

Issues Raised about the RB1- RB2 Zoning Amendments

Questions raised and responses from the
Planning Commission and Borough Council

1. In setting the height limitation as an average of surrounding properties, the Ordinance does not take into account the impact of floodplain requirements. The Ordinance requires that newly constructed buildings, and some existing buildings when renovated, must be elevated above the flood level. The permitted height will then likely be based on the existing height of buildings that are not elevated. This has a disparate impact on properties in the flood plain and will effectively limit homes built in those areas to single story buildings.

- A variance to address this this height limitation, if it is onerous due to floodplain requirements, can be granted by the ZHB on appeal. This problem would arise for only a very small number of properties, far fewer than the many currently nonconforming properties those that will be relieved of that problematic status through the proposed revision of the RB-1 zoning.

2. The height limitation may force homes to actually be smaller in scale than historic properties and will, in many cases, force modified roof lines to reduce heights. This is the opposite of the purported purpose of the ordinance.

- The purpose of the ordinance is to reduce the likelihood that the scale of buildings in an area is violated by new construction that pushes the scale envelope by shoving against all the land development constraints. It is not intended to preserve a particular roof line or building style.

3. Height is measured as a distance from the average grade around the property. Without a survey of the subject property, a measurement of the height of an existing building is no more than an estimate. With regard to footprint, there is no practical way to accurately measure footprint without a full on-site review of the building. The Borough does not have complete records. Because a property owner cannot compel their neighbors to allow a survey or measurement, the exact information may not be available or obtainable.

- The first observation would be correct were it not for the wording of the ordinance which specifically states that height is to be measured as the height visible from the street in front of buildings. The critique reflects either a cursory reading of the ordinance or an effort to find something objectionable.
- The second assumes the absence of records which are now available in digitized form.

4. The Ordinance's restriction on footprint does not account for different sized lots. Similar restrictions on volume (e.g., building coverage, impervious coverage) use ratios, so that the larger the lot, the more you can build. Here, you are bound by an average of neighboring buildings, even if those buildings are constructed on much smaller lots. The proposed Ordinance will therefore have a greater impact on larger lots and in many circumstances will encourage property owners to subdivide, resulting in higher density development.

- That impact assumption is correct. The ordinance, in part, is intended to limit the size of the structures on even large lots to be roughly comparable to the structures on surrounding properties. The subdivision possibility is limited by minimum lot size requirements and would be subject to Planning Commission, Council review and approval in any case. Limiting higher density development is not the objective of this ordinance.

5. The Exclusions improperly exclude larger outliers, but not smaller outliers. This belies the suggestion that the purpose of the Ordinance is to have properties built to fit with surrounding properties. By only excluding larger outliers – even if those outliers are historic properties - the Ordinance will simply ensure that new buildings are smaller – not necessarily consistent with surrounding properties. Moreover, the exclusion of buildings constructed within the past 10 years is arbitrary.

- There are two issues raised here.

First, it is correct that the Exclusions remove larger outliers but not smaller ones. That is consistent with limiting the scale of new construction which is one objective of this ordinance. The exclusion does not ensure that new buildings are smaller than existing ones.

Second, the exclusion of buildings constructed within the past 10 years is, indeed arbitrary, but that is irrelevant. The same can be said of any setback requirement, height limit or other building constraint imposed by zoning. (In fact, the original version of the proposed ordinance called for 20 years but the Planning Commission recommended 10 years as a more appropriate approach consistent with setback requirements, height limits or other building constraints imposed by modern zoning.

6. In the Historic District, the Ordinance is contrary to Section 275-46(C)(4), in that it may require a substantial variation from what was there before. That Section states: “Where demolition is determined by the Borough Council to be unavoidable, the future development of the property shall be undertaken in a manner which preserves the character, front yard setback, and design of the building removed, notwithstanding the front yard setback that may apply within the applicable zoning district. New or reconstructed structures shall maintain the setback of the original building(s) and shall maintain the architectural style, scale, bulk, and design of the buildings in the Historic District.” Compliance with the new ordinance may require a building that is substantially different than the one removed.

