



Community Development Department

DATE: January 9, 2024

FROM: Ben Ehreth, Community Development Director

ITEM: Amending dimensional requirements for residential accessory buildings – Zoning Ordinance Text Amendment

REQUEST:

Planning staff are requesting approval of a zoning ordinance text amendment to amend certain dimensional requirements for residential accessory structures.

The purpose of this text amendment is to clarify sections of Title 14 of the City Code of Ordinances pertaining to residential accessory structures to help address commonly asked questions from the public and reduce potential points of conflict during the review process by city staff.

BACKGROUND INFORMATION:

Areas of clarification that this text amendment addresses include:

- The definition of building height, and how height is measured, for all buildings.
- The height of residential accessory structures including accessory dwelling units (ADUs).
- Where accessory structures can be placed on a property in relation to the principal structure, other accessory structures, and property line setbacks.
- And other minor clarifications connected to residential accessory structures when relevant.

The attached staff report contains a complete review of the request, according to standards of the Comprehensive Plan, city ordinances, and other relevant law. Additionally, the staff report contains an overview of past public engagement prior to, and the results of, the public hearing at the Planning and Zoning Commission meeting held on December 20, 2023.

RECOMMENDED CITY COMMISSION ACTION:

Consider the request for the zoning ordinance text amendment to amend certain dimensional requirements of residential accessory structures and call for a public hearing.

STAFF CONTACT INFORMATION:

Ben Ehreth, Community Development Director, 701-355-1372, behreth@bismarcknd.gov

ATTACHMENTS:

1. CD - Residential Accessory Structure Requirements



STAFF REPORT

Application for: **Zoning Ordinance Text Amendment**

Project ID: **ZOTA2023-002**

Project Summary

<i>Title:</i>	Dimensional Requirements for Residential Accessory Buildings
<i>Status:</i>	Board of City Commissioners – Consideration
<i>Project Contact:</i>	Isak Johnson, Planner
<i>Request:</i>	Amend dimensional requirements for residential accessory buildings
<i>Staff Recommendation:</i>	Call for public hearing

Project Narrative

Accessory structures are allowed throughout the City of Bismarck as well as in the Extraterritorial Area for a variety of uses and purposes in conjunction with the principal use of a given parcel. Commonly asked questions from the public, or potential points of conflict during the review process by City staff related to accessory structures, include aspects of building height, size, and placement.

In order to reduce any confusion surrounding the regulations of accessory structure dimensional requirements, Planning and Building Inspections staff aim to clarify sections of Title 14 of the City of Bismarck Code of Ordinances. This ordinance amendment addresses sections with the intent to increase public understanding and improve City processes related to approval of accessory structures throughout the City and the ETA.

Areas of clarification addressed by this zoning ordinance text amendment include:

- Definition of building height, and how height is measured, for all buildings.
- Height of residential accessory structures, including accessory dwelling units (ADUs).
- Placement of residential accessory structures in relation to principal

structures, other accessory structures, and property line setbacks.

- Other minor clarifications connected to residential accessory structures when relevant.

Of these four areas, the first two contain the most notable changes. These changes for the height of residential accessory structures are summarized in the tables below.

Urban (Corporate Limits)

	Current	Proposed
Height limit (no ADU)	25ft	20ft
Height limit (with ADU)	20ft	25ft
Wall height limit	12ft	No limit
How it is measured (pitched roofs)	To the peak*	To the mean of the wall and peak

Rural (ETA)

	Current	Proposed
Height limit (no ADU)	25ft	25ft
Height limit (with ADU)	20ft	25ft
Wall height limit	16.5ft	No limit
How it is measured (pitched roofs)	To the peak*	To the mean of the wall and peak

(continued)

**Note: This interpretation has been debated within the Community Development Department over the course of previous ordinance amendments throughout the years, and this debate is part of the reason for this proposed amendment.*

The proposed changes are the result of research of peer cities throughout the region in North Dakota, Montana, South Dakota, and Minnesota, as well as numerous conversations between Planning Division staff and Building Inspections Division staff. Ultimately, the proposed changes would place Bismarck’s accessory structure height regulations in a similar vein as most of our peer cities, while being slightly more flexible than a majority of our peer cities.

For reference, most of the researched cities did not have a wall height limit for residential accessory structures but had a lower overall height limit than the proposed twenty feet for Bismarck. Most peer cities had an overall height limit between fifteen and seventeen feet, when using a similar definition of height as Bismarck.

Public Engagement

Public engagement at the City Commission level will commence if the Board of City Commissioners calls for a public hearing.

At the Planning and Zoning Commission level, the public was duly notified of this request prior to their public hearing. A notice was published in the Bismarck Tribune on December 8 and December 15, 2023.

Staff received no written comments prior to the public hearing at the Planning and Zoning Commission. Any public comments received prior to the public hearing at the Board of City Commissioners will be summarized in the staff report.

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.

The goals and objectives of Together 2045 Bismarck’s Comprehensive Plan would be advanced by the proposed zoning ordinance text amendment ([Comprehensive Plan](#))

Yes. The following objectives of the plan would be advanced through the proposed amendment.

S3(e): Encourage accessory buildings to be compatible in design with, and subordinate in scale to, the principal buildings on the property.

S4(a): Increase efficiency of urban land use to maximize public investment in infrastructure and services thereby reducing cost for tax and ratepayers.

