

M E M O R A N D U M

TO: Planning and Zoning Board

FROM: Allen Parsons, AICP
Director, Planning, Zoning and Building Department

REPORT DATE: December 5, 2019

MEETING DATE: December 17, 2019

SUBJECT: Discussion on Structure Heights in Single Family Residential Areas

Recommended Action

Provide direction to staff.

Town Commission Direction

At their April 15, 2019, Goals and Objectives Workshop, the Town Commission (Commission) heard community feedback regarding concerns about compatibility of new single-family residential structures that are noticeably taller than surrounding development and the Town's Daylight Plane standards. Town Commission then requested to have a workshop discussion on the Town's Daylight Plane standards and other options for addressing compatibility when new or redeveloped structures are constructed with contrasting heights to existing nearby structures.

The Commission held a discussion on this topic at their October 15, 2019 Regular Workshop meeting and addressed a number of topics including:

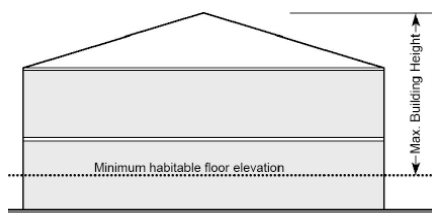
- Federal Emergency Management Agency (FEMA) requirements;
- Options to consider lowering maximum height of homes;
- Creation of nonconforming structures, if regulations are modified;
- Options to modify the way Daylight Plane may be measured and regulated;
- Daylight Plane waivers that have been granted; and
- Engaging architectural expertise on Daylight Plane requirements.

Following discussion, there was consensus to authorize the Planning and Zoning Board (P&Z Board) to have further discussions and make recommendations relating to the heights of single-family structures and Daylight Plane requirements.

This memorandum will serve as initial background for the P&Z Board's consideration of this topic including providing background on how height is measured, existing requirements affecting a building's height, including Daylight Plane provisions, factors that contribute to compatibility, legal conditions associated with entitlements, and concludes with some initial questions for the P&Z to discuss to better frame future research, options and potential recommendations.

Topic Background

How Height is Measured: The maximum height for structures in single-family residential zoning districts in the Town is 30 feet¹. What can be surprising to members of the public is that the maximum height is not measured from the surrounding or street-fronting grade level. The Town measures the height of structures from a point referred to as the “Design Flood Elevation” (DFE) to the roof peak or highest point of the structure or accessory rooftop equipment. See graphic below.



Given that the difference between typical street grades and DFE heights can be anywhere from $\pm 5'$ to $15'+$ vertical feet, a structure that is developed to meet existing single-family height maximums can, in fact, be taller than 30 feet. A common design treatment to meet DFE requirements is to place non-habitable parking/garage elements as a first level and construct habitable level(s) above.

As properties redevelop, from what may have been single-story structures, built prior to Federal Emergency Management Agency (FEMA) requirements to elevate habitable portions of structures above one-hundred year storm floodplain elevations (or “Base Flood Elevation”)², to multiple-story structures, there can be significant juxtapositions in height. Depending on the age of surrounding development, even newly constructed single-story structures, meeting the Town’s DFE requirements, can appear noticeably out of scale with nearby development.

Elevating structures to meet these FEMA and Town requirements, however, do serve multiple important purposes. First among those is, because the Town is located entirely in a Special Flood Hazard Area³ (SFHA), the Town is required, through the National Flood Insurance Program (NFIP), to adopt and enforce a floodplain management ordinance to

¹ The Zoning Code previously had a limitation on number of stories (typically 2-stories in Residential Single Family Zoning Districts). The story limitation was removed in the update of the Zoning Code.

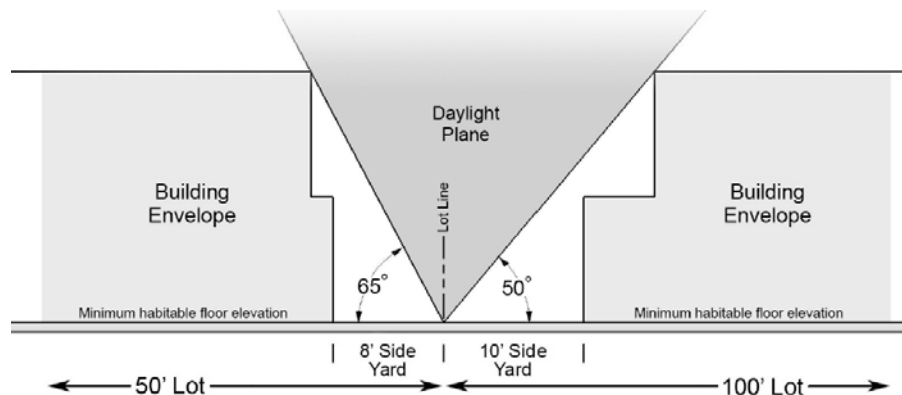
² The Town has an additional requirement above the Base Flood Elevations of 1 additional foot of height for construction in the Coastal ‘A’ Zone and 3 additional feet for construction seaward of the Coastal Construction Control Line (CCCL). These additional height requirements are referred to as the Design Flood Elevation (DFE) from which the measurement of a building’s height begins.

