

MEMORANDUM

May 4, 2010

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, ^{JZ} Legislative Attorney
SUBJECT: Executive Regulation 18-09 – Additional Stories on Sloping Lots

Background

ZTA 08-11 – Required regulations

The Zoning Ordinance limits the height and number of stories for one-family detached dwellings. The sloping lot provision allows additional stories in a building, if the stories are located on the downhill side of a sloping lot.¹ The Department of Permitting Services (DPS) estimates that this provision is applied about 12 times a year. At one time, this provision required the lot to slope at the rate of 10 percent. Since the slope percentage was removed by a ZTA, DPS has interpreted this provision on a case-by-case basis. DPS allowed the sloping lot provision to be used when the slope was 8.5 percent. In the course of the Council's deliberations on ZTA 08-11, DPS stated that the sloping lot provision allowed the downhill side of a lot to have additional stories, even if it is the back yard that slopes down to the front yard.

The Montgomery County Civic Federation recommended an amendment to the sloping lot provision should to ensure that houses will never appear to be more than 2 ½ stories when viewed from the fronting street. The Council was urged to adopt the following amendment (the added condition is underlined):

On any sloping lot, except where the average elevation along the front lot line abutting a street is lower than the average elevation of the lot line along the rear of the lot, stories in addition to the number permitted in the zone in which the lot is located must be permitted on the downhill side of any building erected on the lot, but the building height limit must not otherwise be increased above that specified for the zone....

¹ This provision was first adopted by the Council on February 11, 1964 and has been retained in every zoning ordinance since then.

Councilmember Knapp argued not to change the sloping lot provision but to discuss the need for any legislative changes when the regulations were before the Council.² The Council required DPS to adopt regulations to implement the provision that allows additional stories on sloping lots when it approved ZTA 08-11 on December 9, 2008:

59-A-5.41. Additional stories on sloping lot.

On any sloping lot, stories in addition to the number permitted in the zone in which the lot is located must be permitted on the downhill side of any building erected on the lot, but the building height limit must not otherwise be increased above that specified for the zone. *This section must be implemented by an executive regulation adopted under method 2 of Section 2A-15.* (The text in *italic* was added by ZTA 08-11.)

Executive Regulation 18-09

Executive regulation 18-09 was published in the October 2009 County Register. Only a representative of the Building Association submitted comments. On January 4, 2010 the Executive submitted Executive Regulation 18-09 for the purpose of implementing Section 59-A-5.41 of the Zoning Ordinance. As required by Section 59-A-5.41, the regulation was submitted for the Council’s approval under method 2 review.³ On March 2, 2010 the Council extended the time for its review until June 30, 2010. The regulation becomes effective if the Council fails to disapprove the regulation before June 30, 2010.

Staff received comments from Mike Carey, supported by Joe Davis.⁴ They believe that the regulation is contrary to the sloping lot provision. In their opinion, the sloping lot provision does not apply to any lot that slopes up from the street to the rear of the lot.

Issues

Does Section 59-A-5.41 allow for increased stories if the lot slopes upward from the street elevation to the rear of the lot?

The plain language of the Ordinance would answer this question “yes”; Section 59-A-5.41 allows for increased stories if the lot slopes upward from the street elevation to the rear of the lot. The building is the reference point in §59-A-5.41 to determine the downhill side; it is not the street. The Ordinance

² Council transcript December 9, 2008.

³ Section 2A-15(f) Method (2):

- (A) The issuer must send a copy of the proposed regulation to the County Council after the deadline for comments published in the Register.
- (B) The Council by resolution may approve or disapprove the proposed regulation within 60 days after receiving it.
- (C) If necessary to assure complete review, the Council by resolution may extend the deadline set under subparagraph (B).
- (D) If the Council approves the regulation, the regulation takes effect upon adoption of the resolution approving it or on a later date specified in the regulation.
- (E) If the Council does not approve or disapprove the proposed regulation within 60 days after receiving it, or by any later deadline set by resolution, the regulation is automatically approved.
- (F) If a regulation is automatically approved under this method, the regulation takes effect the day after the deadline for approval or on a later date specified in the regulation.

⁴ See © 7-13.

discusses building height, which is measured from the street side⁵; however, using the street as a reference point to determine if the lot is uphill or downhill from the street is not in the text of the code.

The legislative history of §59-A-5.41 indicates that the Council was aware of DPS's interpretation that the word downhill did NOT refer to elevations relative to the street. The Council was presented with text to change the code to do so, but declined to do so. The history lends support to DPS's interpretation.

Should §59-A-5.41 be amended?

The general thrust of ZTA 08-11 was to allow one-family detached infill development in harmony with the surrounding houses. Additional stories would be allowed on the street facing side of a building under ZTA 08-11 as approved and regulation 18-09. Mr. Carey submitted diagrams to illustrate some situations that may arise.⁶ These situations may be out of character to the current neighborhood.

The heights and setbacks of houses are more important to an observer's perception of bulk than the number of stories. Nevertheless, the current code includes a limit on stories, in addition to building height and setback. As long as stories are regulated, *staff recommends amending ZTA 08-11 to not allow additional stories on a sloping lot on the street-facing side of the house.*

When is a lot considered to be sloping?

