

1 **CITY COUNCIL OF THE CITY OF ANNAPOLIS**

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3 **ORDINANCE NO. O-03-09**

4 **Introduced by Mayor Moyer**

LEGISLATIVE HISTORY			
First Reader:	Public Hearing:	Fiscal Impact Note:	180 Day Rule:
01/26/09	12/14/09	03/19/09	07/25/09
Referred to:	Meeting Date:	Action Taken:	
Rules & City Gov't	11/25/09	Favorable	
Planning Commission	09/17/09	Favorable w/ Amd	

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8 **AN ORDINANCE** concerning

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10 **Height Limitation in MX Zoning District**

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12 **FOR** the purpose of permitting in the MX Zoning District indoor theaters, accessory  
13 structures and/or architectural features such as clock towers to be up to 100 feet  
14 in height if attached to office and/or retail structures that are part of a Planned  
15 Development.

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18 **BY** repealing and re-enacting with amendments the following portions of the Code of  
19 the City of Annapolis, 2008 Edition:  
20 Section 21.48.030  
21 Section 21.50.260

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23 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**  
24 **COUNCIL** that the Code of Annapolis shall read as follows:

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26 **21.48.030 Table of Uses—Office and Mixed Use Zoning Districts.**

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28 P = Permitted Use; S = Special Exception Use; -Std = Use Subject to Standards  
29 (Chapter 21.64); A = Accessory Use; Blank = Not Permitted  
30 A use, including a special exception use, that is not normally permissible as a permitted  
31 use or use subject to standards in a zoning district may be permitted in that district as a  
32 planned development use pursuant to Section 21.24.020  
33 Important. The notes at the end of the table are as much a part of the law as the table  
34 itself.  
35

Uses	District P	District MX	District PM	District C2P
Accessory structures and uses	A	A <sup>6</sup>	A	A
Antennas and amateur radio stations	A-Std	A-Std	A-Std	A-Std
Antique stores		P	P-Std	
Appliance stores including electrical and household appliances, and radio and television sales and repair		P		
Arts and crafts studios		P	P-Std	
Arts and crafts stores		P	P-Std	
Banks and financial institutions		P		
Bake shops		P-Std		
Cab stands including dispatch offices and related parking facilities		S		
Candy stores, where only candy prepackaged off the premises is sold		P		
Candy stores including candy making		P-Std		
Carpet and rug stores, retail sales only		P		
Catering establishments		P-Std		
Clubs, lodges and meeting halls, with no on-premises food or beverage preparation facilities	S	P	S	S
Clubs, lodges and meeting halls, with on-premises food or beverage preparation facilities		P-Std		
Coffee shops		P-Std		
Conference facilities		S		
Convenience stores		P-Std		
Day care centers, group	S		S	S
Delicatessens		P-Std	P-Std	
Department stores		P		
Drive-through facilities associated with permitted or special exception uses			S-Std <sup>5</sup>	
Dry cleaning and laundry drop off and pick up stations			P	
Dry cleaning and laundry establishments		P		
Dwellings, multi-family	S	P-Std	S	S
Dwellings, multi-family, containing 12 or fewer units			P-Std	
Dwellings, single-family attached	P	P-Std	P	
Dwellings, single-family detached	P	P	P	P
Dwellings, two-family	P	P	P	P
Dwellings above the ground floor of nonresidential uses		P		
Food service marts		P-Std	P-Std	

Uses	District P	District MX	District PM	District C2P
Furniture stores		P		
Garden supply, tool and seed stores		P		
<i>Governmental Uses</i>				
Offices	P	P	P	P
Other government and government-related structures, facilities and uses	S	S	S	S
Public schools and colleges	P		P	
Group homes	S		S	S
Hotels with up to forty rooms, including restaurants and conference room facilities.		P-Std		
Hotels with more than forty rooms		S		
Ice cream stores		P-Std		
Inns	S			S
Institutions for the care of the aged	S			S
Laboratories, including medical, dental, research and testing		P		
Launderettes, automatic, self service		P		
Liquor stores		S		
Markets, open air, including farmers' markets and produce markets		P-Std		
Medical appliance stores			P-Std	
Motor vehicle service stations, including fuel sales		S		
Museums and art galleries	P	P	P	
Nautical shops, retail trade		P		
Office and business service establishments		P		
Offices, business and professional, and nonprofit, educational, cultural, or civic	P-Std or S-Std, depending on lot size	P	P-Std	P
Offices, medical	P	P	P	P
Parking garages	S	P-Std, S-Std	S	
Parking lots, other than accessory	S	P-Std	P-Std	
Personal care establishments	S	P	P-Std	
Photocopying and reproduction services, including blueprinting		P		
Physical health facilities, including health clubs, gymnasiums, and weight control centers		P		
Planned developments, business and special mixed	P-Std	P-Std		
Religious institutions, including churches, chapels, mosques, temples and synagogues	P	P	P	

