

**MEMORANDUM**

June 24, 2010

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz, Legislative Attorney  
SUBJECT: Zoning Text Amendment 10-06, Sloping Lots - Applicability

The Council introduced Zoning Text Amendment (ZTA) 10-06, sponsored by Councilmember Elrich, on May 18, 2010. This ZTA would allow only those lots that slope down from the street to the rear of the lot to have additional stories on the rear of the lot. In the opinion of the sponsor, the current sloping lot provision adds to infill development that is out of character with its neighbors; additional stories on the street side of the lot add to the potential for a house to dwarf the dwellings on either side.

A public hearing was held on June 22, 2010 at 1:30 p.m. The Planning Board and the Maryland -- National Capital Building Association recommended against ZTA 10-06. The Civic Federation spoke in favor of ZTA 10-06. Written testimony from Joe Davis, former Chief of the Development Review Division at the Planning Board and member of Councilmember Berliner's working group, also recommended approving ZTA 10-06.

**Background**

The Council required the Department of Permitting Services (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 was published in the October 2009 County Register under the provisions of §59-A-5.41. 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.<sup>1</sup> The regulation was approved by the Council on June 15, 2010.

## 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 discusses building height, which is measured from the street side<sup>2</sup>; 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 legislative 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 under regulation 18-09. Mr. Carey submitted the following diagrams in his comments on the sloping lot Executive Regulations to illustrate some situations that may arise. Figure 1 is a level lot. Figures 2 and 3 show lots that slope down from the street to the rear of the lot. ZTA 10-06 would allow those situations with the additional stories on the rear of the lot. It would not allow figures 4 and 5. Figure 5 would likely not be allowed under the current Ordinance because the

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<sup>1</sup> After the Council extended the time for review on March 2, 2010, the Committee suggested an amendment to the regulation that was agreeable to the Department of Permitting Services on May 6, 2010. The Executive signed a revised regulation consistent with the Committee suggestion.

<sup>2</sup> § 59-A-2.1. Definitions.

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

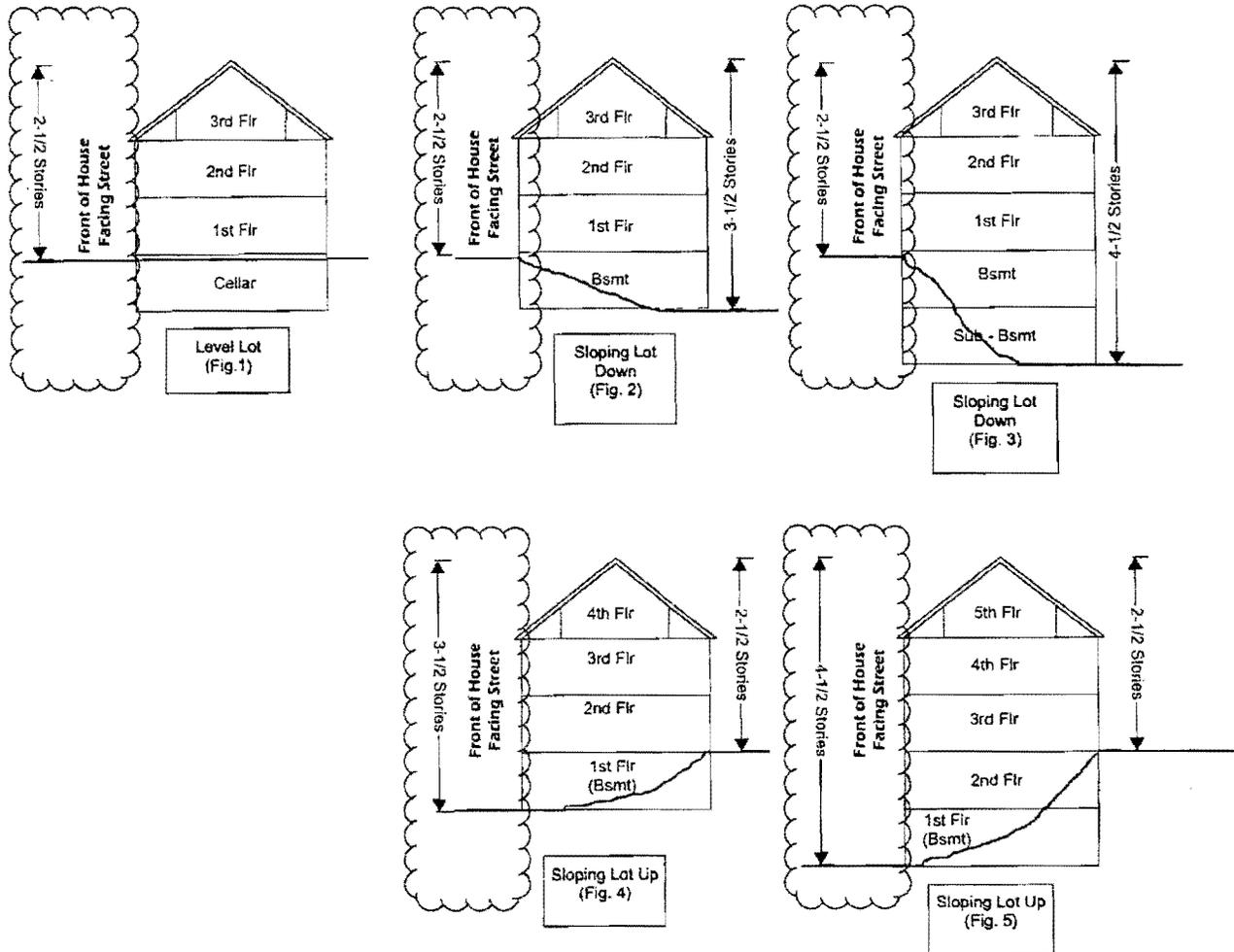
\* \* \*

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.

height of the building as measured from the front of the building would exceed 35 feet. Figure 4 may be out of character to the current neighborhood.

