

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



May 27, 2010

W7a**TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
TONI ROSS, COASTAL PROGRAM ANALYST, SAN DIEGO COAST
DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR LCP
AMENDMENT 4-09B (Building Height) for Commission Meeting of June 9-11,
2010**

SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on December 29, 2009. A one-year time extension was granted on March 10, 2010. As such, the last date for Commission action on this item is March 29, 2011. This is the first component of five unrelated items submitted as LCP amendment number 4-09 (A-E) to be heard by the Commission. All other components will be scheduled for a later hearing.

SUMMARY OF AMENDMENT REQUEST

The City of Carlsbad is requesting to amend Chapter 21.40 – Definitions of its certified implementation plan to update the methods used to measure building height. However, no changes are made to any certified height limits within the City. Specifically, the amendment request includes seven changes within the Definitions zoning chapter, including:

- 1) Modify existing *Grade* definition to *Grade, Existing*
- 2) Add new definition *Grade, Finished*
- 3) Modify the definition of *Basement*
- 4) Modify the definition of *Building Height*
- 5) Modify the definition of *Grade, existing*
- 6) Add new definition for new term *Grade, finished*
- 7) Modify definition for *Underground Parking*

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the implementation plan amendment as submitted. The primary concern regarding changes to building height definitions is potential impacts to public views, or developments that may be out of character with the surrounding

community. However, in this case, the amendment maintains the existing certified building height in all zones. The amendment only serves to clarify how height is measured, and in the case of “daylighted” basements and projects that propose a “padded” finished grade, the proposed amendment establishes additional provisions to protect coastal views.

The appropriate resolution and motion may be found on Page 4. The findings for approval of the Implementation Plan Amendment as submitted begin on Page 5.

ADDITIONAL INFORMATION

Further information on the City of Carlsbad LCP Amendment #4-09B (Building Height) may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of Carlsbad's certified LCP contains six geographic segments, as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties, and Village Redevelopment. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment is a deferred certification area until an implementation plan for that segment is certified. The subject amendment request affects all of the LCP segments.

The original Implementation Plan for the City of Carlsbad was certified in 1981, with various additions certified over time. Currently, the City of Carlsbad Implementation Plan includes Chapter 15.12 and 15.16, and portions of Chapter 18 of the Municipal Code, Chapter 21 (Zoning) in its entirety and any Master Plans/Specific Plans located in the Coastal Zone. In addition, the City has submitted LCP Amendment #3-08 (HMP Implementation Plan); once this submittal is complete and has been reviewed and certified by the Commission, it will be included as a component of the City's Implementation Plan. The proposed amendment proposes several modifications to Chapter 21.40 – Definitions of its certified Implementation Plan.

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. **MOTION:** *I move that the Commission reject the Implementation Program Amendment for the City of Carlsbad LCP Amendment No. 4-09B as submitted.*

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby certifies the Implementation Program Amendment for the City of Carlsbad Implementation Plan as submitted and adopts the findings set forth below on grounds that the Implementation Program conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan, and certification of the Implementation Program will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

**PART III. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD
IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

A. AMENDMENT DESCRIPTION

The City of Carlsbad is requesting to amend Chapter 21.40 – Definitions of its certified implementation plan to update the method used to measure building height. Specifically, the amendment request includes seven changes:

- 1) Modify existing *Grade* definition to *Grade, Existing*
- 2) Add new definition *Grade, Finished*
- 3) Modify the definition of *Basement*
- 4) Modify the definition of *Building Height*
- 5) Modify the definition of *Grade, existing*
- 6) Add new definition for new term *Grade, finished*
- 7) Modify definition for *Underground Parking*

The intent of the revisions is to clarify how building height is measured, but does not change the certified height limit for any structure within the City.

B. FINDINGS FOR APPROVAL

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP, the most applicable of which are referenced below.

a) Purpose, Intent, and Major Provisions of the Ordinance. The only Chapter modified by the proposed amendment is Chapter 21.40 – Definitions. This chapter serves to define the most commonly used terms, and provide some associated design standards. Of the over 100 terms included in the Definitions section, the proposed amendment modifies four definitions and adds one new definition. These include Grade (finished, existing), Basement, Building Height and Underground Parking. While the purpose and intent for these four definitions varies, the common use associated with all terms is the measurement of building height. However, it is important to note that none of these proposed changes to the definitions serve to modify the maximum permitted height of any structure.

b) Adequacy of the Ordinance to Implement the Certified LUP Segments. As discussed in the previous sections, the proposed LCP amendment includes modifications to four definitions and the addition of one new definition to Chapter 21.04 – *Definitions* of the City’s zoning document. These definitions do not modify the allowable building height but do serve to clarify how the measurements of building height should be taken. The proposed modifications will result in four changes to how building height is determined. These include using only exterior portions of a structure (whereas previously both interior and exterior points were utilized) to measure height. The second change will exempt the entrance to underground parking from inclusion in the

measurement of height. Third, the amendment will clarify that exposed exterior walls of basements are included in the building height measurement. Lastly, the changes to definitions will clarify when existing and finished grades are to be used for measuring building height. As such, the major coastal resource concern is related to potential impacts to public coastal views and the scale of development. The City's most applicable LUP policies are listed below and state:

East Batiquitos Lagoon/Hunt Properties Policy 6

The scenic and visual qualities of the area are of great value to the region. Again, the focal point for these qualities is Batiquitos Lagoon. The viewshed to the lagoon and from the lagoon shoreline are important resources. Many of the requirements previously established by this document address visual quality components, such as:

- setbacks;
- preservation of slope areas;
- preservation of lagoon and riparian habitats;
- enhancement of lagoon environments; and
- controlled grading.

- (1) In addition to these provisions, the following shall be provided to further address the important scenic and visual character of the area:
 - (a) La Costa Avenue should be established as scenic corridor pursuant to the City of Carlsbad General Plan Scenic Highway Element.
 - (b) Scenic corridor status shall be pursued for any public roadway to be established along a part or the entire lagoon north shore.
 - (c) Existing, mature, healthy vegetation such as eucalyptus stands, shall be preserved where possible.
 - (d) Offsite signing along public roads shall be prohibited.
 - (e) If a Master Plan is pursued for the property, the provisions of the City of Carlsbad Scenic Preservation Overlay Zone should be utilized where appropriate.
 - (f) View points shall be established along the north and south shore areas (if and where environmentally sound and physically possible) to provide varied visual access to the lagoon.
 - (g) View points should offer a mix of accessibility for pedestrian, bicycle, and motor vehicles.

Mello II Policy 7-13 Visual Access

Visual access over more than 80% of the Carlsbad coastline is unobstructed because of public ownership. No future public improvements which would obstruct this visual access shall be permitted.

