

## M E M O R A N D U M

**To:** Tom Harmer, Town Manager

**From:** Allen Parsons, Director, Planning, Zoning and Building Department

**Report date:** September 1, 2020

**Meeting date:** September 14, 2020

**Subject:** Ordinance 2020-07, Privately-Initiated Zoning Text Amendment seeking to amend Section 158.098, Height and Daylight Plane Regulations of the Zoning Code

### **Recommended Action**

Adopt Ordinance 2020-05.

### **Background**

The Town Commission held first reading and public hearing of Ordinance 2020-05 at their June 30, 2020 Regular Meeting and forwarded it to the September 14, 2020 Regular Meeting for second reading and public hearing.

Ordinance 2020-05 has been revised for second reading and follows Town Commission direction to modify the Planning & Zoning (P&Z) Board's recommendation by:

- 1) Maintaining that total lightning protection device height for single-family and two-family residential structures to not exceed 6' feet above the maximum height of the zoning district (same as P&Z Board), but deleting the ability to increase the maximum height to 16' feet above the maximum height of the zoning district by Special Exception.
- 2) Restricting lightning protection device height for single-family and two-family residential structures within the R-4SF or R-6SF zoning districts to not exceed 12" above the maximum height of the zoning district, and allowing for an applicant to request an increase, by Special Exception, up to a maximum of 6' feet above the maximum height of the zone district.
- 3) Reducing the total lightning protection device height for non-residential, and multifamily residential structures from 16' feet to 6' feet, and allowing for an applicant to request an increase, by Special Exception, up to a maximum of 16' feet above the maximum height of the zoning district.
- 4) Adding a provision to "grandfather" existing lightning protection devices that are not in compliance with these requirements as of the effective date of the Ordinance.

## **Application Request and Staff Analysis**

The applicant, John Barber, Windemuller Technical Services on behalf of property owner Boris Miksic, 640 Halyard Lane, is seeking approval of a Zoning Text Amendment to Section 158.098 - Height regulations, that would allow for “lightning protection systems” to be included as an exception to the height and daylight plane regulations of the Zoning Code.

Section 158.098 Height regulations, contains named exceptions to the aggregate height permissible in each Zoning District in which a property is located (Zoning Code Article IV). This Section of the Code allows specifically designated features to exceed height limitations: by right; by right with limitations; or by Special Exception approval by the Planning & Zoning Board (P&Z). By right exceptions include: television or dish antennas, worship center spires or towers and any attached religious symbols or religious identification emblems. A Special Exception is required to exceed the height regulations for enclosed elevator shafts and vestibules, enclosed stairwells and landings, enclosed mechanical equipment areas, and parapet walls in all Zoning Districts except the R-4SF and R-6SF zoning districts which do not permit such Special Exceptions.

Because these are the only features that are specifically identified as exempt, the Code presently does not allow the common rooftop appurtenance device of “lightning protection systems” to exceed the maximum allowable height or daylight plane requirements.

This issue came to light during the recent building permitting review of a newly constructed house on 640 Halyard Lane, which had proceeded with installation of a lightning protection device that exceeded the house’s 30 ft. Zoning Code height requirement. Staff identified the height aspect as an issue and further investigation revealed that permitting for these devices is commonly unregulated by local jurisdictions, as the Florida Building Code (FBC) does not contain permitting requirements for lightning protection systems. Staff contacted adjacent communities<sup>1</sup> and found that, similar to the Town previously<sup>2</sup>, none of the area jurisdictions require building permits for lightning protection systems. Lightning protection systems have typically been treated like installations of television antennas, which do not require a building permit.

The Florida Building Code provides the authority for Building Officials to require a building permit, with associated building inspections where appropriate. Staff

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<sup>1</sup> Comparison communities consisted of Sarasota County, City of North Port, City of Sarasota, City of Venice, Manatee County, and the City of Bradenton. All of these jurisdictions permit, by right, the ability for lightning protection system installations to exceed the height limitations with no limit on the size, dimensions, or height of such devices provided within their respective Zoning Regulations. In addition, these communities do not require the submission of building permits for the installation of these systems.