Uses	District P	District MX	District PM	District C2P
Research and development businesses, provided that there is no significant assemblage of goods or products		P		
Rest homes and nursing homes	S			S
Restaurant, fast food		S-Std		
Restaurant, standard		P-Std <sup>4</sup> S-Std <sup>4</sup>	P-Std, S-Std	
Retail goods stores		P		
Schools, commercial, trade, vocational, music, dance, or art		P		
Schools, private, elementary, middle, or high	P			
Sidewalk cafes	P-Std	P-Std	P-Std	
Specialty convenience retail store		P	P-Std	
Supermarkets		P-Std		
Telecommunications facilities	A-Std	A-Std	A-Std	A-Std
Telephone transmission equipment buildings		P		
Temporary uses	P-Std	P-Std	P-Std	P-Std
Theaters, indoor		P S-Std <sup>6</sup>		
Tobacco shops		P		
Undertaking establishments and funeral parlors	S			
Wine bars		P-Std		

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Notes:

The following regulations apply to all uses in the MX District:

1. Buildings in excess of forty-six feet, but less than fifty-five feet in height are subject to the following:

a. Either 25 percent of the gross floor area shall be designed for retail uses, or residential uses, or a combination of retail and residential uses, alternatively, the entire ground level front facade shall be designed for retail uses, exclusive of: (i) not more than one driveway, which shall not be greater than thirty-three feet wide, required for access to parking; (ii) space required for a lobby and space required for access to upper floor uses. Retail use along the front facade shall have a minimum height of twelve feet and a minimum depth of twenty-five feet;

b. If surface parking is located on the zoning lot, it shall be located at the rear of the zoning lot and new structures shall be located at the front of the zoning lot. If surface parking is located adjacent to single-family residential use, dense plantings shall be installed and maintained on the zoning lot to provide an effective screen; and

c. Any adverse impacts on critical lane levels of service at adjoining intersections shall be mitigated by the applicant.

2. Buildings in excess of 46 feet, but less than 65 feet in height require special exception approval except as provided in note No. 1 above.

3. Uses and combinations of uses located on zoning lots of 40,000 square feet or more require special exception approval.

4. Two a.m. alcoholic beverage licenses shall not be permitted for properties within the MX-2 or MX-3 height districts, but such licenses shall be allowed for properties within the MX-1 Height District.

5. If the principal use with which the drive-thru facility is associated is a special exception use, then the drive-thru facility requires special exception approval.

6. The following apply only to the uses specified: In the MX-1 area only, in planned developments with a

1 minimum lot size of 5 acres, "Accessory Structures" such as clock towers attached to office and/or retail  
 2 structures and "Theaters, Indoor" shall not exceed 100 feet in height. See the Bulk Regulations Table in  
 3 Sec. 21.50.260.  
 4

