



April 12, 2011

TO ALL INTERESTED PARTIES:

The Mayor and Town Council approved new legislation on Monday, April 4, 2011, that will affect permissible lot grades and building heights within the Town of Vienna. Another ordinance provision will also permit the construction of handicapped ramps in the detached residential zones for a 5-year time period and after demonstration of need. Because each new ordinance provision becomes effective on April 14, 2011, the Town Manager recommended that I provide advance notification to members of the building community. Copies of this new legislation have been attached for your convenience.

In general terms, each single-family detached residential lot within a subdivision (and all such lots are part of a subdivision) has a pre-existing lot grade. That pre-existing lot grade will be used to define deviations therefrom for future development. The new legislation permits a vertical deviation—either up or down—of a maximum of 3 feet between the pre-existing lot grade and the “finished lot grade.” In addition, the term “building height” has been modified to move, what I refer to as “the measuring stick,” from the front of the entirety of the new dwelling to that portion of the dwelling (or principal building) closest to the front building line.

The purpose of these legislative changes is to avoid what the City of Dallas, TX, calls “dirt skirts” where homes are placed atop a newly-grade mound of dirt. In many cases, this large increase in finished lot elevation was designed to permit a “walk-to-daylight” basement entrance. Those types of features will probably be precluded in the future for new homes on “upslope” lots. In addition, the revision to building height was designed to ensure that homes more closely approximate the maximum height of 35 feet or 2-1/2 stories at the front building line (the maximum permissible height DID NOT change, however).

The ability to construct “temporary” handicapped ramps to ADA standards and upon demonstration of need was strongly suggested by the Town’s Board of Zoning Appeals. The Board rightly noted that the specific conditions that give rise to the need for such ramps do not run with the land but rather with an occupant of the subject property. That is why there is an authorized time period (5 years with a possibility for renewal) and a prohibition of transferability to a subsequent property owner.

We look forward to the opportunity of working with you in the months ahead, not only regarding the implementation of this new legislation, but also in the continuing transformation of the Town of Vienna’s vibrant residential community. Please feel free to pass this information along to those firms that you might work with that did not receive a copy of this original E-mail message.

Sincerely,

Gregory M. Hembree, AICP
*Director of Planning & Zoning and
Zoning Administrator for the Town of Vienna, VA*

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Town of Vienna, VA, web site: www.viennava.gov



**Zoning Administrator's Interpretation Regarding New Legislation pertaining to Lot Grades
Transmitted in an E-mail message to the Vienna Planning Commission on November 11, 2011 at 1:39 PM**

ALL:

For the benefit of the newest members of the Planning Commission, I am providing a little history with respect to the subject matter as noted above.

In 2007, then-Councilmember George Lovelace was concerned enough about new dwelling construction that he asked my staff to verify building heights prior to the issuance of certificates of occupancy. This verification process came to be known as the answer to “how do we know that the building height meets the Town Code?”. Subsequent to the implementation of that process, Town Staff and the Planning Commission began a three-and-one half year analysis to find the simplest method to keep builders from piling up dirt and then building a foundation on top of it. I prepared a pictorial analysis of existing examples of “dirt skirts” and how they impacted surrounding properties. The Planning Commission held a number of work sessions to consider same. Staff and the Town Attorney also met with a member of the Fairfax County staff and Councilmember Springsteen to further consider the matter (a lot of this information is in PDF; if anyone wants to see something, just ask).

In July 2010, the Town Attorney proposed the following language:

LOT GRADE: A reference plane representing the average ground level. For the purposes of this Ordinance, finished lot grade for the following structures shall be determined as follows:

- 1. Single family detached dwellings - Average ground level adjoining a building at all exterior walls. Building height measurements for single family detached dwellings and additions thereto shall use the lower average ground level of either the pre-existing or finished grade elevation that exists or is proposed at the time of Building Permit issuance for the dwelling.**
- 2. All other principal structures - Average finished ground level adjoining a building at all exterior walls.**
- 3. Accessory structures - The lowest point of finished ground level adjacent to the structure.**
- 4. Existing grades of any single family detached zoned property located in a previously approved subdivision shall not be altered more than 3 vertical feet.**

Note subsection 4 above (highlighted in red), which was clearly designed to limit the grades—up or down—to 3 feet in “a previously approved subdivision.” This is what I referred to during the conversation last Wednesday evening.