DPS has suggested that figure #4 was theoretically possible within the 35 foot height, but was unlikely because of the desire for tall ceilings. If this is true, ZTA 10-06 would only be a theoretical limitation on stories. If that is true, there would be no harm in adopting ZTA 10-06 because it would have no particular effect.



The heights and setbacks of houses are more important than the number of stories to an observer’s perception of bulk. Nevertheless, the current code includes a limit on stories in addition to building height and setback. The number of stories is more easily determined than height.<sup>3</sup>

The ZTA would use the average street-line elevation to measure slope. Lots that sloped from side yard to side yard would not qualify for additional stories. Lots that sloped diagonally would not qualify (nor do these types of lots qualify under the Executive’s Regulations). The Civic Federation recommended the following text:

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

<sup>3</sup> Height can only be determined by surveying equipment. Specialized equipment is not required to determine the number of stories.

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.

Department of Permitting Services Staff would argue against the approval of ZTA 10-06. In their opinion, the ZTA would be unfair to homeowners along blocks where existing houses have taken advantage of the current sloping lot provision.

As long as stories are regulated by the Ordinance, *staff recommends amending ZTA 10-06 as introduced.*

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Zoning Text Amendment No.: 10-06  
Concerning: Sloping Lots - Applicability  
Draft No. & Date: 1 – 5/11/10  
Introduced: May 18, 2010  
Public Hearing: June 22, 2010  
Adopted:  
Effective:  
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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By: Councilmember Elrich

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- amend the provision concerning sloping lots

By amending the following section of the Montgomery County Zoning Ordinance,  
Chapter 59 of the Montgomery County Code:

DIVISION 59-A-5   “COMPLIANCE REQUIRED”  
Section 59-A-5.41   “Additional stories on sloping lots”

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*  
*Underlining indicates text that is added to existing law by the original text amendment.*  
*[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

**ORDINANCE**

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

1

1           **Sec. 1. DIVISION 59-A-5 is amended as follows:**

2   **Division 59-A-5. Compliance Required.**

3   \*       \*       \*

4   **59-A-5.41. Additional stories on sloping lot.**

5   [On any] If the average elevation of the lot along the front lot line abutting a street  
6   is higher than the average elevation of the lot along the rear lot line, and the lot is a  
7   sloping lot, stories in addition to the number permitted in the zone in which the lot  
8   is located must be permitted on the downhill side of any building erected on the  
9   lot, but the building height limit must not otherwise be increased above that  
10  specified for the zone. This section must be implemented by an executive  
11  regulation adopted under method 2 of Section 2A-15.

12  \*       \*       \*

13       **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of  
14  Council adoption.

15  
16  This is a correct copy of Council action.

17  
18  \_\_\_\_\_  
19  Linda M. Lauer, Clerk of the Council



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

29-1  
#2

**MONTGOMERY COUNTY PLANNING BOARD**

The Maryland-National Capital Park and Planning Commission

June 17, 2010

**TO:** The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

**FROM:** Montgomery County Planning Board

**SUBJECT:** Zoning Text Amendment No. 10-06

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 10-06 at its regular meeting on June 17, 2010. After careful review of the material of record, the Board believes that the ZTA to allow only those lots that slope down from the street to the rear of the lot to have additional stories on the rear of the lot is unnecessary. Therefore, the Board unanimously (voting 4:0) recommends disapproval of the text amendment for the reasons as outlined in the attached technical staff report.

As introduced, ZTA 10-06 would allow only those lots that slope down from the street to the rear of the lot to have additional stories on the rear of the lot. The existing sloping lot regulation allows stories in addition to the number of stories otherwise allowed in the zone to be constructed on the downhill side of the lot, whether the downhill side runs toward the street side or runs toward the back of the lot. However, building height in such circumstances is not permitted to be increased above that specified in the zone. This ZTA is intended to address the sponsor's concern that the current sloping lot provision leads to infill development that is out of character with its neighbors and that additional stories on the street side of the lot add to the potential for a house to dwarf the dwellings on either side.

The Board does not believe this necessarily to be the case. Changes made by the Council to the methodology for measuring building height and to the maximum

building height permitted for residential development in the R-60 and R-90 zones have minimized the potential for out-of-character bulk, while maintaining some degree of design flexibility for property owners. Changes made in 2008 further minimized the potential for massive out-of scale buildings in the smaller lot residential zones by establishing lot coverage requirements based on lot size, not on the minimum lot size requirement of the zone.

The Planning Board believes that the ZTA is unnecessary since the existing method of measuring height in the R-60 and R-90 zones minimizes the ability to build additional stories in the front yard or construct taller buildings given that height is now measured from the average elevation along the front of the buildings. The previous method measured height from the street grade and allowed additional height if the building was located on natural terrain that was higher than the street grade (terrace credit).

### CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the position taken by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at the Board's regular meeting held in Silver Spring, Maryland, on Thursday, June 17, 2010.

  
Marye Wells-Harley  
Vice Chair

MWH: GR



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**Item #**  
**6/17/10**

**DATE:** June 8, 2010  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review *RK*  
 Ralph Wilson, Zoning Supervisor *RW*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To amend the provision concerning sloping lots.

**TEXT AMENDMENT:** No. 10-06  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmember Elrich  
**INTRODUCED DATE:** May 18, 2010

**PLANNING BOARD REVIEW:** June 17 2010  
**PUBLIC HEARING:** June 22, 2010; 1:30pm

**STAFF RECOMMENDATION:** Disapprove.

As introduced, ZTA 10-06 would allow only those lots that slope down from the street to the rear of the lot to have additional stories on the rear of the lot. The existing sloping lot regulation allows stories in addition to the number of stories otherwise allowed in the zone to be constructed on the downhill side of the lot, whether the downhill side runs toward the street side or runs toward the back of the lot. However, building height in such circumstances is not permitted to be increased above that specified in the zone. This ZTA is intended to address the concern that the current sloping lot provision leads to infill development that is out of character with its neighbors and that additional stories on the street side of the lot add to the potential for a house to dwarf the dwellings on either side.

Staff does not believe this necessarily to be the case. Changes made by the Council to the methodology for measuring building height and to the maximum building height permitted for residential development in the R-60 and R-90 zones have minimized the potential for out-of-character bulk, while maintaining some degree of design flexibility for property owners. Changes made in 2008 further minimized the potential for massive out-of scale buildings in the smaller lot residential zones by establishing lot coverage requirements based on lot size, not on the minimum lot size requirement of the zone.

These recent efforts have been reasonably effective in controlling out-of-scale development on relatively small lots. Staff believes that the ZTA is unnecessary since the existing method of measuring height in the R-60 and R-90 zones minimizes the ability to build additional stories in the front yard or construct taller buildings given that height is now measured from the *average elevation along the front of the buildings*. The previous method measured height from the street grade and allowed additional height if the building was located on natural terrain that was higher than the street grade (terrace credit).

## BACKGROUND/ANALYSIS

ZTA 10-06, sponsored by Councilmember Elrich, would allow only those lots that slope down from the street to the rear of the lot to have additional stories on the rear of the lot. The sponsor believes that the current sloping lot provision adds to infill development that is out of character with its neighbors. Additional stories on the street side of the lot are believed to add to the potential for a house to dwarf the dwellings on either side.

The ZTA would change the current sloping lot provision to read as follows:

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

[On any] If the average elevation of the lot along the front lot line abutting a street is higher than the average elevation of the lot along the rear lot line, and the lot is a 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.

\* \* \*

Although the current sloping lot provision allows for additional stories on any side of a building located on the downhill side of a slope, *in no case can the building height exceed that of the zone*. It should be further noted that the applicability of sloping lots legislation in the one-family residential zones is limited to the R-40, R-60 and R-90 zones where the building heights are limited to 2 ½ stories or 30 or 35 feet.

### Previously Approved Legislation

#### A. ZTA 03-27

On October 18, 2005, ZTA 03-27 (Ordinance No. 15-53) was adopted by the County Council. Two key components of the legislation included: revising the method of calculating building height for one-family residential buildings in the R-60 and R-90 zones; and revising the maximum allowable building height for one-family residential buildings in the R-60 and R-90 zones.

The ZTA established a definition for *“height of residential building in the R-60 and R-90 zones”* that measures height from the average elevation of the finished grade along the front of the building to either the highest point of roof surface regardless of roof type, or the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof. The previous methods for calculating building height included a measurement for structures setback less than 35 feet from the street (typical for the R-60 and R-90 zoned properties) measured from the level of approved street grade opposite the middle of the front of the building. This method also included what was generally known as the “terrace credit” where it allowed a building located on a grade above the street grade to be increased by the height of the terrace. As such, *the ability to provide additional stories in the downward slope towards the street, coupled with the additional height of the terrace, augmented the potential for establishing larger homes on smaller lots.*

Under ZTA 03-27, however, the terrace credit was eliminated from the height calculation for the R-60 and R-90 zones. Also, the building height measurement was changed from “the level of approved *street grade* opposite the middle of the front of the building” to the *average elevation of the finished grade along the front of the building to the highest point of roof surface regardless of roof type, or the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof.* Additionally, the finished grade cannot be higher than the pre-development grade. This approach eliminates the need to determine what is or is not a terrace and penalizes excessive terrace removal by tying the measurement of height to the average grade of the front finished elevation.

ZTA 03-27 also limited the residential building height to 30 feet at the roof midpoint or 35 feet at the roof ridge line. This was believed to be the most direct method to limit building height and remove perceived loopholes that allowed a home substantially above 35 feet in the zones where 35 feet was the nominal height limit.

#### B. ZTA 08-11

On December 9, 2008, ZTA 08-11 (Ordinance No. 16-31) was adopted by the County Council to implement a number of the recommendations of the Infill Housing Task Force including lot coverage for infill housing construction (based on lot sizes). The ZTA implemented this concept by creating a graduated scale for lot coverage in the R-200, R-90, and R-60 zones for lots smaller than 25,000 square feet. Lot coverage is based on actual lot size—not on the minimum lot size requirement of the zone. The Council retained the standard building coverage limits for one-story homes, one-story additions and other additions related to the scale of existing houses.

