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**ORDINANCE # \_\_\_\_\_**  
**AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING**  
**CHAPTER 20, PLANNING AND ZONING**  
**OF THE ALBANY MUNICIPAL CODE**

**WHEREAS**, the City of Albany has adopted a Zoning Ordinance in the form of Chapter XX of the Albany Municipal Code, Planning and Zoning; and

**WHEREAS**, on December 4, 2004, the City council adopted a substantial update to the Planning and Zoning Code; and

**WHEREAS**, during the course of implementation, a variety of applications have been received and processed pursuant to the new code; and

**WHEREAS**, whereas the Community Development Department has maintained a binder, available to the public, Commissioners, and staff to catalog areas of the new code that require correction or clarification; and

**WHEREAS**, the Planning and Zoning Commission discussed proposed changes at their regular meetings of September 23, 2008, October 14, 2008, October 28, 2008, November 25, 2008, December 9, 2008, January 27, 2009, and May 12, 2009; and

**WHEREAS**, on November 25, 2008, the Planning and Zoning Commission approved a Resolution of Intention to Amend the Planning and Zoning Code; and

**WHEREAS**, pursuant to the California Environmental Quality Act, the City has determined that the Mitigated Negative Declaration of Environmental Impacts certified on December 4, 2004 is consistent with the proposed clarifications and corrections and no additional environmental review is required pursuant to CEQA Guidelines Section 15183 and Public Resources Code 21083.3; and

**WHEREAS**, the Albany Planning and Zoning Commission, on March 24, 2009, after due public notice, held a public hearing on the proposed amendments to Chapter XX to address corrections and clarifications to the Code, and

**WHEREAS**, the Albany City Council, on \_\_\_\_\_, after due public notice, held a public hearing on the proposed amendments to Chapter XX to address corrections and clarifications to the Code.

**NOW, THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:**

1 **Section 1:** Chapter XX of the Albany Municipal Code, Section 20.08.020, titled  
2 “Definitions,” is hereby amended to include the following text:

3  
4 a. **Yard, front** means a yard of uniform depth extending across the full  
5 width of the lot inward from the front lot line. **The front yard of a corner lot is the**  
6 **yard adjacent to the shorter street front shall be determined by the Community**  
7 **Development Director.**

8  
9 **Section 2:** Chapter XX of the Albany Municipal Code, Section 20.12.040, Table 1  
10 titled “Permitted land uses by district,” is hereby amended to include the following  
11 text:

12  
13 Day Care Home, Residential

Land Use	R-1	R-2	R-3	R-4	RHD	SC	SPC	CM X	PF	W F
b) Large Family 19	<b><u>UP-M</u></b>	<b><u>UP-M</u></b>	<b><u>UP-M</u></b>	<b><u>UP-M</u></b>	<b><u>UP-M</u></b>	-	-	-	-	-

14  
15 **Section 3:** Chapter XX of the Albany Municipal Code, Section 20.12.040, Notes,  
16 Table 1 is hereby amended to add the following text:

17 19. Refer to Section 20.20.020.B.2.d. for special process of notice  
18 and hearing.

19 **Section 4:** Chapter XX of the Albany Municipal Code, Section  
20 20.20.020.B.2.d, is hereby amended to add the following text:

21 d. Public Notice and Hearing. At least ten (10) calendar days prior to a  
22 **decision administrative public hearing** on a Minor Use Permit for a Large  
23 Family Day Care Home, notice of the proposed use and public hearing shall be  
24 mailed or delivered to owners of property within one hundred (100) feet of the  
25 exterior boundaries of the proposed day care home, **as described in subsection**  
26 **20.100.030.C. No hearing shall be held on the application unless a hearing**  
27 **is requested by the applicant or other affected person prior to the**  
28 **announced time of the decision. Upon request for a hearing, public notice**  
29 **shall be provided in the manner and form described in subsection**  
30 **20.100.010.E, except that notice shall not be mailed or delivered beyond**  
31 **one hundred (100) feet of the exterior boundaries of the proposed day care**  
32 **home.**

33  
34 **Section 5:** Chapter XX of the Albany Municipal Code, a new section shall be  
35 adopted, **Section 20.20.130, titled “Live Entertainment Permits,” is hereby**  
36 **adopted to include the following text:**

37  
38 **A. Purpose. This section establishes regulations for the**  
39 **granting of an entertainment permit. The standards are in addition to the**  
40 **requirements of Albany Municipal Code Section 5-11.**

1           **B. Use Permit Required. A major use permit shall be required**  
2 **for any place where entertainment is provided within a bar, cocktail**  
3 **lounge, tavern, café, restaurant, hotel, motel, or public place where food,**  
4 **alcoholic or other beverages, or other refreshments are served.**  
5