However, after numerous iterations and last-minute revisions subsection 4 was dropped entirely and the final adopted version (effective date: April 14, 2011) became what you see immediately below (edits intentionally left in place):

**Town of Vienna Building Height/Lot Grade Provisions
(Planning Commission Recommended Version, December 8, 2010; GMH edits 3-11-2011; Adopted by the Mayor and Town Council on 4-4-2011)**

Town of Vienna Definition under §18-4:

BUILDING HEIGHT: The maximum vertical dimension measured from the FINISHED LOT GRADE at the front wall of the principal building that is situated closest to the front setback line to the highest point of the roof.

New Definition(s) under § 18-4:

FINISHED LOT GRADE: For the purposes of measuring building heights under this Ordinance, finished lot grade shall be:

1.a. In general – For any PRINCIPAL BUILDING, the FINISHED LOT GRADE is the PRE-EXISTING LOT GRADE, calculated as the mid-point between the highest and lowest elevation points along the front setback line.

1.b. Exception for SINGLE FAMILY DWELLINGS– For a SINGLE FAMILY DWELLING, the FINISHED LOT GRADE may deviate from the PRE-EXISTING LOT GRADE by no more than three (3) vertical feet at any point along the PREEXISTING LOT GRADE.

2. For any ACCESSORY BUILDING– the lowest point of elevation point adjacent to any wall of the structure.

PRE-EXISTING GRADE: “Pre-Existing Grade” means the elevation of the lot that exists prior to the issuance of any Grading, Demolition, or Building Permit, or any other activities associated with the removal or rebuilding of the existing principal structure.

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Each member will note that there is no reference to “previously-approved” subdivision. As a result, “pre-existing grade” becomes the control mechanism here and WILL APPLY to all proposed subdivisions. As such, developers will have to conform to the 3-foot up/3-foot down deviation rule. As I noted on Wednesday, November 9th, this should be fairly easy for lot splits.

In the case of a large subdivision with new streets, etc., and as Chairman David Miller indicated, we will employ the existing waiver process as set forth in Section 17-12, Variances, of the Vienna Town Code. As has been done elsewhere within the subdivision regulations, waivers (or variances with a small “v”) can be granted with cause and in accord with the language as set out in this section of the Town Code and as repeated in the next paragraph below. Please also be aware that these waivers must pertain to the subdivision is question and cannot be used to alter any requirements with respect to such area regulations as lot widths, area, etc. The controlling aspect of these provisions are also noted elsewhere within the Town Code at § 18-282.

Sec. 17-12 Variances.

Where in the case of a particular proposed subdivision it can be shown that strict compliance with the requirements of this Chapter would result in extraordinary hardship to the subdivider because of unusual topography; or where conditions peculiar to the site would result in inhibiting the achievement of the objectives of these regulations, the Town Council may vary, modify or waive the requirements so that substantial justice may be done and the public interest secured; provided, that such variance, modification or waiver will not have the effect of nullifying the intent and purpose of these regulations or interfering with carrying out the comprehensive plan of the Town; and provided further that the Town Council shall not vary, modify or waive any requirements establishing lot widths or the front footage of lots and this section shall not be construed to grant such authority to the Council. Any variance, modification or waiver thus authorized shall be entered in the minutes of the Council with a statement of the reason on which the variance was justified and shall be noted on the final plat. (Vienna Code 1962, §13-44; Complete Title Revision 2/66; Amended 12/81)

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The determinations made herein will also be supplied to the current applicant and others who may request an interpretation in the future. As a result of this determination, I believe there is no further need to review the legislation that became effective on April 14, 2011.

Sincerely,

Gregory M. Hembree, AICP
Director of Planning & Zoning and
Zoning Administrator for the Town of Vienna, VA

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Town of Vienna, VA, web site: www.viennava.gov



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2. For any ACCESSORY BUILDING– the lowest point of elevation ~~point~~ adjacent to any wall of the structure.