Staff believes that the uniform method of inverse proportional allowance (the larger the lot, the lower the percentage rate) assists in minimizing out-of-scale

buildings on smaller lots while also allowing larger building footprints on larger lots than on smaller lots.

GR

Attachments

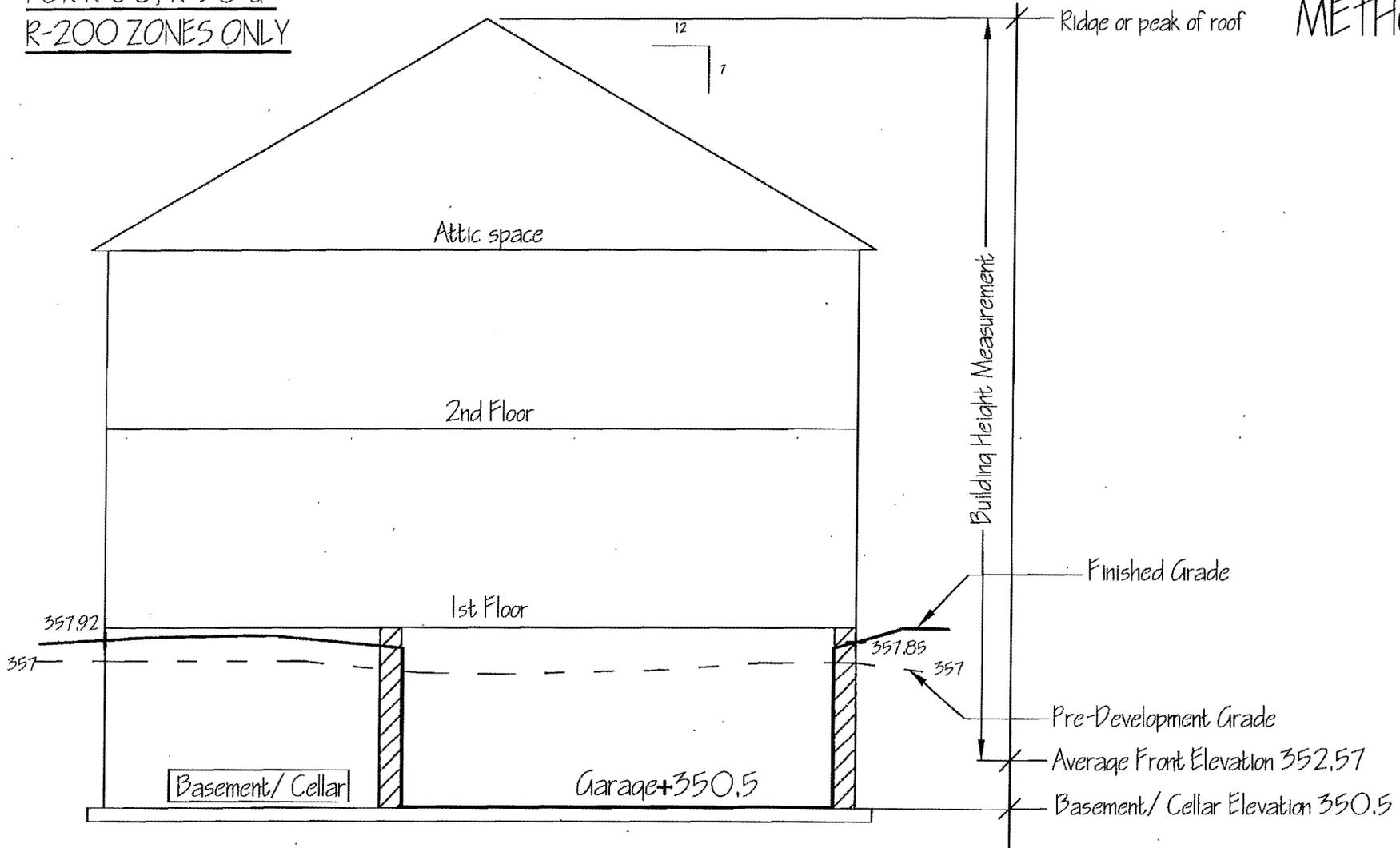
1. Proposed Text Amendment No. 10-06
2. Building Height Measurement Diagrams (DPS Website)

# BUILDING HEIGHT MEASUREMENT:

FOR R-60, R-90 & R-200 ZONES ONLY

Average Elevation of Finished Grade Along Front of Bldg. to Highest Point of Roof