There are two elements to the regulation's definition:

- 1) How much of a slope is considered sloping?
- 2) From what point on the property can the slope be measured?

⁵ § 59-A-2.1. Definitions.

In this Chapter, the following words and phrases have the meanings indicated:

* * *

Height of building: The vertical distance measured from the level of approved street grade opposite the middle of the front of a building to the highest point of roof surface of a flat roof or to the mean height level between eaves and ridge of a gable, hip, mansard, or gambrel roof. However, if a building is located on a terrace, the height above the street grade may be increased by the height of the terrace. In the case of a building set back from the street line 35 feet or more, the building height is measured from the average elevation of finished ground surface along the front of the building. On a corner lot exceeding 20,000 square feet in area, the height of the building may be measured from either adjoining curb grade. For a lot extending through from street to street, the height may be measured from either curb grade.

Height of residential building in the R-60 and R-90 zones: For any one-family detached residential building in the R-60 or R-90 zone, building height is the vertical distance measured from the average elevation of the finished grades along the front of the building to either: (1) the highest point of roof surface regardless of roof type, or (2) the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof. However, for the purposes of determining building height and story, at no point must the finished grade be higher than the pre-development grade. In all cases where this Chapter provides for height limitations by reference to a specified height and a specified number of stories, building height is limited to the specified maximum footage and the number of stories within the specified maximum footage.

⁶ See © page 11.

How much slope is enough?

The Regulation has two alternatives to define how much slope is enough: 1) a change in elevation of at least 1 foot for every 12 feet of horizontal distance; or 2) a change in elevation of at least 6 feet. The first slope definition equates to an 8.3% grade. The second measurement can be less than an 8.3% grade if the distance being measured is longer than 72 feet.⁷ If the distance is less than 72 feet, a 1 to 12 slope will be less than a 6 foot elevation change. Having 2 measures of slope will mean that more buildings can qualify for increased stories.

The definition of height includes the following provisions: "for the purposes of determining building height and story, at no point must the finished grade be higher than the pre-development grade." The sloping lot regulation does not include a similar reference to the pre-development grade.

DPS argues that the reference to measurements from the pre-development grade in the building height definition also applies to sloping lots. On its face, the definition says the pre-development grade applies to height and to stories but, since sloping lots concerns stories, it also applies to sloping lots. Even in the absence of a requirement in the regulation, DPS says that they will only use the pre-development grade to determine sloping lots.

Staff believes that, if DPS intends to use the pre-development grade for the purpose of measuring sloping lots, it should state that in the regulation. The reference to stories in the building height is different than the sloping lot provision. The elevation around a building determines whether the lowest level is a cellar (not counted as a story) or a basement (counted as a story). Sloping lots and stories are different. If DPS uses the definition of building height for the purpose of determining the grade to be measured, it can also be argued that the definition should be used to establish the front grade of a house from which the remainder of the lot must be downhill. **Staff recommends approving a regulation that references the pre-development grade for the purpose of defining slopes.**⁸

From what points on the property can the slope be measured?

The regulation includes 8 alternative measure points from which to derive the qualifying slope:

- 1) from front lot line to rear of building or addition;
- 2) from rear lot line to front of building or addition;
- 3) from front building restriction line to rear building restriction line;
- 4) from rear building restriction line to front building restriction line;
- 5) from front of building or addition to rear of building or addition;
- 6) from rear of building or addition to front of building or addition;
- 7) between side building restriction lines;
- 8) from one side of building or addition to other side of building or addition.

If the lot is sloping, there is a downhill side of a building toward one or more lot lines. In addition, if the building does not have parallel lot lines, any side of the building may be downhill. The downhill side varies because the topography on the lot can vary infinitely.

⁷ An 8.3% grade change is 1 foot of change over a 12 foot distance. A grade of 8.3% or higher would change 6 feet or more in elevation in a distance of 72 feet.

⁸ The Council may only approve or disapprove a method 2 regulation, but the Executive can resubmit an amended regulation without going back to the County register.

The longer the distance measured, the more likely finding a qualifying slope will be. The longest distance-measuring points are those that refer to lot lines. Fewer measures would restrict the application of the sloping provision. The regulation could result in more houses qualifying for the sloping lot provision.

<u>This packet contains</u>	<u>© Page</u>
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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

January 4, 2010

2010 JAN -4 PM 3:42

RECEIVED
MONTGOMERY COUNTY
COUNCIL

TO: Nancy Floreen, President
Montgomery County Council

Method 2

FROM: Isiah Leggett, County Executive

SUBJECT: Executive Regulation 18-09 - Additional Stories on Sloping Lots

The purpose of this memorandum is to transmit for the County Council's approval Executive Regulation 18-09, Additional Stories on Sloping Lots. This regulation implements Section 59-A-5.41 of the County Code as required by Zoning Text Amendment (ZTA) 08-11, Standards – Residential Zones, which took effect April 28, 2009.

Section 59-A-5.41 allows additional stories to be constructed on the downhill side of any building erected on a sloping lot so long as the building's height complies with the height limit for the zone in which the building is located. Executive Regulation 18-09 implements Section 59-A-5.41 by establishing the process for determining whether a lot slopes sufficiently to allow additional stories on the downhill side of a building erected on the lot.