PRE-EXISTING GRADE: “Pre-Existing Grade” means the elevation of the lot that exists prior to the issuance of any Grading, Demolition, or Building Permit, or any other activities associated with the removal or rebuilding of the existing principal structure.

MEMORANDUM

TO: Planning Commission

FROM: Director of Planning & Zoning *GM*
HANCO

DATE: August 3, 2009

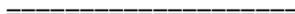
SUBJECT: Appendix Document – Pictorial Essay: Old and New Dwellings, Building Heights

During one of my recent “windshield tours” through the Town, I decided to take a few pictures to help illustrate the types of building height issues that have been under consideration for the past few years.

The following two pictures provide a good representation of the size of new dwellings in comparison to older existing dwellings first constructed when the area was originally subdivided. These homes are located at 101 (foreground) and 103 Harmony Drive, SE:



Residences at 404 East Street SE (foreground), and 619 Welles Street SE



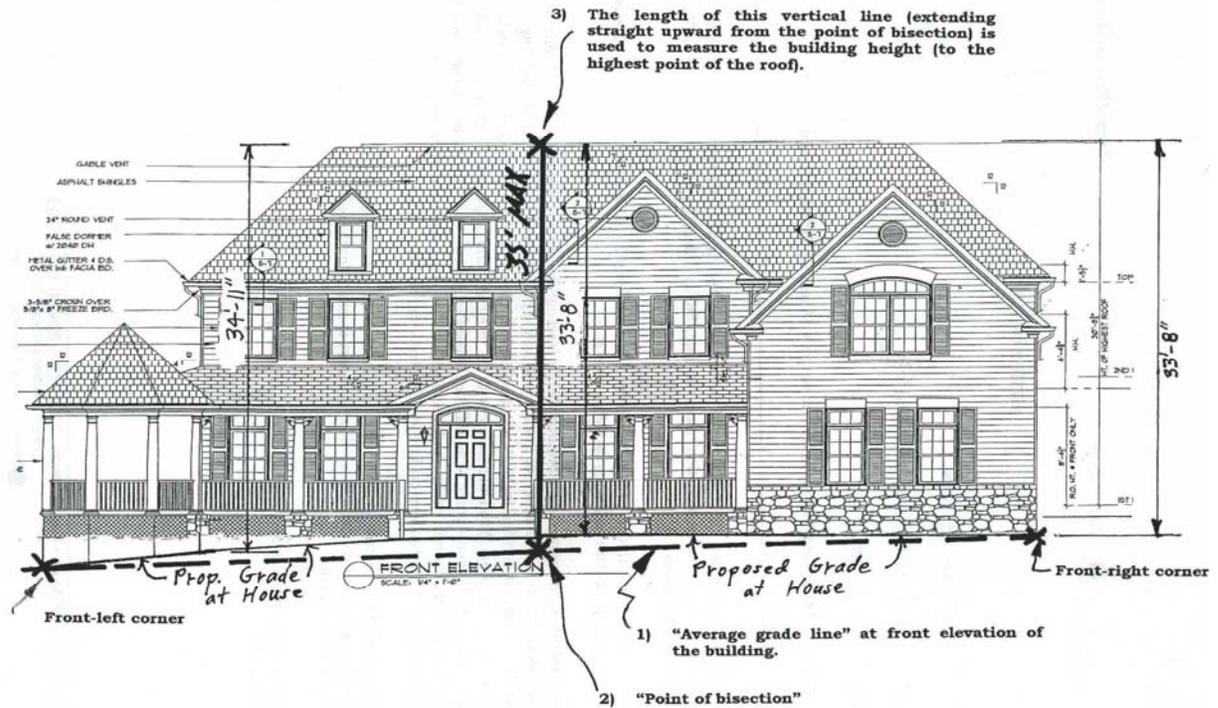
In other documentation, the staff has provided copies of documents that have been studied and reviewed by the Mayor and Town Council for approximately two years. Most of the discussion has centered on the term “building height” and its current definition as found at § 18-4 of the Town Code:

BUILDING HEIGHT: The vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of the roof.