Mello II Policy 8-1 Site Development Review

The Scenic Preservation Overlay Zone should be applied where necessary throughout the Carlsbad coastal zone to assure the maintenance of existing views and panoramas. Sites considered for development should undergo individual review to determine if the proposed development will obstruct views or otherwise damage the visual beauty of the area. The Planning Commission should enforce appropriate height limitations and see-through construction, as well as minimize any alterations to topography.

Additionally, the Scenic Preservation Overlay, discussed in Policy 8-1, is a component of the City's certified implementation plan and states:

S-P Scenic Preservation - Policy 21.40.135 - Coastal Zone Restrictions.

Within the coastal zone, existing public views and panorama shall be maintained. Through the individualized review process, sites considered for development shall be conditioned so as to not obstruct or otherwise damage the visual beauty of the coastal zone. In addition to the above, height limitations and see-through construction techniques should be employed. Shoreline development shall be built in clusters to leave open area around them to permit more frequent views of the shoreline. Vista points shall be incorporated as parts of larger projects...

The intent of both the City's LUP Policies and Zoning Code 21.40.135 is predominantly to protect coastal views. Policy 8-1 includes that the Scenic Preservation Overlay Zone should be applied where necessary throughout the Carlsbad coastal zone to assure the maintenance of existing views and panoramas. However, the parameters defining the geographic location of the Scenic Preservation Overlay are subjective; and, currently, the application of this policy is under-utilized. As such, the Commission and the City agree that the implementation of this policy needs refinement and the City has indicated that it intends to address the application of Policy 8-1 comprehensively in the general LCP update it is currently undertaking.

The proposed revisions clarify how building height is measured but do not change the certified height limit for any structure within the City. Again, the modified definitions will result in four changes to the method by which building height is determined: using only exterior portions of a structure (whereas previously both interior and exterior points were utilized) to measure height; exempting the entrance to underground parking from inclusion in the measurement of height; clarifying that exposed exterior walls of basements are included in the building height measurement; and clarifying when existing and finished grades are to be used for measuring building height.

The first change, allowing height to be measured only from exterior walls, has been proposed by the City because it is difficult to measure height from interior walls, as applicants must project where the grade would intersect the interior walls of the building, and then they must measure the height of the building from these points. It is difficult for applicants to estimate the location of the grade in this manner. The City requires height

limits to be measured from the lowest (existing or finished) grade (unless the development requires a discretionary permit, as discussed in more detail below), and the change to measuring solely from exterior walls does not change this requirement. Thus, this modification will not result in taller building opportunities than are currently allowed by the certified LCP.

Second, exempting entrances to underground parking from inclusion in the measurement of height does not result in any impacts to coastal views because the proposed exemption would only allow the vertical area of a building face that is minimally necessary to provide vehicle access to underground parking to be exempt from the height measurement. Further, the building height will be measured from the nearest grade elevation that is both immediately adjacent to the underground parking structure and the area of the vehicle entrance. This adjacent grade would be projected over the area to be excavated for vehicle entrance, and height would be measured from this projected grade. The City's intent of the exemption is to encourage underground parking, which can serve to create smaller building envelopes. On properties that contain sensitive habitat, for example, a decreased building envelope (through underground parking) could minimize impacts to the existing sensitive habitat, consistent with the City's, and the Coastal Act's policies protecting sensitive habitat.

The third modification, including exposed exterior walls in the measurement of building height, will result in an increased protection to public views. Currently, the City requires that building height measurements include basements and subterranean areas that are exposed above the existing grade, but such measurements exclude subterranean areas that are below the existing grade. There are instances, sloping lots on coastal bluffs, for example, where basement walls are exposed above a new finished grade, and this grade is *below* the existing grade (through cut or grading the site), and thus not included in current height measurements (ref. Exhibit #3). Commonly termed "daylighted basements," exposed below grade basements have been a concern to the Commission because a daylighted basement effectively adds another exposed level to a home (a two-story home becomes a three-story home where the basement is "daylighted"). Furthermore, daylighted basements also raise significant concerns regarding grading of a coastal bluff. With this new definition, applicants will not be encouraged to add square footage through a daylighted basement, as its exposed walls would be included in maximum height measurements. Thus, such basements may be less desirable, effectively also protecting the stability of coastal bluffs. In addition, the visual bulk of such structures along the coastal bluffs will also be minimized, thus enhancing the scenic resources of the shoreline. Therefore, the above changes do not result in potential impacts to coastal views and thus represent no concerns for consistency with the City's certified LUP.

The last proposed modification initially raises greater concerns regarding impacts to public views. As previously discussed, the City's existing regulations require that building height be measured from the lower of finished or existing grade, except when the proposed development requires a discretionary permit, in which case building height can be measured from a finished grade that may be higher, or lower than the original existing grade. If building height is measured from a "cut" finished grade (lower than

existing grade), this does not raise any coastal view concerns, but the allowance for a “padded” grade (higher than existing grade) could result in impacts to existing public views. This process, which could allow height measurements from a higher finished grade, is currently the certified zoning policy (again through the discretionary permit review process), and no changes to the concept are proposed. The City is instead proposing to include two considerations that the City must take into account before allowing an applicant to utilize a grade that is higher than the existing grade to measure height. These considerations include:

- 1) The compatibility of the proposed grading with the topography of the site and surrounding properties; and
- 2) Standards for access, utilities and drainage.

As such, the new language requires additional findings be made before the City can approve the modified method for measuring building height, thus further protecting public coastal views. It is important to note that the majority of development in the coastal zone would require discretionary review in the form of a coastal development permit, but this process already exists in the current certified LCP. While through application of discretionary review, it is likely that most cases would be using finished/padded grades to measure height; the City has indicated that they traditionally approve modified building grades for larger-scale developments that require significant grading in order to create the desired building pad, and not for smaller scale developments proposals such as single family homes. Further, when such an approval is associated with a coastal development permit, the City must find the proposed development, including the final building height, to be consistent with its certified LCP. As previously stated, the City’s LUP has policies addressing potential impacts to coastal views, and as such, any impacts to coastal views resulting from an elevated finished grade would be addressed at the time the CDP is processed, so only development that did not adversely affect such views could be approved. Thus, while the proposed change appears to have potential impacts to coastal views upon initial review, when looked at comprehensively, there is no change to the current process and City’s proposed changes continue to protect coastal views, and are thus consistent, as submitted, with the City’s LUP.

In conclusion, the City’s proposed LCP Amendment serves to clarify the methods for measuring building height and results in an implementation plan that *enhances* protection of public views. The proposed amendment results in no other potential inconsistencies with the City’s certified LUP and can therefore be approved as submitted.

**PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT (CEQA)**

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. The proposed project will not result in any impacts to coastal resources or public access. The Commission finds that there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the LCP amendment may have on the environment. Therefore, in terms of CEQA review, the Commission finds that approval of the LCP amendment will not result in any significant adverse environmental impacts.

