residential or commercial places; and from conservation districts, which conserve a residential or commercial area's distinctive atmosphere or character by protecting or enhancing its significant architectural or cultural attributes.

(b) Definitions. In this section:

(1) BLOCKFACE means the linear distance of lots along one side of a street between the two nearest intersecting streets. If a street dead-ends, the terminus of the dead-end will be treated as an intersecting street.

(2) CORNER SIDE YARD is a side yard abutting a street.

(3) DISTRICT means a neighborhood stabilization overlay district.

ZOAC recommended amendments:

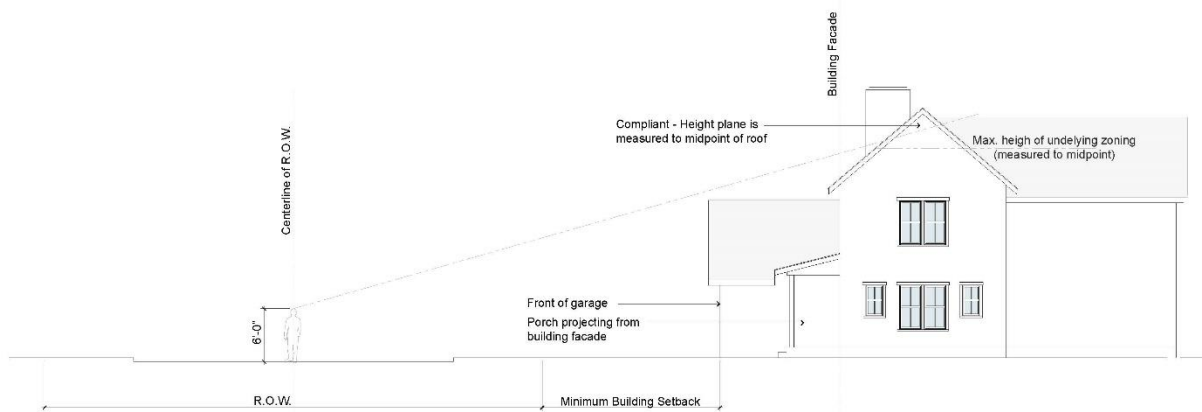
(4) HEIGHT PLANE means a plane projecting upward and toward the subject lot from a point six feet above grade at the center line of the street adjacent to the front property line, and extending to the intersection of a vertical plane from the front building facade line with the maximum height established by the neighborhood stabilization overlay and continuing at the same angle to the maximum height of the underlying zoning. The height plane is illustrated below.

Staff recommended amendments:

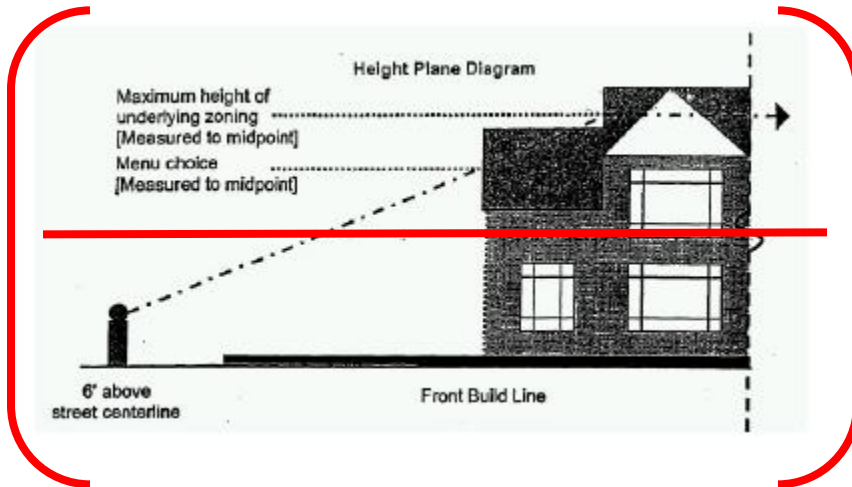
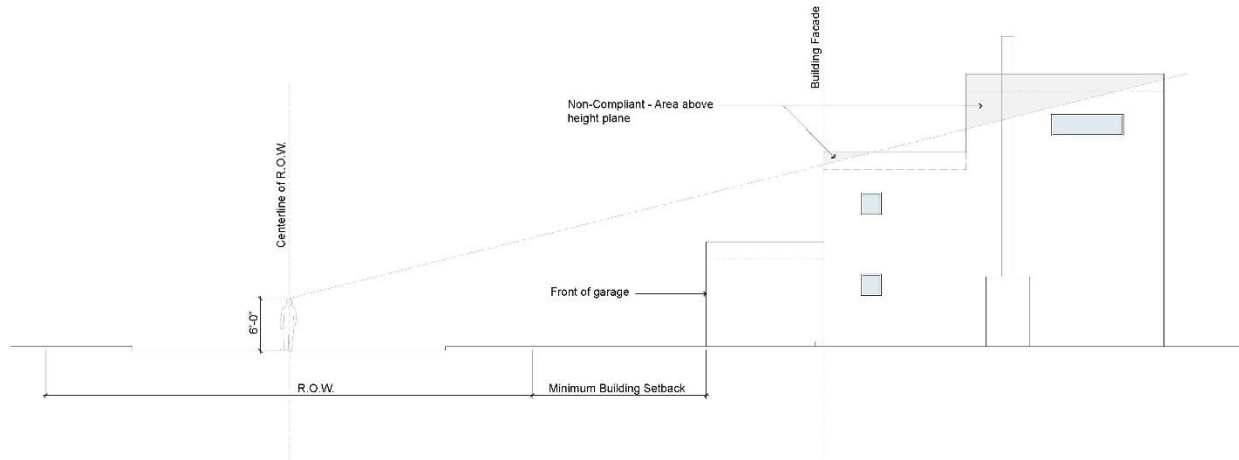
(4) HEIGHT PLANE means a plane projecting upward and toward the subject lot from a point six feet above grade at the center line of the street adjacent to the front property line, and extending to the intersection of a vertical plane from the front building facade line with the maximum height established by the neighborhood stabilization overlay and continuing at the same angle to the maximum height of the underlying zoning. The height plane is illustrated below. For purposes of this subparagraph, BUILDING FACADE means the front-facing exterior wall or walls of the first floor of the principal structure on a lot, and excludes the building facade of the portion of the principal structure designed or used as a parking structure or a projecting porch. For purposes of interpreting the vertical plane in NSOs adopted prior to [date of this ordinance], the term “building line” means “building facade”.