6           \* Appropriate amendments shall also be made to corresponding chapter in  
7 Municipal Code, 5-11 and MC 20.20.070.D. \*

8  
9 **Section 6:** Chapter XX of the Albany Municipal Code, Section 20.24.020 Table 2.A.,  
10 titled “ Site Regulations by District: Residential,” Note 14 is hereby amended to  
11 include the following text:  
12

13           Maximum building height **is three stories, or 35 feet, above natural or finished**  
14 **grade, whichever is lower,** except that the maximum height allowed at the front  
15 setback line shall be 28 feet plus a 45-degree daylight plane. (See subsection  
16 20.24.070.B.)  
17

18 **Section 7:** Chapter XX of the Albany Municipal Code, Section 20.24.020. Table  
19 2.A. titled “Site Regulations by District: Residential,” Note 19(a), is hereby amended  
20 to include the following text:  
21

22 19. Exceptions to setback requirements may be made in the case of a second story  
23 addition to a single-family dwelling, as follows:

24           (a) **Nonconforming walls shall be allowed to extend up over an existing wall**  
25 **or foundation, A second story addition may be built over an existing wall**  
26 **or foundation**—which does not conform to the required setbacks, subject to  
27 design review by the Planning and Zoning Commission and obtaining a use  
28 permit. Existing walls which do not conform to the existing side or rear yard  
29 setbacks may be extended, **in an existing vertical or horizontal plane,**  
30 subject to design review by the Planning and Zoning Commission and a use  
31 permit. Such extensions shall not further encroach on any required setback,  
32 (i.e., a nonconforming wall which encroaches one (1) foot into a required  
33 setback shall not be permitted to encroach two (2) feet) nor shall any  
34 extension create a new encroachment in another direction.  
35

36 **Section 8:** Chapter XX of the Albany Municipal Code, Section 20.24.020. Table 2.B.  
37 Note 3, titled “Site Regulations by District: Nonresidential,” is hereby amended to  
38 include the following text:  
39

40           3. Same as R-3 District, See note **79** – Site regulations, Table 2A:Residential.  
41

42 **Section 9:** Chapter XX of the Albany Municipal Code, Section 20.24.020 Table  
43 2.B.Note 4, titled “Site Regulations by District: Nonresidential” is hereby amended to  
44 include the following text:  
45

1 Maximum building height is ~~three stories, or 38 feet~~, above grade, except that where  
2 the rear property line abuts a residential district, the maximum height at the rear  
3 property line shall be ~~20 feet plus a 45 degree day light plane, or at the rear~~  
4 ~~property line shall be 12 feet plus a 45 degree daylight plane.~~ twelve (12) feet,  
5 above the natural or finished grade, whichever is lower, with a 45-degree  
6 daylight plane or twenty (20) feet, above the natural or finished grade,  
7 whichever is lower, at the minimum required setback of 10', inclined away from  
8 the vertical at a thirty-five (35) degree angle. There shall be no projections or  
9 appurtenances in the day light plane. (See subsection 20.24.070.A., Figure 1.a &  
10 1.b)

11  
12 **Section 10:** Chapter XX of the Albany Municipal Code, Section 20.24.050 B.1.c,  
13 titled "Floor-Area-Ratios" is hereby amended to include the following text:

14  
15 c. Any covered area on or below the first or main floor, ~~for which the~~  
16 ~~average height of the four (4) corners is greater than six (6) feet, shall be~~  
17 ~~included in the calculation of gross square footage, shall be calculated in the~~  
18 ~~floor-area ratio if the average height of the perimeter is greater than four (4)~~  
19 ~~feet, except a single parking area may be excluded as provided in paragraph a,1(b)~~  
20 ~~above. Measurement of height shall be taken from the lower of natural or~~  
21 ~~finished grade to the top of finished floor of the first, main or story above.~~

22  
23 **Section 11:** Chapter XX of the Albany Municipal Code, Section 20.24.070 A, titled  
24 "Setbacks with Daylight Planes, Interior Property Lines Abutting Residential District  
25 Boundaries," is hereby amended to include the following text:

26  
27 A.1. Interior Property Lines Abutting Residential District Boundaries: The minimum  
28 setback where an interior lot line of a property in a Solano Commercial or San Pablo  
29 Commercial District abuts a residential district boundary shall be five (5) feet on the  
30 side.