- The “architectural style, scale, bulk and design” of surrounding buildings in the Historic District will be the basis for the constraints the ordinance imposes by its comparison of proposed new construction to its surrounding. Thus, there is no reason to expect any conflict in the rare instance in which a demolition is approved in the District. However, in the unlikely event of a conflict, it could be presented to the ZHB for relief through a variance.

7. What would happen if a developer came in and bought three or four adjacent properties and tore down the existing properties and there are two homes or structures left on the outside of that newly formed property. Do they determine the height in the average calculation?

- Taking three properties for the sake of simplicity, if the structures on the block of three properties were all torn down, none of them would count towards calculating the average. The structures on the two properties on each side of the three demolished properties would be used to compute the average.

8. Does the zoning officer have access to the build-to line, building footprint and building height for every lot in New Hope? The Planning Commission answered that you do have this information but I can't imagine that all of these records, especially for older homes are on file. Building footprint information can be found in the Bucks County property records and/or Borough records. Height and setbacks can be measured by the applicant. How will New Hope enforce this property average as proposed in the new ordinance? Will the property owners looking to build or renovate have to pay for surveys on all neighboring properties to come up with the required numbers to determine the build-to line, building footprint and building height? They would be required to take measurements if the information is not available.

- First, building height, as already noted, is measured from the street front to avoid need for measurement involving the adjacent property owners.
- Second, there are footprint records on file that also provide data on setbacks (and, in some instances, heights). Borough staff can provide those data to would-be builders. Those data could also be used to determine whether a proposed new construction requires a variance or not, thus permitting routine enforcement.
- The language of the ordinance was carefully crafted to assure that there would be no need for applicants to intrude on neighbors' properties or spend significant sums to obtain the data needed for proposed construction to conform to the ordinance requirements.

9. The Planning Commission stated that all existing homes could be rebuilt to their existing build-to line, building footprint and building height in the event of a natural disaster or fire. Please confirm this is true and state where this can be found in the zoning regulations.

- This is true. The provisions can be found in 275-63A of the Zoning Ordinance which allows for reconstruction of a non-conforming structure that is damaged by fire or natural causes.

10. What happens when the property building height is calculated to only 18 feet and the flood elevation is six feet? Does this homeowner only get a rancher because they are surrounded by ranchers or 1.5 story homes?

- That is precisely the type of extreme hardship for which the Zoning Hearing Board exists to provide variances.
- The language of the Ordinance could be amended to add the flood elevation required to the existing height of all buildings in the average that are not currently flood-plain compliant, thus raising the height average. That provision could resolve the issue completely.

11. if you listen to the meeting recording, the overall takeaway is the intent is to drastically reduce the homes being built in New Hope. It is my opinion eliminating all homes built in the last 20 years along with dropping all larger homes from the average makes this true intent obvious. I can tell you many of the people who spoke at the Planning Commission meeting on Thursday night brought up this is unconstitutional, not legal and will be challenged. I hope the Township -- Borough has received legal advice on this issue before it costs this town more unnecessary fees.

- The exclusion is for 10 years, not 20.
- The Ordinance has been reviewed twice by expert legal counsel that specializes in land use law. Counsel stands by its opinion that the Ordinance is fully legal and constitutional.

12. We would have to go to the zoning officer, to Council to find out if the square foot -- floor space they call it in the zoning, if 5,000 square feet includes the garage or doesn't include the garage. That should be a simple is it included or not included. It is a definition included. And what this does now is this adds another complex layer for people like me that do this for a living.

