

**ZONING ORDINANCE AMENDMENT
SECTION 350-42(H) HEIGHT EXCEPTIONS
ATTACHMENTS**

- 1. Memorandum**
- 2. Draft Ordinance Amendment**

TO: PLANNING COMMISSION
FROM: GREGG R. ADAMS, PLANNER
SUBJECT: ZONING ORDINANCE AMENDMENT
SECTION 350-42(H) HEIGHT EXCEPTIONS

DATE: MAY 3, 2023

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L. HARRIER, J. ZATOR, ESQ., J. ALDERFER, ESQ, A. TALLARIDA, S. PIDCOCK**

Background Information:

Through a recent Zoning appeal, staff discovered that Section 350-42(h) Height Exceptions is sufficiently ambiguous as to merit clarification. The current Section appears to be intended to permit certain features typically located on the roof or attached to the side of a building to exceed the Maximum Height permitted within a given Zoning District. The subsection requiring the clarification states: When attached to the roof of an existing or proposed Building, and not otherwise permitted as an Accessory Use, the height of the Building(s), Structure(s), or portion thereof, shall not exceed one hundred forty (140%) percent of the height of the Principal Building. The ambiguity stems from whether the 140% of the height of the Principal Building is measured from grade or from the roof. In a Zoning District wherein the Buildings are limited to 50 feet, an additional 140% could result in either a 70-foot total height (when measured from grade) or a 120-foot total height (when measured from the 50-foot-high roof). Obviously, the 70-foot Maximum Height of a Building within the IC-1 Zoning District further amplifies the possible maximum height (168 feet). Staff opines that the 140% stated in the Ordinance refers to a measurement from grade and would like to amend the Section to clarify that point.

At their February 15, 2023 meeting, the Board of Commissioners directed staff to move forward with the proposed Zoning Ordinance Amendment.

The Township Solicitor's office reviewed the draft amendment, and their comments were incorporated into the current draft.

The Planning Commission first reviewed the proposed Amendment at their March 16th meeting and made no comments.

During discussions on the matter after the March 16th Planning Commission meeting, staff determined that a number of other clarifications could be made within the Section and within other associated Sections. Initially, staff also opined that it may be prudent to allow certain features to achieve a height greater than the afore-mentioned 140% limit through a Special Exception review by the Zoning Hearing Board. At their April 3rd meeting, the Public Safety Commission reviewed the draft Ordinance and stated that there is no limit to the height that rescues could be made. Staff discussed the matter further and decided that the current requirements should stand and that the Special Exception option should be removed. This change is reflected in the version below and was the only change made between the March 16th and April 20th Planning Commission meetings.

At their April 20th meeting, the Planning Commission reviewed the revised Amendment. Staff noted that, with safety concerns removed from the height limitation discussion, the driving factor in determining the maximum height would be aesthetics. Staff discussed the concept of clarifying “attached”, as there had been confusion over the meaning – a superficial connection versus a structural connection. Staff noted that the proposed Amendment would cap the height of the “Appurtenance” regardless of whether it was on top of the building, structurally attached to the side of the building, or cosmetically attached to the side of the building, and inquired as to whether the “attachment” mattered. The Planning Commission made no comment on the question. Finally, the Planning Commission suggested increasing the buffer between dissimilar Use Categories, i.e. Residential, Commercial, Industrial, etc. Staff implemented the suggestion within subsection (2)(A)(iii). Staff also added a new sentence within subsection (2)(A)(i) regarding buildings split by property lines, such as Twins or Townhomes, wherein the 25% width and depth limitation on “Appurtenances” shall apply only to the part of the Building on the same property as the Appurtenance in question. This restriction would prevent the owner of one half of the Twin from using his neighbor’s width and depth allowance, thereby preventing the neighbor from adding his or her own “Appurtenance”.

As with all Ordinance amendments:

This text indicates explanations of proposed amendments.

This text indicates existing Ordinance Sections when used for reference or as examples.

This text indicates existing text within proposed amendments.

~~**This text** indicates proposed deletions within proposed amendments.~~

***This text** indicates proposed additions within proposed amendments.*

The current Zoning Ordinance Section 350-42(h)

(h) Height Exceptions.

(1) When otherwise listed or interpreted as a permitted Use in this Ordinance, the following Buildings, Structures or portions thereof may, under certain conditions, exceed the height limitation established elsewhere in this Ordinance:

(A) Incinerator, chimney, vent pipe, antenna, public utility Structure, commercial radio and/or T.V. transmission tower, water tank, cupola, clock tower, dormer, spire, belfry, enclosure for service equipment, elevator bulkhead, stage tower, and scenery loft.

(2) The following conditions shall be met:

(A) When attached to the roof, or the side of an existing or proposed Building, the base of the Building(s), Structure(s), or portion(s) thereof shall not cumulatively exceed twenty-five (25%) percent of the base width and depth of the existing or Principal Building.

(B) When attached to the roof of an existing or proposed Building, and not otherwise permitted as an Accessory Use, the height of the Building(s), Structure(s), or portions(s), thereof shall not exceed one hundred forty (140%) percent of the height of the Principal Building.

(3) It is the intent of this section to control the Height of Buildings and Structures, not only to fulfill the general purpose of Section 350-02, but to also comply with Act 161, 1980, Pennsylvania State Legislature, amending the Airport Zoning Law of 1945 (2 P.S. 1550).