The current Town Code maximum height requirement for single-family detached residential dwellings is specified at §§ 18-16, 18-25 and 18-34 as two and one-half stories or 35 feet in height. To determine where the first story begins, the term *basement* is also utilized:

BASEMENT: A portion of a building, partly underground, which has more than one-half (1/2) its height measured from finished floor to finished ceiling above average grade of the adjoining ground and not deemed a story unless the ceiling is six (6) feet or more above the average grade.

The term *building height* is also illustrated on the following page:



The reverse side of the illustration includes a Zoning Administrator’s interpretation pertaining to the calculation of building height. The residence used for this handout is located at 804 Hine Street SE:



Planning Commission Work Session – August 12, 2009

Appendix Document – Pictorial Essay: Old and New Dwellings; Building Heights

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As indicated in my cover memorandum, Councilmember Lovelace has requested that the Planning Commission review the Fairfax County proposal that was current on July 6, 2009. At that time, the proposal was to measure building heights from the existing property grade or altered grade, whichever was lower in elevation.

A pictorial representation of potential problems with that proposal follows:

The existing dwelling and current lot grades at 201 Tapawingo Road SE:



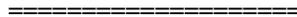
Commissioners will note how the existing residence sits “in a bowl” well below the curb line of Park Street SE, and the adjoining dwelling at 203 Tapawingo Road SE.

Parcels with significant grades, found throughout Northeast Vienna and in parts of the Northwest portion of the Town would present a real challenge for compliance with the stricter grade interpretation. The issue of nonconformity with regulations that have been in existence for 47 years is also a real consideration for any proposed ordinance amendment.

The next picture illustrates two methods of dealing with a significant grade. The first set of homes was constructed about a decade ago and places each house significantly below the street line. The second set of homes was built within the last two years with the builder choosing to elevate the homes to a point that is about one foot beyond the street line. Each of the four properties conforms to the Town’s area requirements for single-family detached residential dwellings.

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Existing homes at 218 (foreground), 220, 300 and 302 Park Street NE:



Pictures follow of two dwellings that were originally determined to be too tall in accord with our height verification procedures. The owner of the house on the left (410 Berry Street SE) is now seeking a height and lot coverage variance from the Board of Zoning Appeals. The dwelling on the right (405 Welles Street SE) was corrected through an alteration in the roof trusses (note the flat roof area to the rear of the dormer).



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Appendix Document – Pictorial Essay: Old and New Dwellings; Building Heights
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Finally, pictures of dwellings where compliance with height requirements has been achieved through elevating the average grade through retaining walls, floor beds, etc.:



← 350 Ayr Hill Avenue NE

225 Locust Street SE →



208 McHenry St SE →





MEMORANDUM

TO: Mayor and Town Council
Town Manager
Town Attorney

FROM: Director of Planning & Zoning *GA*
Harce

DATE: February 22, 2011

SUBJECT: Further Thoughts/Recommendations on the Proposed Lot Grade/Building Height Revisions and their impacts upon "Upslope Lots"

I appreciate the many positive comments regarding the Planning Commission/Town Staff presentation at last Monday night's Work Session. I thought it important that the "prime movers" from the Planning Commission should share in the thought process as the proposed legislation was being evaluated by the Mayor and Town Council.

As pointed out during the February 14, 2011 Work Session, some of the potential impacts upon residential lots that rise in elevation from the public street (**hereinafter referred to as "upslope lots"**) have caused me to further evaluate the ordinance amendment that is the subject of the February 28, 2011 Public Hearing.

The Mayor and Councilmembers will recall that the original legislation as developed by the Town Attorney and myself was designed to prevent the use of "dirt skirts" through the determination of an existing lot grade and the imposition of a maximum vertical deviation—either up or down—of 3 feet. Our version of the new legislation did not change the definition of the term "building height" nor the location in which it is measured (currently at the front of the building).