The proposed ordinance amendment will continue to improve how Bismarck residents use their land as efficiently as possible, while streamlining understandings of the appropriate regulations.

The proposed text amendment is justified by a change in conditions since the zoning ordinance was originally adopted or clarifies a provision that is confusing, in error or otherwise inconsistent with the general intent and purpose of the zoning ordinance ([Goal S9-e](#), [G10-g](#))

Yes. This section of the zoning ordinance has been amended many times, most recently in 2017. The purpose of the proposed zoning ordinance text amendment is to clarify this provision to ensure that the original intent is met.

The general intent and purpose of the zoning ordinance would be adhered to with the proposed amendment (Section 14-02-01; [NDCC 40-47-03](#))

Yes. The proposed zoning ordinance text amendment would support the purpose of the zoning ordinance, as stated in the City Code of Ordinances and North Dakota Century Code.

The proposed text amendment will preserve the overall integrity and coherence of the zoning ordinance ([Goal G10](#))

Yes. All sections of the zoning ordinance containing any references to or potential conflicts with the proposed zoning ordinance text amendment have been reviewed and corrected, as needed.

Section 14-02-03 clarifies the definition of accessory structures (and related items) used throughout this text amendment. Sections 14-03-05, 14-03-06, and 14-03-08 address the primary issues of residential accessory structure placement and height. Then Sections 14-04-01, 14-04-01.1, 14-04-03, 14-04-06 clarify several reiterations of previously addressed items to ensure consistency.

Proper administrative procedures related to the request are being followed (Section 14-07-02, [NDCC Chapter 40-47](#))

Yes. All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The zoning ordinance text amendment has been initiated by staff from the Community Development Department, on behalf of the Planning and Zoning Commission. A preliminary draft was attached to the staff report for the public hearing by the Planning and Zoning Commission.

At the conclusion of the public hearing, the Planning and Zoning Commission approved the preliminary draft, without making any changes, by a vote of five to three (5-3). The same preliminary draft is included for the consideration of the Board of City Commissioners.

The public health, safety and general welfare will not be adversely impacted by the proposed zoning text amendment ([Goal S10-a](#))

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning ordinance text amendment would not adversely impact the public health, safety, and general welfare.

Staff Recommendation

Based on the above findings, staff recommends approval of the zoning ordinance text amendment on dimensional requirements for residential accessory structures.

Attachments

1. Draft zoning ordinance text amendment
2. Examples of accessory structure placement areas
3. Examples of accessory structure height by roof type

Staff report prepared by: Isak Johnson, Planner

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CITY OF BISMARCK ORDINANCE NO. XXXX

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTIONS 14-02-03, 14-03-05, 14-03-06, 14-03-08, 14-04-01, 14-04-01.1, 14-04-03, 14-04-06, OF THE CODE OF ORDINANCES OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO THE DIMENSIONAL REQUIREMENTS FOR ACCESSORY BUILDINGS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA:

Section 1. Amend. Sections 14-02-03 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the dimensional requirements for accessory buildings, is hereby enacted to read as follows:

14-02-03. Definitions. The following definitions represent the meanings of terms as they are used in these regulations:

* * * * *

Accessory Dwelling Unit: A separate and complete dwelling unit established in conjunction with, ~~but clearly subordinate to,~~ and ancillary to, the principal single family dwelling unit, whether within the same structure as the principal unit or within a detached accessory structure on the same lot or parcel. An accessory dwelling unit contains one bedroom, kitchen and bathroom facilities, and a separate exterior entrance.

Accessory Use: A use or structure that is clearly incidental to and customarily found in connection with a principal structure or use; is ~~subordinate in area, extent and~~ ancillary in purpose to the principal building or uses; contributes to the comfort, convenience or necessity of occupants of the principal use; and is located on the same lot and in the same zoning district as the principal use.

* * * * *

~~Building-Accessory: A subordinate~~ A permanent, or semi-permanent, ancillary building or structure, the use of which is customarily incidental to that of a principal building on the same lot, including, without limitation, garages, storage sheds, playhouses, kennels, ~~statuary, trellises, barbecue stoves,~~ residential greenhouses, tent-like structures, or similar structures, storm or civil defense shelter, radio towers, satellite receiving or transmitting stations or antennas, and other structures, towers, antenna, ornaments or devices.

* * * * *

~~Height of Building: The vertical distance measured from the highest of the following three levels:~~

- ~~(a) The street curb level;~~
- ~~(b) The established or mean street grade in case the curb has not been constructed; or~~
- ~~(c) The average finished ground level adjoining the building if it sets back from the street line~~

The average finished ground level adjoining the building at all exterior walls (measured at fixed intervals around the base of the structure)

To:

- (a) the level of the highest point at the roof beams of flat roofs, or roofs including not more than one (1) inch of vertical rise to the one (1) foot of horizontal travel, and;
- (b) the deck line of mansard roofs; or
- (c) to the mean height level of the top of the main plate and highest ridge for other roofs. And when a building has multiple roofs, use the roof with the tallest ridge/height to calculate total building height.

* * * * *

Section 2. Amend. Sections 14-03-05 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the dimensional requirements for accessory buildings, is hereby enacted to read as follows:

14-03-05. Supplementary Provisions. The regulations specified in this title shall be subject to the following provisions and interpretations:

* * * * *

- 4. Location of residential accessory buildings.