Proposed Changes

→ Staff recommends that Section 350-42(h) Height Exceptions be amended as follows:

(h) Height Exceptions. When otherwise listed or interpreted as a permitted Use in this Ordinance, ~~the following certain~~ Buildings, Structures or portions thereof may, under certain conditions, exceed the height limitation established ~~elsewhere in this Ordinance~~ ***in the Zoning District Schedules of Section 350-24(c):***

(1) Permitted Exceptions

(A) Incinerator, chimney, vent pipe, antenna, public utility Structure, commercial radio and/or T.V. transmission tower, water tank, cupola, clock tower, dormer, spire, belfry, ***steeple, minaret,*** enclosure for service equipment, elevator bulkhead, stage tower, ~~and~~ scenery loft, ***or other similar features not otherwise regulated under this Ordinance. For the purposes of this subsection (h) Height Exceptions, these permitted exceptions shall be known as “Appurtenances”.***

(B) Such Appurtenances shall not be places intended primarily for human occupancy; they are to be unoccupied or occupied only occasionally and for short periods of time, typically for the maintenance of the structure or equipment therein.

(2) Zoning Officer Approval of Height Exceptions

~~(BA) The following conditions shall be met~~ ***The Zoning Officer may approve exceptions to the Maximum Height of Building/Structure permitted in Section 350-24(c) (“Maximum Permitted Height”) for the Appurtenances listed in subsection (h)(1) above under the following conditions:***

(i) When attached to ~~the roof, or the side of~~ an existing or proposed Building, the ~~base of the Building(s), Structure(s), or portions(s), thereof~~ ***width of the Appurtenance(s) exceeding the height limitation as measured at the Maximum Permitted Height shall not cumulatively exceed twenty-five (25%) percent of the base width and base depth of the existing or Principal proposed Building as measured at grade, and the depth of the Appurtenance(s) exceeding the height limitation as measured at the Maximum Permitted Height shall not cumulatively exceed twenty-five (25%) percent of the depth of the existing or proposed Building as measured at grade. Should the Building be divided by a property line, the requirements of this subsection apply only to the part of the Building on the same property as the Appurtenance in question.***

(ii) When attached to ~~the roof of~~ an existing or proposed Building, and not otherwise permitted as an Accessory Use, the ~~Height of the Building(s), Structure(s), or portions(s), thereof~~ ***Appurtenances shall not exceed one hundred forty (140%) percent of the height of the Principal Building Maximum Permitted Height permitted in Section 350-24(c), as measured in accordance with the definition of Height in Section 350-05(d).***

(iii) All portions of the Appurtenances that exceed the Maximum Permitted Height shall be set back from any property line the distance equal to the Height at that spot on the Appurtenance. Should the Use Category (Commercial, Industrial,

Residential, etc.) of the Building or Structure to which the Appurtenance is attached be dissimilar to the Use Category of a Use on an adjoining property, the above-mentioned setback shall be doubled with regard to that adjoining property.

(3) It is the intent of this section to control the Height of Buildings and Structures, not only to fulfill the general purpose of Section 350-02, but to also comply with **Act 164, 1984, Pennsylvania State Legislature, amending** Act 161, 1980, ~~Pennsylvania State Legislature,~~ amending the Airport Zoning Law of 1945 (2 P.S. 1550), **and Federal Aviation Regulation Part 77.**

Proposed Clean Version

(h) **Height Exceptions.** When otherwise listed or interpreted as a permitted Use in this Ordinance, certain Buildings, Structures or portions thereof may, under certain conditions, exceed the height limitation established in the Zoning District Schedules of Section 350-24(c):

(1) Permitted Exceptions

(A) Incinerator, chimney, vent pipe, antenna, public utility Structure, commercial radio and/or T.V. transmission tower, water tank, cupola, clock tower, dormer, spire, belfry, steeple, minaret, enclosure for service equipment, elevator bulkhead, stage tower, scenery loft, or other similar features not otherwise regulated under this Ordinance. For the purposes of this subsection (h) Height Exceptions, these permitted exceptions shall be known as “Appurtenances”.

(B) Such Appurtenances shall not be places intended primarily for human occupancy; they are to be unoccupied or occupied only occasionally and for short periods of time, typically for the maintenance of the structure or equipment therein.

(2) Zoning Officer Approval of Height Exceptions

(A) The Zoning Officer may approve exceptions to the Maximum Height of Building/Structure permitted in Section 350-24(c) (“Maximum Permitted Height”) for the Appurtenances listed in subsection (h)(1) above under the following conditions:

(i) When attached to an existing or proposed Building, the width of the Appurtenance(s) exceeding the height limitation as measured at the Maximum Permitted Height shall not cumulatively exceed twenty-five (25%) percent of the width of the existing or proposed Building as measured at grade, and the depth of the Appurtenance(s) exceeding the height limitation as measured at the Maximum Permitted Height shall not cumulatively exceed twenty-five (25%) percent of the depth of the existing or proposed Building as measured at grade. Should the Building be divided by a property line, the requirements of this subsection apply only to the part of the Building on the same property as the Appurtenance in question.

(ii) When attached to an existing or proposed Building, and not otherwise permitted as an Accessory Use, the Height of the Appurtenances shall not exceed one hundred forty (140%) percent of the Maximum Permitted Height permitted in Section 350-24(c), as measured in accordance with the definition of Height in Section 350-05(d).

(iii) All portions of the Appurtenances that exceed the Maximum Permitted Height shall be set back from any property line the distance equal to the Height at that spot on the Appurtenance. Should the Use Category (Commercial, Industrial, Residential, etc.) of the Building or Structure to which the Appurtenance is attached be dissimilar to the Use Category of a Use on an adjoining property, the above-mentioned setback shall be doubled with regard to that adjoining property.

(3) It is the intent of this section to control the Height of Buildings and Structures, not only to fulfill the general purpose of Section 350-02, but to also comply with Act 164, 1984, Pennsylvania State Legislature, amending Act 161, 1980, amending the Airport Zoning Law of 1945 (2 P.S. 1550), and Federal Aviation Regulation Part 77.