



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
Office of the Executive Director

MCPB  
Item # 4  
1/08/04

**DATE:** January 2, 2004  
**TO:** Montgomery County Planning Board  
**VIA:** Carlton Gilbert, Zoning Supervisor  
**FROM:** Greg Russ, Zoning Coordinator  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To amend the Zoning Ordinance to revise the definitions for basement and cellar, to revise the method for calculating building height and to add a definition for pre-development grade

**TEXT AMENDMENT:** No. 03-27  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmember Denis  
**INTRODUCED DATE:** November 25, 2003

**PLANNING BOARD REVIEW:** January 8, 2004  
**PUBLIC HEARING:** January 13, 2004; 1:30pm

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**STAFF RECOMMENDATION:** DENIAL/DEFERRAL

Staff recommends denial/deferral of the proposed Zoning Text Amendment (ZTA) for the following reasons:

- New definition to eliminate terrace exemption creates unnecessary hardship for non-residential zones
- New definition does not adequately address height level to various roof surfaces
- Use of pre-development grade as a tool for measuring height is confusing and could be an interpretation dilemma

**PURPOSE OF THE TEXT AMENDMENT**

The text amendment proposes to amend the Zoning Ordinance to revise the definitions for basement and cellar, to revise the method for calculating building

height and to add a definition for pre-development grade. The purpose of the proposal is to eliminate perceived loopholes that allow greater building heights for one-family detached homes in the existing one-family zoned neighborhoods.

## **BACKGROUND/DISCUSSION**

The ZTA would substitute a new method for calculating building height for the current method. Currently, where structures are setback less than 35 feet from the street, building height is measured from the level of approved street grade opposite the middle of the front of the building to the highest point of a flat roof, with variations for different roof types. If a building is located on a terrace, the height of the terrace is not considered a part of the total building height. This is generally known as the terrace credit and allows a building that is above the street grade to be increased by the height of the terrace. The criteria for calculating the terrace is controversial and has been the subject of several building permit appeals. Where setbacks from the street are more extensive (35 feet or more), the building height is measured from the average elevation of finished ground surface along the front of the building. Related changes to the definitions of basement and cellar are also proposed.

Under ZTA 03-27, the terrace credit would be eliminated. If the finished grade is higher than the pre-development grade, the building height would be measured from an elevation no higher than the highest point of the pre-development grade beneath the building. ZTA 03-27 also clarifies that when building height is specified in terms of both stories and feet, the intent is to limit height to the specified number of stories within the specified footage.

## **ANALYSIS**

The proposed definitional modifications and additions are depicted below.

### **59-A-2.1. Definitions.**

\* \* \*

***Basement:*** *That portion of a building below the first floor joists which at least half of [whose] its clear ceiling height is above the [mean level of the adjacent ground.] average elevation of the finished grades along all sides of the building.*

\* \* \*

***Cellar:*** *That portion of a building below the first floor joists which at least half of [whose] its clear cellar ceiling height is below the [mean level of the adjacent ground.] average elevation of the finished grades along all sides of the building.*

\* \* \*

***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; to the mean height level between eaves and ridge of a gable, hip, mansard, or gambrel roof; except, that 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 corner lots exceeding 20,000 square feet in area, the height of the building may be measured from either adjoining curb grade. For lots extending through from street to street, the height may be measured from either curb grade.] The vertical distance measured to the highest point of a building from the average elevation of the finished grades along all sides of the building. 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 ordinance provides for height limitations by reference to a specified height and a specified number of stories, the intent is to limit height to the specified maximum footage and the number of stories within the specified footage.

\* \* \*

**Pre-development grade:** The natural grade that existed prior to application for a building or demolition permit. Determination of natural grade is by examination of the contour lines on the property as they extend to the adjoining properties and to the street.

Staff has no objection to the plain language modifications to the definitions of basement and cellar. Staff however, does not support the wholesale substitution of the definition for "height of building". Staff believes that the current definition of building height (along with other sections of the Ordinance) could be modified to address the concerns raised by the terrace credit. Discussion of staff's analysis is below.

#### Height level to various roof surfaces

Currently the definition for building height takes into account the mean height level between eaves and the ridge of non-flat roof-types. The proposed definition does not address this issue. As such, the proposed new definition creates a disincentive in providing variety in roof types. Staff believes that measurements for roof-types should remain in the definition.

#### Terrace Exemption

The issue of terrace exemptions should be removed from the definitions section of the Zoning Ordinance and instead discussed in Division 59-B-1, Exemptions from Height Controls. Staff believes that the issue of providing a terrace credit continues to have merit in some cases and therefore, should be further examined. For example, concerns arise typically when a terrace is established in infill situations (mainly in the smaller lot R-90, R-60 and R-40 zones) to circumvent the intent of the building height restrictions. In a number of cases the construction of an artificial terrace (one that is created and is not the natural grade) is out of character with the topography of the surrounding properties. In these instances, staff believes that the terrace credit should not be granted.

However, in the case of a natural-grade terrace, staff does not believe that a property owner should be penalized for the topography of the site. In these instances, the development standards governing height (Section 59-C-1.327) limit the height or number of stories based on the height or number of stories of the surrounding buildings.