<sup>2</sup> Information contained in the application for this amendment provides a sampling of photos and examples of over 150 installations in the Town of lightning protection system installations by Windemuller Technical Services. These installations, which the applicant asserts were permitted exceptions under a prior building official, are located on various buildings throughout the Town, including multiple residences, condominiums, commercial, and municipal buildings.

believes that lightning protection systems do meet applicable criteria for building permitting and as of July 1, 2020 have been requiring permits for their installation. These permits require details on a system's height, size, dimensions, wind load, and electrical components to ensure that the installation of these systems are in compliance, safely installed, and meet the requirements of the Town's Zoning Code and Building Code.

Completion of the house at 640 Halyard, with a Certificate of Occupancy, has been withheld due to this issue. In response, the applicant filed a Zoning Text Amendment seeking the addition of Lightning Protection Systems as an additional named exception to the maximum zoning height requirements.

As initially filed, the Applicant was seeking a Zoning Text Amendment to allow lightning protection devices that would have no limitations as to the maximum height, size or other dimensions. Note: This is similar to the treatment of lightning protection systems, typically referred to as other allowed "roof-top appurtenances" found in most jurisdictions.

Staff worked with the applicant to craft the proposed amendment language to limit the sizes to those of the more typical lightning protection systems. These limitations include: systems that have demonstrated testing by a Nationally Recognized Testing Laboratory (NRTL); and limiting the overall height and the typical component sizes. These limitations were intended to minimize the aesthetic impacts of devices that would exceed building height limitations and to address potential ambiguities of determining that lightning protection systems that may be proposed are in fact authorized for lightning protection (rather than having an applicant apply for an antennae, which is actually a lightning protection system).

Staff recognized that the Code provides several existing height exemptions that are not specifically related to life or safety and are allowed to exceed the Zoning District height without any restriction or limitation as to size or dimension. Television antennae for example, are exempt outright from the height requirements of the Zoning Code with no limitation to their height, size, or dimensions. In addition to the relatively unregulated scale of this existing allowed appurtenance exception, the possibility exists that an applicant could make the case that a proposed lightning protection system also acts as a television antenna and therefore would be permissible under the Code presently without limitation as to the overall height, size, or dimension.

The proposed amendment would permit lightning protection system devices to exceed the Town's height limitations similar to the comparison communities but, dissimilar to these communities, would provide restrictions to their overall allowed height and size.

The privately-initiated zoning text amendment application provides as a primary rationale that allowing for the above-roof installation of lightning protection systems is a life and property safety issue. The application asserts that all

structures, occupants and property owners could benefit by reducing the risk of damage by lightning. The damage and potential for injury<sup>3</sup> from lightning or surge events can cost lives, along with the potential for hundreds or even thousands of dollars to repair, replace or reprogram equipment in residences and businesses, in addition to the costs of downtime and inconvenience.

Staff, including the Town Fire Marshall, are supportive of the primary rationale the application provides that lightning protection is a life and property safety issue that can benefit from properly installed lightning protection systems. These naturally occurring hazards can be highly impactful to properties and are difficult to predict, as lightning is not selective about which buildings or domains it strikes. While the NFPA (National Fire Protection Association) Code does not provide requirements or standards for lightning protection devices on single or two-family construction, it does contain requirements for the installation of such systems on various commercial and multi-family structures for their protection.

There are four primary types of lightning protection systems for protecting structures against lightning, depicted in Figures 1-4 below:

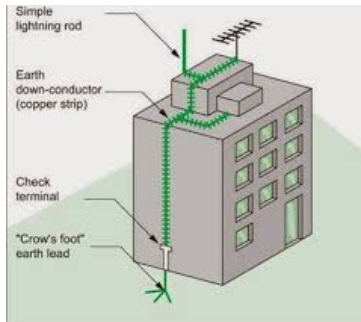


Figure 1 Rods

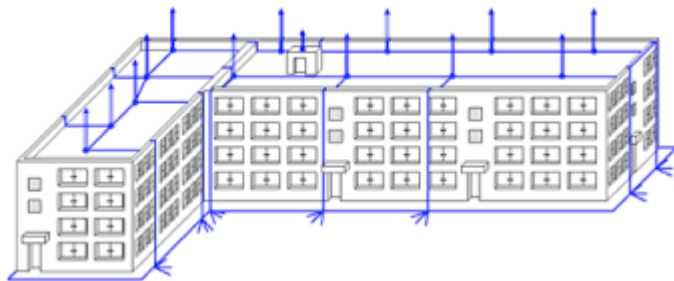


Figure 2 Meshed Conductors

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<sup>3</sup> The types of damage and injury caused by lightning strikes can include:

- Injury to people and fatalities caused by high voltage;
- Fire, explosion, and destruction of machinery, structures, and vegetation due to lightning current;
- Interruption and failure of systems due to lightning electromagnetic impulse (LEMP) to air conditioners, computers, appliances, security systems, televisions, internet and cable modems, lighting systems, pool controls, sprinkler systems, security gates, and home automation systems.