- a. In any residential zoning district except RR and RR5 (see the RR or RR5 district for accessory building regulations specific to that district), all accessory buildings ~~except garages~~ shall be located ~~in the rear yard~~ ten (10) feet from the principal structure, shall be located behind the line created by the front wall of the principle structure, and shall not be less than three (3) feet from the rear or side lot line ~~while noting that structures less than five (5) feet from the side or rear lot line may require fire separation precautions in accordance with City of Bismarck Buiding Code when located at least ten feet behind the rear wall of the principal building.~~
1. For lots situated directly between two roadways, the yard adjacent to the roadway which provides access to the property's principal structure (such as by means of a doorway or driveway) is the front yard.
 2. ~~If the ten-foot distance behind the rear wall of~~ from the principal building cannot be maintained, the structure must be built in accordance with the appropriate fire protection features as determined by the City of Bismarck Building Code and the same setbacks shall be maintained as is required for the principal building.
 3. Any uncovered deck, patio or porch shall not be considered as part of the principal building for purposes of this subsection.
- b. A garage located in a rear yard and ~~approached from an~~ with an approach perpendicular to an alley must be set back from the alley line at least twenty (20) feet to allow for an additional parking space without obstructing the alley. When the approach to the garage is parallel to the alley and the car maneuvers on private property, the distance from the alley and side lot lines to the garage may be not less than three (3) feet.
- c. Accessory buildings, including garages, located on a corner lot in a residential district shall be ~~located not less than twenty feet from the lot line of the side street and in no case shall be set back less than the setback distance required for the principal building.~~ set back from the side street no less than the principal structure setback requirements for the district. For the purpose of this section, the side street is the street that does not provide access to the house by means of a door or driveway. The minimum setback from the adjacent lot line of the lot also facing the side street shall be ~~the same as required for the principal building.~~ no less than three (3) feet and be in accordance with the City of Bismarck Building Code when relevant.

- ~~d. In a residential district any garage on an inside lot may be located with the same setback from the street as required for the principal building providing that such setback is at least twenty feet and that such garage does not violate the side yard requirements for a principal building for the district in which it is located. If such detached garage is located at least ten feet behind the rear wall of the principal building, such garage may be located not less than three feet from the side lot line.~~
- d. All setback measurements for accessory buildings shall be made from the ~~eaves rather than the wall or foundation walls, or the outermost exterior structurally supporting features (such as columns), and the structures must be built in accordance with the City of Bismarck Building Codes with regards to projections from the walls such as eaves.~~
- e. No accessory building shall be allowed on any utility easement.

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Section 3. Amend. Sections 14-03-06 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the dimensional requirements for accessory buildings, is hereby enacted to read as follows:

14-03-06. Incidental Uses. Permitted uses and approved special uses shall be deemed to include accessory uses and accessory structures that are customarily incidental to the principal uses, subject to the following standards:

1. Accessory Uses and Buildings.

a. General Requirements. Accessory uses and buildings shall comply with the following standards and all other applicable regulations of this chapter:

1. The accessory use or building shall be incidental and customarily associated with the principal use or structure.

~~2. Except for accessory buildings for one and two family residential uses constructed in accordance with the provisions of Section 14-03-06(1)(b), the accessory use or building shall be subordinate in area, extent, and purpose to the principal use or building served.~~

- ~~3. The accessory use or building shall contribute to the comfort, convenience and necessity of the occupants of the principal use or building served.~~
2. The accessory use or building shall be located on the same zoning lot as the principal use or building.
3. The accessory use or building shall not be injurious to the use and enjoyment of surrounding properties.
4. No accessory building shall be located within any recorded public easement or over any known public utility.

b. One and two-family residential accessory uses and buildings.

* * * * *

4. All allowable accessory buildings for a one or two-family residence in an urban residential zoning district (R5, R10, RM, RMH & RT) shall be limited to a maximum area of twelve hundred (1,200) square feet, ~~a maximum wall height of twelve (12) feet~~ and a maximum building height of ~~twenty-five (25) feet~~ twenty (20) feet, except for accessory dwelling units which are allowed a maximum height of twenty-five (25) feet as described in Section 14-03-08.4(y).

* * * * *

5. All allowable accessory buildings for a single-family rural residence in a rural residential zoning district (RR & RR5) shall be limited to a maximum area of fourteen hundred (1,400) square feet for lots of ~~40,000~~ forty thousand (40,000) square feet or less; to a maximum area of eighteen hundred (1,800) square feet for lots between ~~40,000~~ forty thousand (40,000) square feet and ~~64,999~~ sixty-five thousand (65,000) square feet; to a maximum area of twenty-four hundred (2,400) square feet for lots over ~~65,000~~ sixty-five thousand (65,000) square feet, except as provided for herein. The ~~maximum wall height shall be limited to sixteen and one-half (16.5) feet~~ and the maximum building height shall be limited to twenty-five (25) feet.

The allowable accessory buildings for a single-family rural residence on a lot in a rural residential zoning district (RR & RR5) with ~~40,000~~ forty thousand (40,000) to ~~64,999~~ sixty-five thousand (65,000) square feet in

area may be increased to a maximum of twenty-four hundred (2,400) square feet provided a special use permit is approved by the Planning Commission in accordance with the provisions of Section 14-03-08.