METHOD 1



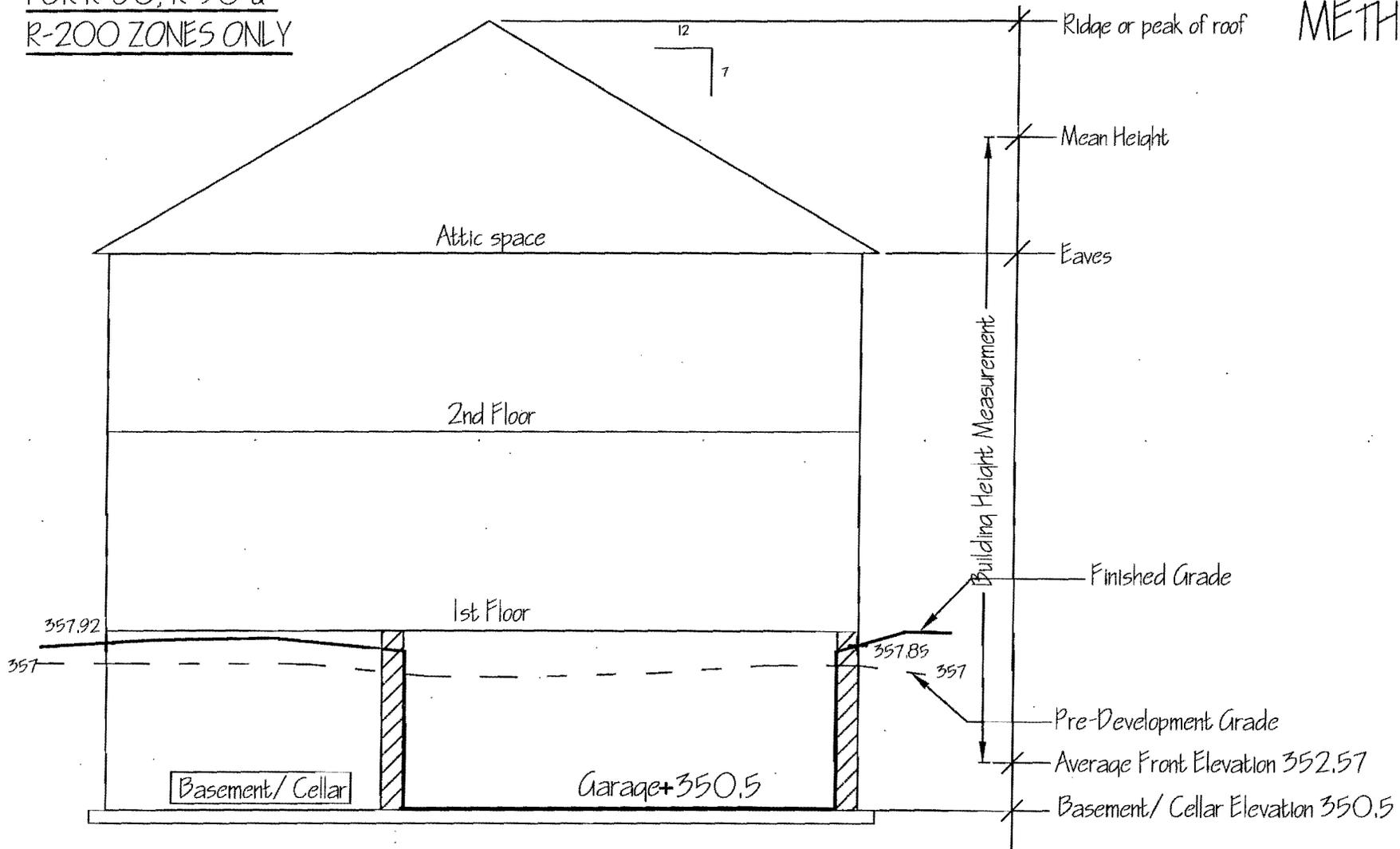
In the R-60, R-90 & R-200 zones, bldg. ht. is the vertical distance measured from average elevation\* of finished grades along front of the bldg., to the highest point of any roof surface. For the purpose of determining bldg. ht. the average front elevation used will be based on either pre-development grade (existing grade) or finished grade whichever is lower at any given point along the front wall.\* Average elevation is determined by multiplying each wall section of front facing planes, times the grade elevation adjacent to that section. Add all products together and divide by the total length of the front wall. This result is the average grade along the front of the bldg. See SAMPLE SITE PLAN FOR BUILDING HEIGHT MEASUREMENT.

# BUILDING HEIGHT MEASUREMENT:

FOR R-60, R-90 &  
R-200 ZONES ONLY

Average Elevation of Finished Grade Along Front of Bldg. to  
Mean Height Between Eaves and Ridge of Roof