5 **21.50.260 Bulk Regulations Table MX District.**

6 Important. The notes at the end of the table are as much a part of the law as the table  
 7 itself.

	Lot Dimensions (minimum) Area (sq. ft. or acres)	Lot Dimensions (minimum) Width (ft)	Required Yard or Setback	Minimum Feet	Floor Area Ratio (maximum) <sup>3</sup>	Height (maximum, feet) <sup>5,8,9</sup>	Location of front facade	Open Space (percent of zoning lot area) <sup>7</sup>	Living Space (minimum gross sq. ft.)
Permitted uses, special exceptions, and uses subject to specific standards	5,400	50	1. Lot line adjoining a residential zoning district:	15 <sup>1,2</sup>	1.75, or 2.25 for the following structures: 1. Any structure with 25 percent or more of its floor area devoted to commercial uses, or residential uses, or a combination of commercial and residential uses, or 2. Any structure with the entire ground level front facade devoted to commercial uses <sup>4</sup> .	1. Structures located within 30 feet of a residence in a residential zoning district: 35 feet. MX-1 Height District: 65 feet. MX-2 Height District: 46 feet. MX-3 Height District: 36 feet.	The front façade of each building shall maintain the established setback of the block on which it is located. Where there is no established setback, the front facade of each such building shall be set back not more than 15 feet from the face of the curb <sup>6</sup> .	Lots 40,000 to 100,000 sf: 10 percent. Lots over 100,000 sf: 30 percent.	For dwellings above the ground floor of non residential uses: Efficiency apartment: 300 One bedroom apartment: 450 Two-bedroom apartment: 600 Each additional bedroom: 150
			2. Any portion of a structure	15 plus 10 feet for each 10 feet of	1.75, or 2.25 for the following	1. Structures located within 30	The front façade of each building	Lots 40,000 to 100,000	For dwellings above the

			<p>e over 35 feet in height:</p>	<p>height above 35 feet<sup>1,2</sup></p>	<p>structures: 1. Any structure with 25 percent or more of its floor area devoted to commercial uses, or residential uses, or a combination of commercial and residential uses, or 2. Any structure with the entire ground level front facade devoted to commercial uses<sup>4</sup>.</p>	<p>feet of a residence in a residential zoning district: MX-1 Height District: 65 feet. MX-2 Height District: 46 feet. MX-3 Height District: 36 feet.</p>	<p>shall maintain the established setback of the block on which it is located. Where there is no established setback, the front facade of each such building shall be set back not more than 15 feet from the face of the curb<sup>6</sup>.</p>	<p>0 sf: 10 percent. Lots over 100,000 sf: 30 percent.</p>	<p>ground floor of non residential uses: Efficiency apartment: 300 One bedroom apartment: 450 Two-bedroom apartment: 600 Each additional bedroom: 150</p>
			<p>3. Portions of a structure over 46 feet in height that are not stepped back as provided for above in 2</p>	<p>50<sup>1,2</sup></p>	<p>1.75, or 2.25 for the following structures: 1. Any structure with 25 percent or more of its floor area devoted to commercial uses, or residential uses, or a combination of commercial and residential uses, or 2. Any structure</p>	<p>1. Structure located within 30 feet of a residence in a residential zoning district: MX-1 Height District: 65 feet. MX-2 Height District: 46 feet. MX-3 Height District: 36 feet.</p>	<p>The front façade of each building shall maintain the established setback of the block on which it is located. Where there is no established setback, the front facade of each</p>	<p>Lots 40,000 to 100,000 sf: 10 percent. Lots over 100,000 sf: 30 percent.</p>	<p>For dwellings above the ground floor of non residential uses: Efficiency apartment: 300 One bedroom apartment: 450 Two-bedroom apartment: 600 Each addition</p>

					with the entire ground level front facade devoted to commercial uses <sup>4</sup> .		such building shall be set back not more than 15 feet from the face of the curb <sup>6</sup> .		al bedroom : 150
			4. All other yards:	As determined through the zoning decision-making process set forth in Division II, Administration.	1.75, or 2.25 for the following structures: 1. Any structure with 25 percent or more of its floor area devoted to commercial uses, or residential uses, or a combination of commercial and residential uses, or 2. Any structure with the entire ground level front facade devoted to commercial uses <sup>4</sup> .	1. Structures located within 30 feet of a residence in a residential zoning district: MX-1 Height District: 35 feet. MX-2 Height District: 65 feet. MX-3 Height District: 46 feet. Height District: 36 feet.	The front façade of each building shall maintain the established setback of the block on which it is located. Where there is no established setback, the front facade of each such building shall be set back not more than 15 feet from the face of the curb <sup>6</sup> .	Lots 40,000 to 100,000 sf: 10 percent. Lots over 100,000 sf: 30 percent.	For dwellings above the ground floor of non residential uses: Efficiency apartment: 300 One bedroom apartment: 450 Two-bedroom apartment: 600 Each additional bedroom : 150

Table Notes

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- 1 This yard is a transitional yard; planting or screening such as with a wall, fence or densely planted compact plantings may be required, as determined through the site plan design review process. Notwithstanding the provisions of Section 21.60.090, no obstruction (as defined by Section 21.60.090) may be located in a required yard, other than the required planting or screening.
- 2 The yard and setback requirements do not apply to the adaptive reuse of an existing structure provided that:
- a. Alterations to the existing structure do not cause any greater encroachment into the required yard than existed before the alterations; and

b. The floor area of the structure resulting from the alterations is no greater than twice the floor area existing before the alterations.