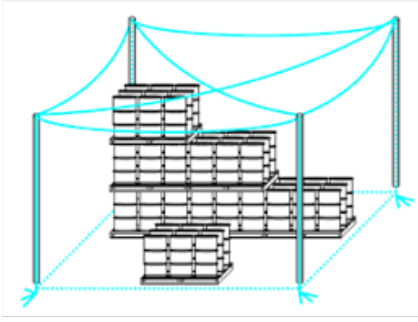


Figure 3 Catenary Wires

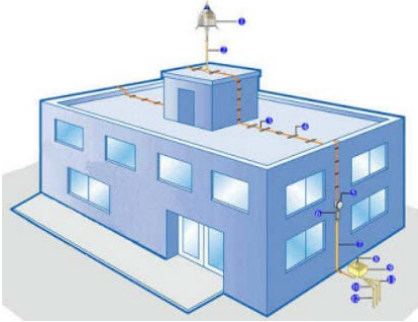


Figure 4 Early Streamer Lightning Protection Systems

This amendment would generally permit the installation of three of the four types of lightning protection systems as exceptions to the applicable Zoning District heights permissible: Rods, Meshed Conductors, and Early Streamer Lightning Protection Systems. The Catenary Wires system, would not be allowed as an exception to building height limits.

**Town Process**

The applicant has submitted a Zoning Text Amendment request, meeting the requirements set forth in Section 158.021, Zoning Text Amendments, of the Zoning Code.

Section 158.021, of the Town Code provides for the filing and review of Zoning Text Amendments. 158.021(A) *Initiation of Proposals for Zoning Text Amendments* further provides:

*The Town Commission may, from time to time, amend, supplement or repeal the regulations and provisions of this Chapter after public notice and hearings as provided by the Charter and upon initiation in one of the following ways:*

- 1) *On its own motion;*
- 2) *On recommendation of the Planning and Zoning Board;*
- 3) *On application by a person who is a fee simple owner of any property in the Town*

Based upon the mechanisms above, the Planning & Zoning Director received a Zoning Text Amendment application from fee simple owner, Boris Miksic, to change a provision of the Town’s Zoning Code, Section 158.098. Pursuant to Code, the P&Z Board was required to hold a public hearing on the proposed Zoning Text Amendment, with due public notice, and submit in writing its recommendation on the proposed change to the Town Commission for official action (see Section 158.021). Following consideration by the P&Z Board this legislative matter was forwarded onto the Town Commission for consideration.

**Comprehensive Plan Consistency**

The Zoning Text Amendment has been evaluated for consistency with the Comprehensive Plan. The following Comprehensive Plan Elements have been evaluated for consistency with the proposed project:

<b>COMPREHENSIVE PLAN GOAL, OBJECTIVE AND POLICY</b>	<b>STAFF EVALUATION</b>
<p><b>FLU Goal 1: To preserve and enhance the character of the Town of Longboat Key by the following:</b>  <b>1) ensuring that the location, density, intensity, and character of land uses are responsive to the</b></p>	<p>The proposed text amendment is consistent with the goal of maintaining an environment that supports the health, safety and welfare of the community.</p>

<p><b>social and economic needs of the community and are consistent with the support capabilities of the natural and manmade systems; and 2) maintaining an environment that is conducive to the health, safety, welfare, and property values of the community.</b></p>	
<p><b>FLU Policy 1.1.7: In development planning efforts, emphasis will be placed upon the protection of the visual and aesthetic character of neighborhoods, including open space.</b></p>	<p>The proposed text amendment does not detract from the aesthetic character of neighborhoods.</p>

**Planning and Zoning Board Recommendation**

At their May 26, 2020 Regular Meeting, the P&Z Board recommended approval (5-1) of Ordinance 2020-05 to the Town Commission and, forwarded the proposed Zoning Text Amendment to the Town Commission for consideration.

