

NO: **R115**

COUNCIL DATE: **May 17, 2010**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **May 17, 2010**

FROM: **General Manager, Planning and Development**

FILE: **3900-30**

SUBJECT: **Proposed Amendments to Surrey Zoning By-law, 1993, No. 12000, and
Surrey Zoning By-law, 1979, No. 5942**

RECOMMENDATION

The Planning and Development Department recommends that Council:

1. Receive this report as information;
2. Approve text amendments to Surrey Zoning By-law, 1993, No. 12000, as amended ("Zoning By-law No. 12000"), all as documented in Appendix I;
3. Approve text amendments to Surrey Zoning By-law, 1979, No. 5942, as amended ("Zoning By-law No. 5942"), all as documented in Appendix II; and
4. Authorize the City Clerk to introduce the necessary amending by-laws for the required readings and to set a date for the related public hearing.

INTENT

The purpose of this report is to obtain Council approval for amendments to Zoning By-law No. 12000 and Zoning By-law No. 5942, as documented in Appendices I and II of this report.

BACKGROUND

From time to time amendments are required in the Zoning By-law to address concerns that arise through the application and administration of the provisions of the By-law. This report addresses such a matter in relation to several definitions contained within the Zoning By-laws.

DISCUSSION

Amendments are proposed to the definition of each of "Building Height" and "Finished Grade" in each of Zoning By-law No. 12000 and Zoning By-law No. 5942.

"Building Height"

Currently, in Zoning By-law No. 12000, "Building Height" is defined as:

"Building Height means the vertical distance measured from the average *finished grade* level at all *building* faces surrounding a *building* to:

- (a) the highest point on a flat roof; or
- (b) the average level between the eaves and ridge of a gable, hip or gambrel roofed *building*; or
- (c) the greater of the two measurements referred to in (a) and (b) above in the case of a *building* with more than one type of roof.

Elevator service rooms, air conditioners and similar equipment, and dormers and other similar roof elements shall not be included in the measurement of *building height* provided that the dormers and other similar roof elements, in aggregate, do not exceed 25% of the area of the roof in which they are located".

The *italicized* words in the above-noted definition are separately defined in Zoning By-law No. 12000.

The definition of "Building Height" in Zoning By-law No. 5942 is the same as Zoning By-law No. 12000, except that it does not contain a reference to "dormers and other similar roof elements".

"Finished Grade"

In each of Zoning By-law No. 12000 and Zoning By-law No. 5942, "Finished Grade" is defined as:

"Finished Grade means:

- (a) the rough grading elevation as identified on a *lot* grading plan, where such a plan has been approved by the *City*; or
- (b) where there is no approved *lot* grading plan, the lowest ground elevation existing prior to construction, such ground elevation to include fill materials placed on the *lot* to raise the ground elevation up to but not above the average elevation of adjacent *lots* at the adjoining *lot lines*".

Depending upon whether or not there is a lot grading plan approved by the City, the height of a building is measured from either finished grade or existing grade. By definition, "Finished Grade" can, in fact, be existing grade when there is no lot grading plan approved by the City (i.e., the lowest ground elevation existing prior to construction). This ambiguity has led to confusion amongst some architects and other design professionals resulting in situations where the height of a building shown in a development permit or building permit drawing is inaccurate and the actual building height is greater than that shown in the drawings.

In the case of buildings on single family or duplex lots, for the purpose of calculating the building height, the grade levels around the perimeter of the buildings are established on the basis of a lot grading plan that is approved by the City when the lots were created by a recent subdivision. At the time of the subdivision, the City requires the submission of a lot grading plan prepared by a professional engineer, and approves it to ensure the subdivision meets the City's standards for roads and services, and to ensure that an excessive amount of fill is not placed on a lot so as to create a problematic interface condition with a neighbouring property. In an infill situation where no lot grading plan exists, sub-clause (b) of the "Finished Grade" definition applies, which requires that the building height be measured from the lowest ground elevation on the lot that existed prior to construction (existing grade).

For a multi-family building and other non-single-family or duplex buildings, a lot grading plan is currently not required nor is one submitted for approval at the time of subdivision because the construction and servicing details are not determined until later, typically during the building permit stage. Therefore, part (b) of the "Finished Grade" definition would apply for the purpose of calculating the building height (i.e., the lowest ground elevation existing prior to construction). However, the current definition of "Finished Grade" is not clear on what constitutes a "lot grading plan approved by the City".

