

# **TOWNSHIP OF LOWER MERION**

## ***Building & Planning Committee***

### **Issue Briefing**

**Topic:** Immediate Zoning Code Edits

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**Date:** July 7, 2020

#### **I. Action To Be Considered By The Board:**

Consider authorization for a public hearing to adopt an ordinance to amend the Zoning Code to incorporate minor clean up language, including the following amendments:

1. Revise the definition “New Construction”;
2. Allow generators to project into side and rear yard setbacks and allow generators and air-conditioning equipment in the frontage yard and front setback on corner lots by special exception;
3. Amend the window inset requirements;
4. Remove duplicative Off-Site Traffic Improvement Floor Area Ratio incentive in the City Avenue District - Bala Village;
5. Establish a two-story minimum building height requirement in the City Avenue District – Bala Village;
6. Require a covenant to protect historic resources occupied by a regulated incentive use and clarify that a zoning permit is required for a regulated use;
7. Clarify the Historic Resource Impact Study requirements; and
8. Remove an incomplete sentence from the Zoning Administration requirements.

#### **II. Why This Issue Requires Board Consideration:**

An ordinance to amend the Zoning Code is subject to the approval of the Board of Commissioners.

#### **III. Current Policy Or Practice (If Applicable):**

A new Zoning Code was adopted February 26, 2020. It was anticipated that minor amendments would be forthcoming with the implementation of the new Zoning Code.

#### **IV. Other Relevant Background Information:**

The proposed ordinance includes minor edits requiring immediate action. Staff is maintaining a running list of suggested Zoning Code edits. These edits were identified by Building & Planning Department staff and General Code as requiring immediate attention and are summarized below.

#### **Section 1: § 155-2.1 Definition of Terms, “New Construction”**

The former Zoning Code had several definitions embedded in various articles throughout the document, which made some definitions difficult to find. In order to streamline the Zoning Code and make it easier to use the consultant team pulled all definitions into Article 2: Definitions. The term for “New Construction” was pulled from the old Floodplain District. This term is required to be defined as shown below for compliance with the National Flood Insurance Program.

*New Construction:* Structures for which the start of construction commenced on or after November 19, 1975, and includes any subsequent improvements thereto.

Under the new Zoning Code, the application of this term is no longer limited to the Floodplain District as adopted. The Zoning Officer recommended that the term be modified as follows to once again limit the application of this term to properties within the floodplain.

*New Construction, Floodplain:* Structures for which the start of construction commenced on or after November 19, 1975, and includes any subsequent improvements thereto.

## **Section 2:** Article 3, General to Districts, Projections for Generators and Air-conditioning Equipment

The new Zoning Code includes more stringent standards for the placement of generators and air-conditioning equipment. The intent was to ensure residents' quiet enjoyment of their property and to discourage the placement of unsightly mechanical equipment in the front yard and near neighboring properties. However, since the adoption of the Zoning Code staff has received a handful of inquiries about these standards from residents who have been negatively impacted by these provisions prompting a review and assessment of the standards for generators and air-conditioning equipment.

The proposed revisions allow for some flexibility with regards to the placement of the equipment if it is properly screened and is located at least 10 feet from the rear and side property lines. This will help to reduce the visual impact of the equipment. The equipment must comply with [Chapter 105 Noise and Exterior Lighting](#).

The amended language also allows greater flexibility on corner lots since they are subject to Front Yard Setbacks and Frontage Yard requirements on two sides of the property, which significantly limits the placement of necessary mechanical equipment. A Frontage Yard is the area between a building façade and the street. This area is required to be wholly open to the sky and unobstructed, except for specified Projections in § 155-3.6. The proposed standards allow generators and air-conditioning units in the Front Yard Setback and the Frontage Yard on corner lots by special exception. A similar provision exists in the old Zoning Code. The standards provided in § 155-3.14 regarding generators and air-conditioning equipment are being replaced with the new standards in § 155-3.6.G. Staff recommends the following amendments:

*§ 155-3.5.F.(1) The following structures and equipment are prohibited in frontage yards:*

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*(b) Air conditioning compressors, [except as specified in § 155-3.6.G](#);*

*(c) Emergency generators, [except as specified in § 155-3.6.G](#);*

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*§ 155-3.6 Projections*

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*[G. Generators and air-conditioning equipment. All generators and air-conditioning equipment shall be screened from view from any frontage and from any abutting residential property, except across an alley.](#)*

*[\(1\) If there is insufficient space for a generator to be installed at a location in compliance with the required setback, a generator may project up to four feet into the required side and rear yard setback provided](#)*

the generator is placed a minimum of ten feet from the property line.

(2) On corner lots, air-conditioning equipment and generators may be placed in the front setback or the frontage yard when authorized as a special exception provided the generator and air-conditioning equipment is placed as close to the building as possible per the manufacturer's minimum clearance specifications.