The allowable accessory buildings for a single-family rural residence on a lot in a rural residential zoning district (RR & RR5) with more than ~~65,000~~ sixty-five thousand (65,000) square feet in area may be increased to a maximum of thirty-two hundred (3,200) square feet provided a special use permit is approved by the Planning Commission in accordance with the provisions of Section 14-03-08.

* * * * *

6. All allowable accessory buildings for a single-family rural residence in the agricultural zoning district (A) shall be limited to a maximum area of one (1) percent of the total lot area up to a maximum of five thousand (5,000) square feet. The ~~maximum wall height shall be limited to sixteen and one-half (16.5) feet and the maximum building height shall be limited to twenty-five (25) feet.~~

* * * * *

- e. Non-residential accessory uses and buildings in all other zoning districts.

* * * * *

- ~~9. Except for agricultural buildings located in the agricultural zoning district, no accessory building shall exceed the height or floor area of the principal building.~~
9. Manufacturing and repair facilities incidental to the principal use subject to the following limitations:

* * * * *

Section 4. Amend. Sections 14-03-08 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the dimensional requirements for accessory buildings, is hereby enacted to read as follows:

14-03-08. Special Uses. In order to carry out the purposes of this title, the board of city commissioners finds it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the city planning and zoning commission and by the Zoning Administrator (where allowed) prior to the granting of a building permit or certificate of occupancy and that the city planning and zoning commission and the Zoning Administrator (where allowed) are hereby given limited discretionary powers relating to granting of such permit or certificate.

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4. Permanent uses (planning and zoning commission approval). The city planning and zoning commission is authorized to grant special use permits for the following uses:

* * * * *

y. Accessory Dwelling Units

* * * * *

3. Requirements for All Accessory Dwelling Units. Prior to receiving a special use permit an applicant shall demonstrate that the following requirements will be met:

- a. No more than one accessory dwelling unit may be permitted on each lot or parcel.
- b. An accessory dwelling unit must be contained completely within the principal structure on the lot or parcel, or contained within an accessory structure that meets all requirements of this Code, including size and setback requirements of the underlying zoning district. However, the height of any accessory dwelling unit may be up to ~~twenty (20)~~ twenty-five (25) feet ~~or the height of the principal structure on the lot, whichever is less.~~

* * * * *

- ~~g. No part of any rooftop deck or balcony on an accessory dwelling unit may be located within twenty five (25) feet of a side or rear property line.~~

- g. An accessory dwelling unit must be connected to public utilities if available on the lot or parcel. If the lot is serviced by an on-site sewage treatment facility, the applicant must show that sufficient sewage treatment capacity will be available to meet anticipated needs.
- h. An accessory dwelling unit must comply with all residential building code requirements outlined in Title 4 of the Bismarck Code of Ordinances.
- i. An accessory dwelling unit may be occupied by no more than one family, as defined by Title 14 of the Bismarck Code of Ordinances.

* * * * *

Section 5. Amend. Sections 14-04-01 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the dimensional requirements for accessory buildings, is hereby enacted to read as follows:

14-04-01. RR Residential District. In any RR residential district, the following regulations shall apply:

* * * * *

10. Accessory Buildings. All allowable accessory buildings for a single-family residence shall be limited to a maximum of fourteen hundred (1,400) square feet for lots of ~~40,000~~ forty thousand (40,000) square feet or less; to a maximum of eighteen hundred (1,800) square feet for lots between ~~40,000~~ forty thousand (40,000) square feet and ~~64,999~~ sixty-five thousand (65,000) square feet; and to a maximum of twenty-four hundred (2,400) square feet for lots over ~~65,000~~ sixty-five thousand (65,000) square feet, except as provided herein. ~~The maximum wall height shall be limited to sixteen and one-half (16.5) feet and the maximum building height shall be limited to twenty-five (25) feet.~~

The allowable accessory buildings for a single-family rural residence on a lot with ~~40,000~~ forty thousand (40,000) to ~~64,999~~ sixty-five thousand (65,000) square feet in area may be increased to a maximum of twenty-four hundred (2,400) square feet provided a special use permit is approved by the Planning Commission in accordance with the provisions of Section 14-03-08.

The allowable accessory buildings for a single-family rural residence on a lot with more than ~~65,000~~ sixty-five thousand (65,000) square feet in area may be increased to a maximum of thirty-two hundred

(3,200) square feet provided a special use permit is approved by the Planning Commission in accordance with the provisions of Section 14-03-08.

* * * * *

Section 6. Amend. Sections 14-04-01.1 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the dimensional requirements for accessory buildings, is hereby enacted to read as follows:

14-04-01.1. RR5 Residential District. In any RR5 residential district, the following regulations shall apply:

* * * * *

11. Accessory Buildings. All allowable accessory buildings for a single-family rural residence shall be limited to a maximum of thirty-two hundred (3,200) square feet. ~~The maximum wall height shall be limited to sixteen and one-half (16.5) feet and the maximum building height shall be limited to twenty-five (25) feet.~~

* * * * *

Section 7. Amend. Sections 14-04-03 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the dimensional requirements for accessory buildings, is hereby enacted to read as follows:

14-04-03. R5 Residential District. In any R5 residential district, the following regulations shall apply:

* * * * *

10. Height limits. No single-family dwelling shall exceed forty (40) feet in height. No principal building for any other permitted use shall exceed fifty (50) feet in height. No accessory building shall exceed ~~twenty-five (25)~~ twenty (20) feet in height, except for accessory dwelling units which are allowed a maximum height of twenty-five (25) feet.