### Pre-Development Grade

The current definition of building height measures vertical distance from the level of approved street grade while the proposed new definition measures from the average elevation of the finished grade along all sides of the building, except for the purposes of determining building height and story, the finished grade cannot be higher than the pre-development grade. A definition for pre-development grade is also proposed. Staff believes that this definition is confusing and creates interpretation concerns when determining "finished" verse "pre-development" grade. Staff, however, does agree with including in the building height definition the portion of the new language that clarifies that when building height is specified in terms of both, stories and feet, the intent is to limit height to the specified number of stories within the specified footage.

### **Conformance with the Applicable Master or Sector Plans**

According to staff of Community-Based Planning, the proposed text amendment would not affect the goals and objectives of any master or sectors plan .

### **RECOMMENDATION**

Based on the analysis as discussed above, staff recommends that ZTA 03-27 be deferred/denied. In lieu of the proposed text amendment, staff believes that a new text amendment should be introduced that removes the terrace exemption from the definitional section and addresses it in the "Exemptions from Height Controls" section (Division 59-B-1) of the Zoning Ordinance. Staff believes that the terrace exemption is a substantive standard that is more appropriately located in the Exemption section (Section 59-B) of the Zoning Ordinance. The Definition section should convey the understanding of a term and not serve to regulate. In the case of larger lot residential zones where setbacks from the street are more extensive (35 feet or more), the building height is measured from the average elevation of finished ground surface along the front of the building, making a terrace credit unnecessary. Further it is believed that a terrace exemption in the R-90, R-60 and R-40 zones should be granted only when the terrace is at its natural grade as determined prior to any building or demolition activity on the property. Staff does agree with including in the building height definition the proposed new language that clarifies that when building height is specified in terms of both, stories and feet, the intent is to limit height to the specified number of stories within the specified footage.

**GR**  
**Attachments**

1. Proposed Text Amendment No. 03-27

ATTACHMENT 1

Zoning Text Amendment No: 03-27  
Concerning: Building height measurement  
Draft No. & Date: 1 – 11/21/03  
Introduced: November 25, 2003  
Public Hearing: January 13, 2004; 1:30 PM  
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 Denis

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AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- revising the definition of basement;
- revising the definition of cellar;
- revising the method for calculating building height; and
- adding a definition for pre-development grade.

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

DIVISION 59-A-2     “DEFINITIONS AND INTERPRETATION”  
Section 59-A-2.1    “Definitions”  
ARTICLE 59-B       “EXEMPTION FROM CONTROLS”  
DIVISION 59-B-1    “EXEMPTIONS FROM HEIGHT CONTROLS”  
Section 59-B-1.1    “Belfries, chimneys, etc.”

*EXPLANATION: **Boldface** indicates a heading or a defined term.  
Underlining indicates text that is added to existing laws  
by the original text amendment.  
[Single boldface brackets] indicate text that is deleted from  
existing law by the 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           **Sec. 1. Division 59-A-2 is amended as follows:**

2   **DIVISION 59-A-2.       DEFINITIONS AND INTERPRETATION.**

3   **59-A-2.1.   Definitions.**

4   \* \* \*

5   **Basement:** That portion of a building below the first floor joists which at least  
6 half of [whose] its clear ceiling height is above the [mean level of the adjacent  
7 ground.] average elevation of the finished grades along all sides of the building.

8   \* \* \*

9   **Cellar:** That portion of a building below the first floor joists which at least half of  
10 [whose] its clear cellar ceiling height is below the [mean level of the adjacent  
11 ground.] average elevation of the finished grades along all sides of the building.

12 **Height of building:** [The vertical distance measured from the level of approved  
13 street grade opposite the middle of the front of a building to the highest point of  
14 roof surface of a flat roof; to the mean height level between eaves and ridge of a  
15 gable, hip, mansard, or gambrel roof; except, that if a building is located on a  
16 terrace, the height above the street grade may be increased by the height of the  
17 terrace. In the case of a building set back from the street line 35 feet or more, the  
18 building height is measured from the average elevation of finished ground surface  
19 along the front of the building. On corner lots exceeding 20,000 square feet in  
20 area, the height of the building may be measured from either adjoining curb grade.  
21 For lots extending through from street to street, the height may be measured from  
22 either curb grade.] The vertical distance measured to the highest point of a  
23 building from the average elevation of the finished grades along all sides of the  
24 building. However, for the purposes of determining building height and story, at  
25 no point must the finished grade be higher than the pre-development grade. In all  
26 cases where this ordinance provides for height limitations by reference to a  
27 specified height and a specified number of stories, the intent is to limit height to



28 the specified maximum footage and the number of stories within the specified  
29 footage.

30 \* \* \*

31 **Pre-development grade:** The natural grade that existed prior to application for a  
32 building or demolition permit. Determination of natural grade is by examination of  
33 the contour lines on the property as they extend to the adjoining properties and to  
34 the street.

35 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the  
36 date of Council adoption.

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38 This is a correct copy of Council action.

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43 Mary A. Edgar, CMC

44 Clerk of the Council