



ALDERPERSON AGENDA ITEM MEMO

To: Community Affairs Committee

From: Alderperson Joseph Makhoul II

Date: 8/3/23, updated 9/20/23

Subject: Placing appropriate height restrictions in the C-2 Zoning District

A. Background/Rationale

Under Wauwatosa's current zoning code, C-2 and industrial zoned properties have an unlimited building height. This unlimited building height provision has caused some developers to propose inappropriate developments and simply argue that the development is allowed "by right". They therefore refuse to take residents' concerns or comments into consideration. They refuse to look at the effect it will have on the neighbors, neighborhoods, or even the city. This matter has been further compounded by the fact that the Design Review Board, which is supposed to have the authority to determine if a development is actually appropriate for a given area, has been told they are only allowed to consider the aesthetics of the design. This has caused conflicts between neighbors and developers, and neighbors and the city as well. This has even led to legal action taken against the city, costing thousands of dollars of taxpayer money to be spent by the city defending such actions. Steps need to be taken to prevent such events from occurring in the future by placing appropriate building height limits.

B. Key Issues for Consideration

Under current zoning code appropriate height limits are placed in all zoning districts except C-2 and industrial zoning; which have an unlimited building height. This lack of height restrictions has led to developers proposing developments that are inappropriate for our neighborhoods and for the city itself.

It had been stated that building height would be controlled by the density limits in place; however, there are loop holes and developers have used those loop holes to propose structures of inappropriate height especially near residential neighborhoods.

Parking structures do not count or effect density; therefore, a developer is allowed to construct a parking structure of any height, and then place a residential development meeting density allowances on top of that parking structure, and that would be allowed.

Likewise commercial/ office space development is not counted in density calculations. A developer could therefore develop multiple stories of commercial/ office space (of any height), and then place residential development meeting allowed density on top of the commercial development and that would also be allowed.

Furthermore, unit space is not taken into consideration when looking at density calculations. A unit could be 500 sq ft or 5000 sq ft and it would still be considered as one unit for density calculations.



ALDERPERSON AGENDA ITEM MEMO

For example, if a developer is allowed 20 units based on density calculations, they could design a structure of 2 floors of 10 units each, or even 20 floors of one unit each, therefore no height control.

The only way to make sure that proposed developments are of an appropriate height for a given area is for the city itself to impose appropriate building height limits

C. Fiscal Impact

The exact fiscal impact of the proposed height limits is unknown and unclear. There would be some decrease in potential tax revenue, as taller buildings would have a higher value and therefore a higher net tax revenue; however, the potential decrease in tax revenue can be offset in other ways. Additionally, inappropriately tall buildings in a given area would very likely cause a decrease in the value of other nearby structures therefore decreasing tax from those structures. It is also VERY inappropriate to set standards simply based on potential revenue generated. We do not want to alienate our residents, change the feel and character of our neighborhoods, and the character of the city itself, simply based on chasing tax revenue.

D. Requested Action

Request is for a simple and straight forward text amendment placing appropriate height limits within the C-2 Zoning District as follows:

Any C-2 zoned parcels adjacent to, or for which any portion of the property line comes within 50 feet of any residential zoned property shall have a maximum building height limit of 60 feet using height determination calculation as set forth under current Wauwatosa ordinances

Exceptions to the above height limits shall be given to the Regional Mall Property and the Milwaukee Regional Medical Complex property, with defined boundaries of those properties as of the effective date of this proposal.

Discussion of appropriate height limits for C-2 zoned properties for which all boundary lines are greater than 50 feet away from all residential (R) shall take place at a later date.. Height limits for these areas shall be worked on in coordination with City staff and done in conjunction with formation of the new comprehensive plan.

As part of this proposal, density limits for those properties with boundary lines coming within 50 feet of a residential zone property will be removed. Density limits for properties that have boundary lines greater than 50 feet from a residential zoned property shall remain in place as currently stated in City statutes and shall be further discussed when height restrictions on those parcels are taken up at a later date.

Developers may not use the process of rezone in an attempt to get around requirements for height restrictions on properties whose boundaries come within 50 feet of a residential zoned property. Such restrictions as they apply prior to a rezone shall remain in place for a period of one year after the rezone process is completed. For example if a developer owns a C-2 zoned property for which



ALDERPERSON AGENDA ITEM MEMO

a boundary comes closer than 50 feet to a residential zoned property, and the owns the residential zoned property for which the boundary line is closer than 50 feet; said developer may not rezone the residential zone property and then claim that since the C-2 zoned property is now further than 50 feet from the C-2 property and that they are now allowed to exceed the 60 foot height restriction on the C-2 zoned property. The C-2 zoned property would still be subject to the 60 foot height restriction for a period of one year from the completion of the rezone process on the residential zoned property in question .

Through no process (PUD, variance or other) may any developer be allowed to exceed the maximum height limit of 60 feet for any property who's property line comes within 50 feet of a residential zoned property. Only through a new text amendment modifying or removing this restriction would exceeding the 60 foot height limit be allowed.

Buildings that exist as of the effective date of this amendment change, who's property lines come within 50 feet of a residential zoned property and which currently exceed the 60 foot height restriction shall be allowed to remain as they are. Should those buildings need to be rebuilt, they will be allowed to rebuild back to their height as of the effective date of this ordinance amendment, so long as the rebuild takes place within the footprint of the existing building. If any part of the building is built outside of the existing footprint, then the entire building would required to follow then new height restrictions.

As stated previously this height restriction proposal is at this time only covering C-2 properties for which any part of their boundary lines come within 50 feet of any residential zoned properties. This is being done as a way to put in place a layer of protection for our residents from inappropriate developments that may effect their neighborhoods. This proposal still allows for city growth, as most of the buildings on the C-2 zoned properties subject to this proposal are well below the 60 foot limit thus still allowing for upward growth. In addition the compromise of removing density limits on the properties covered allows developers greater capacity to make use of their building

E. Attachments

Any and all attachments will be provided prior to the scheduled date for presentation of this proposal.