(G:\San Diego\Reports\LCPs\Carlsbad\CAR LCPA 4-09B Building Height.doc)

Exhibit 1

ORDINANCE NO. CS-045

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A ZONE CODE AMENDMENT TO AMEND THE "BUILDING HEIGHT" DEFINITION AND OTHER RELATED AMENDMENTS TO CHAPTER 21.04 - DEFINITIONS OF THE CITY OF CARLSBAD ZONING ORDINANCE.

CASE NAME: BUILDING HEIGHT ZONE CODE AMENDMENT
CASE NO.: ZCA 08-01

The City Council of the City of Carlsbad, California, does ordain as follows:

SECTION I: That the Table of Contents of Chapter 21.04 of the Carlsbad


Municipal Code shall be amended to read as follows:

Chapter 21.04

DEFINITIONS

Sections:

- 21.04.005 Provisions not affected by headings.
- 21.04.010 Tenses.
- 21.04.015 Number.
- 21.04.020 Accessory.
- 21.04.021 Affordable housing.
- 21.04.025 Alley.
- 21.04.030 Apartment.
- 21.04.035 Apartment house.
- 21.04.036 Aquaculture.
- 21.04.040 Automobile wrecking.
- 21.04.041 Bar or cocktail lounge.
- 21.04.045 Basement.
- 21.04.046 Bed and breakfast uses.
- 21.04.048 Biological habitat preserve.
- 21.04.050 Block.
- 21.04.055 Boardinghouse.
- 21.04.056 Bona fide public eating establishment.
- 21.04.057 Bowling alley.
- 21.04.060 Building.
- 21.04.061 Building coverage.
- 21.04.065 Building height.
- 21.04.070 Building, main.
- 21.04.075 Building site.
- 21.04.080 Business or commerce.
- 21.04.085 Cellar.
- 21.04.086 Child day care center.
- 21.04.090 Club.
- 21.04.091 Coin-operated arcade.
- 21.04.093 Commercial living unit.
- 21.04.095 Commission.
- 21.04.098 Common wall.
- 21.04.099 Community development director.
- 21.04.100 Court.

EXHIBIT #1
Ordinance of Approval
LCPA #4-09B Building Height
 California Coastal Commission

- 1 21.04.105 Dairy.
- 21.04.106 Delicatessen.
- 2 21.04.107 Development (in the coastal zone).
- 21.04.109 Drive-thru restaurant.
- 3 21.04.110 Dump.
- 21.04.115 Dwelling.
- 4 21.04.120 Dwelling unit.
- 21.04.125 Dwelling, one-family.
- 5 21.04.130 Dwelling, two-family.
- 21.04.135 Dwelling, multiple-family.
- 6 21.04.137 Educational facilities, other.
- 21.04.140 Educational institution or school.
- 7 21.04.141 Escort service.
- 21.04.142 Factory-built housing.
- 8 21.04.145 Family.
- 21.04.146 Family day care home.
- 9 21.04.147 Family day care home, large.
- 21.04.148 Family day care home, small.
- 10 21.04.149 Employer-sponsored child day care center.
- 21.04.150 Garage, private.
- 11 21.04.155 Garage, public.
- 21.04.156 Gas station.
- 12 21.04.160 Grade, existing.
- 21.04.161 Grade, finished.
- 13 21.04.165 Guest house or accessory living quarters.
- 21.04.166 Hazardous waste.
- 14 21.04.167 Hazardous waste facility.
- 21.04.170 Hospital.
- 15 21.04.175 Hospital, mental.
- 21.04.185 Hotel.
- 16 21.04.186 Household--Low-income.
- 21.04.187 Household--Moderate-income..
- 17 21.04.188 Household--Very low-income.
- 21.04.188.1 Incidental outdoor dining areas.
- 18 21.04.189 Income level--Target.
- 21.04.190 Institution.
- 19 21.04.195 Kennel.
- 21.04.200 Kitchen.
- 20 21.04.202 Level.
- 21.04.203 Liquor store.
- 21 21.04.205 Lodginghouse.
- 21.04.210 Lot.
- 22 21.04.215 Lot area.
- 21.04.220 Lot, corner.
- 23 21.04.222 Lot coverage.
- 21.04.225 Lot depth.
- 24 21.04.230 Lot, interior.
- 21.04.235 Lot, key.
- 25 21.04.240 Lot line, front.
- 21.04.245 Lot line, rear.
- 26 21.04.250 Lot line, side.
- 21.04.255 Lot, reversed corner.
- 27 21.04.256 Lot--Planned unit development (PUD).

28

- 1 21.04.260 Lot, through.
- 21.04.263 Lot width.
- 2 21.04.265 Mobile building.
- 21.04.266 Mobile home.
- 3 21.04.267 Mobile home accessory structure.
- 21.04.268 Mobile home lot.
- 4 21.04.269 Mobile home park.
- 21.04.270 Modular building.
- 5 21.04.273 Motel.
- 21.04.275 Nonconforming building.
- 6 21.04.280 Nonconforming use.
- 21.04.285 Outdoor advertising display.
- 7 21.04.290 Outdoor advertising structure.
- 21.04.291 Pawnshop.
- 8 21.04.292 Planning director.
- 21.04.293 Poolhall or billiard parlor.
- 9 21.04.295 Professional care facility.
- 21.04.297 Public and quasi-public office buildings and accessory utility buildings and facilities.
- 10 21.04.298 Recreational vehicle (RV).
- 21.04.299 Recreational vehicle (RV) storage.
- 11 21.04.300 Residential care facility.
- 21.04.301 Secondhand or thrift shop.
- 12 21.04.302 Satellite television antenna.
- 21.04.303 Second dwelling unit.
- 13 21.04.305 Sign.
- 21.04.306 Space or structure, habitable.
- 14 21.04.307 Specified hazardous waste facility.
- 21.04.310 Stable, private.
- 15 21.04.315 Stable, public.
- 21.04.320 Stand.
- 16 21.04.325 State freeway.
- 21.04.330 Story.
- 17 21.04.335 Street.
- 21.04.340 Street line.
- 18 21.04.345 Street, side.
- 21.04.350 Structural alterations.
- 19 21.04.355 Structure.
- 21.04.356 Tattoo parlor.
- 20 21.04.357 Time-share project.
- 21.04.360 To place.
- 21 21.04.370 Underground parking.
- 21.04.375 Use.
- 22 21.04.376 Useable living area.
- 21.04.378 Veterinarian and small-animal hospital.
- 23 21.04.379 Wireless communication facility.
- 21.04.380 Yard.
- 24 21.04.385 Yard, front.
- 21.04.390 Yard, rear line of required front.
- 25 21.04.395 Yard, side.
- 26 21.04.400 Zoo, private

27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECTION II: That the Section 21.04.045 of the Carlsbad Municipal Code shall be amended to read as follows:

21.04.045 Basement

"Basement" means that portion of a building between floor and ceiling which is completely or partially below the existing grade or finished grade, whichever is lower, but so located that the vertical distance from exterior grade to the adjacent interior floor below is greater than the vertical distance from exterior grade to the adjacent interior ceiling above. This definition must apply to a minimum of seventy-five percent of the perimeter of the basement for that portion of a building to qualify as a basement. (Ord. NS-532 § 1, 2000; Ord. NS-204 § 1, 1992; Ord. NS-180 § 1, 1991; Ord. 9060 § 208)

SECTION III: That the Section 21.04.065 of the Carlsbad Municipal Code shall be amended to read as follows:

21.04.065 Building height.

A. "Building height" is limited to the vertical distance measured from "existing grade" (defined: Section 21.04.160) or "finished grade" (defined: Section 21.04.161), whichever is lower, at all points along the "building coverage" (defined: 21.04.061) up to a warped plane located at a height, above all points along the "building coverage", that is equal to the height limit of the underlying zone. All portions of the building shall be located at or below the building height limit, except as provided below.