The Planning Commission took the proposed legislation two steps further, however, by: *1) revising the definition of building height to point to the term "finished lot grade;" and 2) by establishing a fixed measurement location along the front setback line (contained within the new definition of Lot Grade at section 1.a).* This building height "measuring stick" would be situated—in all cases—60 feet from the street centerline in the RS-16 zone, 55 feet in the RS-12.5 zone, and 50 feet in the RS-10 zone and would not take into consideration the proposed location of a new dwelling.

After our conversation the other evening, I spent additional time in the field evaluating the effect of this new legislation upon the building of new homes and have concluded that of the various types of lots that were discussed (flat lots, those that slope from side to side, those that fall from the street—downslope lots, if you will, and upslope lots), the upslope lots would be most dramatically affected by the draft ordinance recommended by the Planning Commission. I also note that downslope lots would receive a

DPZ: Further Thoughts/Recommendations on the Proposed Lot Grade/Building Height Revisions and their impacts upon “Upslope Lots”
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potential advantage; and the issue of severely-sloping lots has already been addressed in the form of § 18-163 of the Town Code which permits an additional story in the case of those lots which slope downward at or in excess of 25 percent (25 vertical feet within a horizontal run of 100 feet). Upslope lots, however, would experience a diminishing maximum permitted building height in feet as the new structure is situated farther behind from the front building line.

In my travels out in the field this past week, I came across a number of existing dwellings that seem to illustrate my point and have included photographs of four (4) such homes within this memorandum.

206 Owaissa Court SE →

The dwelling, built in the late 1970s, is situated some 52 feet from the right-of-way line of the cul-de-sac at its closest point. The “upslope” of the existing driveway appears to be at least eight (8) percent with a resulting “average elevation of the finished lot grade at the front of the building” being about 3 feet above that at the front building line (a continuous arc some 30 feet from the Owaissa Court SE, right-of-way line).



← 301 Ayr Hill Avenue NE

This dwelling has a similar uphill grade to that as noted in the preceding picture. In accord with the Ayr Hill subdivision that was drawn on March 15, 1937 and filed later that same year, the **minimum** front setback line is 100 feet from the centerline of the street, or 50 feet from the right-of-way line of Ayr Hill Avenue NE. (Section 18-15C requires a minimum front-yard setback line of 35 feet from the right-of-way line.)

DPZ: Further Thoughts/Recommendations on the Proposed Lot Grade/Building Height Revisions and their impacts upon “Upslope Lots”
February 22, 2011
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Behind the green-roofed garage at 304 Tapawingo Road SE, is the front elevation of 311 Glyndon Lane SE → (accessible from a private driveway situated in the 800 block of Glyndon Street SE)

This parcel technically fronts onto Tapawingo Road SE, through a pipe-stem type lot (no longer permitted in the Town) that is some 20 feet in width and 150 feet in length. The average elevation of the house—built in 2008—is about 6 feet above the corresponding elevation of Tapawingo Road SE.



← 106 Elmar Drive SE

This relatively new dwelling has been constructed on the original farmhouse tract and its front averages fourteen (14) feet above the height of the street. The proposed lot grade limitations (3-foot vertical height limit) would eliminate at least one front terrace. The placement of the “measuring stick” for building height at the front setback line is, in this case, some 60 feet in front of the dwelling and would most likely eliminate its top floor if it were to be built after the adoption of the proposed legislation.

Unable to be depicted in picture format, the dwelling at 394 Park Street SE (Lot 5 in the “The Glen”) sits at the end of a 600-foot-long gravel driveway on a gentle upslope lot and represents, perhaps, the most extreme case where building height would be penalized as a result of the Planning Commission’s recommendation for placing the measuring stick at the front building line.

DPZ: Further Thoughts/Recommendations on the Proposed Lot Grade/Building Height Revisions and their impacts upon “Upslope Lots”
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A final picture:

503 Tapawingo Road SW →

Note the wing wall at the right-front corner (a matching wing wall is on the left side and behind the black car) that is used to “lower” the overall height of the dwelling. Our height verification program that began in 2007 would have “flagged” the proposed dwelling height as part of the building permit review process and would have required the appropriate adjustments to ensure that the dwelling does not exceed 35 feet or 2-1/2 stories in height. (Building heights—especially at the permit stage—must be certified by the engineer who is also preparing such plan features as grading plans).