31  
32 The minimum setback at the rear shall be one of the following two options: 1)  
33 An additional setback for any portion of any structure extending above twenty  
34 (20) feet in height, up to the maximum height permitted in the Commercial  
35 District, shall be defined by a daylight plane extending from a base point located  
36 twenty (20) feet above the ground plane at the line of the ten (10) foot required  
37 rear yard setback, inclined away from the vertical at a thirty-five degree angle  
38 (See figure 1.a); 2) The base point for the daylight plane may be located twelve  
39 (12) feet above the ground plane at the property line that abuts a residential  
40 district, with no setback from the property line, inclined away from the vertical  
41 at a forty-five degree angle (see figure 1.b). There shall be no projections or  
42 appurtenances in the day light plane.

43  
44 ~~and ten (10) feet on the rear. An additional setback for any portion of any~~  
45 ~~structure extending above twenty (20) twelve (12) feet in height, up to the~~  
46 ~~maximum height permitted in the Commercial District, shall be defined by a~~

1 daylight plane extending from a base point located twenty (20) twelve (12) feet  
2 above the ground plane lower of natural or finished grade at the line of the  
3 minimum required setback, inclined away from the vertical at a forty-five (45o)  
4 thirty five (35) degree angle. (See Figure 1.a., below.) Alternatively the base  
5 point for the daylight plane may be located twelve (12) feet above the ground  
6 plane at the property line that abuts a residential district, with no setback from  
7 the property line required. (See Figure 1.b., below.)  
8

9 *Insert Diagram 20.24.070 A. Figure 1.*  
10

11 **Section 12:** Chapter XX of the Albany Municipal Code, Section 20.24.070, titled  
12 “Setbacks with Daylight Planes, Interior Property Lines Abutting Residential District  
13 Boundaries,” is hereby amended to include the following text:  
14

15 **A2. The minimum setback, where an interior lot line of a property in a higher**  
16 **density residential district abuts a lower density residential district, and**  
17 **Municipal Code Section 20.24.030 does not apply, the minimum side yard**  
18 **setback shall be five (5) feet on the side. An additional setback for any portion of**  
19 **any structure extending above twenty (28) feet in height, up to the maximum**  
20 **height permitted in the zoning District, shall be defined by a daylight plane**  
21 **extending from a base point located twenty (28) feet above the ground plane at**  
22 **the line of the five (5) foot required side yard setback, inclined away from the**  
23 **vertical at a forty-five degree angle (See figure 2.a)**  
24

25 **A.3. The minimum setback, where an interior lot line of a property in a higher**  
26 **density residential district abuts a lower density residential district, and**  
27 **Municipal Code Section 20.24.030 does not apply, shall be fifteen (15) feet at the**  
28 **rear. An additional rear yard setback for any portion of any structure extending**  
29 **above twenty (20) feet in height, up to the maximum height permitted in the**  
30 **district shall be defined by a daylight plane extended from a base point located**  
31 **twenty (20) feet above the ground plane at the line of the minimum required**  
32 **setback, inclined away from the vertical at a forty-five (45) degree angle (See**  
33 **figure 2.b)**  
34

35 **Section 13:** Chapter XX of the Albany Municipal Code, Section 20.24.070 B, titled  
36 “Setbacks with Daylight Planes, Exterior Property Lines at Streets Abutting  
37 Residential Districts,” is hereby amended to include the following text:  
38

39 2. Where a property in a Residential Medium Density District (R-2) or a  
40 Residential High Density District (R-3) has an exterior lot line on either Kains  
41 Avenue or Adams Street that abuts a residential district, the minimum setback  
42 from such lot line shall be fifteen (15) feet. An additional setback for any portion of  
43 any structure extending above twenty-eight (28) feet in height, up to the maximum  
44 height permitted, shall be defined by a daylight plane extending from a base point  
45 located twenty-eight (28) feet above the line of the minimum required setback,  
46 inclined away from the vertical at a forty-five (45) degree angle. See Figure 2. below.

1  
2 **Section 14:** Chapter XX of the Albany Municipal Code, Section 20.24.080 B, titled  
3 “Height Limits and Exceptions,” is hereby amended to include the following text:  
4

5 **B. General Exceptions.** Subject to approval of a use-permit design  
6 review, towers, spires, cupolas, chimneys, elevator penthouses, water tanks,  
7 monuments, flagpoles, theatre scenery storage structures, fire towers, and similar  
8 structures may be erected to a height not more than ten (10) feet above the height  
9 limit prescribed by the regulations for the district in which the site is located,  
10 provided that no such structure shall be used for habitable space or advertising  
11 purposes, and provided that the aggregate of such structures does not cover more than  
12 ten (10%) percent of the roof area of the top floor of the structure to which they are  
13 attached. All structures that exceed the height limit shall be subject to design review.  
14