Executive Regulation 18-09 was published in the October 2009 County Register. The only comments submitted on the regulation were provided by Raquel Montenegro, Associate Director, Legislative Affairs, Maryland National Capital Building Industry Association. A copy of those comments are attached. The Fiscal Impact Statement for Executive Regulation 18-09 is also attached.

I look forward to working with the Council on this important matter. If you have any questions about this proposed regulation please contact Susan Scala-Demby on 240-777-6255.

Attachments



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive . 101 Monroe Street . Rockville, Maryland 20850

Subject: Additional Stories on Sloping Lots	Number 18-09
Originating Department: DEPARTMENT OF PERMITTING SERVICES	Effective Date:

Montgomery County Regulation on:

ADDITIONAL STORIES ON SLOPING LOTS

Department of Permitting Services

Issued by County Executive
Regulation #18-09

Authority: Code Section 59-A-5.41

Supersedes: None

Council Review: Method 2 under Code Section 2A-15

Comment Deadline: October 31, 2009

Effective Date:

Sunset Date: None

SUMMARY:

This regulation establishes the policies and procedures for the method used to calculate a sloping lot and to determine when a lot slopes sufficiently to allow additional stories on the downhill side of any building erected on a sloping lot. This regulation does not allow additional building height above that specified for the zone.

ADDRESSES: Department of Permitting Services
255 Rockville Pike, Second Floor
Rockville, Maryland 20850

Staff Contact: Amy Edwards, Office Services Coordinator
240-777-6316

BACKGROUND:

The Department of Permitting Services is responsible for the enforcement of the Zoning Ordinance, Chapter 59 of the Montgomery County Code as amended. This regulation establishes the policies and procedures for the method used to calculate a sloping lot and to determine when a lot slopes sufficiently to allow additional stories on the downhill side of any building erected on a sloping lot. This regulation does not allow additional building height above that specified for the zone



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive . 101 Monroe Street . Rockville, Maryland 20850

Subject: Additional Stories on Sloping Lots	Number 18-09
Originating Department: DEPARTMENT OF PERMITTING SERVICES	Effective Date:

Section 1: Purpose

This regulation establishes the process for determining if a lot slopes sufficiently to allow additional stories on the downhill side of a building erected on a sloping lot.

Section 2: Applicability

This regulation applies to any lot that is determined to slope sufficiently to allow additional stories in excess of the number of stories allowed in the zone as defined in 59-A-5.41 of the *Zoning Ordinance*.

Section 3: Policy

3.0 It is the policy of the Department of Permitting Services to determine a lot to be sloping when any of the following circumstances occur on the lot:

- (1) There is a change in vertical elevation of at least one (1) foot for each twelve (12) feet of horizontal distance when measured from between any of the following points:
 - (a) from front lot line to rear of building or addition;
 - (b) from rear lot line to front of building or addition;
 - (c) from front building restriction line to rear building restriction line;
 - (d) from rear building restriction line to front building restriction line;
 - (e) from front of building or addition to rear of building or addition;
 - (f) from rear of building or addition to front of building or addition;
 - (g) between side building restriction lines; or
 - (h) from one side of building or addition to other side of building or addition, and
- (2) Between the points selected, there is a change in elevation of at least six feet.



MONTGOMERY COUNTY EXECUTIVE REGULATION

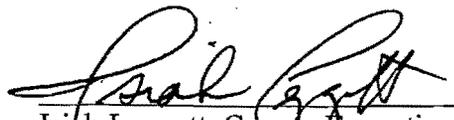
Offices of the County Executive . 101 Monroe Street . Rockville, Maryland 20850

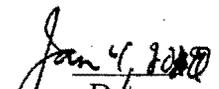
Subject: ADDITIONAL STORIES ON SLOPING LOT	Number: 18-09
Originating Department DEPARTMENT OF PERMITTING SERVICES	Effective Date:

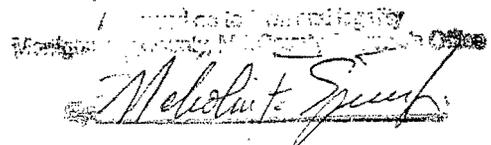
EFFECTIVE DATE

Section 4.

This regulation is effective on April 1, 2010.


Isiah Leggett, County Executive


Date


Montgomery County, Maryland
Melvin E. Spivey



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

September 22, 2009

TO: Joseph F. Beach, Director
Office of Management and Budget

VIA: Angela Dizelos, Management and Budget Manager

FROM: Amy Wilson, Management and Budget Specialist

SUBJECT: Executive Regulation 18-09, Additional Stories on Sloping Lots

REGULATION SUMMARY

This regulation establishes the policies and procedures for the method used to calculate a sloping lot and to determine when a lot slopes sufficiently to allow additional stories on the downhill side of any building erected on a sloping lot. This regulation does not allow additional building height above that specified for the zone.

FISCAL SUMMARY

Since this regulation only establishes a policy for determining when a lot is sloping, implementation of this regulation does not require additional resources and has no fiscal impact on the County.