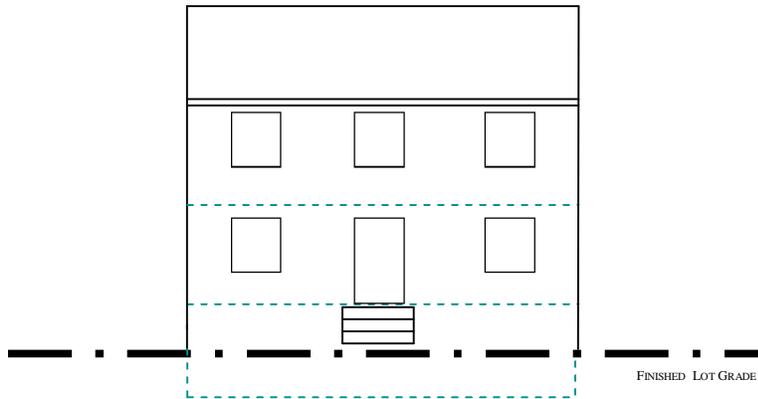
It was noted on the first page of this memorandum that both the Town Attorney and I sought to limit the height of dirt skirts used by builders to pull foundations out of the ground (and to create walk-to-daylight basement entrances). After viewing thousands of existing dwellings in the field, it was my recommendation that a vertical deviation of 3 feet from the existing grade be established as the limit between existing and proposed lot grades.

Given my increasing concern that the relocation of the “measuring stick” to determine building heights (as proposed by the Planning Commission) could actually increase the likelihood of future variances for lot redevelopment activities (and perhaps also negatively impact property values), it is my opinion—provided with great respect for the work of the Town’s Planning Commission regarding this matter—that the Town Attorney’s draft ordinance from July 2010 should be considered and subsequently approved at the public hearing to be held on February 28, 2011.

See also Proposed Ordinance Attachments from the Town Attorney and Planning Commission.