(5) INTERIOR SIDE YARD is a side yard not abutting a street.

Height Plane Diagram A



Height Plane Diagram B



(6) MEDIAN means the middle number in a set of numbers where one-half of the numbers are less than the median number and one-half of the numbers are greater than the median number. For example, 4 is the median number of 1, 3, 4, 8, and 9. If the set of numbers has an even number of numbers, then the median is the average of the two middle numbers. For example, if the set of numbers is 1, 3, 4, 6, 8, and 9, then the median is the average of 4 and 6, or 5.

(7) NEIGHBORHOOD COMMITTEE means the owners of at least 10 properties within a proposed district.

(8) SINGLE FAMILY STRUCTURE means a main structure designed for a single family use, without regard to whether the structure is actually used for a single family use. For example, a house containing a child care facility is a single family structure, but an institutional building, such as a church or school, converted to a single family use is not.

(c) Petition, initiation, and process.

(1) Except as provided in this subsection, the procedures for zoning amendments contained in Section 51A-4.701, "Zoning Amendments," apply.

(2) A neighborhood stabilization overlay may only be placed on an area that is zoned as a single family residential district and developed primarily with single family structures. A neighborhood stabilization overlay may not be placed on a conservation district or a neighborhood with a historic overlay. A neighborhood stabilization overlay may be placed on an established neighborhood even though it contains vacant lots. A neighborhood stabilization overlay may not be placed on a new subdivision being developed on a tract of land.

(3) A district must contain at least 50 single family structures in a compact, contiguous area, or be an original subdivision if the subdivision contains fewer than 50 single family structures. Boundary lines should be drawn to include blockfaces on both sides of a street, and to the logical edges of the area or subdivision, as indicated by a creek, street, subdivision line, utility easement, zoning boundary line, or other boundary. Boundary lines that split blockfaces in two should be avoided. The minimum area of a subdistrict within a district is one blockface.

(4) The neighborhood committee may request a petition form by submitting a request to the department on a form furnished by the department. The request must include the boundaries of the proposed district. The boundaries of the proposed district must comply with the requirements of this section.

(5) As soon as possible after the department provides the neighborhood committee with a petition form, the department shall conduct a neighborhood meeting. The department shall give notice of the neighborhood meeting to all property owners within the proposed district as evidenced by the last approved city tax roll at least 10 days prior to the neighborhood meeting.

(6) The petition must be on a form furnished by the department. The petition form must include a map of the boundaries of the proposed district, a list of the proposed regulations, the name and address of all property owners within the proposed district, and

a statement that by signing the petition the signers are indicating their support of the district.

(7) The petition must be submitted with the following:

(A) The dated signatures of property owners within the proposed district in support of the proposed district.

(i) For a proposed district with 50 or fewer single family structures, the signatures on the petition must be dated within three months following the date of the neighborhood meeting.

(ii) For a proposed district with more than 50 single family structures, the signatures on the petition must be dated within six months following the date of the neighborhood meeting.

(B) The application fee, if applicable.

(i) If a petition is signed by more than 50 percent but less than 75 percent of the lots within the proposed district, the application fee must be paid.

(ii) If a petition is signed by 75 percent or more of the lots within the proposed district, the application fee is waived.

(iii) If the proposed district is authorized pursuant to Section 51A-4.701(a)(1), the application fee is waived.