A lot grading plan prepared by a professional engineer is required at the building permit stage to show the existing grades. Also, a development site plan is required to illustrate the proposed grades (finished grades) in relation to the existing grades shown on the lot grading plan. This grading information is reviewed by staff to ensure compliance with the Building Code and the City's site construction and servicing standards. Most non-single family projects are required to obtain a development permit before a building permit application is accepted. The building height is established by the development permit. However, in some cases, staff find that the building height, as proposed at the development permit stage and accepted by staff to be in keeping with the building height regulation of the Zoning By-law, is no longer accurate on the basis of the lot grading information provided at the building permit stage.

As the current definitions of "Building Height" and "Finished Grade" are not fully clear, as discussed above, it is proposed that these definitions in Zoning By-law No. 12000 and Zoning By-law No. 5942 be amended to:

- Clarify that the current definition of "Building Height", which requires the building height to be measured from finished grade, is to be used for buildings on single family and duplex lots;
- Provide a separate definition of "Building Height" for all buildings that are not located on single family and duplex lots, which makes it clear that the existing grade is to be used to measure the building height. The separate definition would eliminate the possibility for misinterpretation;
- Provide a new definition of "Existing Grade" in relation to the "Building Height" definition for buildings that are not located on single family and duplex lots;
- Clarify in the definition of "Finished Grade", that the lot grading plan is the plan that was approved by the City at the time of subdivision when the lot was created;

- Clarify the definition of "Building Height" to identify more clearly how the average finished grade and the average existing grade on a lot are to be calculated;
- Identify that both "Finished Grade" and "Existing Grade" will need to be established on a legal survey prepared by a registered British Columbia Land Surveyor; and
- Remove the reference to "elevator service rooms, air conditioners and similar equipment" from the definition of "Building Height" for buildings located on the single family and duplex lots, as it is redundant in relation to these types of buildings.

Appendix III provides illustrations to exhibit how building height is to be measured under the new building height definition.

Staff is also reviewing the submission requirements for development permit applications and is considering the pros and cons of requiring a lot grading plan as part of the development application submission package. A further report to Council on procedural requirements for land development applications will be provided once this review is completed.

Proposed Amendments to the Definition of "Care Facility", "Child Care Centre" and "Alcohol and Drug Recovery House" in Zoning By-law No. 12000 and "Personal Care Facility" in Zoning By-law No. 5942

"Care Facility"

Currently, in Zoning By-law No. 12000 "Care Facility" is defined as:

"Care Facility means a *building* which contains *sleeping units* for persons receiving care or assistance which is licensed or funded by provincial or federal agencies, including personal care and intermediate care as defined and regulated under the Community Care Facility Act, R.S.B.C. 1996, c. 60 and extended care as defined and regulated under the Hospital Act, R.S.B.C. 1979, c. 200 but excluding a *temporary homeless shelter* and an *alcohol and drug recovery house*".

The following amendments are proposed to this definition:

- Replace the reference to the Community Care Facility Act with the current Community Care and Assisted Living Act, which was adopted by the provincial government in 2004 to regulate community care facilities;
- Replace "which is licensed or funded by provincial or federal agencies" with "where the *building* and/or operator are regulated or funded by provincial or federal agencies". According to the Regulations of the Community Care and Assisted Living Act, "care facilities" provide three or more "prescribed services" and must be licensed, while "assisted living residences" provide one or two "prescribed services" and must be registered. The word "regulated" will encompass both of these;

- Remove the exclusion of "temporary homeless shelter and an alcohol and drug recovery house". This will mean that all residential facilities that provide "sleeping units" and "care and assistance" will be required to meet the proposed new definition of "Care Facility" (see above) in Zoning By-law No. 12000. The General Provisions of Zoning By-law No. 12000 permit care facilities, which accommodate no more than "10 persons where not more than 6 of whom are persons in care", to be located in any residential zone. A care facility that accommodates more than six persons in care must be located in a zone that permits care facilities, either a Special Care Housing Zone (RMS-1) or (RMS-2) or a Comprehensive Development Zone that includes care facility as a permitted use.
- Remove the reference to the Hospital Act as it no longer defines or regulates extended care; and

"Child Care Centre"

Currently, in Zoning By-law No. 12000 "Child Care Centre" is defined as:

"Child Care Centre means a facility for children which includes group day care, family day care, pre-school, out-of-school care, child minding, specialized day care and emergency child care all as defined, licensed and regulated under the Community Care Facility Act, R.S.B.C. 1979, c. 57 and the Child Care Regulations set out under B.C. Reg. 319/89".