Site Analysis

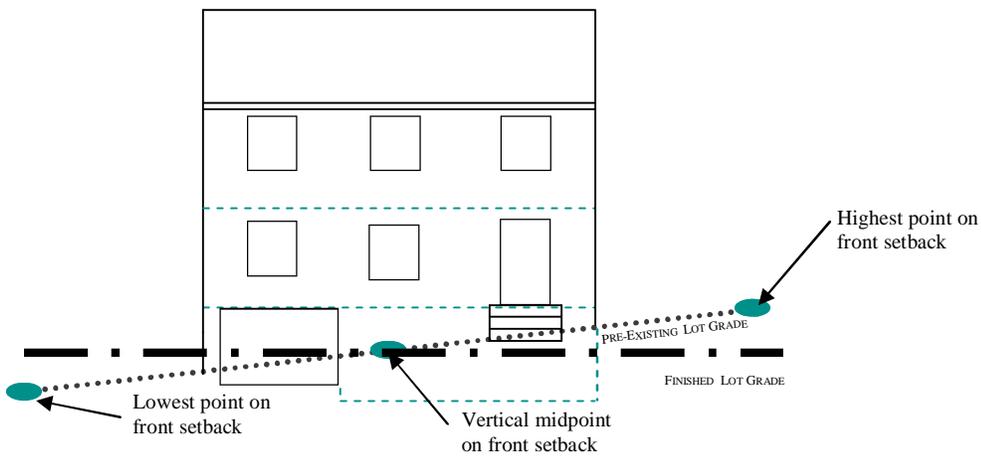
ELEVATION



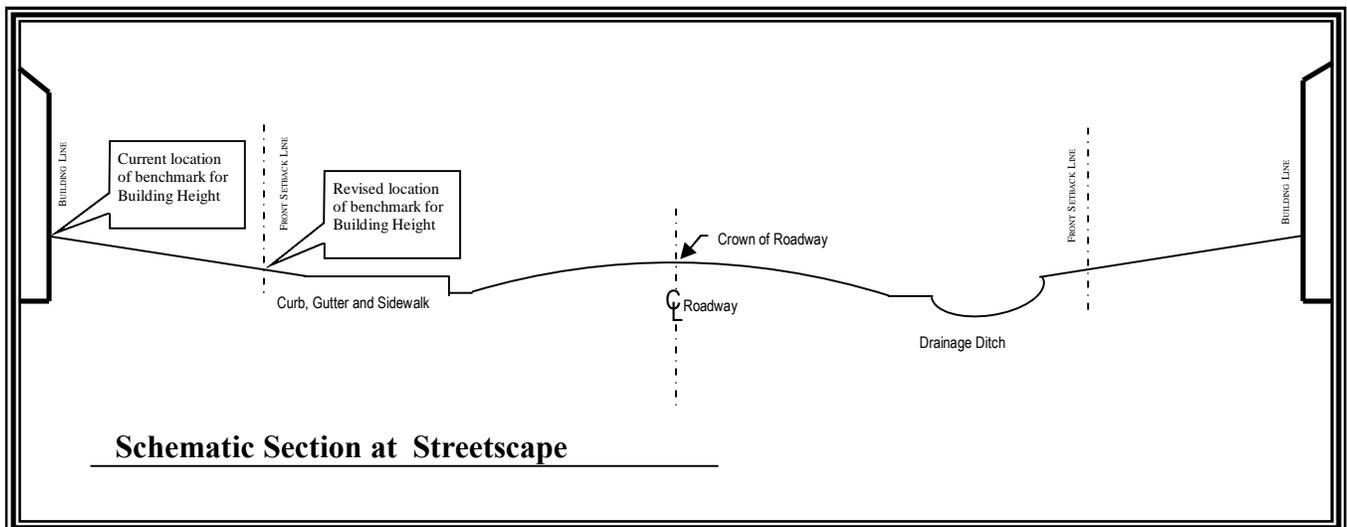
**POTENTIAL OUTCOME FROM
PROPOSED PLANNING COMMISSION
CHANGES TO SECTION 18-4
BUILDING HEIGHT & LOT GRADE
AS SEEN IN EXAMPLES OF
SINGLE FAMILY DETACHED
DWELLINGS WITHIN THE
TOWN OF VIENNA, VA**

*As prepared for February 14, 2011
Work Session for the
Mayor and Town Council*

Flat Site



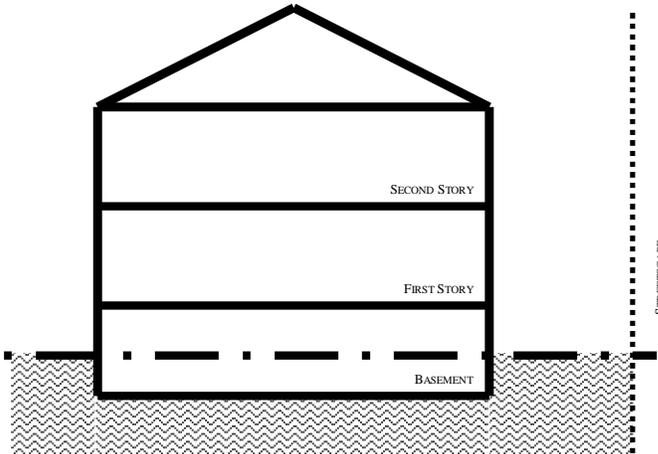
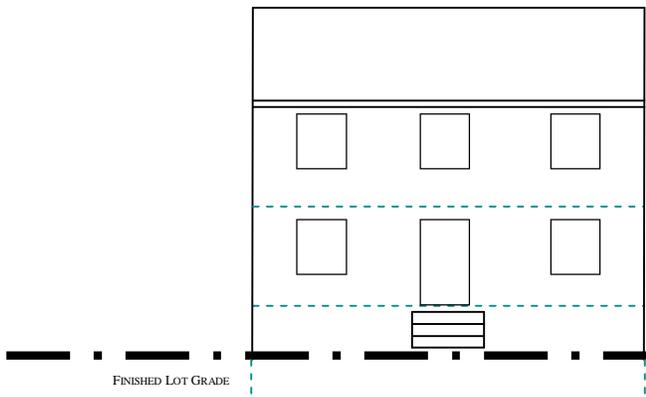
Slope at street