15 **Section 15:** Chapter XX of the Albany Municipal Code, Section 20.24.080 C, titled  
16 “Height Limits and Exceptions,” is hereby amended to include the following text:  
17

18 **C. Mechanical Appurtenances.** Mechanical appurtenances covering not  
19 more than twenty (20%) of the roof area of the top floor of any **nonresidential**  
20 **structure** to which they are attached may exceed the height limit prescribed by the  
21 regulations for the district in which the site is located by six (6) feet subject to design  
22 review and provided that such structures are screened in accordance with subsection  
23 20.24.110, and further provided that no screening is located within ten (10) feet of the  
24 perimeter of the plate line of the top story.  
25

26 **Section 16:** Chapter XX of the Albany Municipal Code, Section 20.24.110 C.2, titled  
27 “Fences, Landscaping, Screening” is hereby amended to include the following text:  
28

29 2. In any R District any fence, wall hedge, or other visual obstruction shall not  
30 exceed three (3) feet in height within any front yard, or within fifteen (15) feet of any  
31 front property line, whichever is less; except that in no case shall such visual  
32 obstruction exceed three (3) feet in height within ten (10) feet of the front property  
33 line-any property line abutting a street.  
34

35 **Section 17:** Chapter XX of the Albany Municipal Code, Section 20.24.110 C.2 and,  
36 titled “Fences, Landscaping, Screening,” is hereby amended to include the following  
37 text:  
38

39 Exception to height limit in front yard: A structure designed to provide a decorative  
40 gateway, such as an arbor, trellis or pergola, may occupy an area not to exceed twenty  
41 (20) square feet, with a maximum horizontal dimension of six (6) feet and a  
42 maximum vertical dimension of ten (10) feet, subject to granting of a zoning permit  
43 administrative design review approval based on all of the following findings:  
44

- 45 a. *The structure is not attached to the principal structure or any other*  
46 *structure other than a fence.*

- 1  
2 b. *Structural bulk is minimized by the use of open materials such as lattice.*  
3  
4 c. *The location of the structure does not create a sight*  
5 *distance problem with respect to driveways or street intersections.*  
6  
7 d. *The design of the structure is appropriate to the main building and the*  
8 *landscaping of the property.*  
9

10 **Section 18:** Chapter XX of the Albany Municipal Code, Section 20.24.080 E.5, titled  
11 “Height Limits and Exceptions,” is hereby amended to include the following text,  
12 which will be repeated from Municipal Code Section 20.24.020 Table 2.A. Note 12:  
13

14 **E.5. Planning and Zoning Commission, subject to Design Review criteria,**  
15 **may grant a use permit to allow greater height for second story additions, up to**  
16 **35 feet, measured in accordance with subsection 20.24.080, and based on all**  
17 **three (3) of the following findings:**

18 **a. The existing house has a partial ground story that causes an increase in the**  
19 **overall height of the building, and there are sound design reasons from considering**  
20 **a roof line which exceeds twenty-eight (28) feet.**

21 **b. The natural downward or upward topography of the site causes an increase in**  
22 **the overall height of the building. The minimum roof pitch has been maintained on**  
23 **the addition to be consistent with the existing architectural design of the house. The**  
24 **height has been measured from the natural or finished grade to the highest point**  
25 **on the roof.**

26 **c. The existing architectural character and design of the house is maintained.**  
27 **Design factors have been considered to offset or minimize the increased height,**  
28 **such as breakup in the mass and bulk, offsetting one or more portions of the**  
29 **addition from the ground story wall line, and adding architectural details and**  
30 **elements such as horizontal trim or other features to create interest.**  
31

32 **Section 19:** Chapter XX of the Albany Municipal Code, Section 20.24.130 H, titled  
33 “Accessory Buildings,” is hereby amended to include the following text:  
34

35 H. Setbacks. Accessory buildings ~~located in rear setback areas~~ shall be within  
36 six (6”) inches of the side or rear lot line, or shall be set back at least three (3’)  
37 feet, and shall be subject to the following provisions:  
38

- 39 1. Accessory buildings shall not have openings (windows, doors, and vents)  
40 within three (3) feet of the property line. This includes openings on walls  
41 that are perpendicular to a property line. An exception shall be made for  
42 garage (vehicle) doors.  
43 2. Accessory buildings located on the street side yard of corner lots are  
44 required to meet the minimum setback requirements for the main building.  
45 3. ~~Accessory buildings on the interior side yard shall not encroach into~~  
46 ~~the required side yard setback.~~

**Section 20:** Chapter XX of the Albany Municipal Code, Section 20.28.050.A.1.c and Table 6, titled "Parking Area Standards," is hereby amended to include the following text:

- c. Open Parking. The minimum dimensions for an open parking space meeting the parking requirements for a newly constructed single-family dwelling shall be eight (8) feet six (6) inches in width and eighteen (18) feet in length. The minimum width dimension for a double-car open parking space shall be sixteen (16) feet. All minimum width dimensions shall be increased by an additional one (1) foot of width adjacent to each wall, fence, property line or other fixed obstruction that restricts access abutting the long dimension of the parking space.