The following amendments are proposed to this definition:

- Reference the current Community Care and Assisted Living Act and the most recent Child Care Licensing Regulation; and
- Replace "includes group day care, family day care, pre-school, out-of-school care, child minding, specialized day care and emergency child care" with the names of the care programs outlined in the Child Care Licensing Regulation set out under the new B.C. Regulation No. 95/2009.

"Alcohol and Drug Recovery House"

Currently, in Zoning By-law No. 12000 "Alcohol and Drug Recovery House" is defined as:

"Alcohol and Drug Recover House means a building which contains sleeping units for persons receiving on-site care and support for recovery from alcohol or drug dependency which is regulated under the Community Care Facility Act, R.S.B.C. 1996, c.60".

The following amendments are proposed to this definition:

- Reference the current Community Care and Assisted Living Act; and
- Italicize the words "building" and "sleeping units", which are defined terms in Zoning By-law No. 12000.

Currently, in Zoning By-law No. 5942 "Personal Care Facility" is defined as:

"Personal Care Facility means any building or structure in which food, lodging and care are provided, with or without charge, to persons not related to the operator of the facility by blood or marriage, who, on account of age, infirmity, physical or mental defect or other disability, require special care".

This definition should be consistent with the proposed definition of "Care Facility" in Zoning By-law No. 12000. Therefore, it is proposed that the amended definition of "Personal Care Facility" read as follows:

"Personal Care Facility means a building which contains sleeping units for persons receiving care or assistance where the building and/or operator are regulated or funded by provincial or federal agencies, including care and assisted living as defined and regulated under the Community Care and Assisted Living Act, S.B.C., 2002, c. 75".

Other Amendments

In addition to references to the Community Care Facility Act and/or Child Care Regulations in Part 1 Definitions of Zoning By-law No. 12000 and Zoning By-law No. 5942, both by-laws contain numerous references to this Act and/or Regulations throughout the by-laws.

All such references in both by-laws should be replaced with the current Community Care and Assisted Living Act or Child Care Regulations.

Legal Services has reviewed the amendments recommended in this report and has no concerns.

CONCLUSION

The current definitions of "Building Height" and "Finished Grade" in Zoning By-law No. 12000 have caused some confusion, which, in some situations, has resulted in buildings that are greater in height than shown in development permit and building permit drawings. This has been more prevalent with multi-family and other buildings as opposed to single family or duplex dwellings. This report proposes a number of amendments to these definitions in Zoning By-law No. 12000 and Zoning By-law No. 5942. In support of these amendments, two additional definitions are proposed in each of the by-laws.

Additionally, amendments to the definitions of "Care Facility", "Child Care Centre" and "Alcohol and Drug Recovery House" in Zoning By-law No. 12000 and "Personal Care Facility" in Zoning By-law No. 5942 are proposed. Amendments are also proposed to other Parts of both by-laws to reference the current provincial legislation for community care and child care facilities.

Based on the above discussion, it is recommended that Council:

- Approve text amendments to Zoning By-law No. 12000, all as documented in Appendix I;
- Approve text amendments to Zoning By-law, all as documented in Appendix II; and

- Authorize the City Clerk to introduce the necessary amending by-laws for the required readings and to set a date for the related public hearing.

Original signed by
Jean Lamontagne
General Manager
Planning and Development

BP/AM/kms/saw

Attachments:

Appendix I Proposed Amendments to Zoning By-law, No. 12000
Appendix II Proposed Amendments to Zoning By-law No. 5942
Appendix III Illustrations – Determining Building Height

Proposed Amendments to Surrey Zoning By-law, 1993, No. 12000, as amended

The following amendments are proposed to Surrey Zoning By-law, 1993, No. 12000, as amended:

Part 1 Definitions

1. Amend the definition of "Alcohol and Drug Recovery House" as follows:
 - Italicize the words "building" and "sleeping units"; and
 - Replace "Community Care Facility Act, R.S.B.C. 1996, c.60" with "Community Care and Assisted Living Act, S.B.C., 2002, c.75, as amended".
2. Delete the definition of "Building Height" in its entirety and replace it with the following definitions:

"Building Height for Buildings located on Single Family and Duplex Lots

means the vertical distance measured from the average *finished grade* level, determined by averaging the *finished grades* at all *building* faces surrounding the perimeter of a *building*, to:

- (a) the highest point on a flat roof; or
- (b) the average level between the eaves and ridge of a gable, hip or gambrel roofed *building*; or
- (c) the greater of the two measurements referred to in (a) and (b) above in the case of a *building* with more than one type of roof.