Susan Scala-Demby of the Department of Permitting Services contributed to and concurs with this analysis.

JFB:aw

c: Kathleen Boucher, Assistant Chief Administrative Officer
Carla Reid, Director, Department of Permitting Services
John Cuff, Office of Management and Budget
Amy Wilson, Office of Management and Budget

OMB REVIEW

Fiscal Impact Statement approved


OMB Director

Fiscal Impact Statement not approved, OMB will contact department to remedy.

Office of the Director (5)

Scala-Demby, Susan

From: Raquel Montenegro [rmontenegro@mncbia.org]
Sent: Friday, October 30, 2009 3:54 PM
To: Scala-Demby, Susan
Subject: RE: Executive Reg on sloping lot...

Susan -

Thank you for forwarding the DRAFT Executive Regulation 18-09 "Additional Stories on Sloping Lots".

Per ZTA 08 -11 Standards – Residential Zones, DPS was directed to develop, by 11/09/09, regulations to implement the sloping lot provision ... [On any sloping lot, stories in addition to the number permitted in the zone in which the lot is located must be permitted on the downhill side of any building erected on the lot, but the building height limit must not otherwise be increased above that specified for the zone...].

It is clear that the draft regulation provides criteria that establishes what is a slope, while it seeks to reflect the diversity of the topography found in Montgomery County.

However, no regulation can comprehensively address all variations of topography, and conditions, found in the County; consequently we ask that a provision be added to the regulation that, if a properly-owner has a lot with a slope that does not meet the criteria established in 3.0 (1) and (2), the applicant can request that DPS review the property for consideration of a sloping lot designation.

An additional point that we ask to be addressed is to confirm the measuring points to be from the highest grade to lowest grade.

Thank you for consideration of these comments.

Raquel D. Montenegro
Associate Director, Legislative Affairs
Maryland National Capital Building Industry Association
1734 Elton Rd, Suite 200
Silver Spring, Maryland 20903
Office: 301.445.5408
Cell: 301.768.0346

From: Scala-Demby, Susan [mailto:Susan.Scala-Demby@montgomerycountymd.gov]
Sent: Tuesday, October 13, 2009 11:25 AM
To: Raquel Montenegro
Subject: Executive Reg on sloping lot...

...is attached

Please feel free to contact me if you have further questions.

Susan Scala-Demby Permitting Services Zoning Manager
240-777-6255

Please complete our Customer Survey

For Zoning Information visit www.montgomerycountymd.gov/permittingservices

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E-MAIL FROM

MIKE CARCY TO JEFF ZYONTE 1/7/10

The sloping lot determination, as represented in the draft distributed on July 14th, attempts to qualify a sloping lot as a topography change in excess of 10% between the center point at the front of a building and the rear wall of the proposed addition or existing house.

I believe this determination, in its current form, is problematic for a number of reasons whereby other applicable sections of the code are being neglected in this application.

The determination includes the following language (emphasis added):

"The first elevation is taken at the front lot line and is from the approximate center or middle of the lot, using the existing grade. The second elevation is taken at the rearmost portion of the proposed house or addition, also using the existing grade. Then subtract the higher elevation from the lower elevation."

The application of this statement is in direct conflict with section 59-A-5.41, which clearly states (emphasis added) that additional stories are only permitted on the downhill side:

"On any sloping lot, stories in addition to the number permitted in the zone in which the lot is located must be permitted on the downhill side of any building erected on the lot, but the building height limit must not otherwise be increased above that specified for the zone."

59-A-5.41 presents circumstances whereby only properties sloping down from the street are entitled to additional stories under the code. In theory, a steep enough slope DOWN from the street could allow for multiple additional stories than the maximum allowed by the zoning regulations. The inverse, however, is not allowable by 59-A-5.41. A lot that slopes UP from the street would not be entitled to the same number of additional stories by applying this section of the code. To interpret 59-A-5.41 in that manner would violate the code as it is specifically written, and would require a legislative change removing "downhill" from this section in order to apply the July 14th determination.

As described later, height determination is always from the street side, not the building face with the lowest exposed elevation at grade, as described in the July 14th determination. Thus, it is possible to have a house with one or more stories (as defined in 59-A-2.1) than the maximum allowable for the zone (ref. 59-C-1.327 "Maximum Building Height" development standards), provided it is built on a lot sloping DOWN from the street. The reason for this is that "height," as defined in 59-A-2.1, *must* be measured from the building elevation facing the street, and includes not only vertical distance, but total stories. So, while the building may actually have more stories than allowable by the development standards, the "height," as measured from the street, may still only be the defined maximum for that zone if the additional stories are effectively down the hill.

It is important to note that many of the terms contained in 59-A-5.41 have specific definitions explained in section 59-A-2.1, "Definitions." For example, building height is defined as follows:

***Height of building:** The vertical distance measured from the level of approved street grade opposite the middle of the front of a building to the highest point of roof surface of a flat roof or to the mean height level between eaves and*

ridge of a gable, hip, mansard, or gambrel roof. However, if a building is located on a terrace, the height above the street grade may be increased by the height of the terrace. **In the case of a building set back from the street line 35 feet or more, the building height is measured from the average elevation of finished ground surface along the front of the building.** On a corner lot exceeding 20,000 square feet in area, the height of the building may be measured from either adjoining curb grade. For a lot extending through from street to street, the height may be measured from either curb grade.