1. "Building height" includes:

a. All portions of a building exposed above the existing grade or finished grade, whichever is lower. This includes, but is not limited to, all portions of exterior walls of a basement, underground parking or other subterranean areas that are exposed above existing grade or finished grade, whichever is lower, and the exposed exterior portion of a basement located on the downhill or uphill side of a building on a sloping lot, but does not include the exposed portion of an "underground parking" structure entrance (defined: Section 21.04.370) that is minimally necessary to provide vehicle access to the "underground parking" structure and which is below the existing or finished grade, whichever is lower, of the area that is immediately adjacent to the "underground parking" structure.

b. Per Section 21.46.020 of this title, protrusions above the building height limit may be allowed.

2. If a discretionary permit for a development or alteration of an existing development is approved, and such approval includes a grading plan that shows a finished grade higher in elevation than the existing grade, then building height may be measured from the approved finished grade. In approving a finished grade through a discretionary permit that is higher in elevation than the existing grade, consideration shall be given to the natural topography of the site, compatibility with the existing grade of adjacent and surrounding properties, and the need to comply with required access, utility and drainage standards.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. When nondiscretionary permits allow retaining walls, fill or other grading, which create a finished grade higher in elevation than the grade that existed prior to the retaining wall, fill, or grading, then building height shall be measured from existing grade.

SECTION IV: That the Section 21.04.160 of the Carlsbad Municipal Code shall be amended to read as follows:

21.04.160 Grade, existing.

"Existing grade," for the purposes of measuring building height, means the ground elevation prior to any grading or other site preparation related to, or to be incorporated into, a proposed development or alteration of an existing development.

SECTION V: That the Carlsbad Municipal Code shall be amended to add the following new section as follows:

21.04.161 Grade, finished.

"Finished grade", for the purposes of measuring building height, means the final ground elevation after the completion of any grading or other site preparation related to, or to be incorporated into, a proposed development or alteration of an existing development.

SECTION VI: That Section 21.04.370 of the Carlsbad Municipal Code shall be amended to read as follows:

21.04.370 Underground parking.

"Underground parking" means parking areas that are located completely or partially underground where the finished floor of the parking area is below grade to the point where the parking area qualifies as a basement as defined in Section 21.04.045.

EFFECTIVE DATE: This ordinance shall be effective no sooner than thirty days after its adoption but not until LCPA 08-02 is approved by the California Coastal Commission, and the City Clerk shall certify to the adoption of this ordinance and cause it to be published at least once in a publication of general circulation in the City of Carlsbad within fifteen days after its adoption.

///
///
///
///

6


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

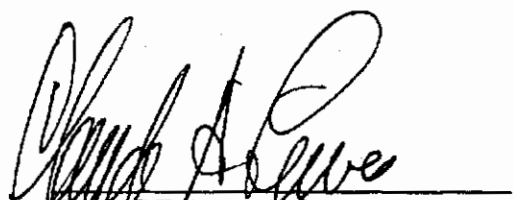
INTRODUCED AND FIRST READ at a regular meeting of the
Carlsbad City Council on the 28th day of July, 2009, and thereafter

PASSED, APPROVED AND ADOPTED at a regular meeting of the
City Council of the City of Carlsbad on the 4th day of August, 2009, by the following
vote, to wit:

- AYES: Council Members Lewis, Hall, Packard and Blackburn.
- NOES: None.
- ABSENT: Council Member Kulchin.

APPROVED AS TO FORM AND LEGALITY:


 RONALD R. BALL, City Attorney
 8/5/09.


 CLAUDE A. LEWIS, Mayor

ATTEST:

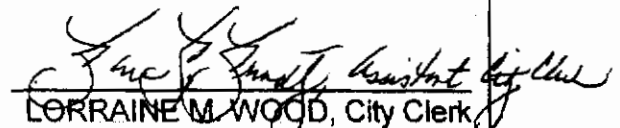

 LORRAINE M. WOOD, City Clerk
 (Seal)



EXHIBIT A
ZCA 08-01/LCPA 08-02 – BUILDING HEIGHT ZONE CODE AMENDMENT
STRIKE-OUT/UNDERLINE VERSION OF AMENDMENTS

Chapter 21.04

DEFINITIONS

Sections:

- 21.04.005 Provisions not affected by headings.
- 21.04.010 Tenses.
- 21.04.015 Number.
- 21.04.020 Accessory.
- 21.04.021 Affordable housing.
- 21.04.025 Alley.
- 21.04.030 Apartment.
- 21.04.035 Apartment house.
- 21.04.036 Aquaculture.
- 21.04.040 Automobile wrecking.
- 21.04.041 Bar or cocktail lounge.
- 21.04.045 Basement.
- 21.04.046 Bed and breakfast uses.
- 21.04.048 Biological habitat preserve.
- 21.04.050 Block.
- 21.04.055 Boardinghouse.
- 21.04.056 Bona fide public eating establishment.
- 21.04.057 Bowling alley.
- 21.04.060 Building.
- 21.04.061 Building coverage.
- 21.04.065 Building height.
- 21.04.070 Building, main.
- 21.04.075 Building site.
- 21.04.080 Business or commerce.
- 21.04.085 Cellar.
- 21.04.086 Child day care center.
- 21.04.090 Club.
- 21.04.091 Coin-operated arcade.
- 21.04.093 Commercial living unit.
- 21.04.095 Commission.
- 21.04.098 Common wall.
- 21.04.099 Community development director.
- 21.04.100 Court.
- 21.04.105 Dairy.
- 21.04.106 Delicatessen.
- 21.04.107 Development (in the coastal zone).
- 21.04.109 Drive-thru restaurant.
- 21.04.110 Dump.
- 21.04.115 Dwelling.
- 21.04.120 Dwelling unit.
- 21.04.125 Dwelling, one-family.
- 21.04.130 Dwelling, two-family.
- 21.04.135 Dwelling, multiple-family.
- 21.04.137 Educational facilities, other.
- 21.04.140 Educational institution or school.
- 21.04.141 Escort service.
- 21.04.142 Factory-built housing.
- 21.04.145 Family.
- 21.04.146 Family day care home.
- 21.04.147 Family day care home, large.
- 21.04.148 Family day care home, small.
- 21.04.149 Employer-sponsored child day care center.
- 21.04.150 Garage, private.
- 21.04.155 Garage, public.
- 21.04.156 Gas station.
- 21.04.160 Grade, existing.
- ~~21.04.161 Grade, finished.~~
- 21.04.165 Guest house or accessory living quarters.
- 21.04.166 Hazardous waste.
- 21.04.167 Hazardous waste facility.
- 21.04.170 Hospital.
- 21.04.175 Hospital, mental.
- 21.04.185 Hotel.
- 21.04.186 Household--Low-income.
- 21.04.187 Household--Moderate-income.
- 21.04.188 Household--Very low-income.
- 21.04.188.1 Incidental outdoor dining areas.
- 21.04.189 Income level--Target.
- 21.04.190 Institution.
- 21.04.195 Kennel.
- 21.04.200 Kitchen.
- 21.04.202 Level.
- 21.04.203 Liquor store.
- 21.04.205 Lodginghouse.
- 21.04.210 Lot.
- 21.04.215 Lot area.
- 21.04.220 Lot, corner.
- 21.04.222 Lot coverage.
- 21.04.225 Lot depth.
- 21.04.230 Lot, interior.
- 21.04.235 Lot, key.
- 21.04.240 Lot line, front.
- 21.04.245 Lot line, rear.
- 21.04.250 Lot line, side.
- 21.04.255 Lot, reversed corner.
- 21.04.256 Lot--Planned unit development (PUD).
- 21.04.260 Lot, through.
- 21.04.263 Lot width.
- 21.04.265 Mobile building.
- 21.04.266 Mobile home.
- 21.04.267 Mobile home accessory structure.
- 21.04.268 Mobile home lot.
- 21.04.269 Mobile home park.
- 21.04.270 Modular building.
- 21.04.273 Motel.
- 21.04.275 Nonconforming building.
- 21.04.280 Nonconforming use.
- 21.04.285 Outdoor advertising display.
- 21.04.290 Outdoor advertising structure.
- 21.04.291 Pawnshop.
- 21.04.292 Planning director.
- 21.04.293 Poolhall or billiard parlor.
- 21.04.295 Professional care facility.
- 21.04.297 Public and quasi-public office buildings and accessory utility buildings and facilities.
- 21.04.298 Recreational vehicle (RV).
- 21.04.299 Recreational vehicle (RV) storage.
- 21.04.300 Residential care facility.
- 21.04.301 Secondhand

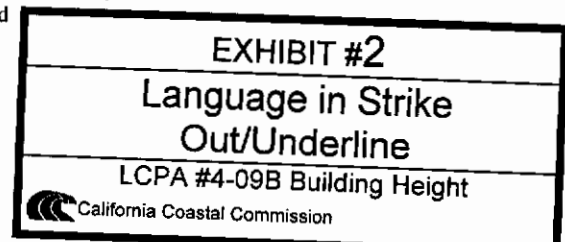


EXHIBIT A
ZCA 08-01/LCPA 08-02 – BUILDING HEIGHT ZONE CODE AMENDMENT
STRIKE-OUT/UNDERLINE VERSION OF AMENDMENTS

21.04.302 Satellite television antenna.
21.04.303 Second dwelling unit.
21.04.305 Sign.
21.04.306 Space or structure, habitable.
21.04.307 Specified hazardous waste facility.
21.04.310 Stable, private.
21.04.315 Stable, public.
21.04.320 Stand.
21.04.325 State freeway.
21.04.330 Story.
21.04.335 Street.
21.04.340 Street line.
21.04.345 Street, side.
21.04.350 Structural alterations.

21.04.355 Structure.
21.04.356 Tattoo parlor.
21.04.357 Time-share project.
21.04.360 To place.
21.04.370 Underground parking.
21.04.375 Use.
21.04.376 Useable living area.
21.04.378 Veterinarian and small-animal hospital.
21.04.379 Wireless communication facility.
21.04.380 Yard.
21.04.385 Yard, front.
21.04.390 Yard, rear line of required front.
21.04.395 Yard, side.
21.04.400 Zoo, private.

21.04.045 Basement.

"Basement" means that portion of a building between floor and ceiling which is completely or partially below ~~partly below and partly above~~ the existing grade or finished grade, whichever is lower, as measured along all points of the exterior (~~immediately outside of "building coverage"~~) perimeter of the structure immediately adjacent to the "building coverage" (defined: 21.04.061), but so located that the vertical distance from exterior grade to the adjacent interior floor below is more than the vertical distance from exterior grade to adjacent interior ceiling. This definition must apply to a minimum of seventy-five percent of the perimeter of the basement ~~building coverage~~ for that portion of a building a structure to qualify as a basement. ~~The portion of a basement that is below existing grade is not included in the measurement of building height (as defined in Section 21.04.065).~~ Notwithstanding Chapter 21.48 of this code, existing buildings and projects which have a complete application or received discretionary approvals by January 25, 2000, or if no discretionary approvals are required, then development projects for which a building permit has been issued by January 25, 2000, shall not be considered nonconforming. (Ord. NS-532 § 1, 2000; Ord. NS-204 § 1, 1992; Ord. NS-180 § 1, 1991; Ord. 9060 § 208)

21.04.065 Building height.

(a) ~~The height of a building shall be measured as follows:~~

(1)A. "Building height" ~~is limited to~~ means the vertical distance ~~of a structure~~ measured from "existing grade" (defined: Section 21.04.160) or "finished grade" (defined: Section 21.04.161), whichever is lower, at all points along the "building coverage" (defined: 21.04.061) up to a warped plane located at a height, above all points along the "building coverage", that is equal to the height limit of the underlying zone. All portions of the building shall be located at or below the building height limit, except as provided below. ~~the more restrictive (lowest) of finished or existing grade. The vertical distance is measured from all points at grade along and within the building coverage to the highest point of the structure directly above that point of measurement.~~

EXHIBIT A
ZCA 08-01/LCPA 08-02 – BUILDING HEIGHT ZONE CODE AMENDMENT
STRIKE-OUT/UNDERLINE VERSION OF AMENDMENTS

1. “Building height” includes:

- a. All portions of a building exposed above the existing grade or finished grade, whichever is lower. This includes, but is not limited to, all portions of exterior walls of a basement, underground parking or other subterranean areas that are exposed above existing grade or finished grade, whichever is lower, and the exposed exterior portion of a basement located on the downhill or uphill side of a building on a sloping lot, but does not include the exposed portion of an “underground parking” structure entrance (defined: Section 21.04.370) that is minimally necessary to provide vehicle access to the “underground parking” structure and which is below the existing or finished grade, whichever is lower, of the area that is immediately adjacent to the “underground parking” structure.
- b. Per Section 21.46.020 of this title, protrusions above the building height limit may be allowed.