<b>Table 6. 20.28.050 Residential Parking Dimensions.</b>			
<b>Type of Parking</b>	<b>Width</b>	<b>Length</b>	<b>Height</b>
<i>Enclosed Parking:</i>			
Single space	8'6"*	19'	7'
Side-by-side spaces	16' **	19'	7'
<i>Covered Parking:</i>			
Single space	8'6"*	18'	7'
Side-by-side spaces	16' **	18'	7'
<i>Open Parking:</i>			
Single space	8'6"*	18'	N/A
Side-by-side spaces	16' **	18'	N/A
<i>Driveways</i>			
Single	7'	N/A	N/A
Double	15'	N/A	N/A

\* One (1) additional foot in width shall be provided on each side abutting any wall, fence, property line, or other fixed obstruction that restricts vehicle access.

\*\* Minimum side-by-side, or double, parking space width is double the minimum single width minus one (1) foot. Additional width for obstructions is applicable.

Chapter XX of the Albany Municipal Code, Section 20.28.050 Table 6, titled "Residential Parking Dimensions," is hereby amended to include the following text:

~~\* One (1) additional foot in width shall be provide on each side abutting any wall, fence, property line, or other fixed obstruction that restricts vehiele access.~~

~~\*# Minimum side-by-side, or double, parking space width is double the minimum single minus one (1) foot. Additional width for obstruction is applicable.~~

**Section 21:** Chapter XX of the Albany Municipal Code, Section 20.40.080 titled "Housing Provisions" is hereby adopted to include the following text:

- A. A developer of any project subject to the requirements in this chapter may appeal to the city council for a reduction, adjustment, or waiver



1 of the requirements based upon the absence of any reasonable  
2 relationship or nexus between the impact of the development and  
3 either the amount of the fee charged or the inclusionary requirement.  
4

- 5  
6 B. A developer subject to the requirements of this chapter who has  
7 received an approved tentative subdivision or parcel map, use permit  
8 or similar discretionary approval and who submits a new or revised  
9 tentative subdivision or parcel map, use permit or similar  
10 discretionary approval for the same property may appeal for a  
11 reduction, adjustment or waiver of the requirements with respect to  
12 the number of lots or square footage of construction previously  
13 approved.  
14 C. Any such appeal shall be made in writing and filed with the city clerk  
15 not later than ten (10) days before the first public hearing on any  
16 discretionary approval or permit for the development, or if no such  
17 discretionary approval or permit is required, or if the action  
18 complained of occurs after the first public hearing on such permit or  
19 approval, then the appeal shall be filed within ten (10) days after  
20 payment of the fees objected to. The appeal shall set forth in detail  
21 the factual and legal basis for the claim of waiver, reduction, or  
22 adjustment. The city council shall consider the appeal at the public  
23 hearing on the permit application or at a separate hearing within sixty  
24 (60) days after the filing of substantial evidence to support the appeal  
25 including comparable technical information to support appellant's  
26 position. No waiver shall be approved by the city council for a new  
27 tentative subdivision or parcel map, user permit or similar  
28 discretionary approval on property with an approved tentative  
29 subdivision or parcel map, use permit or similar discretionary permit  
30 unless the council finds that the new tentative subdivision or parcel  
31 map, user permit or similar discretionary approval is superior to the  
32 approved project both in its design and its mitigation of  
33 environmental impacts. The decision of the council shall be final. If a  
34 reduction, adjustment, or waiver is granted, any change in use within  
35 the project shall invalidate the waiver, adjustment, or reduction of the  
36 fee or inclusionary requirement

37 **Section 22:** Chapter XX of the Albany Municipal Code, Section 20.100.080.C.1.  
38 titled "Administrative Actions Appealable." is hereby amended to include the  
39 following text:

- 40 1. Any person aggrieved by a decision to grant or deny a permit or action  
41 taken by the Planning staff or any other City Official under the  
42 provisions of this chapter, or any person aggrieved by an  
43 administrative determination or interpretation made in conjunction  
44 with a decision to grant, deny or comply with a determination made  
45 pursuant to a provision of this ~~code~~ **chapter**, may appeal such action  
46 to the Planning and Zoning Commission.