Dormers and other similar roof elements shall not be included in the measurement of *building height* provided that the dormers and other similar roof elements, in aggregate, do not exceed 25% of the plan view area of the roof on which they are located.";

and

"Building Height for Buildings not located on Single Family and Duplex Lots

means the vertical distance measured from the average *existing grade* level, determined by averaging the *existing grades* at all *building* faces surrounding the perimeter of a *building*, to:

- (a) the highest point on a flat roof; or
- (b) the average level between the eaves and ridge of a gable, hip or gambrel roofed *building*; or
- (c) the greater of the two measurements referred to in (a) and (b) above in the case of a *building* with more than one type of roof.

Elevator service rooms, air conditioners and similar equipment, and dormers and other similar roof elements shall not be included in the measurement of *building height* provided that the dormers and other similar roof elements, in aggregate, do not exceed 25% of the plan view area of the roof on which they are located."

3. Delete the definition of "Care Facility" in its entirety and replace it with the following:

"means a *building* which contains *sleeping units* for persons receiving care or assistance where the *building* and/or operator are regulated or funded by provincial or federal agencies, including care and assisted living as defined and regulated under the Community Care and Assisted Living Act, S.B.C., 2002, c.75, as amended."

4. Delete the definition of "Child Care Centre" in its entirety and replace it with the following:

"means a facility for children which includes group child care, preschool, family child care, occasional child care and multi-age child care all as defined, licensed and regulated under the Community Care and Assisted Living Act, S.B.C., 2002, c.75, as amended and the Child Care Licensing Regulation set out under B.C. Reg. 95/2009, as amended."

5. Insert the following definition after the definition of "Entertainment Uses":

"Existing Grade

means the lowest ground elevation existing prior to construction, as established on a legal survey plan by a registered British Columbia Land Surveyor, such ground elevation to include fill materials placed on the *lot* to raise the ground elevation up to, but not above, the average elevation of adjacent *lots* at the adjoining *lot lines*."

6. Delete the definition of "Finished Grade" in its entirety and replace it with the following:

"Finished Grade

means:

- (a) the rough grading elevation as identified on a *lot* grading plan, where such a plan has been approved by the *City* at the time of subdivision when the *lot* was created; or
- (b) where there is no *lot* grading plan that was approved by the *City* at the time of subdivision when the *lot* was created, the lowest ground elevation existing prior to construction, as established on a legal survey by a registered British Columbia Land Surveyor, such ground elevation to include fill materials placed on the *lot* to raise the ground elevation up to, but not above, the average elevation of adjacent *lots* at the adjoining *lot lines*."

Other Amendments

7. Wherever the reference to "Community Care Facility Act, R.S.B.C.", "Community Care Facility Act, R.S.B.C. 1979, c. 57" or "Community Care Facility Act, R.S.B.C. 1996, c.60" appears, replace it with "Community Care and Assisted Living Act, S.B.C., 2002, c.75, as amended"; and
8. Wherever the reference to "Child Care Regulations set out under B.C. Reg. 319/89" appears, replace it with "Child Care Licensing Regulation set out under B.C. Reg. 95/2009, as amended".

Proposed Amendments to Surrey Zoning By-law, 1979, No. 5942, as amended

The following amendments are proposed to Surrey Zoning By-law, 1979, No. 5942, as amended:

PART 1 - DEFINITIONS

1. Delete the definition of "BUILDING HEIGHT" in its entirety and replace it with the following definitions:

"BUILDING HEIGHT FOR BUILDINGS LOCATED ON SINGLE FAMILY AND DUPLEX LOTS

means the vertical distance measured from the average finished grade level, determined by averaging the finished grades at all building faces surrounding the perimeter of a building, to:

- (a) the highest point on a flat roof; or
- (b) the average level between the eaves and ridge of a gable, hip or gambrel roofed building; or
- (c) the greater of the two measurements referred to in (a) and (b) above in the case of a building with more than one type of roof.