3. The FAR limitations do not apply to the rehabilitation of an existing structure. As used in this subsection, "rehabilitation" is limited to the remodeling, renovation, alteration or reconstruction of an interior of the existing structure without any change in the bulk of the structure and without any remodeling, renovation, alteration or reconstruction of the structure's exterior, excepting minor cosmetic repairs and routine maintenance.

4. The commercial use space shall have a minimum height of 12 feet and a minimum depth of 25 feet. Non-commercial uses that may be included in this façade are limited to: i) one driveway, up to 33 feet wide, required for access to parking; ii) space required for a lobby; and iii) space required for access to upper floor uses.

5. In the historic district, special height measurement and limits requirements apply. See Chapter 21.56.

6. The setback is measured to the principal elements of the front facade at its closest point to the curb.

7. Open space must be permanently dedicated to use in common.

8. The height of rooftop accessory structures, including, but not limited to, utility penthouses and architectural appurtenances shall not exceed twelve feet above the maximum height under this section. No accessory structures shall exceed twenty-five (25) percent of the rooftop area on which it is affixed, except that accessory structures exceeding this height and/or area requirement may be allowed as a special exception subject to the provisions of Chapter 21.26.

9. In planned developments with a minimum lot size of 5 acres, "Theaters, Indoor" and "Accessory Structures" such as clock towers, attached to office and/or retail Structures shall not exceed 100 feet in height.

**SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its passage.

**ADOPTED** this 21st day of December, 2009.

**ATTEST:**

**THE ANNAPOLIS CITY COUNCIL**

\_\_\_\_\_  
**Regina C. Watkins-Eldridge, MMC**  
City Clerk

**BY:** \_\_\_\_\_  
**JOSHUA J. COHEN, MAYOR**

**EXPLANATION:**

Highlighting indicates matter added to existing law.

~~Strike Out~~ indicates matter deleted from existing law.

Underlining indicates amendments.

## O-03-09

### Height Limitation in MX Zoning District Staff Report

The purpose of this ordinance is to permit the accessory structures and indoor theaters to be as tall as 100 feet, but only in the MX-1 Zoning District where the current maximum for any structure is 65 feet; in addition, it would only apply in planned developments with a minimum lot size of 5 acres. At present, accessory structures in MX are classified as “accessory use” and indoor theaters are classified as “permitted use subject to standards.” This legislation would require that if the structure’s height is to exceed 65 feet up to the proposed 100 feet, then a “special exception” would be required. To obtain a special exception, the following would be necessary:

- Staff Report by the Planning and Zoning Director and any other city department reviewing the application
- Public Hearing with the Planning Commission
- Planning Commission makes written findings of fact and recommendations on the application to the Board of Appeals.
- Public Hearing with the Board of Appeals where the Planning Commission’s findings and recommendations and a report from the Planning and Zoning Director are placed into evidence
- Within thirty days of the conclusion of the public hearing, the Board of Appeals shall decide to: (1) approve the application, (2) approve the application subject to specific conditions; or (3) deny the application.
- The Planning Commission may recommend, and the Board of Appeals may stipulate, conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special exception as are deemed necessary for the protection of the public interest and to secure compliance with the requirements specified in Section 21.26.050.

The impetus for this legislation is the Park Place development at West Gate Circle. The proposal is to construct a theater and a clock tower. While the main area of the theater would not exceed the current 65 foot limitation, there is a need for the theater’s fly to be about 100 feet high. A theater’s “fly” is the area above the stage where sets and props are raised so as to be out of sight of the audience. The clock tower would also be about 100 feet high and would be an accessory structure attached to a primary structure.

The MX-1 Zoning District is primarily located north of West Street, south of the old WB&A Railroad right-of-way, between Brown Street and Jefferson Street along with several smaller areas along West Street toward and at Church Circle.

Prepared by the City of Annapolis Office of Law, (410) 263-7945