³ The SFHA is a high-risk area defined as any land that would be inundated by a flood having a 1-percent chance of occurring in a given year (also referred to as the base flood). The high-risk-area standard constitutes a reasonable compromise between the need for building restrictions to minimize potential loss of life and property and the economic benefits to be derived from floodplain development. Development may take place within an SFHA, provided that development complies with local floodplain management ordinances, which must meet the minimum Federal requirements.

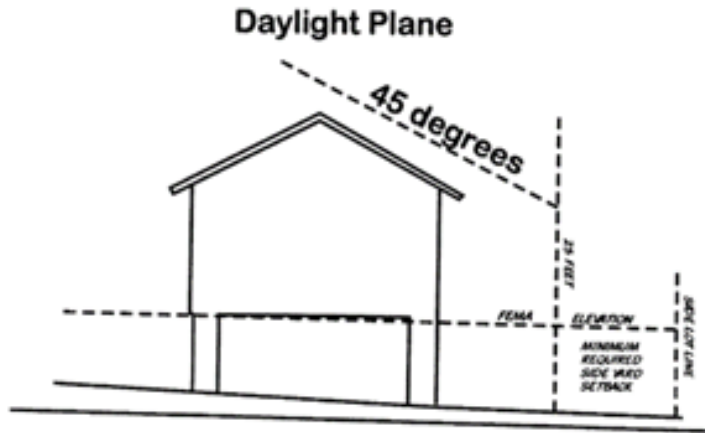
reduce future flood risks to new construction. By doing so, the Federal Government will make flood insurance available as a financial protection against flood losses. Furthermore, the Town's exemplary participation in the NFIP results in insurance discounts of up to 25% Town-wide. The primary reason, however, is as a vulnerable coastal barrier island, carefully managing development via construction practices that can reduce flood losses, increases resiliency, and reduces costs associated with flood disasters to individuals and government.

Daylight Plane: The Town does have additional requirements, referred to as the "Daylight Plane" provisions that are applicable to single-family structures and are intended to mitigate negative impacts of taller structures on their next door neighbors. The provisions were added to the Zoning Code in 1997 (Ord. 97-09) and are intended as measures to address the height and bulk of single-family structures, promoting light, air, and privacy. The Daylight Plane controls apply to single-family structures that are developed with taller building heights and require angling or designing upper portions to be further away from their next door neighbors.

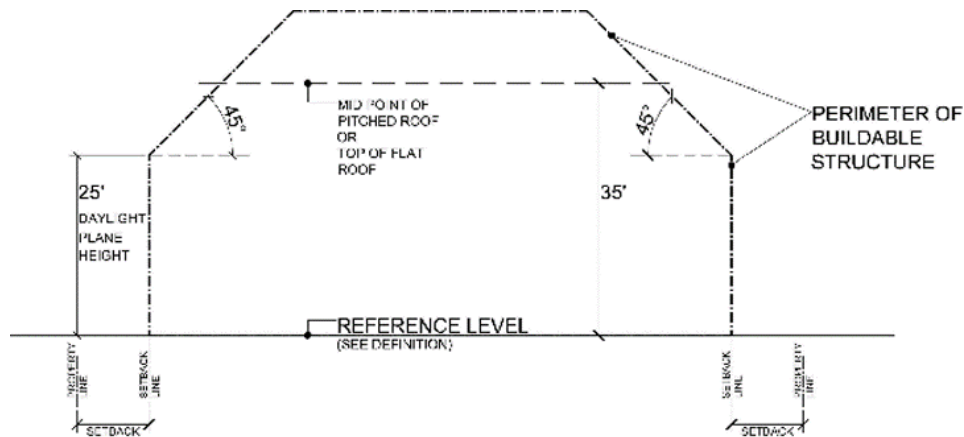
The Zoning Code defines daylight plane as "*The angle in degrees for single-family homes measured from side lot line boundaries projecting upward toward the center of the parcel beginning at minimum habitable floor elevation as established by law.*" The required angle for daylight plane is dependent upon the width of a lot. For example, if a property is 100 feet wide, the required daylight plane angle is 50 degrees. The angle lessens as the width of the property becomes greater (Note: 50 to 65 degrees is the maximum lower and upper limit, respectively). See graphic below.



Staff conducted a survey of Zoning Codes from surrounding and similar jurisdictions. While daylight plane requirements are not in many codes, they are not an uncommon development control. Sarasota County has Daylight Plane requirements for single-family structures (typical maximum single-family zoning heights are 35 ft.) located in A-Zones or V-Zones that require a 45 degree slope of no-development generally measured from the minimum required side lot line setback, and beginning at 20 feet above the FEMA required elevation. See graphic below.



The City of Sarasota’s Daylight Plane requirements for single-family structures (typical maximum single family zoning heights are 35 ft.) is very similar, with a 45 degree slope of no-development generally measured from the minimum required side lot line setback, and beginning at 25 feet above the FEMA required elevation. See graphic below.