Dormers and other similar roof elements shall not be included in the measurement of building height provided that the dormers and other similar roof elements, in aggregate, do not exceed 25% of the plan view area of the roof on which they are located.";

and

"BUILDING HEIGHT FOR BUILDINGS NOT LOCATED ON SINGLE FAMILY AND DUPLEX LOTS

means the vertical distance measured from the average existing grade level, determined by averaging the existing grades at all building faces surrounding the perimeter of a building, to:

- (a) the highest point on a flat roof; or
- (b) the average level between the eaves and ridge of a gable, hip or gambrel roofed building; or
- (c) the greater of the two measurements referred to in (a) and (b) above in the case of a building with more than one type of roof.

Elevator service rooms, air conditioners and similar equipment, and dormers and other similar roof elements shall not be included in the measurement of building height provided that the dormers and other similar roof elements, in aggregate, do not exceed 25% of the plan view area of the roof on which they are located.".

2. Insert the following definition after the definition of "DWELLING – MULTI-FAMILY":

"EXISTING GRADE

means the lowest ground elevation existing prior to construction, as established on a legal survey plan by a registered British Columbia Land Surveyor, such ground elevation to include fill materials placed on the lot to raise the ground elevation up to, but not above, the average elevation of adjacent lots at the adjoining lot lines."

3. Delete the definition of "FINISHED GRADE" in its entirety and replace it with the following:

"FINISHED GRADE

means:

- (a) the rough grading elevation as identified on a lot grading plan, where such a plan has been approved by the City at the time of subdivision when the lot was created;
or
 - (b) where there is no lot grading plan that was approved by the City at the time of subdivision when the lot was created, the lowest ground elevation existing prior to construction, as established on a legal survey by a registered British Columbia Land Surveyor, such ground elevation to include fill materials placed on the lot to raise the ground elevation up to, but not above, the average elevation of adjacent lots at the adjoining lot lines."
4. Delete the definition of "PERSONAL CARE FACILITY" in its entirety and replace it with the following

"PERSONAL CARE FACILITY

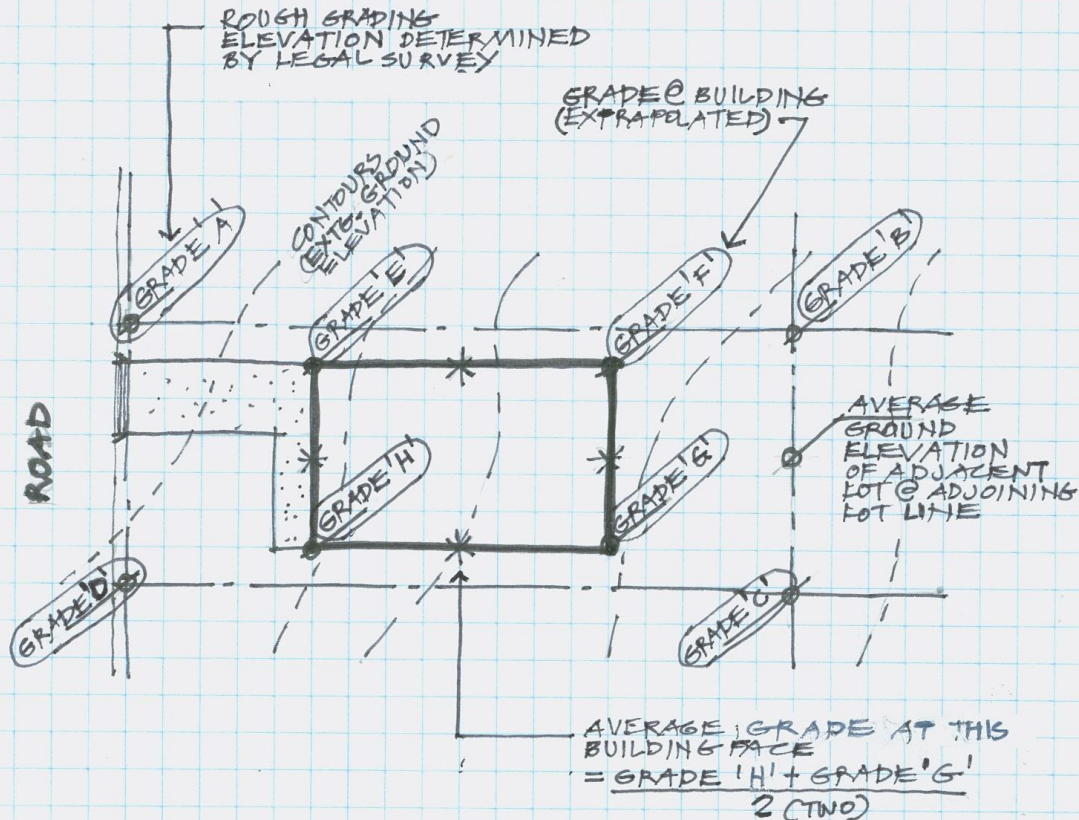
means a building which contains sleeping units for persons receiving care or assistance where the building and/or operator are regulated or funded by provincial or federal agencies, including care and assisted living as defined and regulated under the Community Care and Assisted Living Act, S.B.C., 2002, c.75 as amended."

