



STAFF REPORT
ACTION ITEM

Item #10a

SUBJECT: **C-4 Zoning District Text Amendments**
ZTA21-01, ZTA21-03, and ZTA21-04

DATE OF MEETING: April 27, 2021

STAFF CONTACTS: Andy Conlon, Senior Planner
Don Dooley, Director of Planning & Economic Development
Dale Lehnig, Director of Engineering, Planning & Development
Sally Hankins, Town Attorney

SUMMARY:

At its meeting on April 15, 2021, the Planning Commission voted 7-0 to recommend approval of Ordinance 21-02-01, as it is attached to this Staff Report, and is forwarding it to the Town Council for action. This ordinance would amend the height regulations in the C-4 zoning district and expand the rights of property owners to restore non-conforming structures after they have been damaged.

BACKGROUND:

By Resolution 20-12-01, adopted December 3, 2020, the Planning Commission initiated an amendment to the Zoning Ordinance, to reduce the maximum height of buildings that may be constructed as a matter of right in the C-4 zoning district, and forwarded the Resolution to Town Council for its consideration. At its December 8, 2020 meeting, the Town Council directed staff to commence work on, and advertise for public hearing, the proposed zoning ordinance amendment.

On March 9, 2021, the Purcellville Town Council and Planning Commission conducted a duly-advertised joint public hearing (virtually), at which they received public comment and discussed, without taking action, the six issues identified in the staff report as requiring further direction.

At its meeting on April 1, 2021, the Planning Commission provided its recommended direction for each of the six issues identified in the public hearing staff report, as indicated

below in **BLUE** font. Staff has incorporated each of the Planning Commission's recommended changes into Ordinance 21-02-01, as it is attached to this staff report.

ISSUES AND RECOMMENDATIONS:

Six issues were identified in the public hearing staff report. As to those issues, the Planning Commission and Staff recommendations differ in only one regard: whether buildings in the C-4 zoning district should be limited by the number of stories. The Planning Commission recommends that buildings be limited by both stories and measured height. Staff does not oppose limiting height by both stories and measured height in concept, but notes two issues with it:

(1) There is a small ambiguity in what constitutes a "story." It appears from the existing definition (which can be amended in the future) that un-airconditioned attic space falls within the definition of a "story" and, if this is true, a building could then have only 1.5 stories of air-conditioned space. This problem could most likely be dealt with through a zoning determination that concludes: "Attic space within a building shall not be counted as a building story."

(2) Both a Planning Commissioner and a citizen commented at the Planning Commission meeting that there exist numerous three-story homes in the C-4 zoning district that would become non-conforming as a result of the proposed 2.5-story limitation. The Town has not conducted an inventory of structures relative to their number of stories, so the impact is not understood at this time. Research done by Planning Commissioners through the land records of Loudoun County did not identify the existence of numerous three-story structures, so it remains unclear to what extent this problem exists.

Putting those issues aside, one reason to support (or oppose) limiting height by both stories and height, is to limit the amount of usable floor space allowed within a building. A 35-foot tall building could conceivably contain three occupiable floors, thereby potentially generating greater impact on public resources than a building occupied by only two occupiable floors.

THE SIX ISSUES:

At its meeting on April 1, 2021, the Planning Commission recommended the following, relative to each of the six issues identified in the public hearing staff report:

Issue 1: Who Decides Height Exception Cases

Background: The law allows for “height exception” cases to be decided by either the Town Council, by Special Use Permit (Article 8), or by the Board of Zoning Appeals, by Special Exception (Article 9, Section 5). The current Zoning Ordinance delegates to the BZA the authority to decide “height exception” cases. However, the Planning Commission was of the opinion that the elected body, and not a quasi-judicial body, should decide “height exception” cases in the C-4 zoning district.

PC Recommendation: The Planning Commission recommends that “height exception” cases in the C-4 zoning district be decided by the Town Council, after recommendation from the Planning Commission.

Staff Recommendation: Staff has no recommendation as to which body (the Town Council or the BZA) decides height exception cases. Staff recommends, though, that one approach be selected across all zoning districts. Nonetheless, if a split-approach is desired, it is legally permissible.

Issue 2: The Consequences of Defining Height by the Number of Stories

Background: The intention of the Planning Commission was to allow two usable stories to be located above-grade in the C-4 zoning district. However, the current definition of “story” would include most basements and attics¹. Therefore, if a building were to have an attic, then the proposed 2½ story limit would allow such building to have only 1½ usable stories located above-grade, thereby defeating the intent of the Planning Commission.

PC Recommendation: The Planning Commission recommends that heights in the C-4 zoning district continue to be limited by both the “*number of stories*” and the “*height*,” as measured in feet. The Planning Commission recommends that the maximum number of stories be “two and one-half,” in lieu of “two” stories, in order to accommodate the space that exists under certain roof types that the zoning ordinance defines as a “half story.” Further, the Planning Commission recommends that basements not count as a “story” in the C-4 zoning district.