Height of residential building in the R-60 and R-90 zones: For any one-family detached residential building in the R-60 or R-90 zone, building height is the vertical distance measured from the average elevation of the finished grades along the front of the building to either: (1) the highest point of roof surface regardless of roof type, or (2) the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof. **However, for the purposes of determining building height and story, at no point must the finished grade be higher than the pre-development grade. In all cases where this Chapter provides for height limitations by reference to a specified height and a specified number of stories, building height is limited to the specified maximum footage and the number of stories within the specified maximum footage.**

In the case of the first definition (anywhere but R-60 and R-90 zones), the height of the building is always measured along a datum at the *front* of the building, regardless of whether the lot qualifies as terraced, having a 35' distance to the front of the building, or if it is a corner lot. In the second definition (R-60 and R-90), height includes not only the vertical distance, but also stories. The term "story" ("half-story" also included) is also defined in section 59-A-2.1 as:

Story: That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there be no floor above it, the space between such floor and the ceiling next above. A basement is counted as a story. A mezzanine floor shall be counted as a story if it covers more than one-third of the area of the floor next below it or if the vertical distance between the floor next below it and the floor next above it is 20 feet or more.

Story, half: A story under a gable, hip or gambrel roof, the wall plates of which on at least 2 opposite exterior walls are not more than 2 feet above the floor of such story.

The attached figures identify the various scenarios described above in great detail. For the purposes of these examples, I am assuming an R-90 zone, which has a height limitation of 35' to the peak or 30' to the mean of the eave and peak AND does not exceed 2-½ stories (ref. 59-C-1.327)

Figure 1 shows a 2-½ story residence on a flat lot. No sloping lot application is required. Since the bottom level wall plates are more than 50% below grade, the bottom floor is a cellar, thus it does not count as a story, and does not count towards height in this regard.

Figure 2 shows a building where the lot slopes **down** from the road. Note the bottom level is shown as a basement since less than 50% of the wall plates for that level are concealed by surrounding finish grade. This level therefore counts as a story. Were it not for the sloping lot provision, this would be deemed a 3-½ story home due to the designation of the bottom floor. However, since the additional story is on the downhill side, the 3-½ stories is not an issue since the overall height – as defined and measured along the front of the house – has not exceeded 2-½ stories.

Figure 3 shows an exaggerated case whereby it is possible to have a 4 ½ story house in a zone limited to a 2 ½ story height limitation. Again, since height is measured along the front elevation, it does not matter that 4 ½ stories are visible from the back of the house.

Figure 4 shows the inverse condition. The slope of the lot in this case goes **up** from the street. Considering the bottom floor as a basement, and thus a story, this house, while no larger than the one depicted in *Figure 2*, does **not** qualify for the sloping lot provision since the additional story is now on the face of the building that is measured for height (as defined in 59-A-2.1) in both vertical distance and number of stories. While it is possible that the vertical distance may comply with the zoning standards assuming 8' ceilings, it must meet both criteria. This configuration does not comply because the 'height' looking at the front elevation is violating the 2-½ story maximum for an R-90 zone.