Other Amendments

1. Wherever the reference to "Community Care Facility Act R.S.B.C." appears, replace it with "Community Care and Assisted Living Act, S.B.C., 2002, c.75, as amended".

Illustrations - Determining Building Height

LOT GRADING PLAN WITH BUILDING FOOTPRINT
 showing Existing Ground Elevation (Contours)
 & Rough Grading Elevation (Finished Grade)

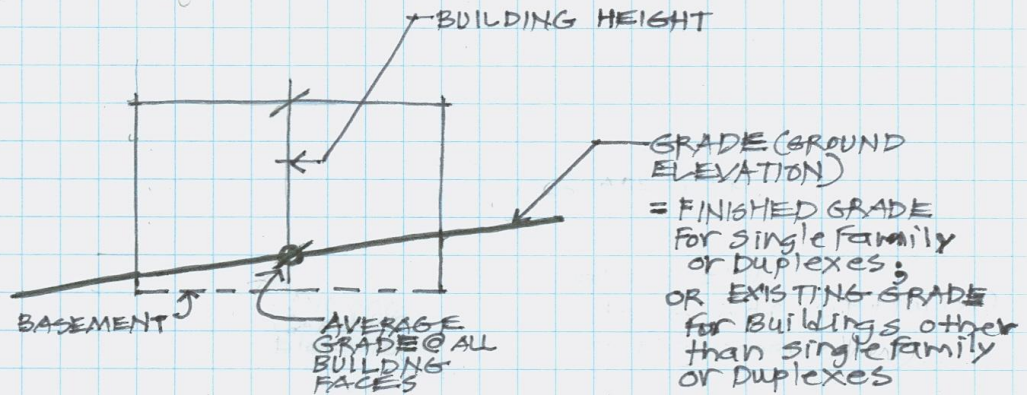


AVERAGE GRADE, FOR BUILDING HEIGHT PURPOSES, MAY BE DETERMINED BY:

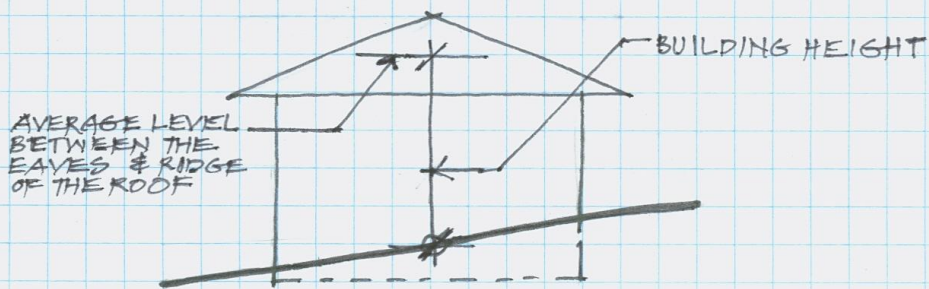
- 1 - Average of all "Average Grades" (*) at all Building Faces; or
- 2 - Averaging Grades @ each corner of the building
 $= \frac{\text{grades 'E' + 'F' + 'G' + 'H'}}{4 \text{ (Four)}}$