Schematic Section at Streetscape

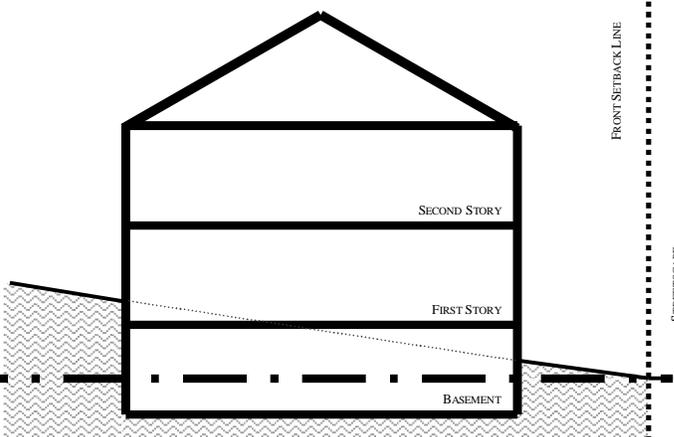
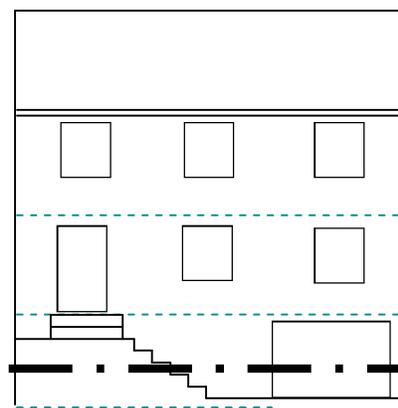
ELEVATION

SECTION



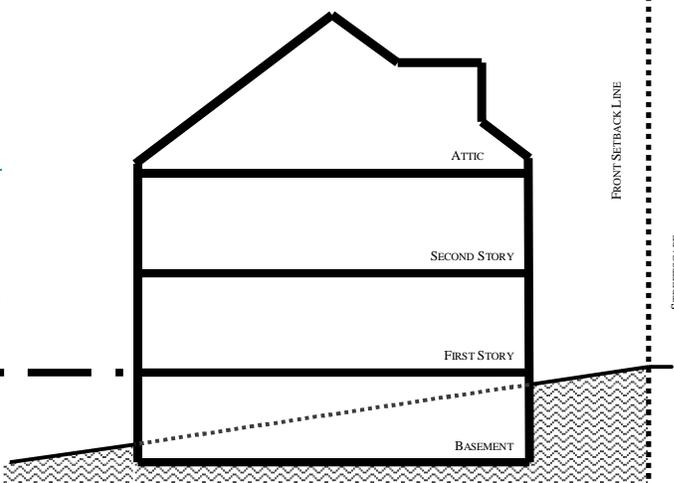
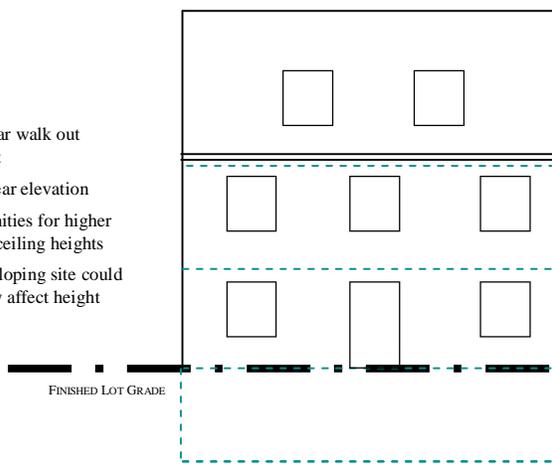
Flat Site

- Easier basement level front walk out parking
- Steeply sloping site could adversely affect height



Slope-up from street

- Easier rear walk out basement
- Higher rear elevation
- Opportunities for higher roofline/ceiling heights
- Steeply sloping site could favorably affect height



Slope-down from street

*As prepared for February 14, 2011
Mayor and Town Council Work Session*

Site Cross Sections