METHOD 2



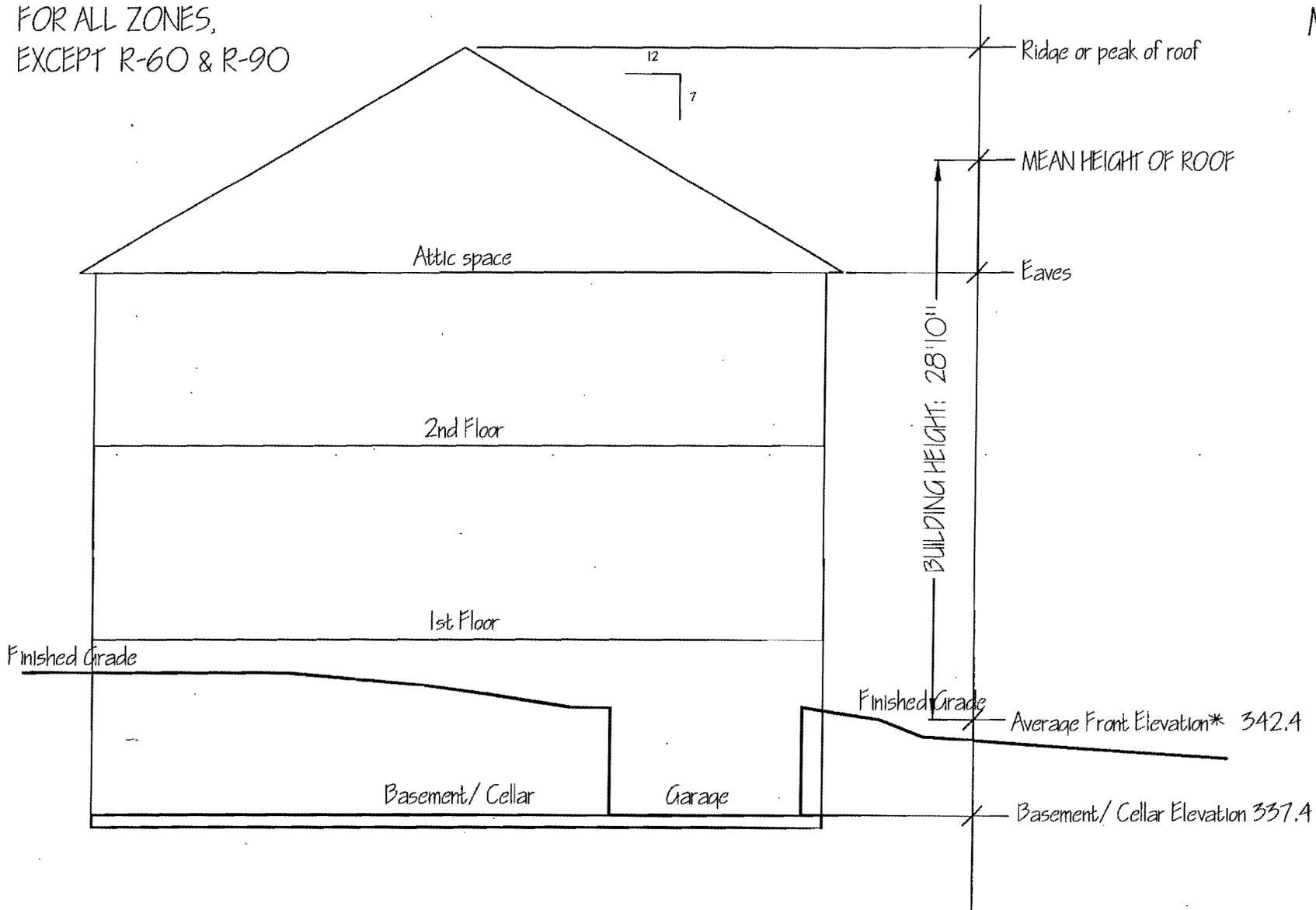
In the R-60, R-90 & R-200 zones, bldg. ht. is the vertical distance measured from average elevation\* of finished grades along front of the bldg., to the mean ht. between eaves and ridge of a gable, hip or mansard roof. For the purpose of determining bldg. ht. the average front elevation used will be based on either pre-development grade (existing grade) or finished grade whichever is lower at any given point along the front wall.\* Average elevation is determined by multiplying each wall section of front facing planes, times the grade elevation adjacent to that section. Add all products together and divide by the total length of the front wall. This result is the average grade along the front of the bldg. See SAMPLE SITE PLAN FOR BUILDING HEIGHT MEASUREMENT.