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~~§ 155-3.14.B. — Air conditioning equipment (excluding self-contained window air conditioning units) and generators shall not be placed in the required front and rear setback, except that such equipment may be placed in the required front or rear setback when authorized as a special exception.~~

### **Section 3:** § 155-3.9 Architecture Standards, Window Inset Requirements

With the Township's historic buildings providing the basis for establishing architectural standards, the new Zoning Code includes requirements to support the visual character of the community. Window inset requirements were established to ensure that windows provide architectural appeal and are not flush-mounted as flush-mounted windows tend to create a flat façade.

Since the adoption of the Zoning Code, the Building & Planning Department has been contacted by several builders concerned with the inset requirement, specifically with regards to the three-inch minimum inset. They cited concerns with water intrusion and stated that providing a three-inch inset would void the warranty on new windows. Staff believes that disallowing flush-mounted windows, without specifying the required inset will achieve the same goal. Staff recommends the following amendment:

~~§155-3.9C(2) Windows shall not be flush mounted and shall be inset from the exterior wall-a minimum of three inches.~~

### **Section 4:** § 155-6.8 CAD-BV City Avenue District, Bala Village, Table 6.8.1 Bala Village (CAD-BV) Density Increase Standards, Removal of Duplicative Off-Site Traffic Improvement (OSTI) Incentive

In the CAD-BV District Floor Area Ratio (FAR) incentives are provided for the following elements: public gathering space, mixed-use buildings, underground and/or wrapped parking structures, transit facility improvements, historic preservation, and off-site traffic improvements (OSTI). The incentives are cumulative, and a developer may choose to use one or several incentives in order to reach the maximum FAR of 2.0.

The OSTI incentive is applied once for an initial increase of 0.2, plus an additional 0.05 increase in addition to each incentive used by the developer. This results in a duplicative FAR increase. In 2018 the Board of Commissioners adopted an amendment to the City Avenue District, Regional Center Area (CAD-RCA) to remove the duplicative 0.05 OSTI FAR incentive noting that the improvements and fees generated for traffic improvements were nominal in comparison to the FAR incentive. The initial OSTI incentive is still available. When the ordinance was adopted, it was envisioned that the OSTI incentive would also be revisited for the CAD-BV.

This spring, when General Code edited and posted the new Zoning Code online, they notified staff that the cross references for the OSTI incentives were inaccurate in **Table 6.8.1 Bala Village (CAD-BV) Density Increase Standards**. Correcting the cross references required an amendment to the Zoning Code. Instead of amending the cross references, staff felt this would be an appropriate time to remove the duplicative OSTI incentives in the CAD-BV District.

### **Section 5:** § 155-6.8 CAD-BV City Avenue District, Bala Village, Table 6.8.2 Bala Village (CAD-BV) Dimensional Standards, Establish a Minimum Two-Story Building Height Requirement

Under the new Zoning Code, the City Avenue District, Bala Village (CAD-BV) is the only commercial district that does not require a two-story minimum height requirement, leaving the corridor susceptible to unsightly, auto-oriented pad development. Establishing a two-story minimum height requirement will promote the goals and objectives of the CAD-BV, which includes encouraging multiple-use real estate development, promoting the livability of the district, and enhancing the visual character and identity of the district.

Staff recommends adding the new minimum height requirements to Table 6.8.2 Bala Village (CAD-BV) Dimensional Standards as follows:

<b>Table 6.8.2 Bala Village (CAD-BV) Dimensional Standards</b>	
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<b>Building Height (feet)</b>	
Along City Avenue	<a href="#">2 stories minimum, up to 65 maximum</a>
Buildings between North Highland Avenue and Montgomery Avenue	<a href="#">2 stories minimum, up to 60 maximum<sup>5</sup></a>
Buildings between Bala Avenue and the Cynwyd Rail Line from City Avenue to Montgomery Avenue	<a href="#">2 stories minimum, up to 60 maximum<sup>5,6</sup></a>
Buildings along westerly side of Bala Avenue between Aberdale Road and North Highland Avenue and all other streets	<a href="#">2 stories minimum, up to 49 maximum<sup>5</sup></a>

**Section 6:** § 155-7.1.B. HROD Historic Resources Overlay District, Require Permanent Protection of a Historic Resource When a Zoning Permit is Issued for a Regulated Use and clarify that a zoning permit is required for a regulated use.

The Historic Resources Overlay District includes use incentives in exchange for permanently protecting historic resources. During the Zoning Code adoption process, it was decided that the approval process for Accessory Dwelling Units (ADU's) and Historic Home Occupations should be streamlined to make these incentives more practical and attractive to homeowners. Instead of requiring a Conditional Use approval, these uses may now be approved by a Zoning Permit as a Regulated Use subject to specific provisions. However, the new Zoning Code only requires a covenant to permanently protect a historic resource be provided when a Conditional Use approval is required. This was an inadvertent oversight. In order to ensure the guaranteed permanent protection of the historic resource staff recommends the following amendment:

*§ 155-7.1.B.(3) A means to guarantee the permanent protection of the historic integrity of the subject resource(s), such as the establishment of conservation easements(s) or appropriate covenants in a form acceptable to the Township Solicitor, shall be provided prior to the granting of any conditional use approval [and/or prior to the issuance of a zoning permit for a regulated use listed in Table 7.1.1 Historic Resource Uses](#).*

A minor edit is also needed in this section to clarify that a regulated use may be permitted provided a zoning permit is approved.