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**Section 23. Severability.**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

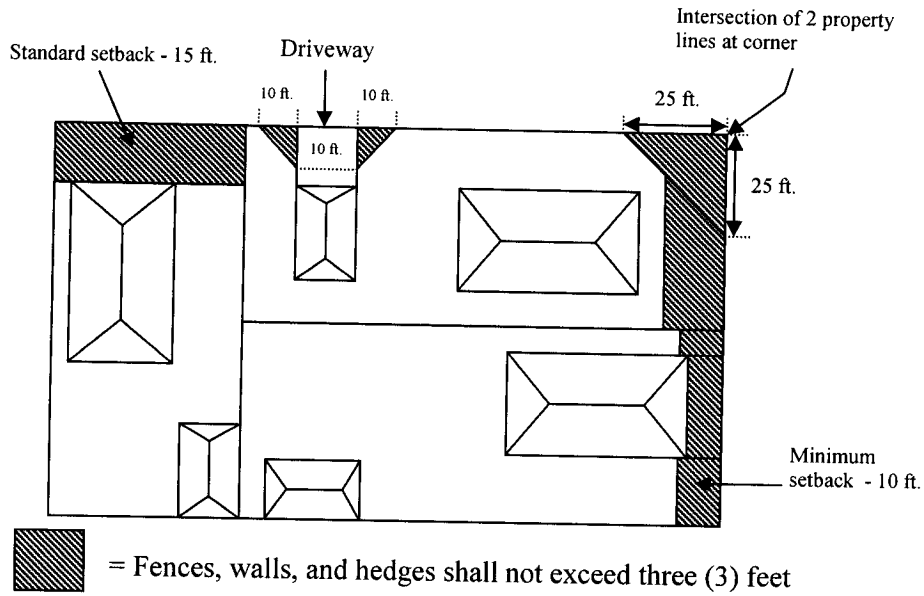
**Section 24: Publication and Effective Date.**

This ordinance shall be posted at three public places within the City of Albany and shall become effective thirty days after the date of its posting.

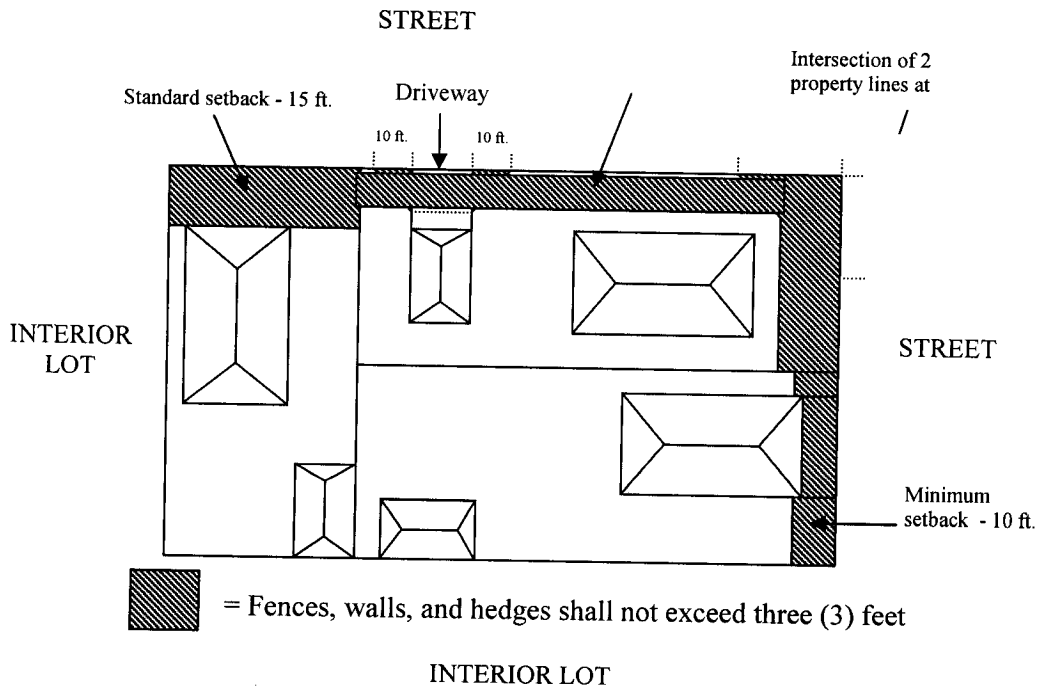
**PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on the \_\_\_ day of \_\_\_, 2009, by the following vote:

20.24.110.C.2

Current Diagram

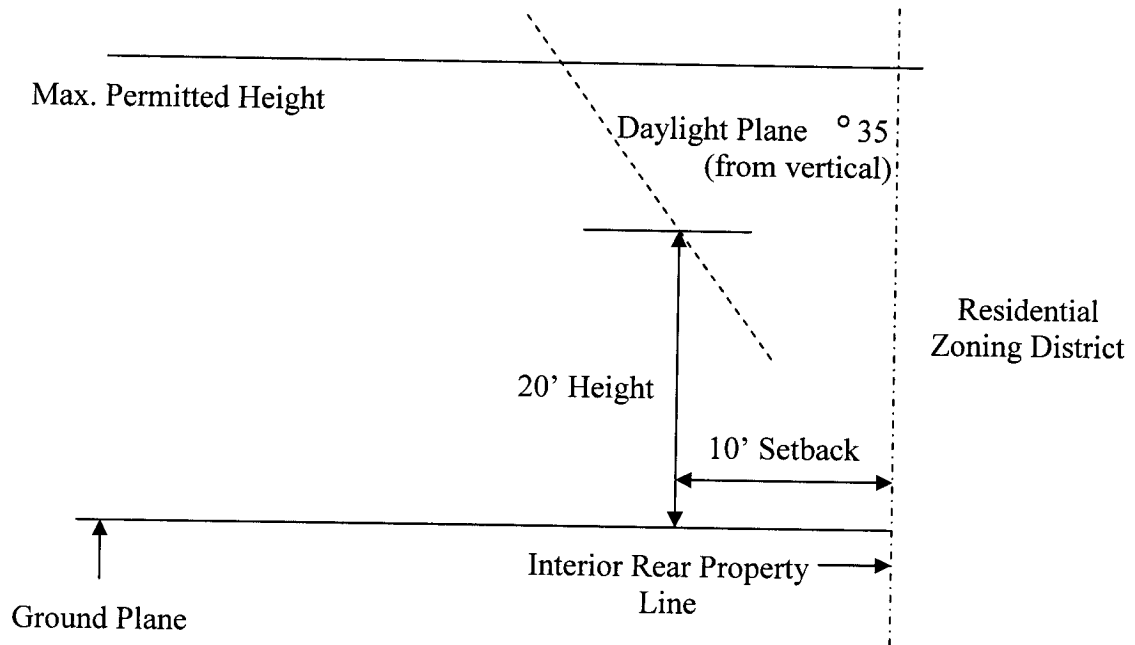


Proposed Diagram





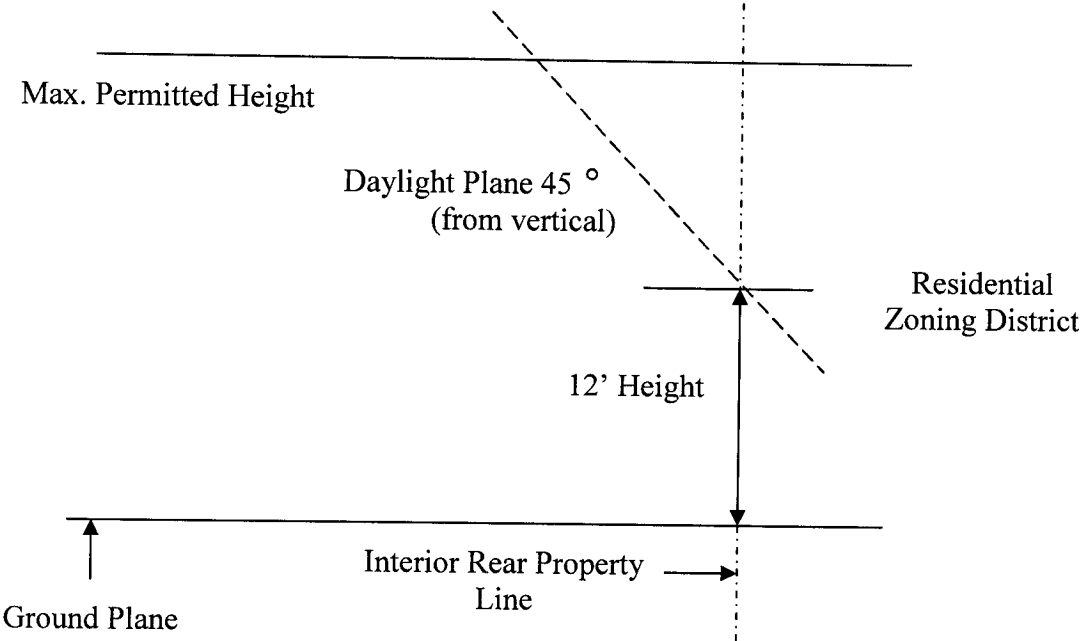
20.24.070 Figure 1.a.



