

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 25, 2020

Meeting date: October 5, 2020

Subject: Ordinance 2020-05, 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, then continued the public hearing to the October 5, 2020 Regular Meeting.

Based on direction provided at the September 14, 2020 Regular Meeting, Ordinance 2020-05 has been revised to:

- 1) Allow total lightning protection device height, for single-family and two-family residential structures, to not exceed 6' feet above the maximum height of the applicable Zoning District. Note: This is similar to the recommendation by the Planning & Zoning Board (P&Z Board). In addition, it provides that such devices not exceed 6' feet above the maximum height of the building (to ensure that device height on buildings lower than the maximum height allowed by Zoning District also do not exceed 6' in height).
- 2) Delete the restriction that lightning protection device height for single-family and two-family residential structures, within the R-4SF or R-6SF Zoning Districts, not exceed 12" inches above the maximum height of the Zoning District, and allowance for an applicant to request an increase, by Special Exception, up to a maximum of 6' feet above the maximum height of the Zoning District.
- 3) Allow the total lightning protection device height for non-residential, and multifamily residential structures to be increased from 6 feet to 16 feet Note: This is the same as recommended by the P&Z Board. In addition, it provides that such devices not exceed 16 feet above the maximum height of the building (to ensure that device height on buildings lower than the maximum building height allowed by Zoning District also do not exceed 16 feet in height).

All other provisions of Ordinance 2020-05 are the same as was considered by the Commission at its September 14, 2020 Regular Meeting.

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 permit 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 feet 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 communities¹ and found that, similar to the Town previously², 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.

¹ 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.

² 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.

The Florida Building Code provides the authority for Building Officials to require a building permit, with associated building inspections where appropriate. Staff believes that lightning protection systems do meet applicable criteria for building permits 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 Code 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 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 injury³ 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 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.

Planning & Zoning (P&Z) 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 16 feet in height. The P&Z Board recommended a maximum allowance of up to 6 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 16 feet above the height permissible in the Zoning District, by Special Exception approval.

Staff's opinion is that the proposed regulations provide valid aesthetic controls and provide reasonable allowances for the common types of lightning protection systems. If the Commission adopts Ordinance 2020-05, staff will bring back a future Zoning Text Amendment to address size limitations associated with existing height exceptions for satellite dishes and TV antennas.

³ 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.

Staff Recommendation

Adopt Ordinance 2020-05.

Attachments

- A. Ordinance 2020-05 (Available in Town Clerk's Office)
- B. Applicant's Supplemental Materials (Note: Applicant's Application and prior submitted materials from prior meetings are part of the overall record). (Available in Town Clerk's Office)
- C. PowerPoint Presentation (Available in Town Clerk's Office)
- D. Public Correspondence Received (Available in Town Clerk's Office)

End of Agenda Item