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Section 8. Amend. Sections 14-04-06 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the dimensional requirements for accessory buildings, is hereby enacted to read as follows.

14-04-06. R10 Residential District. In any R10 residential district, the following regulations shall apply:

* * * * *

10. Height limits. No single-family dwelling and no two-family dwelling shall exceed forty (40) feet in height. No principal building for any other permitted use shall exceed fifty (50) feet in height. No accessory buildings shall exceed ~~twenty-five (25)~~ twenty (20) feet in height, except for accessory dwelling units which are allowed a maximum height of twenty-five (25) feet.

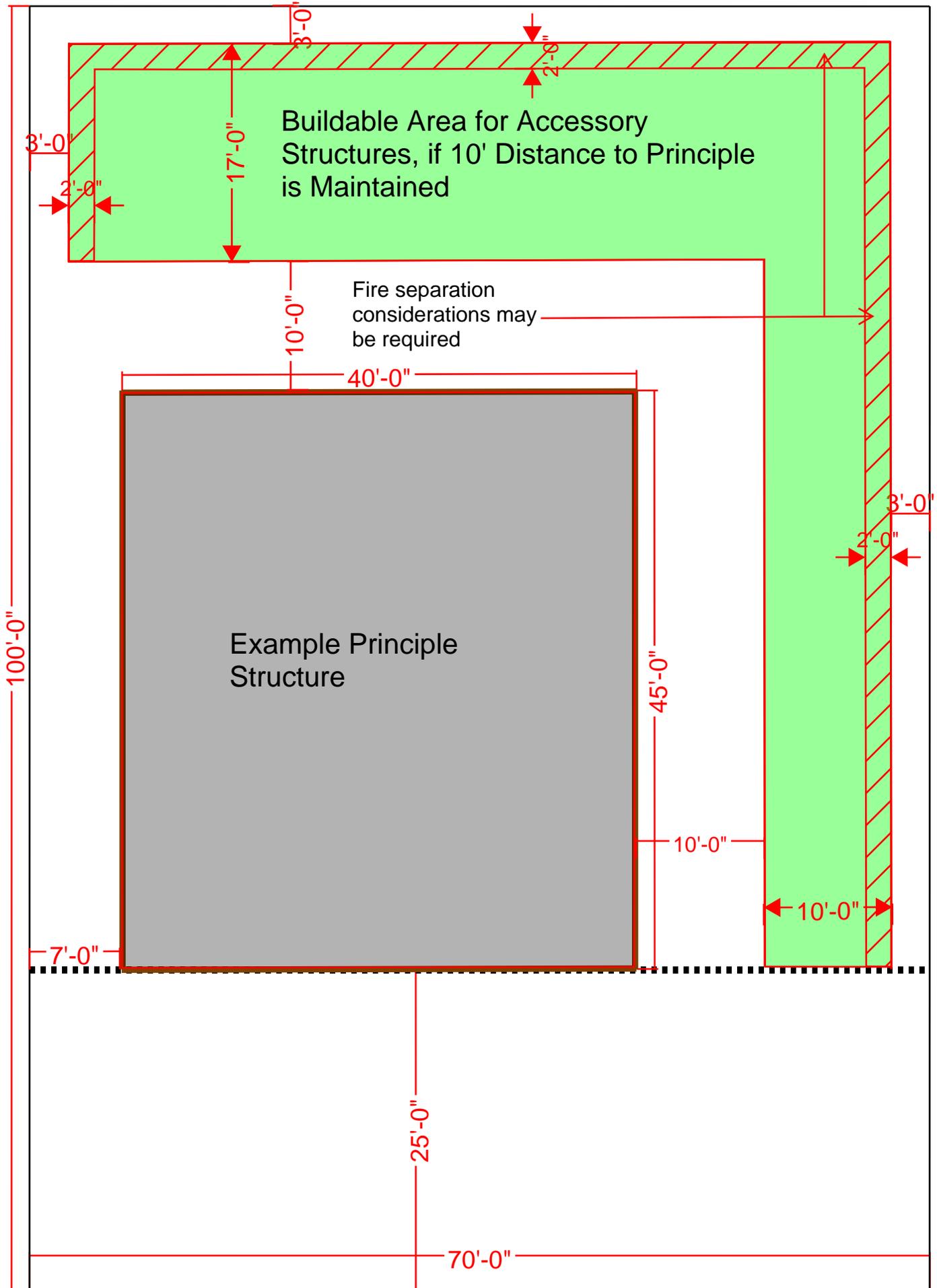
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Section 9. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent remaining portions of this ordinance.