# BUILDING HEIGHT MEASUREMENT

BUILDING SETBACK FROM STREET LINE MORE THAN 35 FT. -- USE AVERAGE FRONT ELEVATION

FOR ALL ZONES,  
EXCEPT R-60 & R-90

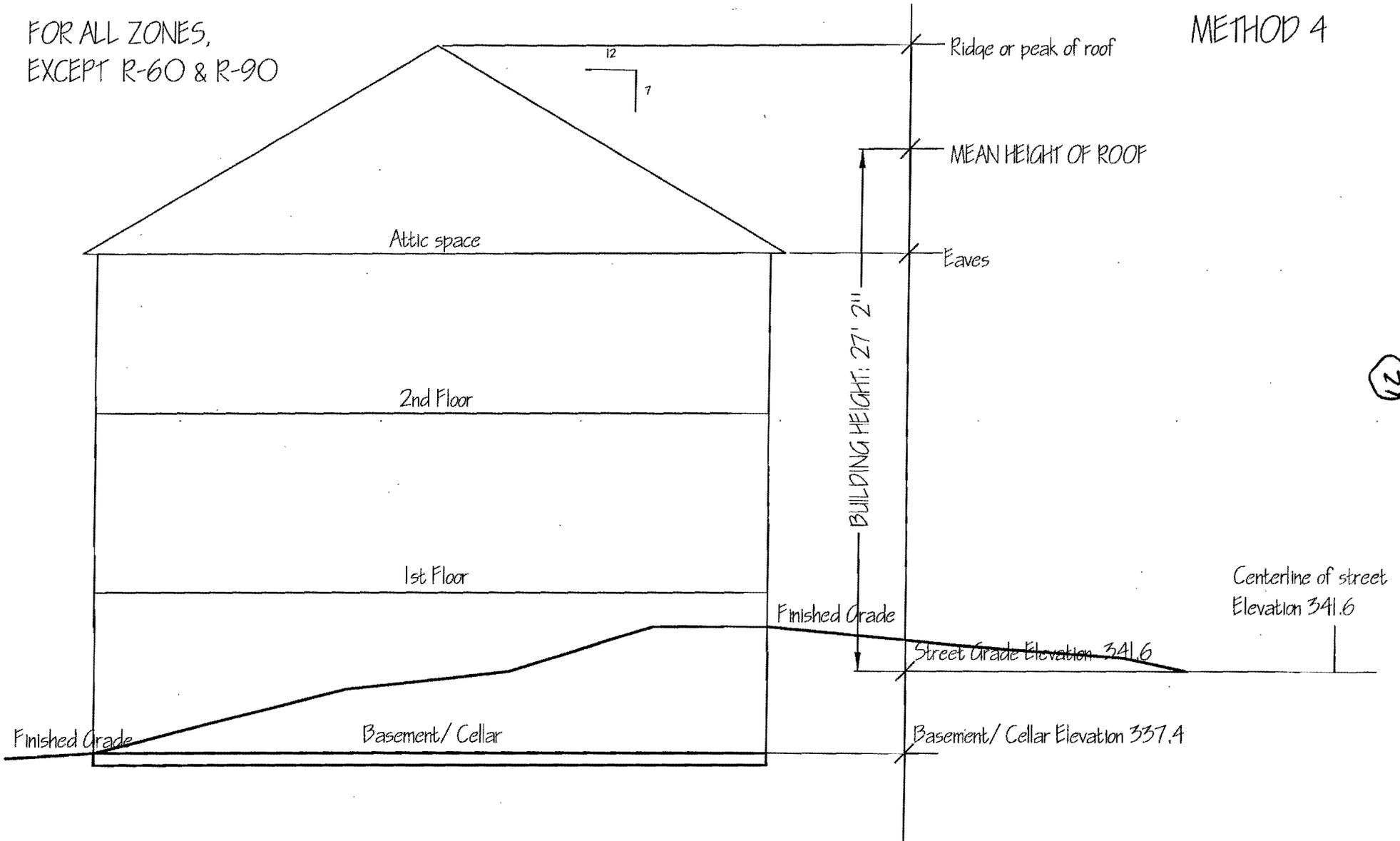
METHOD 3



Building Height is the vertical distance measured from the average elevation\* of finished grade along the front of the building, to the highest point of roof surface of a flat roof, to the mean height between the eaves and ridge of a gable, hip, gambrel or mansard roof. \*Average elevation is determined by multiplying each wall section of front facing planes, times the finished grade elevation adjacent to that section. Add all products together and divide by the total length of the front wall. This result is the average finished grade along the front of the building.

# BUILDING HEIGHT MEASUREMENT: BUILDING SETBACK FROM STREET LINE LESS THAN 35 FT.--USE STREET GRADE ELEV. METHOD 4

FOR ALL ZONES,  
EXCEPT R-60 & R-90



(2)

Building Height is the vertical distance measured from the street grade elevation at the centerline of the street, opposite the middle of the front of the building, to the highest point of roof surface of a flat roof, to the mean height between the eaves and ridge of a gable, hip, gambrel or mansard roof.



June 22, 2010

MCCF Testimony to County Council on ZTA 10-06, Sloping Lots - Applicability

I am Jim Humphrey, Chair of the Montgomery County Civic Federation's Planning and Land Use Committee, testifying on behalf of the Federation. While MCCF supports and appreciates the effort of Councilmember Elrich to address a problem related to residential infill development on sloping lots, we urge adoption of ZTA 10-06 with amendment.

It is the Federation's position that a primary focus of Montgomery County zoning ordinance sections pertaining to single-family residential zones is to create uniform parameters (height and setback) for neighborhood homes as viewed from the street. Zoning standards are designed, in part, to define the character of a neighborhood as viewed from the public right-of-way by those driving down the street or walking down the sidewalk. But, as currently written, there are sections of the county zoning ordinance concerning residential building height that contradict one another.

Section 59-A-5.41 of the County Code notes that additional stories must be permitted on the downhill side of any building erected on a sloping lot, "but the building height limit must not otherwise be increased above that specified for the zone." This language is problematic when applied to the R-60 and R-90 zones, where height is measured from the average elevation along the front wall of a home and there are two qualifiers for building height: 2 1/2 stories, and height in number of feet--either 30 feet to the midpoint between the eaves and ridgeline, or 35 feet absolute height (see Sec.59-A-2.1).

The R-60 and R-90 zone height definition in the Code also states that "In all cases where this Chapter [59] 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." As it currently exists, Sec. 59-A-5.41 would allow an additional story to show along the front of a home as viewed from the street, if the lot sloped down from the rear to the front, so long as the height limit in feet is not exceeded. So, while the height in the R-60 and R-90 zones is limited to 2 1/2 stories and a number of feet, Department of Permitting Services in promulgating the Sloping Lot Executive Regulations approved by Council last week has chosen to apply one height standard (number of feet) while allowing the other (2 1/2 stories) to be violated.

MCCF believes the contradictory provisions relating to residential building height that currently exist in the zoning ordinance can be brought into agreement with the addition of

new language to Sec. 59-A-5.41 that is slightly different than that recommended in ZTA 10-06. Staff notes that under the ZTA as introduced lots that sloped from side to side would not qualify for additional stories on the downhill side, nor would those that slope diagonally.

Our recommendation is that the sloping lot provision be amended to ensure that houses will never appear to be more than 2 1/2 stories when viewed from the fronting street. This could be accomplished by adding the underlined language to Sec.59-A-5.41:

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.