~~(2) “Existing grade,” for the purposes of measuring building height, means the ground level elevation which existed on or before August 1, 1991 and prior to any grading or other site preparation related to, or to be incorporated into, a proposed new development or alteration of existing developments unless a discretionary permit for such developments or alterations is approved. In that case, existing grade shall mean the grade after the property is developed or improved in accordance with the grading plans which implement the approved discretionary permit.~~

2. If a discretionary permit for a development or alteration of an existing development is approved, and such approval includes a grading plan that shows a finished grade higher in elevation than the existing grade, then building height may be measured from the approved finished grade. In approving a finished grade through a discretionary permit that is higher in elevation than the existing grade, consideration shall be given to the natural topography of the site, compatibility with the existing grade of adjacent and surrounding properties, and the need to comply with required access, utility and drainage standards.

3. For ~~When~~ nondiscretionary permits ~~allow~~ where retaining walls, fill or other grading, ~~which~~ are utilized to create a finished grade higher in elevation than ~~the~~ grade that existed prior to the retaining wall, fill, or grading, existing grade as defined in this subsection and as determined by the planning director, then building height shall be measured from existing grade. ~~existing grade shall be~~

EXHIBIT A
ZCA 08-01/LCPA 08-02 – BUILDING HEIGHT ZONE CODE AMENDMENT
STRIKE-OUT/UNDERLINE VERSION OF AMENDMENTS

~~used in the determination of building height.~~

- ~~(3) Building height measurements include basements and other subterranean areas that are above existing grade. In the case of basements, cellars and underground parking, building height is measured from existing grade, excluding the area below existing grade.~~
- ~~(4) Building height is measured to the peak of the structure. Per Section 21.46.020 of this title, protrusions above height limits may be allowed.~~

~~(Ord. NS-675 § 1, 2003; Ord. NS-204 § 2, 1992; Ord. NS-180 § 3, 1991; Ord. 9667, 1983; Ord. 9498 § 1, 1978; Ord. 9141 § 1; Ord. 9060 § 212)~~

21.04.160 Grade, existing.

~~"Grade" means the average of the finished ground level at the center of all walls of a building. In case walls are parallel to and within five feet of a sidewalk, the aboveground level shall be measured at the sidewalks. For the purposes of measuring building height, "grade" means the ground elevations along and within the area of building coverage.~~

~~**"Existing grade," for the purposes of measuring building height, means the ground elevation prior to any grading or other site preparation related to, or to be incorporated into, a proposed development or alteration of an existing development.** (Ord. NS-180 § 4, 1991; Ord. 9060 § 231)~~

21.04.161 Grade, finished.

~~**"Finished grade", for the purposes of measuring building height, means the final ground elevation after the completion of any grading or other site preparation related to, or to be incorporated into, a proposed development or alteration of an existing development.**~~

21.04.370 Underground parking.

~~"Underground parking" means parking areas that are located completely or partially underground where the finished floor of the parking area is below existing grade to the point where the parking area qualifies as a basement as defined in Section 21.04.045. Underground parking areas are excluded from the measurement of building height. However, in the case where underground parking is not completely underground, building height will be measured from existing grade so that the portion of the parking structure above existing grade is part of the building height.~~

~~(Ord. NS-204 § 3, 1992; Ord. NS-180 § 8, 1991)~~

FIGURE #1
CUT GRADING

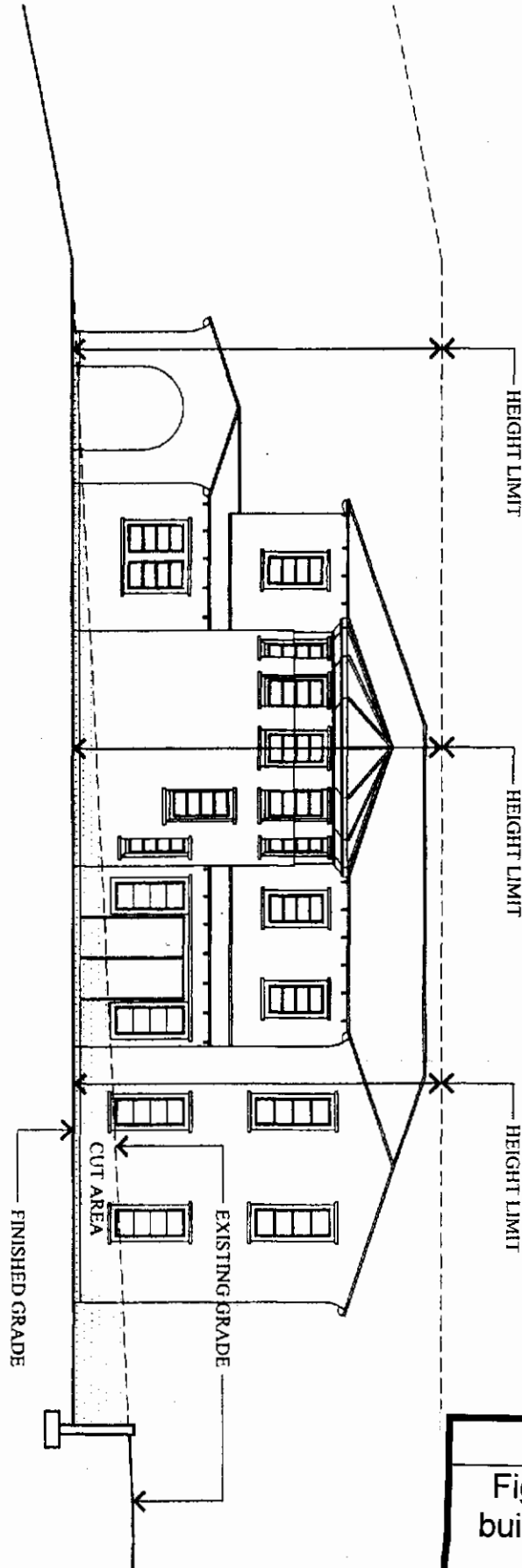


EXHIBIT #3
Figures demonstrating new
building height measurement
methods
LCPA #4-09B Building Height
California Coastal Commission