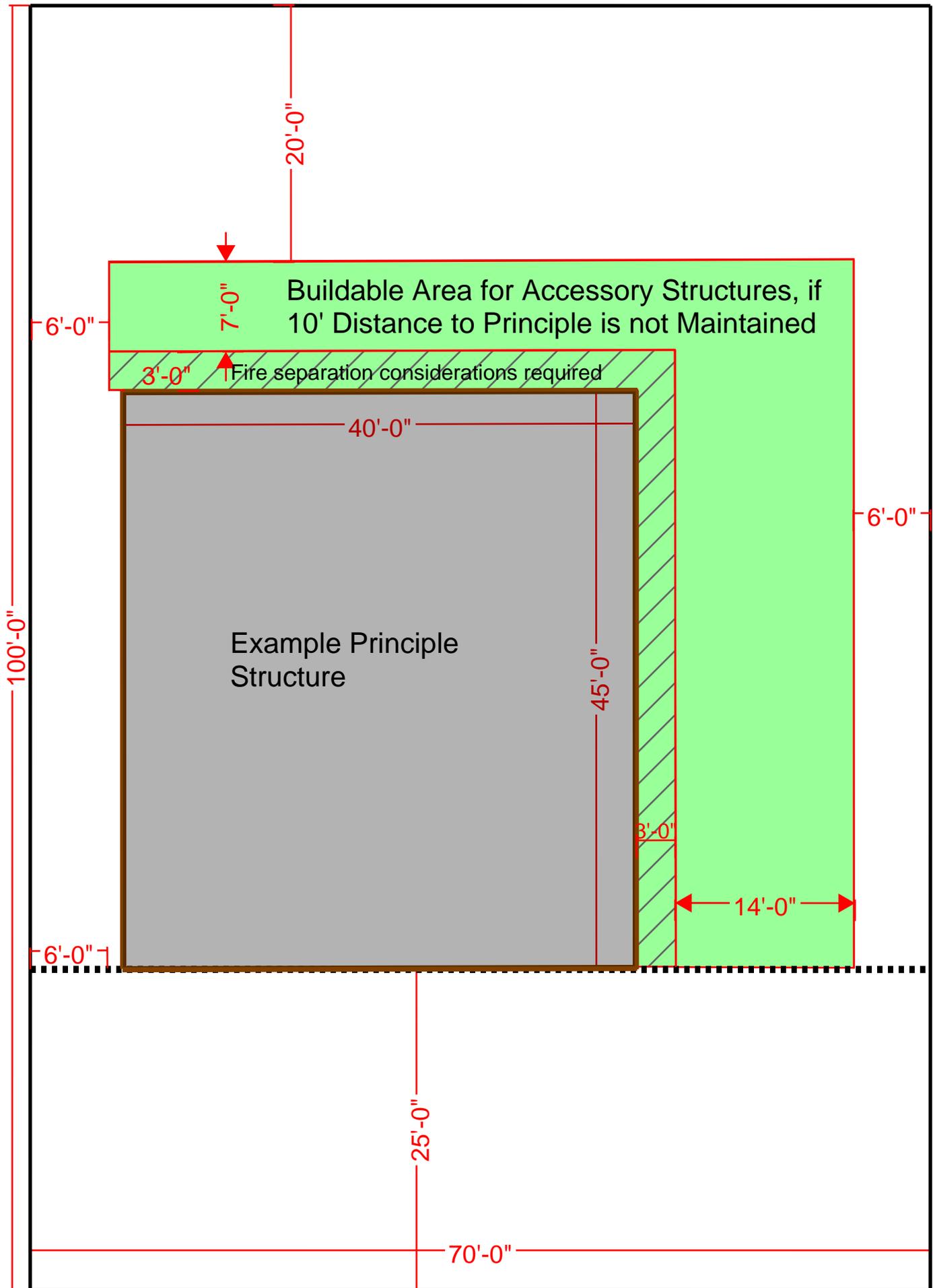
Section 10. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 11. Effective Date. This ordinance shall take effect after final passage, adoption and publication.