DETERMINING BUILDING HEIGHT

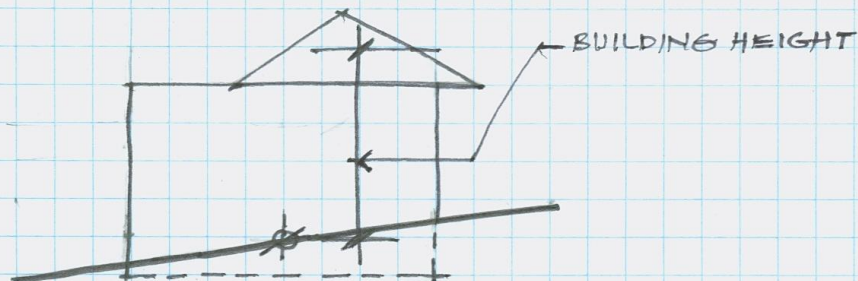
① FLAT-ROOFED BUILDING



② GABLE, HIP or GAMBREL-ROOFED BUILDING

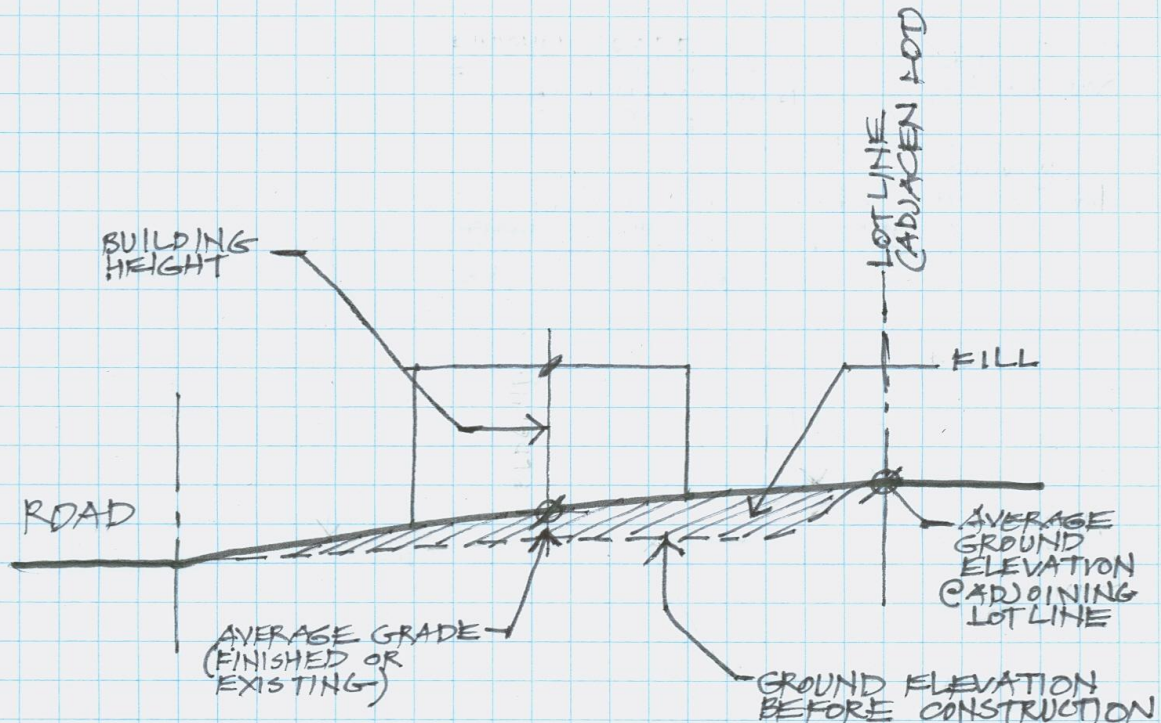


③ BUILDING WITH MORE THAN ONE TYPE OF ROOF



DETERMINING BUILDING HEIGHT

■ FINISHED GRADE OR EXISTING GRADE FOR BUILDING HEIGHT PURPOSES



■ FINISHED GRADE (for single family & duplex)
= Rough Grading Elevation on a City-Approved Lot Grading Plan or Ground Elevation before construction as established on a legal survey

■ EXISTING GRADE (for buildings other than single family & duplex)
= Ground Elevation before construction as established on a legal survey

■ Both FINISHED GRADE & EXISTING GRADE
Includes any fill placed to raise ground elevation up to the average ground elevation of adjacent lot @ the adjoining lot line.