*§ 155-7.1.B.(4) A use other than that permitted by the underlying district may only be permitted, provided that the following conditions are met:*

- (a) The use shall be contained within the historic buildings or structures unless otherwise specifically permitted.*
- (b) Obtaining a recommendation by the Historical Commission or Board of Historical Architectural Review (HARB) (if the property is in an historic district).*

(c) Obtaining a zoning permit approval for a regulated use, or ~~conditional use~~ approval by the Board of Commissioners (BOC) for a conditional use.

**Section 7:** § 155-7.1.J. HROD Historic Resources Overlay District, Clarify When a Historic Resource Impact Study is Required

The Historic Resource Impact Study requirements were largely carried over from the old Zoning Code. Under the old Zoning Code, the Historic Resource Impact Study was required to describe the impact of the project on any adjacent historic resource as well as to the subject property. There was a wording change that inadvertently left this out of the new code. The new Zoning Code requires that a Historic Resource Impact Study describe the impact of the project on Class I or Class II resources, which means that unclassified but contributing resources in historic districts may be omitted. Staff recommends amending the language as follows:

*§ 155-7.1.J.(2)(b)[2] Description of impact on each contributing element within the ~~Class I or Class 2~~ Historic Resource and any adjacent Historic Resource on the same lot or on a different lot identified in Article XI, Process and Procedures, with regard to architectural integrity, historic setting and future use.*

*§ 155-7.1.J.(2)(b)[3] General description of effect of noise and traffic and other impacts generated by the proposed change on any contributing element within the ~~Class I or Class 2~~ Historic Resource and any adjacent Historic Resource on the same lot or on a different lot identified in Article XI, Process and Procedures.*

**Section 8:** § 155-11.1. Zoning administration, Remove Incomplete Sentence

General Code identified a fragment of a sentence in the Zoning Administration section of the Zoning Code. The Township Solicitor advised that removing or revising the language will require a Zoning Code amendment. Staff recommends removing the fragment as follows:

*§ 155-11.1.H.(13) The applicant must comply with the parking requirements for the proposed use as set forth in Article VIII, Parking Standards. The Board of Commissioners may prohibit any additional parking between the right-of-way and the facade of the building if the Board finds such parking would negatively impact the historical integrity of the resource. ~~Special accessory events which may generate an unusual volume of traffic beyond that normally generated by a permitted use on a daily basis, such as fund raising events, recitals, stage performances, lectures and exhibitions, etc.~~*

**Relationship to the Comprehensive Plan**

The new Zoning Code was adopted in February 2020 to implement the goals and objectives of the 2016 Comprehensive Plan. The proposed ordinance includes minor edits to provide points of clarification and to ensure ease of use.

**Standards for Text or Rezoning Amendments**

Staff would like to draw the Building & Planning Committee's attention to the standards for text or rezoning amendments, which are included in the new Zoning Code.

§ 155-11.3.E.(2) *Standards for text or rezoning amendments. In deciding whether to adopt or deny any proposed amendment, or to adopt some modification of the Planning Commission's recommendation, the Board of Commissioners shall consider, among other factors, the following:*

- (a) Whether the proposed amendment is consistent with the goals, objectives, and policies of the Comprehensive Plan, as adopted and amended from time to time;*
- (b) Whether the proposed amendment is compatible with current and projected conditions and the overall character of development in the immediate vicinity of the subject property;*
- (c) Whether the proposed amendment is the most desirable use for which the land in the subject property is adapted; and*
- (d) Whether the proposed amendment will have an adverse effect on the value of properties throughout the jurisdiction.*

Staff feels the proposed amendments are consistent with the Comprehensive Plan and will not have an adverse effect on the value of properties. Staff recommends the adoption of this ordinance.

### **Planning Commission Recommendation**

On July 6, 2020, the Planning Commission recommended the authorization of a public hearing in October on the proposed ordinance.

### **Next Steps**

The proposed ordinance will be considered at the upcoming public meetings listed below:

- July 8, 2020: Building & Planning Committee – The B&P will make a recommendation on the authorization of a public hearing for the Board of Commissioners to consider the adoption of the proposed ordinance.
- July 15, 2020: Board of Commissioners – The BOC will consider the authorization of a public hearing.
- October 2020 (TBD): Board of Commissioners – The BOC will consider the adoption of the proposed ordinance at a public hearing, if a public hearing is authorized in July.

### **V. Impact on Township Finances:**

There will be no impact on Township finances.

### **VI. Staff Recommendation**

Staff recommends the Board of Commissioners adopt the proposed ordinance amending the Zoning Code.