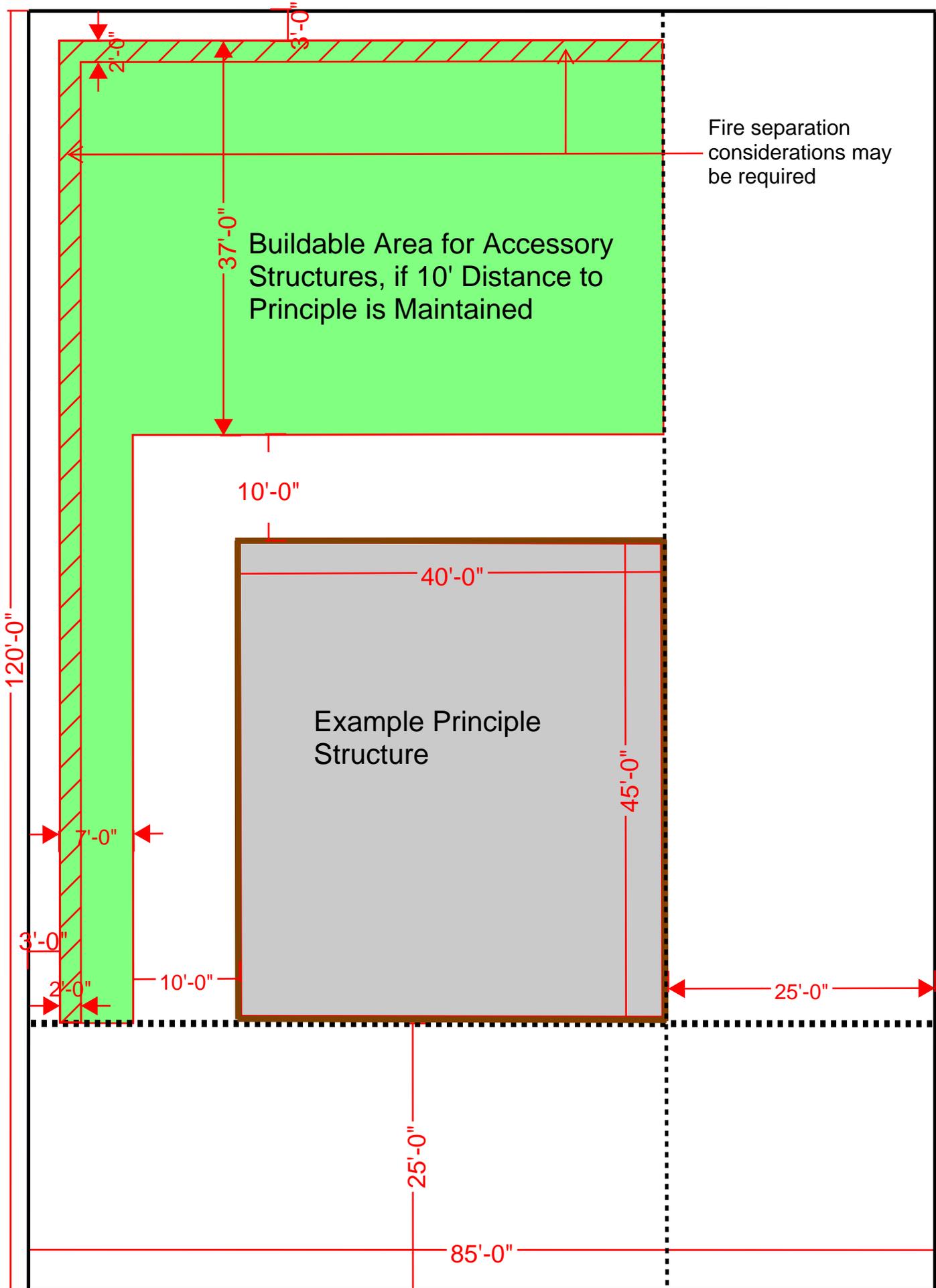
Accessory Structures on an Interior Lot (1"=10')



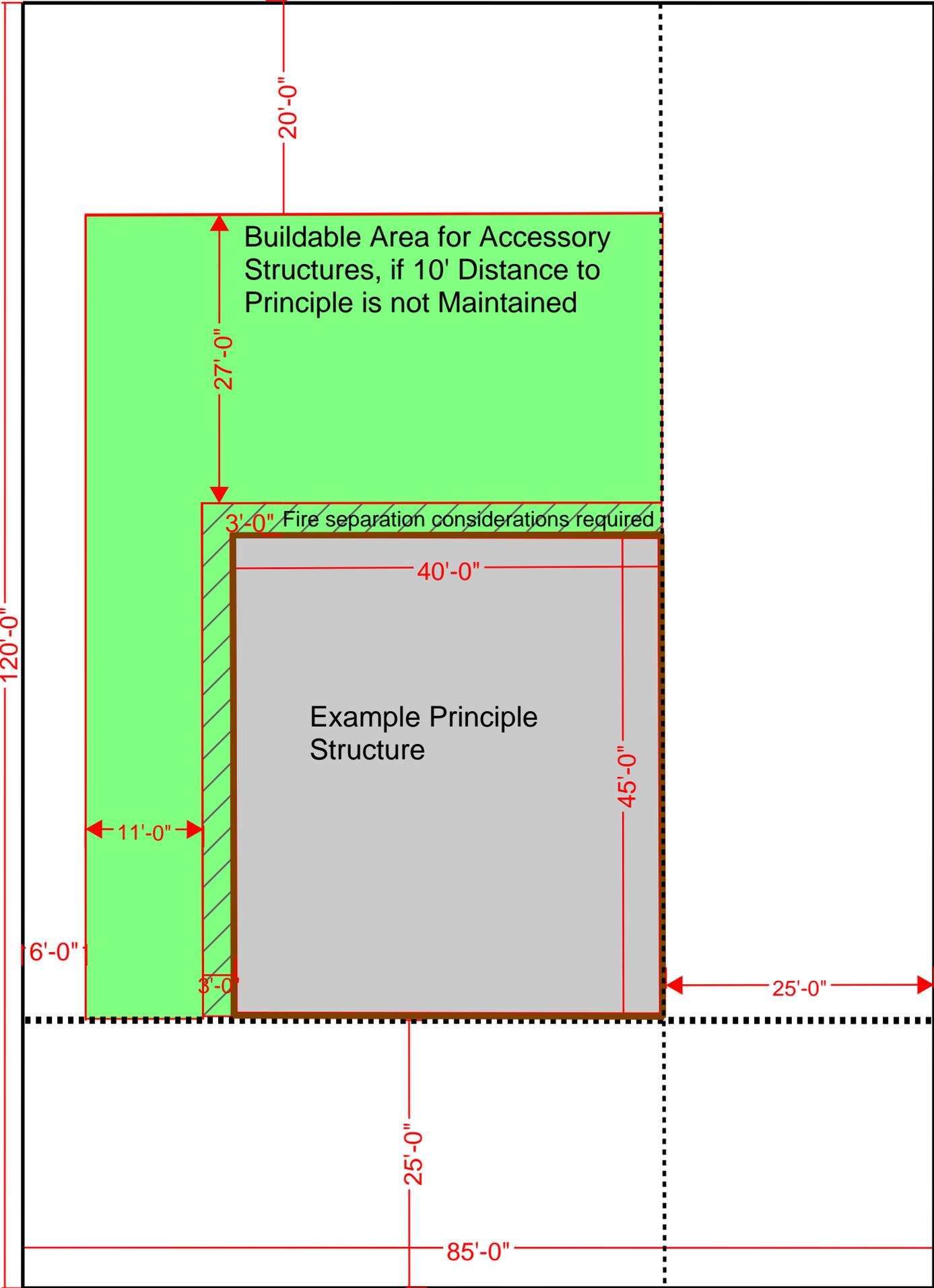
Accessory Structures on an Interior Lot (1"=10'), cont.