The P&Z Board recommended modifications to the originally proposed limits of the height of lightning protection devices for single and two-family structures. The amendment was originally drafted to allow for lightning protection systems up to a maximum of sixteen feet in height. The P&Z Board recommended a maximum allowance of up to six feet in height, for single-family and two-family residential structures, with the ability to request an increase in the height to a maximum of up to sixteen feet above the height permissible in the Zoning District, by Special Exception approval.

**Town Commission First Reading and Public Hearing**

At their June 30, 2020 Regular Meeting, the Town Commission provided direction to modify Ordinance 2020-05 by the four items noted above. The proposed updates to the Ordinance are highlighted below:

*Section 158.098 (C), No exceptions to the height regulations shall be permitted except as authorized by Article IV, and as specifically provided for below:*

- (6) *Lightning protection systems that are listed and labeled by a Nationally Recognized Testing Laboratory (NRTL), under the Lightning Protection components category, subject to the following:*
  - a. *Total lightning protection device height for single-family and two-family residential structures, including mast and lightning protection*

devices, shall not exceed 6' feet above the maximum height of the zoning district, except as noted in (b) below.

- b. Total lightning protection device height for single-family and two-family residential structures, within the R4-SF or R-6SF zoning districts, shall not exceed 12" inches above the maximum height of the zoning district, and may be increased by Special Exception to not exceed 6' feet above the maximum height of the zoning district.
- c. Total lightning protection device height for non-residential, and multifamily residential structures, including mast and lightning protection devices, shall not exceed 6' feet above the maximum height of the zoning district and may be increased by Special Exception to not exceed 16' feet above the maximum height of the zoning district.
- d. Lightning protection devices, attached to the mast, shall not be more than 9" inches in diameter and 10" inches in height.
- e. Non-residential, and multi-family residential structures' mast diameter shall be a minimum of 5/8" inches and shall not exceed 5" inches in diameter.
- f. Single-family, and Two-family residential structures' mast diameter shall be a minimum of 5/8" inches and shall not exceed 1-1/4" inches in diameter.
- g. Existing lightning protection devices that are not in compliance with this Section as of the effective date of this Ordinance shall be considered nonconforming structures subject to the provisions of Section 158.131.

During public comment at the June 30, 2020 Town Commission Regular Meeting a question was raised by a speaker regarding the proposed height limitations and their impact of the installation of types of lightning protection systems that have typical heights greater than 12 inches. An allegation was made that such restrictions could subject the Town to claims of antitrust laws and the Sherman Act. The Town Attorney has provided a memorandum (Attachment C) addressing this allegation and, among other points, notes that

“the Town’s Zoning regulation is not mandating the installation of certain lightning rods within any Zoning District; rather, any installation of such an accessory structure is solely at the request for the property owner. Additionally, as the Town’s regulation is currently drafted, if the property owner/consumer desires such an accessory structure, the property owner has significant home design choices that may also impact the accessory structure’s applicable height regulations. Further, as drafted, the Town is also providing property owner/consumers with a hearing process to seek allowable height increases for such accessory structures...

...as long as the Town’s Zoning regulations are neutral and not part of a tailored scheme to pigeonhole consumers into a specific product choice,



the Town's accessory use height regulations are not the type of regulations that would appear to give rise to liability under applicable antitrust laws."

Staff is of the opinion that the proposed regulations provide valid aesthetic controls and provide reasonable allowances for the common types of lightning protection systems.

### **Staff Recommendation**

Adopt Ordinance 2020-05.

### **Attachments**

- A. Ordinance 2020-05 (Available in Town Clerk's Office)
- B. Privately Initiated Zoning Text Amendment Application (Available in Town Clerk's Office)
- C. Memorandum from Town Attorney and Associated Attachments, August 28, 2020 (Available in Town Clerk's Office)
- D. P&Z Board Meeting Minutes, May 26, 2020 (Available in Town Clerk's Office)
- E. PowerPoint Presentation (Available in Town Clerk's Office)
- F. Public Correspondence Received (Available in Town Clerk's Office)

**End of Agenda Item**