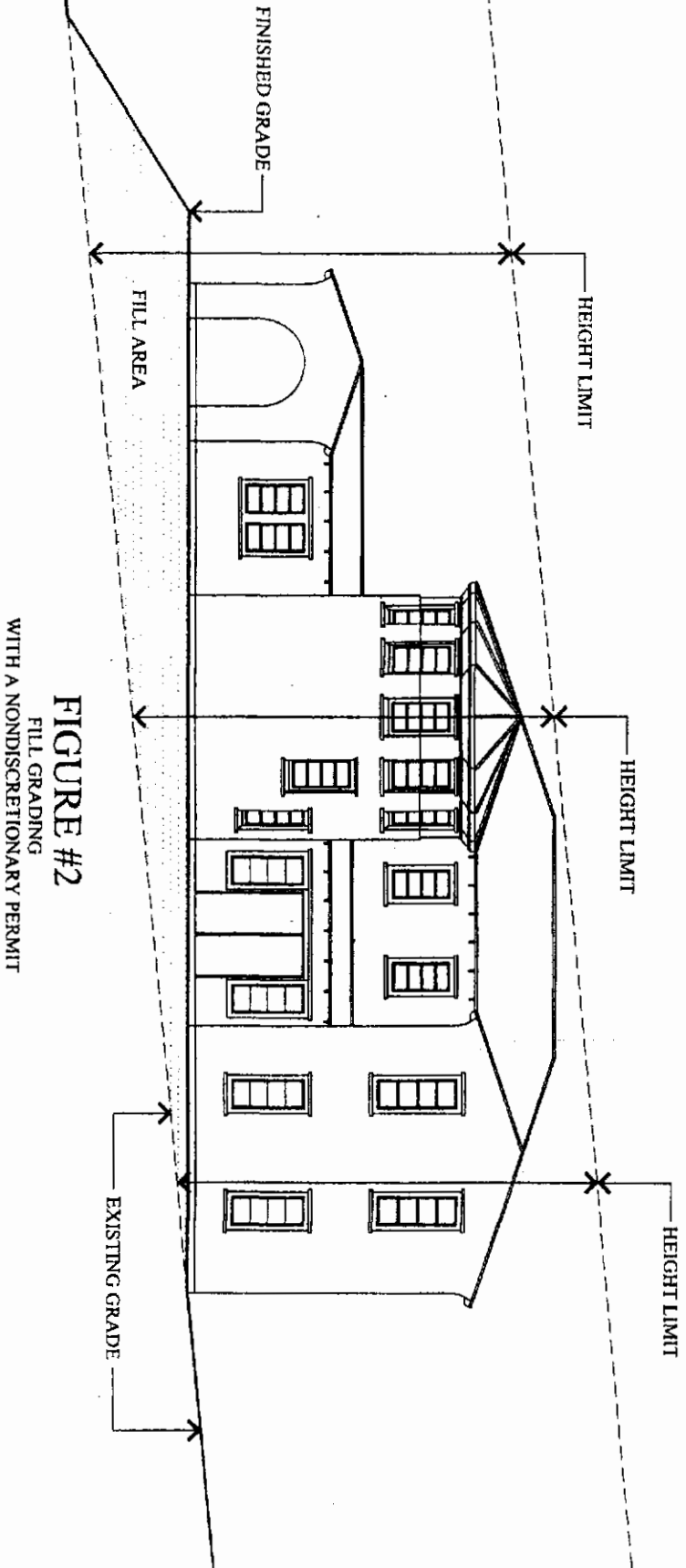


FIGURE #2
 FILL GRADING
 WITH A NONDISCRETIONARY PERMIT

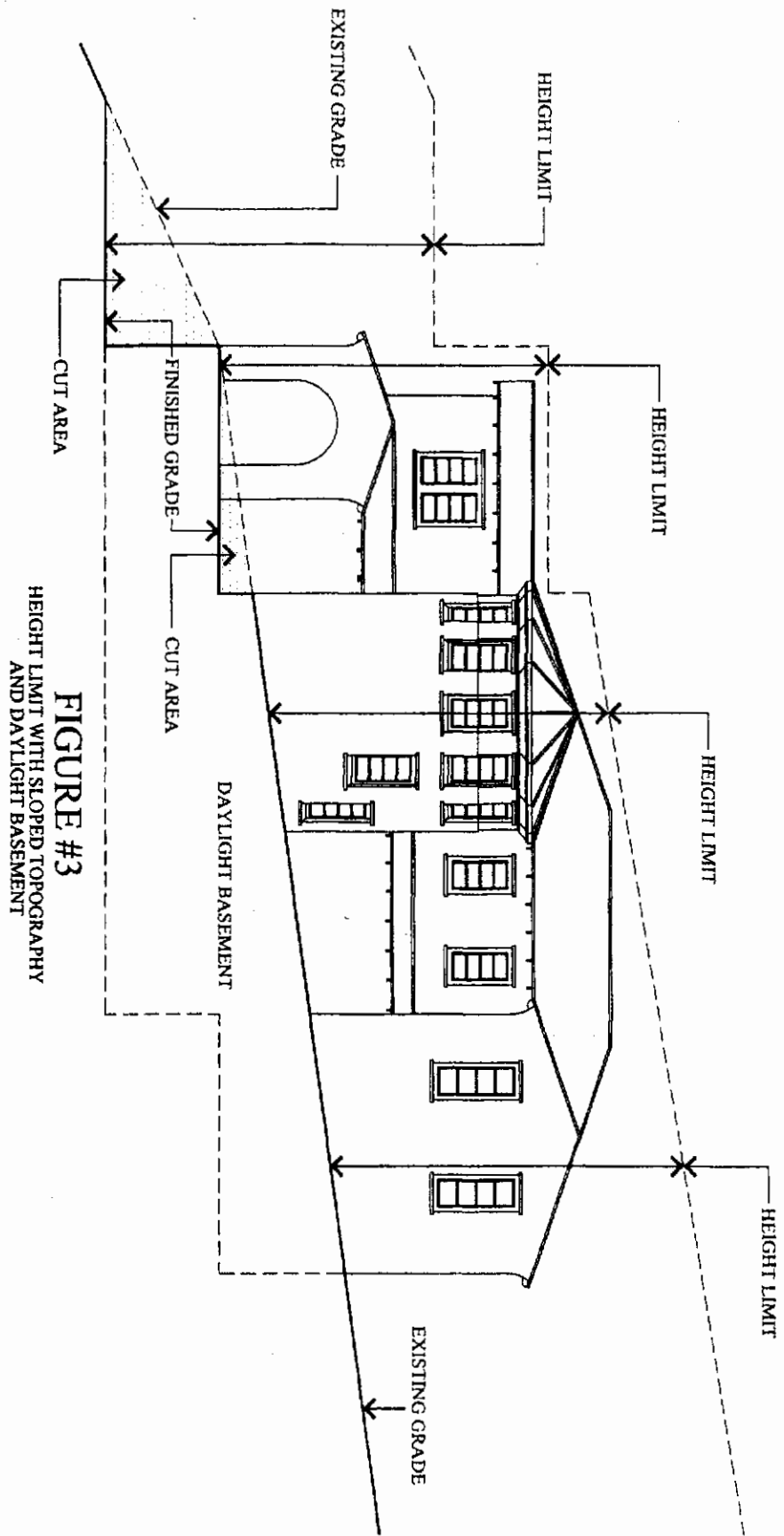


FIGURE #3
HEIGHT LIMIT WITH SLOPED TOPOGRAPHY
AND DAYLIGHT BASEMENT