\* If there is a difference in grade planes between two adjacent properties at the rear, the average of the discrepancy between the two heights shall be used as the point at which to measure the building height.



20.24.070 Figure 1.b.

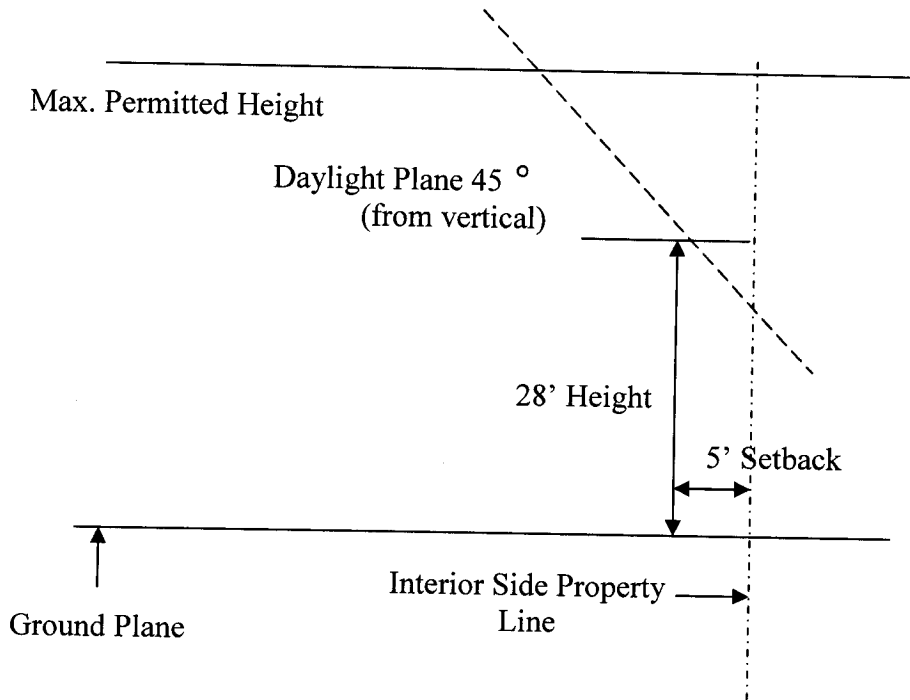


\* If there is a difference in grade planes between two adjacent properties at the rear, the average of the discrepancy between the two heights shall be used as the point at which to measure the building height.





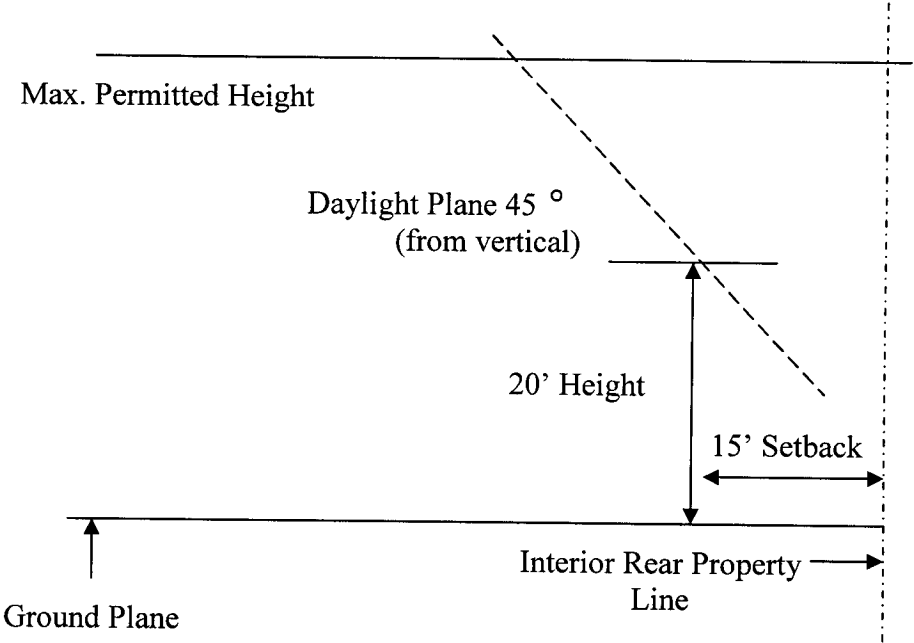
20.24.070 Figure 2.a.



\* If there is a difference in grade planes between two adjacent properties at the rear, the average of the discrepancy between the two heights shall be used as the point at which to measure the building height.



20.24.070 Figure 2.b.



\* If there is a difference in grade planes between two adjacent properties at the rear, the average of the discrepancy between the two heights shall be used as the point at which to measure the building height.