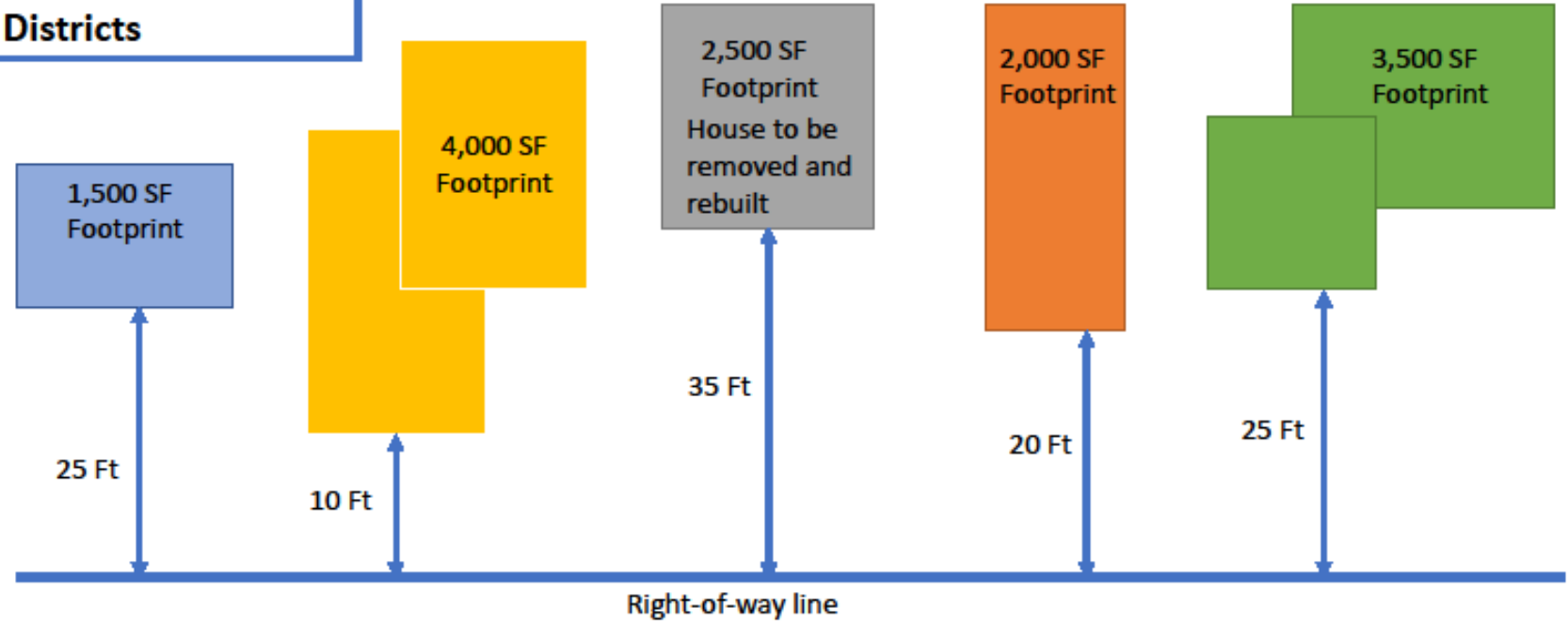
- You could go to any of several Borough Officer (but not to Council) or submit a Right-To-Know Request to get the footprint data. You would have to go to the office to get permit forms and the like in any case. If this additional effort impedes an applicant's ability to develop, then he or she must not have much commitment to the project.

13. Then we get to how are garages handled? On two of these houses of the five there is front detached garages. Am I allowed to put a garage in the front now or is that not allowed? The parking again is the issue. Am I allowed to have parking out front? It is safe to pave, better stormwater management, better for the environment. We cannot have parking out front. Then so what overrides what? Does HARB -- over 5,000 square feet is that the overrider or is it this new ordinance the overrider?

- Garages are part of the footprint of a property.
- The parking issues would be resolved by other elements of the Zoning Ordinance.
- HARB governs in the Historic Area and does not outside it.
- In any case, a Right-To-Know request could ask the Borough to provide any information on file that is available for review.

**Sample Calculations
for RB-1 and RB-2
Districts**

Average Footprint = 2,700 SF - New house may be up to 3,105 SF with 15% allowance
Average Front Setback = 23 Ft - New house may be setback up to 26 Ft with 15% allowance



Building Height along Front Façade is also calculated with an average of five buildings.

Edge of Road