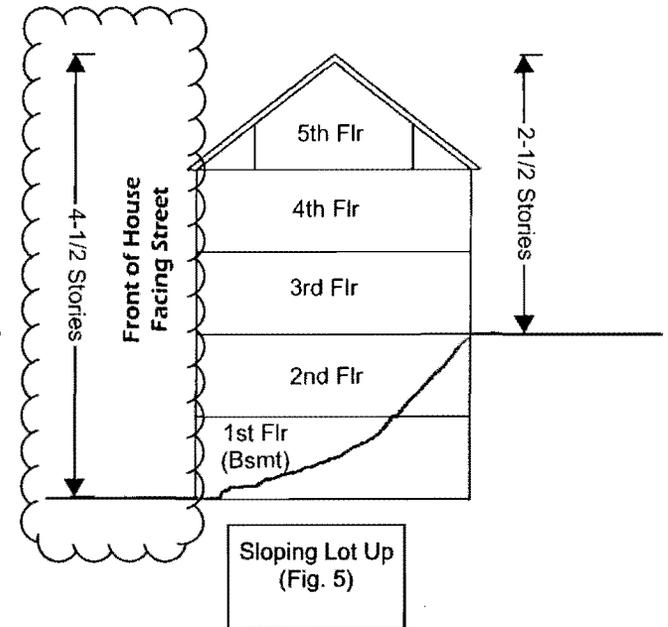
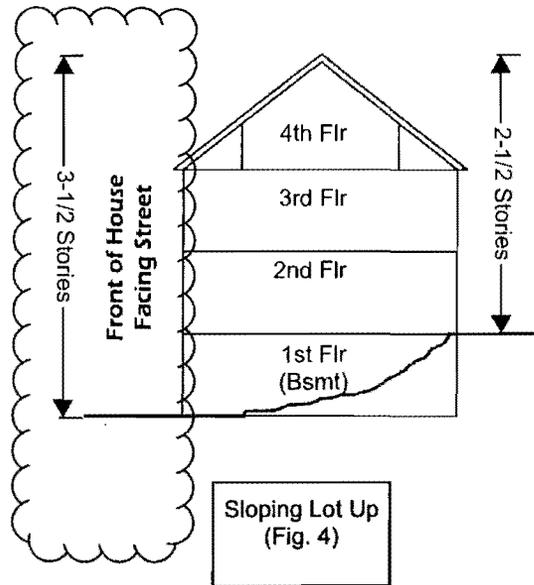
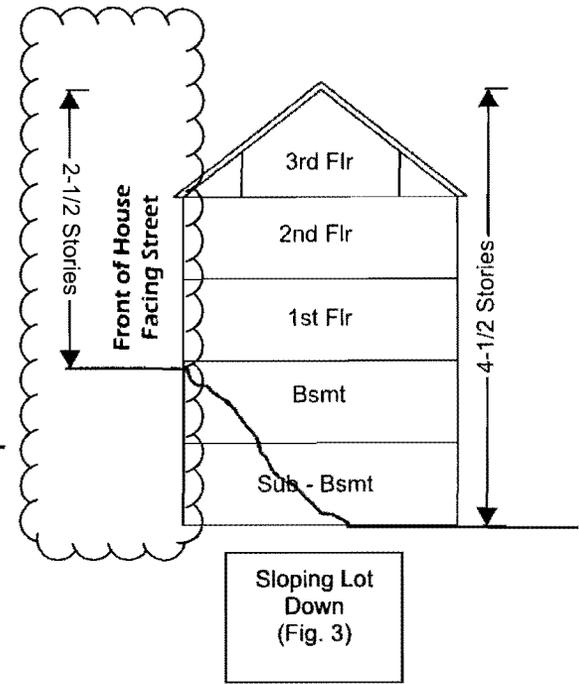
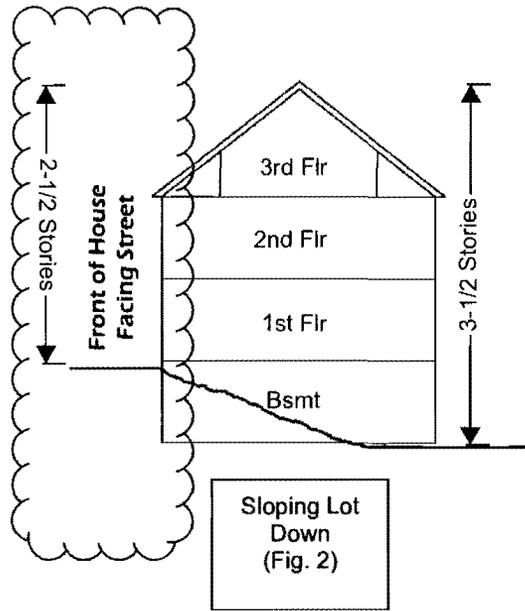
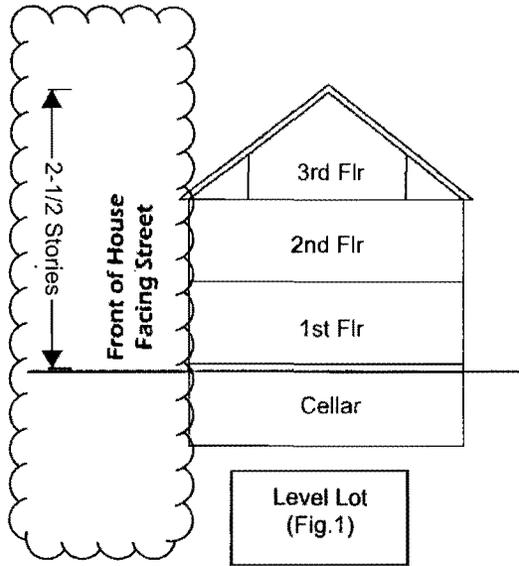
Figure 5 shows an even more extreme condition than *Figure 4*. The slope of the lot in this case also goes uphill from the street. Considering the bottom floor as a basement, and thus a story, this house, while no larger than *Figure 3*, also does NOT qualify for the sloping lot provision since the additional stories are on the face of the building that is measured for height in both vertical distance AND number of stories. While it is unlikely that the vertical distance would comply with the zoning standards assuming 8' ceilings, it would be possible to have a shallower slope on the roof to make it comply with the 35' maximum. Even so, this configuration does not comply because the 'height' looking at the front elevation is violating the 2-½ story maximum.