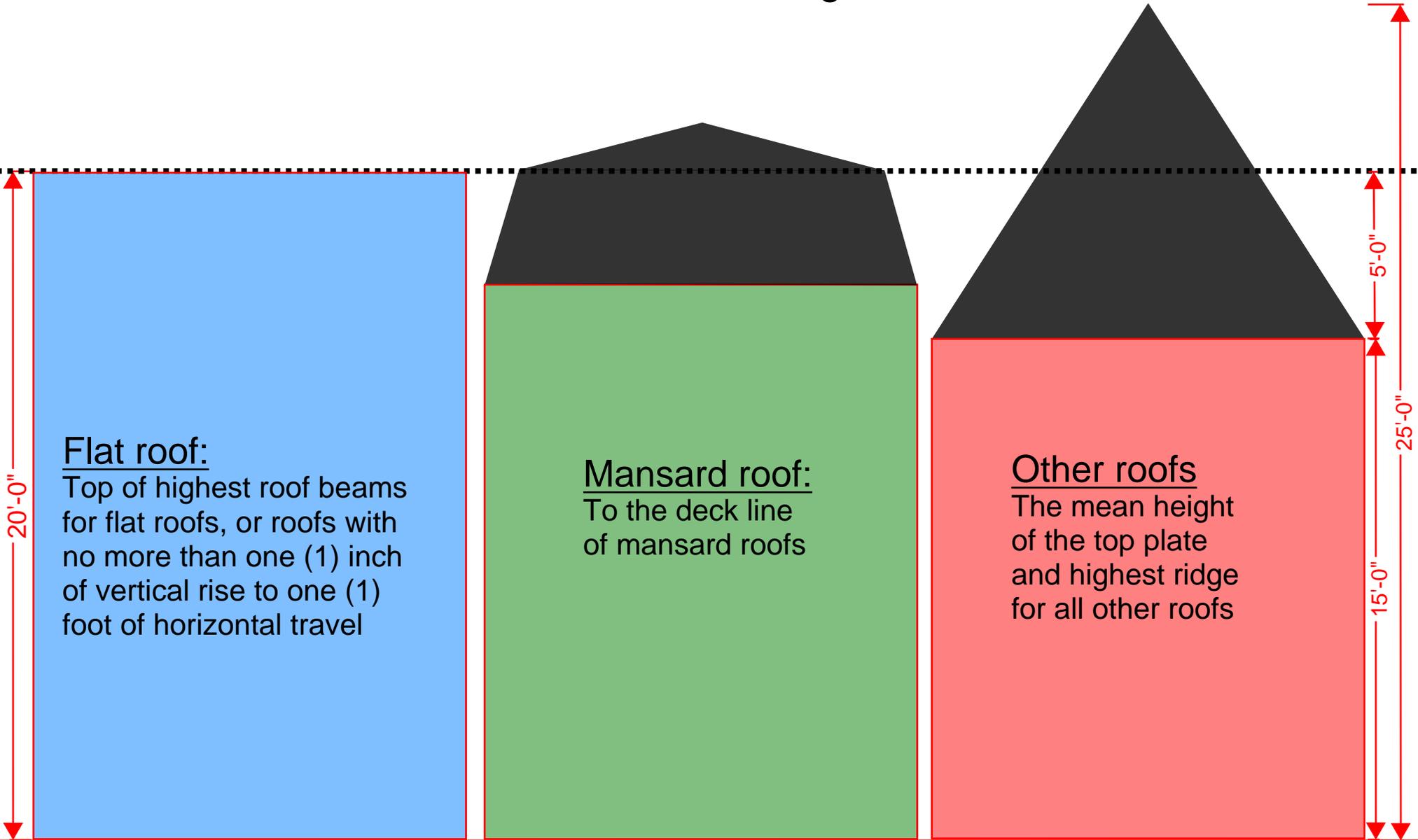
Accessory Structures on a Corner Lot (1"=12')



Accessory Structures on a Corner Lot (1"=12'), cont.



Example maximum heights of different roof types, assuming measurements from level ground



Example maximum mean heights of pitched roof types, assuming measurements from level ground and fourteen (14) ft wall height*

*Note: fourteen (14) ft wall height used for comparison only because proposed amendment removes maximum wall height requirement.