Due to the height at which Daylight Plane measurements begin, the Town’s provisions would be considered more stringent than either Sarasota County or the City of Sarasota.

Other Compatibility Factors: Certain characteristics contribute to factors of compatibility. These factors include the size, shape, form of the houses, their architecture, and the relationship of each house to the street and nearby houses. Initial input and Town Commission discussion appears to be focused primarily on privacy, and the scale and massing of new development, more than it is on architectural consistency.

Scale refers to the size overall of a building in relation to other buildings in the vicinity; but this is a perceived size, so the compatibility of the scale of a house is relative to the perceived size of neighboring houses. Because it is relative, the scale of a house cannot be easily quantified or measured, but it is an important factor in determining how well a new house or addition will fit in with the neighborhood. Scale is related to height; however, while the Zoning Code provides maximum height limits for buildings, it does not address how the height of one house should relate to the height of adjacent houses or the

character of a particular neighborhood. A potential opportunity to address this relationship is if a new house or addition is proposed to be larger than the surrounding houses it could utilize design techniques to reduce the apparent mass and scale in a manner that is compatible with the neighborhood.

Massing refers to the form of a building and its various components, and how these components relate to one another and contribute to the apparent size of a building. Massing is related to scale, but it is also a function of the complexity of building form. The less complex or simpler forms (i.e. box like) tend to appear more massive, while buildings with more variety in their forms may appear less massive. The relative simplicity or complexity of the footprint of a house contributes directly to its massing. For example, basing a large two-story house on a simple rectangular footprint is likely to lead to a relatively massive looking structure, while a more intricate footprint will lend itself to greater articulation of exterior wall surfaces and a less massive appearance.

Ground level impacts can typically be addressed by screening (i.e. vegetative and/or fence/wall). Existing Zoning Code requirements mandate some screening requirements where a nonresidential use abuts a residential district or where a multifamily district or use abuts a single-family district, but not in cases where new, larger-scale single-family structures may be abutting existing lower-scale single-family structures. Providing screening with mature trees, while costing more than standard perimeter landscaping, may be a cost-effective measure. Trees that grow to 20-25 feet high, with a similar canopy spread, can effectively screen views from second story windows.

If the focus is primarily intended to address privacy concerns, the Zoning Code's existing provisions, including Daylight Plane controls, generally address light and air with a lesser emphasis on privacy. Providing additional design requirements for second-story additions and new two-story houses could be further expressed to utilize design components to maintain the privacy enjoyed by neighbors. Examples include: locating and designing second stories, especially with regard to floor plan layout and window placement, to avoid direct views into private side and rear yard areas of neighboring properties; use of clerestory windows or windows with translucent/obscured glass; including screening elements (such as louvers, lattice, or solid walls), as appropriate, to protect neighbors' privacy from views that would be otherwise possible from balconies, decks, landings, stairs, and similar features.

Legal Constraints/Bert Harris Act: Any potential changes to the Town's Zoning Code that may reduce existing entitlements needs to be carefully crafted and evaluated to ensure that properties impacted still have the ability to use their property as contemplated within its zoning district. Florida has an expanded scope of Constitutional "takings" claims under the "Bert J. Harris, Private Property Protection Act (F.S. 70.001), which provides for claims where a government "inordinately burdens an existing use of real property or a vested right to a specific use of real property." The attached memorandum from the Town Attorney indicates that there is not a significant amount of case law on the Act, but that there appears to be at least one case that has upheld the right of a local government to

reduce height in an existing zoning district, as the property owners still had the ability to use their properties as contemplated by the zoning district. Should additional height limitations be contemplated, the Town Attorney recommends:

- 1) Providing evidence in the record regarding the legitimate public purpose of the regulation;
- 2) Establishing the public purpose as being important for the safety and welfare of the public;
- 3) Making factual findings regarding the need for the regulation in furtherance of the public purpose and relation to the safety and welfare of the public;
- 4) Making sure that property within land use and zoning categories can continue to be developed and used as contemplated within the zoning district.

Discussion Questions: Given that potential changes to how the Town may desire to address residential development and redevelopment is a weighty topic, staff proposes to initiate a likely multi-part discussion with seeking to discover the range of potential issues that are of concern to Planning and Zoning Board. This will help staff with researching and providing potential options to address any such concerns.

Staff is providing the following questions to assist the Planning and Zoning Board in reaching a consensus on issues to be further considered in addressing the height of single-family residential structures including Daylight Plane standards:

1. What are the general concerns around heights of newly developed single-family structures?
2. Does the Town want to change/reduce the maximum height of new structures? Under certain existing or area-specific conditions?
3. Does the Town want to consider adding additional design criteria to mitigate new development?
4. Does the Town want to change the way daylight plane is measured?

Staff Recommendation

Depending on consensus of direction, staff may bring back item(s) for additional workshop discussion and direction or may proceed with bringing revised language or concepts back to the Planning and Zoning Board for subsequent consideration.

Attachments

- A. Memorandum from Town Attorney, Re: Bert Harris Act, June 14, 2017