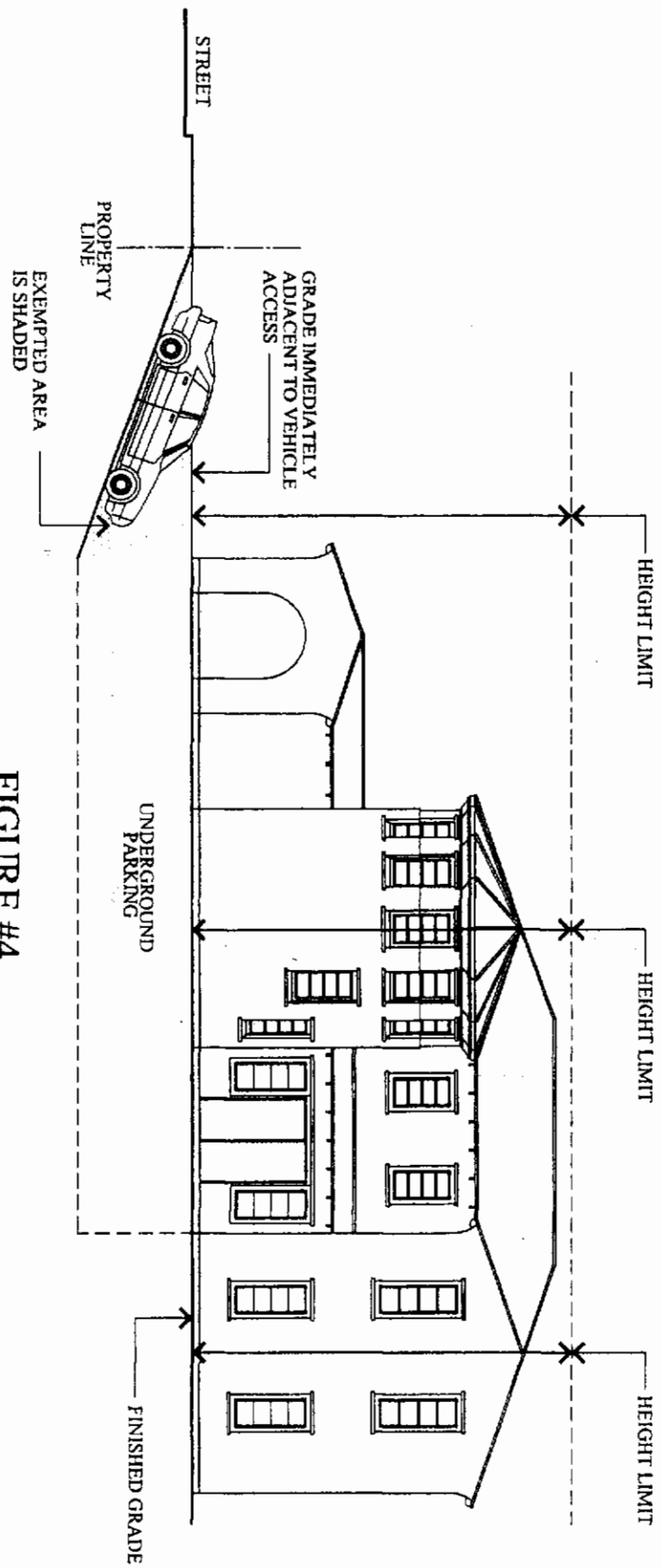


FIGURE #4
EXEMPTION FOR VEHICLE ACCESS
TO UNDERGROUND PARKING

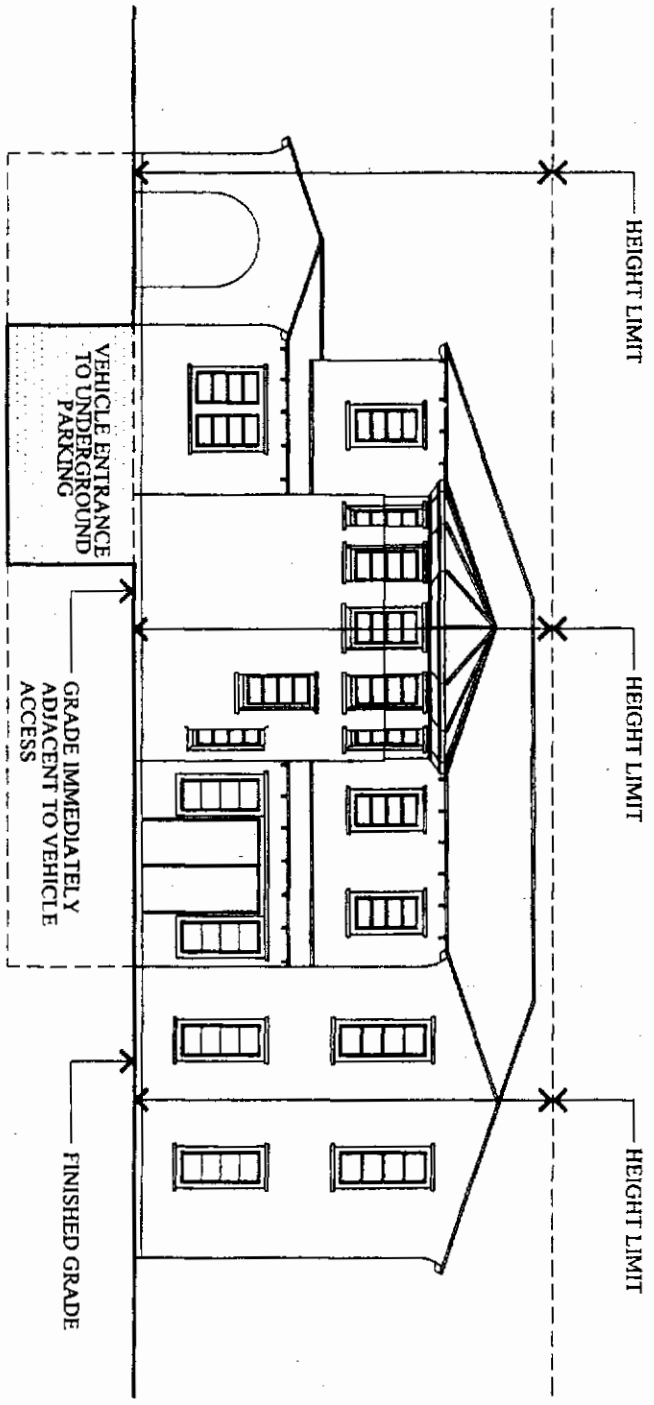


FIGURE #4A
EXEMPTION FOR VEHICLE ACCESS
TO UNDERGROUND PARKING