This language would allow lots which slope down from one side to the other, or which slope down diagonally from a front corner to the opposite rear corner, to qualify for additional stories on the downhill side. But it would help retain the character of neighborhoods as viewed from the street by standardizing height limits as applied along the building line--the front wall of homes. And I would remind members that staffer Jeff Zyontz, Council Legislative Attorney, recommended this amendment "to prevent additional stories in the front of a house", in his staff packet for ZTA 08-11, the residential infill legislation approved by Council on December 9, 2008.

June 18, 2010

Joseph R. Davis  
1037 Tanley Road  
Silver Spring, Maryland 20904

The Honorable Nancy Floreen, Esq.  
President, Montgomery County Council  
Stella Werner Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Testimony for Zoning Text Amendment 10-06

Dear Nancy:

Please include my comments in the record of the County Council's public hearing for Text Amendment 10-06 which concerns additional stories on sloping lots (Sec. 59-5.41 of the Zoning Ordinance). I strongly recommend that the County Council approve Zoning Text Amendment No. 10-06 because it is necessary to reestablish the use of building stories as a legitimate measure of building height. In my opinion, Executive Regulation 18-09 institutionalizes a method of height measurement for sloping lots that will allow buildings of 3 to 4 stories, as viewed from the street, in R-60 and R-90 zoned neighborhoods, thus negating the height limit stated in Sec. 59-C-1.327. Since building height is measured at the front of the building, the Executive Regulation effectively negates long established height limit of 2 ½ stories in R-60 and R-90 zoned neighborhoods. I believe that this represents a significant unintended consequence in the administration of the sloping lot exemption provisions of Sec. 59-A-5.41.

The current sloping lot exemption was reviewed by Councilmember Berliner's Infill Development Task Force as part of an effort to address "mansionsization" problems in older, down-County neighborhoods. I served on that Task Force at the request of the late Councilmembers Marilyn & Don Praisner. At that time, the resident members of the Task Force agreed that there was a problem with application of the sloping lot provision in the established down-County neighborhoods where the 2 ½ story height limit for homes is most prevalent. This issue was deferred by the Council in 2009, as part of the Council's action to approve the infill development zoning legislation. The legislation directed The Department of Permitting Services (DPS) to prepare a written interpretation through Executive Regulation with approval by the County Council.

I became aware of the sloping lot problem when DPS interpreted the provision to allow a 3 story home at 1016 Nora Drive in the White Oak area of Silver Spring. I'm sure you have heard of the problems with this lot through testimony and background material provided to you by one of my neighbors, Mike Carey, who lives across Nora Drive from 1016. I believe that Mr. Carey is providing you with his own testimony and information on this text amendment. I agree with his assessment of the situation and strongly encourage you to examine his documentation and drawings. It is interesting to note that DPS first approved the building permit for the Nora Drive addition by calling it a two-story addition when, in fact, it is the second and third stories to what had been an existing 2 story home. It is now a 3 story home in the R-90 Zone. The maximum height limit in the R-90 Zone is 2 1/2 stories. During the course of discussions with the Board of Appeals, DPS, late in the process, raised the sloping lot exemption noting that the lot qualified for the exemption from stories because it was a sloping lot. The property is a sloping lot where the rear lot line is significantly higher than the front lot line facing the street.

In my opinion, DPS failed to note that the exemption provision applies only in situations where, as stated in the Ordinance, "...the building height limit must not otherwise be increased above that specified for the zone." In other words, for lots in the R-60 and R-90 zones, the exemption should only apply where the additional stories do not allow the height of a building to exceed the Zoning Ordinance height limit of 2 ½ stories. Building height is measured on the front side of a building, facing the street. This is important because one measure of a residential neighborhood's character is established by the height and massing of homes as viewed from the street. Approval of ZTA 10-06 will enable a more common sense application of the exemption clearly stating that the exemption is only applicable where the front lot line is at a higher elevation than the rear lot line. If a lot slopes downward from the front (or street side) to the back lot line, then DPS could allow an additional story because it would not affect the height as measured on the front or street side. This change seems appropriate to me for any situation involving a sloping lot, regardless of zoning.

I note that P&P staff recommends that TA 10-06 not be approved. Last week, when I spoke with staff about their recommendation I was very surprised that they did not know about the recent Executive Regulation with the interpretation by DPS. Staff at P&P has now reviewed the Executive Regulation and has told me that TA 10-06 is still not needed because the height limit of the zone, as expressed in feet, could not be exceeded under present wording in the Ordinance. In other words a 3 or 3 1/2 story building is OK provided it does not exceed the 32 & 35 foot height limits. This validates my concern that the sloping lot exemption represents a significant loophole that can adversely affect the character of existing neighborhoods. I see nothing in the existing law that removes the story limit if such a limit applies in a Zone. Certainly nothing written in the sloping lot exemption provision eliminates stories as a standard other than DPS practice and the new Executive Regulation. A clarifying amendment is necessary to address the sloping lot exemption.

I hope that you and the other Councilmembers will give careful consideration to this text amendment because the DPS interpretation of the existing sloping lot exemption has adversely affected my neighborhood in White Oak and could adversely affect other established neighborhoods in the County. Approval of this text amendment as introduced is essential to assure that long established height standards limiting the number of stories in established neighborhoods are not set aside to the detriment of our residential communities. Allowing additional stories on a downward slope only makes rational sense with the stipulation recommended in this ZTA. Thank you for the opportunity to provide my comments to you on this matter.

Sincerely,

Joseph R. Davis