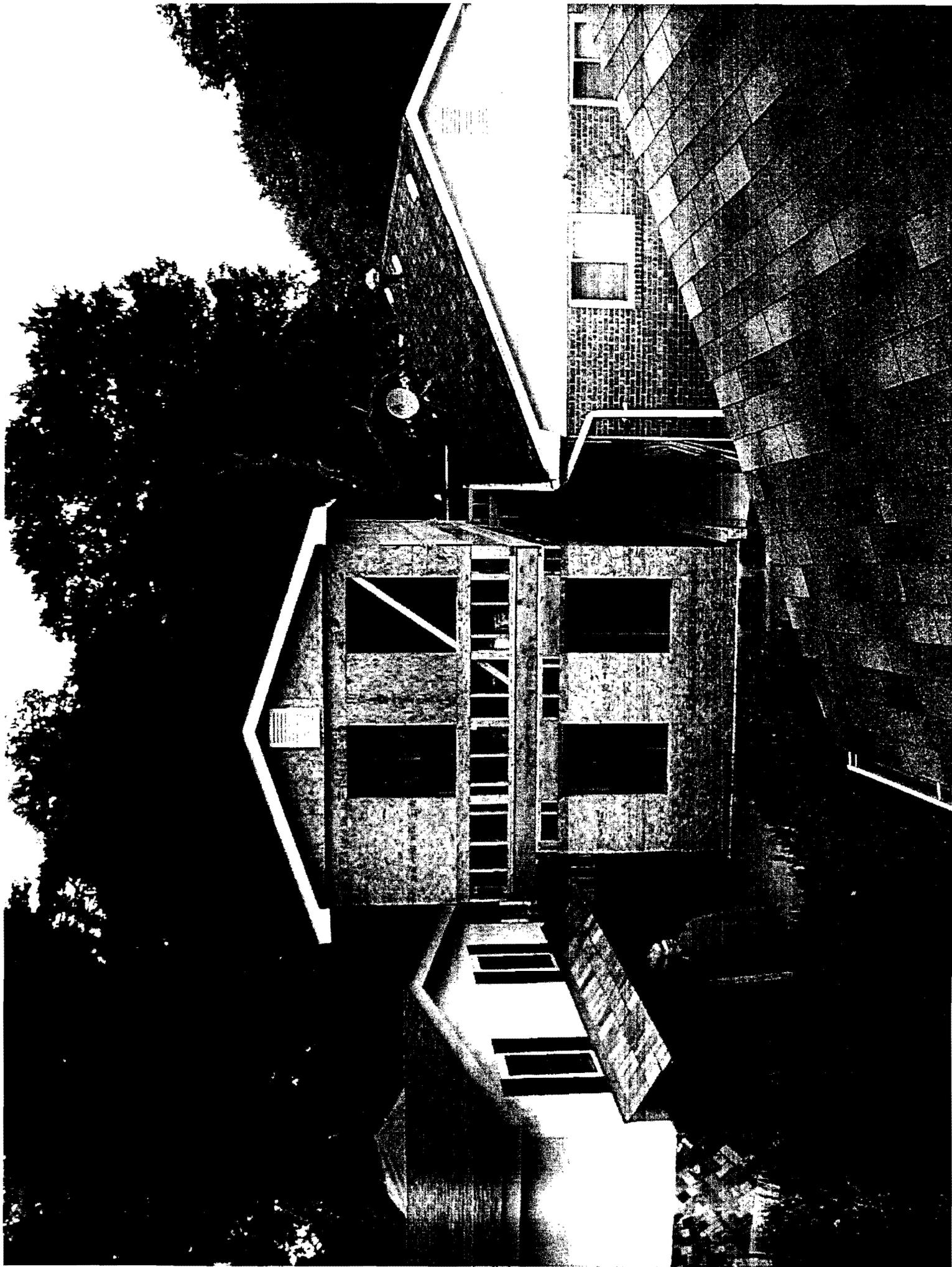
Regardless of whether or not a percentage is applied to the adopted interpretation policy, it would actually violate section 59-A-5.41 in its current form since it does not consider the uphill or downhill side of a building relative to the face of the building facing the street that is used to determine height by the zoning standards. Applying the sloping lot provision as it is specifically written, still limits the visual height of buildings from the street in accordance with the zoning standards for the respective zone. While some may argue it unfairly benefits property owners with lots sloping away from the street, that is not the matter in question and only the County Council has license to change 59-A-5.41.