(C) A map showing the boundaries of the proposed district.

(D) A list of any neighborhood associations that represent the interests of property owners within the proposed district.

(E) A list of the names and addresses of the neighborhood committee members.

(F) Any other information the director determines is necessary.

(8) A public hearing to create a district is initiated by submission of a complete petition or by authorization pursuant to Section 51A-4.701(a)(1).

(9) For purposes of Section 51A-4.701, "Zoning Amendments," once a complete petition has been submitted to the director, the neighborhood stabilization overlay shall be treated as a city plan commission authorized public hearing. If the district is initiated by petition, the notice of authorization contained in Section 51A-4.701(a)(1) is not required.

(10) Along with any other required notice, at least 10 days prior to consideration by the city plan commission, the director shall mail a draft of the proposed neighborhood stabilization overlay ordinance and a reply form to all owners of real property within the area of notification. The reply form must allow the recipient to indicate support or opposition to the proposed neighborhood stabilization overlay and give written comments. The director shall report to the city plan commission and the city council the percentage of replies in favor and in opposition, and summarize any comments.

(e) Neighborhood stabilization overlay.

(1) In general.

(A) A neighborhood stabilization overlay is not required to specify standards for each category of yard, lot, and space regulation in this subsection, but if it does, the regulations must be selected from the options described in this subsection.

(B) The yard, lot, and space regulations of the neighborhood stabilization overlay must reflect the existing conditions within the neighborhood.

(C) Except as provided in the neighborhood stabilization overlay, the yard, lot, and space regulations of the underlying zoning remain in effect.

(D) The provisions of Section 51A-4.704(c), regarding renovation, remodeling, repair, rebuilding, or enlargement of nonconforming structures, remain in effect.

(E) The yard, lot, and space regulations of the neighborhood stabilization overlay apply only to single family structures.

(F) The yard, lot, and space regulations of the neighborhood stabilization overlay must be read together with the yard, lot, and space regulations in Division 51A-4.400. In the event of a conflict between the neighborhood stabilization overlay and Division 51A-4.400, the neighborhood stabilization overlay controls.

(2) Front yard setback. The minimum front yard setback must be within the range between the setback of the underlying zoning and the median front yard setback of single family structures within the district. This range may allow for a front yard setback that is greater or lesser than the front yard setback of the underlying zoning. For example, if the minimum front yard setback of the underlying zoning is 25 feet and the median front yard setback of single family structures within the district is 40 feet, the minimum front yard setback selected must be between 25 feet and 40 feet.

(3) Corner side yard setback. The minimum corner side yard setback must be within the range between the setback of the underlying zoning and the median corner side yard setback of single family structures within the district. This range may allow for a corner side yard setback that is greater or lesser than the corner side yard setback of the underlying zoning. For example, if the minimum corner side yard setback of the underlying zoning is five feet and the median corner side yard setback of single family structures within the district is 20 feet, the minimum corner side yard setback selected must be between five feet and 20 feet.

(4) Interior side yard setback. The minimum interior side yard setback must be within the range between the setback of the underlying zoning and the median interior side yard setback of single family structures within the district. This range may allow for an interior side yard setback that is greater or lesser than the interior side yard setback of the underlying zoning. For example, if the minimum interior side yard setback of the underlying zoning is five feet and the median interior side yard setback of single family structures within the district is 20 feet, the minimum interior side yard setback selected must be between five feet and 20 feet. The minimum side yard setback for each side yard may be separately established. For example, the minimum side yard on the west side may be five feet, and the minimum side yard on the east side may be 10 feet.

(5) Height.

(A) If the petition is signed by the owners of more than 50 percent but less than 60 percent of the lots within the district, height regulations may not be included in the overlay.

(B) If the petition is signed by the owners of 60 percent or more of the properties within the district, the maximum height selected must be selected from the following:

(i) If the median height of single family structures within the district is 20 feet or more, then the district height must be within the range between the median height of single family structures within the district and the maximum height of the underlying zoning.

(ii) If the median height of single family structures within the district is less than 20 feet, then the district height must be either the median height of single family structures within the district or within the range between 20 feet and the maximum height of the underlying zoning.

(C) If the district regulates height, single family structures, including structures listed in Section 51A-4.408(a)(2) but excluding chimneys, may not be built to heights that exceed the height plane [,except structures listed in Section 51A-4.408(a)(2)]. Height is measured from grade to the midpoint between the lowest eaves and the highest ridge of the structure. See Paragraph 51A- 2.102(47), "Height."

(6) Garage access, connection, location. The garage access, connection, or location must be selected from one or more of the following options:

(A) garage access of:

- (i) front entry;
- (ii) side entry; or
- (iii) rear entry;

(B) garage connection of:

- (i) attached to the single family structure; or
- (ii) detached from the single family structure; and

(C) garage location:

- (i) in front of the single family structure;
- (ii) to the side of the single family structure; or
- (iii) to the rear of the single family structure. (Ord. 26161)