Staff Recommendation: Staff continues to recommend removing the limit on the number of “stories” and limiting building height only by the height of a building as measured in feet, in

¹ *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, then the space between such floor and the ceiling next above it. For the purpose of height measurement for any building other than a detached single-family dwelling a basement shall be counted as a story if its ceiling is over five feet above the level from which the height of the building is measured or if it is used as a separate dwelling unit by other than a janitor or other employee and his family.

order to avoid the administrative difficulties caused by attics, basements, and the space under gabled roofs.

Issue 3: Height Measurement Methodology: Finished Grade v. Pre-Existing Grade

Background: The zoning ordinance requires that height be measured from the finished grade – in other words, the grade that exists after the site has been prepared for construction. Some jurisdictions require that height be measured from pre-existing grade, others require that height be measured from the average of the pre-existing and finished grades, and others, still, measure height from the finished grade. In theory, the practice of measuring height from finished grade could result in a building that sits on enough “fill” to cause the building to appear much taller than it actually measures. In practice, though, measuring height from the finished grade has not been a problem for the Town. Nonetheless, it should be noted as a potential problem that could result from the Town’s height-measuring methodology.

PC Recommendation: The Planning Commission recommends that height continue to be measured from the average finished grade, as opposed to the pre-existing grade. However, it recommends that the Town undertake a future amendment to the development ordinance, in order to limit the number of feet by which finished grade can exceed pre-existing grade.

Staff Recommendation: Staff recommends continuing the practice of measuring building height from finished grade; however, staff recommends that the Planning Commission and Town Council amend, in the future, the Land Development and Subdivision Control Ordinance to place limits on the maximum elevation difference between pre-existing grade and finished grade to mitigate the risks associated with measuring height from finished grade.

Issue 4: One-Time Height Survey

PC Recommendation: Height Survey was for informational purposes; No recommendation needed.

Issue 5: Administrator Discretion When Interpreting Roof Type

Background: The methodology for measuring height is currently based on the type of roof a structure has, and a “roof-type” based methodology would continue under the proposed ordinance. As part of the building-height survey, the surveyor tested the ordinance’s proposed measurement methodology against buildings that have unconventional rooflines or are situated on unusual grades, to ensure that the prescribed methodology functions as intended. The surveyor noted that certain buildings arguably have more than one type of

roof. For example, the Giant grocery store has predominantly a flat roof. However, it also has a decorative “fake” gable located above the front façade.

One solution to this ambiguity is to add language directing that when a building has more than one type of roof, or has one type of roof with peaks of varying heights, then the building shall be measured in accordance with the rules that would yield the tallest height.

Alternatively, the Planning Commission and Town Council can leave this ambiguity in place, and allow the zoning administrator discretion to resolve these issues in a consistent manner across all similar cases.

PC Recommendation: The Planning Commission recommends allowing any ambiguity in the “building height methodology” to remain, understanding that the Zoning Administrator shall have the authority to resolve any ambiguities as the ordinance is administered.

Staff Recommendation: Staff recommends leaving the ambiguity in place, and allowing the zoning administrator discretion to resolve these height measurement issues in a consistent manner across all similar cases.

Issue 6: Nonconformities Caused by Stories

Background: Existing structures within the C-4 zoning district that exceed either the proposed maximum 2½ stories, or 35 feet, will be “non-conforming” relative to height.

Several speakers at the March 9, 2021, public hearing expressed concern that there exist many three-story residential buildings in the C-4 zoning district that will become non-conforming upon adoption of the proposed ordinance, since the current ordinance allows for three-story buildings.

The Town attempted to identify which buildings will become non-conforming by virtue of their height as measured in feet, and identified only one: the Valley Energy Building. However the Town has not identified which buildings may become non-conforming by virtue of their number of stories.

PC Recommendation: The Planning Commission recommends that the ordinance maintain a maximum number of stories, but increased it from 2 to 2½. The Planning Commission further recommends that basements in the C-4 zoning district be excluded from the number of “stories” a building is deemed to have.

Staff Recommendation: Staff continues to recommend that the limitation on the number of “stories” be removed from the proposed ordinance, in order to avoid the administrative difficulties caused by attics, basements, and the space under gabled roofs.

BUDGET IMPACT: While there is no expected future budget impact from the proposed amendment, the Town spent approximately \$7,000 to have certain building heights surveyed, as described in this staff report.

MOTION(S):

I move that the Town Council approve Ordinance 21-02-01, amending the heights in the C-4 zoning district.

ATTACHMENT(S):

1. Ordinance 21-02-01