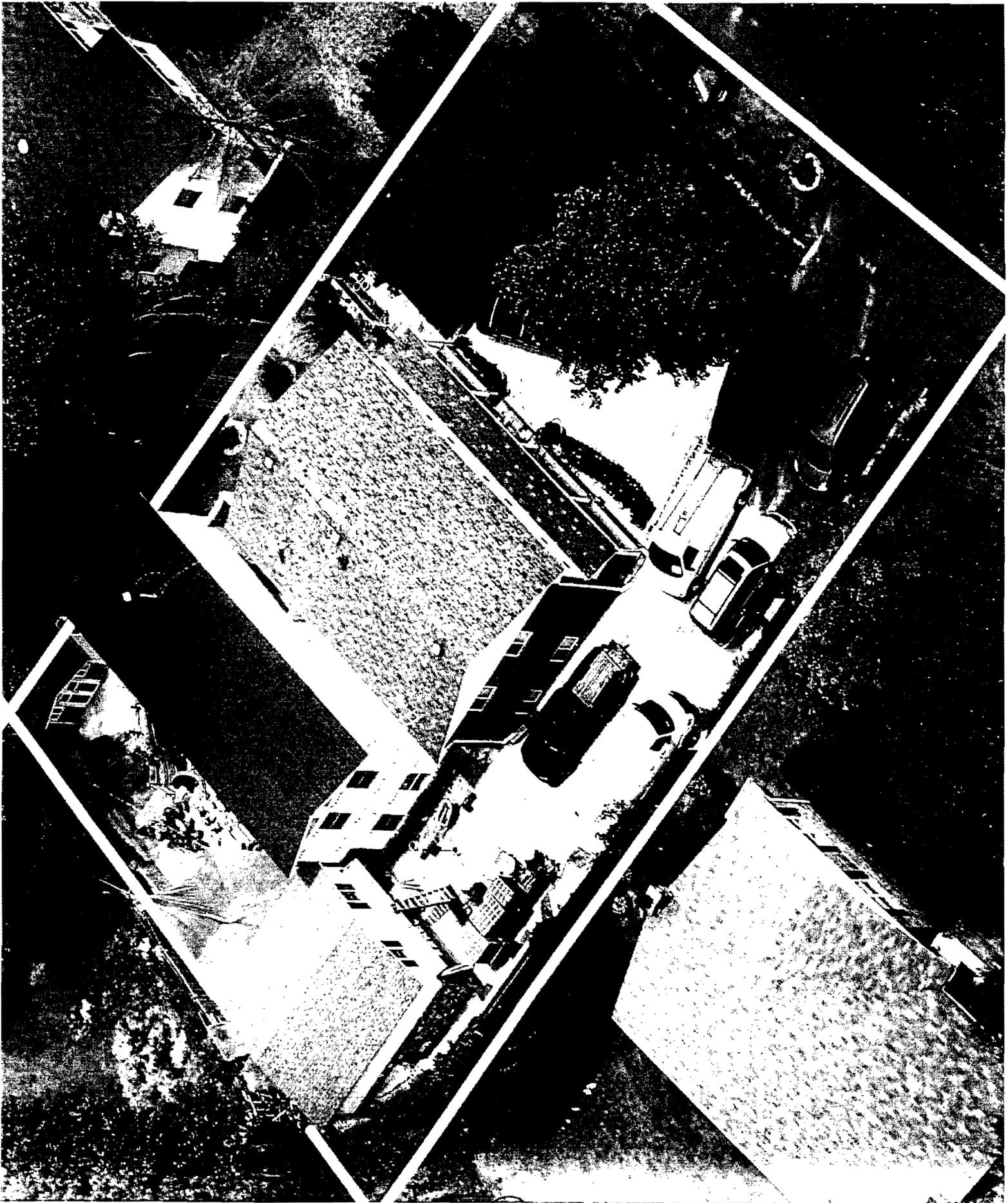
My recommendation for application of the sloping lot provision is simple: draft a simplistic policy that follows the provision as it is specifically written in 59-A-5.41, but include the references to 'building height' as defined by the Code (59-A-2.1), as well as the need to stay within both the vertical distance and number of stories limited to the zone in the development

standards (59-C-1.32). I also recommend *against* applying any slope percentage, since there is the possibility that it may actually deny property owners who currently have lots sloping away from the street the right to exercise the sloping lot exception if they do not meet the 10% criteria.

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Zyontz, Jeffrey

From: jrdavis1@aol.com
Sent: Tuesday, May 04, 2010 12:59 PM
To: Zyontz, Jeffrey
Cc: Mike.Carey@cbb-nmmc.com; mcarey@balfourbeattyus.com; careymp@verizon.net; Iseli, Claire
Subject: Executtive Regulation 18-09, Additional Stories on Sloping lots

Jeff,

Please include this E-mail in the packet for the PHED Committee's meeting to discuss the proposed Executive Regulation for additional stories on Sloping Lots. I understand that this matter will be discussed at the PHED meeting on Thursday, May 6 at about 1:15 PM. I recommend that the Council not approve this proposed Regulation because it is based on a longstanding misinterpretation of the plain language requirements of Section 59-A-5.41 concerning additional stories on sloping lots. The provision was never intended to allow a building to exceed the building height limit of a zone. The proposed interpretation will result in buildings that do exceed the height limit of a zone, thus broadening the exemption beyond the intent of the ordinance.

The intent of the Zoning Ordinance is to provide some flexibility in situations where an additional story can be added in limited situations where the height as measured in feet at the front of a building, facing a street, will not exceed the building height as expressed in feet. In other words, the exemption only makes sense where a lot slopes downward, from the street. Mike Carey who chairs a DPS Code Committee has prepared prior exhibits that clearly explain the situation and I strongly support his position in opposition to this proposed Regulation. Also, I believe that your model used to describe the issue a year or so ago is also helpful in showing the problem.

I worked on Councilmember Berliner's Task Force concerning "Infill Housing" issues and the resident representatives recommended that this exemption be clarified to correct the misinterpretation by DPS. Unfortunately, the proposed Regulation attempts to memorialize what can only be described as a serious mistake in plain language application of zoning law. I will try to attend the session on Thursday with Mike Carey so that we can assist the PHED Committee if they questions and to help them better understand community concern about this matter.

Sincerely,
Joe

Joseph R. Davis
1937 Tanley Road
Silver Spring, Maryland 20904